

**MINUTES OF A REGULAR MEETING  
OF THE  
EULESS CITY COUNCIL  
MARCH 24, 2009**

**CALL TO ORDER**

A regular meeting of the Euless City Council was called to order by Mayor Mary Lib Saleh at 4:00 p.m. on Tuesday, March 24, 2009, in the Precouncil Conference Room of City Hall, 201 North Ector Drive. Those present included: Mayor Mary Lib Saleh, Mayor Pro Tem Linda Martin, Council Members Tim Stinneford, Leon Hogg, Donna Mickan and Glenn Porterfield. Council Member Perry Bynum was out of town.

**During the precouncil meeting:**

- > Mayor Saleh distributed a report on the National League of Cities Conference she attended in Washington, D.C., and stated that the major items of discussion included the Stimulus Package, transparency in government and accountability of elected officials. Council Member Donna Mickan stated that in the workshops she attended on energy and transportation, the City of Euless is already doing many of the things they were advocating.
- > City Secretary Susan Crim reviewed the calendar of future city activities and events.
- > City Manager Gary McKamie introduced Hadi Wehbe, Vice President, and Shawn Rosbrough, Project Manager, with VCC, (Vratsinas Construction Company), LLC, the recommended construction company for the new Redi-Mix Concrete office building. He stated that they offered the best value as a qualified proposer capable of completing the project as specified, among 18 competitive sealed proposals that were received.
- > Director of Economic Development Bill Ridgway announced the Crud Collection Day would be held Saturday, April 4, from 9:00 to 11:00 a.m. He stated that Allied Waste and Community Waste Disposal (CWD) will each donate \$8,000 toward the cost of the program. The cost is \$41 per car for Euless citizens to dispose of hazardous waste products.
- > Director of Public Works Ron Young discussed the Water Conservation Plan that is required by the Texas Commission on Environmental Quality (TCEQ) to be implemented by retail public utilities that provide potable water service to 3,300 or more connections. He stated the majority of the requirements are already in place in the City of Euless. The Plan must be formally adopted by the City Council before May 1, 2009.
- > Director of Public Works Ron Young reported that the City of Euless has received another request for a Municipal Setting Designation in the City of Grand Prairie and a resolution will be placed on a future agenda for consideration.

- > Director of Planning and Development Mike Collins gave another update on the proposed changes to the sign ordinance that included wall and window signage. He stated that they are also adding some new definitions to help clarify various types of signs. City Manager Gary McKamie said the ordinance will be ready for City Council approval in the next couple of months.
- > Police Chief Mike Brown and Sergeant Eric Starnes reviewed a proposed crime prevention ordinance in which the police department will provide crime safety education programs and require businesses to be registered, have safety training programs, alarm systems, drop safes, surveillance equipment and have automated teller machines bolted to the floor. Council Members requested the Police Chief bring a cost estimate back to them on how much it will cost businesses to implement such an ordinance.
- > City Manager Gary McKamie reported that the proposed planning contract with Redico will be on the next council agenda for approval for Phase I of the project, bounded by SH183, SH157, SH10 and Vine Street.
- > City Manager Gary McKamie gave an update on the design of the Senior Citizens Center/Midway Park Family Life Center. He stated they hope to have the architectural services contract ready for approval in the near future. The project will be done in phases and later phases will be based on grants received.
- > Director of Finance Vicki Rodriguez presented the financial report for the month of February.
- > The agenda items were reviewed.

## **COUNCIL CONSIDERATION OF SCHEDULED ITEMS - COUNCIL CHAMBERS**

The Euless City Council continued their meeting in the Council Chambers at 7:00 p.m. for the consideration of scheduled items.

## **STAFF MEMBERS PRESENT**

City Manager Gary McKamie, Deputy City Manager Loretta Getchell, City Attorney Bob McFarland, City Secretary Susan Crim, Deputy City Secretary Becky Null, Director of Public Works Ron Young, Director of Economic Development Bill Ridgway, Fire Chief Robert Isbell, Police Chief Mike Brown, Director of Finance Vicki Rodriguez, Director of Parks and Community Services Ray McDonald, Director of Planning and Development Mike Collins, Assistant Police Chief Bob Freeman, Assistant Police Chief Harland Westmoreland, City Engineer Robert Barker, Assistant Director of Planning and Development Chris Barker, Assistant Public Works Director J. T. Ackerman, Texas Star General Manager Glenda Hartsell-Shelton, Fleet and Facility Administrator Kyle McAdams, Human Resources/Risk Administrator Carolyn Marshall, Library Administrator Kate Lyon, Police Lieutenant Danny Neill, Police Sergeant Eric Starnes, Police Sergeant Casey Sanders, Public Service Officer Gale "Goose" Wall, Senior Planner Stephen Cook, Inspector Rick Eldredge, Victim's Assistance Coordinator Kathy

Haecker, Special Projects Manager Kay Godbey, Information Services Administrator Dan McLain, Computer Services Specialist Jake Dilliplane, and Communications/Marketing Manager Betsy Deck.

**VISITORS**

David Hughes, Rev. Fr. Vasile Tudora, Jerrie Keller, Iris Elliott, Esther Johnson, Carroll Scott, Jake Thomasson, Susan Rogers, Julie Watkins, Ali Gowani, Keith Eggers, Gary Haecker, and others as noted in the visitor register.

**INVOCATION**

Reverend Fr. Vasile Tudora, St. John the Baptist Greek Orthodox Church, gave the invocation.

**PLEDGE OF ALLEGIANCE**

Council Member Leon Hogg led the Pledge of Allegiance.

**ITEM NO. 1 PRESENTATION OF EMPLOYEE OF THE MONTH FOR APRIL**

Police Chief Mike Brown introduced Public Service Officer Gale “Goose” Wall. Mayor Saleh presented Goose with a plaque for being selected employee of the month for April.

**CONSENT AGENDA**

Council Member Stinneford motioned to approve Consent Agenda Items numbered 2 through 4.

Council Member Porterfield seconded the motion.

Ayes: Mayor Saleh, Mayor Pro Tem Martin, Council Members Stinneford, Hogg, Porterfield, and Mickan

Nays: None

Mayor Saleh declared the motion carried.

**ITEM NO. 2 RENEWED RFP NO. 012-07**

Renewed Request for Proposal No. 012-07 for the first one-year extension of depository services with Frost National Bank per the terms of the original bid with all fees remaining unchanged.

**ITEM NO. 3 APPROVED RESOLUTION NO. 09-1307**

Approved Resolution No. 09-1307 appointing William M. McKamie and Bradford E. Bullock as Associate City Attorneys.

**ITEM NO. 4 APPROVED CITY COUNCIL MINUTES**

Approved the minutes of the Regular City Council Meeting of March 10, 2009.

**REGULAR AGENDA**

**ITEM NO. 5 AUTHORIZED THE CITY MANAGER TO EXECUTE AN ENGINEERING DESIGN CONTRACT**

Council Member Mickan motioned to authorize the city manager to execute an engineering design contract with Elliott and Hughes, Inc., for design of replacement sanitary sewer mains for the FY 2009 Sanitary Sewer Rehabilitation Project, in an amount not to exceed \$61,000. The project will include the west side of Woodridge Circle, Brierwood Court, the west side of Driftwood Drive from Tanglewood Trail to West Pipeline Road, the east side of Dickey Drive and Summerbrook Drive from Koen Lane to South Pipeline Road.

Mayor Pro Tem Martin seconded the motion.

Ayes: Mayor Saleh, Mayor Pro Tem Martin, Council Members Stinneford, Hogg, Porterfield, and Mickan

Nays: None

Mayor Saleh declared the motion carried.

**ITEM NO. 6 AWARDED RFP NO. 003-09**

Council Member Porterfield motioned to award RFP No. 003-09 and authorized the city manager to enter into a contract with VCC (Vratsinas Construction Company), LLC., 600 E. Las Colinas Blvd., Suite 1225, Irving, Texas, 75039, for the construction of a single-story office building for Redi-Mix Concrete in the amount of \$3,333,244.00.

Council Member Hogg seconded the motion.

Ayes: Mayor Saleh, Mayor Pro Tem Martin, Council Members Stinneford, Hogg, Porterfield, and Mickan

Nays: None

Mayor Saleh declared the motion carried.

**ITEM NO. 7 APPROVED FIRST AND FINAL READING OF ORDINANCE NO. 1842**

Council Member Stinneford motioned to approve the first and final reading of Ordinance No. 1842 amending Chapter 2, "Administration," Article III, "Officers and Employees," Division 2, "Municipal Court," Section 2-140, "Juvenile Case Manager Fee," Subsection (a) of the Code of Ordinances to increase the juvenile case manager fee from \$3.00 to \$5.00.

Council Member Hogg seconded the motion.

Ayes: Mayor Saleh, Mayor Pro Tem Martin, Council Members Stinneford, Hogg, Porterfield, and Mickan

Nays: None

Mayor Saleh declared the motion carried.

#### **ITEM NO. 8 APPROVED FIRST AND FINAL READING OF ORDINANCE NO. 1844**

Associate City Attorney Brad Bullock stated this is a major revision to update the sexually oriented business (SOB) ordinance. He asked Police Chief Mike Brown to describe the concerns and problems of these type businesses from a police perspective.

Police Chief Mike Brown described what it was like answering calls to assist Fort Worth at businesses on FM 157 south of the Euless city limits. He stated the challenges posed to law enforcement officers included: inadequate interior and exterior lighting; enclosed booths and private rooms; the combination of alcohol and sexually oriented businesses caused a higher chance of violence, sexual crimes, and public order crimes; and patting down people with possible HIV or other sexually transmitted disease (STD) infected individuals.

He noted the types of crimes attracted to sexually oriented businesses include: drugs, weapons, property theft, assault crimes, organized crime, public disorder, intoxication, and prostitution.

Additional hazards include: safety concerns to entertainers and police officers because of close proximity to nearly nude entertainers; the secluded areas where nearly nude entertainers interact with police makes criminal activity more likely, such as prostitution, drug crimes and assaults.

Police Chief Brown further stated that the proposed changes to the ordinance will help ensure the safety of the patrons, public, and officers. Background checks to be mandated by this ordinance will help keep the criminal element or repeat offenders from being involved or associated with the business. He stated that separating businesses that attract criminal activity from neighborhoods, schools, churches, and parks will help in discouraging a concentration of criminal activity.

Associate City Attorney Brad Bullock stated that any ordinance for sexually oriented businesses is not regulating the content of the speech, but the well recognized and well documented secondary effects associated with these types of businesses. The purpose of zoning is to separate incompatible uses.

He stated there are a lot of different types of adult businesses. From a regulatory standpoint, there are two types – retail businesses and on-site entertainment. Retail businesses include businesses with a small amount of adult material or back rooms, adult video shops, and adult novelty shops. On-site entertainment includes video

viewing booths, adult theaters, adult cabarets, adult massage parlors, lingerie modeling, and sexual encounter centers.

He stated that no ordinance is going to regulate every business that has at least some adult material, such as convenience stores or bookstores that sell Playboy magazine. To be defined as a sexually oriented business, a business must regularly have at least 25% of their inventory and/or floor space dedicated to adult material. There are bookstores that identify themselves as "adult" bookstores and a large percentage or their entire inventory is adult material. Whether or not a retail business has at least 25% of their inventory and/or floor space dedicated to adult material, if they identify themselves as an "adult" store, they will be regulated.

The other major category is on-site entertainment. These types of businesses create the greatest and most pervasive negative secondary effects. On-site video viewing booths are coin or slug operated, enclosed booths designed to accommodate one or more individuals, and often facilitate anonymous sex. Prostitution, drug use, and drug sales are also common. The booths are a breeding ground for sexually transmitted diseases. While booths may be permitted in the proposed ordinance, booths cannot have doors, and will require a manager's station with direct line of sight by the manager to every part of the business, including viewing booths.

Council Member Stinneford asked if the business has a video camera system, can they get around the open door policy.

Mr. Bullock stated they can have a camera system as long as they have line of sight and there are no secluded areas, but they still could not have doors on the booths.

Adult cabarets and topless clubs have a high-impact of negative secondary effects. From a public safety perspective, alcohol and these types of businesses do not mix well. Interaction between customers and entertainers poses the greatest risk of improper conduct. Prostitution, drugs, sex crimes, assaultive offenses, and property crimes are associated with this type of business.

Mayor Saleh asked what age is considered an adult.

Mr. Bullock stated that age 18 and up. He noted an incident in Dallas a couple of years ago where a 13 year old girl was found to be working in a topless club. Dallas could not close the establishment down because there was not a provision in their ordinance prohibiting minors. He stated that one of the features of this ordinance is to prohibit minors from not only working in, but also entering an adult establishment.

He stated that another important aspect of the proposed ordinance is a no touch provision and a six foot distance separation requirement between entertainers and patrons. Although the media mistakenly reported that the ordinance would not allow tipping, it does allow tipping by the use of tip jars, credit cards, or while the entertainer is fully clothed, but not while a dancer is performing.

Council Member Mickan asked if the no touching just applies to performers or does it apply to topless servers.

Mr. Bullock stated it applies to both, but noted that in Eules, servers and entertainers will be required to wear the minimum of pasties and g-strings.

He stated that nude modeling typically includes private rooms where patrons are disrobed with a towel covering them. Lingerie models are frequently in a state of total nudity, and interaction between the customer and model is encouraged. In Eules, nude modeling will be prohibited. Even if the dancer wears pasties and a g-string, it could not be done in an enclosed room and there would have to be a manager's station, as well.

The negative secondary effects of these businesses impact communities and property values. He explained the Secondary Effects Doctrine as a non-censorial purpose for adopting regulations. Regulations should be based on adequate record of negative secondary effects and must be content neutral "time, place, manner" regulations. Measurable negative secondary effects include: negative impact on property values; negative impact on incidence of crime; urban blight; and concentration of sexually oriented businesses. He noted that cities do not have to conduct their own studies. There are plenty of documented studies by various cities over the past 30 years, and they are cited in the ordinance.

Mayor Pro Tem Martin asked Mr. Bullock to address how these businesses affect property values.

Mr. Bullock stated it is well documented that property values decrease significantly when a sexually oriented business locates in a particular area. He went over the 2008 Texas City Attorneys Association (TCAA) Study Findings on the effect of property values which compared different land uses, including sexually oriented businesses, and their effects on the market value of a single-family home and commercial property within 500 feet.

He stated it is constitutionally impermissible to zone out these businesses. If the 1,000 foot rule is increased, it could zone them out. If there are no areas at least 1,000 feet from schools, churches, etc., a variance provision is provided. He noted that in the City of Eules, sexually oriented businesses are restricted to industrial zoning.

Other TCAA findings include:

- 91% of surveyed appraisers believe adult businesses have a negative effect on market value of single-family homes located within 500 feet of such a use.
- More than 71% believe negative effects of SOBs on market value of a single-family home do not disappear until at least one-half mile or more (2,640+ feet).
- More than 63% believe negative effects of various SOBs on market value of community shopping centers do not disappear until at least a quarter of a mile or more (1,320+ feet).

- SOB sites are crime hotspots because they attract potential victims, similar to the way tourist attractions attract potential victims.
- Compared to the typical tourist, however, a SOB patron is: disproportionately male; open to vice overtures; carry cash; and when victimized, is reluctant to involve police.
- Proximity to alcohol is a key component of the criminological theory of secondary effects.
- Alcohol aggravates an SOB's already high ambient crime risk by lowering the inhibitions and clouding judgment of SOB patrons.
- This rationale supports prohibiting nudity and semi-nudity in and immediately around public places and establishments that serve alcohol.
- When an "adult superstore" opened on an interstate highway off-ramp, total crime in a rural Illinois village rose by 60%. When the SOB closed two years later, total crime in the village dropped by 60%. (McCleary, 2006)
- Following the opening of a "lingerie boutique" in Sioux City, Iowa, total crime within 500 feet of the site doubled. Total crime in a contiguous control circle was unchanged. (McCleary & Weinstein, 2007)
- An update of the 1977 Los Angeles secondary effects study found that both on-site and off-site SOBs posed large, significant public safety hazards. Risk-distance functions for both subclasses demonstrate that ambient victimization risk seeps into surrounding neighborhoods for several blocks.

Important features of the proposed ordinance include:

- Sec. 18-78 – Findings
  - Every major secondary effects study of the last 30 years is cited and the findings will be relied on in the adoption of this ordinance.
  - Crime, including prostitution, drug crimes, assault and property crimes are all associated with SOBs.
  - The spread of STDs is associated with SOBs.
  - Unregulated nude and semi-nude dancing, particularly where alcohol is served, creates an environment where negative secondary effects flourish.
- Sec. 18-79 – Definitions
  - **Sexually Oriented Business** is defined as a business where 25% or more of its inventory and/or floor space is devoted to "adult" products.

- This necessarily means that some businesses that sell some “adult” material will not be regulated by this ordinance.
- Courts have held that subjecting all businesses that sell any “adult” material is overbroad, and thus, unconstitutional.
- Sec. 18-81 Licenses
  - SOBs are required to obtain licenses wherein they provide certain information regarding ownership, floor plans, etc.
  - Conviction of certain crimes prohibits a person from obtaining a license (sex crimes, drug crimes, etc.)
  - Because they likely enjoy greater First Amendment freedoms, and create somewhat lower negative secondary effects, adult bookstores/movie stores are not required to obtain a license (all other restrictions still apply).
- Sec. 18-85, 18-87 – Denial, Suspension and Revocation
  - In certain circumstances, when a license is denied, revoked or suspended, the applicant must be given a provisional license to operate while appeal of the denial is pending in court (constitutional requirement).
- Sec. 18-91 – Exemption from Location Restrictions
  - The Zoning Board of Adjustment (ZBA) **may** grant an exemption from the 1,000 foot locational restriction (a constitutionally required procedure).
  - As with any other ZBA decision, the city could appeal it to district court.
- Sec. 18-103 – Permits
  - Entertainers and managers are required to obtain permits in order to undergo background checks.
  - If they have been convicted of specified crimes (prostitution, sex crimes, assault, drugs, etc.), they are ineligible for permits.
- Sec. 18-107 – Nudity, Semi-Nudity Prohibited
  - Nudity and semi-nudity are prohibited in all SOBs and within 50 feet of a public place or establishment that serves or permits the consumption of alcohol (TABC licensed premises and BYOB establishments).
  - Nudity and semi-nudity are NOT prohibited city-wide – State Disorderly Conduct law applies and there is a First Amendment interest in allowing venues where alcohol is not served or allowed in displaying nude and semi-nude messages.

- Sec. 18-108 – Loitering and Monitoring
  - Loitering is prohibited in the parking lots and on the premises of SOBs.
  - SOBs are required to video monitor parking lots and retain tapes for law enforcement in the event criminal activity occurs.
- All SOBs require:
  - Manager stations
  - Line of sight views
  - No touching between entertainers and customers
  - Six foot rule
  - Adequate lighting
  - No doors on video booths
  - Nobody under 18 admitted in SOBs
  - No 24 hour SOBs
- Minimum of 1,000 feet between SOBs and:
  - Churches
  - Schools
  - Parks
  - Residential areas
  - Other SOBs

In conclusion, Mr. Bullock noted that:

- “Adult” expression is protected under the First Amendment.
- This ordinance does **NOT** regulate that protected expression. It **DOES** regulate the negative secondary effects associated with it.
- With adoption of this ordinance, the City of Euless will have state-of-the-art SOB regulations on par with any city in Texas.

Mayor Pro Tem Martin motioned to approve the first and final reading of Ordinance No. 1844 amending Chapter 18, “Businesses,” Article III, “Licensing Requirements for Sexually Oriented Businesses” with the following amendments: Sec. 18-108 (a) (ii) to require recordings of the parking lot of the premises to be kept for a period of 30 days instead of one week; and Sec. 18-114 (A) (8) and (9) and Sec. 18-115 (A) (8) and (9) to change the illumination from not less than one foot-candles as measured at the floor level to two foot-candles.

Council Member Stinneford seconded the motion.

Ayes: Mayor Saleh, Mayor Pro Tem Martin, Council Members Stinneford, Hogg, Porterfield, and Mickan

Nays: None

Mayor Saleh declared the motion carried.

## **ITEM NO. 9 PUBLIC COMMENTS**

There were no public comments.

## **ITEM NO. 10 REPORTS**

### **STAFF REPORT**

Assistant Director of Planning and Development Chris Barker reported that Trinity High School Football Coach Steve Lineweaver, contacted him looking for a community project for the football players. After meeting with Coach Lineweaver, Steve Sheppard of First Baptist Church, and City Inspector Rick Eldredge, they found four areas nearby that needed cleaning up. Chris gave a presentation of the before and after pictures of trash, debris, tree limbs, and illegal dumping that the football players removed in about three hours from the following locations: (1) drainage easement on Rockwall Drive; (2) utility easement on Clinic Drive; (3) northeast corner of FM 157 and South Pipeline Road; and (4) outside of a residence at 915 Cannon Drive. He thanked Allied Waste for donating a roll-off dumpster, and the City of Euless, Trinity High School football team, Coach Lineweaver, and Scott Sheppard for their participation.

### **CITY MANAGER**

City Manager Gary McKamie stated he appreciated the work Brad Bullock and Mick McKamie did on the sexually oriented business ordinance. He also stated his appreciation for a lot of the preparation work Sergeant Eric Starnes did on the ordinance, noting that Eric has his Masters in Public Administration degree, has earned a law degree, is a practicing attorney, and works as a sergeant in our Police Department. He stated that the Euless Revitalization Program has been working with several churches in restoring homes, and noted that Euless employees and Restoration Church will be working on a home on Ridgecrest on Friday, March 27.

### **CITY ATTORNEY**

City Attorney Bob McFarland thanked Attorney Brad Bullock, Police Sergeant Eric Starnes, Police Chief Mike Brown, and Director of Planning and Development Mike Collins for their great work on Ordinance No. 1844 regulating sexually oriented businesses.

### **CITY COUNCIL**

Council Member Stinneford congratulated Goose Wall on being selected employee of the month, commenting that the people he works with in the jail are not happy people because of their circumstance in being there. He congratulated the entire staff at Texas Star on the new renovations. He stated that Texas Star General Manager Glenda Hartsell-Shelton and her staff did an incredible job during the renovation. He thanked

the Trinity High School football team for their community work. He relayed a story that Mark Towers, speaker at the Board and Commission Dinner, told about each day is not just another day, but it's another chance.

Council Member Hogg stated that tonight makes him proud to represent the city as a city council member.

Mayor Pro Tem Martin thanked the citizens for being at the meeting tonight.

Council Member Micken thanked Chris Barker for his report and the Trinity High School football team for the clean-up work they did. She congratulated Goose Wall on being employee of the month. She also congratulated Ray McDonald on the 18<sup>th</sup> Growth Award and the Arbor Day City recognition the city received. She noted that she presented a certificate to the IHOP Restaurant at its ribbon cutting. She thanked City Secretary Susan Crim and her staff for the great Board and Commission Dinner. She participated in the welcoming home of a soldier from Iraq last Thursday, which she stated was heartwarming. She thanked all the staff who work hard every day.

Council Member Porterfield stated he is convinced that the entire city council is dedicated to making citizens in Euless be in a state of happiness. He noted that the word happiness comes from "happen" and can be good or bad. He stated that happiness is the result of good things happening, and we are always wanting to find good things for our citizens. He stated the council wants to recognize those who help in this endeavor, which is what happened at the Board and Commission Dinner by recognizing the volunteers, and what happens at the council meetings by recognizing staff. He stated his appreciation for being a part of bringing happiness.

Mayor Saleh welcomed Brad Bullock as an Associate City Attorney. She stated her appreciation for staff's work and for the audience attending the meeting. She noted there was great television coverage at the soldier's welcoming home. She stated the staff and volunteers do great things, and she is glad to be a part.

#### **ITEM NO. 11 ADJOURNMENT**

Mayor Saleh adjourned the meeting at 8:30 p.m.

**APPROVED:**

**ATTEST:**

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Mary Lib Saleh  
Mayor

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Susan Crim, TRMC  
City Secretary