

**MINUTES of a MEETING
of the
DALWORTHINGTON GARDENS
CITY COUNCIL
Thursday, July 21, 2005 7:00 P.M.**

REGULAR SESSION

A regular meeting was held at **7:00 o'clock p.m.** on **Thursday, July 21, 2005** 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

Guy Snodgrass- Mayor Pro tem
Mike Pettke- Councilman
Michael Tedder- Councilman
Jim Piland- Councilman

Members Absent

Al Taub- Mayor
Ken Wallace- Councilman

Staff Present

Melinda Brittain- City Administrator
Bill Waybourn- Chief of Public Safety
Stan Wilkes- City Attorney
Greg Saunders- City Engineer
Krysten Jeter- City Assistant

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

(Agenda Item 1) Mayor Proclamations

Mayor Pro tem Snodgrass proclaimed the week of September 17-23, 2005 be declared Constitution Week.

Mayor Pro tem Snodgrass asked that Council move ahead to Agenda Item 16

(Agenda Item 16) Resolution 05-45, concerning State Law regarding Eminent Domain.

Mayor Pro tem Snodgrass read part of a newspaper article about Eminent Domain and asked for a motion for the resolution regarding Eminent Domain, and if passed would like a copy sent to all state legislatures.

On motion by Councilman Pettke, seconded by Councilman Piland, by a vote of 3 ayes and 0 nays, Resolution 05-45 was adopted, as follows:

Resolution No. 05-45

A RESOLUTION CONCERNING LEGISLATIVE ACTION ON
THE USE OF EMINENT DOMAIN FOR DEVELOPMENT
PURPOSES.

Resolved, that the City Council of the City of Dalworthington Gardens encourages the Legislature of the State of Texas to enact such measures as may be appropriate to limit the use of the power of eminent domain for the sole purpose of urban development.

Resolved further, that a copy of this resolution be sent to both houses of the Texas Legislature.

The Mayor Pro tem next took up agenda item 2 and continued conduct of the meeting in accordance with the order of the agenda.

(Agenda Item 2) Citizen comments

Cathy Stein, 2622 Clover Lane thanked City for road improvements on Clover Lane.

Kathy Price, 2820 Whisperwood, gave a park status report

(Agenda Item 3) Mayor and Council comments

(Agenda Item 4) Departmental Reports and June Financial Report Chief

Chief Waybourn gave the 2004 Summary Report. Melinda Brittain gave the departmental and financial report for June.

On motion by Councilman Tedder, seconded by Councilman Pettke, it was:

RESOLVED, that the departmental and financial reports for the month of June, be approved and placed in the records of the City.

The motion passed by a vote 3 ayes 0 nays.

(Agenda Item 5) Minutes of June 16, 2005 Meeting/ June 21, 2005

On motion by Councilman Pettke, seconded by Councilman Tedder, it was:

RESOLVED, that the minutes of the meeting of the City council held on June 16, 2005 with corrections made and minutes of June 21, 2005 be approved and placed in the records of the City.

The motion passed by a vote of 3 ayes and 0 nays.

(Agenda Item 6) Public Hearing: Final Plat, Lot 1, Block 1, The Gardens Town Center

On motion by Councilman Tedder, seconded by Councilman Pettke, consideration of the final plat for the Gardens Town Center was tabled by a vote of 3 ayes and 0 nays.

(Agenda Item 7) Public Hearing: PD Final Development Plan, The Gardens Town Center

On motion by Councilman Tedder, seconded by Councilman Pettke consideration of the final development plan for the Gardens Town Center was tabled by a vote of 3 ayes and 0 nays.

(Agenda Item 8) Public Hearing: Final Plat, Lots 1 and 2, Block 1, McAndrew Addition

On motion by Councilman Tedder, seconded by Councilman Pettke, it was:

RESOLVED, that the Final Plat, Lots 1 and 2, Block 1, McAndrew Addition be approved and placed in the records of the City.

The motion passed by a vote of 3 ayes and 0 nays.

(Agenda Item 9) Senior Citizen Tax Exemption

On motion by Councilman Tedder, seconded by Councilman Pettke, consideration of the Senior Citizen Tax Exemption was tabled by a vote of 3 ayes and 0 nays.

(Agenda Item 10) Ordinance 05-09, concerning Atmos' Grip Request

On motion by Councilman Tedder seconded by Councilman Pettke, it was:

ORDINANCE 05-09
DENYING ATMOS' GRIP REQUEST

AN ORDINANCE OF THE CITY OF DALWORTHINGTON GARDENS, TEXAS, DENYING THE REQUEST OF ATMOS ENERGY CORP., MID-TEX DMSION, FOR AN ANNUAL GAS RELIABILITY INFRASTRUCTURE PROGRAM (GRIP) RATE INCREASE IN THIS MUNICIPALITY, AS A PART OF THE COMPANY'S STATEWIDE GAS UTILITY DISTRIBUTION SYSTEM; APPROVING COOPERATION WITH OTHER CITIES WITHIN THE ATMOS ENERGY CORP., MID-TEX DIVISION DISTRIBUTION SYSTEM AS PART OF THE ATMOS CITIES

STEERING COMMITTEE (ACSC); AUTHORIZING ACSC TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION; AUTHORIZING INTERVENTION AS PART OF ACSC IN ANY APPEAL OF THE CITY'S ACTION TO THE RAILROAD COMMISSION; APPROVING COSTS INCURRED AS REASONABLE AND PROVIDING A REQUIREMENT FOR PROMPT REIMBURSEMENT OF COSTS; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING FOR NOTICE OF THIS ORDINANCE TO ATMOS ENERGY CORP., MID-TEX DIVISION.

WHEREAS, on or about December 17, 2004, Atmos Energy Corp., Mid-Tex Division, (the "Company") filed with the City of Dalworthington Gardens, a request pursuant to Texas Utilities Code § 104.301 for an annual gas reliability infrastructure program (GRIP) rate increase for customers on the Company's statewide gas utility system to be effective February 15, 2005, and subsequently extended that effective date until March 4, 2005, for some cities on its system; and

WHEREAS, the City has exclusive original jurisdiction to evaluate the Company's request as it pertains to the distribution facilities located within the City, pursuant to Texas Utilities Code §§ 102.001(b) and 103.001; and

WHEREAS, the City timely acted to suspend the effective date of Atmos' proposed rate increase; and

WHEREAS, it is reasonable for the City of Dalworthington Gardens to cooperate with other cities in a coalition of cities in opposition to the Company's filing at the Railroad Commission ("Commission"), said coalition being known as Atmos Cities Steering Committee ("ACSC"), in any appeal of the cities' actions to the Commission; and

WHEREAS, the Gas Utility Regulatory Act grants local regulatory authorities the right to intervene in rate proceedings filed at the Railroad Commission; and

WHEREAS, the Texas Utilities Code § 103.022 provides that costs incurred by the City in ratemaking activities are to be reimbursed by the regulated utility; and

WHEREAS, ACSC's rate case expenses incurred in this proceeding are reasonable and should be reimbursed by the Company; and

WHEREAS, counsel for ACSC, upon review of the Company's filing and upon consultation with various consultants, recommends finding that the Company's proposal is unjustified, unreasonable and is not in compliance with the GRIP statute (Texas Utilities Code § 104.301) either in fact or in law; and

WHEREAS, information provided by the Company in response to ACSC's requests for information indicates that the Company actually decreased per-customer investment in infrastructure during calendar year 2003; and

WHEREAS, the Company has publicly stated that it will receive substantial profit in 2005 over that approved by the Commission in GUD No. 9400; and

WHEREAS, the Company's GRIP request fails to account for growth in numbers of customers, thereby undercounting the revenues it will receive from its proposed GRIP rate increase; and

WHEREAS, the Company's GRIP request fails to recognize that GUD No. 9400 rates included profit based on TXU Corporation's capital structure rather than Atmos Energy Corp.'s current capital structure, which justifies a lower rate of return; and

WHEREAS, the information reviewed by the ACSC consultants indicates that implementation of the Company's GRIP request would result in further over-earning by the Company above that approved by the Commission in GUD No. 9400; and

WHEREAS, in consideration of the city taking action before August 12, 2005, on the currently pending GRIP request, the Company has agreed not to file any additional GRIP requests before September 15, 2005.

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

SECTION 1. That the Company's GRIP rate increase request is found to be unjustified, unreasonable and in violation of the GRIP statute and is therefore denied in all respects. The defects in the request include, but are not limited to, the following: (a) the Company improperly calculated its 2003 rate base; (b) the Company included in its calculation projects unrelated to system improvement; (c) the Company failed to recognize the increased revenues it is now receiving due to increased rates approved by the Commission in GUD No. 9400 and due to customer growth; (d) information supplied by the Company indicated that the Company actually decreased its per-customer investment in infrastructure in calendar year 2003; (e) approval of the Company's GRIP request would result in over-earning by the Company in the year of

implementation; and (t) the Company has failed to demonstrate that it meets the statutory prerequisites to qualify for a GRIP rate increase or that its proposed method of implementation of the GRIP statute constitutes a constitutional application of the statute.

SECTION 2. That the City is authorized to cooperate with other Cities within the Company's Distribution System that have formed ACSC to hire and direct legal counsel and consultants, negotiate with the Company, make recommendations to the City

regarding reasonable rates and to direct any necessary litigation associated with an appeal of this ordinance to the Commission.

SECTION 3. That the costs incurred by ACSC in reviewing the Company's GRIP request and representing ACSC in this proceeding are hereby found to be reasonable and, upon submission to the Company, shall be promptly reimbursed by the Company.

SECTION 4. That the City is authorized to intervene in any appeal of the city's action filed at the Commission, and to participate in any such appeal as a member of ACSC.

SECTION 5. That this Ordinance shall become effective immediately from and after its passage, as the law and charter in such cases provide.

SECTION 6. That it is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

SECTION 7. That a copy of this ordinance, constituting final action on the Company's application, shall be forwarded to the appropriate designated representative of the Company within 10 days as follows: Richard Reis, Manager, Gas Regulation, Atmos Energy Corp., MidTex Division, Lincoln Center II, 18th Floor, 5420 LBJ Freeway, Dallas, Texas, 75240.

DULY PASSED and approved by the City Council of the City of Dalworthington Gardens, Texas on this the 21st day of July, 2005.

The motion passed by a vote of 3 ayes and 0 nays.

(Agenda Item 11) Park Board request for use of park for money-generating purposes

On motion by Councilman Tedder, seconded by Councilman Pettke, it was:

RESOLVED, that the Park Board's request for use of the park for money-generating purposed be approved for this one time event and utilized to raise proceeds in compliance with health codes and that the funds go back to the City for their discretion as expenditures.

The motion passed by a vote of 3 ayes and 0 nays

(Agenda Item 12) Employee Insurance and Health Savings Accounts

On motion by Councilman Pettke, seconded by Councilman Tedder, consideration of Employee Insurance and Health Savings Account was tabled until further research could be done by a vote of 3 ayes and 0 nays.

(Agenda Item 13) Yard Piping Improvement Project Change Order

On motion by Councilman Tedder, seconded by Councilman Pettke, it was:

RESOLVED, that Change Order No. 1 to the contract for yard piping improvements heretofore awarded to Allison-Broyles Contractors in the amount of \$56,735.30 is hereby approved for the purpose of (purpose of change order) so that after Change Order No. 1 the total contract price is \$62,655.30

The motion passed by a vote of 3 ayes and 0 nays.

(Agenda Item 14) Dustin Trail repair

On motion by Councilman Tedder, seconded by Councilman Pettke, consideration of Dustin Trail repairs was tabled by a vote of 3 ayes and 0 nays.

(Agenda Item 15) Ordinance 05-10, Amendment of City Code Providing for Election of Aldermen by Place

On motion by Councilman Pettke, seconded by Councilman Tedder, by a vote of 3 ayes and 0 nays, Ordinance 05-10 was adopted, reading as follows:

ORDINANCE NO. 05-10

AN ORDINANCE OF THE CITY OF DALWORTHINGTON GARDENS AMENDING THE CODE OF THE CITY BY THE ADDITION TO TITLE TWO, PERSONNEL AND ADMINISTRATION, THEREOF TO ADD CHAPTER 2.7, MAYOR AND COUNCIL ELECTIONS; PROVIDING FOR THE ELECTION OF ALDERMEN BY NUMBERED PLACE; PRESCRIBING OTHER MATTERS PERTAINING TO MUNICIPAL ELECTIONS; PROVIDING FOR PUBLICATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SUBMISSION OF THE CHANGE IN METHOD OF ELECTION TO THE U.S. DEPARTMENT OF JUSTICE; AND, NAMING AN EFFECTIVE DATE.

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

That Title 2, ADMINISTRATION AND PERSONNEL, of the Code of the City of Dalworthington Gardens be and the same is hereby amended by the addition thereto of a new chapter, to be known as "Chapter 2.7 - MAYOR AND COUNCIL ELECTIONS", which shall be and read as follows:

CHAPTER 2.7 - MAYOR AND COUNCIL ELECTIONS

- 2.7.1 Regulation of elections. The city council shall make all regulations that it considers needful or desirable, not inconsistent with the laws of the State of Texas, for the conduct of municipal elections, for the prevention of fraud in such elections and for the recount of ballots in case of doubt or fraud. Municipal elections shall be conducted by the regular election authorities, who shall also have power to make such regulations not inconsistent with any regulations made by the council or the laws of the State of Texas.
- 2.7.2 Filing for place on ballot. Any qualified elector of the city desiring to have his or her name placed upon the official ballot for any election to the office of mayor or alderman may do so by presenting a written request for that purpose, signed by himself or herself and filing the same with the city secretary in a timely manner as prescribed by state law.
- 2.7.3 Council ballot form. The full names of all candidates for mayor or alderman, determined as hereinbefore provided, except such as may be withdrawn, died or become ineligible, shall be printed on the official ballots without party designations. If there are two candidates with the same surnames or with names so similar as to be likely to cause confusion, the address of their places of residence shall be placed with their names on the ballot. The order of the names on the ballot shall be determined by lot.
- 2.7.4 Election of mayor and councilmen. The Mayor shall be elected to office from the city at large. The other members of the city council shall be elected to office at large, but by specific place which shall be designated as Alderman, Place One (1), Two (2), Three (3), Four (4) and Five (5). The Mayor and Aldermen, Places One (1) and Two (2), shall be elected in even-numbered years and Aldermen, Places Three (3), Four (4) and Five (5) shall be elected in odd-numbered years.

- 2.7.5 Election by majority; runoff elections. In elections of the Mayor and Aldermen, the candidate receiving a majority of all votes cast for the office shall be elected. If no candidate in such an election receives a majority, the Mayor shall, on the first day following the official count, call for a second election to be held as provided by law. The two (2) candidates receiving the highest number of votes shall have their names placed on the ballot to be prepared by the city secretary, in the order of their standing in the computation of votes. In the event of a tie between two candidates, they shall cast lots to determine their places on the ballot. In the event of a tie in a runoff election, the runoff candidates shall cast lots to determine the winner.
- 2.7.6 Laws governing city elections. All city elections shall be governed by the laws of the State of Texas governing general and municipal elections, so far as same may be applicable thereto; and in the event there should be any failure of the general laws to provide for some feature of the city election, then the city council shall have power to provide for such deficiency, and no informalities in conducting a city election shall invalidate the same, if it be conducted fairly and in substantial compliance with the general laws of the State of Texas and ordinances of the city.
- 2.7.7 Canvassing election. The election officers shall make returns of the elections, general and special, to the city council in accordance with state law and the council shall canvass and declare the results of such election.

2.

That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portion of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

3.

That this ordinance shall be published in book form as a part of the Code of the City.

4.

That the City Secretary shall cause this ordinance to be submitted to the Voting Section of the Civil Rights Division of the U. S. Department of Justice as a

change in the practice or procedure with respect to voting for the office of alderman as provided by law.

5.

That this ordinance shall take effect and be in full force and effect from and after the date of its final passage and its approval by the U.S. Department of Justice and shall be applicable to all elections for aldermen of the city commencing with the uniform election date of May, 2006.

(Agenda Item 17) Future Agenda Items

Direct Deposit

(Agenda Item 18) Adjourn

Councilmember Pettke made the motion to adjourn. Councilman Tedder seconded the motion. Motion passed by a vote of 3 ayes and 0 nays.