

MINUTES
of
A REGULAR MEETING
of the
DALWORTHINGTON GARDENS
CITY COUNCIL

Regular Session: Thursday, February 28, 2008 7:00 P.M.

REGULAR SESSION

A regular meeting was held at 7:00 o'clock p.m. on Thursday, February 28, 2008 in the Council Chambers of the Dalworthington Gardens City Hall, 2600 Roosevelt Drive, Dalworthington Gardens, Texas. The following items of business were considered, discussed and acted upon, as deemed appropriate by the Council:

MEMBERS PRESENT:

Michael Tedder, Mayor
Guy Snodgrass, Mayor Pro tem
Mike Pettke, Councilman
Jim Piland, Councilman
Steve Loe, Councilman

MEMBERS ABSENT:

Ken Wallace, Councilman

STAFF PRESENT:

Melinda Brittain, City Secretary
Stan Wilkes, City Attorney
Dick Perkins, City Engineer
Jerry Vennum, Deputy Chief of Public Safety

CALL TO ORDER- Mayor Tedder called the meeting to order at 7:00 p.m.

1. Citizen comments.
Steve Oaks, Indian Trails- stated he would prefer 6" to 8" rule on tree ordinance
2. Mayoral Proclamations: Severe Weather Awareness Week & March for Meals
Mayor Tedder read the proclamations for Severe Weather Awareness Week & March for Meals
3. Mayor and Council comments.
None
4. **Resolution 08-08**, Departmental Reports and January Financial Report.
On motion by Councilman Pettke, seconded by Councilman Loe, by a vote of 4 ayes and 0 nays, it was:

RESOLVED, that the Departmental Reports and January Financial Reports be approved and placed in the records of the city

5. **Resolution 08-09**, Minutes of January 17, 2008 Meeting.
On motion by Councilman Pettke, seconded by Councilman Loe, by a vote of 4 ayes and 0 nays, it was:

RESOLVED, that the minutes of the regular meeting of the City Council held on January 17, 2008, be approved and placed in the records of the city.

No Tabled Items from Previous Meetings

Public Hearings and Action

6. **Public Hearing:** Plat Revision.
Applicant: John Anton
Location: 3623 Wooded Creek Circle
Property Description: Lot 12R, Block 1 & Tract 3B, Wooded Creek Estates
Zoning: Single Family SF-1
No action was taken

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7. **Ordinance 08-01 & Resolution 08-10, Public Hearing:** Amendment to Chapter 17.11 of the Zoning Ordinance with reference to tree preservation. Mayor Tedder opened the public hearing at 7:25 p.m. and asked for public comments. The following persons spoke:
Cathy Stein, 2622 Clover Lane
There being no other public comments, the Mayor closed the public hearing at 7:30 p.m.

On motion by Councilman Piland, seconded by Councilman Pettke, by a vote of 4 ayes and 0 nays, the following resolution and ordinance were adopted:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALWORTHINGTON GARDENS, TEXAS:

1.

That Chapter 17.11 – LANDSCAPE STANDARDS, of Title 17, ZONING, of the Code of the City shall be amended so that hereafter it shall be and read as follows:

Chapter 17.11 - LANDSCAPE STANDARDS

17.11.01

Purpose and intent The purpose of this Chapter is to establish minimum standards for landscaping in the City in order to enhance property values, improve the appearance of the City, and enhance the community's ecological, environmental and aesthetic qualities.

A. It is the intent of these standards to insure that landscaping shall not be limited to the application of turf or grass; but shall include also the coordinated planting (or retention) of grass, shrubs, ground cover, flowering plants, and trees and the grading or moving of earth to form a visually aesthetic and pleasing environment.

B. It is the intent of these standards to reduce the negative effects of increases in air temperatures, glare, noise, erosion and sedimentation caused by expanses of impervious and unvegetated surfaces within the urban environment.

C. It is the intent of these standards to recognize that the use of landscaping elements can contribute to the processes of air purification, oxygen regeneration, ground water recharge, storm water runoff retardation, and the abatement of noise, glare and heat.

D. It is the intent of these standards to maximize the preservation of existing trees of a size and type that are beneficial to the environment.

The review of all site plans pursuant to this chapter shall include the consideration of the plan applicant's efforts in coordinating a variety of plant material with the physical features of the property.

17.11.02

Scope of chapter; definitions

A. Scope of chapter. The standards contained in this Chapter are minimum standards.

1. All of the provisions of this Chapter shall apply in all zoning districts to any unimproved tract or platted lot to be used for any purpose other than single-family residences regardless of tract or lot size.

2. The provisions of 17.11.13 shall apply to tracts and/or platted lots to be used for single-family residential purposes; and

3. Nothing herein shall be deemed to regulate the removal of trees located in street right-of-way or other permanent public easements when such removal is reasonably necessary to the use of the easement by the city or other easement owner.

B. Definitions. As used in this chapter, the following words or terms shall have the meanings herein provided.

“Tree” – A perennial woody plant with a single trunk or multiple trunks that at maturity will obtain a minimum 6” caliper.

“Caliper” – For newly installed trees, the diameter of the trunk measured 6” above ground level. For existing trees, the diameter of the trunk 4-1/2 feet above the ground. The caliper of a multi-trunk tree shall be the full caliper of the largest trunk plus one-half the caliper of the other trunks.

“Ornamental tree” – A perennial woody plant generally having a height of 25 feet or less at maturity, which may branch to the ground and has significant seasonal color, texture or other ornamental characteristics.

“Protected tree” – Any existing tree of at least 6” caliper.

“Replacement tree” – A tree planted or preserved to mitigate the loss of a protected tree. A preserved tree shall have a minimum caliper of 3” in order to be considered a replacement tree. Newly planted trees shall have a minimum caliper of 3” at planting.

17.11.03

Administration and enforcement

- A. The provisions of this Chapter shall be administered and enforced by the Zoning Administrator (in this chapter called the Administrator). Administrative fees shall be as prescribed in Chapter 3.3 of this Code.
- B. No permits for the use or improvement of property within the scope of this chapter shall be issued or development contracts executed by the City until a landscape plan conforming to provisions of this Chapter has been submitted and approved by the city. (1) A plan shall be submitted and approved at the time of submission of a preliminary plat or application for plat revision. (2) If the property is already finally platted, the plan shall be submitted and approved before the issuance of any building permit on the property. (3) With approval of the planning and zoning commission, plan submission may be deferred prior to development, but in any event, a plan shall be submitted and approved prior to the removal from the property of any protected tree, as herein defined. The City shall review a submitted site plan and respond to the applicant within thirty (30) days after submission. If not approved, the response will include written, specific comments setting forth the changes to the plan necessary to conform to this Chapter.

- C. Prior to issuance of an initial certificate of Occupancy for any building or structure, or, in the case of a residential lot for which no certificate of occupancy is otherwise required, prior to the approval of the property for utility service, all screening and landscaping shall be in place in accordance with the approved landscape plan. If an initial Certificate of Occupancy is sought at a season of the year in which the Administrator determines that it would be impractical to plan trees, shrubs or grass, or to lay turf, a Conditional Occupancy certificate may be issued, notwithstanding the fact that the landscaping required by the Landscape Plan has not been completed, if the applicant shall escrow with the City a sum of money, in cash, reasonably sufficient, in the opinion of the Administrator, to pay all of the costs of implementation of the plan as of the commencement of the planting season next following the date of escrow.

17.11.04

Content of Landscape Plan The Landscape Plan shall be prepared by a landscape architect, landscape contractor or landscape designer. Landscape plans shall be drawn to a minimum scale of (no smaller than) one (1) inch = fifty (50) feet. A plan shall be on a standard drawing sheet of a size not to exceed 24" x 36". A plan that cannot be drawn in its entirety on a single sheet must be drawn with appropriate match lines on two or more sheets. The plan shall contain the following:

- A. Date, scale, north point and the names, addresses and telephone numbers of the property owner and the person preparing the plan.
- B. The location of existing boundary lines and dimensions of the lot, the zoning classification of the lot and of adjacent properties; and, a vicinity map.
- C. Project name, address and lot and block description of all property in the project.
- D. An inventory and location of all trees of 6" and greater caliper. Trees shall be identified by size and species and classification as canopy or ornamental tree.
- E. An inventory and location of all trees proposed for removal and the reasons for removal, together with a plan for tree replacement and preservation conforming to 17.11.13 hereof.
- F. An inventory of protected trees and how they will be protected from damage during construction on the property.

- G. The location of all plants and landscaping material to be used including paving, benches, screens, fountains, statues and other landscape features.
- H. Size, species, quantity and spacing of all plant materials to be used.
- I. A general layout and description of irrigation, sprinkler or water systems, including placement of water sources as designed by a licensed irrigator.
- J. Description of maintenance provisions for the Landscape Plan.
- K. Planting and irrigation specifications as part of the Landscape Plan.
- L. A general grading and drainage plan.
- M. Projected date of completion.

17.11.05

Required Landscape Mixture Twenty percent (20%) of the total land area in any proposed development in the SF, MF, B-1 and B-2 Districts, and fifteen percent (15%) in the B-3 and LI Districts shall be landscaped. At least fifty percent (50%) of the total required landscaped area shall be located in the street yard(s) (Exhibit A). The following are minimum requirements for grass, shrubs, and trees to be provided by an applicant pursuant to an approved plan:

- A. All ground surfaces not used for buildings, sidewalks, roadways or other impermeable surfaces shall be covered with live grass, turf, shrubbery, trees, ground cover, flowering plants or appropriate mulching.
- B. Shrubs not less than eighteen (18) inches in height or five (5) gallons in container size shall be planted on-site, one shrub for each five (5) lineal feet of the public street right-of-way located adjacent to the property.
- C. Landscaping shall include the retention or planting of one (1) three (3) inch caliper tree per each fifty (50) feet of street frontage which may be credited toward satisfying the requirement of trees in parking lot perimeter areas contained in 17.11.09 A2 hereof. Planting locations on the street frontage will be at the applicant's discretion.
- D. Minimum spacing of required plants shall be based upon 75% of the expected width of the plant at maturity.

17.11.06 Description of Planting Material

- A. Plant materials used in conformance with the provisions of this Chapter shall conform to the standards of the AMERICAN STANDARD FOR NURSERY STOCK, or equal thereto. Grass seed, sod and other material shall be clean and reasonably free of weeds and noxious pests and insects.
- B. Appendix A is a list of recommended landscape plant material. The applicant may use other plant material not listed if it is determined to be an appropriate and functional element of the landscape plan. Plant materials recommended by the Texas Extension Service, Tarrant County office, shall be deemed appropriate under this chapter.
- C. The following is a list of plant materials which shall not be incorporated in a landscape plan:

TABLE 17.11.01

Arizona Ash	Fraxinus velutina "Arizona"
Bois D'arc	Maclura pomifera
Cottonwood	Populus deltoides
Siberian Elm	Ulmus pumila
Hackberry	Celtis occidentalis
Silver Maple	Acer saccharinum
Mimosa	Albizzia julibrissen
Mulbery	Morus alba
Lombardy Poplar	Populus nigra italica
Sycamore	Platanus occidentalis
Chinese Tallow	Sapium sebiferum
Arborvitae	Thuja occidentalis
Euonymus	Euonymus japonicus
Weeping Willow	Salix babylonica
Wax Ligustrum	Ligustrum japonicum
Pittosporum	Pittosporum tobira "Variegata" or "Wheeler's Dwarf"
Loquat	Eriobotraya japonica
Oleander	Nerium oleander

17.11.07 Landscaping credit Landscape credits may be applied to the overall landscape requirement, as provided in 17.11.05, Required Landscape Mixture. However, in no instance shall the credits reduce the total amount

of landscaping on a lot to less than ten (10) percent of the total lot area. Credits will only be allowed if they are maintained as a permanent element of the landscape plan. Credits may be obtained as follows:

- A. For each one (1) square foot of area that is landscaped in the public street right-of-way, one (1) square foot of landscape credit will be applied to the overall landscaping requirement.
- B. For each one (1) square foot of area that is landscaped with flowering seasonal color, two (2) square feet of landscape credit will be applied to the overall landscaping requirement.

In addition to the required shrub planting, for each newly planted shrub 18" in height or contained in a five (5) gallon container, which is maintained in a living and growing condition fifteen (15) square feet of landscape credit will be applied to the overall landscape requirement.

In addition to the required tree planting, for each newly planted or acceptable existing tree of at least three (3) inches in trunk diameter, measured twelve (12) inches above grade, which is maintained in a living and growing condition, one hundred (100) square feet of landscape credit will be applied to the overall landscape requirement. Planting of two (2) ornamental trees of eight (8) feet height shall receive the same landscape credit as one (1) three (3) inch caliper tree.

- E. In addition to the required tree planting, for each newly planted or acceptable existing tree of at least six (6) inches in trunk diameter, measured twelve (12) inches above grade, which is maintained in a living and growing condition, two hundred fifty (250) square feet of landscape credit will be applied to the overall landscape requirement. Each additional one (1) inch diameter of tree over six (6) inches shall receive twenty (20) square feet of landscape credit.

17.11.08 Maintenance of landscaping All landscaping maintenance shall be the responsibility of the property owner, occupant, or person otherwise in charge of the property. The following are minimum standards for landscaping maintenance:

- A. All landscaping shall be permanently maintained and shall include an underground irrigation system installed by a licensed irrigator and meeting all applicable requirements of the City.
- B. Irrigation systems may be buried on public street rights-of-way. The City or any franchised utility will not be responsible for

damage to any landscaping material or equipment while performing repairs or maintenance to its systems. However, landscaped rights-of-way shall be irrigated.

- C. Landscaped areas shall be kept free of trash, litter, weeds and other such material or plants not a part of the landscaping.
- D. All plant materials shall be maintained in a healthy and growing condition as is appropriate for the season of the year.

Plant materials which die shall be replaced with plant material of similar variety and size within a six (6) month period.

17.11.09

Landscaping of parking lots It is the intent of this section to encourage the design and construction of parking areas so as to landscape areas within a parking lot as well as areas considered unusable for parking or maneuvering space. The following are the minimum requirements for parking and vehicle use areas exceeding 9,000 square feet or 16 parking spaces, whichever is greater. Landscaping of parking lots shall be credited toward satisfying minimum lot landscaping as provided in 17.11.04 hereof.

- A. Perimeter Landscaping Off-street parking and vehicular use areas shall be screened from all abutting properties and/or public rights-of-way with a thirty (30) inch high screen, hedge, berm or other durable landscape barrier. Perimeter landscape areas shall be protected from vehicle encroachment by six (6) inch concrete curbs and shall conform to the following criteria and standards:
 - 1. Whenever an off-street parking or vehicular use area abuts a public right-of-way, except a public alley, a perimeter landscape area of at least fifteen (15) feet in depth, which may include landscaped right-of-way, shall be maintained between the abutting public street and off-street parking or vehicular use area.
 - 2. Plants and materials used in living screens shall be at least 18 inches high at time of planting and shall be of an evergreen type and specie that will attain a maximum height of thirty (30) inches at maturity. Spacing should be calculated to obtain a seventy-five (75) percent screen two (2) years after planting. Other barriers or screening devices shall be thirty (30) inches in height. The remaining areas shall be landscaped with shrubs, grass or other ground cover in accordance with criteria contained in 17.11.06, above, except they shall include at least one (1) tree for

each fifty (50) lineal feet, or fraction thereof, of the lot. Perimeter Trees required by 17.11.04C which are also located in perimeter areas may be applied to satisfy this requirement.

3. Necessary access ways from the public right-of-way and between adjacent lots shall be permitted through all such landscaping. The maximum width for access ways shall be: fifty (50) feet for non-residential two-way movements; thirty (30) feet for residential two-way movements; twenty (20) feet for one-way movements.
4. Whenever an off-street parking or vehicular use area abuts an adjacent property line, a perimeter landscape area at least ten (10) feet in width shall be maintained between the edge of the parking area and the adjacent property line except in those areas where off-street parking is continuous, or is planned to be continuous, across lot boundaries. Shrub centers shall be offset from the property line a distance of not less than fifty percent of the mature width of the shrub. Landscaping criteria contained in 17.11.09 A 2 and 3 hereof shall apply.

B. Interior landscaping

1. Parking lots shall contain a minimum of one hundred forty (140) square feet of landscaped island per each sixteen (16) contiguous parking spaces required. The landscape island shall include one (1) three (3) inch caliper tree. Islands at the end of parking rows abutting vehicle access ways qualify for this purpose and are encouraged.
2. Landscaped islands shall be irrigated by an underground system as provided in 17.11.08 hereof. Irrigation of all landscaped areas adjacent to any parking and/or driving surfaces shall be so designed, operated and maintained that a minimum of water is applied to parking and/or driving surfaces.
3. All shrubbery, flowering plants, and trees planted in parking lot islands or adjacent to parking lots shall be set back three (3) feet from any curb that provides for "head-in" automobile parking, as illustrated in Exhibit A to this chapter.

4. Landscape material in parking lots shall include shrubs and trees or a combination thereof, which in turn may be planted with a combination of grass, ground cover and/or flowering plants.
5. All landscaping within the parking lot shall be located within a landscaped island or module, delineated from the surrounding paved area by a curb or barrier, constructed of masonry or concrete, not less than six (6) inches in height around the perimeter of the island or module.
6. At least three-fourths (3/4) of the tree drip line (at maturity) area must be in permeable area, as illustrated in Exhibit B to this chapter.
7. For larger existing trees located in the parking area, which are being retained and incorporated into the landscape plan, an appropriate aeration system or an alternative method of protecting the tree must be provided and detailed in the landscape plan.

17.11.10 Landscaping adjacent to residential districts For any development in commercial districts, and those institutional uses including churches, schools and governmental facilities in all zoning districts which abut districts zoned residential, there shall be a minimum twenty (20) foot wide green belt of "live plant material of the evergreen variety" which is expected to grow to six (6) feet in height at maturity, a minimum of three (3) feet in height at the time of installation and planted on five (5) foot centers, for the entire distance along which the development abuts the residential district. Where a fire lane is required, the green belt may be reduced to five (5) feet, as illustrated in Exhibit C to this chapter. Shrub centers shall be offset from the line of the abutting district a distance of not less than fifty percent of the mature width of the shrub.

These requirements are in addition to requirements for screening devices required by sections 17.4.05 and 17.5.01 C 4 of this Title.

17.11.11 Conflict with traffic Landscape planting shall not be erected or installed in such a manner as to interfere with traffic view or impose a safety hazard. Visibility triangles required by Chapter 16.1 shall apply to intersections of vehicle access ways and public streets.

17.11.12 Existing nonconforming uses All uses existing at the time of adoption of this Chapter which do not meet the standards provided herein will be considered as nonconforming to City landscape standards. Effective conformance with these standards may be approved by accomplishment of

the following within four (4) years of the adoption of this chapter; otherwise, the nonconforming uses will be subject to provisions of Chapter 17.12 of the City Code.

- A. The owner shall provide a landscape plan to the City for approval in accordance with provisions of 17.11.05, addressing landscaping of existing open areas and parking facilities. The standards of this chapter shall be applied to the extent that existing physical layouts and improvements will permit without making major modification thereto.
- B. Landscape work shall be completed in accordance with the approved plan. The Administrator will inspect completed work and upon approval shall issue a conditional Certificate of Occupancy noting the effective compliance with landscape standards. The certificate shall remain valid as long as landscaping is protected and maintained in accordance with provisions of this chapter.

17.11.13 Tree preservation This section provides a methodology for tree preservation. Tree preservation is required with respect to any tract or platted lot on which there exists at least one protected tree. The intent is to protect a percentage of protected trees from being destroyed.

- A. Before any live protected tree can be removed, cut down or destroyed, a tree removal permit must be obtained from the City. It shall be unlawful for any person to remove, cut down or destroy any protected tree without first having obtained a tree removal permit therefore. Each protected tree removed without a permit shall constitute a separate violation of this section. The City shall prescribe the form and content of the permit and the application therefore.
- B. Tree Point Accumulation: Tree points shall be determined when there are protected trees to be destroyed or removed. One point shall be equal to one caliper inch. Fractions shall be rounded upward to the nearest one-half inch. Compliance with this section shall exist when the number of tree points earned through tree replacement or retention equals or exceeds the number of tree points lost for trees removed or destroyed, subject to the following requirements:
 - 1. Tree points lost on a lot shall be determined by combining the total caliper inches of all protected trees that are to be removed and that are: (1) located within the proposed building pad plus

ten (10) feet around the perimeter of the proposed structure and are at least 30” or greater caliper; or (2) located elsewhere on the site and are at least 6” or greater caliper.

2. Tree points shall be separated into caliper inches of removed ornamental trees and caliper inches of trees that are not classified as ornamental trees. Tree points lost through removal or destruction of trees that are not ornamental trees must be replaced with tree points from replacement trees which are not ornamental trees. Replacement trees for ornamental trees may be either ornamental or non-ornamental trees.
3. Newly planted replacement trees shall be of a type listed in Appendix A of this Chapter.

C. Protection of Preserved Trees

1. All trees to be preserved shall be flagged by the permittee prior to commencement of construction on the site (including pre-construction clearing of a site or any portion thereof) and maintained until completion of construction. Flagging shall be done with brightly colored vinyl tape wrapped around the main trunk at a height of 4’ or more above the ground so as to be visible to workers on foot or driving equipment.
2. All preserved trees shall have protective fencing installed at the permittee’s expense prior to commencement of construction on the site (including pre-construction clearing of a site or any portion thereof) and maintained until completion of construction. The fencing shall be located at approximately the tree’s drip line. The protective fencing may be brightly colored vinyl, chain link or similar fencing with an approximate height of four (4) feet.

D. Any newly planted replacement tree that dies shall be replaced with a new tree meeting the same requirements as were applicable to the tree being replaced. The new tree shall be planted within six months of notice from the City requiring such replacement.

E. A permit for removal of a tree suffering damage or disease may be issued by the City if, in the reasonable judgment of the City’s code enforcement official, the failure to remove the tree would create a health or safety hazard.

With reference to a single-family residence, the provisions of this section 17.11.13 shall be deemed satisfied if the property complies with all applicable tree replacement requirements 90 days after the residence has been approved by the City for utility service; provided, that paragraph D of this section shall remain effective for one year following the planting of any replacement tree.

2.

That this ordinance shall repeal any provision of prior ordinances in conflict herewith.

3.

That this ordinance is hereby made cumulative of all other ordinances of the City not in conflict herewith.

4.

That if any section, clause, sentence, or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

5.

That violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor; and, that any person violating any provision of this ordinance shall be punished in accordance with the provisions of Section 1.1.26 of the City Code: By a fine not exceeding two thousand dollars. For each day that a violation shall continue or be permitted to exist, there shall be deemed a separate violation. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

6.

That the caption and penalty clause of this ordinance shall be published in the Commercial Recorder, a newspaper of general circulation in the City, as provided by law.

7.

That this ordinance shall be in full force and effect from and after the date of its adoption and publication as provided by law.

RESOLUTION NO. 08-10

A RESOLUTION STATING LEGISLATIVE INTENT CONCERNING
THE ENACTMENT OF CHAPTER 17.11 OF THE CITY CODE, AS
AMENDED, PROVIDING FOR TREE PRESERVATION.

WHEREAS, the City Council desires to enact an ordinance providing reasonable standards for the preservation of trees in the City; and

WHEREAS, the City Council does not want to impose undue burdens on owner/occupants of single-family residences; and

WHEREAS, the City Council further desires to state its intent in providing for the issuance of tree removal permits in order to aid the City's code enforcement personnel in the administration of the ordinance; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALWORTHINGTON GARDENS, TEXAS:

That in the administration of tree removal permits pursuant to 17.11.13 A. of Ordinance Number 08-01, if an applicant for such permit is both the owner and an occupant of a single-family residence situated on the property for which the permit is sought, such property shall, to the extent of not more than ½ acre, including the building foundation site, be exempt from the tree replacement requirements of the ordinance.

Action Items:

8. **Ordinance 08-02**, Oncor Street Lighting Tariff Revision
Steven Taylor was present representing Oncor.
On motion by Mayor Pro tem Snodgrass, seconded by Councilman Loe, by a vote of 4 ayes and 0 nays, the following ordinance was adopted:

AN ORDINANCE APROVING AND ACCEPTING THE MODIFICATION OF
ONCOR ELECTRIC DELIVERY COMPANY LLC LIGHTING SERVICE TARIFF

BE IT ORDAINED:

1.

That 6.1.1.6 – Lighting Service, of the Tariff for Retail Delivery Service of Oncor Electric Delivery Service, as contained in Attachment A, a document of seven pages, be and it is hereby approved.

2.

That Attachment A be appended to the minutes of the meeting at which this ordinance is adopted and shall be deemed a part of and amendment to 13.1.09 of the Code of the City.

9. **Ordinance 08-03**, Atmos Rate Case Ordinance.

On motion by Councilman Pettke, seconded by Councilman Loe, by a vote of 4 ayes and 0 nays, the following ordinance was adopted:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DALWORTHINGTON GARDENS, TEXAS, ("CITY") APPROVING A SETTLEMENT AGREEMENT BETWEEN THE ATMOS CITIES STEERING COMMITTEE AND ATMOS ENERGY CORP., MID-TEX DIVISION ("ATMOS MID-TEX" OR "THE COMPANY") REGARDING THE COMPANY'S STATEMENT OF INTENT TO CHANGE GAS RATES IN ALL CITIES EXERCISING ORIGINAL JURISDICTION; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE SETTLEMENT AGREEMENT AND FINDING THE RATES TO BE SET BY THE ATTACHED TARIFFS TO BE JUST AND REASONABLE; ADOPTING A SAVINGS CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND LEGAL COUNSEL.

WHEREAS, the City of Dalworthington Gardens, Texas ("City") is a gas utility customer of Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "the Company"), and a regulatory authority with an interest in the rates and charges of Atmos Mid-Tex; and

WHEREAS, on or about September 20, 2007, Atmos Mid-Tex, pursuant to Gas Utility Regulatory Act § 104.102 filed with the City a Statement of Intent to increase system-wide gas rates by approximately \$52 million, such increase to be effective in all municipalities exercising original jurisdiction within its Mid-Tex Division service area effective on October 25, 2007; and

WHEREAS, the City took action to suspend the October 25, 2007 Effective Date and to coordinate a response to Atmos' filing with more than 150 other similarly situated

municipalities through the Atmos Cities Steering Committee ("ACSC") (such participating cities are referred to herein as "ACSC Cities"); and

WHEREAS, Atmos has agreed to extend the October 25, 2007, Effective Date such that the City's jurisdiction over this matter ends March 1, 2008; and

WHEREAS, the Railroad Commission of Texas ("RRC" or the "Commission") in GUD No. 9670, issued an Order approving new system-wide rates for customers of Atmos Energy's Mid-Tex Division in March 2007, which increased residential base rates by approximately \$10 million annually; and

WHEREAS, ACSC and Atmos have each appealed the RRC's decision in Atmos' most recent system-wide rate increase as well as the decision rendered in GUD No. 9400 to the Travis County District Court; and

WHEREAS, Atmos and ACSC have been in continuing disagreement, dispute, and litigation over the application of Section 104.301 of the Texas Utilities Code and the resulting rate increases ("GRIP surcharges") established by the RRC; and

WHEREAS, Atmos filed its application for its fourth GRIP surcharge in four years on May 31, 2007, seeking to increase the rates of all customers by approximately \$12 million annually; and

WHEREAS, the ACSC Cities desire to avoid the litigation expense that would result from another lengthy contested rate case proceeding before the RRC as well as the prosecution of the appeals in various courts of the GRIP surcharges and the two previous system-wide rate decisions; and

WHEREAS, ACSC desires to recoup certain costs it previously incurred in connection with GRIP-related proceedings (costs which Atmos contends are not reimbursable rate case expenses under the Texas Utilities Code), as well as costs incurred in connection with this proceeding; and

WHEREAS, on October 18, 2007, more than 60 ACSC members met in Arlington with officers and executives of Atmos to discuss various issues, including rate making, resulting in a mutual pledge to work toward settlement; and

WHEREAS, ACSC members designated a Settlement Committee made up of ACSC representatives to work with ACSC attorneys and consultants to formulate and review reasonable settlement positions to resolve outstanding matters with Atmos, including the pending rate increase request; and

WHEREAS, the Settlement Committee and lawyers representing ACSC met several times with the Company to negotiate a Settlement Agreement resolving the issues raised in the Company's Statement of Intent filing as well as all outstanding appeals of the two prior rate cases and various GRIP filings; and

WHEREAS, the Settlement Committee, as well as ACSC lawyers and consultants believe existing rates are unreasonable and should be changed; and

WHEREAS, the ACSC Executive Committee recommends ACSC members approve the negotiated Settlement Agreement and attached tariffs; and

WHEREAS, the attached tariffs provide for an expedited rate review process as a substitute to the current GRIP process instituted by the Legislature; and

WHEREAS, the expedited rate review process as provided by the Rate Review Mechanism Tariff eliminates piecemeal ratemaking, the ACSC's major objection to the current GRIP process; and

WHEREAS, the attached tariffs implementing new rates are consistent with the Settlement Agreement and are just, reasonable, and in the public interest; and

WHEREAS, it is the intention of the parties that ACSC Cities receive the benefit of any Settlement Agreement that Atmos enters into with other entities arising out of its Statement of Intent or any associated appeals of a decision entered by the Railroad Commission regarding the Company's request to increase rates; and

WHEREAS, the Settlement Agreement as a whole is in the public interest.

NOW, THEREFORE, BE IT ORDAINED:

Section 1. That the findings set forth in this Ordinance are hereby in all things approved.

Section 2. That the City Council finds that the Settlement Agreement, which is attached hereto and incorporated herein as Attachment A, is in the public interest and is hereby endorsed in all respects.

Section 3. That existing rates for natural gas service provided by Atmos Mid-Tex are unreasonable and new tariffs, which are attached hereto and incorporated herein as Attachment B, are just and reasonable and are hereby adopted.

Section 4. That to the extent any resolution or ordinance previously adopted by the Council is inconsistent with this Ordinance, it is hereby repealed.

Section 5. That the meeting at which this Ordinance was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 6. That if any one or more sections or clauses of this Ordinance is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or

invalidate the remaining provisions of this Ordinance and the remaining provisions of the Ordinance shall be interpreted as if the offending section or clause never existed.

Section 7. That if ACSC Cities determine any rates, revenues, terms and conditions, or benefits resulting from a Final Order or subsequent Settlement Agreement approved in any proceeding addressing the issues raised in Atmos' Statement of Intent would be more beneficial to the ACSC Cities than the terms of the attached Settlement Agreement, then the more favorable rates, revenues, terms and conditions, or benefits shall additionally accrue to the ACSC Cities. However, approval of the attached Rider RRM, Rider CEE, Rider GCR and the Rider WNA shall not be affected by the application of the provisions contained in this section, it being the understanding and the intent of the parties hereto that such tariffs shall continue according to their terms.

Section 8. That this Ordinance shall become effective from and after its passage with rates authorized by attached Tariffs to be effective for customer bills delivered on or after March 1, 2008.

Section 9. That a copy of this Ordinance shall be sent to Atmos Mid-Tex, care of Joe T. Christian, Director of Rates, at Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Blevins Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

10. **Resolution 08-11**, GEXA contract renewal

On motion by Mayor Pro tem Snodgrass, seconded by Councilman Loe, by a vote of 4 ayes and 0 nays, it was:

RESOLVED, that the GEXA contract renewal, option C, be approved and placed in the records of the city.

11. **Resolution 08-12**, Municipal Setting Designation Application Park Row – Arlington

On motion by Councilman Pettke, seconded by Councilman Loe, by a vote of 4 ayes and 0 nays, it was:

RESOLVED, that the Municipal Setting Designation Application Park Row in Arlington be approved.

12. **Resolution 08-13**, Award Bid – Twin Springs/Twin Lakes Pavement Reconstruction

On motion by Councilman Piland, seconded by Councilman Pettke, by a vote of 4 ayes and 0 nays, it was:

RESOLVED, that the base bid for Twin Springs/Twin Lakes Pavement Reconstruction be awarded to Reynolds Asphalt & Construction Company in the amount of \$92,883.00.

13. Park Board Items:

- a. Receive recommendation for use of grant and PRFDC budgeted funds
No action was taken.

- b. **Resolution 08-14**, Fill Park Board vacancy
On motion by Councilman Piland, seconded by Mayor Pro tem Snodgrass, by a vote of 4 ayes and 0 nays, it was:

RESOLVED, that Donna Peck be appointed to fill the vacancy on Park Board.

- c. Receive recommendation regarding 2008 Gardens Gathering
No action

14. **Resolution 08-15**, Wireless Communication facility agreement and amendment
On motion by Councilman Pettke, seconded by Councilman Loe, by a vote of 4 ayes and 0 nays, it was:

RESOLVED, that Wireless Communication facility agreement and amendment be disapproved.

15. Review of and action relating to specifications for Fire Engine purchase
On motion by Mayor Pro tem Snodgrass, seconded by Councilman Loe, by a vote of 4 ayes and 0 nays, the review was tabled.

16. **Resolution 08-16**, City Holiday Leave

On motion by Councilman Piland, seconded by Councilman Loe, by a vote of 3 ayes from Councilman Piland, Councilman Loe, and Mayor Tedder and 2 nays from Mayor Pro tem Snodgrass & Councilman Pettke, it was:

RESOLVED, that President's Day and Martin Luther King Day be recognized and approved as city holidays.

17. Set meeting for City Hall expansion review

On motion by Councilman Piland, seconded by Councilman Loe, by a vote of 4 ayes and 0 nays, it was:

RESOLVED, that the meeting for City Hall expansion be set for the second week in March.

FUTURE AGENDA ITEMS

On motion by Councilman Piland, seconded by Councilman Loe, by a vote of 4 ayes and 0 nays, it was:

RESOLVED, that the City Council Worksession be scheduled for a day between March 11-13, 2008.

Audit Meeting- Melinda and Krysten will coordinate and let council know.

ADJOURN

On motion by Councilman Loe, seconded by Councilman Pettke, by unanimous vote the meeting was adjourned at 9:40 p.m.