

MINUTES
REGULAR CITY COUNCIL MEETING
CITY OF MURPHY
206 North Murphy Road
Murphy, Texas

November 1, 2011
6:00 P.M.

CALL TO ORDER

INVOCATION & PLEDGE OF ALLEGIANCE

ROLL CALL & CERTIFICATION OF A QUORUM

PRESENTATIONS

- **Presentation and review of Murphy Maize Days and 5K/Fun Run**
Stacy Buckley and Kristen Roberts provided an overview of the events.

PUBLIC COMMENTS

No public comments were submitted.

CONSENT AGENDA

All consent agenda items are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember so requests, in which event the item will be removed from the Consent Agenda and voted on separately.

- A. Approval of the Minutes from the October 18, 2011 Regular City Council Meeting.**
- B. Consider and/or act upon approval of a resolution approving the 2011 tax roll with a total levy of \$8,328,925.99 as certified by Kenneth L. Maun, Tax Assessor Collector of Collin County.**
- C. Consider and / or act upon approval of a Memorandum of Agreement (MOA) with the State of Texas Department of State Health Services (DSHS) for Mutual Aid of Emergency Medical Services for Public Assistance to provide mutual aid in a pending or actual disaster.**

Council Action

Councilmember Halbert requested to remove Item D from the Consent Agenda to be considered individually. Ms. Halbert moved to approve the remaining Consent Items, A-C as presented. Councilmember Daugherty seconded the motion. A vote was taken and passed, 7-0.

- D. Consider and/or act upon approval of a cross-connection backflow ordinance.**

Council Action

After some clarification, Councilmember Halbert moved to approve a cross-connection backflow ordinance amending the last sentence of Section 82-410 (b) to *“This annual registration fee includes the City’s verification of the Tester’s equipment and tools.”* Councilmember Daugherty seconded the motion. A vote was taken and passed, 7-0.

INDIVIDUAL CONSIDERATION

- 1. Consider and/or act upon authorizing the City Manager to enter into an Interlocal Agreement with the City of Richardson for Phase 1 of a feasibility study for a Multi Agency Recreation Center.**

Council Discussion

Councilmember Halbert recused herself from this discussion and vote. Several Councilmembers indicated that they are not sure if the City needs to partner and fund this type of facility. There was a consensus to go forward with Phase 1 of the study to determine the need and how it meets the City's Master Plan.

Council Action

Councilmember Brandon moved to authorize the City Manager to enter into an Interlocal Agreement with the City of Richardson for Phase 1 of a feasibility study for a Multi Agency Recreation Center not to exceed \$15,000. Councilmember Daugherty seconded the motion. A vote was taken and passed 6-0 with Councilmember Halbert absent for this discussion and motion.

- 2. Consider and/or act upon approval of 9-1-1 address changes.**

Council Action

After some clarification, Councilmember Daugherty moved to approve the 9-1-1 address changes with the Albertson's shopping center designated as the 100 block. Councilmember Halbert seconded the motion and moved to amend the motion to include removing 210 E. FM 544. Councilmember Daugherty seconded the amendment. A vote was taken on the amendment and passed, 7-0. A vote was taken on the main amended motion and passed, 7-0.

- 3. Consider and/or act upon changes to the Governance Policy and Code of Ethics, including personnel matters and clarifying what constitutes an investigation, an inquiry, the scope of access by City Council Members to records and information, and setting forth procedures to deal with a violation of such policies.**

Council Discussion

Councilmember Bradley initiated the discussion regarding confidential information and a councilmember's access to it. He stated that rules needed to be in place to govern this. There was also discussion regarding what is considered an investigation and the role of a councilmember. Councilmember Bradley described a specific incident of a councilmember requesting previous employment information on a mid-level staff person who does not report to Council and the question was asked as to whether this would be considered an investigation.

Councilmember Brandon stated that he would like to see this policy jibe with the many Attorney General Opinions that are related to this subject. Councilmember Brandon also stated that he would love to define what constitutes an investigation because it seems to be a very grey area.

Councilmember Grant stated that he would hesitate to rely solely on Attorney General Opinions because they are very fact specific and specific to certain areas of law and cannot be used as precedence in a court of law. Councilmember Grant stated he would like to make it clear that he did not request the information and said that his personal opinion was that any councilmember can make a request for information to any city in his or her personal capacity as long as that information isn't used in an official capacity. He explained further that if an individual used their official capacity to gain information and it is used in their

official capacity, or; if information was obtained in a councilmember's personal capacity and then later used in their official capacity, then that would rise to the level of an investigation.

Councilmember Halbert read a statement for the record which is attached as *Exhibit A* to the Minutes.

Councilmember Grant requested to see the open records request. Councilmember Brandon said that the City could submit an open records request requesting a copy of the open records request that he initiated. Councilmember Halbert said that it would be embarrassing to the City to request this information. Councilmember Brandon stated that he agreed with Councilmember Grant's assessment that an individual can request information as long as it is not in their official capacity. He went on to say that if an investigation is warranted to see if any city resources were used, he is all for it. Councilmember Halbert stated that you do not get to be a regular citizen 23 hours of the day and a councilmember 1 hour a day. She explained that councilmembers are perceived as councilmembers 24/7. Ms. Halbert stated that she does not want to request a copy of the request but would be fine with initiating an investigation to see if this is an investigation of an employee of the city.

Mayor Baldwin asked what the nature of the inquiry was. Councilmember Brandon stated that he had requested the information but has not looked at it. He explained that he requested the information for a citizen who is considering running for City Council and wanted more information on an employee's background. He stated that this request stemmed from the citizen's dissatisfaction during the budget discussions.

Mayor Baldwin stated to Councilmember Brandon that he hoped that he recognized the difficulties that this situation has presented and the perception to employees knowing that a councilmember is requesting personal information and not knowing what will or won't be done with the information. Mayor Baldwin stated that he hoped he would seriously consider the potential implications before doing something like that again. Councilmember Brandon responded that the point was taken.

Council Action

Councilmember Bradley moved to direct the City Attorney to provide language in the Governance Policy related to Council access of confidential information. Councilmember Daugherty seconded the motion. A vote was taken and passed, 7-0.

Councilmember Halbert moved to direct the City Attorney to draft language for the Governance Policy to include the ability for Council to censure a Councilmember for violations of the Governance Policy, the Ethics Policy, or the Charter. Ms. Halbert clarified that she would like language for non-ethical violations to be included in the Governance Policy. Councilmember Grant seconded the motion. A discussion regarding defining an investigation followed the motion. City Manager Fisher pointed out that the recently amended Charter did clarify what constitutes an investigation. Councilmember Halbert requested the City Attorney to clarify what is *not* considered an investigation and what actions would be considered as initiating an investigation. A vote was taken and passed, 7-0.

CITY MANAGER/STAFF REPORTS

City Manager Fisher reported on the following:

- **Early Voting continues through November 4**
- **Election Day – November 8**
- **Board & Commission applications being accepted**
- **Board & Commission interviews – Nov 14-18**

- Thanksgiving Holiday – Nov 24-25
- Employee Holiday Dinner – Dec 12
- Stage 3 Watering Restrictions –Effective Today
- McCreary Road construction will be delayed until North Murphy Road utility relocations are completed

EXECUTIVE SESSION

The City Council will hold a closed Executive Session pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, in accordance with the authority contained in:

- §551.071 Consultation with City Attorney regarding pending litigation or contemplated litigation or settlement offer involving *Michael Cantrell v. City of Murphy, et al.*, Cause No. 6:09-cv-225.
- §551.071 Consultation with City Attorney regarding pending litigation or contemplated litigation or settlement offer involving *Johnny Boles v. City of Murphy, et al.*, Civil Action No. 4:11cv682
- §551.072 Deliberation regarding real property; to deliberate the purchase, exchange, lease, or value of real property.
- §551.074 Personnel Matters – to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Municipal Judge.

Council Action

Council convened into Executive Session at 7:37 p.m.

RECONVENE INTO REGULAR SESSION

The City Council will reconvene into Regular Session, pursuant to the provisions of Chapter 551, Subchapter D, Texas Government Code, to take any action necessary regarding:

- §551.071 Consultation with City Attorney regarding pending litigation or contemplated litigation or settlement offer involving *Michael Cantrell v. City of Murphy, et al.*, Cause No. 6:09-cv-225.
- §551.071 Consultation with City Attorney regarding pending litigation or contemplated litigation or settlement offer involving *Johnny Boles v. City of Murphy, et al.*, Civil Action No. 4:11cv682
- §551.072 Deliberation regarding real property; to deliberate the purchase, exchange, lease, or value of real property.
- §551.074 Personnel Matters – to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Municipal Judge.

Council Action

Council reconvened into Regular Session at 8:28 p.m. Councilmember Halbert moved to authorize City Manager James Fisher and Mayor Pro Tem John Daugherty to attend Cantrell litigation on behalf of the City. Councilmember Bradley seconded the motion. A vote was taken and passed, 7-0.

ADJOURNMENT

With no further business, the meeting was adjourned at 8:28 p.m.

APPROVED BY:

Bret M. Baldwin, Mayor

ATTEST:

Aimee Nemer, City Secretary

Exhibit A
November 1, 2011 City Council Minutes
Statement from Deputy Mayor Pro Tem Colleen Halbert

Councilmembers do not represent themselves, nor do they represent only those who voted for them, or those who “got them elected.” They represent the entire population of the city of Murphy – all 18,000 or so.

The role of a Councilmember is to serve not only the citizens, but also to serve The City of Murphy in ensuring that the city’s interests are protected. This includes not compromising the integrity of our community, or engaging in personal quests for information that give the appearance of a Council investigation, or attacking individual employees.

As Councilmembers our role is similar to that of a company’s Board of Directors. It is highly unusual for a member of a Board of Directors to begin a solo investigation upon an employee, especially one that is not a direct report. Even our Charter prohibits this sort of investigation and also this sort of delving into day to day operations.

Upon election a Councilmember takes on a new role different from Joe Citizen. While it is acceptable and appropriate for citizens to make certain requests for information, it is ill-advised for a Councilmember to do open records requests from other cities. This can be damaging to the City of Murphy’s reputation, ability to work with other cities, and recruit candidates if it appears that there is a Councilmember acting on behalf of the City to do investigations, especially when personnel matters are involved.

We have this governance policy in place to assist in delineating how communication should flow from staff to Council. If any member of Council has concerns about how that information is flowing than they should bring that to the attention of the full Council. If a majority of Council believes that the concerns are warranted, then the Council should deal directly with the City Manager, as he or she is the direct report tasked with the day to day operations of the city. If the Council then has concerns about the abilities of the City Manager, then they deal with the City Manager through the personnel procedures. At no time is it appropriate for Council, individually or collectively, to involve themselves in personnel matters beyond their direct reports as lined out by the Charter.

If the Council determines that there is no cause for concern about the flow of information, or the functionality of the city, then it is inappropriate for individual Councilmembers to continue by questioning individual staff members, other cities or agencies and working to undermine the work of the City Council or the City Staff.

It seems that if the Charter prohibits solo investigations and Council involvement in the day to day operations, then there should be repercussions for those Councilmembers who violate the Charter before it reaches the level of involving the entire community in divisive and costly recall elections.