

**MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF THE CITY
OF LUFKIN, TEXAS HELD ON THE 5TH DAY OF MAY, 2009**

On the 5th day of May, 2009, the City Council of the City of Lufkin, Texas convened in a Regular Meeting in the Council Chambers of City Hall with the following members, thereof to wit:

Jack Gorden, Jr.
Rose Faine Boyd
Lynn Torres
Don Langston
Rufus Duncan
Phil Medford
Paul L. Parker
Keith Wright
Robert Flournoy
Renee Thompson
Rodney Ivy
Larry Brazil
Duane Freeman
Doug Wood
Dorothy Wilson
Barbara Thompson
Dale Allred

Mayor
Mayor Pro-Tem
Councilmember, Ward No. 3
Councilmember, Ward No. 4
Councilmember, Ward No. 5
Councilmember, Ward No. 6
City Manager
Deputy City Manager
City Attorney
City Secretary
Human Resource Director
Police Chief
Asst. Fire Chief
Finance Director
Planning Director
Main Street Director
Inspection Services Director

being present, and

R. L. Kuykendall

Councilmember, Ward No. 1

being absent, when the following business was transacted:

1. The meeting was opened with prayer by James Craft, Southside Baptist Church.
2. Mayor Jack Gorden welcomed visitors present.

3. APPROVAL OF MINUTES

Minutes of the Regular Meeting of April 21, 2009, were approved as corrected on a motion by Councilmember Rose Faine Boyd, and seconded by Councilmember Lynn Torres. A unanimous affirmative vote was recorded.

NEW BUSINESS:

**4. AUTHORIZE THE APPLICATION FOR THE FY2010 EMS LOCAL PROJECTS
GRANT – APPROVED - FOR THE LUFKIN FIRE DEPARTMENT**

Mayor Jack Gorden stated that the next item for consideration was to authorize the application for the FY 2010 EMS Local Projects Grant for the Lufkin Fire Department.

City Manager Paul Parker stated that the Lufkin Fire Department had the opportunity to apply for a Texas Department of State Health Services (DSHS) Grant, which required a fifty percent (50%) match. City Manager Parker added that the Fire Department was requesting to be allowed to apply for the grant, and if approved would use the funds to purchase five (5) AutoPulse devices. City Manager Parker explained that the devices delivered chest compressions (CPR) to cardiac arrest victims automatically instead of a paramedic having to do so. City Manager Parker added that the compressions were more consistent and also freed the paramedic to handle other needs of the patient and continue to perform other necessary life-saving procedures. City Manager Parker stated that the devices would be very beneficial from life safety standpoint, and reiterated that the Fire Department was requesting that the Council allow them to apply for the grant and purchase five (5) CPR units. City Manager Parker added that if approved, the total commitment would be for thirty-five thousand dollars

(\$35,000) from the City of Lufkin. City Manager Parker stated that the devices were fourteen thousand dollars (\$14,000) each for a total of seventy thousand dollars (\$70,000).

Mayor Gorden stated that he was not familiar with the device. Interim Fire Chief Duane Freeman stated that the devices were relatively new technology. Mr. Freeman added that he wanted to focus on the life-saving aspect of the devices. Mr. Freeman stated that the Fire Department provided ambulance service to all of Angelina County, and often when transporting a patient from the southern end of the county, such as Zavalla or Huntington, the transport time was longer. Mr. Freeman explained that maintaining chest compressions for that length of time was physically demanding and not nearly as effective. Mr. Freeman added that research showed that the device tripled the survival rate of patients in cardiac arrest. Mr. Freeman stated that the device would be a great asset to the department.

Mayor Gorden stated that the Fire Department had been very successful with grant applications in the past and that he commended the department.

Mayor Gorden asked for questions or comments from the Council.

Councilmember Lynn Torres moved to approve the authorization of the application for the FY2010 EMS Local Projects Grant for the Lufkin Fire Department. Councilmember Don Langston seconded the motion. A unanimous affirmative vote was recorded.

5. RESOLUTION AUTHORIZING AN AMENDMENT TO THE 2008/2009 OPERATING BUDGET (BUDGET AMENDMENT NO. 21), – APPROVED – PROVIDING FOR THE SUPPLEMENTAL APPROPRIATION OF FUNDS IN THE GENERAL FUND; AND PROVIDING AN EFFECTIVE DATE

Mayor Jack Gorden stated that the next item for consideration was the Resolution authorizing an amendment to the 2008/2009 Operating Budget (Budget Amendment No. 21), providing for the supplemental appropriation of funds in the General Fund; and providing an effective date.

City Manager Paul Parker stated that the Council was aware that the City of Lufkin currently provided support for the Boys and Girls Club to run the aquatic center, with the understanding that there would be hours dedicated to public swim time. City Manager Parker explained that it was the second full year of operation for the aquatic center and the Boys and Girls Club had some additional operational costs. City Manager Parker added that the City was requesting the Council to make a one (1) time additional twenty-five thousand dollar (\$25,000) payment to assist in the operation of the aquatic center for the remainder of the fiscal year.

Mayor Gorden stated that the Council had thoroughly discussed the request and had looked at the budget for the operations of the aquatic center.

Mayor Gorden asked for questions or comments from the Council.

Councilmember Lynn Torres stated that it needed to be reiterated that this was a one (1) time influx of cash to assist the Boys and Girls Club with the current situation. Councilmember Torres added that this additional payment would in no way alter the Council's current commitment to allocate a fifty thousand dollar (\$50,000) donation for the budget next year. Councilmember Torres explained that the Council had not made a decision on whether or not that donation would increase.

Councilmember Don Langston moved to approve the Resolution authorizing an amendment to the 2008/2009 Operating Budget (Budget Amendment No. 21), providing for the supplemental appropriation of funds in the General Fund; and providing an effective date. Councilmember Phil Medford seconded the motion. A unanimous affirmative vote was recorded.

6. Mayor Jack Gorden recessed the Regular Session at 5:07 p.m. to enter into Executive Session.

EXECUTIVE SESSION: In accordance with the Texas Government Code Section 551.071 (2) Consultation with City Attorney on any Regular Session Agenda item requiring confidential, attorney/client advices necessitated by the deliberation or discussion of said items (as needed), and real estate, demolition of buildings, or appointments to boards and personnel may be discussed.

Mayor Jack Gorden reconvened the Regular Session at 5:52 p.m.

WORK SESSION:

7. DISCUSS POSSIBLE DOWNTOWN TREE REPLACEMENT

Mayor Jack Gorden stated that the next item for consideration was to discuss possible Downtown tree replacement.

City Manager Paul Parker stated that the item was regarding the fourteen (14) trees located on First Street in the Downtown area of Lufkin. City Manager Parker stated that at the last Council Meeting the Council decided to review the item at the next meeting to decide whether or not to go forth. City Manager Parker explained that since that meeting Angelina Beautiful Clean came forward and said they would pay one half (½) of the cost, based on their Board's approval, if the City Council agreed to pay the other one half (½) of the replacement cost. City Manager Parker stated that Tony Moline, Executive Director of Angelina Beautiful Clean, believed the AB/C Board would do this, but could not obligate until the final approval of the board. City Manager Parker stated that if the City Council wanted to replace the fourteen (14) trees on First Street with either Baldcypress or Shumard Oak, on a trial basis, the City Staff would go forth.

Councilmember Don Langston stated that there were some dead trees in the area, but that none of them were on First Street. City Manager Parker stated that a few of the trees on First Street were dead and would have had to be replaced anyway. Councilmember Langston stated that he had heard nurserymen say various things about the root balls of Baldcypress and what they did to streets. Deputy City Manager Keith Wright stated that he had discussed the Baldcypress trees with someone and they assured him that there would not be a problem with the Baldcypress knees coming up into the sidewalk. Deputy City Manager Wright added that there was a three (3) foot deep section around each location where the grates were to prevent the roots from coming out close to the surface. Councilmember Langston stated that the last comment he had was related to the aesthetics, and that the Baldcypress trees were just ugly. Councilmember Langston asked why Baldcypress trees had been chosen, and if there was a particular reason for picking them. Councilmember Langston added that the Shumard Oaks would look better. Mayor Gorden stated that the Shumard Oaks were fine with him, and that he liked both the Baldcypress and Shumard Oak trees.

Deputy City Manager Wright stated that there were two (2) or three (3) locations where there were problems with an underlying clay layer that held water. Deputy City Manager Wright suggested putting the Baldcypress trees in those locations. Mayor Gorden commented that the Baldcypress would be more prone to live in that type of soil.

Councilmember Langston asked why the City was considering changing out live trees. Mayor Gorden stated that it was to create a more aesthetic view through the middle of town. Mayor Gorden added that some of the trees that were currently there were not going to get very big, and when they were put in there was not much thought put into which type of trees to plant, and that they were a hodgepodge mix without any consistency. Mayor Gorden stated that it would be nice to try the proposed trees down First Street. Mayor Gorden added that AB/C had been nice to pay for one half (½) of the cost involved.

Councilmember Langston stated that he was not objecting to the idea, but wanted to make sure that the choice of trees was correct. Mayor Gorden asked Councilmember Langston to pick either the Baldcypress or Shumard Oak. Councilmember Langston stated that he had already given his opinion about the two (2) types of trees. Mayor Gorden stated that the City should go with the Cypress trees. Deputy City Manager Wright stated that if it was okay with the Council, then Staff would plant the Baldcypress trees in the areas where there were issues with too much water, and plant Shumard Oak trees in the other areas.

Councilmember Rufus Duncan stated that he thought the whole point was to have consistency in the type of trees planted. Mayor Gorden stated that the trees should all be the same type. Deputy City Manager Wright stated that Staff would do whatever the Council wanted done. Mayor Gorden suggested that the Baldcypress be planted on First Street, and if it worked and the City was able to move to other parts of Downtown, then the Shumard Oak trees would be used. Councilmember Langston stated that the ugly trees would be on First Street and the pretty trees would be on other streets. Mayor Gorden stated that he wanted to plant the trees that would be most likely to live. Councilmember Langston stated that had a place and would certainly be good wherever there were issues with too much water, but that the trees had a scaly bark, they would shed and their tendency was to die at the top. Councilmember Langston referred the pictures of the Baldcypress trees in Nacogdoches, where they were used, and stated that the trees didn't present a pretty picture for First Street. Councilmember Langston added that he would defer to those that knew more about it than he did. Mayor Gorden stated that it didn't make that much difference to him, but that he loved Cypress trees.

Councilmember Lynn Torres asked who had recommended that the City use the Baldcypress trees for the Downtown area. Deputy City Manager Keith Wright stated that there was a group interested in doing landscaping that suggested the two (2) types of trees.

Councilmember Phil Medford inquired that if the City was only going to replace the trees on First Street initially, were any of the locations the ones that held water. Main Street Director Barbara Thompson stated that the area in front of the Parks and Recreation Department, on First Street, was one of the areas that would hold water. Ms. Thompson added that the area in front of the First Street Café was really dry, and further down First Street in front of the First Street Art Center was a wet area. Ms. Thompson stated that the areas near Shepherd and Lufkin Avenue were dry areas. Ms. Thompson stated that the trees that were currently in the area were selected before she began to work for the City, and added that the selection was made based on the fact that some areas were dry, and other areas were wet. Mayor Gorden pointed out that there was a group of people interested in landscaping that were going to assist the City by making sure that the trees would live and were done properly.

Mayor Gorden then asked the Council if there was anyone with strong feelings about the type of trees that should be planted. The City Council gave no indication that they had strong feelings either way.

Ellen Temple stated that if there was an area that had a narrow sidewalk, the City needed to plant a tree that would grow straight up such as a Cypress. Mayor Gorden stated that it appeared that the decision was to plant the Baldcypress trees on First Street.

Councilmember Lynn Torres stated that she wanted to be sure that the City consulted a tree expert.

8. DISCUSS PROPOSED LANDSCAPE ORDINANCE

Mayor Jack Gorden stated that the next item for consideration was the proposed Landscape Ordinance.

Planning Director Dorothy Wilson stated that the Council and Staff had been working on the Landscape Ordinance for an extended period. Ms. Wilson added that during the last discussion there were several areas that the Council had asked Staff to look at. Ms. Wilson stated that the Ordinance was worked on by the Planning Office, Engineering, Inspection Services, and the Main Street Director, along with the City Manager and the Deputy City Manager. Ms. Wilson stated that the main areas that had been emphasized were changes to the Certificate of Occupancy requirements moving to a temporary Certificate of Occupancy being allowed, with a letter of credit certifying that the City could use the funds if needed, or if someone didn't finish a project. Ms. Wilson added that Staff also dropped Chinese Tallow as a tree that could be counted or used in crediting for trees. Ms. Wilson stated that Staff kept Crepe Myrtles as an allowable tree. Ms. Wilson added that Staff allowed for Xeriscaping, temporary irrigation, specified the floodway to be a one hundred (100) year floodway and changed the parking space requirement from thirty (30) to fifty (50).

Ms. Wilson stated that the purpose of the Ordinance was to replace the existing Landscape Ordinance that Staff believed had standards that were too lax, and put in new standards that should help increase the value of property and retain more mature trees in Lufkin. Ms. Wilson added that the Ordinance was also to protect property values, enhance visual image, and provide sound and site buffers between properties and different uses. Ms. Wilson stated that the Ordinance applied to all property except non-commercial residential. Ms. Wilson explained that the compliance was through holding a temporary Certificate of Occupancy at the end of a construction project.

Ms. Wilson stated that a question had been brought up about whether the Ordinance would apply to the City. Ms. Wilson explained that it would apply to the City of Lufkin, but did not apply to other governmental entities, because the City had no authority over the other governmental entities. Ms. Wilson added that there was a section in the Ordinance that stated that it was strongly encouraged for the other governmental entities if they were interested. Ms. Wilson stated that the Federal Government often took the suggestions of what the City preferred in their designs.

Ms. Wilson stated that for the standards the Ordinance required landscape on ten percent (10%) of the total square footage of the lot. Ms. Wilson added that currently the City took the area that had not been covered by building or paving, and applied a percentage on the leftover property. Ms. Wilson stated that this could be five percent (5%), seven and one-half percent (7½%), or ten percent (10%). Ms. Wilson explained that it would be on the total property area, whether a huge building was built with a lot of paving, or a small building was built with a small amount of paving. Ms. Wilson stated that there were exemptions for areas that were part of a phased development like was currently taking place at Lockheed Martin. Ms. Wilson explained that Lockheed Martin had completed one (1) phase and were now doing their second phase. Ms. Wilson added that the standard would only apply to the first phase, and then when the second phase was completed it would apply to it. Ms. Wilson stated that there were exemptions for the one hundred (100) year floodway areas, because Staff wanted those areas to be left as they were. Ms. Wilson added that this also applied to undisturbed areas. Ms. Wilson explained that if there were areas that the owner wanted to keep in its natural habitat or configuration, the areas would be exempted from the total square footage of the lot.

Ms. Wilson stated that another change to the Ordinance was that the City would have the authority, through the Code Enforcement Office, to enforce the TCEQ Storm Water Pollution Prevention Plan. Ms. Wilson added that the City would require proof of the plan be submitted to the City prior to any work being done. Ms. Wilson stated that within the total landscape area the requirements that were being set out was one (1) tree for every five hundred (500) square feet, one (1) shrub for every two hundred (200) square feet, and twenty percent (20%) of the landscape would have to be in the street yard. Ms. Wilson explained that the street yard was considered to be the line that would be drawn from one side of the property to the other side, along the back plane of the building on the site, and going up to the front property line. Ms. Wilson stated that the Ordinance also required a minimum of ten (10) foot wide planting area that was the length of the front property line.

Ms. Wilson stated that Staff made some changes to the landscaped islands based on the input at the last meeting that would be triggered when there were properties using in excess of fifty (50) parking spaces. Ms. Wilson explained that the requirement that the owner would provide landscape islands every fifty (50) spaces would then be triggered. Ms. Wilson stated that the landscape islands had a requirement that the island would be a minimum of fifty (50) square feet, have one dimension of five (5) feet, and required one (1) tree in the area. Ms. Wilson added that on that section the owner could use a Xeriscape design or drought tolerant plantings. Ms. Wilson stated that live materials had to be limited to no more than three (3) feet at maturity.

Ms. Wilson stated that Staff also addressed parking lots in the Ordinance. Ms. Wilson explained that when a commercial parking lot abutted residential, it required a solid six (6) foot fence. Ms. Wilson added that there was also the option of shrub screening, and two (2) gallon shrubs and plants that would be three (3) feet tall after a two (2) year period would be required for that option. Ms. Wilson explained that these plants would be required to be in a five (5) feet wide bed. Ms. Wilson added that the bed would have to be bermed with a three (3) to one (1) slope ratio, or planted with plants that were drought and freeze resistant. Ms.

Wilson stated that there was a third option with the shrub screen. Ms. Wilson explained that a combination of the two (2) prior lists could be used along with trees.

Ms. Wilson stated that there was a provision in the Ordinance for reduction in the landscaped area. Ms. Wilson explained that the landscape would be started with a ten percent (10%) area for the total lot, and then reduced by areas done in future phases, reduced by the one hundred (100) year floodway area, and by the undisturbed areas.

Ms. Wilson stated that the Ordinance also had extensive standards for tree preservation. Ms. Wilson explained that the trees that were going to be saved would have to be marked and there would have to be a barricade along the tree drip line before construction started. Ms. Wilson added that there would also have to be barricades so that general construction practices would not impede the growth of the trees or the life of the tree and so that soil compaction, changes in grade and machinery crossing the area wouldn't damage the trees.

Ms. Wilson stated that Staff also did some work on irrigation requirements. Ms. Wilson explained that previously there had been a mandatory requirement to either have a conventional system, a drip system or a leaky pipe system. Ms. Wilson added that now the requirement was that only one (1) of the previously named systems had to be met or could be done with temporary or above ground watering for drought resistant planting. Ms. Wilson stated that this was not a requirement, but merely a suggestion. Ms. Wilson added that parking lots that had trees close to the pavement required a water source.

Ms. Wilson stated that Staff had added a little more to the plant criteria. Ms. Wilson explained that one (1) of the things that came up was that Crepe Myrtles needed to be kept and that the Chinese Tallow needed to be dropped. Ms. Wilson added that this had been done, and that Staff had specified that plants needed to be native or acclimated to the East Texas Region. Ms. Wilson stated that Staff also specified that the trees that weren't allowed couldn't be used for credit as a switch for planting new trees, and they couldn't be used as a credit toward other trees. Ms. Wilson explained that if there was a Bradford Pear on the site it could be preserved, but it wouldn't count toward the number of trees that were required, and wouldn't count toward reducing the number by saving that tree. Ms. Wilson stated that there were also requirements that the selection of plants that were used be specific to that particular site. Ms. Wilson explained that a site that didn't get much water would need certain plants, and sites that had irrigation would need a different type of plant.

Ms. Wilson stated that canopy trees needed a minimum caliper of three inches (3") at the diameter breast height and had to have a minimum branching height of six feet (6'). Ms. Wilson added that the minimum overall height had to be eight feet (8') after planting. Ms. Wilson explained that once the tree was in the ground there would have to be eight feet (8') from the ground level to the top of the tree. Ms. Wilson stated that shrubs needed to be two (2) gallon shrubs and trees had to be planted that wouldn't affect the infrastructure. Ms. Wilson explained that the trees could not have root systems that would go around pipes or that would go through concrete. Ms. Wilson added that artificial plants could not be used.

Ms. Wilson stated that there was an extensive selection of requirements for pre-planting, during planting, and after planting. Ms. Wilson explained that some of the specific requirements were uncompleted landscape work required a irrevocable Letter of Credit assigned to the City for its use, landscape must be kept away from infrastructure, the site clearance between intersections of right-of ways be protected and no trees be placed that would impede vision. Ms. Wilson stated that there had also been a problem with vision being impeded on driveways coming out to the street by the adjacent property's landscaping. Ms. Wilson explained that Staff added a requirement that the sight clearance between properties had to be protected.

Ms. Wilson stated that the Ordinance had standards for excavation, based on best management practices, and pruning standards for how to prune correctly. Ms. Wilson reminded the Council that the pruning standards would not apply to utility companies. Ms. Wilson added that the utility companies would still be able to remove trees, and prune and trim as needed, for the safety of their employees and for the general use of the utilities.

Ms. Wilson stated that trenches and shrub beds had to be edged, cultivated, and mulched. Ms. Wilson added that mulch was not something used in the past, but that there were a lot of recommendations on mulching to conserve water.

Ms. Wilson stated that within the pre-construction standards Staff required that trees be flagged if they were within forty feet (40') of construction area or surface improvements. Ms. Wilson explained that if there were trees just outside of the parking lot area, those trees would still have to be flagged so that construction equipment wouldn't interfere with them. Ms. Wilson stated that open space flagging for the area that were below trees or around trees, that were counted as landscaped areas, had to be flagged with twenty-five foot (25') intervals at the maximum. Ms. Wilson added that protective fencing had to be placed around some of the trees and plantings at a four foot (4') height and ten foot (10') maximum intervals. Ms. Wilson stated that there were also standards for bark protection.

Ms. Wilson stated that during construction there was a requirement to clearly mark the trees to be saved and that there was a prohibition on material storage, equipment cleaning, liquid disposal, vehicles, grade changes, and impervious paving that might kill the trees. Ms. Wilson added that some of the prohibitions carried over after construction. Ms. Wilson stated that for a plant to be considered preserved and to count toward the credit for the site, seventy-five percent (75%) of the critical root zone had to be maintained and undisturbed and at natural grade. Ms. Wilson stated that more than twenty-five percent (25%) of the tree canopy could not be removed. Ms. Wilson added that part of that area during construction also had standards for boring, trenching and root pruning. Ms. Wilson stated that at the end of the process there were requirements that if a tree died, it had to be replaced within one hundred twenty (120) days. Ms. Wilson explained that currently one of the problems was that there was no requirement of when a tree had to be planted, and subsequently the contractor says the owner would have to replace it, and the owner says that the contractor would have to replace it. Ms. Wilson added that then nobody would replace the tree or they would delay the process of getting the tree replaced. Ms. Wilson reiterated that utilities could trim or remove hazards as needed.

Ms. Wilson stated that the nonconforming uses basically stayed the same. Ms. Wilson explained that there were the grandfathered uses, or those already in existence, and then the uses where whenever there was an annexation of property that was undeveloped at the time of annexation, the property owner had to comply with the new standard. Ms. Wilson added that if the property was annexed with a development already on it, the property would fall into the grandfathered category. Ms. Wilson stated that if there was a twenty-five percent (25%) increase in the size of the structure, the property owner would have to come into compliance. Ms. Wilson stated that this covered the tree and landscaping section, and that she would answer any questions that the Council had regarding the Ordinance.

Councilmember Don Langston stated that he did have a few questions. Councilmember Langston stated that the City had a detention pond requirement that was sometimes absorbed a lot of property. Councilmember Langston asked if there was a way to exempt that area from the remainder of the property for landscaping purposes. Deputy City Manager Keith Wright stated that a lot of cities did that, and that he thought it would be appropriate. Deputy City Manager Wright stated that cities such as Austin and San Antonio use detention facilities to do landscaping and plant trees. Deputy City Manager Wright added that it should be acceptable, as long as it was maintained and the property owner had their volume. Councilmember Langston stated that he would like the City to consider that as part of the exemption. Councilmember Langston added that sometimes the detention ponds were located on the front of properties, and that he noticed that the City had a pretty stringent landscape requirement on the front of the property. Councilmember Langston explained that there needed to be a mechanism where terrain requirements didn't conflict with the landscaping requirement. Councilmember Langston stated that most of the engineers that did that type of work obviously would consult with the City. Councilmember Langston added that he was confident that the current staff could handle it, but didn't know why the future staff might do with it. Deputy City Manager Wright stated that he didn't know why the detention requirements and landscaping requirements couldn't go hand in hand with each other.

Councilmember Langston stated that there was no dollar amount for what the Letter of Credit would be. Councilmember Langston added that there should be some language in the Ordinance to determine how much money would be required in the form of the Letter of Credit, so that people knew up front the consequences. Councilmember Langston stated that there were certain times of year that landscaping couldn't be done, yet a building may need

to be occupied. Councilmember Langston added that there needed to be a mechanism, but at the same time the cost needed to be defined.

Councilmember Langston said it would be interesting to see how the City attempted to enforce the planting requirements. Councilmember Langston added that the planting requirements were a good guide, but it was difficult to conceive Inspection Services going out on a Saturday afternoon where a nurseryman was feverishly trying to finish a job and called for Inspection Services to come and check the depth of his planting. Councilmember reiterated that the planting requirements were a good guide, but that he was concerned with the enforcement issues.

Councilmember Langston stated that whenever a person calculated the twenty-five percent (25%) rule on existing structures they would recognize that there were a number of structures getting closer to the Downtown area that were already limited on space. Councilmember Langston stated that Memorial Hospital was one (1) of those examples. Councilmember Langston added that Memorial Hospital would never be able to add on, unless they eliminated some parking areas to accommodate the landscape requirement. Councilmember Langston added that there would be some areas that were fringe in the Downtown area that might need to be looked at specifically, because the size of the property and the parking requirements that were already in place. Councilmember Langston stated that the Museum of East Texas would possibly be in jeopardy if they expanded. Councilmember Langston added that these were areas that the City needed to take a hard look at to see if there needed to be some type of mechanism in place, and that perhaps the variance mechanism was adequate. Planning Director Dorothy Wilson stated that there was a section that allowed for the variance that Councilmember Langston had asked to be put in. Ms. Wilson added that the alternative design would be a benefit above the particular standard. Councilmember Langston stated that there were no options in some cases. Councilmember Langston explained that the hospital wouldn't want to put plants on the roof, yet the hospital would be at a disadvantage. Councilmember Langston added that the hospital was just one (1) example that came to mind, but that he was sure there would be others. Councilmember Langston stated that there were some fringe areas that could be affected, and that the City should look at the twenty-five percent (25%) requirement and should possibly have a means of exempting those properties.

Councilmember Phil Medford stated that he had a question about the indiscriminate clearing of lots. Councilmember Medford stated that the Ordinance addressed pre-construction and what was required to flag trees to designate those that were going to be saved. Councilmember Langston asked if a building permit would be required if someone owned and lot in Lufkin and were going to clear it. Ms. Wilson stated that currently the building permit was not required, but that the section of the Ordinance talked about the purpose being to prevent indiscriminate clearing of property. City Manager Parker stated that the next Ordinance that would be discussed in the Work Session addressed the lot clearing whenever there was no development. Councilmember Medford stated that he didn't know if this Ordinance and the next one (1) were considered as two (2) separate Ordinances. Ms. Wilson stated that page six (6) Section six (6) A- 2 of the Ordinance prohibited the indiscriminate clearing of property. Ms. Wilson added that page seven (7) Section six (6) A-5-b stated that the use of the tree credit provisions was not intended to promote the removal of all or a majority of the trees on the site with retention of only the minimum number of mature trees per acre. Ms. Wilson stated that it was intended instead for preserving existing vegetation, including a variety of tree sizes. Ms. Wilson stated that she had not emphasized these areas when the committee discussed them because they had decided to make two (2) separate Ordinances, in case the Council was interested in one (1) and not the other.

Deputy City Manager Wright stated that in Section two (2) "Jurisdiction and Applicability" he was not sure that this would apply to the City. Ms. Wilson stated that there had been a specific sentence that said that this would not apply to the City, but that sentence was removed and instead the Staff went with Section two (2) B which stated that the landscape requirements would apply to all private and institutional development. Deputy City Manager Wright stated that institutional was not defined. Deputy City Manager Wright suggested that a term be added such as non-exempt government entities. Councilmember Langston asked why the City would be exempted except for right-of-way purposes for a traffic hazard. Deputy City Manager Wright explained that was what this was for, and that an item needed to be added to define this and make it clear that this was referring to government entities that

were non-exempt. Councilmember Langston asked about the City doing road borings and things of that nature. Deputy City Manager Wright stated that this was covered in the next Ordinance in the Work Session. Ms. Wilson stated that she could be more specific about when this applied.

Councilmember Medford stated if there was an increase of twenty-five percent (25%), the new addition would have to comply with the Ordinance, but asked if the balance or original structure was still grandfathered. Ms. Wilson stated that if the new addition increased the entire structure by twenty-five percent (25%), the property owner would have to comply with the Ordinance. City Manager Parker explained that the twenty-five percent (25%) addition would trigger the compliance for the addition and the original structure. Ms. Wilson added that usually the original structure was built before there was landscaping requirements, so the Ordinance would require the entire site be in compliance. Deputy City Manager Wright stated that this brought back some of the issues that Councilmember Langston had mentioned. Deputy City Manager Wright explained that structures such as the First Baptist Church facilities had a limited site and would not be able to expand and still be in compliance. Deputy City Manager Wright added that there would have to be some type of variance for those types of properties. Ms. Wilson stated that if a structure such as First Baptist was going to expand, and the asphalt was going to be torn up, then some of the asphalt could be cleared to put in a green area. Councilmember Langston stated that Ms. Wilson needed to actually inspect that area before using it as an example, because the property was already pretty tight. Deputy City Manager Wright suggested that the variance was possibly the way to handle situations such as that. Councilmember Langston agreed that there just needed to be a mechanism available, if needed.

Mayor Gorden reminded the audience that the Work Sessions were not items that would require action, but were tools used to discuss items and work out details so that whenever it was time to take action the Council would be more informed.

Ellen Temple thanked the Council and Staff, and added that the new Ordinance was a huge improvement to the old Landscape Ordinance. Ms. Temple asked if there were any guidelines, such as “Best Forestry Practices”, set forth for the utility trimmers so that they would have to cut trees at the joint instead of halfway up a limb. Ms. Temple stated that it would be good to spell out guidelines for the utility companies. City Manager Parker explained to Ms. Temple that the utility companies were exempt from any Ordinance set forth by the City of Lufkin. Ms. Temple asked who controlled the utility companies and their practices in regards to trimming. City Manager Parker stated that the utility companies were controlled internally so that they had rights to clear their lines. Mayor Gorden stated that it did appear that some cities had a different approach to working with the utility companies.

Mayor Gorden then asked for questions or comments from the Council or audience. City Manager Parker asked the Council if they would like to further review or have another Work Session regarding the Landscape Ordinance. City Manager Parker asked for Council’s pleasure as far as guiding the Staff. Mayor Gorden stated that he was ready for the Ordinance, if Staff would take the Council’s comments, and added that the Council may still do some tweaking.

9. DISCUSS PROPOSED TREE PRESERVATION ORDINANCE

Mayor Jack Gorden stated that the next item for consideration was the proposed Tree Preservation Ordinance.

Ms. Wilson stated that this agenda item was regarding the Tree Preservation Ordinance. Ms. Wilson added that the Ordinance would be what regulated which trees would be retained and the process for mitigation of the trees that had been lost during development. Ms. Wilson stated that the Ordinance was also for facilitating the site design and to specifically prohibit the indiscriminate clearing of trees. Ms. Wilson stated that the Ordinance defined indiscriminate clearing very specifically, but that generally the definition was any clearing that occurred and didn’t make a distinction between the trees to preserve and the trees that were staying and could be incorporated into the site development and made no consideration of effects on storm water drainage, site design, or the City’s tree goals of preservation of mature trees.

Ms. Wilson stated that the clearing of land also specified that this would include excavating, grading, regarding, land filling, berming, paving, diking, removing trees, clearing, grubbing, and other earth changes.

Ms. Wilson stated that the Ordinance would apply in all zones except “Residential Large Single Family Dwelling”, “Residential Medium Single Family Dwelling”, Residential Small Single Family Dwelling and Agricultural zones. Ms. Wilson added that the Ordinance would apply to apartment, duplexes, and facilities like an assisted living facility. Ms. Wilson stated that the requirements were triggered by the application for a building permit, by a request to harvest timber, or by pre-development clearing of a site for sale or other purposes. Ms. Wilson stated that the Ordinance did not apply to the individual home owner on a single lot, right-of-ways, easements, franchise and utility companies, public and private tree care, and didn’t limit the authority of the Tree Board.

Ms. Wilson stated that the clearing permit was the mechanism for implementation of the Tree Preservation Ordinance and required one (1) of two (2) options. Ms. Wilson explained that five (5) mature trees that were six inches (6”) or larger in caliper could be preserved per acre, on any part of the site, or a layout could be followed. Ms. Wilson added that the layout was very specific, and that seventy-five percent (75%) of the length of the property line had to be saved. Ms. Wilson stated that the rear of the property had to have a forty foot (40’) wide area of landscaping of trees that went from the property line inward, and twenty-five feet (25’) on the sides and that twenty-five feet (25’) went inward toward the center of the lot. Ms. Wilson added that within the seventy-five foot (75’) area there had to be ten (10) mature trees per acre saved.

Ms. Wilson stated that if the previous requirement was of no interest to the property owner, or could not be met, or if there were some reason the owner was not amenable to that option, there was an alternative to the preservation. Ms. Wilson explained that this would require a development plan be submitted by an engineer, giving specific reasons why the site couldn’t comply. Ms. Wilson added that the alternative would require that the development plan be done with proof of the reasons that it had to be done, or the tree removal mitigation fee would have to be paid. Ms. Wilson stated that the tree removal mitigation fee would be used toward replacing trees in City parks, and adjacent to the right-of-way, where appropriate.

Ms. Wilson stated that the penalties or enforcement would be by written notice with remedial action. Ms. Wilson stated that the fines would be one and one half (1½) times the fee the person should have paid prior to development.

Mayor Gorden asked for questions or comments from the Council.

Councilmember Don Langston stated that he had some concern about the exemption for the Agricultural Zoning, because typically that was the way that most people brought land into the City. Mayor Gorden stated that he had the same concern. Councilmember Langston added that the larger tracts that came into the City that could be developed would come in as Agricultural Zoning and would be exempted under the Ordinance, and that he didn’t think that was a good idea. City Manager Parker stated that all of the City’s new annexations came in zoned “Agricultural” and that Councilmember Langston was correct about new developments.

Councilmember Langston stated that the best management practices that the timber industry utilized had protection of streams, and protection or a buffer to the roadway, and under the Tree Preservation Ordinance the neighbors were buffered to the possible clearing, but not necessarily to the public. Councilmember Langston added that this was something that the Council and Staff should also look at.

Councilmember Rufus Duncan stated that he thought that the exemption for Agricultural should be removed.

Deputy City Manager Keith Wright stated that the second sentence in Section two (2) B which stated, “The requirements shall not apply to property owned by other governmental entities” should be removed. Ms. Wilson stated that the correction would state, “The requirements shall apply to property owned by non-exempt government entities”.

Mayor Gorden asked if the City had any authority over TxDOT in relation to the Ordinance. Deputy City Manager Wright stated that the City did not have that authority.

Councilmember Phil Medford asked if a permit would have to be obtained under this proposal. Ms. Wilson stated that a permit would have to be obtained through Inspection Services Department. Councilmember Medford stated that the Agricultural Zoning, which was what most property was annexed under, was the entire focus. Councilmember Medford added that there was some undeveloped land within the old existing city limits, but most of the focus would be the newly annexed areas and how it was developed and the indiscriminate clearing of that property. Mayor Gorden stated that there were more Agricultural exemptions within the City than the Council might realize. Councilmember Medford stated that this was true and if a property owner had five (5) acres then they would classify the property that way. Councilmember Langston stated that previously the newly annexed properties came in zoned Residential and it would have exempted the property. Councilmember Langston added that currently with the Agricultural Zoning classification, it needed to be included and not be allowed to be exempted. Mayor Gorden stated that there would be some cases that the Council had not considered, and that there needed to be a way to apply common sense, perhaps with variances.

Councilmember Rufus Duncan stated that the Texas Commission on Environmental Equality (TCEQ) permits were required when building, but when property was cleared it was the same thing. Ms. Wilson stated that Councilmember Duncan was correct, and that Staff said that there needed to be proof of the TCEQ Storm Water Pollution Prevention Plan (SWPPP) when applying for the building permit, but didn't address it on any type of clearing. Councilmember Duncan stated that his understanding was that whenever building permits were turned in and the size of the property required that permit, it was now part of the building permit function. Councilmember Duncan stated that it should be the same so that whenever a clearing permit was obtained and the TCEQ SWPPP applied, it would be part of the permitting process.

Councilmember Langston stated that just the requirement of the storm water pollution prevention plans was going to go a long way toward minimizing the amount of runoff and the amount of lost soil into the current storm sewer systems. Councilmember Langston added that being in the business he noticed that there was development that went on without that process being followed. Councilmember Langston stated that this was a State Law violation. Councilmember Langston added that the City had come to the realization that there was a lot of clearing going on in the area, and that it did affect the City's runoff, and that he was glad to see that the City was going to be active.

Mayor Gorden stated that he thought the two (2) Ordinances would serve the City well in the future and go a long way.

Ms. Wilson stated that Staff and Council had previously discussed getting the development community, involved after the Council had a chance for discussion. Ms. Wilson asked if the City was at a point where the development community could be involved, before the Ordinances were taken to the Planning and Zoning Commission and brought back to the Council. Councilmember Langston stated that the City had always tried to include the development community about what was going on, and that their comments would be helpful. Mayor Gorden agreed with Councilmember Langston, and told Ms. Wilson to involve the development community. Mayor Gorden asked Ms. Wilson to make sure to get the development community's comments for the record.

Mayor Gorden then asked for comments from the audience.

Ellen Temple stated that she loved trees. Ms. Temple stated that the indiscriminate clearing permit requirement was huge, and thanked the Staff and Council. Ms. Temple stated that the only thing that she saw was that the Ordinance exempted residential sites and manufacturing sites, and that she would like the Council to consider including those sites because someone developing a residential area could clear everything. Ms. Temple added that everyone had seen that happen. Ms. Temple stated that she felt the same about the manufacturing sites. Ms. Temple added that she would like them to be included in the indiscriminate clearing permit process. Ms. Temple stated that she noticed on the permit it required landscaping on the back and sides, but that she wanted everyone to think about the corridors. Ms. Temple

stated that on the corridors coming into Lufkin a person knew that you were in East Texas. Ms. Temple added that if the City didn't protect those forested corridors, they wouldn't be there. Ms. Temple stated that she thought a buffer along the highways or the front of those lots would be a wonderful thing. Ms. Temple added that currently there was some of that growth, if it could be preserved. Ms. Temple stated that if some landscaping was done on the front then Lufkin would have something really special and would protect the entrances into town. Ms. Temple stated that she didn't know how to tweak the Ordinance to capture that vision, but that she wanted the Staff and Council to please consider it.

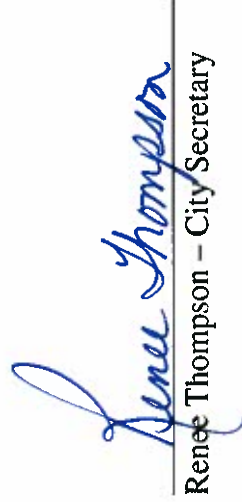
Mayor Gorden stated that when the U. S. Forest Service did some cutting they left trees down the highway as a buffer. Mayor Gorden asked if there had been some special considerations for construction or special zoning on US Highway 59 South to help the way the entrance coming into Lufkin looked. Deputy City Manager Wright stated that there was some landscaping that was going to be done by TxDOT. Mayor Gorden stated that he thought the City had made some special considerations on US Highway 59 South coming into Lufkin.

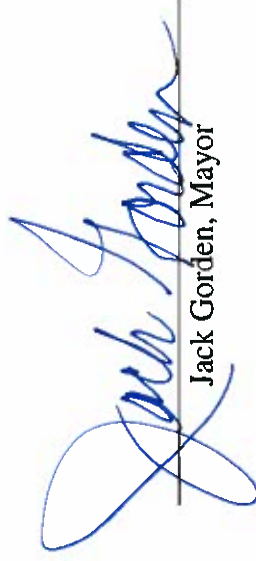
Mayor Gorden stated that the Staff and Council had made a lot of headway and thanked everyone for attending.

10. CALENDAR NOTATIONS FROM MAYOR, COUNCIL MEMBERS, AND CITY MANAGER

Mayor Gorden stated that the next item for consideration was the calendar notations from the Mayor, Council Members, and City Manager. City Manager Parker stated that Thursday, May 7, 2009, was the National Day of Prayer at 12:00 noon in the City Hall Atrium. City Manager Parker added that Friday, May 8, 2009, was the Chamber First Friday Luncheon, and that Zoo Director Gordon Henley was the keynote speaker. City Manager Parker stated that Saturday, May 9, 2009, was the City Elections, and that the Councilmember for Ward No. 2 position was up for election, and encouraged everyone to vote in the election. Mayor Gorden stated that the Expo Anniversary Party would be Wednesday, May 13, 2009, and that the City had tables for the event. City Manager Parker stated that the remainder of the items on the calendar was the standard meetings of the City.

11. There being no further business for consideration, the meeting adjourned at 6:52 p.m.


Renee Thompson – City Secretary


Jack Gorden, Mayor