

**MINUTES OF THE  
REGULAR CITY COUNCIL MEETING  
MONDAY, SEPTEMBER 17, 2007 — 6:00 P.M.  
209 S. WASHINGTON  
KAUFMAN, TEXAS 75142**

**CITY COUNCILMEMBERS**

<b>MAYOR</b>	<b>WILLIAM FORTNER</b>
<b>MAYOR PRO-TEM</b>	<b>LONNIE BOUNDS</b>
<b>COUNCILMEMBER</b>	<b>GIL ALTOM JR.</b>
<b>COUNCILMEMBER</b>	<b>JEFF COUNCIL</b>
<b>COUNCILMEMBER</b>	<b>CHARLES GILLENWATER</b>
<b>COUNCILMEMBER</b>	<b>BARRY RATCLIFFE</b>
<b>COUNCILMEMBER</b>	<b>VON CARL THOMAS</b>

**INVOCATION:** Pastor Greg Richards from the Morning Star Church

**PLEDGE OF ALLEGIANCE**

**CALL MEETING TO ORDER:** Mayor Fortner called the Meeting to order at 6:04 p.m. Councilmembers present were William Fortner, Jeff Council, Lonnie Bounds and Barry Ratcliffe. Mayor Fortner declared a quorum present. Councilmember Thomas and Councilmember Gillenwater arrived at 6:08 p.m. Councilmember Altom was absent. Councilmember Thomas left the meeting at 7:40 p.m. Also present were City Attorney David Dodd, City Manager Curtis Snow, ACM/City Secretary Jo Ann Talbot, Director of Finance Cathy Cummins, Director of Public Works Richard Underwood, Director of Development of Services Terry Capehart, Chief of Police James M. Smith and Fire Chief Eddie Brown.

**RECOGNITION:** Mayor Fortner recognized and presented a Certificate to Director of Finance Cathy Cummins for the Achievement for Excellence in Financial Reporting – Government Finance Officers Association for Fiscal Year Ending September 2006.

**CITIZENS COMMENTS (5 MINUTES)** Citizens may address the City Council on any subject but must first complete a Request to Speak Form. Comments are limited to five (5) minutes, but no more than five (5) minutes per individual, and are not transferable. Citizen's comments not to exceed a total of 15 minutes.

No citizen's comments were made.

**CONSENT AGENDA ITEMS #1 THROUGH #9**

**“All matters listed under the Consent Agenda, are considered to be routine by the City Council and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the consent agenda and will be considered separately. For a citizen to request removal of an item, a speaker card must be filled out and submitted to the City Secretary.”**

1. Consider approval of the Minutes of the August 13, 2007 Special City Council Meeting.
2. Consider approval of the Minutes of the August 20, 2007 Regular City Council Meeting.
3. Consider approval of the Minutes of the August 28, 2007 Special City Council Meeting.
4. Consider second reading and adoption of Ordinance O-17-07 an Ordinance authorizing and allowing, under the act governing the Texas Municipal Retirement System, “Updated Service Credits” in said system on an annual basis for service performed by qualifying members of such system who at the effective date of the allowance are in the employment of the City of Kaufman; providing for increased prior and current service annuities for retirees and beneficiaries of deceased retirees of the city; to increase the rate of deposits to the Texas Municipal Retirement System by the employees of the city; and establishing an effective date for the ordinance.
5. Consider approval and authorize the Mayor to execute a contract between the Office of Rural Community Affairs and the City of Kaufman for the Texas Community Development Block Grant (TxCDBG) Program (Contract No. 727320).
6. Consider approval and authorize the Mayor to execute a contract with Gary R. Traylor and Associates for Grant Management Services for the City’s 2007 Texas Community Development Block Grant (TxCDBG) Program project.
7. Consider approval and authorize the City Manager to execute a Letter Agreement with the Kaufman Senior Citizens to extend a lease an additional five (5) years on the municipal building located at 112. S. Jackson Street.
8. Bid Award – Fiscal Year 2007/2008 Motor Fuel and Oil.
9. Bid Award – Fiscal Year 2007/2008 Street Maintenance Materials.

Councilmember Council moved and seconded by Councilmember Ratcliffe to approve the Consent Agenda items 1-9. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom was absent.

## **END OF CONSENT AGENDA**

### **BID AWARDS**

10. Bid Award – Fiscal Year 2007-2008 Street Rehabilitation Program.

City Manager Curtis Snow informed the Council that documents were prepared and submitted to 14 companies. A total of three (3) bids were received, opened and read aloud Friday, September 7, 2007 at 10:00 a.m.

Staff reviewed all bids received and has determined that Apac-Texas, Inc. in Dallas, Texas submitted the most responsible bid for this project.

Apac-Texas, Inc. submitted a total bid of \$208,112.58. The total amount of funds proposed in FY' 2007-2008 for Street Rehab is \$200,000. The remaining \$8,112.58 is also available in the street maintenance section of the FY' 2007-2008 budget.

Staff recommends that Council award the bid for the 2007 Street Rehabilitation Project to Apac-Texas, Inc. in Dallas, Texas for the total amount of \$208,112.58, contingent upon final approval of the FY' 2007-2008 Budget.

Mayor Pro-Tem Bounds asked if the City had ever used Apac-Texas for Street Rehabilitation. Director of Public Works Richard Underwood responded no, but they do work for TxDot.

Councilmember Gillenwater moved and seconded by Mayor Pro-Tem Bounds to award the bid for the 2007 Street Rehabilitation Project to Apac-Texas, Inc. in Dallas, Texas for the total amount of \$208,112.58, contingent upon final approval of the FY' 2007-2008 Budget. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom was absent.

11. Bid Award- Kaufman Elevated Water Storage Tanks Repaint and Repair Project.

City Manager Curtis Snow informed the Council that Bid documents were prepared and submitted to 8 companies. A total of five (5) bids were received, opened and read aloud Tuesday, September 11, 2007 at 10:00 a.m.

City Staff along with Carter & Burgess Engineering reviewed all bids received and determined that Diamond Enterprise, Inc. in Gloster, Mississippi submitted the most responsible bid for this project.

Diamond Enterprise, Inc. submitted a bid for the total amount of \$349,240 to repaint and repair both overhead water storage tanks. Approximately \$590,000 is available for this project once engineering and inspection services are accounted for.

Staff recommends that Council award the bid for the Kaufman Elevated Water Storage Tanks Repaint and Repair Project to Diamond Enterprise, Inc. in Gloster, Mississippi for the total bid amount of \$349,250. This amount does not include painting a sign on the towers.

Mayor Pro-Tem Bounds moved and seconded by Councilmember Ratcliffe to award the bid for the Kaufman Elevated Water Storage Tanks Repaint and Repair Project to Diamond Enterprise, Inc. in Gloster, Mississippi for the total bid amount of \$349,250. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom was absent.

12. Consider approval of Professional Services for Inspection Services for Kaufman Elevated Water Storage Tanks Repaint and Repair Project.

City Manager Curtis Snow informed the Council that proposals were received from two (2) companies for inspection services to inspect the repair and repainting of the water tank project.

City Staff along with Carter & Burgess Engineering reviewed the proposals submitted and determined that Jimmy D. Dunham, P.E. submitted the most responsible proposal for this project.

Jimmy D. Dunham, P.E. submitted a proposal for a total cost not to exceed \$20,000 for inspection services for the Kaufman Elevated Water Storage Tanks Repaint and Repair Project. This amount is based on approximately 15 to 20 trips per tank at \$500 per trip. The City pays for only the amount of trips required for inspections of each tank. Adequate funds are available within this project for the inspection services.

Staff recommends that Council award the bid for the inspection services for the Kaufman Elevated Water Storage Tanks Repaint and Repair Project to Jimmy D. Dunham, P.E. for a total cost not to exceed \$20,000.

Councilmember Gillenwater moved and seconded by Mayor Pro-Tem Bounds to award the bid for the inspection services for the Kaufman Elevated Water Storage Tanks Repaint and Repair Project to Jimmy D.

Dunham, P.E. for a total cost not to exceed \$20,000. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom was absent.

### **DISCUSSION/ACTION ITEMS**

13. Consider a motion to reconsider "Ordinance O-12-07 of the City of Kaufman, Texas, amending the Code of Ordinances, Chapter 90 "Streets, sidewalks, and other public places" by adding a new Article V; providing definitions; declaring prohibited uses on public sidewalks; providing for liability of abutting property owners for injuries caused by defective sidewalks and driveways; providing for liability for persons making special use of sidewalks or driveways; providing for City of Kaufman cost sharing for repairs of sidewalks; providing for City Council to undertake involuntary assessment proceedings for necessary repairs; providing for voluntary property owner participation costs; permitting; deleting Section 102-4 riding animals or bicycles on sidewalks; providing for a penalty, a repealer, savings clause and an effective date."

Councilmember Council moved and seconded by Mayor Pro-Tem Bounds to reconsider "Ordinance O-12-07 of the City of Kaufman, Texas, amending the Code of Ordinances, Chapter 90 "Streets, sidewalks, and other public places" by adding a new Article V; providing definitions; declaring prohibited uses on public sidewalks; providing for liability of abutting property owners for injuries caused by defective sidewalks and driveways; providing for liability for persons making special use of sidewalks or driveways; providing for City of Kaufman cost sharing for repairs of sidewalks; providing for City Council to undertake involuntary assessment proceedings for necessary repairs; providing for voluntary property owner participation costs; permitting; deleting Section 102-4 riding animals or bicycles on sidewalks; providing for a penalty, a repealer, savings clause and an effective date." Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom was absent.

14. Consider amending or rescinding ""Ordinance O-12-07 of the City of Kaufman, Texas, amending the Code of Ordinances, Chapter 90 "Streets, sidewalks, and other public places" by adding a new Article V; providing definitions; declaring prohibited uses on public sidewalks; providing for liability of abutting property owners for injuries caused by defective sidewalks and driveways; providing for liability for persons making special use of sidewalks or driveways; providing for City of Kaufman cost sharing for repairs of sidewalks; providing for City Council to undertake involuntary assessment proceedings for necessary repairs; providing for voluntary property owner participation costs; permitting; deleting Section 102-4 riding animals or bicycles on sidewalks; providing for a penalty, a repealer, savings clause and an effective date."

Mayor Fortner called upon the citizens that wished to speak in regards to the Sidewalk ordinance.

Persons that spoke in opposition of Ordinance O-12-07.

Jimmy Council, 1404 Washington Street, Kaufman  
Janice Murrell, 106 West Allen Street, Kaufman  
Mike Minnor, P. O. Box 878, Kaufman  
Michelle Sjerven, 5197 Old Rail Road Trail, Kaufman

After hearing from the persons in opposition of the ordinance, City Manager Curtis Snow explained that the Council's motive was they wanted residential neighborhoods to improve and to give incentives for homeowners to make the improvements to sidewalks. There was never a discussion of policing sidewalks and ordering people to make improvements. Based on what real concerns and issues the Council had heard tonight from citizens, Mr. Snow recommended rescinding the ordinance.

Mr. Snow reported the ordinance set standards that prior to approval did not exist. The ordinance related to the liability, use, maintenance and repair of sidewalks within the city. It also allowed for cost participation between the city and property owners for repair and replacement of sidewalks. Local businesses and property owners were upset by the idea of having to accept liability and the burden of repairs for the sidewalks. The City did not create any new liabilities in the ordinance for property owners. No ordinance the City adopts can transfer liability and cannot shift any liability the city already has.

City Attorney David Dodd reported the ordinance does not create liability for property owners for several reasons. In many cases, the property owner may already have liability for the sidewalk. Many sidewalks were built without city involvement by developers and may have never been dedicated or given to the city. Many sidewalks may also be built on private property instead of in a public right of way. This must be reviewed on a case by case basis. An ordinance such as this cannot create civil liability for a property owner. The provision in the ordinance Section 190-163 does not constitute an acceptance of liability by or a legitimate transfer of liability to a third party.

After further discussion, Councilmember Council moved and seconded by Mayor Pro-Tem Bounds to rescind Ordinance O-12-07 and to review the ordinance and have public input and public hearings on a new revised sidewalk ordinance. It was also recommended to consider the ordinance on an election ballot during the City's regular election period. Mayor

Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom was absent.

Mayor Fortner commented that we want to encourage sidewalks and sidewalk improvements in our community and with this ordinance, we felt we were helping the citizens. Apparently, we were not.

15. Consider second reading and adoption of Ordinance O-13-07 of the City Council of the City of Kaufman, Texas, amending the Code of Ordinance, Chapter 66, Article II, "Smoking" by deleting Section 66-31 through Section 66-35 and supplementing with Section 66-31 through Section 66-70; providing provisions regulating smoking in public places; providing a severability clause; providing an effective date; and providing for a penalty.

City Manager Curtis Snow informed the Council that Ordinance O-13-07 prohibits smoking in public places and in work places. The only place that will be allowed to smoke in the city will be bars, private clubs and areas that are total enclosed areas or a resident. Smoking is prohibited within 20 feet of any outside entrances, operable windows, and ventilation systems of enclosed areas.

Councilmember Council asked who enforces the ordinance. City Manager Curtis Snow responded that the enforcement of the ordinance shall be by the Public Health Officer or designee, Environmental Enforcement Officer, Building Official or designee, City of Kaufman Firefighters, Peace Officer, Code Enforcement Officers and the City Manager or designee.

Mayor Fortner moved and seconded by Councilmember Gillenwater to adopt Ordinance O-13-07 of the City Council of the City of Kaufman, Texas, amending the Code of Ordinance, Chapter 66, Article II, "Smoking" by deleting Section 66-31 through Section 66-35 and supplementing with Section 66-31 through Section 66-70; providing provisions regulating smoking in public places; providing a severability clause; providing an effective date; and providing for a penalty. Mayor Fortner called for a vote. Mayor Fortner, Councilmember Council, Mayor Pro-Tem Bounds, Councilmember Ratcliffe and Councilmember Gillenwater voted AYE. Councilmember Thomas voted NAY. Councilmember Altom was absent. Ordinance O-13-07 passed by a vote of 5-1.

16. Consider adoption of Ordinance O-18-07 adopting the Annual Program of Services (Budget) for the City of Kaufman, Texas and a Revised Job Classification Plan for the Fiscal Year beginning on October 1, 2007 and ending on September 30, 2008.

Councilmember Council moved and seconded by Councilmember Ratcliffe to adopt Ordinance O-18-07 adopting the Annual Program of Services (Budget) for the City of Kaufman, Texas and a Revised Job Classification Plan for the Fiscal Year beginning on October 1, 2007 and ending on September 30, 2008. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom was absent.

17. Consider adoption of Ordinance O-19-07 levying the ad valorem tax of the City of Kaufman, Texas for the year 2007; on all taxable property within the corporate limits of the City as of January 1, 2007; not exempt by law; providing revenues for payment of current municipal expenses; and providing for the collection of taxes and the enforcement of collection.

City Manager Curtis Snow informed the Council this ordinance adopts the property tax rate to support the budget. He explained how the tax rate increase works in connection with the levying of ad valorem tax.

Councilmember Gillenwater moved and seconded by Mayor Pro-Tem Bounds to adopt Ordinance O-19-07 levying the ad valorem tax of the City of Kaufman, Texas for the year 2007; on all taxable property within the corporate limits of the City as of January 1, 2007; not exempt by law; providing revenues for payment of current municipal expenses; and providing for the collection of taxes and the enforcement of collection. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom was absent.

18. Consider adoption of Ordinance O-20-07 approving the 2007 tax rolls for the City of Kaufman, Texas.

Mayor Pro-Tem Bounds moved and seconded by Councilmember Gillenwater to adopt Ordinance O-20-07 approving the 2007 tax rolls for the City of Kaufman, Texas. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom was absent.

19. Consider approval of the Kaufman Economic Development Corporation Business Plan for Fiscal Year 2008.

City Manager Curtis Snow gave an overview to the Council of the Kaufman Economic Development Corporation Business Plan for Fiscal Year 2008. Councilmember Council moved and seconded by Mayor Pro-Tem Bounds to approve the Kaufman Economic Development Corporation Business Plan for Fiscal Year 2008. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom was absent.



20. Consider a Police Department 2008 Strategic Plan.

Chief of Police James M. Smith gave the Council an overview of the Police Department's 2008 Strategic Plan. Councilmember Council moved and seconded by Councilmember Gillenwater to accept the report. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom was absent.

### **APPOINTMENTS**

21. Consider the appointment of three citizens to review applications for the HOME Grant Program.

City Manager Curtis Snow informed the Council there were 9 applications submitted for the HOME grant. Three applicants withdrew and one was ineligible. Therefore, the other five were qualified. The Mayor and Council were in an agreement to go forward with the five (5) qualified applications on file. After discussion, Councilmember Thomas moved and seconded by Councilmember Ratcliffe to approve the five qualified applicants on file. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom was absent.

The City Council took a break at 7:34 p.m.

Councilmember Von Carl Thomas left the meeting at 7:40 p.m.

The City Council went into Executive Session at 7:45 p.m.

### **EXECUTIVE SESSION**

THE CITY COUNCIL WILL HOLD A CLOSED EXECUTIVE SESSION PURSUANT TO CHAPTER 551, GOVERNMENT CODE V.T.C.A. (OPEN MEETINGS LAW), IN ACCORDANCE WITH THE AUTHORITY CONTAINED IN SECTION 551.074 PERSONNEL AND SECTION 551.071 LEGAL

1. Personnel - Under TEX. GOV'T. CODE Sec. 551.074
  - a. City Manager's Annual Evaluation.
2. Legal – Under TEX. GOV'T. CODE Sec. 551.071
  - b. Update on pending litigation – Dallas Crown Packing Company

ANY FINAL ACTION, DECISION, OR VOTE ON A MATTER DELIBERATED IN EXECUTIVE SESSION MEETING OR ON INFORMATION RECEIVED IN A CONFERENCE WITH EMPLOYEES WILL ONLY BE TAKEN IN AN OPEN MEETING THAT IS HELD IN COMPLIANCE WITH TEX. GOV'T CODE CH. 551. THE CITY COUNCIL RESERVES THE RIGHT TO ADJOURN INTO

EXECUTIVE SESSION AS AUTHORIZED BY TEX. GOV'T CODE SEC. 551.001, ET SEQ. (TEXAS OPEN MEETINGS ACT) ON ANY ITEM ON ITS OPEN MEETING AGENDA OR TO RECONVENE IN A CONTINUATION OF EXECUTIVE SESSION ON THE EXECUTIVE SESSION MEETING ITEMS NOTED ABOVE, IN ACCORDANCE WITH THE TEXAS OPEN MEETINGS ACT, INCLUDING, WITHOUT LIMITATION, SECTIONS 551.071-551.086 OF THE OPEN MEETINGS ACT.

### **END OF EXECUTIVE SESSION**

The City Council adjourned Executive Session at 8:18 p.m.

#### 22. CONSIDER ANY OFFICIAL ACTION ON THE EXECUTIVE SESSION CLOSED MEETING ITEMS:

1. Personnel - Under TEX. GOV'T. CODE Sec. 551.074
  - a. Consider any official action regarding the City Manager's Evaluation.  
  
No action taken.
2. Legal – Under TEX. GOV'T. CODE Sec. 551.071
  - b. Update on pending litigation – Dallas Crown.  
  
No action taken.

### **ANNOUNCEMENTS FROM CITY MANAGER.**

1. Auction results on City Surplus Property – On line Auction  
  
City Manager Curtis Snow reported that the City received \$31,766.01 in results of the auction. However, fees to the county from seized vehicles and other fees had not been taken out of this amount.
2. Schedule a Joint Meeting with Kaufman Independent School District (Tuesday, October 23<sup>rd</sup>)  
  
The Council agreed to meet with the Kaufman Independent School District on Tuesday, October 23<sup>rd</sup> at 6:00 p.m. at the Administration Building.
3. TML Conference – Nov. 6-9, 2007

City Manager Curtis Snow reminded the Council of the TML Conference being held November 6 -9, 2007.

City Manager Curtis Snow reminded the Council of the Chamber Civic Auction to be held September 22, 2007.

**REQUEST/COMMENTS FROM MEMBERS OF CITY COUNCIL.**

Mayor Pro-Tem Bounds inquired about the burned restaurant structure on the square. City Manager Curtis Snow reported that a citation was issued today for violation of non-compliance health and safety laws.

Mayor Pro-Tem Bounds inquired about the old building at Foster's nursery that was to be removed. City Manager Curtis Snow reported that he would start enforcement of the building.

Mayor Fortner informed the Council that he had resigned from the Kaufman Economic Development Corporation Board and asked if any one on the Council would be interested. Councilmember Gillenwater reported that he would consider the position.

**ADJOURNMENT.**

There being no further business, Councilmember Ratcliffe moved and seconded by Councilmember Council to adjourn the meeting at 8:35 p.m. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom and Councilmember Thomas were absent.

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**WILLIAM FORTNER  
MAYOR**

**ATTEST:**

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**JO ANN TALBOT  
CITY SECRETARY**

