

**PLANO CITY COUNCIL
SEPTEMBER 24, 2012**

COUNCIL MEMBERS PRESENT

Phil Dyer, Mayor
Lissa Smith, Mayor Pro Tem
Ben Harris, Deputy Mayor Pro Tem
Pat Miner
André Davidson
Jim Duggan
Patrick Gallagher
Lee Dunlap

STAFF PRESENT

Bruce Glasscock, City Manager
Frank Turner, Deputy City Manager
LaShon Ross, Deputy City Manager
Diane Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Dyer convened the Council into the Regular Session on Monday, September 24, 2012, at 7:25 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. A quorum was present.

Sr. Pastor Gene Wilkes of Legacy Church led the invocation and Cadette Girl Scout Troop 1861 of Armstrong, Bowman, Haggard and Otto Middle Schools led the Pledge of Allegiance.

COMMENTS OF PUBLIC INTEREST

Citizen Abby Huff invited the Council to visit an exhibit related to the Girls Scouts of America's 100th Anniversary at the State Fair of Texas.

CONSENT AGENDA

Upon a motion made by Deputy Mayor Pro Tem Harris and seconded by Council Member Miner, the Council voted 8-0 to approve and adopt all items on the Consent Agenda as recommended and as follows:

Approval of Minutes (Consent Agenda Item "A")

August 27, 2012
September 5, 2012
September 10, 2012

Approval of Expenditures

Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)

Bid No. 2012-288-B for the purchase of two (2) Trucks from Caldwell Country Automotive in the amount of \$65,176 for Fleet Services, to be utilized by Special Waste, and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “B”)

Bid No. 2012-267-B for Gladys Harrington Library Restroom Renovation to Tegrity Contractors, Inc. in the amount of \$174,777 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “C”)

Purchase from an Existing Contract

To approve the purchase of Haggard Library Interior Improvements in the amount of \$70,855 from Williams and Thomas, L.P. d/b/a Jamail & Smith Construction through an existing contract/agreement with TCPN, and authorizing the City Manager to execute all necessary documents. (TCPN Contract #R5086) (Consent Agenda Item “D”)

To approve the purchase of six (6) Pick-Up Trucks for Fleet Services to be utilized by Ground Maintenance, Compost Operations, Utility Maintenance, Backflow Operations, & Police, in the amount of \$133,326 from Caldwell Country Automotive through an existing contract/agreement with TASB/BuyBoard, and authorizing the City Manager to execute all necessary documents. (TASB/BuyBoard Contract #358-10) (Consent Agenda Item “E”)

To approve a one (1) year contract with four (4) City optional renewals for the purchase of Blauer Police Uniforms for the Police Department in an estimated amount of \$100,000 from GST Public Safety Supply through an existing contract/agreement with Tarrant County (Tarrant County Contract #2011-041), and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “F”)

Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)

To approve a Professional Services Agreement by and between the City of Plano and J. Volk Consulting, Inc., in the amount of \$100,260 for the Standard Details project; and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “G”)

Adoption of Resolutions

Resolution No. 2012-9-19(R): To approve the appointment of the Health Authority for the City of Plano in accordance with Section 121.033 of the Texas Health and Safety Code; approving the Agreement between the City of Plano and Allan R. deVilleneuve, M.D. for Professional Services; and providing an effective date. (Consent Agenda Item “H”)

Resolution No. 2012-9-20(R): To approve the terms and conditions of an Advance Funding Agreement for project using funds held in the State Highway 121 Sub-account – City Street Improvements – Off System Project; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “I”)

Resolution No. 2012-9-21(R): To approve the terms and conditions of Agreements between the City of Plano and various community organizations, providing for the expenditure of Buffington Community Services funds in the amount of \$263,500 for the provision of various community services; authorizing its execution by the City Manager; and providing the effective date. (Consent Agenda Item “J”)

Resolution No. 2012-9-22(R): To approve the terms and conditions of Agreements between the City of Plano and various community organizations, providing for the expenditure of Community Development Block Grant funds in the amount of \$183,344 and HOME funds in the amount of \$276,533 for the provisions of various community services and developments; authorizing the execution by the City Manager; and providing the effective dates. (Consent Agenda Item “K”)

Resolution No. 2012-9-23(R): To approve the terms and conditions of agreements between the City of Plano, Texas and various heritage preservation organizations which render services that are beneficial to the public and serve a valid public purpose in the total amount of \$735,583; authorizing the City Manager to execute such agreements with these organizations for the provision of support of heritage preservation; and providing an effective date. (Consent Agenda Item “L”)

Resolution No. 2012-9-24(R): To approve the terms and conditions of a technical services contract with Motorola Solutions, Inc.; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “M”)

Resolution No. 2012-9-25(R): To rescind prior Resolution No. 2012-5- 11(R) which approved the Agreement with TT Holdings I, Inc., d/b/a TriTech Software Systems for the purchase of Stratus ft6300 fault tolerant server and one year maintenance on May 29, 2012; approving a new Agreement for the purchase of Stratus ft6300 fault tolerant server and one year maintenance from TriTech Software Systems for a total \$91,200 and maintenance service for five (5) additional years in an amount not to exceed \$66,724.00; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “N”)

Resolution No. 2012-9-26(R): To ratify the terms and conditions of a Consent to Assignment Agreement by and between the City of Plano, Texas, 15th and I, LLC, and Comerica Bank to authorize assignment of the Development Agreement between Southern Land Company, LLC and the City of Plano as security for financing of the development project at the southeast corner of 15th Street and I Avenue; ratifying its execution by the City Manager; and providing an effective date. (Consent Agenda Item “O”)

Ordinance No. 2012-9-27: To repeal in its entirety Ordinance No. 2011-9- 27, codified as Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste of the Code of Ordinances of the City of Plano, Texas and enacting this new Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano, establishing a revised schedule of rates and charges for solid waste disposal and collection applicable to commercial accounts; providing a repealer clause, a severability clause, and providing an effective date. (Consent Agenda Item “P”)

Ordinance No. 2012-9-28: To repeal Ordinance No. 2011-9-31; establishing the number of certain classifications within the Fire Department for fiscal year 2012-13; establishing the authorized number and effective dates of such positions for each classification; establishing a salary plan for the Fire Department effective September 24, 2012; and providing a repealer clause, a severability clause and an effective date. (Consent Agenda Item “Q”)

Ordinance No. 2012-9-29: To repeal Ordinance No. 2012-4-9; establishing the number of certain classifications within the Police Department for fiscal year 2012-13; establishing the authorized number and effective dates of such positions for each classification effective September 24, 2012; establishing a salary plan for the Police Department effective September 24, 2012; and providing a repealer clause, a severability clause and an effective date. (Consent Agenda Item “R”)

Ordinance No. 2012-9-30: To repeal Ordinance No. 2011-3-17; establishing a certification pay plan for classified members of the Plano Fire and Police Departments; establishing an assignment pay plan for members of the Plano Fire Department serving in the capacity of paramedic; establishing a Paramedic Preceptor pay plan for members of the Plano Fire Department; establishing an assignment pay plan for members of the Plano Police Department serving in the capacity of Field Training Officers; and providing a repealer clause, a severability clause and an effective date. (Consent Agenda Item “S”)

END OF CONSENT

Resolution No. 2012-9-31(R): To approve the terms and conditions of an Economic Development Incentive Agreement by and between Collin Creek Mall, LLC and the City of Plano, Texas; authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda Item “1”)

Deputy City Manager Turner spoke to Collin Creek Mall’s development in the 1980’s, contributions to the community and continuing the City’s relationship. Rouse Properties VP of Development Steve Backman spoke to his firm’s focus on a tailored approach in redevelopment of regional malls, the impact of other centers on Collin Creek Mall and partnering with the City for revitalization.

Upon a motion made by Council Member Miner and seconded by Council Member Davidson, the Council voted 8-0 to approve the terms and conditions of an Economic Development Incentive Agreement by and between Collin Creek Mall, LLC and the City of Plano, Texas; and further to adopt Resolution No. 2012-9-31(R).

Consideration of an Appeal of the Heritage Commission's Denial of a Certificate of Appropriateness to reinstall a non-permanent retractable cover on the roof top patio located at 1006 E. 15th Street. Zoned Downtown Business/Government (BG); Heritage Resource #26 Designation (H-26). Applicant: Blackgold Partners/Nathan & Bonnie Shea (Tabled 08/13/12) (Regular Agenda Item “2”)

Upon a motion made by Deputy Mayor Pro Tem Harris and seconded by Council Member Duggan, the Council voted 8-0 to remove the item from the table.

Consideration of an Appeal (cont'd)

Director of Planning Jarrell advised that the applicant is appealing a denial from the Heritage Commission related to the replacement of a cover over a portion of a rooftop patio. She spoke to the original cover which had begun to show wear and the Commission's denial based on the height, mass and visibility of the new structure. Ms. Jarrell advised that, since tabling, Staff has met with the applicant to discuss potential modifications and finds that doing so would require total dismantling. She further advised that Building Inspections has determined that it meets building code requirements. Applicant Nathan Shea spoke to the new structure's ability to withstand high winds and Ms. Jarrell advised that the new structure is two feet taller than the original. Council Member Dunlap spoke to the applicant having prior knowledge of the permitting process; and, stated a preference for the new cover.

Upon a motion made by Council Member Dunlap and seconded by Council Member Miner, the Council voted 8-0 to approve the appeal of the Heritage Commission's Denial of a Certificate of Appropriateness to reinstall a non-permanent retractable cover on the roof top patio located at 1006 E. 15th Street.

Public Hearing and adoption of Ordinance No. 2012-9-32 as requested in Zoning Case 2012-12 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to amend Planned Development-374-Retail on 6.9± acres of land located at the northeast corner of Plano Parkway and Independence Parkway, in the City of Plano, Collin County, Texas, to modify the development standards of the district including amending or repealing the limitation on the hours of operation; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, a publication clause, and an effective date. Applicant: RaceTrac (Tabled 09/10/12) (Regular Agenda Item "3")

Upon a motion made by Deputy Mayor Pro Tem Harris and seconded by Council Member Miner, the Council voted 8-0 to remove the item from the table.

Planning Manager Firgens advised that the applicant is requesting to remove stipulations, originally approved in 1987 through a planned development, which limit the hours of operation stating that the City typically addresses issues related to retail zoning through noise/lighting ordinances and adjacency standards. She advised that the Planning and Zoning Commission recommended approval expanding the hours of operation from 17 to 19 as follows: (Proposed additions are indicated by underlined text; deletions are indicated by strikethrough text.)

Restrictions:

1. Maximum Square Footage: 118,701 square feet of building area
2. Maximum Retail: 100% - Neighborhood Support Retail.
In addition to those uses permitted in the Retail districts, the following uses shall be permitted:
 - Office - showroom/warehouse

Ordinance No. 2012-9-32 (cont'd)

- Office - technical
 - Scientific and research labs
3. Truck docks for these uses shall be located at grade level.
 4. Maximum Floor Area Ratio: 0.5:1
 5. Maximum Floor Area Ratio on any Given Lot: 0.75:1
 6. Maximum Lot Coverage: 40% (inclusive of parking structures)
 7. Maximum Building Height: 2 story (36 feet) - all heights shall include mechanical/penthouse
 8. Maximum Parking Structure Height: 2 levels above grade (20 feet)
 9. Setback Requirements: 50 feet from north property line and 50 feet from Plano Pkwy.

The zoning granted above is granted subject to the following additional stipulations:

1. Regulatory provisions of the Zoning Ordinance pertaining to additional setbacks from residential zoning districts (Sections 3.500, 3.600, and 3.700) shall apply to this tract.
2. A study of Plano Pkwy., from Jupiter Rd. to Preston Rd., shall be conducted by the city to evaluate standards and plans for driveway spacing, median breaks, acceleration/deceleration lanes, signalization, and intersection design. The objective of the study is to enhance the parkway's capacity without adding additional through lanes. The cost of the study shall be borne by the petitioners for zoning. The closing of Longworth Dr. north of Plano Pkwy. shall be a major consideration in the Plano Parkway Study.
3. All landscape areas required by the Design Guidelines (referenced after PD-393-R/O-2) shall be irrigated by an underground, automatic sprinkler system.
4. All subsequently approved preliminary site plans and site plans for this tract shall conform to the Design Guidelines for the Plano Pkwy./S.H. 190 Corridor as adopted by the City Council and as placed by the owner as Restrictive Covenants on the tract binding both the current and future owners to such guidelines.
5. This tract shall be deed restricted to limit the hours of operation to ~~17~~ 19 total hours, preferably ~~11:00 p.m.~~ 12:00 a.m. to 5:00 a.m. being ~~be the closing~~ closed hours.
6. No access to any tract shall be gained from the existing alley or alleys serving the residential area.
7. Truck docks and trash containers shall be to the interior of constructed buildings and at grade.

Ordinance No. 2012-9-32 (cont'd)

8. There will be no dedicated street adjacent and parallel to the residential district.
9. Parking structures shall be screened from view of the residential district through the use of natural screens.
10. Sodium vapor lights shall not be used for parking lots and other exterior lighting. All lighting shall meet the requirements of the Plano Lighting Ordinance.

Refer to Design Guidelines after PD-393-R/O-2 for additional stipulations.

Ms. Firgens advised that the applicant is requesting removal of all restrictions to permit 24-hour operation and that due to letters received in opposition, the Council must record a three-quarter vote of approval to effect the revision in zoning. She clarified that the request includes two lots in addition to the corner owned by RaceTrac and that any changes would apply to uses on all three and further that this is the only such regulated retail location.

Mayor Dyer opened the Public Hearing. Tommy Mann, Winstead PC, representing the applicant, spoke to residential adjacency standards absent in 1987 to protect homeowners, requested 24 hour operating hours and stated that current limitations on operating hours are deed restrictions and do not include either the City or the neighborhood as "benefited parties." He spoke to noise/lighting regulation through ordinances, lost revenues and responded to the Council, advising that the other two property owners in the planned development district are in agreement with the proposed revisions. Ms. Firgens advised that the current ordinance provides a total number of hours of operation; but includes the term "preferably" when referencing exact times, which creates enforcement challenges. City Attorney Wetherbee spoke to issues related to enforcing deed restrictions and recommended including specific language in regulatory ordinances. Director of Planning Jarrell spoke to rezoning of the Plano Parkway corridor in 1987 and work with homeowners to craft the existing language.

Robert Miller, representing the Dallas North Estates Homeowners Association, spoke to this property being the only one zoned Retail along the Plano Parkway corridor, zoning in place on the property when purchased by RaceTrac, other service stations in the area, and the potential for noise/traffic. Mr. Mann responded that service stations do not generate new trips, but offer a convenience for those in the area. No one else spoke for or against the request. The Public Hearing was closed.

Ms. Wetherbee recommended specifying the hours of operation to address enforcement issues and Council Member Miner made a motion to amend Planned Development-374-Retail on 6.9± acres of land located at the northeast corner of Plano Parkway and Independence Parkway, in the City of Plano to modify the development standards of the district to include limiting the hours of operation for uses to 5:00 a.m. to 12:00 a.m. (19 hours). Council Member Dunlap seconded the motion. (No vote was taken at this time.)

Ordinance No. 2012-9-32 (cont'd)

Mayor Pro Tem Smith and Council Member Duggan stated concern that this ordinance singles out one retail property to establish and enforce hours of operation. Council Member Miner spoke to RaceTrac's awareness of the restrictions when purchasing the property. Council Member Davidson stated concern related to expanding the hours of operation to 24 hours for all three lots within the planned development. Deputy Mayor Pro Tem Harris spoke to the RaceTrac site being more than 150 feet from residential zoning and Council Member Dunlap spoke to the zoning applicable to the three properties and RaceTrac's agreement with conditions upon purchase.

The motion was restated by Council Member Miner and seconded by Council Member Dunlap to amend Planned Development-374-Retail on 6.9± acres of land located at the northeast corner of Plano Parkway and Independence Parkway, in the City of Plano to modify the development standards of the district to include limiting the hours of operation for uses to 5:00 a.m. to 12:00 a.m. (19 hours). The Council voted 5-3 with Mayor Pro Tem Smith, Deputy Mayor Pro Tem Harris and Council Member Duggan voting in opposition. The motion failed.

A motion was made by Council Member Miner and seconded by Council Member Dunlap to amend the "hard corner" of Planned Development-374-Retail located at the northeast corner of Plano Parkway and Independence Parkway, in the City of Plano to modify the development standards of the district to include limiting the hours of operation for uses to 5:00 a.m. to 12:00 a.m. (19 hours). Council Member Davidson stated concern related to singling out the "hard corner." The Council voted 5-3 with Deputy Mayor Pro Tem Harris, Council Member Duggan and Council Member Davidson voting in opposition. The motion failed.

Mr. Mann restated the request for 24 hours of operation; but, advised that 19 with hours of operation from 5 am to 12 midnight would be acceptable.

A motion was made by Council Member Miner and seconded by Council Member Dunlap, to amend Planned Development-374-Retail on 6.9± acres of land located at the northeast corner of Plano Parkway and Independence Parkway, in the City of Plano to modify the development standards of the district including amending or repealing the limitation on the hours of operation to include opening from 5 am to midnight seven days a week; as requested in Zoning Case 2012-12 and as recommended by the Planning and Zoning Commission with the following revision:

5. ~~This tract shall be deed restricted to limit the hours of operation to 17 total hours, preferably 11:00 p.m. to be the closing hour.~~ The hours of operation for uses located within this district are limited to 5:00 a.m. to 12:00 a.m. (19 hours).

The Council voted 8-0, the motion carried, and Ordinance No. 2012-9-32 was adopted as revised.

Resolution No. 2012-9-33(R): To appoint a board member to serve on the Dallas Area Rapid Transit Authority (DART) Board of Directors as provided in Chapter 452 of the Texas Transportation Code and providing an effective date. (Regular Agenda Item “4”)

Upon a motion made by Mayor Dyer and seconded by Mayor Pro Tem Smith, the Council voted 8-0 to appoint Paul N. Wageman as a board member to serve on the Dallas Area Rapid Transit Authority (DART) Board of Directors and further to adopt Resolution No. 2012-9-33(R).

Resolution No. 2012-9-34(R): To affirm the appointment of a shared board member with the City of Farmers Branch to serve on the Dallas Area Rapid Transit Authority (DART) Board of Directors as provided in Chapter 452 of the Texas Transportation Code and providing an effective date. (Regular Agenda Item “5”)

Upon a motion made by Mayor Dyer and seconded by Council Member Miner, the Council voted 8-0 to affirm the appointment of Faye Moses Wilkins as a shared board member with the City of Farmers Branch to serve on the Dallas Area Rapid Transit Authority (DART) Board of Directors and further to adopt Resolution No. 2012-9-34(R).

Nothing further was discussed. Mayor Dyer adjourned the meeting at 8:38 p.m.

Phil Dyer, MAYOR

ATTEST

Diane Zucco, City Secretary