



# City of Rowlett Meeting Minutes City Council

4000 Main Street  
P.O. Box 99  
Rowlett, TX 75030-0099  
www.rowlett.com

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Tuesday, June 24, 2008

6:30 PM

Municipal Building - 4000 Main Street

As authorized by Section 551.071(2) of the Texas Government Code, this meeting may be convened into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item herein.

The City of Rowlett reserves the right to reconvene, recess or realign the Regular Session or called Executive Session or order of business at any time prior to adjournment.

## 1. CALL TO ORDER

*Mayor Harper called the meeting to order at 6:30 p.m.*

**Present:** Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

## 2. ITEMS FOR INDIVIDUAL CONSIDERATION

### 2.-A. Consider a resolution approving or denying the appeal from Lakepointe Pharmacy CUP.

*Mayor Harper read the item into the record.*

*Keri Samford, Director of Planning and Community Development stated "We're here for the Lakepointe Pharmacy addition; and we'll give a little background; we'll go through what was proposed; we'll give some options that are available; and then we'll take any questions from you."*

*Mayor Harper stated "Again, let me check with David; David, can I combine Citizens' Input with this or is it better to do it in a separate way?"*

*David Berman, City Attorney replied "You can do it any way you want."*

*Mayor Harper stated "All right. Those of you who've signed up for Citizens' Input, I may be calling upon you...I just want to hear you, we all want to hear you but we're doing things a little differently. Go ahead Keri."*

*Ms. Samford stated "The property is currently zoned Commercial-2 or C-2, as it's known on our Zoning Map. Per the Rowlett Development Code (RDC), buildings with drive-thru windows require a Conditional Use Permit (CUP). A CUP is like a permit that allows for conditions to be placed on zoning or uses that are put into place. And that really is the reason why we're here tonight. Because of this drive-thru and the shopping center is less than twenty thousand (20,000) square feet.*

A public hearing was held on April 22nd at the Planning and Zoning Commission. Twenty-five (25) notices were mailed out, the following were returned: two (2) in favor of the project as a whole and six (6) opposed. The summary of the concerns by the citizens there that night were the extension of Silver Lake Drive. There is an easement there; however, the City has no plans to extend that and we were assured by the developer that they have no plans to extend that, as well, into the neighborhood and create another access point. A twenty-four (24) hour pharmacy was a concern and that is actually a condition, as well, that twenty-four (24) hour operation is not allowed. Concern that the screening wall will make it even more difficult to exit the rear entry garage; and the CUP condition that was placed is the screening wall must be a minimum ten (10) foot living screen with rod iron fence, but it must be installed five (5) feet from the alley or the utility easement whichever distance is greater. They were concerned about backing out and backing into a masonry fence or the rod iron fence. They were concerned about restaurant odors and sanitation issues. This really is the preliminary stages, the CUP stages, we don't even have development plans in yet and all of that will meet the environmental health regulations and any of the codes that are in the Rowlett Development Code. Noise during construction, this is also addressed by our Code. The applicant was not present to make a statement; however, they're not required to attend the meeting. In addition to other comments, the Commissioners discussed their preference for rod iron fence with living screen partially due to the current living screen associated with Tatiano's, which is just down the street. The Commissioners stated they would like to see consistency, as well as, the aesthetic value of the living screen. The members of the community that were in attendance that night agreed with that. There's a vacant lot between the proposed Lakepointe Pharmacy and Tatiano's lot. If a project is proposed for that lot that meets all the code requirements, it must be approved; meaning that it would not come back before this board...this Council. Requiring Lakepointe Pharmacy to provide a living screen does not guarantee screening consistency in the future. The Tatiano's project is not directly adjacent to the subject property; a separate undeveloped lot lies between the two (2) properties. As far as rezoning or establishing an Overlay District with associated designed standards, the undeveloped property between the two (2) properties could be developed by right with a conforming masonry screening wall. And this is an illustration of that; the subject property, the vacant lot in between and then Tatiano's on the corner. The Lakepointe Pharmacy CUP was approved for a shopping center with eleven thousand four hundred fifteen (11,415) square feet with four thousand (4,000) feet of pharmacy with drive-thru at the Planning and Zoning Commission meeting with the following conditions. All retail uses including those under fourteen thousand (14,000) square feet are allowed by right with the exception of those individually called out in the Code as requiring a CUP. What it means is there are some listed retail uses that are allowed; it might be a size limit that just hinders that; however, if it's specifically called out as needing a CUP then we still require a CUP. The twenty-four (24) hour operation; again, this was addressing some of the concerns by the citizens present that night and the screening wall; we talked about that a little earlier. It must be five (5) feet from the alley or the utility easement and it's a rod iron fence with living screen instead of the masonry.

This is just some follow-up steps that staff took after the...on April 24th staff sent a follow-up email to the applicant stating the decision by P&Z and the next steps in the development process. In May, the applicant contacted staff and said they did not want to provide the rod iron fence with living screen. Staff sent the applicant detailed information about the appeal process and the appeal was sent on May 16th. Oh, excuse me...they submitted a letter during a...a disputing requirement for the living screen on May 21st and there were some concerns at that time with the increase landscape buffer due to the berming requirement; it would decrease the buildable area and increase construction costs. Twenty-five (25) notices regarding the City Council appeal, which is what we're here for tonight, the appeal of the rod iron fence with living screen was sent out. The following were returned: six (6) in favor of the masonry screening wall and three (3) opposed to the masonry screening wall. This is a question the other night, it was addressed, not at the podium but I wanted to

assure the City Council tonight that the picture they showed in the packet of the masonry screening wall, what we call a slip-wall or a panel wall, and this is not allowed in the Rowlett Development Code. So what you see here would not be allowed. It has to be reinforced columns and of the same material of the building.

Several options for the City Council to consider tonight, should the Council decide to retain the requirements from P&Z for the living screen, you can modify the living screen provision by eliminating or reducing the berming requirement. Starting the berm on the property line and keeping it one (1) foot in height will enable the property owner to keep the screening within the ten (10) foot required landscape buffer. The Council can require the rod iron and living screen and eliminate the berm all together. Or you can choose to allow the applicant to build a masonry screening wall. And I'm available for any questions."

Mayor Harper stated "A couple of comments and then we'll open it up the Council for questions and owners and owner's representative, and those that wish to speak. Everyone will have an opportunity so just be patient.

In my view, the Development Code is extremely important to the City of Rowlett, for many reasons and not the least of which is it makes us predictable. When people come to the City of Rowlett for building, whether it's residential or commercial, they want to know what the rules are and they want to be sure that they can factor that into their personal plans; whether it again is commercial or residential. What we don't want to do, in my judgment Council, is to get into a situation where we're not predictable. Where the rules are not documented, memorialized, and available for anyone wishing to come to Rowlett to see beforehand. We, I doubt have a perfect document but we've put a lot of work into the Unified Development Code (UDC) and I would suggest that it's very good; that it's very well done. I think the issue raised by Mr. Maggiotto, at the last Council meeting, was that what we're talking about now isn't really spelled out in the Unified Development Code and if it is that will really solve the issue for us this evening because we just need to read what it says and comply with it. But if it isn't then we have to apply some judgment. I urge Council will apply judgment in such a way that we become very consistent and remain very consistent to those residents who want to come to us and those businesses that want to come to us because that is a positive. And that's something we need to be. So, having said that, let's first start with Council. Mayor Pro Tem, do you have anything you wish to ask or add?"

Mayor Pro Tem Gottel replied "No, I've done some research; Keri and I have had some conversations before the meeting, as well. To Mr. Maggiotto's comments last time, I'm in absolute agreement. You have rules in place; we need to abide by the rules. And they are abiding by the rules; so they would have my support to build the screening wall."

Mayor Harper stated "Mr. Maggiotto, as Deputy, do you have anything you wish to add?"

Deputy Mayor Pro Tem Maggiotto replied "Nothing more on the philosophy that we talked about last week. I do want to reiterate that the builder did have a choice between a masonry wall and a living screen. He chose the masonry screen; I just want to make that clear. Thank you."

Mayor Harper stated "Ms. Rushing."

Councilmember Rushing stated "I have no questions at this time."

Mayor Harper stated "Mr. Kilgore."

Councilmember Kilgore stated "I guess this is where I..."

Mayor Harper stated "It puts you in a tough spot doesn't it?"

Councilmember Kilgore replied "No, not at all. If it were simple, that is, either the rules allow it or they don't allow it, if the rules don't allow it we wouldn't even be having this meeting. I presume we get this far, it gets past the Planning and Zoning Commission, only because the rules allow it. It was one of the options in P&Z's sheet. Now I'll start from the general and I'll work to the specific. First of all, aesthetics, contrary to what has been said, are very much part of the parcel of the RDC and P&Z efforts. As a matter of fact, one of the major motivating things besides consolidation in the new UDC or RDC as it is now was aesthetics. It's because we have been hammered over the head by big developers who were going to do it their way and not give us the quality development we wanted in Rowlett. And we put aesthetic requirements in. Now once these things are in, there are some things that P&Z can do and under the new RDC, there are a whole lot of things we can't do. P&Z has very little power now because if the developer crosses their "T's" and dots their "I's" it's fairly narrow, and it is fairly decided as we've talked about. But there's a little bit of discretion in there. In this particular case, the mere fact that we are here tonight suggests that the living screening wall was one of the options that the current RDC allowed P&Z. That is contrary to what's been represented here, no chilling effect on businesses. Before this particular development, we had lots of satisfied customers before the P&Z and they were happy with P&Z's efforts. I can't speak for what they dealt with getting to P&Z but once they dealt with P&Z they were happy. P&Z has leaned over backwards; I think in some cases too much but have been very accommodating with businesses. However, what we normally see is developers that go out and talk to the people they're going to affect with their development. They talk with them either beforehand or they come to the P&Z and they work with us and them and everybody does what they want; we get something that makes everybody happy. Now, in this particular case, narrowing it down to that, it was a little bit upsetting. The developer would tell us that he didn't show up to P&Z meetings because, in his mind it was a slam dunk. He knew or should have known this was not the slam dunk because clearly, the comments of the citizens before the P&Z public hearing were against this development. There have been some of them against it for all kinds of reasons. Well, what we were confronted with at P&Z was the developer didn't show up but the citizens did. So we had this conversation back and forth considering all the possibilities and considering the costs. The cost was mentioned and dollar figures were thrown out. It was decided that the citizens, the neighbors, the people who would be affected were very much in favor, at that time, with the living screen. I will note that when people have commented on the appeal so far, we can discount business owners, I mean the screening wall is to protect the neighbors, it's not to protect the business contrary to one of the things brought up by the business. It's not to protect the businesses further down Lakeview Parkway. Some of the people who oppose the appeal are other businesses located on Lakeview Parkway or not even in the City of Rowlett. Those in my mind are not legitimate oppositions. The people on the side streets are not affected by this business, as well. The people directly behind it, the majority which we have heard from prefer the living screening wall. So, putting that to rest, the citizens were there, they had their issues. We didn't have anyone from the developer to work with to work it out. That's what the citizens want, it's allowed for the P&Z to do, so we did it. By design, in government organizations in this country, all government organizations, the top of the pyramid is elected officials; their qualifications to be elected officials are usually age and citizenship, and they get elected. And nothing else. And sometimes we see that in our elected officials, unfortunately. Government is not run by engineers, or accountants, its run by elected officials. And I as an elected official, when I'm dealing with a citizen and the citizen has got a want and desire, the law, the Code allows me to do it and I don't have any contrary argument, then I'm going to do it. So under the circumstances, I'm convinced that the P&Z reached the right decision. And that's my...other than that; I have no opinion on the matter."

Mayor Harper replied "Thank you, Mr. Kilgore. Mr. Jackson, would you speak to it please, sir."

Councilmember Jackson stated "I'm not going to try defend what the P&Z did and what they did not do; what we're faced with now is having to make a decision for the pharmacy. I think that's where openness and predictability comes in as far as Rowlett is concerned. We

*need to be open; we need to let people know that we're open for business; and we're predictable just like you indicated to us. So we need to go by what the UDC says and according to what's in there is what we should try to abide by."*

*Mayor Harper stated "And Patrick, in your judgment, the UDC says living..."*

*Councilmember Jackson replied "Living screen. It doesn't say it. I'm sorry it says masonry wall; it did not specify a living screen. So if that's what they want to do then I think we should."*

*Mayor Harper stated "Mr. Phillips."*

*Councilmember Phillips stated "Okay, I just want to make sure that I understand the RDC; I apologize for not being completely prepared here. Without this CUP that was required, because it has a drive thru with footage variance, this project would have gone through without coming to P&Z at all with the masonry screening wall. Is that correct?"*

*Mayor Harper stated "We'll let Keri respond to that."*

*Ms. Samford replied "That's correct."*

*Councilmember Phillips stated "If they had specified a living screening wall instead, it would have gone through as well?"*

*Ms. Samford replied "That would go to the Planning and Zoning Commission."*

*Councilmember Phillips stated "Okay, that would go to P&Z. If it's not masonry, it would have gone to P&Z regardless."*

*Ms. Samford answered in the affirmative.*

*Councilmember Phillips stated "That's what I needed to know."*

*Mayor Harper stated "Okay, thank you, Mr. Phillips. Now what I'd like to do is have a similar round of presentations from the owners and owner's representatives. Is one of those who wish to speak at Citizens' Input and then we'll have some cross talk back and forth. Is that all right with everyone? Do we have the owner or owner's representative present? That being the case, we'll go right into the Citizens' Input. I'm going to start with Lisa Helms."*

- 1. Lisa Helms, 9014 Chimneywood Drive, Rowlett, spoke in favor of the living screen wall.*
- 2. Deborah Teel, 9010 Chimneywood Drive, Rowlett, spoke in favor of the living screen wall and the required setback.*
- 3. John H. Teel, 9010 Chimneywood Drive, Rowlett, spoke in favor of the living screen wall.*
- 4. Della Vickers, 9006 Chimneywood Drive, Rowlett, spoke in favor of the living screen wall.*

*Mayor Harper stated "Again, owner's representative or owner, if you wish to speak now is the time. They're not present. Okay, let's go forward."*

*I'd like to ask one question, Ms. Samford, what is the history of the living screen? I know that Tatiano's is doing it but that's something they proposed and we agreed to; we didn't require it, we agreed to it?"*

Ms. Samford replied "That is correct."

Mayor Harper stated "Have we required living screens anywhere else?"

Ms. Samford replied "It's not a requirement; our requirement is the masonry wall. It is an option at the developer's choice if they would like to request that and then it does go through the process. It is spelled out and specified what has to be done but it is an option."

Mayor Harper stated "So we allow it but we don't require it."

Ms. Samford answered in the affirmative.

Mayor Harper continued "And this would be the first instance of requiring it, should it pass this evening."

Ms. Samford replied "Without the owner's request of it, yes."

Mayor Harper stated "What I'm saying is up until now we have agreed to it which simply says the owner says 'we want to do it' and we're willing to do it. In this instance, what we're really saying is in spite of what the owner wishes to do, we're going to go one step beyond that and say we want a living screen. I just want to be sure I understand. I understand that we're able to do that according to the law that we have but we've not exercised that before until this particular instance. Am I correct, everyone? Council, who wants to try to speak to the issue again, Mr. Phillips."

Councilmember Phillips stated "I have one other question. I know our ordinances in the Development Code are all considered in terms of maintenance, it's got to be maintained in a certain way. In terms of the living screen, do we have a similar thing? Does the living part have to be maintained must be...in terms of opacity and health of the plants and all that; that's all addressed, isn't it?"

Ms. Samford replied "It does have to be maintained; if it dies then it is the owner's responsibility to replace that and maintain that. And we have to go out and inspect that."

Councilmember Phillips stated "Okay, thank you."

Mayor Harper stated "Mr. Kilgore."

Councilmember Kilgore stated "A couple of points. One was brought up by Mr. Teel is that the developer's actions here don't give me a high level of confidence in what we're going to be dealing with in going forward given the way he's handled this at this point. We keep talking about 'we can only do this' or 'we can only do that' or 'doing it the way we've always done it'. This is a very high profile area because it runs lengthwise along Lakeview Parkway. I think a living screen would make all the difference in the world. I think we can but I do believe we need to do two (2) things, personally. I think, first of all, we do something right for the citizens, that's screening to the people that would benefit from it and we give them the best possible wall. But I think we need to immediately follow-up with, as Councilmember Maggiotto suggested, with an overlay and require it for that entire length. That would benefit the view, both from Lakeview Parkway and the citizens behind and it would be an even-handed application to everybody along it. We already have half of it...a quarter of it as living screen now, let's do it all. I think we will all benefit. Let's do something different for a change and do it right for the citizens of Rowlett. That's my comment."

Mayor Harper stated "Mr. Kilgore, when you...you suggest an overlay for that one area, but would you go beyond that and suggest that this ought to be codified?"

Councilmember Kilgore replied "I think we ought to look at it; I think there may be other areas that may be applicable where you have...it's going to vary from area to area. We've approved areas where this hasn't come up before because it's not really necessary because of the relationship of the business property to the adjacent residential property; it's on a case by case basis. It's easy to see here where it's beneficial. I don't know that it's beneficial everywhere and I don't really know unless you were looking further up and down Lakeview or on the other side of Lakeview in that area. I don't know how you go about it but you could figure it out, I'm sure."

Mayor Harper stated "Mr. Maggiotto."

Deputy Mayor Pro Tem Maggiotto stated "Thank you, Mayor. I'll open with what I stated before. The principle...the reason why we have a UDC is to allow developers to create a product that meets our expectations, our requirements. When we get into the area of aesthetics, even Conditional Use Permits, Mr. Teel's right, as well as, Ms. Samford. A use permit allows a Council to do anything. One of my pet peeves, as you know, is environmental having to do with LEED or EnergyStar. The Council has in its right, so do the Planning and Zoning, to specify that the property will develop as a LEED, platinum, gold, silver, pick any color you want. So the use permit does allow a lot of flexibility but I'm going to go back to the principle. Once we get into the position of subjectivity and subjectivity is this. We may all feel that a masonry wall is more expensive versus a rod iron with stone and brick columns, that may be true in the capital costs but if I have to maintain a greenspace with the rising costs of water and plant life, the operational costs will out-strip the capital costs. This is a fact when we build a building. Today, when we build a building it may last fifty (50) years. It's documented that operational costs will out-strip the capital costs of building. So when we talk and when we get into the business of making judgments about what things costs or how things look, we can have a Councilmember that would much prefer forty percent (40%) stone as oppose as to what we have in the UDC. Right now we said we would upgrade our aesthetics by adding a stone content; we agreed to twenty (20) but in this Use Permit, we can go to fifty percent (50%) if someone feels that's more aesthetically pleasing. Is that fair to the builder? No. So pick any subject matter you want, once we're in the area of Use Permits we can change what builders do. And I would resist that because that does not send a clear message. And what I'd like to have is as an afterthought, and I don't believe this, I mean I would like to see developers...when we did incorporate the UDC we thoughtfully, or the preparer of the UDC thoughtfully, approached how do we give developers a range of options in which to build? Okay, we've got masonry; we say masonry specifically for one reason, it allows brick, it allows architectural, it allows split-faced CMU, there are a whole plethora of products that come under the guidelines of masonry but we all may feel that we just like red brick and that's what we want. If we did that, we would get tired of red brick very quickly because that's what the City would look like. So the UDC is a body of work that allows enough flexibility and allows enough mix aesthetics so that we would not have a 'same City' everywhere we look. So I'm prepared to make a motion now, Mayor."

Mayor Harper stated "Before we do that, I'd like to have the options put back up on the screen, Keri. Now we're actually voting up or down on a resolution before us but I'd like you all to take a look at this one more time. Keri, would you walk us through that one more time, please?"

Ms. Samford replied "Sure. Should the Council decide to retain the requirements from the Planning and Zoning Commission for the living screen, you can modify the living screen provision by either eliminating or reducing the berming requirement. You can also modify the height of the planting. The plantings required by the UDC are eight (8) feet; in this CUP requirement, we specified ten (10) feet. So there is a variance there."

Mayor Harper stated "And I want to be sure that the Council and I understand; these options come about because of a CUP. The basic law is very different than what Keri is telling us. The options are available to us but they have not been consistently applied in every instance in the past."

Ms. Samford continued "As any CUP, as Councilmember Maggiotto stated that you have the right and ability to place any condition on that. So it can be a wide variety of different options; that's why we spelt them out here. Starting the berm on the property line and keeping it at one (1) foot in height will enable the property owner to keep the screening within the ten (10) foot required landscape buffer. That's one option; so the berm is just one (1) foot high, three (3) feet at the crown, so that's nine (9) total feet and you still have some berming there. Again, you can adjust the living screen at the time of planting as well. The Council can also require the rod iron fence and living screen and eliminate the berm requirement all together. So you just have that flat on the ground. Or the other option is to allow the applicant to build the masonry screening wall."

Mayor Harper stated "Now Mr. Maggiotto, back to your point. You want to make a motion. The motion is to consider a resolution either approving or denying the appeal from Lakepointe Pharmacy CUP and if we approve, if we vote and we vote 'aye', Mr. Berman, I'm presuming that is upholding the appeal? I want to get it right so that no one is confused."

David Berman, City Attorney replied "When the motion is made I was going to make sure it was said in the right way."

Mayor Harper stated "Mr. Maggiotto, would you make your motion and we'll seek a second after that."

Deputy Mayor Pro Tem Maggiotto replied "Thank you, Mayor. I'd like to make a motion to approve the appeal by the developer for Lakepointe Pharmacy CUP, specifically concerning the six (6) foot masonry wall versus the ten (10) foot with rod iron fence."

Mayor Harper stated "So again, we have a motion on the floor to approve the appeal and the appeal is to put in place the last option you see. Which would be to build a masonry screening wall; so voting 'aye' will endorse the building of a masonry screening wall. You got it, Mr. Berman? Is there a second to that motion?"

Mayor Pro Tem Gottel seconded the motion.

Mayor Harper stated "More discussion, Council? Do we need any more discussion of this?"

Mayor Pro Tem Gottel replied "Can I make a comment?"

Mayor Harper stated "Indeed you may."

Mayor Pro Tem Gottel stated "One of the concerns and this is really where I come from, if I had my choice in choosing I would definitely choose the living screen. But what it really comes down to the point of we set precedence and then yet, if we say we're requiring this, someone could more right next door and as long as they meet the requirement they put the masonry wall back up; without an overlay. So the only way that I would support that would be to have the overlay. Because we're really sending a very clear message to these folks and said 'we'll if you build a little smaller, you're going to be put on the CUP'."

Mayor Harper stated "Well we have to go at this sequentially."

Mayor Pro Tem Gottel stated "I understand."

Mayor Harper continued "The first sequence is do we approve or not approve a masonry screening wall as listed specifically in UDC. That's really our first sequence. Should that pass, there's no more discussion. Should it not pass then there's some more conversation that's necessary as to the first three suggestions. Mr. Phillips."

Councilmember Phillips stated "I'm right there with Todd on this one; I would much prefer to see the living screen. I'm a little troubled by the fact that the UDC holds out to masonry. If they'd come through with twenty thousand (20,000) square feet and not a drive-thru, we wouldn't be sitting here talking about this at all; there would be a brick wall and it would be done. That's basically where I'm at with that; my preference would be to see the living screen but our Code doesn't have that in this particular case."

Mayor Harper stated "Again, we have the CUP and that gives us the power and authority to go beyond but it is something that should be used sparingly. And I think Ms. Samford it has been used sparingly. Is that correct, would you say? Any other comments from Council?"

Councilmember Rushing stated "Mayor, I'd just like to make one comment. I'm very disappointed that this developer will not be...has not been willing to work with the neighbors. We haven't seen that very often. This is a high visibility area. I like the rest would prefer it to be screened but I think we also have to send a message to the developers that we've got a set of guidelines and we're not going to change in the course of it. I think he could have done a lot more to work with the citizens and the City on this. I think if he looks at the costs of a real masonry wall compared to a rod iron with trees, it's not as huge as the very inexpensive wall that he showed us in his photograph. And I would like to see this Council consider going back to our UDC and changing it to a living screen so that we can have that throughout the City. But on the south side right across from this same location, it backs up to fences, not alleys; so a masonry wall as opposed to a living screen would be something that would be okay. It's just certain areas where it would look much better to have it, like Mr. Kilgore said; I think we need to look at our Code. I think we need to work with rewriting our Code again. We need to send a clear message to developers when they come in. These are our guidelines and we're not going to change in midstream. Thank you."

Mayor Harper stated "There's clarification I need from Mr. Berman. Mr. Berman, we have seven (7) people here voting tonight; two (2) are going to abstain. The question was raised before that their abstentions are a positive or a negative; I consider them to be null. I want to be clear that we have five (5) people who will be effectively voting this evening and the motion carries with a three (3) or more vote for it. Am I correct?"

Mr. Berman replied "For five (5) voting, three (3) is a majority."

Mayor Harper stated "Okay. So gentlemen and lady, what we're going to be doing is voting by a show of hands. Raising your hand when I call for the vote will indicate an 'aye'; and an aye indicates that we do support the building of masonry screening wall. Is everyone clear on that?"

**A motion was made by Deputy Mayor Pro Tem Maggiotto, seconded by Mayor Pro Tem Gottel, that this matter be approved as RES-071-08. The motion carried by the following vote:**

**Ayes:** 4 - Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips and Councilmember Rushing

**Noes:** 1 - Mayor Harper

**Abstentions:** 2 - Councilmember Jackson and Councilmember Kilgore

Mayor Harper stated "Now what I would like to see happen Keri, is for you to go to this business and let them know our unhappiness and let them know it is wise for them to try yet again to work with citizens and get the living screen. That is the unanimous desire of this Council but because of the current rules and regulations they are being allowed to build a masonry wall. All right, thank you.

### 3. WORK SESSION ITEMS

#### 3.-A. Joint meeting with the Charter Review Commission.

Mayor Harper thanked the Charter Review Commission for their tireless work. Stated the Council will vote regarding the ballot language on July 15, 2008.

Jeffrey Sheldon, Chair of the Charter Review Commission, thanked the Council, City Secretary's office, City Attorney and citizens.

Twenty-five (25) items were identified in the City Charter for review by the Commission. Each item was reviewed regarding its merit, its benefit to the citizens, its relevance, and its public acceptance.

Each item was explored with the following questions:

1. Is the change beneficial or justified on its own merit?
2. Would it be implementable or would it be unworkable?
3. Was it a major issue or was it unimportant?
4. Were we confident that we were correct in making the recommendation or was there a possibility of some risk for being wrong or incorrect?

The Charter Review Commission was broken down into four (4) subcommittees:

1. Ethics and Nepotism
2. Taxes and Debt Issuance
3. Term Limits and Compensation
4. Referendum and Initiative

#### Slide 1

##### Summary of Proposed Changes

- The entire Charter was reviewed together with comments and suggestions from Councilmembers, City staff and citizens.
- Each item has been discussed and reviewed by the Commission for its merit, benefit to the public, relevance and public acceptance.
- The Charter Review Commission recommends thirteen (13) items for amendment.
- Three (3) of the thirteen (13) items might be changed under Article XII - Adoption of Charter; Section 12.04 Administrative Amendment if approved by the Council and City Attorney as not substantively changing the Charter.

#### Slide 2

- Article III: City Council - Section 3.02 (3) - term limits
- Article III: City Council - Section 3.04 Election (2) - delete current requirement and provide for runoff election with the local election schedule
- Article III: City Council - Section 3.11 (1) - change the compensation for the Mayor to a per meeting basis
- Article III: City Council - Section 3.11 (2) - change the compensation for each Councilmember to a per meeting basis
- Article III: City Council - Section 3.16 (3) - provide for unedited broadcasts and recordings of proceedings

- Article III: City Council - Add Section 3.22 - conflicts of interest
- Article VI: City Manager - Section 4.01 Appointment - Add a requirement that the City Manager maintain residency within the city
- Article V: City Officers - Add Section 5.07 - require an annual performance review for all City Officers
- Article VI - Financial: Section 6.04 Taxes and Taxation (1) Powers (A) correction of typographical error
- Article VII: Bonds, Warrants and Other Evidence of Indebtedness - Section 7.01 - change the percentage of affirmative votes required by the Council to issue bonds and other evidence of indebtedness
- Article IX: Legislation by Initiative and Referendum - Section 9.02 - Referendum (1) - revise and add City Attorney approval as to the petition's legal form
- Article XII: Section 12.02 Amendment of Charter - amend charter during state and national election cycle
- Article XII: Section 12.03 Charter Review Commission (1) Appointment - appointment of commission at least once every 4 years

Slide 3

Proposed Changes

Article III - City Council

Section 3.02 Elected Officers

- 3) Term Limits - An individual shall serve no more than three (3) consecutive three (3) year terms as Mayor. An individual shall serve no more than three (3) consecutive three (3) year terms as Councilmember. No person shall serve for more than six (6) consecutive terms as a Councilmember or as Mayor combined. A member who has served the maximum number of consecutive terms may serve additional terms subject to the same limitations after a break in service of one (1) year or more. A "term" as used in this paragraph, shall include any period of service during a term of office when that period is in excess of one (1) year, and a period of service shall be considered "consecutive" so long as the person affected had served any amount of time within the preceding term.

These term limits become effective for the current Mayor and Councilmembers upon adoption.

Slide 4

Section 3.04 Election

- 2) In the event that a candidate does not receive a majority of votes, it shall be the duty of the City Council to order a runoff election for every place or Mayor to which no one was elected. Such runoff election shall be held no earlier than thirteen (13) days and in accordance with local election schedule.

City Attorney voiced concerns regarding a conflict with Dallas County should we choose to not renew the Interlocal Agreement for elections in the future.

Slide 5

Section 3.11 Compensation for the Mayor and Councilmembers

- 1) The Mayor shall receive as compensation the sum of seventy-five dollars (\$75.00) for each attended regular, special or emergency meeting of the Council. The compensation in no event shall exceed the sum of one thousand eight hundred dollars (\$1,800) per annum for the Mayor.

Ms. Davis, a member of the Commission, stated the change was suggested as a 'per meeting' payment for the perception of the voters. Stated the timing of a perceived raise for the Council was not something the voters would agree to, nor was it something they would suggest be taken to the voters but in the future it sets the stage for moving in the 'per meeting' payment.

*Council stated there are expenses involved with the Council attending meetings; some Councilmembers would like to recover the expenses for gasoline, babysitting costs, etc. The Commission stated the cap limit should be lifted at some point.*

*Questions were voiced as to whether wording could be added to the proposal to include a specific date as to when the maximum compensation sum goes away.*

*Commission stated they discussed reimbursement at length; stated some items can be resolved through ordinance or resolution rather than adding to the City Charter.*

*Slide 6*

*Section 3.11 Compensation for the Mayor and Councilmembers*

- 2) Each Councilmember shall receive as compensation the sum of fifty dollars (\$50.00) for each attended regular, special or emergency meeting of the Council. The compensation in no event shall exceed the sum of one thousand two hundred dollars (\$1,200) per annum for Councilmembers.*

*Slide 7*

*Section 3.16 Quorum of City Council and Minutes of City Council Meetings*

- 3) All recordings and broadcasts of City Council meetings shall be unedited except for violations of Federal Communications Commission (FCC) regulations.*

*Council stated this would guarantee communication between the citizens, Council, and staff.*

*City Attorney voiced concerns regarding this item to be placed in the City Charter as opposed to passing a City resolution.*

*City Manager suggested this item be a City policy.*

*Slide 8*

*Section 3.22 Conflicts of Interest*

*The use of public office for private gain is prohibited. The city council shall implement this prohibition by ordinance, the terms of which shall include, but not be limited to strictly prohibiting the Mayor or any Councilmember from: acting in an official capacity on matters which the official has a private financial interest of any kind that is clearly separate from that of the general public; the acceptance of gifts or items of an annual aggregate value greater than \$250 from a single source; the use of confidential information; and appearance by city officials before other city agencies on behalf of private interests. Neither the Mayor nor any other Councilmembers will vote on, debate or discuss matters involving companies for whom they work. This ordinance shall include a statement of purpose and shall provide for reasonable public disclosure of finances by officials with major decision-making authority of monetary expenditures and contractual and regulatory matters in compliance with state law. The ordinance shall also provide for fines or other appropriate administrative action for violations.*

*Commission stated there is ample State law that governs nepotism; recommended no changes to the existing section on Nepotism.*

*Council asked for clarification regarding 'appearance by city officials before other city agencies on behalf of private interests' and 'shall provide for reasonable public disclosure of finances by officials with major decision-making authority'. Council suggested that the word 'finances' be changed to 'financial interest'.*

*Council asked for clarification regarding if campaign contributions would be limited to \$250; the Commission stated the campaign contributions were not included; Council suggested*

that it be stated that it would be best for the proposal to state that the campaign contribution information would not be included in the \$250 limit.

City Attorney suggested the word 'private' be changed to the word 'special' in the sentence '...acting in an official capacity on matters which the official has a private financial interest...'; suggested instead of 'the use of confidential information', it should read 'the use of confidential information in a non-official capacity'; suggested narrowing down '...involving companies for whom they work' to '...for business for which they have a substantial financial interest or in which they are employed'.

Council suggested a language change on behalf of private interests; suggested the language be changed to 'on behalf of the private interests of another' which would not cause any confusion as to one's ability to represent your own interests.

Slide 9

Proposed Changes

Article VI - City Manager

Section 4.01 Appointment

The City Council by four (4) affirmative votes shall appoint a City Manager who shall be the administrative and chief executive officer of the City and shall be responsible to the City Council for the administration of the offices of the City, except as otherwise provided by this Charter. The City Manager shall be chosen by the City Council solely on the basis of executive and administrative training, experience and ability. The City Manager need not, when appointed, be a resident of the City, but the City Manager shall be a resident of the City within six (6) months of assuming the appointment to City Manager and shall maintain residency within the City during his or her employment as City Manager.

Slide 10

Proposed Changes

Article V - City Officers

Section 5.07 Annual Performance Reviews

All City Officers appointed by the City Council shall have an annual performance review with the Council, to include a review of the prior period performance, achievement of prior period goals and a discussion of future period goals and standards.

City Attorney suggested a language change from 'City Officers' to 'City Officials appointed by the City Council'; and rather than 'to include a review of the prior period performance, achievement of prior period goals and a discussion...' say 'all city officials appointed by the Council shall be reviewed annually by the City Council'.

Commission stated they did not intend for it to just look at the prior period but to also look forward at goals.

Council stated there is independence with the court officials, that must be there, and where is the line.

City Attorney stated the Council must be careful not to evaluate the Court Officials on a criterion that would affect their judicial independence.

Slide 11

Proposed Changes

Article VI - Financial

Section 6.04 Taxes and Taxation

1) Powers

- a) The City Council shall have the power to levy, for general purposes, an ad valorem tax on real, personal, and mixed property within the territory of the City,

*not exempt from taxation by the Texas Constitution and laws of the State, not to exceed a total of one dollar and twenty-five cents (\$1.25) per one hundred dollars (\$100.00) assessed valuation of said property in accordance with State Law 31, based upon its true value as provided by law to the extent of the constitutional limit permitted by the State to cities. In no event shall the City ever have the power to levy an ad valorem on non-business personal property. The word "ever" may be able to be removed entirely.*

*Slide 12*

*Proposed Changes*

*Article III - Bonds, Warrants and Other Evidence of Indebtedness*

*Section 7.01 Authority to Issue*

*The City shall have the right and power to borrow money for public purposes by whatever method it may deem to be in the public interest. The City shall have the right and power to issue tax bonds, revenue bonds, and any other evidences of indebtedness for permanent public improvements or for any other public purpose not prohibited by law or this Charter and to issue refunding bonds to refund outstanding evidences of indebtedness previously issued. All such bonds or other evidences of indebtedness shall be issued in conformity with the laws of the State applicable at the time of issuance of such obligations. An affirmative vote of at least 80% of Councilmembers in attendance at a regularly scheduled meeting shall be required to authorize issuance of all bonds and other evidence of indebtedness, with the exception of refunding bonds.*

*Council asked the number of Councilmember would make up the 80% affirmative vote.*

*Commission stated it would consist of six (6) of seven (7) votes; five (5) of six (6) votes; four (4) of five (5) votes; or four (4) or four (4) votes.*

*Council asked if an Attorney General opinion has been issued on this subject.*

*Commission answered in the negative.*

*Council requested an Attorney General's opinion on this item.*

*City Attorney stated an opinion can be requested but it would have to go through the State Representative.*

*Slide 13*

*Proposed Changes*

*Article IX - Legislation by Initiative and Referendum*

*Section 9.02 Referendum*

- 1) The qualified voters of the City shall have the power to approve or reject at the polls any ordinance passed by the City Council (except ordinances appropriating money, levying a tax or authorizing the issuance of bonds or other evidences of indebtedness authorized by the laws of the State of Texas or this charter) by submitting a petition to the City Council which, after approval as to legal form by the City Attorney, requests that the ordinance be repealed, or, if not repealed, that it be submitted to a vote of the qualified voters of the City.*

*City Attorney stated the City Attorney cannot advise citizens on their petitions.*

*Council suggested the City Attorney prepare a standard referendum petition form for the City Secretary's office; Council would like to provide the citizens with a tool rather than an impediment.*

*Council questioned the City Attorney regarding Tax Notes.*

*Slide 14**Proposed Changes**Article XII - Adoption of Charter**Section 12.02 Amendment of Charter*

*Amendments to this Charter may be framed and submitted to the qualified voters of the City as provided by the Texas Constitution and the laws of the State as presently enacted or hereafter amended; but no more often than once every two (2) years, as provided by the laws of the State. The submission of amendments to qualified voters shall be on State or National election dates.*

*Slide 15**Proposed Changes**Article XII - Adoption of Charter**Section 12.03 Charter Review Commission*

- 1) *Appointment - The City Council shall appoint a Charter Review Commission at least once every four (4) years. The Charter Review Commission shall consist of seven (7) citizens of the city.*

*Slide 16**Proposed Order of Charter Amendments on the Ballot*

1. *Article III: City Council - Section 3.16 (3) - provide for unedited broadcasts and recordings of proceedings*
2. *Article VII: Bonds, Warrants and Other Evidence of Indebtedness - Section 7.01 - change the percentage of affirmative votes required by the Council to issue bonds and other evidence of indebtedness*
3. *Article V: City Officers - Add Section 5.07 - require an annual performance review for all City Officers*
4. *Article III: City Council - Add Section 3.22 - conflicts of interest*
5. *Article XII: Section 12.02 Amendment of Charter - amend charter during state and national election cycle*
6. *Article XII: Section 12.03 Charter Review Commission (1) Appointment - appointment of commission at least once every 4 years*
7. *Article III: City Council - Section 3.02 (3) - term limits*
8. *Article III: City Council - Section 3.04 Election (2) - delete current requirement and provide for runoff election with the local election schedule*
9. *Article III: City Council - Section 3.11 (2) - change the compensation for each Councilmember to a per meeting basis*
10. *Article III: City Council - Section 3.11 (1) - change the compensation for the Mayor to a per meeting basis*

*Mayor to a per meeting basis*

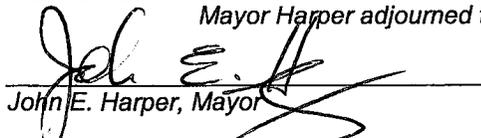
*Slide 17**Possible Revision by Administrative Amendment*

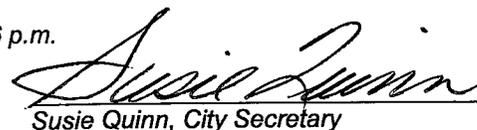
1. *Article VI: City Manager - Section 4.01 Appointment - Add a requirement that the City Manager maintain residency within the city*
2. *Article VI - Financial: Section 6.04 Taxes and Taxation (1) Powers (A) correction of typographical error*
3. *Article IX: Legislation by Initiative and Referendum - Section 9.02 - Referendum (1) - revise and add City Attorney approval as to the legal form*

*Council stated that although the Charter Review Commission's task is complete, they would like for the Commission to stay as a Commission to react to the ballot language and also to help promote the issues. The final vote for ballot language will be presented July 15, 2008.*

**4. ADJOURNMENT**

*Mayor Harper adjourned the meeting at 9:16 p.m.*

  
John E. Harper, Mayor

  
Susie Quinn, City Secretary

Date Approved: July 15, 2008