

**CITY OF LUBBOCK  
REGULAR CITY COUNCIL MEETING  
MARCH 5, 2007  
7:30 A. M.**

**The City Council of the City of Lubbock, Texas met in regular session on the 5th day of March, 2007, in the City Council Chambers, first floor, City Hall, 1625 13th Street, Lubbock, Texas at 7:30 A. M.**

**7:31 A.M. CITY COUNCIL CONVENED  
City Council Chambers, 1625 13th Street, Lubbock, Texas**

**Present: Mayor David A. Miller, Mayor Pro Tem Jim Gilbreath, Council Member Linda DeLeon, Council Member Phyllis Jones, Council Member John Leonard, Council Member Floyd Price**

**Absent: Council Member Gary O. Boren**

**1. CITIZEN COMMENTS**

**Note: Citizen Comments items are listed in the order they were addressed.**

**1.3. Ysidro Gutierrez, Lubbock County Commissioner, Precinct 3, appeared before the City Council to discuss South Beach Club and Lounge.**

County Commissioner Ysidro Gutierrez addressed Council in support of his friend, Armando Gonzales, who is the father of the owner/operator of South Beach Club and Lounge. Commissioner Gutierrez mentioned the Supreme Court's ruling on eminent domain and it being lawful for government to take away one person's property and give it to another person so that the other person could profit from the original owner's property. Gutierrez requested Council try to work with the Gonzales family in every way possible to not deprive them of their livelihood.

**1.2. Christopher and Angela Gonzales appeared before the City Council to discuss South Beach Club and Lounge and the City's attempt to purchase.**

Christopher Gonzales, owner/operator of South Beach Club and Lounge, addressed Council regarding the future of his family's business.

**1.1. Armando and Naida Gonzales appeared before the City Council to discuss South Beach Club and Lounge.**

Armando Gonzales spoke to Council as advocate and supporter of his son and daughter-in-law, Christopher and Angela Gonzales, owners/operators of South Beach Club and Lounge. He appealed to Council to do the right thing when considering the purchase of the building where South Beach is currently located.

Mayor Miller explained to the citizens of Lubbock the history of how the South Beach Club and Lounge issue came about. The Mayor also assured the Gonzales family that, should a deal be consummated or transaction concluded where the City of Lubbock does buy the building, it would not be through eminent domain or a condemnation of the building.

- Howard Cowan, owner/operator of Howard Cowan Bond Agency (surety bonds) that deals with contractors who need surety bonds, addressed Council regarding recent contract bids that have been taken by the City of Lubbock in regard to mowing contracts for City parks, cemetery, and some right-of-way. His concern is to find the appropriate use of surety bonds to protect the taxpayers money, to guarantee that the work will be done, and to provide opportunities for small businesses to bid on these contracts.

**At this time, Items 6.1 and 6.2 were moved from Regular Agenda and considered.**

**6.1. Public Meeting 7:30 a.m. - Health: Hold a public meeting to consider the regulation of on-site sewage facilities, including septic tanks, in Lubbock County.**

**The public meeting was held at 8:00 a.m.**

The Texas Commission on Environmental Quality has established rules for on-site sewage facilities to provide Texas citizens with adequate public health protection and a minimum of environmental pollution.

The Texas Legislature has enacted legislation codified as Texas Health and Safety Code, Chapter 366, which authorizes a local government to regulate the use of on-site sewage facilities in its jurisdiction in order to abate or prevent pollution or injury to public health arising out of the use of on-site sewage facilities.

In 1995, the City entered into an agreement with Lubbock County that provided for the Lubbock County Health and Environmental Inspector to enforce the above-mentioned rules for on-site sewage facilities within the Lubbock city limits and Lubbock County. The following amendment to Chapter 12 renews and formalizes this agreement in accordance with the Texas Commission on Environmental Quality procedures.

**FISCAL IMPACT**

No impact to the General Fund.

Staff recommended approval.

Tommy Camden, Health Director, gave comments and explained that this public meeting is more of a requirement of the Texas Commission for Environmental Quality (TCEQ) to post a public meeting that is hosted by City Council. TCEQ required the City to formerly adopt the new rules that are codified under the Texas Health Commission.

**6.2. Ordinance Amendment 1st Reading - Health: Ordinance No. 2007-O0021 amending Chapter 12 of the Code of Ordinances of the City of Lubbock and adopting rules for on-site sewage facilities, providing a savings clause, providing a penalty clause, and providing for publication.**

The Texas Commission on Environmental Quality has established rules for on-site sewage facilities to provide the Texas citizens with adequate public health protection and a minimum of environmental pollution.

The Texas Legislature has enacted legislation codified as Texas Health and Safety Code, Chapter 366, which authorizes a local government to regulate the use of on-site sewage facilities in its jurisdiction in order to abate or prevent pollution or injury to public health arising out of the use of on-site sewage facilities.

In 1995, the City entered into an agreement with Lubbock County that provided for the Lubbock County Health and Environmental Inspector to enforce the above-mentioned rules for on-site sewage facilities within the Lubbock city limits and Lubbock County. The following amendment to Chapter 12 renews and formalizes this agreement in accordance with Texas Commission on Environmental Quality procedures.

**FISCAL IMPACT**

There is no impact to the General Fund.

Staff recommended approval of the first reading of this ordinance.

Motion was made by Mayor Pro Tem Gilbreath, seconded by Council Member Leonard to pass on first reading Ordinance No. 2006-O0021 as recommended by staff. Motion carried: 6 Ayes, 0 Nays.

**2. EXECUTIVE SESSION**

**Mayor Miller stated: "City Council will hold an Executive Session today for the purpose of consulting with the City Staff with respect to pending or contemplated litigation; the purchase, exchange, lease, or value of real property; personnel matters; and competitive matters of the public power utility, as provided by Subchapter D of Chapter 551 of the Government Code, the Open Meetings Law."**

**8:07 A. M. CITY COUNCIL RECESSED TO EXECUTIVE SESSION  
City Council Conference Room**

**All council members were present.**

**2.1. Hold an executive session in accordance with V.T.C.A. Government Code, Section 551.071, to discuss pending or contemplated litigation or settlement agreement, and hold a consultation with attorney (Citibus, Finance, Police, Right-of-Way, Solid Waste, Stormwater, Streets, Water Utilities).**

- 2.2. **Hold an executive session in accordance with V.T.C.A. Government Code, Section 551.072, to deliberate the purchase, exchange, lease, or value of real property (Visitors Center, Water Utilities).**
- 2.3. **Hold an executive session in accordance with V.T.C.A. Government Code, Section 551.074 (a)(1), to discuss personnel matters (City Attorney, City Manager, City Secretary) and take appropriate action.**
- 2.4. **Hold an executive session in accordance with V.T.C.A. Government Code, Section 551.086, on the following competitive matters (Electric Utilities):**
  - 2.4.1 **to deliberate, vote and take final action on electric rates of Lubbock Power and Light;**
  - 2.4.2 **to discuss, vote and take final action on a competitive matter regarding operation, financial and capital statements and budgets, revenue and expense projections, strategic and business plans and studies of Lubbock Power and Light;**
  - 2.4.3 **to discuss and deliberate a competitive matter regarding the strategies, goals, funding and strategic purpose of the City of Lubbock's relationship with and membership in the West Texas Municipal Power Agency.**

**9:39 A.M. CITY COUNCIL REGULAR MEETING RECONVENED  
City Council Chambers**

**Present:** Mayor David A. Miller; Mayor Pro Tem Jim Gilbreath; Council Member Linda DeLeon; Council Member Phyllis Jones; Council Member John Leonard; Council Member Floyd Price; Lee Ann Dumbauld, City Manager; Anita Burgess, City Attorney; and Rebecca Garza, City Secretary

**Absent:** Council Member Gary O. Boren

**Mayor Miller reconvened the meeting at 9:39 a.m.**

**3. PROCLAMATIONS AND PRESENTATIONS**

**3.1. Invocation by Pastor Sonya Beaty, Bethel AME Church.**

**3.2. Pledge of Allegiance to the Flags.**

Pledge of Allegiance was given in unison by those in the City Council Chambers to both the United States flag and the Texas flag.

**3.3. Special recognition commemorating the first annual Black History Month March.**

Mayor Miller presented special recognition commemorating the first annual Black History Month March. Roberta Hightower was present to accept the special recognition.

**4. MINUTES**

**4.1. Approval of Prior Meeting Minutes: Regular City Council Meeting, February 6, 2007.**

Motion was made by Council Member Price, seconded by Council Member Jones to approve the minutes of the Regular City Council Meeting of February 6, 2007 as recommended by staff. Motion carried: 6 Ayes, 0 Nays.

**5. CONSENT AGENDA (Items 5.1-5.6, 5.8-5.14)**

Motion was made by Council Member DeLeon seconded by Council Member Price to approve Items 5.1-5.6, 5.8-5.14 on consent agenda as recommended by staff. Motion carried: 6 Ayes, 0 Nays, with Council Member Jones recusing on Item 5.12.

**5.1. Zone Case No. 3074 (north of FM 1294 and east of old US 87) Ordinance 2nd Reading - Zoning: Ordinance No. 2007-O0018 Consider request of Parkhill, Smith and Cooper (for Lubbock Economic Development Alliance) for a zoning change from T to M-2 on 301.648 acres of unplatted land located in the west half of Section 38, Block D, .**

This zoning change will provide proper zoning for the development of a 300-acre industrial area north of Lubbock/Preston Smith International Airport and owned by Lubbock Economic Development Alliance (LEDA).

Adjacent land uses:

N – vacant

S – Texas A and M University Experiment Station farm land

E – vacant

W – several business locations and homes, outside the city limits

The property was acquired by the City to provide for rail spurs recently brought into the Airport for enhancement of future and existing businesses and is needed for rail service by both airfield and non-airfield operations. In a previous transaction between the City and LEDA, LEDA is now the owner of the property and is requesting M-2 zoning for the purpose of having land to offer for industrial development.

Since the recent annexation, the Comprehensive Land Use Plan has not been amended for this parcel. The parcel was annexed as transitional until the proper future land use status is determined and made a part of the Plan. All of the land within the vicinity of the Airport inside the City is designated as “industrial” because of the influence of the Airport. Residential and airfield/industrial uses are not considered as compatible adjacent land uses. That fact has been recognized on all of the Land Use Plans adopted by the City Council since 1975. The same land use concept applies to this parcel, and staff recommended that the Planning Commission include the “industrial” designation as a minor amendment for the Comprehensive Land Use Plan in a motion, should the zone case be referred to the Council for approval.

Several property owners north of the annexed area who are not residents of either the City of Lubbock or the City of New Deal, but residents of a “no

man's land" in between the two cities in the vicinity of a junk yard, the Interstate and an active railroad, attended the meeting. The individuals did not express any real opposition to the proposal, but did have questions about what was going to be located there. LEDA officials visited with the group after the meeting. The staff is not aware of the outcome of those discussions.

As noted, the area is consistent with the need for industrial designation and the request is consistent with zoning policy. The parcel is adjacent to an FM Highway and is also within 100 yards of I-27, so development of the parcel as industrial should have little impact on the thoroughfare system.

The Planning Commission recommended the request with the addition of amendment of the Comprehensive Land Use Plan to designate the area as "industrial".

#### **FISCAL IMPACT**

No fiscal impact is anticipated.

The staff supports the recommendation of the Planning Commission and recommended approval.

#### **5.2. Budget Amendment Ordinance 2nd Reading - Finance: Ordinance No. 2007-O0017 Consider budget ordinance Amendment No. 8 amending the FY 2006-07 budget respecting the General Fund.**

The Centennial Committee has requested \$100,000 as "seed money" to begin preparation for the City's Centennial celebration.

#### **FISCAL IMPACT**

The \$100,000 appropriation will come from General Fund Balance.

#### **5.3. Budget Amendment Ordinance 2nd Reading - Finance: Ordinance No. 2007-O0020 Consider budget ordinance Amendment No. 9 amending the FY 2006-07 budget respecting the LP&L Fund and Water Fund.**

1. Amend the operating budget in the LP&L Fund. Specific information regarding these projects is competitive information protected under Chapter 552.133 of the Texas Government Code.
2. Amend Capital Improvement Project 91210, Water Main Extension South by appropriating \$232,320 of additional revenue from the Lubbock Cooper Independent School District. The total appropriation for this project will be \$882,320. The additional funding will pay for the equivalent pipeline size of a six-inch line to Lubbock Cooper Independent School District. Under the contract approved on June 26, 2006 (Resolution No. 2006-R0308), the increased pipeline size will be paid by the City.

#### **FISCAL IMPACT**

Included in backup information and item summary.

Staff recommended approval of the second reading of this ordinance.

**5.4. Right-of-Way Ordinance 1st Reading - Right-of-Way: Ordinance No. 2007-O0022 abandoning and closing a portion of 26th Street located in Section 5, Block E-2, Lubbock County, Texas, street closure located at 5601 19th Street.**

This ordinance abandons and closes a portion of 26th Street in Section 5, Block E-2, which is located just east of Frankford Avenue and west of Eileen Street. This closure is due to new development on the Lubbock Christian University campus. Since the requestor of this closure is the original dedicator of the street area being closed, there will not be a charge for this closure. All utility companies are in agreement with this street closure.

**FISCAL IMPACT**

No fiscal impact is anticipated.

Staff recommended approval of the first reading of this ordinance.

**5.5. Right-of-Way Ordinance 1st Reading - Right-of-Way: Ordinance No. 2007-O0023 abandoning and closing a portion of a 20-foot alley located in Section 6, Block E, Lubbock County, Texas, alley closure located at 717 East 73rd Street.**

This ordinance abandons and closes a portion of a 20-foot alley located just east of Globe Avenue and north of East 73rd Street. The requestor owns both sides of the alley and wants to be able to access both properties from the alley. The east/west alley closure will remain as a drainage and utility easement and will be credited 50% for easement purposes. Since the requestor of this closure is not the original dedicator of the alley area being closed, there will be a charge for this alley closure. The total alley area being closed is 5,749.81 square feet and the Right-of-Way Department has determined two values due to the alley having commercial property on one side of the alley and residential lots on the other side of the alley. Staff valued the commercial property at 75 cents per square foot and the residential lots at 17 cents per square foot with a total value of \$2,056.50 for the alley closure. In the re-plat, the requestor is dedicating 3,000 square feet of new alley x 17 cents = \$510. Therefore the amount due the City is \$1,546.50 (\$2056.50 - \$510). All utility companies are in agreement with this alley closure.

**FISCAL IMPACT**

Estimated General Fund revenue of \$1,547.

Staff recommended approval of the first reading of this ordinance.

**5.6. Monitor Well Permit Resolution - Right of Way: Resolution No. 2007-R0087 authorizing the Mayor to execute a Street Use License and/or City Public Grounds Monitor Well Permit with Talon/LPE, for a street right-of-way monitor well located at 4401 50th Street.**

This monitor well allows Talon/LPE to drill a ground water monitor well in the west street right-of-way of Quaker Avenue just south of 50th Street. The adjacent property owner Southwest Convenience Store has given written

approval to allow the contractor to place the monitor well on the east side of their property in the street right-of-way. The former gas station property located at 4337 50th Street had an underground tank that was leaking and the TNRCC has requested that they go off site with a monitor well in addition to what they have already drilled on their property. This permit is for 20 years, payable every 5 years in advance. All utilities are in agreement and the City will receive \$100 per year for this monitor well location.

**FISCAL IMPACT**

Estimated General Fund revenue of \$100 annually.

Staff recommended approval of this resolution.

- 5.7. This item was moved from consent agenda to regular agenda and considered following Item 5.14.**
- 5.8. Overnight Camping Authorization Resolution - Parks and Recreation: Resolution No. 2007-R0088 authorizing a temporary overnight camping area in Mackenzie Park on Saturday, April 21, 2007, for the 6th Annual Lubbock Grand Prix to be held on Sunday, April 22, 2007, by the Montford Unit Volunteer Employees.**

The Montford Unit Volunteer Employees have asked for permission to allow overnight camping in Mackenzie Park on April 21, 2007, the night before their motorcycle race benefiting Special Olympics on Sunday, April 22, 2007. This will be the sixth year this race has been held in the undeveloped portion of Mackenzie Park south of Parkway Drive and west of Oak Avenue. No campfires will be allowed and portable restrooms, extra trash cans, and security will be provided by the Montford Unit employees.

Chapter 10-1(5) of the Code of Ordinances allows for the designation of camping areas. If approved by the City Council, camping will be allowed on April 21-22, 2007, at a location as indicated on the map included.

On February 27, 2007, the Parks and Recreation Advisory Board approved recommendation of this request to the City Council.

**FISCAL IMPACT**

No fiscal impact is anticipated.

Staff recommended approval of this resolution.

- 5.9. Settlement Resolution - Risk Management: Resolution No. 2007-R0089 authorizing the Mayor to settle any and all claims under claim No. 06-C-067 relating to an automobile collision in the amount of \$90,000.**

Risk Management funds for the settlement of this claim are available.

**FISCAL IMPACT**

The settlement of this claim will come from the Risk Fund.

Staff recommended approval of this resolution.

**5.10. Support Resolution - Water Utilities: Resolution No. 2007-R0090 authorizing the Mayor to support the Canadian River Municipal Water District's Plan for the use of 2005 revenue bond proceeds for the development of well field infrastructure.**

The Canadian River Municipal Water Authority (CRMWA) issued approximately \$100 million in revenue bonds with approval by member cities for the purposes of purchasing groundwater rights and constructing well field infrastructure. The original plan was to spend approximately \$20 million for well field infrastructure. The final plan will require approximately \$25 million. The remaining balance has been and will continue to be used for the purchase of groundwater rights. CRMWA is requesting approval and support for this change in plans from its member cities.

**FISCAL IMPACT**

No fiscal impact is anticipated as the City's fund requirements will not change.

The Lubbock Water Advisory Commission and staff recommended approval of this resolution.

**5.11. Tax Abatement Contract Assignment Resolution - Business Development: Resolution No. 2007-R0091 authorizing the Mayor to execute an assignment to transfer and assign to First Industrial Development Services, Inc. the tax abatement agreement dated December 16, 1999, between the City of Lubbock and U.S. Distribution Center, L.L.C.**

On December 16, 1999, the City Council approved a tax abatement contract with U.S. Distribution Center, L.L.C. for the construction of a distribution facility located in the South Enterprise Zone at 5801 MLK Jr. Boulevard. This is the facility United Supermarkets leases for their distribution center. United Supermarkets, as lessee, is the recipient of the benefit of the tax abatement.

In February 2006, U.S. Distribution Center, L.L.C. sold the building to First Industrial Development Services, Inc. Then in January 2007, First Industrial Development Services, Inc. sold the building to Naples Lubbock Venture, L.L.C. This will be a two-step process. In the first step, the tax abatement contract will need to be assigned to First Industrial Development Services, Inc., then in step two, the contract will need to be assigned from First Industrial to the new owner, Naples Lubbock Venture, L.L.C.

This item is the first step of the process. U.S. Distribution Center, L.L.C. is requesting that the City Council authorize an assignment of the tax abatement agreement to First Industrial Development Services, Inc. Step two of the process will be on a future agenda.

**FISCAL IMPACT**

No fiscal impact is anticipated.

Staff recommended approval of this resolution.

**5.12. Contract Resolution - Civic Services: Resolution No. 2007-R0092 authorizing the Mayor to execute an agreement with Civic Lubbock, Inc. to oversee and coordinate funding allocated from Hotel Occupancy Tax to be used for the 2007 Music Festival and/or future Lubbock Music Festivals.**

Pursuant to the current license agreement dated September 21, 2005, Civic Lubbock, Inc. created an Entertainment Task Force Standing Sub-Committee. Responsibilities include the development, organization, coordination, and funding of events that will take advantage of various talent and venues associated with the City's entertainment industry while working collectively with entertainment entities throughout the region to have a positive impact on tourism within the City.

The City of Lubbock FY 2006-07 Budget was amended on November 21, 2006, to appropriate and designate \$175,000 from the Hotel/Motel Tax Fund Balance for the Lubbock Music Festival. The Hotel Occupancy Tax statute requires an agreement when funds are being allocated to a secondary agency, as in the case with Civic Lubbock, Inc. The funds will be deposited in an interest bearing account and Civic Lubbock, Inc. shall comply with all laws and provisions of Chapter 351 of the Texas Tax Code. Civic Lubbock, Inc. will make quarterly reports to the City Secretary with regards to such expenditures made by Civic Lubbock and detailing how these funds were expended.

**FISCAL IMPACT**

On November 21, 2006, the City Council allocated \$175,000 of Hotel Occupancy Tax for this purpose.

Staff recommended approval of this resolution.

Council Member Jones recused on this item.

**5.13. Contract Resolution - Water Utilities: Resolution No. 2007-R0093 authorizing the Mayor to execute a contract for the replacement of online particle counting sensors at the Water Treatment Plant, RFP 07-704-DD.**

This project involves the replacement of 24 online particle counter sensors at the Water Treatment Plant, located at 6001 N. Guava. The sensors are necessary to monitor the number and sizes of suspended particles passing through the treatment process and are a valuable tool for early warning of possible breakthrough in the filters. By continuously monitoring particle sizes, operational changes may be made in a timely manner to minimize or eliminate particle sizes related to Cryptosporidium and Giardia. The existing units are several years old and repair parts have now become obsolete. Continuous online monitoring of the water quality is an essential tool that allows staff to make necessary adjustments of chemical dosages or treatment practices to produce quality water for the citizens of Lubbock and the other communities.

Time for completion of this project is 90 days with liquidated damages of \$25 per day.

Evaluation criteria published in the RFP included price, 40%; resume and references of the proposed job superintendent, 15%; potential items that could reduce the cost of work, 15%; insurance claims and litigation during the last three years, 15%; construction time, 10%; list of subcontractors, 10%; phasing options that may shorten construction time, 5%.

The selection committee ranked each proposal as follows:

L. Howard Construction, Inc.  
Abernathy, TX  
\$143,353  
625 points

Prime Controls  
Lewisville, TX  
\$155,150  
616 points

#### **FISCAL IMPACT**

A total of \$150,000 is appropriated in the Adopted FY 2006-07 Water Fund operating budget for the replacement of these particle counters.

Staff recommended contract award to L. Howard Construction of Abernathy, Texas for \$143,352.80.

**5.14. Contract Amendment Resolution - Public Works: Resolution No. 2007-R0094 authorizing the Mayor to execute Amendment No. 4 to the contract with Hugo Reed and Associates, Inc. for engineering services for Glenna Goodacre Blvd. and other streets in the Overton Park development.**

Hugo Reed and Associates, Inc. (HRA) was selected to perform engineering services related to street improvements and certain construction of amenities within the Overton Park project rights-of-way.

The original contract with HRA dated December 8, 2003, included the design of Glenna Goodacre Boulevard from University Avenue to Avenue U, 6th Street from University Avenue to Avenue X, Avenue X from 6th Street to 10th Street, certain right-of-way amenities, schematics, and an overall Overton Park parking study. The original contract amount was \$277,089.

Amendment No. 1 to the engineering services contract was dated August 26, 2004, and included the design of 6th Street from Avenue X to Avenue V and Avenue V from Marsha Sharp Freeway to Glenna Goodacre Blvd., and certain right-of-way amenities. Amendment No. 1 was for \$165,915.

Amendment No. 2 was dated November 4, 2004, and included design and construction services for public lighting and University Avenue curb and gutter reconstruction adjacent to the City Bank tract. Amendment No. 2 was for \$7,500.

Amendment No. 3 was dated November 7, 2005, and included surveys and design, plan preparation, estimates and right-of-way surveys and parcel documents, along with storm sewer design, for the Wal-Mart streets, and certain other residential streets within Overton Park. Amendment No. 3 was for \$406,306.

Amendment No. 4 changes the scope of work that was previously described in Amendment No. 3. These changes were due to the need to prioritize some of the street improvements differently than originally planned within the Overton Park project. Hugo Reed & Associates has agreed to these changes in scope of work.

Amendment No. 4 additional scope of work: Avenue T from 7th Street to Glenna Goodacre Boulevard; Avenue S from 7th Street to Glenna Goodacre Boulevard; Avenue R from 7th Street to Glenna Goodacre Boulevard; and certain curb and gutter on the north side of Glenna Goodacre Boulevard from Avenue R to Avenue S.

Amendment No. 4 deletes from the previous scope of work the following: 10th Street from Avenue U to Avenue S; Avenue T from 9th Street to 10th Street, and certain storm sewer work at the intersection of Avenue S and 10th Street.

Amendment No. 4 will not change the contract amount. This contract is based on hourly rates for actual work performed with a "not to exceed" contract amount of \$856,810. This amendment will extend the completion date of engineering services associated with this contract to December 31, 2007.

#### **FISCAL IMPACT**

The funding for the engineering services in Overton Park will come from the North Overton TIF Fund. Amendment No. 4 will not increase the contract amount.

Staff recommended approval of this resolution.

#### **6. REGULAR AGENDA**

**Note: Regular Agenda items and Consent Agenda items moved to Regular Agenda are listed in the order they were addressed (Items 5.7, 6.7, 6.8, 6.3, 6.4, 6.5, 6.6)**

- 6.1. This item was moved from regular agenda and considered following Citizens Comments.**
- 6.2. This item was moved from regular agenda and considered following Items 6.1.**
- 5.7. License Agreement Resolution - Parks and Recreation: Resolution No. 2007-R0095 authorizing the Mayor to execute an Athletic Facility License Agreement with various baseball, softball, and soccer user groups for games and practice sessions of various City locations.**

This agreement will allow various user groups listed in "Exhibit C" permission to conduct various games and practice sessions at various City athletic facility locations. The agreement defines responsibilities of the respective organizations and the City.

The leagues will provide services relating to the operation of the league including the development of roster lists, the payment of league fees, the scheduling of all games and tournaments, the assignment, training and payment of referees, officials and score keepers, and other services that may be necessary for the administration of the league.

Maintenance responsibilities for leagues and the City are outlined in "Exhibit A". Field signage regulations are outlined in "Exhibit B".

#### **FISCAL IMPACT**

Sports user fee revenue of \$2 for each participant. There are approximately 8,420 participants in the various leagues, which will generate approximately \$16,840 in revenue.

Staff recommended approval of this resolution.

Randy Truesdell, Parks and Recreation Manager, and Assistant City Manager Scott Snider gave comments and answered questions from Council.

Motion was made by Council Member DeLeon, seconded by Mayor Pro Tem Gilbreath to pass Resolution No. 2006-R0095 as recommended by staff. Motion carried: 6 Ayes, 0 Nays.

**6.7. Ordinance Amendment 1st Reading - Building Inspection: Ordinance No. 2007-O0024 amending Chapter 6 of the Code of Ordinances of the City of Lubbock, Texas, amending Article I, Section 6-25, providing for the administrative approval of certain building installations otherwise affected by a property boundary.**

This ordinance amendment will allow administrative approval of various building installations and uses normally prohibited because of proximity to, or encroachment upon, or across a property line. Where the adjacent lots are under common ownership and the anticipated hazards do not therefore exist, a recordable agreement to hold the property as one parcel will provide property owner relief while affording the necessary protections. This ordinance amendment will ratify a practice that has been successfully used for the past six years.

#### **FISCAL IMPACT**

No fiscal impact is anticipated. Recordation fees are the responsibility of the applicant.

The ordinance amendment is recommended by the Model Code and Construction Ordinance Advisory Board and staff recommended approval of the first reading of this ordinance.

Steve O'Neal, Building Official, gave comments and answered questions from Council.

Motion was made by Council Member DeLeon, seconded by Council Member Price to pass on first reading Ordinance No. 2006-O0024 as recommended by staff. Motion carried: 6 Ayes, 0 Nays.

**6.8. Budget Amendment Ordinance 1st Reading - Finance: Ordinance No. 2007-O0025 Amendment No. 10 amending the FY 2006-07 budget respecting the Grant Fund.**

Approve the reallocation of unspent funds from U. S. Department of Housing and Urban Development Community Development Block Grant, HOPE 3 Program and HOME Investment Partnership Programs. The amount of funds to be reallocated is \$740,000. The unspent funds will be used for public facility projects and housing programs. Funds will be allocated in the following manner:

1. Reallocate previously appropriated funds of \$25,000 from FY 2005-06 Community Development Block Grant reallocation funds from Housing and Urban Development, for the renovation of Boys and Girls Club Phea Branch.
2. Reallocate previously appropriated funds of \$90,000 from FY 2005-06 Community Development Block Grant reallocation funds from Housing and Urban Development, for the renovation of Boys and Girls Club Optimist Branch.
3. Reallocate previously appropriated funds of \$100,000 from FY 2005-06 Community Development Block Grant reallocation funds from Housing and Urban Development, for the Down Payment and Closing Cost of North and East Lubbock Community Development Corporation.
4. Reallocate previously appropriated funds of \$65,000 from FY 2005-06 Community Development Block Grant reallocation funds from Housing and Urban Development, for the 108 Loan Payment of City of Lubbock Community Development.
5. Reallocate previously appropriated funds of \$100,000 from FY 2005-06 Community Development Block Grant reallocation funds from Housing and Urban Development, for the Emergency Repair Program of City of Lubbock Community Development.
6. Reallocate previously appropriated funds of \$20,000 from FY 2005-06 Community Development Block Grant reallocation funds from Housing and Urban Development, for the Residential Rehab HOME Project Cost of City of Lubbock Community Development.
7. Reallocate previously appropriated funds of \$240,000 from FY 2005-06 HOPE 3 reallocation funds from HOPE 3 repayment revolving funds, for the New Construction Program of City of Lubbock Community Development.

8. Reallocate previously appropriated funds of \$100,000 from FY 2005-06 HOME Investment Partnership Grant reallocation funds from Housing and Urban Development, for Handicapped Accessible Housing of Community Housing Resource Board.

#### **FISCAL IMPACT**

Included in item summary.

Staff recommended approval of the first reading of this ordinance.

Jeff Yates, Chief Financial Officer, and Bill Howerton, Director of Community Development, gave comments and answered questions from Council.

Motion was made by Mayor Pro Tem Gilbreath, seconded by Council Member DeLeon to pass on first reading Ordinance No. 2006-00025 as recommended by staff. Motion carried: 6 Ayes, 0 Nays.

#### **9:55 A. M. CITY COUNCIL RECESSED**

#### **10:00 A. M. CITY COUNCIL RECONVENED**

- 6.3. Public Hearing 10:00 a.m. - Environmental Compliance: Hold a public hearing concerning the City's application proposing the establishment of a Municipal Settings Designation related to groundwater contamination in the vicinity of 5th Street & Avenue J, described as an 8.84 acre tract of land out of section 1, Block O and Section 79, Block A.**

Mayor Miller opened the public hearing at 10:01 a. m. No one appeared on behalf or in opposition to the City's application proposing the establishment of a Municipal Settings Designation. Mayor Miller closed the hearing at 10:12 a. m.

Pursuant to Section 28-178 of the Code of Ordinances, this public hearing is being provided as an opportunity for public input related to the City's application for Municipal Settings Designation status for properties owned by the City and Louise Hopkins Underwood Center for the Arts (formerly owned by Bordens Milk Products, Inc.). The properties are located in the vicinity of 5th Street & Avenue J as shown on the accompanying map.

The following will serve as the required written Director's report:

The application accompanying this report was completed and submitted on behalf of the City by Enprotec, Hibbs and Todd. The application was reviewed by the following departments: City Attorney, Environmental Compliance, Planning, Engineering, Water Utilities and City Manager. The application was found to be complete, meeting all requirements of Ordinance No. 2006-00133. All reviewing departments support the application. Measures specified in the application are judged to adequately protect human health and the environment while balancing the economic welfare of the citizens of the City. Acceptance of the ordinance (a related but separate agenda item) by the City Council will appropriately restrict use of the designated groundwater

from beneath the property. The public drinking water supply will serve as the required alternative potable water supply. All requirements pertaining to public, property holder and public utilities notices have been fulfilled.

If Council accepts the Ordinance and adopts the resolution supporting the application to the Texas Commission on Environmental Quality (an additional separate item on today's agenda), City staff will file application with the Executive Director of the Commission as provided by Texas Health and Safety Code Section 361.805.

#### **FISCAL IMPACT**

The Texas Commission on Environmental Quality (TCEQ) requires a \$1,000 application fee. The \$1,000 fee will be funded from the FY 2006-07 Environmental Compliance operating budget.

If the application is approved by both the City and the TCEQ, approximately \$1 million in groundwater remediation expenses will be avoided.

Staff recommended approval.

Dan Dennison, Environmental Compliance Manager, gave comments and answered questions from Council.

Dave Melton appeared and addressed Council regarding questions he had. His concerns were how deep to the groundwater table is the contamination, how far to the east it extends, and requested a map of the plume. Mr. Dennison answered his questions.

#### **6.4. Municipal Settings Designation Ordinance 1st Reading - Environmental Compliance: Ordinance No. 2007-O0026 prohibiting the potable use of groundwater beneath designated property located in the immediate vicinity of 5th Street and Avenue J (described as an 8.84 acre tract of land out of Section 1, Block O and Section 79, Block A) and placing specific restrictions on the non-potable use.**

The Texas Commission on Environmental Quality requires the placing of specific restrictions on property with contaminated groundwater if the benefits of Municipal Settings Designation (MSD) status are to be received. In fulfillment of application requirements for MSD status for property located in the vicinity of 5th Street and Avenue J, the proposed ordinance will prohibit the potable use of designated groundwater from beneath the property, and restrict the non-potable use of the specified groundwater to sampling and remediation purposes unless prior consent has been granted by the City for specific non-potable use.

#### **FISCAL IMPACT**

Benefit of approximately \$1 million in avoided groundwater remediation expenses will be realized if this ordinance and resolution also on the agenda are both approved by Council, provided Texas Commission on Environmental Quality approves the final application.

Staff recommended approval of the first reading of this ordinance.

Motion was made by Council Member DeLeon, seconded by Council Member Price to pass on first reading Ordinance No. 2006-O0026 as recommended by staff. Motion carried: 6 Ayes, 0 Nays.

**6.5. Resolution Supporting Application for Municipal Settings Designation - Environmental Compliance: Resolution No. 2007-R0096 supporting the application by the City of Lubbock to Texas Commission on Environmental Quality for a Municipal Settings Designation for property located in the vicinity of 5th Street and Avenue J, described as an 8.84 acre tract of land out of Section 1, Block O and Section 79, Block A.**

Redevelopment of former industrial properties is frequently delayed or prevented due to concerns about groundwater contaminants. Consequently, the State legislature provided an alternative means for addressing groundwater issues by passing H.B. 3152 in 2003. In 2006, the City Council adopted Ordinance No. 2006-00133 as a means for participating in the process, which allows properties to receive Municipal Settings Designation (MSD) status when the groundwater is not required and an alternative potable water source is available. Provided all requirements of law are met, MSD status precludes the necessity for remediating the groundwater. Public health is protected through restrictions on the use of the water and fulfilling all obligations related to addressing soil and air contaminants, if present.

The Texas Commission on Environmental Quality has determined that properties located in the vicinity of 5th Street and Avenue J (including LP&L Plant 1, former Fleet Services, former Fire Administration, and former Bordens Dairy) overlay groundwater contamination primarily related to leaking underground storage tanks formerly located on the properties.

This resolution is necessary to comply with Ordinance No. 2006-00133, provided Council approves the ordinance (a separate item on today's agenda) supporting the establishment of the described properties as an MSD. Support of the ordinance and this resolution will enable staff to formally apply to the Texas Commission on Environmental Quality for MSD status, which would save citizens approximately \$1 million in groundwater remediation expenses while simultaneously protecting public health.

**FISCAL IMPACT**

The Texas Commission on Environmental Quality requires a \$1,000 application Fee. The \$1,000 fee will be funded from the FY 2006-07 Environmental Compliance operating budget.

If the application is approved, approximately \$1 million in groundwater remediation expenses will be avoided.

Staff recommended approval of this resolution.

Motion was made by Council Member DeLeon, seconded by Mayor Pro Tem Gilbreath to pass Resolution No. 2007-R0096 as recommended by staff. Motion carried: 6 Ayes, 0 Nays.

**6.6. Contract Resolution - Citibus: Resolution No. 2007-R0097 authorizing and directing Citibus to execute a contract for CitiAccess Ambulatory Services, BID 2007-1.**

Citibus issued an Invitation to Bid for CitiAccess ambulatory services Medicaid and CitiAccess to seek a way to provide more cost-efficient trips for ambulatory passengers.

Bidders were asked to provide four trip costs:

- Within the Lubbock city limits, scheduled in advance (Bid Item 1).
- Within the Lubbock city limits, scheduled on the same day that service was requested (Bid Item 1).
- With either origin or destination outside of the Lubbock city limits, but within Lubbock County, scheduled in advance (Bid Item 2).
- With either origin or destination outside of the Lubbock city limits, but within Lubbock County, scheduled on the same day that service was requested (Bid Item 2).

The bid document did not guarantee a number of trips that would be given to the selected bidder. In addition, the bid document did not guarantee any revenue amount to the selected bidder.

The following bids were received and compared with Citibus' cost to provide the service:

	Bid Item 1 Scheduled		Bid Item 2 Scheduled	
	in Advance	on Same Day	in Advance	on Same Day
Caprock Community Action	\$12.00	\$18.00	\$15.00	\$20.00
Citibus*	\$19.00	\$19.00	\$22.00	\$22.00
Sexton Enterprises	\$22.94	\$22.94	No bid	No bid
South Plains Community Action	\$28.00	\$31.00	\$28.00	\$31.00

\* Bid Item 1 is based on actual costs, October-December 2006; Bid Item 2 is estimated.

Since June 26, 2006, Caprock Community Action has been providing Medicaid trips as a subcontractor to Citibus at the rate of \$12 per trip for trips that have origins and destinations in the same county. Citibus feels confident

that their bid is a good bid and that they can provide the services as outlined in the bid documents for the price they have submitted.

Should the contract, for whatever reason, not be awarded to Caprock Community Action, Citibus is able to provide the services at a lower cost than the bid that was submitted by the second-lowest bidder.

Citibus would like to call attention to the following provision in the Invitation to Bidders:

**ANTI-LOBBYING PROVISION**

17.1 DURING THE PERIOD BETWEEN THE BID CLOSE DATE AND THE CONTRACT AWARD, BIDDERS, INCLUDING THEIR AGENTS AND REPRESENTATIVES, SHALL NOT DIRECTLY DISCUSS OR PROMOTE THEIR BID WITH ANY MEMBER OF THE LUBBOCK CITY COUNCIL, CITY STAFF, CITIBUS STAFF, OR MEMBERS OF THE LUBBOCK PUBLIC TRANSIT ADVISORY BOARD EXCEPT IN THE COURSE OF CITY-SPONSORED INQUIRIES, BRIEFINGS, INTERVIEWS, OR PRESENTATIONS, UNLESS REQUESTED BY THE CITY OF LUBBOCK/CITIBUS.

17.2 This provision is not meant to preclude bidders from discussing other matters with City Council members, City staff, Citibus staff, or members of the Lubbock Public Transit Advisory Board. This policy is intended to create a level playing field for all potential bidders, assure that contract decisions are made in public, and to protect the integrity of the bid process. Violation of this provision may result in rejection of the bidder's bid.

If a contract is awarded as a result of this bid, Citibus will give the current Medicaid subcontractors 180 days written notice to terminate existing agreements. This is in accordance with Section 15 of the Medicaid Request for Proposal, the provisions of which are incorporated into Citibus' formal agreement with the Texas Department of Transportation.

Officials from the Texas Department of Transportation have assured Citibus that subcontracting to a rural transportation provider does not violate any state policies, procedures, or guidelines.

Attached is a letter from Claudia Cowley, executive director of Caprock Community Action Association, Inc., outlining her agency's ability to provide services within Lubbock County.

This information was presented to the Lubbock Public Transit Advisory Board at their January 24, 2007, meeting.

**FISCAL IMPACT**

Contract award to the lowest bidder will result in a savings of approximately \$181,000 during the first year of the contract.

Citibus and the Lubbock Public Transit Advisory Board recommended approval of this resolution.

Motion was made by Council Member Price, seconded by Council Member Jones to pass Resolution No. 2007-0097 as recommended by staff.

John Sims, attorney for Sexton Enterprises, Inc., gave comments concerning his client's position in this matter and requested Council to throw out all the bids and start the process over again.

City Attorney Anita Burgess responded to Mr. Sims comments and answered questions from Council.

Mayor Pro Tem Gilbreath stated that one of the things that must be considered in this bid is whether or not the low bidder is the low responsible bidder. Balance sheets from two of the three bidders were handed out to Council, and Mayor Miller asked that Caprock Community Action fax theirs over as soon as possible. The Mayor then called for a recess so that Council could review the documents.

**10:20 A. M. CITY COUNCIL RECESSED**

**10:25 A. M. CITY COUNCIL RECONVENED**

Jim Sexton gave comments.

Victor Kilman, Director of General Services; Anita Burgess, City Attorney; and John Wilson, Director of Citibus, answered questions from Council.

Motion was made by Mayor Pro Tem Gilbreath, seconded by Council Member Jones to table this item until all balance sheets are in. Motion carried: 6 Ayes, 0 Nays.

**This item was removed from the table following Item 7.1.**

**7. WORK SESSION**

**7.1. Presentation - Lubbock Entertainment and Arts Facilities Task Force: Dan Pope, Chairman, Lubbock Entertainment and Arts Facilities Task Force will present LEAF Task Force final report.**

Dan Pope, Chairman, Lubbock Entertainment and Arts Facilities Task Force presented LEAF Task Force final report. He updated Council on areas such as Executive Summary, which included the performing arts venues recommendations; the performing arts venues' sub-committee report; the arena venues' sub-committee report; and the athletic venues' sub-committee report. The recommended rankings for the entertainment and arts facilities are:

#1 – Performing Arts Center, with an estimated cost of \$50 million; Major Civic Center Remodel, with an estimated cost of \$40 million; and the Baseball Hall of Fame, with an estimated cost of \$20 million,

#2 – Multi-Purpose Arena, with an estimated cost of \$35-\$40 million,

#3 – Baseball Complex, with an estimated cost of \$32.5 million, and the Equestrian Facility, with an estimated cost of \$16-\$18 million.

Mr. Pope then answered questions from Council.

Mayor Miller responded to Mr. Pope's presentation by stating that this is a process, one of many steps that will go into a long-term plan for our City. LEAF's work is now complete and will be turned over to the Downtown Redevelopment Commission. They, in turn, have three or four more months to go before they come with their plan, as well as their implementation recommendations. Then, the Citizens Advisory Committee will make decisions as it relates to their recommendations to Council. There is still time for citizens input. It would not be appropriate to go forward without additional citizens input.

**At this time, Item 6.6 was removed from the table.**

City Attorney Anita Burgess informed Council that there had been an open records request made by John Sims, attorney for Sexton Enterprises, for Caprock Community Action's balance sheet. Burgess asked that Council preserve those documents (balance sheets), and that the request would be handled in accordance with the manner of handling all Public Information Act requests.

Mayor Pro Tem Gilbreath asked City Attorney Anita Burgess to again go over the criteria of being the lowest responsible bidder, and for John Wilson, Director of Citibus, to respond to those criteria.

Representing Ms. Burgess, Linda Chamales, Assistant City Attorney, presented the provisions to Council on being the lowest responsible bidder, and the contractor (Citibus) may consider contractor integrity, compliance with public policy, record of past performance, financial and technical resources, and the bidder's past relationship with the City of Lubbock Citibus.

John Wilson with Citibus responded on how Caprock Community Action met all criteria.

Council was informed by Ms. Chamales that, in this case, Council would need to either take the lowest responsible bidder or reject all bids. She then answered questions from Council.

Vote was then taken on the original motion to pass Resolution No. 2007-R0097 as recommended by staff. Motion carried: 6 Ayes, 0 Nays.

**11:15 A.M. CITY COUNCIL RECESSED TO EXECUTIVE SESSION**

**11:18 A.M. CITY COUNCIL RECONVENED**

Mayor Miller stated, under Executive Session Item 2.1 listed as Finance, "the City of Lubbock is auditing the health benefits contract with its former third party administrator, AAG, and the Parker Group due to irregularities discovered by City staff. The City's Audit Committee has considered this matter and concurs with City staff.

AAG has shown significant reluctance with regard to the audit causing numerous and unwarranted delays. The reluctance deals with the following:

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**Demand payment of a non-itemized additional fee prior to conducting the audit.**

**Providing incomplete and unworkable data.**

**AAG officials being unavailable for scheduled visits by the City's auditors.**

**AAG refusing to produce critical information needed to conduct the audit**

The City of Lubbock has spent \$45,116,023 from 2004 through 2006 for health claims expenses and \$1,344,750 for the health clinic for its two years of operation.

The City, including its employees, retirees, as well as its taxpayers, is entitled to know whether these health claims and fees were paid properly to AAG. It is the City's fiduciary duty to insure a proper audit of these matters and to recover any monies that may be owed to the City.

Therefore, the City has no option, given the resistance of AAG, but to initiate litigation in support of the audit.

For more information, please contact the City Attorney's Office at 775-2222."

Mayor Miller went on to say that a civil suit has been filed in District Court on March 5, 2007, and the City is determined to find out whether or not the taxpayers' money was spent appropriately.

**11:22 A. M. COUNCIL ADJOURNED**

There being no further business to come before Council, Mayor Miller adjourned the meeting.