

City of Denton City Council Minutes  
July 29, 2014

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, July 29, 2014 at 11:30 a.m. in the Facilities Management Training Room at 869 S. Woodrow, Denton, Texas.

PRESENT: Mayor Watts; Mayor Pro Tem Engelbrecht, Council Member Gregory, Council Member Hawkins, Council Member Johnson, Council Member Roden, and Council Member Ryan

ABSENT: None

1. Receive a report, hold a discussion, and give staff direction concerning the current status of the 2014 mosquito season.

Ken Banks, Director-Environmental Services/Utility Budget, stated that the Mosquito Surveillance and Response Plan was developed in 2002 and was reviewed every year with revisions if needed. It used monitoring data to establish Risk Levels. The monitoring was conducted by UNT and was based on principals of integrated pest management. Each Risk Level had actions for surveillance, public education and mosquito control. Risk Level 1 was a normal response with the probability of human outbreak remote; Risk Level 2 was an enhanced response again with a low probability of human outbreak; Risk Level 3 was a public health concern level with a low human outbreak probability; Risk Level 4 was a public health warning with a moderate to high human outbreak probability and Risk Level 5 dealt with a public health alert with human outbreak confirmed.

Setting Spray Triggers – the setting of spray triggers was challenging as (1) decisions involved complex biological, ecological and public health factors, (2) the decision would always be made with incomplete information, (3) there would be strong feelings from the public in response to the decision, and (4) trigger levels for spraying could be thought of as a spectrum. Trigger conditions should always attempt to balance public health protection, non-target impacts, efficient resource use and realistic response level expectations.

Council Member Roden asked how it was determined that spraying was effective.

Banks stated that it was a difficult situation to assess as there were many variables to the mosquito population in addition to spraying. There were many compounding variables which might have an effect on the mosquito population such as rainfall, change in temperature, life span.

Council discussed the benefits/negatives for spraying both on ground level and air spraying and the results from spraying.

Monitoring – monitoring of the mosquito traps was done by researchers at UNT and involved two types of monitoring. One was a routine monitoring method where samples were sent to the Texas Department of State Health Services and the other was monitoring for Rapid Analyte Measurement Platform testing. The first monitoring took about a week for screening results with the second completed in a day or less. Trap results were posted on the City's website. Statewide and local monitoring results were presented.

Control for mosquito larva – the City concentrated on using a larvacide (BTI) which was highly specific to mosquitoes. It did not affect fish, frogs or other predatory insects that might feed on mosquito larvae. However, it did have to be applied correctly to be effective.

Monitoring and larviciding – As of July 8<sup>th</sup>, 2935 BTI applications had been made within the City drainage networks, 84 BTI treatments were provided to citizens, 192 traps were deployed for routine monitoring, 80 traps were deployed for RAMP testing with no WNV positive samples collected.

Equipment and inventory status - the City had 2 ULV sprayers with one in service and one for a backup. The units were serviced and calibrated regularly. A spray contractor was on standby with enough chemicals for 3-4 spray events. The BTI inventory was adequate.

A review of expenditures for 2014 was presented which included the UNT monitoring contract, the UNT RAMP program and the RAMP supplies. Total budgeted expenses for 2012 was \$57,000, for 2013 was \$38,000 and was estimated to be between \$30,000-\$42,000.

Mayor Pro Tem Engelbrecht asked about trap locations.

Banks stated that they were fixed locations on a grid throughout the system. There were some temporary traps which could be placed on an as-needed basis or complaint basis.

2. Hold a discussion and provide staff with direction regarding the creation of an ad hoc City Council Committee to interface with the Historic Landmark Commission (HLC) and review the operations, procedures, powers, duties, policies and regulations related to Historic Landmark Preservation and Historic Districts in the City of Denton, Texas.

Brian Lockley, Director of Planning and Development, reviewed the history of the Historic Landmark Commission, the composition of the Committee, the powers and duties of the committee and potential topics for the Ad Hoc Committee consideration. The language detailing the duties of the Commission had essentially remained the same since the Commission was formed. He noted that regarding whether the makeup of the Committee was as indicated in the ordinance it did not affect the validity of the actions taken.

Council Member Johnson felt that the Council should think about having specifics for all boards and commissions to allow for the best decisions made such as what were the core capabilities that needed to be included for each board/commission. He suggested looking at all boards/commissions to set qualifications for the members.

Mayor Pro Tem Engelbrecht stated that the ordinance did not specify someone having expertise in historical structures. He suggested reviewing the member qualifications as noted for HLC.

Council Member Roden cautioned not to divide the qualifications too far down as it might limit who would be able to serve. He suggested finding people who were passionate to serve. He asked if there was a structure for HLC to use to tackle the goals as provided in the ordinance.

Lockley stated that up to this point, the meetings focused on applications. More recently the Commission had started to discuss more initiatives. It was working on a downtown overlay with subcommittees and other projects with a broader perspective on the HLC goals.

Council Member Gregory felt that the Commission was reactive to situations that had already happened and was glad to hear that it was starting to be more proactive.

Mayor Watts stated that in some ways, not been proactive in their charge, was partly the problem caused by the policy makers.

Council Member Johnson stated that he saw that it was an advisory board to set the vision but the advisory board was not the regulatory arm. He felt that citizens who wanted to do something with a building were going to a commission of appointed citizens which may or may not have a complete understanding of the Code and who were negotiating the items. Planning should be regulating and HLC should be visionary to set the standards for regulations. He suggested thinking about the role of the HLC to be a vision setter and not the regulatory enforcer.

City Attorney Burgess stated that some boards were strictly advisory in nature and some were a governmental board which had some regulatory powers. HLC did have some independent regulatory authority.

Council Member Roden stated that the fact that it fell under Planning showed that it had a clear role for Certificates of Appropriateness. He was unclear that other aspects fell under Planning's role and that it might be a departmental structure based on what department it fell under. Another part of the discussion could be structural items that were causing certain emphasis on a role over another role.

Mayor Watts asked about the genesis of this discussion.

Council Member Roden stated that it was a general recognition on the part of the Commission to address some issues on the Council level. That was a mechanism to review the policies in general to get more discussion with the Council. It might include specific topics or a general rewrite of the ordinance.

Mayor Pro Tem Engelbrecht stated that there were also discussions taking place on how individual homeowners could withdraw from the historic district.

Mayor Watts stated that the point was to update the ordinance to meet current situations.

Council Member Johnson stated that the current regulations were structured for controversy between the homeowners and the unknown of what they would have to spend to meet those regulations. In Fort Worth there were very clear criteria for historic districts. He liked the idea of being proactive to develop a framework for historic districts which would set the Commission up for success and not put the applicant and the Commission in controversy.

Mayor Watts stated that would have a set of predictability whereby the criteria was known when an individual purchased in a particular area.

Council Member Johnson felt that Fort Worth had done a good job of defining the parameters so everyone knew what exactly what they would have to do.

Mayor Pro Tem Engelbrecht stated that one of the issues was that the criteria might be set but the environment had changed over the years such as windows, doors, siding. There was also a question of what period was supposed to be matched and how to preserve it yet meet sustainability issues with better quality products that gave the same look but provided better maintenance and looked better.

Council Member Roden felt the tension was going to be in the Downtown scenario as it would be hard to have strict criteria when applied to commercial uses as the uses could change very often as opposed to a residential situation which remained the same. He felt it was not possible to overlay a residential mindset in a downtown commercial area.

Lockley felt that the HLC would largely agree with the comments made but currently the historic districts were residential as opposed to commercial. There was also a regulation that new residential homeowners had to be informed that the home was located in a historic district and had certain regulations associated with it. The historical functions had been moved under Neighborhood Areas in his department. He also felt there was some understanding that commercial historical regulations would not be as strict as residential regulations. He noted that the HLC had expressed their desire to expand their authority to include topics such as the Downtown Square being added to the National Registry, the use of solar energy in historic districts, and the creation of new historic districts and the expansion of existing historic districts. Policies HLC presented for consideration included (1) aesthetic issues associated with the use of solar energy within historic districts, (2) creation of a downtown overlay district, (3) adopt elements of strategic planning and establish annual goals, (4) increase inventory of landmark and historic structures and (5) balance historic preservation with economic development.

Council Member Johnson asked if the goal of the ad hoc council committee was to be a liaison between Council and the HLC for future guidelines.

Council Member Roden felt that the ad hoc committee would be a suggested mechanism for larger goals such as a general overview of policies and where the City wanted to head in terms of historic preservation. This should involve citizens, Council and HLC with the need to set an agenda either to rewrite the entire ordinance or set a few goals to consider.

Council Member Ryan stated that he was in favor of an ad hoc committee if the goal was to look at the ordinance and where to update the current ordinance. He was not in favor of a forever committee just work on this one issue.

Mayor Watts stated that he was unclear of the purpose of the ad hoc committee and questioned if it was to work with HLC and historic stakeholders. He wanted to make sure what the goal/charge would be for the ad hoc committee.

Council Member Hawkins stated that it was not that the Council felt that the HLC was doing a bad job; it was just that the ordinance was outdated.

Mayor Pro Tem Engelbrecht asked if this would be citizen committee.

Council Member Roden stated that would depend on what was identified to work on. He felt that a citizen committee might be required to be a part of accomplishing the goal.

Mayor Pro Tem Engelbrecht stated that incentives such as abatements followed as part of the process and that it then became an issue of every citizen so there would need to be a broad citizen involvement as well as talking about neighborhoods that might want to move forward as a district.

Council Member Hawkins stated that the commercial aspect was also seen as an economic tool.

Council Member Johnson suggested establishing the ad hoc committee to look at the ordinance and then if Council along with the ad hoc committee and HLC felt that there was a need for an overlay over downtown, a broader group might be needed to help shape the decision. If only updating the ordinance was involved there was not a need for massive amounts of citizen involvement. If there were broader topics, then citizens should be involved.

Consensus of the Council was to move forward with creation of the ad hoc committee with input on the direction of the duties. The item would be considered at the August 12<sup>th</sup> meeting with Council Members Roden, Ryan and Johnson indicating an interest to serve on the ad hoc committee.

Following the completion of the Work Session, the City Council convened in a Closed Meeting at 1:48 p.m. to consider the specific items listed below under the Closed Meeting section of this agenda.

#### 1. Closed Meeting

##### A. Consultation with Attorneys - Under Texas Government Code, Section 551.071.

1. Discuss, deliberate, and receive information from the City's attorneys pertaining to the legal consequences of negotiation and extensions of non-annexation agreements in areas of the City's extraterritorial jurisdiction, and provide the City's attorneys with direction, where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative or legal proceedings.
2. Consult with and provide direction to City's attorneys regarding legal issues and strategies associated with Gas Well Ordinance regulation of gas well drilling and production within the City Limits and the extraterritorial jurisdiction, including: Constitutional limitations, statutory limitations upon municipal regulatory authority; statutory preemption and vested rights; impacts of federal and state law and regulations; impacts of gas well drilling upon protected uses and vice-versa; moratorium on drilling and production; other concerns about municipal regulatory authority or matters relating to enforcement of the Gas Well Ordinance; settlement matters concerning gas well drilling in the City; surface development issues involving surface and mineral estates; and legal matters associated with a citizen's initiative

regarding hydraulic fracturing where a public discussion of these legal matters would conflict with the duty of the City's attorneys under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

3. Discuss, deliberate, and receive information from the City's attorneys pertaining to sanitary sewer overflows and resulting enforcement action, and provide the City's attorneys with direction, where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative or legal proceedings.

With no further business, the meeting was adjourned at 4:03 p.m.

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CHRIS WATTS  
MAYOR  
CITY OF DENTON, TEXAS

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JENNIFER WALTERS  
CITY SECRETARY  
CITY OF DENTON, TEXAS