

**MINUTES
OF THE
MEETING OF THE
BENBROOK CITY COUNCIL
THURSDAY, NOVEMBER 3, 2005**

The regular meeting of the Benbrook City Council was held on Thursday, November 3, 2005 at 7:30 p. m. in the Council Chambers at 911 Winscott Road with the following Council members present:

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

Also Present:

Cary Conklin, City Manager
Joanna King, City Secretary
David Gattis, Assistant City Manager
Andy Wayman, Assistant City Manager
Shawna Cortez, Assistant to City Manager

Others Present:

Ed Gallagher, City Planner
Dorcas Neuman, Benbrook News
Jackie Hartman
Mark O'Connor
George & Jan Barnhart
Valerie Stowe
Bill Smith
Daniel Tully
Sam Balkum
Lisa Flowers
Robin Yarbrough
Marilyn Ackmann
Four (4) Government Students from WHHS

I. CALL TO ORDER

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

**II. INVOCATION
PLEDGE OF ALLEGIANCE**

Mr. Andy Wayman gave the invocation.
The Pledge of Allegiance was recited.

III. CONSENT AGENDA (Items listed under the Consent Agenda are considered routine and are enacted in one motion. The exception to this rule is that a Councilmember, citizen or City Manager may request one or more items to be removed from the Consent Agenda for separate discussion and action.)

1. Minutes of the regular meeting held October 20, 2005

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

Vote on the Motion:

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

Noes: None

Motion carries unanimously.

IV. PROCLAMATION/AWARDS/RECOGNITION

**1. Employee Recognition
George Barnhart – Fire Captain – 20 Years Service**

Mayor Dittrich presented Fire Captain George Barnhart with a Certificate of Appreciation for his twenty years service to the citizens of Benbrook.

V. CITIZEN PRESENTATION

1. Benbrook Firefighter Association – Request Funding for 14th Annual Christmas Tree Lighting

Fire Lieutenant Jackie Hartman, on behalf of the Benbrook Firefighters Association, requested funds for the 14th Annual Christmas Tree Lighting Fireworks Show. Lt. Hartman stated the tentative date scheduled for the event is December 3, 2005 at the Benbrook Community Center/YMCA. The main focus of the event is to provide for those families in and around Benbrook that are less fortunate, providing them with the essentials during the holiday season.

Throughout the years, many civic-minded organizations have stepped forward and joined with the Firefighters Association to make the event possible. Those organizations include Benbrook Fire Auxiliary, Benbrook Police Officers Association, Citizens on Patrol, Benbrook Chamber of Commerce, Benbrook Lion's Club, Benbrook EDC, 4-PAWS, and local merchants and businesses.

Due to the lack of available income, the Firefighters Association is not able to fully

fund this year's event. The Firefighter's Association handles the cost of the pictures with Santa, station decoration, Christmas "tree of lights", refreshments for citizens and other cost associated with the event. With the limited income, the Association is unable to fund the fireworks portion of the show. In an effort to continue the annual Christmas Tree Lighting Celebration, the Firefighters Association is requesting assistance from the City. The estimated cost for the fireworks display is \$9,000. Of this amount, \$8,000 is for the fireworks display and \$1,000 is for the sound equipment.

Motion by Mr. Schull, seconded by Mr. Allison to grant the funding request from the Benbrook Firefighters Association for the 14th annual Christmas Tree Lighting in the amount of \$9,000.

Mr. Stowe requested staff to include the cost of the fireworks display in the next year's budget for council consideration. He stated that approval of this program would alleviate the necessity of the Firefighters Association from making a yearly request for funding.

Vote on the Motion:

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

Noes: None

Motion carries unanimously.

VI. PRESENTATION BY PLANNING AND ZONING COMMISSION

VII. REPORTS OF CITY MANAGER

A. GENERAL

G-1594 Ordinance Amending the Benbrook Municipal Code by Amending Chapter 9.16-Illegal Filling or Dumping, Chapter 15.42-Storm Water Quality, and Adding a New Chapter 15.48-Excavation, Grading and Filling

Mr. Dave Gattis gave the following report: Historically, Benbrook has taken a laissez-faire approach to regulation of excavation and fill activities, except in floodplains. Current regulations prohibit certain fill activities and regulate land disturbance activities under storm water regulations.

Benbrook has experienced recent problems with fill activities and increasing requirements from State and Federal government. The proposed ordinance removes ambiguity and loopholes in excavation and filling. The amendment to

Section 9.16 regarding fill activities, removes exemption for dirt and rock, and provides procedures for correcting illegal fill. Section 15.42 is amended to eliminate potential duplication in requirements. A new section 15.48 regulates most excavation, grading and fill activities, including permit requirements and design standards.

Motion by Mr. Stowe, seconded by Mr. Allison to adopt Ordinance No. 1199 regarding excavation, fill and dumping as presented.

Vote on the Motion:

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

Noes: None

Motion carries unanimously.

Ordinance No. 1199 being **“AN ORDINANCE AMENDING TITLES 9 AND 15 OF THE BENBROOK MUNICIPAL CODE (1985), AS AMENDED, BY AMENDING CHAPTER 9.16-ILLEGAL FILLING OR DUMPING; AMENDING CHAPTER 15.42-STORM WATER QUALITY AND ADDING A NEW CHAPTER 15.48-EXCAVATION, GRADING AND FILLING; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.”**

SECTION 5

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 fined not more than Two Thousand Dollars (\$2,000) for all violations involving zoning, fire safety, 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 7

The City Secretary of the City of Benbrook is hereby directed to engross and enroll this Ordinance by copying the caption, penalty clause, and effective date clause of this Ordinance in the Ordinance records of the City.

SECTION 9

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-1595 Ordinance Denying Gas Reliability Infrastructure Program Rate Increase Proposed by Atmos Energy Corporation

Mrs. Shawna Cortez gave the following report: In September 2005, Atmos made a Gas Reliability Infrastructure Program (GRIP) filing with the Railroad Commission, City of Benbrook, and other cities served by Atmos. The filing was based on investments made in 2004 and notified the entities of its intent to increase its distribution rates to all customers effective November 19, 2005.

Atmos has publicly stated that it will receive substantial profit in 2005 and that its expenses are significantly below those on which its current rates are based. Atmos's GRIP request fails to account for growth in its customer base, thus under counting the revenue it will receive from the proposed increase.

Atmos's GRIP request fails to recognize that current rates include profit based on TXU Gas Corporation's capital structure rather than Atmos' current capital structures, which justifies a lower rate of return.

The proposed ordinance:

- Denies the GRIP rate increase;
- Authorizes the City to participate in Atmos Cities Steering Committee;
- Authorizes the City to intervene in any appeal of the City's action and participate in any appeal as a member of ACSC; and
- Requires prompt reimbursement of the City's legal and consultant expenses.

Staff recommends that City Council approve the proposed ordinance denying the request of Atmos Energy for a GRIP rate increase; authorizing participation in ACSC; authorizing ACSC to obtain legal and consulting services, negotiate with Atmos, and direct any necessary litigation; authorizing intervention in any appeal of the City's action to the Railroad Commission; and requiring reimbursement of the City's expenses.

Motion by Mr. Schull, seconded by Mr. Sauma to adopt Ordinance No. 1200 as presented.

Vote on the Motion:

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

Noes: None

Motion carries unanimously.

Ordinance No. 1200 being “**AN ORDINANCE OF THE CITY OF BENBROOK, TEXAS, DENYING THE REQUEST OF ATMOS ENERGY CORP., MID-TEX DIVISION, FOR AN ANNUAL GAS RELIABILITY INFRASTRUCTURE PROGRAM (GRIP) RATE INCREASE IN THIS MUNICIPALITY, AS A PART OF THE COMPANY’S STATEWIDE GAS UTILITY DISTRIBUTION SYSTEM; APPROVING COOPERATION WITH OTHER CITIES WITHIN THE ATMOS ENERGY CORP., MID-TEX DIVISION DISTRIBUTION SYSTEM AS PART OF THE ATMOS CITIES STEERING COMMITTEE (ACSC); AUTHORIZING ACSC TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION; AUTHORIZING INTERVENTION AS PART OF ACSC IN ANY APPEAL OF THE CITY’S ACTION TO THE RAILROAD COMMISSION; PROVIDING A REQUIREMENT FOR PROMPT REIMBURSEMENT OF COSTS INCURRED BY THE CITY; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING FOR NOTICE OF THIS ORDINANCE TO ATMOS ENERGY CORP., MID-TEX DIVISION.**”

G-1596 Resolution Ordering Atmos Energy Corporation to Show Cause Regarding the Reasonableness of Existing Natural Gas Distribution Rates

Mrs. Shawna Cortez gave the following report: The City has original jurisdiction over gas utility rates within Benbrook. GURA grants municipalities the authority to initiate a proceeding to determine if existing rates are unreasonable. The last rate case, GUD 9400 in May 2004, was the gas system owned by TXU Gas, which had different operating expense and debt structure than Atmos.

The current rates are not based on Atmos’ cost of service or capital structure. Atmos is most likely over-earning. Atmos has made numerous public statements regarding the reduction of its operating expenses and the increased revenue it has made from Texas systems.

The proposed Resolution requires Atmos to:

- Submit to the City by December 31, 2005, a filing based on a rate year ending June 30, 2005.
- File on a system-wide basis in a form consistent from City to City.
- Reimburse the City’s rate case expenses on a monthly basis.

Motion by Mr. Allison, seconded by Mr. Stowe to adopt Resolution 2005-20 ordering Atmos to show cause regarding the reasonableness of its existing natural gas distribution rates within the City of Benbrook; requiring Atmos to

submit by December 31, 2005 a rate package based on a rate year ending June 30, 2005; and requiring reimbursement of the City's legal and consultant expenses.

Vote on the Motion:

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

Noes: None

Motion carries unanimously.

Resolution No. 2005-20 being "A RESOLUTION BY THE CITY OF BENBROOK, TEXAS, ORDERING ATMOS ENERGY CORP., MID-TEX DIVISION, TO SHOW CAUSE REGARDING THE REASONABLENESS OF ITS EXISTING NATURAL GAS DISTRIBUTION RATES WITHIN THE CITY; REQUIRING ATMOS ENERGY CORP., MID-TEX DIVISION TO SUBMIT A RATE PACKAGE ON A RATE YEAR ENDING JUNE 30, 2005; DIRECTING THAT SUCH FILING SHALL BE MADE BY DECEMBER 31, 2005; REQUIRING REIMBURSEMENT OF REASONABLE LEGAL AND CONSULTANT EXPENSES; AND REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL."

Mrs. Marilyn Ackmann with Atmos Energy addressed City Council regarding the fact that natural gas prices will be higher this winter than in past years. Mrs. Ackmann advised citizens can call Atmos regarding this matter. She also stated emergency assistance is available to citizens with an undo hardship that are unable to pay their gas costs.

- VIII. OTHER MATTERS OF BUSINESS**
- IX. INFORMAL CITIZEN PRESENTATION**
- X. ADJOURNMENT**

Meeting adjourned at 8:00 P.M. followed by a worksession to discuss priority projects for 2006.

APPROVED:

Jerry B. Dittrich, Mayor

ATTEST:

Joanna King, City Secretary