

**MINUTES OF THE
REGULAR CITY COUNCIL MEETING
MONDAY, APRIL 28, 2008 — 6:00 P.M.
KAUFMAN CITY HALL
209 S. WASHINGTON
KAUFMAN, TEXAS 75142**

CITY COUNCILMEMBERS

MAYOR	WILLIAM FORTNER
MAYOR PRO-TEM	GIL ALTOM JR.
COUNCILMEMBER	KENNY CAMPBELL
COUNCILMEMBER	JEFF COUNCIL
COUNCILMEMBER	CARLA CROUCH
COUNCILMEMBER	CHARLES GILLENWATER
COUNCILMEMBER	BARRY RATCLIFFE

INVOCATION: Larry Jones Chaplin for the Kaufman County Jail

PLEDGE OF ALLEGIANCE

CALL MEETING TO ORDER: Mayor Fortner called the meeting to order at 6:03 p.m. Councilmember's present were William Fortner, Gil Altom Jr., Jeff Council, Barry Ratcliffe, Carla Crouch, Charles Gillenwater and Kenny Campbell. Mayor Fortner declared a quorum present. Also present were City Attorney David Dodd, City Manager Curtis Snow, ACM/City Secretary Jo Ann Talbot, Director of Finance Cathy Cummins, Director of Development of Services Marcy Ratcliff and Interim Chief of Police Randy Roach.

PROCLAMATION – SUPPORTING CLICK IT OR TICKET ENFORCEMENT MOBILIZATION FOR MAY 2008 – Councilmember Council moved and seconded by Councilmember Ratcliffe to support the Proclamation recognizing Click It or Ticket Enforcement for the month of May, 2008. All approved.

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.

CONSENT AGENDA ITEMS #1 THROUGH #7

“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 March 10, 2008 Work Session and Special City Council Meeting.
2. Consider approval of the Minutes of the March 24, 2008 Regular City Council Meeting.
3. Consider second reading and adoption Ordinance O-03-08 of the City of Kaufman, Texas amending the Comprehensive Zoning Ordinance O-02-07 and establishing Specific Use Permit Number Fourteen (SUP-14) to allow a Private Club with restaurant services for property located at 9 Oak Creek Drive, Suites B & C, described as Lot 2A, Block A of the Rubio Addition, City of Kaufman, Texas.; providing certain conditions; amending the Official Zoning Map; and providing for a penalty, severability, savings, and an effective date.
4. Consider second reading and adoption of Ordinance O-08-08 to continue Ordinance O-19-99 curfew hours for minors in the City of Kaufman for a further three (3) years; providing a penalty not to exceed \$500.00; providing a savings clause; providing for publication in the official newspaper of the city; providing a severability clause; and providing an effective date.
5. Proclamation declaring May as Fair Housing Month in the City of Kaufman, Texas.
6. Consider approval of Resolution R-05-08 authorizing continued participation with the Steering Committee of Cities served by Oncor; and authorizing the payment of 10 cents per capita to the Steering Committee to fund regulatory and related activities related to Oncor Electric Delivery.
7. Consider approval of Resolution R-06-08 of the City Council of the City of Kaufman, Texas authorizing the City Manager to execute an Agreement with Humane Society of Cedar Creek Lake, Inc. for Public Animal Shelter Services.

Councilmember Campbell moved and seconded by Councilmember Gillenwater to approve the Consent Agenda Items 1 through 7.

Mayor Fortner called for a vote with all voting AYE, the motion carries.

END OF CONSENT AGENDA

PLANNING AND ZONING ITEMS

8. Consider a Final Plat, in order to develop a new Denny's Restaurant, being all of a certain 35,761 square feet (0.82) acre) tract of land, generally located on the southwest corner of State Highway 175 and State Highway 34, and being Lot 1 Block 1 of the Kaufman Plaza Addition and being situated in the D. Falcon Survey, Abstract No. 151, City of Kaufman, Kaufman County, Texas (Case No. P-01-08)

Director of Development Services Marcy Ratcliff informed the Council that the final plat under consideration will create one lot containing 0.82 acres for the purpose of developing a Denny's restaurant. The site and the surrounding property is currently undeveloped. City Council approved the Preliminary Plat of Lots 104, Block 1, Kaufman Plaza Addition on December 10, 2007, which depicted the development of a Denny's restaurant. The property is currently zoned Commercial.

After discussion, Mayor Pro-Tem Altom moved and seconded by Councilmember Crouch to approve the (0.82) acre) tract of land, generally located on the southwest corner of State Highway 175 and State Highway 34, and being Lot 1 Block 1 of the Kaufman Plaza Addition and being situated in the D. Falcon Survey, Abstract No. 151, City of Kaufman, Kaufman County, Texas (Case No. P-01-08). Mayor Fortner called for a vote with all voting AYE, the motion carried.

DISCUSSION/ACTION ITEMS

9. Conduct the Ninth (9th) Annual Evaluation on the performance of Northland Cable Properties, Inc., accordance with the Franchise Agreement.

Mr. Jim Burgess representing Northland Cable Ventures, LLC presented the Council with a performance evaluation for the calendar year of 2007. He asked if the Council had any questions. He informed the Council that the franchise expires in December of this year and that the Cable Company will file all future reports with the State instead of the City.

No action was taken.

10. Consider first reading and approval of Ordinance O-09-08 amending the existing Gas Franchise between the City and Atmos Energy Corporation

to provide for a different consideration; providing an effective date; providing or acceptance by Atmos Energy Corporation; and finding and determining that the meeting at which this Ordinance is passed is open to the public as required by law.

City Manager Curtis Snow informed the City Council that currently, the City of Kaufman has a franchise agreement with Atmos energy to provide gas services to citizens of Kaufman and use City rights of way to deliver those services. In exchange, Atmos Energy pays 4% of their gross revenues to the City as lease payments for installing their gas lines in the City's rights of way.

When the franchise agreement was negotiated the City included in the agreement a clause that states if Atmos negotiates another franchise agreement with another customer city that has a franchise fee that is higher, Kaufman would be entitled to the same fee. This is called a "favored nation" clause and fairly standard.

Atmos Energy recently renegotiated another franchise agreement where they agreed to a 5% franchise fee. This opens Kaufman to the same fee.

In the beginning, utilities were owned by municipalities. When they sold them off to private corporations they did not sell them the land in which their infrastructure lies. Municipalities negotiated franchise agreements to ensure the standard of service delivery was kept up to the municipalities' expectations and set a lease payment for the use of the cities' properties.

Since then, utility companies have argued (successfully) to state rate setting agencies that franchise fees were a tax and not a lease payment. That argument takes the expense of franchise fees off the balance sheet and favors the utility companies in their rate hearings. In Texas, utility companies show the franchise fee (now called tax) separately on the utility bill.

With that understanding, the Council members can decide for themselves whether the franchise tax is a tax on the customers or a fee for service paid by the utility. Ultimately, the customer is going to pay the cost.

If a Council member believes the franchise fee is a cost of service, than another city has established a new market rate of 5% for the use of public rights of way. The favored nation clause was included in the franchise agreement because it was expected that the market value of a lease on public rights of way would increase at some future date and therefore Kaufman would want the new market rate.

If a Council member believes the franchise fee is a tax on the customer, than now he or she needs to decide whether a tax increase is necessary to fund city services. The City continues to be under funded to meet its capital and operational needs. Staff continually seeks alternative revenue streams to close the gap. This 1% increase in the gas franchise will produce approximately \$15,000 or 0.5¢ of property tax equivalent.

After discussion Councilmember Campbell moved and seconded by Mayor Fortner to approve the first reading of Ordinance O-09-08 amending the existing Gas Franchise between the City and Atmos Energy Corporation to provide for a different consideration; providing an effective date; providing or acceptance by Atmos Energy Corporation; and finding and determining that the meeting at which this Ordinance is passed is open to the public as required by law. Mayor Fortner called for a vote with all voting AYE, the motion carried.

11. Consider authorizing the City Manager to execute an Agreement with Matrix Consulting Group for Professional Consulting Services to provide an employee compensation and classification services with the City of Kaufman.

City Manager Curtis Snow informed the Council that the City budgeted \$12,000 to update our compensation and classification plan for City employees. Staff received two proposals from The Waters Consulting Group and Matrix Consulting Group. After interviews with both firms, it was determined Matrix scope of services more closely aligned with the City's requested scope of services. The staff from Matrix involved with this proposal has experience with the City of Kaufman and are more familiar with the City's needs. The cost of this proposal is \$13,500. It is \$1,500 more than budgeted. The difference will come from the City Manager's operating budget.

After discussion, Councilmember Ratcliffe moved and seconded by Councilmember Gillenwater to authorize the City Manager to execute an Agreement with Matrix Consulting Group for Professional Consulting Services to provide an employee compensation and classification services with the City of Kaufman. Mayor Fortner called for a vote with all voting AYE, the motion carried.

12. Consider authorizing the City Manager to execute a letter agreement with Wiginton Hooker Jeffry, PC Architect for Professional Consulting Services to evaluate the projected area requirements and budget assumptions for the proposed Kaufman Cultural Center.

City Manager Curtis Snow gave an overview of the operation expenses for a proposed Cultural Center. He reported that the project could be done

without any tax increase. He reported his projections to fund the project is \$13.6 million. Now that all entities are on board with supporting a \$13.6 million multi purpose center, it would be prudent to develop more refined costs for the actual construction of the concept in the event that we have to modify our request from the Foundation or the scope of the project. None of the six entities have expressed an interest in committing more funds to the project and the \$6.3 million to be raised locally is a fairly set number. If any of the assumptions in the project are wrong, we will have to cutback on the scope of the project, amend the request for funds from the Foundation, and/or seek additional funding from other sources.

The cost of the professional services is \$7,500. We have set aside approximately \$214,000 from a bond issue for the sports complex and city facilities. The use of these funds for design purposes of a city facility is an appropriate use of these funds.

Councilmember Council commented that his concerns were that the Kaufman Independent School Board has not fully supported the project. He believes that spending the \$7,500 is just throwing it away.

Mayor Pro-Tem Altom commented that you need to count on our initial numbers being in the ballpark, referring to the proposed revenue and expense costs. We need to look at this as spending \$7,500 for the chance to get \$7.3 million in free grant money. He believes that you have to take the chance to know if you have a good estimate of the project.

Councilmember Council moved to table the action item, and then withdrew his motion.

Mayor Pro-Tem Altom moved and seconded by Councilmember Campbell to approve a letter agreement with Wiginton Hooker Jeffry, PC Architect for Professional Consulting Services to evaluate the projected area requirements and budget assumptions for the proposed Kaufman Cultural Center. Mayor Fortner called for a vote. Councilmember Campbell, Mayor Pro-Tem Altom, Mayor Fortner, Councilmember Ratcliffe, Councilmember Gillenwater and Councilmember Crouch voted AYE. Councilmember Council vote NAY. The motion passed 6-1.

13. Consider approval of extended health benefits for Jimmy Alsup under the COBRA Continuation of Coverage for a six month period.

City Manager Curtis Snow informed the Council that the Animal Control Officer was seriously injured during work hours in the performance of his duties. The seriousness of his injuries has required the City to move Mr. Alsup's status as an inactive employee. Due to his status, Mr. Alsup is not eligible to be enrolled in the City's health plan, but he is entitled to health

insurance under COBRA. A portion of Mr. Alsup's income is protected under Workmen's Compensation insurance. His income will be significantly reduced until he completes his recovery.

For the first six months of his inactive status, the City could participate in contributing the cost of his health insurance under COBRA to the limits offered as if he were an active employee. After six months, the City will review his status and make a determination on future payments. In the event Mr. Alsup finds employment elsewhere or health insurance other than what is provided by COBRA, the City's contribution will cease.

Councilmember Gillenwater was informed that the City has no past precedence of setting this policy. Councilmember Gillenwater asked if the COBRA insurance premium would be increased. Staff reported that the COBRA premium has always remained the same as the City's cost, but they would verify this information.

After further discussion, Mayor Pro-Tem Altom moved and seconded by Councilmember Gillenwater to approve paying health insurance under the COBRA plan through September 2008 up to 110% of the current monthly premium for Jimmy Alsup. Mayor Fortner called for a vote with all voting AYE, the motion carried.

EXECUTIVE SESSION

No Executive Session held.

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

1. Personnel – Under TEX. GOV'T. CODE Sec. 551.074
 - a. Discuss the position of Chief of Police.

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

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

1. Personnel – Under TEX. GOV'T. CODE Sec. 551.074

a. Consider any action regarding Chief of Police.

No action taken.

ANNOUNCEMENTS FROM CITY MANAGER.

1. Work Session and Canvass Election – Tuesday, May 13, 2008
2. Employee Awards Luncheon May 15th at TVEC at Noon.
3. Clean Up Day – May 16th & 17th
4. Regular City Council meeting – will be held Tuesday, May 27th.
5. Director of Development of Services Marcy Ratcliff informed the Council that the structure located at 104 S. Washington, a wall fell on the outside of the building. The wall was on the outside interior and was not a load bearing wall. Staff will be meeting with the property owners tomorrow to further discuss the integrity of the two buildings located at 101 W. Mulberry and 104 S. Washington Street. The buildings abut one another. 101 W. Mulberry is still under a monthly status report on an 18 month schedule to be repaired under the order of the Building Standards Commission.

REQUEST/COMMENTS FROM MEMBERS OF CITY COUNCIL.

Councilmember Gillenwater commended the Kaufman Police Department for a good job. Councilmember Ratcliffe echoed to this statement.

Councilmember Council commended Director of Public Works Richard Underwood for working on the Oak Street water leak. He also commended the Police Department on the recent drug cases.

Mayor Fortner reported that on one side of the Highway 175 Underpass the grass needed attention.

ADJOURNMENT.

Councilmember Campbell moved and seconded by Councilmember Council to adjourn the meeting at 7:36 p.m. Mayor Fortner called for a vote with all voting AYE, the motion carried.

**WILLIAM FORTNER
MAYOR**

ATTEST:

**JO ANN TALBOT
CITY SECRETARY**