

**MINUTES OF THE  
REGULAR CITY COUNCIL MEETING  
TUESDAY, MARCH 23, 2010 — 6:00 P.M.  
KAUFMAN CITY HALL  
209 S. WASHINGTON  
KAUFMAN, TEXAS 75142**

**CITY COUNCILMEMBERS**

<b>MAYOR</b>	<b>WILLIAM FORTNER</b>
<b>MAYOR PRO-TEM</b>	<b>BARRY RATCLIFFE</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>KENNETH MUNDEN</b>
<b>COUNCILMEMBER</b>	<b>LOUIS TIJERINA</b>

**PLEDGE OF ALLEGIANCE**

**CALL MEETING TO ORDER:** Mayor Fortner called the meeting to order at 6:04 p.m. Councilmember's present were William Fortner, Barry Ratcliffe, Jeff Council, Charles Gillenwater and Kenneth Munden. Councilmember Altom and Councilmember Tijerina were absent. Mayor Fortner declared a quorum present. Also present were City Attorney David Dodd, City Manager Curtis Snow, ACM/City Secretary Jo Ann Talbot, Chief of Police Michael Holder, Director of Public Works Richard Underwood, Director of Finance Cathy Cummins and Director of Development Services Marcy Ratcliff.

**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 comments were made by citizens.

**PROCLAMATION**

Proclamation – Fair Housing for the Month of April 2010

Proclamation – Arbor Day for Month of April 2010

Mayor Fortner Proclaimed April 2010 as Fair Housing Month and Arbor Day.

## **CONSENT AGENDA ITEMS #1 THROUGH #4**

**“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 February 22, 2010, Regular City Council Meeting.
2. Consider approval of the Minutes of the March 8, 2010, Special City Council Meeting and Work Session.
3. Consider second reading and adoption of Ordinance O-01-10 of the City of Kaufman, Texas, amending the Code of Ordinances and supplementing Chapter 114 Waterways; Section 114-8. City Lakes Park; paragraph (e) and (f); providing for a penalty, a repealer, savings clause and an effective date.
4. Consider approval of the Kaufman Economic Development Corporation Financial Audit Fiscal Year ending September 2009.

Mayor Pro-Tem Ratcliffe moved and seconded by Councilmember Gillenwater to approve Consent Agenda Items #1 through #4. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom and Councilmember Tijerina were absent.

## **END OF CONSENT AGENDA**

### **PLANNING AND ZONING**

5. Conduct a Public Hearing and Consider Ordinance O-02-10 on Zone Change Z-02-10 requested by National Signs, LTD., for a Specific Use Permit to allow a Monument Sign to exceed 100 square feet at Texas Health Resources Presbyterian Hospital, located at 850 Ed Hall Drive, a tract of land containing 11.62 Acres, out of the C.A. Lovejoy Survey, Abstract 303, City of Kaufman, Kaufman County, Texas, on property zoned Retail “R”. Case No. Z-02-10. (P&Z approved 6-0 with stipulations)
  - a. Conduct Public Hearing.

Mayor Fortner declared the Public Hearing open at 6:07 p.m.

Director of Development Services Marcy Ratcliff informed the City Council that the applicant is requesting a specific use permit (SUP) to allow a proposed monument sign, to be located at the main entrance to the Texas Health Resources Presbyterian Hospital, to exceed 100 square feet. The proposed monument sign contains 165 square feet, which is 65 feet more than allowed as a matter of right.

The applicant requested variances to the monument sign regulations on the maximum sign height of 10 feet, sign depth of 1.5 feet and front yard set back of 5 feet. The overly wide Texas Department of Transportation (TxDOT) right of way and the slope of the topography, at the entrance of the hospital would make it very difficult to see the existing sign. The purpose of the new signage is to be more visible to automotive traffic and to direct traffic to the correct entrance. The Board of Zoning Adjustments, on February 23, 2010, voted 5-0 to approve variances to allow for a 15 foot sign height, a 2.5 foot sign depth and a 1 foot front yard setback.

The property is currently zoned Retail, "R" under Zoning Ordinance O-02-07. The "R" district was established to provide areas for neighborhood, local and regional shopping and service facilities for the retail sales of goods and services. The "R" district should be located along or at the intersection of major collectors or thoroughfares to accommodate higher traffic volumes. Hospitals are listed as allowed by a specific use permit in the "R" district. The existing hospital does not have a specific use permit, because when it was originally built, it was an approved use and did not require a specific use permit.

The Sign Regulations were amended, in August 2008, to allow monument signs over 100 square feet as a specific use permit. This is the first application for a sign specific use permit.

#### COMPREHENSIVE PLAN:

##### Land Use Plan:

The 2009 Future Land Use Plan designated the land use of the subject property as Public/Semi Public. The existing Retail zoning is in compliance with the 2009 Future Land Use Plan since the use of the property is for a hospital that serves the public and semi public.

##### Thoroughfare Plan:

The Thoroughfare Plan designates W. US Highway 175 as a “Type AA”, Major Arterial, requiring a future right-of-way width of 240 feet. The existing right-of-way is developed and maintained by the State of Texas. TxDOT controls all the driveway accesses.

The Thoroughfare Plan designates Ed Hall Drive (Highway 243) as a “Type C”, Major Collector, requiring a future right-of-way width of 80 feet. The existing right-of-way width well exceeds 80 feet. The existing right-of-way is developed and maintained by the State of Texas. TxDOT controls all the driveway accesses.

### DETERMINATIONS NECESSARY FOR CONSIDERING SUP'S

#### Sec 30.2. – SPECIFIC USE PERMIT REGULATIONS:

A. In recommending that a Specific Use Permit for the premises under consideration be granted, the City shall determine that such uses are harmonious and adaptable to building structures and uses of abutting property and other property in the vicinity of the premises under consideration, and shall make recommendations as to requirements for the paving of streets, alleys and sidewalks, means of ingress and egress to public streets, provisions for drainage, adequate off-street parking, screening and open space, heights of structures, and compatibility of buildings. In approving a requested SUP, the Planning and Zoning Commission and City Council may consider any or all of the following:

1. The use is harmonious and compatible with surrounding existing uses or proposed uses;
2. The activities requested by the applicant are normally associated with the permitted uses in the base district;
3. The nature of the use is reasonable;
4. Any negative impact on the surrounding area has been mitigated; and/or
5. That any additional conditions specified ensure that the intent of the district purposes are being upheld.

In granting a Specific Use Permit, the Planning and Zoning Commission and City Council may impose conditions which shall be complied with by the owner or grantee before a certificate of occupancy may be issued by the Building Official, or his designee, for use of the building on such property pursuant to such Specific Use Permit and such conditions precedent to the granting of the certificate

of occupancy. Any special conditions shall be set forth in writing by the City Council prior to issuance of the Certificate of Occupancy, and shall be incorporated into the amending ordinance establishing the SUP.

The Planning and Zoning Commission on March 2, 2010 recommended approval of Z-02-10 for a requested Specific Use Permit for a 165 square foot monument sign by a vote of 6-0 with the following stipulation:

No enlargement of the monument sign shall be permitted unless an amendment to the Specific Use Permit is first approved by City Council.

After discussion, Councilmember Council moved to approve Ordinance O-02-10. The motion was seconded by Councilmember Munden.

Councilmember Council moved to amend the motion with Mayor Fortner closing the Public Hearing at 6:16 and repeating the motion to follow under Agenda Item 5. B.

- b. Consider Ordinance O-02-10 for a Specific Use Permit to allow a Monument Sign to exceed 100 square feet.

After discussion, Councilmember Council moved to approve Ordinance O-02-10 for a Specific Use Permit to allow a Monument Sign to exceed 100 square feet at Texas Health Resources Presbyterian Hospital, located at 850 Ed Hall Drive, a tract of land containing 11.62 Acres, out of the C.A. Lovejoy Survey, Abstract 303, City of Kaufman, Texas County, Texas, on property zoned Retail "R". Case No. Z-02-10. The motion was seconded by Councilmember Munden. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom and Councilmember Tijerina were absent.

6. Consider the Site Plan (SP-01-10) for the Kaufman County Appraisal District at 2300 Commerce Way. The property is platted Lot 11, Kaufman Business Park, in the City of Kaufman, Kaufman County, Texas. The property is zoned Planned Development-2 and is proposed to be developed as the new office facility for Kaufman County Appraisal District. Case No. SP-01-10

Development Services Director Marcy Ratcliff informed the Council that the Kaufman County Appraisal District (KCAD) submitted a site plan review application for the development of their new 9,634 square foot office facility at 2300 Commerce Way. The undeveloped Lot 11, containing

1.674 acres, is located towards the rear of the Millennium Business Park, adjacent to the Scotts Revised Addition.

The office area requires 32 off-street parking spaces and the applicant is providing 75 spaces. The applicant is required to provide 2 handicapped off-street parking spaces and is providing 4 spaces. The office area includes a large area for Board meetings and public meetings for Appraisal Review Board. The KCAD is providing all the additional off-street parking for their customer needs. The applicant is proposing two 24 foot driveway entrances to the property.

The total impervious area (building, parking and other paved areas) is 51,186 SF, which is approximately 70% of the total lot area. The applicant is required to provide a 5' wide sidewalk along Commerce Way.

The development is required to provide not less than 15% of the gross building site area, which would be 1,445 SF. The applicant is proposing to provide 29% of the total lot, as landscape area, which is 21,733 SF.

The proposed building will have 100% masonry coverage, minus the windows and doors. The average building height is 26 feet.

The applicant will be providing a 6 foot masonry fence along the rear property line to provide screening to the three adjacent residential lots located in the rear, in Scotts Revised Addition.

The site plan meets the technical requirements of Planned Development (PD) – 2 and Zoning Ordinance O-02-07.

#### COMPREHENSIVE PLAN:

##### Land Use Plan:

The 2009 Future Land Use Plan designated the land use of the subject property as Commercial. The existing PD-2 zoning is in compliance with the 2009 Future Land Use Plan. PD-2 allows a variety of commercial, retail and office uses.

##### Thoroughfare Plan:

The Thoroughfare Plan designates W. US Highway 175 as a "Type AA", Major Arterial, requiring a future right-of-way width of 240 feet. The existing right-of-way is developed and maintained by the State of Texas. TxDOT controls all the driveway accesses.

The Thoroughfare Plan designates the future Highway 34 Bypass as a "Type AA", Major Arterial, requiring a future right-of-way width of 240 feet. The existing right-of-way is developed and maintained by the State of

Texas. TxDOT controls all the driveway accesses. The future Highway 34 Bypass will be located along the western border of the Millennium Business Park. This development will not have direct access to the future Highway 34 Bypass.

The Planning and Zoning Commission on March 2, 2010, recommended approval by a vote of 6-0 of Site Plan S-01-10, addressed as 2300 Commerce Way.

Mayor Fortner inquired about the fencing and asked if the applicant had requested a change on the masonry fence requirement. Marcy Ratcliff responded that the applicant had not requested a change of fencing requirements. Mayor Fortner asked staff to work on considering removing the masonry fencing requirement in the Planned Development Zoning in the Millennium Business Park as well as in the overall zoning ordinance. Ms. Ratcliff reported that she would take this item to the Planning and Zoning Commission for review in regards to the Zoning Ordinance. She would also speak to the Director of Economic Development Lee Ayres to discuss with the KEDC Board to consider a recommendation regarding the masonry fencing requirement.

After further discussion, Councilmember Council moved and seconded by Mayor Pro-Tem Ratcliffe to approve the Site Plan (SP-01-10) for the Kaufman County Appraisal District at 2300 Commerce Way. The property is platted Lot 11, Kaufman Business Park, in the City of Kaufman, Kaufman County, Texas. The property is zoned Planned Development-2 and is proposed to be developed as the new office facility for Kaufman County Appraisal District. Case No. SP-01-10. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom and Councilmember Tijerina were absent.

## **DISCUSSION/ACTION ITEMS**

7. CONSIDER FIRST READING AND APPROVAL OF ORDINANCE O-03-10 OF THE CITY OF KAUFMAN, TEXAS, AMENDING THE CODE OF ORDINANCES, AS HERETOFORE AMENDED BY AMENDING CHAPTER 70; BY ADDING ARTICLE IV SECTION 70.100 "TREE PRESERVATION" TO ESTABLISH A TREE CARE PROGRAM FOR PUBLIC PROPERTY, STREETS AND RIGHT-OF-WAYS; WITH MEMBERS OF THE PARKS AND RECREATION BOARD TO SERVE AS THE TREE PRESERVATION BOARD; DESIGNATING THE CITY DIRECTOR OF PUBLIC WORKS WITH ADMINISTRATIVE RESPONSIBILITY FOR THE MAINTENANCE AND REMOVAL OF TREES ON CITY PROPERTY; AND PROVIDING FOR THE REMOVAL OF DISEASED OR HAZARDOUS TREES ON PRIVATE PROPERTY UNDER CERTAIN CONDITIONS; PROVIDING A SERVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR CIVIL

PENALTIES; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

Assistant City Manger/City Secretary Jo Ann Talbot informed the Council that the Tree Care Ordinance allows the City to be recognized as a Tree City USA Community. Some reasons to become a Tree City USA Community include:

1. The Tree City USA program provides direction, assistance, and national recognition to our community by supporting the framework for a sustainable urban forest.
2. It honors our community and demonstrates commitment to a healthier environment through Arbor Day celebrations and Tree City USA recognition.
3. Boost property values across the community. Properly placed trees can increase property values from 7-21% and buildings in wooded areas rent more quickly and tenants stay longer.
4. Reduce costs for energy, storm water management, and erosion control. Tress yield up to three time their cost in overall benefits to the city, averaging \$273 per tree.
5. Cut energy consumption by up to 25%. Studies indicate that as few as three additional trees planted around each building in the US could save over country \$2 billion, annually, in energy costs.
6. Build stronger ties to our neighborhood and community. Trees and green spaces directly correlate to greater connections to the neighborhood and neighbors.

To become a Tree City USA, the City has to adopt a Tree Care Ordinance. The tree ordinance must establish a board. The board will be responsible for writing and implementing an annual community forestry work plan. The ordinance should be flexible enough to fit the needs of the community. The Tree Care Ordinance designates the Parks and Recreation Board. They will be responsible for developing and making recommendations to the City Council and implementing policy.

The tree ordinance provides an opportunity to set good policy and back it with the force of law when necessary. Ideally, it will provide clear guidance for planting, maintaining and removing trees from streets, parks and other public places. **This ordinance is meant to be used for our City streets and parks, unless the owner of any tree or shrub overhangs any street right-or-way**, then the property owner is responsible for the pruning.

There are four (4) requirements to become a Tree City USA. One 1) To appoint a Tree Board; Two 2) Adopt a Tree Care Ordinance; Three 3) To have a Community Forestry Program with an Annual Budget of at Least \$2.00 per capita and four 4) An Arbor Day Observance and Proclamation.

Some of the eligible expenses that may be counted in meeting the \$2.00 per capita requirement are: city workers' salaries, tree purchases, equipment purchases, administrative time, insurance, etc. The Parks and Recreation Board will develop and implement the policies. The Parks/Street Department will enact the Ordinance and maintain the forestry program with an annual work plan.

Jo Ann Talbot responded to Mayor Pro-Tem Ratcliffe inquiry that this policy will also enhance the planting and beautification of our parks and rights-of-way.

After discussion, Mayor Fortner moved and seconded by Councilmember Gillenwater to approve the first reading of ordinance O-03-10 of the City of Kaufman, Texas, amending the Code of Ordinances, as heretofore amended by amending Chapter 70; by adding Article IV Section 70.100 "Tree Preservation" to establish a tree care program for public property, streets and right-of-ways; with members of the Parks and Recreation Board to serve as the Tree Preservation Board; designating the City Director of Public Works with administrative responsibility for the maintenance and removal of trees on city property; and providing for the removal of diseased or hazardous trees on private property under certain conditions; providing a severability clause; providing a savings clause; providing for civil penalties; providing for a penalty of fine not to exceed five hundred dollars (\$500.00) for each offense; and providing an effective date. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom and Councilmember Tijerina were absent.

8. CONSIDER FIRST READING AND APPROVAL OF ORDINANCE O-04-10 OF THE CITY OF KAUFMAN, TEXAS ESTABLISHING THE EMERGENCY MEDICAL SERVICES "EMS" BOARD; AND PROVIDING FOR AN EFFECTIVE DATE.

Assistant City Manger/City Secretary Jo Ann Talbot informed the Council that the current ETMC/EMS Master contract for Paramedic Ambulance Service with the City of Kaufman calls for a three (3) member board to monitor compliance of the Master Contract for the purpose of supervising the performance and financial responsibilities as well as to perform various administrative services and functions.

The three (3) member board consists of one (1) resident citizen, one (1) City Council member and Kaufman's Fire Chief.

The last time the members were appointed was 2002. They were Byron Gregg, Skipper Yates (Councilmember) and Fire Chief Eddie Brown.

The contract gives no guidance when the members are appointed and how long the Board shall serve. Therefore, Staff recommends approving Ordinance O-04-10 establishing the Emergency Medical Services "EMS" Board including responsibility and establishing two (2) year terms. In addition, Ms. Talbot informed the Board that the ETMC/EMS Master contract for Paramedic Ambulance Service is going to expire at the end of the year and there will be some items for the Board to review and consider improving the Master Contract. Emergency Medical Services "EMS" Board will hold quarterly meetings, posting an agenda and keeping minutes of the meeting.

After discussion, Councilmember Munden moved seconded by Mayor Pro Ratcliffe to approve first reading of Ordinance O-04-10 of the City of Kaufman, Texas establishing the Emergency Medical Services "EMS" Board; and providing for an effective date. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom and Councilmember Tijerina were absent.

9. CITY SECRETARY CERTIFIES THAT CANDIDATES ARE UNOPPOSED AND CONSIDER FIRST READING AND APPROVAL OF ORDINANCE O-05-10 DECLARING UNOPPOSED CANDIDATES IN THE MAY 8<sup>TH</sup>, 2010 GENERAL CITY ELECTION, ELECTED TO OFFICE; CANCELING THE ELECTION; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Assistant City Manager/City Secretary Jo Ann Talbot informed the Council that by State Law, upon receiving the certification, the City Council may, by ordinance, declare the unopposed candidates elected to office, in which case the election is not held. The City Council is given discretion in declaring the election, to hold one or not hold one. Staff was directed to prepare the Ordinance to cancel the election.

City Secretary Jo Ann Talbot presented to Council the Certification of Unopposed Candidates and Ordinance O-05-10 that will declare the unopposed candidates elected to office and canceling the election. Once the ordinance is adopted, Staff will post at City Hall, at the Early Voting location, and at the polling place on Election Day May 8<sup>th</sup>.

By law we must wait until after the official dates of canvassing an election before presenting the elected officers a certificate of election and "Oath of

Office". The "Oath of Office" for elected officers will be held on May 24<sup>th</sup> during the regular City Council meeting.

Mayor Fortner moved and seconded by Councilmember Gillenwater to approve the first reading of Ordinance O-05-10 declaring unopposed candidates in the May 8<sup>th</sup>, 2010 General City Election, elected to office; canceling the election; providing a severability clause; and providing an effective date. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom and Councilmember Tijerina were absent.

10. CONSIDER ADOPTION OF ORDINANCE O-06-10 AMENDING THE 2009-2010 FISCAL YEAR BUDGET (BUDGET AMENDMENT #10-001) IN REGARDS TO AN EMERGENCY EXPENDITURE AT THE WASTEWATER TREATMENT PLANT TO REPAIR THE ULTRAVIOLET DISINFECTION SYSTEM AND FOR ENGINEERING SERVICES FOR THE RAND ROAD ALLEY SEWER PROJECT.

Director of Public Works Richard Underwood informed the Council that the Ultraviolet Disinfection System is the City's Wastewater Treatment Plant permitted disinfection system. This system works by the transmission of UV light through the discharge waters. During the past couple of years, this system has had issues and due to other emergencies, Staff has been pulling parts from 1 unit to repair the other. However, in high flows (during rains) the facility needs both units in operation to properly disinfect the plant's discharge waters. At this time, one (1) unit is completely out of service and the other is only operating at approximately 30%.

At the December 21, 2009, Council approved Engineering services agreement with Jacobs Engineering for the Rand Road Alley Sewer Project. At that time, Staff noted that these funds were not allocated in the 2009-2010 Budget and would have to come from fund balance at a later date and amend the FY 2009-2010 Budget.

The cost of materials to be purchased by the Staff for the Ultraviolet System is estimated at \$15,550 and the cost for a technician to make all the repairs is estimated at \$11,800.

The contract for Jacobs Engineering to design the Kaufman Alley Sewer Project is \$16,200.

The total amount of funds are not available within the current FY' 2009-2010 Water/Wastewater budget. Therefore, the total cost of the engineering, materials and technician's labor will be \$43,550. Staff request that \$15,500 for a new floating aerator currently budgeted be

utilized for the projects. Staff also request that the remaining amount of \$28,050 be funded through water/wastewater fund balance.

Staff recommends that Council appropriate \$28,050 from water/wastewater fund balance and approve a budget amendment to the FY 2009-2010 Water/Wastewater budget engineering services and repairs to the WWT Plant Ultraviolet Disinfection System.

After discussion, Councilmember Gillenwater moved and seconded by Councilmember Council to approve first reading of Ordinance O-06-10 amending the 2009-2010 fiscal year budget (budget amendment #10-001) in regards to an emergency expenditure at the wastewater treatment plant to repair the ultraviolet disinfection system and for engineering services for the Rand Road alley sewer project. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom and Councilmember Tijerina were absent.

11. CONSIDER APPROVAL OF RESOLUTION R-07-10 OF THE CITY OF KAUFMAN, TEXAS, ENDORSING CERTAIN LEGISLATIVE CHANGES RELATING TO THE SUNSET REVIEW OF THE TEXAS PUBLIC UTILITY COMMISSION AND THE SPECIAL PURPOSE REVIEW OF THE ELECTRIC RELIABILITY COUNCIL OF TEXAS.

City Manager Curtis Snow informed the Council that the City of Kaufman is a member of Cities Aggregation Power Project, Inc. ("CAPP"). The CAPP Board of Directors has voted to authorize certain legislative efforts pertaining to the Sunset Commission's review of the Public Utility Commission ("PUC") and the Electric Reliability Council of Texas ("ERCOT"). The Sunset agency's recommendations pertaining to both organizations are expected to form the basis of bills during the 82<sup>nd</sup> Legislative Session in 2011. As such, CAPP will recommend legislative action related to the Sunset Commission's examination of both the PUC and ERCOT. In addition, CAPP will offer all resolutions of its members during Sunset hearings to apprise lawmakers of CAPP Cities' perspective on how to make the electric market more competitive and beneficial to consumers.

In 1999, Texas lawmakers adopted Senate Bill 7, the state's electric deregulation law. The legislation expanded competition in the wholesale electricity market and opened the door to competition among electric retailers. Proponents of the legislation promised lower electric prices.

Unfortunately, the reality has been otherwise. Although Texans paid electric prices well below the national average during the decade before Senate Bill 7 was passed, customers in deregulated parts of the state now pay prices above the national average. In fact, even the lowest residential

electric rates in deregulated areas of Texas typically exceed rates paid by all residents of neighboring states, such as those in Oklahoma and Louisiana.

CAPP believes that for deregulation to fulfill its promise, the market must become more competitive. Problems include the ability of some generators to exercise monopoly-like control in large swaths of the state, and the inability of many consumers to make informed choices because of confusion in the retail electricity market. Efforts to address market design issues by ERCOT also have been mismanaged, gone over budget and fallen behind schedule.

As an active market participant, CAPP is in the unique position to identify problems that have developed in the deregulated marketplace and to provide a consumer's perspective to legislators interested in fixing those problems.

Based upon this point of view, CAPP has formulated recommendations for the Sunset Advisory Commission as it conducts its PUC and ERCOT reviews. CAPP's recommendations are intended to improve competition in the electric market place by making the PUC and ERCOT more accountable to consumers, by limiting market power, and by creating competitive options for all customers. CAPP's recommendations reflect the organization's desire for a truly healthy electric market where consumers can save and competition can flourish. Such a market — one where power remains affordable and reliable — will mean more economic development for Texas cities and a better standard of living for our citizens.

Legislative change is necessary to better protect cities' budgets, enhance cities' ability to protect their citizens, and increase competition among retail providers. The following changes are proposed by the CAPP Board:

- All generators, regardless of size, should explicitly be barred from the unlawful exercise of market power.

*Current PUC rules protect relatively small generation companies from prosecution for anti-competitive behavior. But generators that control a small portion of the wholesale electricity market can sometimes have a big impact on prices. For instance, a relatively small operator in Texas temporarily drove up overall spot market prices in 2007 by engaging in an energy bidding practice that the Wall Street Journal said was "reminiscent of one that played a role in the meltdown of California's electricity market."*

- Entities such as municipalities, commercial customers or retail electric providers harmed by wholesale market abuse should be given explicit standing to participate in market power abuse enforcement actions brought by the PUC.

*In 2007, the Texas Public Utility Commission initiated an enforcement proceeding against TXU for allegedly engaging in anti-competitive behavior. PUC staff found that improper actions by TXU during a short interval in 2005 had increased overall wholesale energy costs by more than \$50 million. However, Retail Electric Providers, municipalities and others harmed by these higher costs were barred from participating in the enforcement proceeding. Such entities can contribute resources and expertise to the often overburdened PUC.*

- Fines should be increased for market abuses in such a way that the PUC can order full restitution to the market, market participants, or parties injured by the violation.

*In the above case, TXU's improper behavior was found by the PUC staff to have caused more than \$50 million in harm to the wholesale energy market. However, the PUC fined the company only \$15 million — an amount not even equal to the extra revenue the PUC said TXU generated from its anti-competitive activities.*

- Activities defined as market abuse by the Federal Energy Regulatory Commission should be prohibited.

*According to a 2007 Wall Street Journal report, a generation company operating in Texas has freely engaged in an activity that appears to be very similar to energy bidding practices associated with Enron behavior in California. However, the activities are not expressly prohibited in Texas and as a consequence of the company's actions, it can collect \$157,000 an hour to run its plant — or more than 10 times the amount it would collect under more typical circumstances, according to the newspaper. The FERC, with authority over most wholesale electricity markets in the U.S., has the ability to recognize, define and prohibit market power abuse. Texas should prohibit the type of market abuse that occurs elsewhere in the country, as prescribed by the FERC.*

- The statutory purpose of the PUC should be modified to ensure that the agency harmonizes its pursuit of competition with the protection of electric consumers.

*Leaders at the Texas Public Utility Commission are some of state government's most enthusiastic advocates for electric competition. However, in their zeal to promote the Texas deregulation law, leaders*

*at the PUC have overlooked the higher electric prices paid by Texans relative to electric prices elsewhere. A slight adjustment of the Public Utility Regulatory Act would direct the agency to maintain its focus on consumer protection, even while it continues promoting electric competition.*

- As a condition of conducting business in Texas, Retail Electric Providers (“REPs”) should be required to include among their offers one standard electricity package that has PUC-approved terms and conditions. Such standard offer products will ensure that REPs compete based on price, not on customer confusion.

*Comparing electric deals can be difficult. A quick review of the powertochoose website reveals a bewildering array of offers, each with difficult-to-comprehend fine print. Because the details of each offer vary, it is nearly impossible for consumers to make apples-to-apples comparisons when they shop for electricity. Requiring REPs to include among their offers a standard deal established by the Public Utility Commission would reduce confusion among residential electricity consumers. REPs would have the freedom to price such standard deals in any way they see fit.*

- The number of consumer representatives on the ERCOT board should be increased from the current three members, to six.

*The ERCOT board sets many important rules for the Texas wholesale electricity market. The board is comprised of men and women who represent electric generation companies, retail electric providers and others with a financial stake in the market. However, end-use consumers — that is, those who ultimately pay all costs associated with the market — have been historically under-represented. As a consequence, consumers have been unable to block or mitigate potentially expensive initiatives that may benefit those with a financial interest in higher electric prices, but which do not hold any clear benefit for end-use consumers.*

- The Office of the Comptroller should be assigned a seat on the ERCOT board and on appropriate budget oversight panels within ERCOT. The Comptroller’s office should be given access to all ERCOT contracting material and be charged with conducting a bi-annual performance review of ERCOT.

*Mismanagement at ERCOT has led to cost overruns and even criminal convictions by top officials there. In 2003, for instance, the PUC directed ERCOT to begin making important changes to its management system for the wholesale electricity market. These*

*changes were estimated to cost no more than \$76.3 million and were expected be in place by Oct. 1, 2006. Unfortunately, the project's costs have increased by at least 800 percent, and it is now four years behind schedule. Comptroller oversight would help discourage such costly missteps in the future.*

- The PUC should be required to provide prior approval of all debt financing by ERCOT.

*Debt service costs at ERCOT has increased by more than 400 percent since the 2003 fiscal year. The organization also has increased its use of debt to finance capital projects in recent years, including at least one recent capital project that is 100 percent financed with debt. More PUC oversight is required to ensure that the organization does not meet its annual budget targets through the inappropriate use of debt to shift costs into the future.*

The CAPP Board, made up exclusively of City representatives, requests that the City Council pass the attached resolution endorsing CAPP's legislative/Sunset agenda.

The staff of the City of Kaufman recommends that the City Council adopt the resolution.

After discussion, Mayor Pro-Tem Ratcliffe moved and seconded by Mayor Fortner to adopt Resolution R-07-10 of the City of Kaufman, Texas, endorsing certain legislative changes relating to the Sunset review of the Texas Public Utility Commission and the special purpose review of the Electric Reliability Council of Texas. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom and Councilmember Tijerina were absent.

12. CONSIDER APPROVAL OF RESOLUTION R-08-10 OF THE CITY OF KAUFMAN, TEXAS, APPROVING NEIGHBORHOOD ENHANCEMENT ACTION TEAM (NEAT) POLICY.

Director of Development of Services Marcy Ratcliff informed the Council that Resolution R-08-10 is a defined policy of the Neighborhood Enhancement Action Team (NEAT), which directs the City Manager and Staff to act on the City's behalf. NEAT's main purposes are to connect specific neighborhood issues and projects with City and community resources for better coordination and implementation. The policy defines the philosophy, the program goals, the strategy and activities of the NEAT program.

The NEAT program will involve all the city departments, citizens, volunteer groups, and businesses.

City departments will work within their approved budgets. Additional services and supplies are to be donated by volunteers.

Staff recommends approval of Resolution R-08-10 adopting policies to implement the NEAT program.

After discussion, Councilmember Gillenwater moved and seconded by Councilmember Council to approve Resolution R-08-10 of the City of Kaufman, Texas, approving Neighborhood Enhancement Action Team (NEAT) Policy. Mayor Fortner called for a vote with all voting AYE, the motion carried. Councilmember Altom and Councilmember Tijerina were absent.

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

City Manager Curtis Snow reminded the Council of the following:

1. NEAT meeting with Organizations March 25<sup>th</sup> at 6:00 p.m. Fire Station.
2. NEAT meeting April 8<sup>th</sup> at Nash School at 7:00 p.m.
3. Kaufman Chamber of Commerce Golf Tournament, Monday, April 19, 2010, Cedar Creek Golf Course
4. NEAT - Neighborhood Cleanup #1 – Saturday, April 24<sup>th</sup>
5. Council Retreat was discussed and scheduled for May 7<sup>th</sup> and May 8<sup>th</sup>. No Work Session to be held on May 10<sup>th</sup>.
6. The new Police Expedition Vehicle arrived and will be outfitted in April.

### **ADJOURNMENT.**

There being no further business, the meeting was adjourned at 7:22 p.m.

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**WILLIAM FORTNER  
MAYOR**

**ATTEST:**

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**JO ANN TALBOT  
CITY SECRETARY**