



**MINUTES
OF THE
MEETING OF THE
BENBROOK CITY COUNCIL
THURSDAY, NOVEMBER 2, 2006**

The regular meeting of the Benbrook City Council was held on Thursday, November 2, 2006 at 7:30 p. m. in the Council Chambers at 911 Winscott Road with the following Council members present:

Jerry Dittrich
James Schull
Keith Bailey
Rickie Allison
John Vander
Larry Stowe
Ron Sauma

Also Present:

Cary Conklin, City Manager
Joanna King, City Secretary
Dave Gattis, Assistant City Manager
Andy Wayman, Assistant City Manager
Wade Adkins, City Attorney

Others Present:

Dorcas Neuman, Benbrook News
Valerie Stowe
Felix Hebert
Bill Smith
Daniel Tully
Peter Kau
Pat Dunkin
Joan Chew
Glen Martin
Ron Slate
Tammy Kendall
Jim Wilson
Scott Roberson
Students from Western Hills High School
and 5 other citizens

I. CALL TO ORDER

Meeting called to order at 7:30 p. m. by Mayor Dittrich.

**II. INVOCATION
PLEDGE OF ALLEGIANCE**

Invocation given by Pastor Todd Pylant with First Baptist Church
The Pledge of Allegiance was recited.

III. MINUTES

CONSENT AGENDA

- 1. Minutes of the regular meeting held October 19, 2006**
- 2. Confirm Appointment to Civil Service Commission**
- 3. Interlocal Agreement with City of Fort Worth for Rabies Control**

Motion by Mr. Allison, seconded by Mr. Sauma to approve the consent agenda as presented.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mr. Allison, Mayor Dittrich, Mr. Vander Pan, Mr. Stowe, Mr. Sauma

Noes: None

Motion carries unanimously.

IV. CITIZEN PRESENTATION

- 1. Tammy Kendall - Plantation West Drainage Easement**

Ms. Tammy Kendall made presentation to City Council regarding the drainage easement required at 4100 Mary's Creek Drive. Ms. Kendall request compensation in the amount of \$25,000 as a fair and equitable price for her loss of property. Following presentation, Mr. Gattis informed City Council that could make a counter offer to Ms. Kendall, postpone the item for executive session, or take no action.

Motion by Mr. Stowe, seconded by Mr. Schull to consider this item in Executive Session.

Vote on the Motion:

Ayes: Mr. Bailey, Mr. Allison, Mayor Dittrich, Mr. Vander Pan, Mr. Stowe, Mr. Sauma, Mr. Schull

Noes: None

Motion carries unanimously.

V. PRESENTATION BY MAYOR AND MEMBER OF CITY COUNCIL

1. Appointment of City Manager

Motion by Mr. Allison, seconded by Mr. Schull to appoint Andy Wayman as City Manager effective January 1, 2007.

Vote on the Motion:

Ayes: Mr. Allison, Mayor Dittrich, Mr. Vander Pan, Mr. Sauma, Mr. Schull, Mr. Bailey

Noes: Mr. Stowe

Motion carries 6-1.

Emergency Item

2. Appointment of Associate Municipal Court Judge

Mr. Conklin advised City Council that the Municipal Court Judge would be unable to attend the November 4, 2006 Municipal Court Session due to illness. He stated the court presently does not have an Associate Judge. Mr. Conklin recommended the appointment of Mr. D. Lee Gwinn as the Associate Municipal Court Judge.

Motion by Mr. Schull, seconded by Mr. Stowe to appoint Mr. D. Lee Gwinn as the Associate Judge for Benbrook Municipal Court.

Vote on the motion:

Ayes: Mayor Dittrich, Mr. Vander Pan, Mr. Stowe, Mr. Sauma, Mr. Schull, Mr. Bailey, Mr. Allison

Noes: None

Motion carries unanimously.

VI. PRESENTATION BY PLANNING AND ZONING COMMISSION

VII. REPORTS OF CITY MANAGER

A. GENERAL

G-1663 Adopt Ordinance Amending Chapter 8.48 Regulations of Smoking of the Benbrook Municipal Code by Adding Section 8.48.025 - Exemptions

Motion by Mr. Allison, seconded by Mr. Vander Pan to remove item G-1663 from the table.

Vote on the Motion:

Ayes: Mr. Schull, Mr. Bailey, Mr. Allison, Mayor Dittrich, Mr. Vander Pan, Mr. Stowe, Mr. Sauma

Noes: None

Motion carries unanimously.

Mr. Wayman gave the following report: On August 17, 2006, City Council amended Section 8.48 of the Benbrook Municipal Code, banning smoking in all public buildings. On September 28, 2006, City Council instructed staff to draft an amendment providing conditional exceptions to the smoking ordinance.

The proposed exceptions were reviewed and amended by the City Attorney. The exceptions apply to the existing bingo hall and veterans organizations. Conditions for exceptions include:

- Must provide an enclosed non-smoking area
- Must provide a separate ventilation system
- Must provide separate entrance/exit
- Must provide proper signs
- No one under 18 is allowed in smoking area
- Bingo paraphernalia must be sold in non-smoking area
- 120 days to comply
- Exceptions for current facilities only
- Exceptions no longer apply if facility is sold or ceases to operate for 24 consecutive months

The City Attorney continues to express concern that the exemptions would weaken the ordinance and make it subject to legal challenge.

Following discussion, motion by Mr. Vander Pan, seconded by Mr. Stowe to adopt the ordinance amending Chapter 8.48 as presented and allow 120 days for compliance.

Vote on the Motion:

Ayes: Mr. Vander Pan, Mr. Stowe, Mr. Sauma

Noes: Mr. Schull, Mr. Bailey, Mr. Allison, Mayor Dittrich

Motion fails 3-4.

G-1664 Ordinance Amending Chapter 1.12 of the Benbrook Municipal Code to Revise the Fee for Park Land Dedication

Mr. Gattis gave the following report: Parkland dedication requirements were established in 1998. The Subdivision Ordinance requires that developers of

residential property dedicate one acre of park land for every 100 residential lots or units that they create. In cases where a development does not dedicate parkland of sufficient size, or where the City does not want to accept the land being dedicated, there is an option for the developer to pay a fee-in-lieu of the land dedication.

The current fee is \$400 per lot or unit, based on the cost of a developed piece of land costing \$40,000 per acre. This fee has not been raised since 1998. Staff performed a "random" sample of residential land prices throughout Benbrook and found them to range from a low of \$10,000 per acre to a high of \$202,652 per acre. The average of all properties in the same was \$68,046. Throwing out the high figure resulted in an average of \$56,828.

In either event, it appears that our current park land dedication fee is too low. The staff recommends that it be set at \$600 per lot or dwelling unit, based on an average residential land value of \$60,000 per acre.

Motion by Mr. Stowe, seconded by Mr. Sauma to adopt Ordinance No. 1221 amending Parkland dedication fee at \$600 per unit.

Vote on the Motion:

Ayes: Mr. Stowe, Mr. Sauma, Mr. Schull, Mr. Bailey, Mr. Allison, Mayor Dittrich, Mr. Vander Pan

Noes: None

Motion carries unanimously.

Ordinance No. 1221 being "AN ORDINANCE AMENDING CHAPTER 1.12 OF THE BENBROOK MUNICIPAL CODE (1985), AS AMENDED, BY REVISING THE FEE SCHEDULE FOR THE CITY OF BENBROOK, BY REVISING PARKLAND DEDICATION FEES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING FOR PUBLIC IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE."

SECTION 4

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be find not more than Two Thousand Dollars (\$2,000.00) for all violations involving zoning, fire safety or public health and sanitation, including dumping of refuse, and shall be fined not more than Five Hundred Dollars (\$500.00) for all other violations of this Ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 8

This Ordinance shall be in full force and effect from and after its passage and publication as provided by law, and it is so ordained.

G-1665 Annexation Proceedings to Enlarge and Extend the Boundary Limits of the City of Benbrook, Texas:

Tract 1: A tract of land which is a variable width right-of-way of Chapin Road extending approximately 4,135 feet in a westerly direction from the southerly extension of the west line of Lot 1, Block 1, Western Hills High School Addition, as recorded in Cabinet A, Slide 6960, Plat Records, Tarrant County, Texas

Tract 2: A tract of land which is a variable width right-of-way of Chapin Road extending approximately 2,000 feet in an easterly direction from the east right-of-way line of Interstate Loop 820 (First Public Hearing)

Mr. Gattis gave the following report: Part of the negotiations with the City of Fort Worth, the boundary between Fort Worth and Benbrook along Chapin Road requires revision. The City Council authorized the staff to proceed on the annexation of two segments of right-of-way along Chapin Road at the August 3rd City Council meeting. Fort Worth also has agreed to participate next year in an asphalt overlay of Chapin Road.

In 1968, Benbrook and Fort Worth adopted a Joint Resolution that established the future common boundary line between the two. Each City was then entitled to annex up to that line. The line along Chapin Road was established as the north right-of-way between the Loop 820 Frontage Road and Western Hills High School and along the south right-of-way line east of Williams Road.

The City of Benbrook never annexed the north half of Chapin Road between Van Deman Drive and Carman Drive, and never annexed the entire right-of-way between Burkett Drive and Western Hills High School, even though we have been maintaining this roadway for many years. We also have never annexed the full width of right-of-way between Van Deman Drive and the Loop 820 frontage road. The two tracts are entirely street right-of-way and no private property is involved.

State law has specific procedures for annexation. State law requires two public hearings prior to adoption. The second hearing will be held November 6 and final action will be December 7, 2006. State law also requires that we prepare an Annexation Service Plan describing how we will provide city services to the newly annexed tract within specific time frames. Police, fire, EMS, animal control, health codes and street maintenance will begin on the effective date of the Ordinance. No other services or capital projects are required.

Mayor Dittrich opened the public hearing at 8:24 p.m. No one spoke for or against this item. Public hearing remains open until November 16, 2006.

G-1666 First Public Hearing to Receive Citizen Input on Continuation of Teen Curfew

Deputy Police Chief Mills gave the following report: In July 1994, the City of Benbrook first enacted a curfew ordinance to restrict the hours an individual under the age of seventeen can be in a public place. State law requires a review of municipal curfew ordinances every three years to determine if the ordinance should be abolished, continued, or modified. State law further requires a review of the ordinance's effect on the community and on problems the ordinance is intended to remedy. The Local Government Code stipulates that the City Council conduct public hearings on the need to continue the ordinance. Since 1994, the Benbrook City Council has reauthorized the curfew ordinance.

The restricted hours are from 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day and 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.

Consideration of the curfew ordinance is two phased and includes (1) the November 2, 2006 public hearing and (2) an additional public hearing followed by City Council consideration. City Council last review the ordinance in December 2003.

The Benbrook Police Department believes that the curfew ordinance has assisted the department in late night crime prevention.

Benbrook police officers have issued the following citations for curfew violations in the past three years:

2004	59
2005	45
2006	50

During the same period, minors have been arrested for committing the following number of crimes during the hours of curfew.

2004	17
2005	18
2006	21

The Cities of Bedford, Burleson, Crowley, Euless, Everman, Forest Hill, Fort Worth, Hurst, North Richland Hills, Saginaw, Watauga and White Settlement have enacted curfew ordinances. Arlington, Grapeview, Keller, Kennedale, Mansfield, and Southlake have not enacted a curfew ordinance.

Mayor Dittrich opened the public hearing at 8:30 p.m. No one spoke for or against the item. Mayor Dittrich closed the public hearing at 8:31 p.m.

VIII. OTHER MATTERS OF BUSINESS

1. Resolution - Tarrant Regional Transportation Coalition - Exemption of Sales Tax Cap

Mr. Gattis gave the following report: The resolution City Council received in the packet should actually be a resolution to support a local option sales tax to fund regional rail in North Central Texas. Two years ago the Regional Transportation Council developed a proposal for regional rail to serve the counties of Dallas, Fort Worth, Collin and Denton.

The usual way to pay for this project is through sales tax. The problem is that most cities are at their maximum sales tax allowed. State law only allows cities to collect two-cents in local sales tax. One cent is for the general fund and the other one-cent for other uses. Cities that have joined Dart pay one-cent to Dart. The cities that have joined the T pay 1/2 cent. However, those cities are prohibited from having an Economic Development Corporation.

The request is for the Regional Transportation Coalition to go before the legislature to obtain an additional 1/2 cent sales tax capability as a local option. This request was made two years ago and although the Legislature did not act, a Legislative Committee was formed to study the issue. In the mean time, Dart and the T conducted an opinion poll regarding regional rail service. Approximately 70% were in favor of regional rail and the sales tax funding.

Motion by Mr. Vander Pan, seconded by Mr. Schull to adopt Resolution 2006-13 supporting a local option sales tax to fund regional rail in North Central Texas.

Vote on the Motion:

Ayes: Mr. Sauma, Mr. Schull, Mr. Bailey, Mr. Allison, Mayor Dittrich, Mr. Vander Pan, Mr. Stowe

Noes: None

Motion carries unanimously.

Resolution No. 2006-13 being **"A RESOLUTION SUPPORTING A LOCAL OPTION SALES TAX TO FUND REGIONAL RAIL IN NORTH CENTRAL TEXAS."**

IX. INFORMAL CITIZEN COMMENTS

Mr. Jim Wilson expressed appreciation to City Council for the Bike Trail designation along Winscott Road.

Mr. Scott Roberson questioned how other cities could exempt Bingo Halls from a smoking ordinance and Benbrook could not. Mr. Roberson was advised that he could speak to members of the City Council following the regular meeting.

V. EXECUTIVE SESSION – Pursuant to Texas Government Code

Section 551.072 – Deliberation Regarding Real Property

1. Consider Counter Offer for Drainage Easement at 4100 Mary's Creek Drive

Mayor Dittrich recessed the regular meeting at 8:44 p.m. to conduct Executive Session to consider a counter offer for a drainage easement at 4100 Mary's Creek Drive.

RECONVENE FROM EXECUTIVE SESSION

Necessary Action from Executive Session

Mayor Dittrich reconvened the regular session at 9:03 p.m.

Motion by Mr. Stowe, seconded by Mr. Vander Pan to offer Ms. Kendall \$20,000 for the drainage easement at 4100 Mary's Creek Drive.

Vote on the Motion:

Ayes: Mr. Bailey, Mayor Dittrich, Mr. Vander Pan, Mr. Stowe

Noes: Mr. Sauma

Motion carries 4-1.

X. ADJOURNMENT

Meeting adjourned at 9:03 p.m.

APPROVED:

Jerry B. Dittrich, Mayor

ATTEST:

Joanna King, City Secretary