

**City Council Minutes**  
**Tuesday, September 24, 2019**

On the 24<sup>th</sup> day of September 2019, at 6:30 p.m., the City Council of the City of Hurst, Texas, convened in Regular Meeting at City Hall, 1505 Precinct Line Road, Hurst, Texas, with the following members present:

Henry Wilson	)	Mayor
Larry Kitchens	)	Mayor Pro Tem
David Booe	)	Councilmembers
Bill McLendon	)	
Jon McKenzie	)	
Cathy Thompson	)	
Cindy Shepard	)	
Clay Caruthers	)	City Manager
John Boyle	)	City Attorney
Matthew Boyle	)	Assistant City Attorney
Rita Frick	)	City Secretary
Clayton Fulton	)	Assistant City Manager
Malaika Marion Farmer	)	Assistant City Manager
Robert Wallace	)	Building Official

With the following Councilmembers absent: none, constituting a quorum; at which time, the following business was transacted:

The meeting was called to order at 6:30 p.m.

Councilmember Thompson gave the Invocation.

The Pledge of Allegiance was given. The Texas Pledge was given.

**PRESENTATION(S) AND PROCLAMATION(S)**

1. Presentation by Hurst-Eules-Bedford Independent School District representative on the progress of the HEB Reads! program.

Mayor Wilson recognized Library Director Jesse Loucks who introduced H-E-B ISD Librarian Kiera Elledge who provided information regarding the 2019 H-E-B Reads collaborative initiative. Ms. Elledge reviewed reading minute statistics from each city noting the huge success in Hurst. She outlined the elements and benefits of the program, reviewed accomplishments, and plans for the future. Councilmembers noted the importance of a strong reading foundation and the positive impact of the program.

**CONSENT AGENDA**

2. Considered approval of the minutes for the September 10, 2019 City Council meetings.

Councilmember Kitchens moved to approve the consent agenda. Motion seconded by Councilmember Booe. Motion prevailed by the following vote:

Ayes: Councilmembers Booe, Kitchens, McKenzie, Thompson, McLendon and Shepard  
No: None

**PUBLIC HEARINGS AND RELATED ITEM(S)**

3. Conducted a Public Hearing regarding a proposed order for the repair, removal or demolition of property located at 450 E. Hurst Blvd, Hurst, Texas; Lot A3, Block 14, of the Holder Estates subdivision (Dakota Place Apartments).

Mayor Wilson announced a public hearing regarding a proposed order for the repair, removal or demolition of property located at 450 E. Hurst Blvd, Hurst, Texas; Lot A3, Block 14, of the Holder Estates subdivision (Dakota Place Apartments) and recognized Building Official Robert Wallace who reviewed City of Hurst substandard code requirements and issues regarding code compliance over the years. He reviewed inspection findings by third party contractors Childress Engineering regarding roof and structural assessment; Farmer Environmental Group regarding odors, HVAC conditions, water damage to various units, stains and substantial debris in the air and mold spores in specific units; and Bureau Veritas inspection noting violations in all units, exposed wiring, improper electrical junctions, infestation including mold, roaches, gnats, and rodents and holes in balcony floors. Pictures were shown of various code violations. Mr. Wallace reviewed current compliance status stating no building permit was issued for electrical or roof work. He reviewed meetings with the owner, staff and legal counsel where the owner admitted to non-permitted electrical and roof work being completed. And, that the owner provided an "engineering report" in support of roof work that only addresses the owner's photographs of work done on five units. He stated the owner was instructed to apply for a retroactive Building Permit, provide complete scope of work, obtain licensed electrician's report as to non-permitted electrical work, and a full engineer's report on the non-permitted roof work. He stated the owner owes substantial re-inspection fees to the City and none of the demands were met. Mr. Wallace stated notice was sent to the owner declaring the apartments substandard as described in Chapter 5, Article VII, Section 5-295 of the Hurst Code of Ordinances; a list of deficiencies was attached; an order was issued to repair and rehabilitate all of the required improvements on the complex; and the notice granted 15 days to apply for permits to repair and rehabilitate the building and 90 days to complete the work once the permits were issued. Also noted was during the specified period and to date, no permit applications for the work have been submitted to the City. He stated the recommendation is to consider an order to repair, remove, or demolish the buildings at 450 E. Hurst Blvd.

Assistant City Attorney Matthew Boyle provided a notebook to Council and noted he has

also provided a copy to the owner Mr. Mercer. He requested Mr. Wallace and any other witnesses going to speak tonight, during the public hearing, to be sworn in. City Secretary Rita Frick swore in all individuals providing testimony. Mr. Boyle also requested a copy of a notebook that has been provided to Mr. Mercer and each member of the Council be accepted as evidence. Mayor Wilson accepted the evidence. Mr. Boyle reviewed the information provided in the notebook, including the time line, which started in June 2014, and noted that since that time there have been and remain serious structural deficiencies with the roofs. He noted numerous complaints about the condition and status of roofs. Also noted were the various third party reports, notices to the property owner and the proposed draft order. He also stated the notebook includes inspections and various complaints. Mr. Boyle noted in July 2016, the property owner was ordered by staff to replace the roofs, and since that date, none of the roofs have been repaired and no permits applied for or obtained. Mr. Boyle reviewed the building permit process and explained an application for a permit describes the work to be done, which is then inspected for code compliance. He stated the permitting process is designed to protect the health, safety, and welfare of the residents of the complex. Mr. Boyle reviewed his meeting with Mr. Mercer and his attorney. He reviewed a draft order asking the Council to order the repair within 30 days. If more than 30 days is needed, then the property owner bears responsibility to provide a scope of work and timeline for repair.

Mayor Wilson recognized Jeff Duncan, 2841 Prairie View Drive, Northlake, Texas, 76226 who stated he was not employed by Mr. Mercer, but a contractor that has worked for Mr. Mercer. He stated Mr. Mercer is of good character, and these issues are due to the inefficiencies of the building inspection department. Mr. Duncan explained he has been trying to obtain a permit for years and the City's timeline is incorrect, and provided his opinion of the roof damage and necessary repairs. He indicated he has been helping Mr. Mercer make repairs and the roof issue is his responsibility. Mr. Duncan stated a storm damaged the roof and reviewed the different roof materials and components and work that was done. He stated permits were not pulled in that it was not a permissible repair and the roof was restored. He further stated the roof repair included all City requirements. He continued his explanation of the roof damage and repairs and again stated he has attempted to get permits.

Mayor Wilson recognized Charles Mercer, 6101 Terrace Oaks Lane, Fort Worth, Texas, 76112, who provided a handout of information to the Council. Mr. Mercer stated he is the owner of Dakota Apartments, which he bought about five years ago. He stated when he bought the property the City wanted an upgrade to the electrical system and the previous owners completed half of an electrical upgrade, and he completed the upgrade. He stated Building Inspector Richard Clark recommended the contractor who did the repairs. He stated he paid the contractor \$20,000 and later looked at inspections where the work requested was not noted in the inspection. He stated the contractor then wanted to do the second half of the work. That they bid the work and found another contractor for \$4,000. He expressed concern that when he hired another contractor Richard Clark started citing him for various violations. Mr. Mercer expressed concern work was finalized, but not inspected, work was without a permit. He explained timing and weather conditions regarding roof damage and that he had Jeff repair the roof. Mr. Mercer stated Richard Clark decided he needed a whole new roof structure. He stated he

requested to have a structural engineer and Mr. Clark said no. He stated Mr. Clark is not a structural engineer, so he appealed his decision, which he lost, and now he has to replace all four buildings. Mr. Mercer stated he has tried to pull permits, but no response. He expressed his opinion that inspectors said there were failures in the roof and leaks, but there were not, just false reports. Mr. Mercer continued to express his belief of false reports, work demanded to be completed, which was not necessary and did not need permits, and other code compliance items, which he completed, but staff kept extending what work needed to be done. Mr. Mercer expressed his belief, in regards to cleanliness, that it was the City's responsibility to tell the tenants they are not up to standard. Also stated was his belief the reports were written vaguely and no communication from the City so there would be re-inspection fees. He expressed his opinion the City Council should instruct their staff to follow the rules passed by the Council.

Mayor Wilson recognized City Attorney Matthew Boyle who reviewed the roof condition, how the roof structure is comprised and what it would take to repair the roof with Building Official Robby Wallace. Mr. Wallace described the type of roof and material needed for this building, and needed repairs per the code. He stated the Building Official required the expertise of a design engineer to ensure the roof would be code compliant. He stated the Childress Report was clear that the roof repairs should be designed and certified complete by a licensed engineer. Mr. Boyle requested Chief Palla to testify and City Secretary Rita Frick swore in Chief Palla. In response to questions from Mr. Boyle, Chief Palla stated the fire department's standard operating procedure for the Dakota Apartments is that they are not to get on the roof under any circumstances. He stated staff was notified the roof was substandard and there is no tactical reason to be on the roof. Mr. Mercer questioned Building Official Robby Wallace regarding the water damage stating there was far more water when the hurricane came through four years ago than is now trapped. Mr. Wallace described how these types of roofs are typically constructed with weatherproofing material. Mr. Jeff Duncan also provided information related to roof composition. City Attorney Boyle noted binder of information he provided to the Council and Mr. Mercer including a timeline, presentation, latest code compliance inspection report, Farmer Environmental Report (excluding appendices), Childress Engineering Roof and Structural Assessment, Notices, Draft Order, Inspections and Complaints regarding roof leaks and miscellaneous complaints. He stated the City of Hurst is trying to take the correct steps for the seventy-seven families residing in the apartments. Mr. Boyle reviewed the issues existing in 2016 that remain today and noted illegal electrical work without a permit or performed by an unlicensed contractor. He requested the Council consider approval of the proposed order.

Mr. Mercer again reiterated earlier comments expressing his belief the roof is fixed and again questioned the inspections and requirements.

There being no one else to speak, Mayor Wilson closed the public hearing.

4. Considered ordering the repair, removal or demolition of property located at 450 E. Hurst Blvd, Hurst, Texas; Lot A3, Block 14, of the Holder Estates subdivision (Dakota Place Apartments).

Councilmember Thompson moved to order the structures on the property to be repaired, removed, or demolished no later than October 24, 2019 and adopt the Order as presented by staff. Motion seconded by Councilmember Shepard. Motion prevailed by the following vote:

Ayes: Councilmembers Booe, Kitchens, McKenzie, Thompson, McLendon and Shepard  
No: None

**BUDGET RELATED ITEM(S)**

5. Considered Ordinance 2450(a), second reading, adopting budget for fiscal year beginning October 1, 2019 and ending September 30, 2020.

City Manager Clay Caruthers advised this is the second reading of the proposed budget for fiscal year beginning October 1, 2019 and ending September 30, 2020. He stated they have complied with all state requirements for the adoption of the budget.

Councilmember Kitchens moved to approve Ordinance 2450(a). Motion seconded by Councilmember Booe. Motion prevailed by the following vote:

Ayes: Councilmembers Booe, Kitchens, McKenzie, Thompson, McLendon and Shepard  
No: None

6. Considered Ordinance 2450(b), second reading, ratifying the Property Tax Revenue Increase reflected in the Fiscal Year 2019-2020 Budget.

City Manager Clay Caruthers advised this ordinance is simply ratifying the previous ordinance, which is required anytime you exceed the effective tax rate. He also noted that next year the vernacular will change regarding adoption of the tax rate. Mr. Caruthers stated all required hearings were held and reminded the audience of the voter approved bonds for the new Animal Shelter and Adoption facility is supported by the increased tax rate, and otherwise, the rate supports the maintenance and operation rate increase of 1.24%. Mayor Wilson also noted Tarrant County College approved the land purchase contract for the Animal Shelter and Adoption facility.

Councilmember McKenzie moved to approve the consent agenda. Motion seconded by Councilmember Thompson. Motion prevailed by the following vote:

Ayes: Councilmembers Booe, Kitchens, McKenzie, Thompson, McLendon and Shepard  
No: None

7. Considered Ordinance 2451, second reading, setting the tax rate for the 2019 tax year.

City Manager Clay Caruthers stated comments made for agenda item 6 were the same discussion for this item.

Councilmember Booe moved to approve Ordinance 2451, second reading, that the property tax rate be increased by the adoption of a tax rate of \$0.597299, which is effectively a 9.6% increase in the tax rate. Motion seconded by Councilmember McKenzie. Motion prevailed by the following vote:

Ayes: Councilmembers Booe, Kitchens, McKenzie, Thompson, McLendon and Shepard  
No: None

8. Considered Ordinance 2452, second reading, approving all water and wastewater rates for Fiscal Year 2019-2020.

Assistant City Manager Clayton Fulton noted the discussion during the budget process for the proposed water and wastewater rates and that revenue comes from the rate payers, with the major obligations the wholesale costs. He stated, since 2013, the wholesale costs have continued to increase up to 40% of the total budget. He reviewed the City's rate smoothing process, which prevents huge fluctuations for the citizens. Mr. Fulton stated the impact to the average customer is about \$2.20 a month.

Councilmember McLendon moved to approve Ordinance 2452, including the proposed Water and Wastewater rates effective October 1, 2019, to be included in all City utility bills processed on, or after, November 1, 2019. Motion seconded by Councilmember Booe. Motion prevailed by the following vote:

Ayes: Councilmembers Booe, Kitchens, McKenzie, Thompson, McLendon and Shepard  
No: None

#### **PUBLIC HEARING(S) AND RELATED ITEM(S)**

9. Conducted a public hearing to consider amending City of Hurst Code of Ordinances Section 27/24 "Nonconforming Uses" by adding Section 27-24(n) regarding nonconforming uses created by the right-of-way acquisition by governmental agency.

Mayor Wilson announced the public hearing to consider amending City of Hurst Code of Ordinances Section 27-24 "Nonconforming Uses" by adding Section 27-24(n) regarding nonconforming uses created by the right-of-way acquisition by governmental agency and recognized City Manager Clay Caruthers who stated staff is working diligently to complete construction on Pipeline Road, and that there have been a couple of right-of-way acquisitions to widen the road, which has removed some parking spaces away from the businesses. He stated the proposed Ordinance ensures property owners that any zoning violation, due to the right-of-way acquisition, is treated as a nonconforming use, protecting the businesses.

There being no one to speak, Mayor Wilson closed the public hearing.

10. Considered Ordinance 2454 amending City of Hurst Code of Ordinances Section 27/24

“Nonconforming Uses” by adding Section 27-24(n) regarding nonconforming uses created by the right-of-way acquisition by governmental agency.

Councilmember Thompson moved to approve Ordinance 2454 amending the City of Hurst Code of Ordinances Section 27-24 “Non-Conforming Uses” by adding Section 27-24(n) regarding Non-Conforming Uses created by right-of-way acquisition by a governmental agency. Motion seconded by Councilmember Booe. Motion prevailed by the following vote:

Ayes: Councilmembers Booe, Kitchens, McKenzie, Thompson, McLendon and Shepard  
No: None

### **RESOLUTION(S)**

11. Approval of Resolution 1747 nominating candidates to the Tarrant Appraisal District (TAD) Board of Directors.

No action was taken on this item.

### **OTHER BUSINESS**

12. Council reviewed the following board, commission and committee meeting minutes:
  - Hurst Senior Citizens Advisory Board
  - Parks and Recreation Board
  - Library Board
13. Review of upcoming calendar items - City Manager Caruthers reviewed calendar items noted in the packet. Also noted were plans for a helicopter at the Fire Department Open House, the Fall Festival, October 5, 2019 will be in the parking lot in front of Nordstrom’s at Northeast Mall and plans to have hayrides, pumpkins and children’s activities.
14. City Council Reports - Items of Community Interest

**PUBLIC INVITED TO BE HEARD – A REQUEST TO APPEAR CARD MUST BE COMPLETED AND RETURNED TO THE CITY SECRETARY TO BE RECOGNIZED.** No one spoke.

**EXECUTIVE SESSION** in Compliance With the Provisions of the Texas Open Meetings Law, Authorized by Government Code, Section 551.087 deliberation and conducting of economic development negotiations regarding financial information relative to prospective business expansion in the city and Section 551.071, Consultation with City Attorney to seek advice regarding Pending or Contemplated Litigation or Settlement Offers (Dakota Place Apartments) to reconvene in Open Session at the conclusion of the Executive Session.

Mayor Wilson did not recess to Executive Session.

15. Take any and all action ensuing from Executive Session. No action was taken

**ADJOURNMENT**

The meeting adjourned at 8:52 p.m.

**APPROVED** this the 22<sup>nd</sup> day of October 2019.

**ATTEST:**

  
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Rita Frick, City Secretary

**APPROVED:**

  
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Henry Wilson, Mayor