

DALLAS CITY COUNCIL
Monday, March 5, 2012
Council Chambers

The Dallas City Council met in regular session on Monday, March 5, 2012, at 7:00 p.m. in the Civic Center with Mayor Brian Dalton presiding.

Mayor Dalton stated Councilor Mark McDonald had submitted his resignation from the Council earlier in the day, effective immediately.

ROLL CALL AND PLEDGE OF ALLEGIANCE

Council members present: Council President Wes Scroggin, Councilor Jim Fairchild, Councilor Beth Jones, Councilor Jackie Lawson, Councilor Kevin Marshall, Councilor Murray Stewart, Councilor LaVonne Wilson, and Councilor Ken Woods, Jr.

Also present were: City Manager Jerry Wyatt, City Attorney Lane Shetterly, Community Development/Operations Director Jason Locke, Chief of Police John Teague, Engineering and Environmental Services Director Fred Braun, Fire Chief Bill Hahn, Administrative Services Director Robert Spivey, and Recording Secretary Emily Gagner.

Mayor Brian Dalton led the Pledge of Allegiance.

Mayor Dalton welcomed and introduced the DHS wrestling team. He commended coach Tony Oliff who received "Coach of the Year" honors.

PUBLIC HEARING

Walmart Appeal Hearing (SPR 11-01)

Mayor Dalton this quasi-judicial proceeding would be structured as a more formal process. He opened the public hearing at 7:07 p.m.

He explained that only those who had participated before the Planning Commission by submitted oral or written testimony could submit arguments during the public hearing. He clarified that the appeal was limited to the record and no new evidence would be permitted. He added the arguments were required to be directed to the three issues that were listed in the notice of appeal.

Mayor Dalton asked if the Councilors had any ex parte communications to declare. There were none.

Mayor Dalton reviewed the procedure for the public hearing. He explained after the staff report was given, the appellant and the applicant would each get 15 minutes to speak. Others with standing would be allowed to speak at that time for no more than five minutes each. He added the applicant would then be given another 5 minutes to provide rebuttal, at which time the hearing would be closed. He advised the audience they should remain orderly and courteous and refrain from applause.

Mr. Locke presented the staff report. He explained the Council had received the complete record on the matter earlier and noted there were two additional items that had been received prior to the hearing from citizens that had standing in the matter. He reviewed the background of the application, which proposed expanding and remodeling the existing Walmart store, comprised of an 80,583 square foot building with a 6,190 square foot garden center, to an approximately 98,900 square foot building which retained the 6,190 square foot garden center. He noted the parking configuration would change to make it more functional and include the addition of landscape islands to bring it closer into conformance with the current Development Code.

Mr. Locke stated the Planning Commission approved the application on January 10, 2012, and the Final Order of Approval was signed on January 19, 2012. He indicated all parties were given notice of the decision in accordance with the Development Code and a timely appeal that revolved around three issues was filed and was before the Council.

Mr. Locke explained the first issue of appeal, which asserted that the existing stormwater system was not sufficient to serve the existing store and that the outdoor garden area contained fertilizers, compost, etc., that could leak into the ground and enter the stormwater system. Mr. Locke reviewed the staff analysis, noting the appellants cited no specific facts or supporting data in the record for their claims. He explained the storm drain system that was installed in 1995 was 30% larger than required at that time and the discharge rate into the city wouldn't be increased. He noted there were no documented instances of malfunction and since the expansion would result in a reduction of total runoff, that issue didn't have merit per the staff analysis. He indicated that

regarding the outdoor garden area, there was evidence in the record that the chemicals were stored inside the store and there was no record of non-compliance related to storage of fertilizers.

Mr. Locke stated the second appeal issue asserted that the existing store was a non-conforming use and the City's zoning ordinance didn't permit non-conforming uses to be expanded. It was further asserted that Walmart didn't provide evidence to support their claim that it would bring the store more into conformance with the zoning ordinance. The appellants also asserted that the driveways were nonconforming and Walmart didn't allege the driveway would be brought closer to or into conformance. Mr. Locke indicated that if the issue was meant to address nonconforming development as opposed to nonconforming use, then there was ample evidence in the record that showed the nonconforming development elements were being brought into or closer to compliance with the standards of the Dallas Development Code. Mr. Locke noted when a property was developed, over time the standards and requirements changed, adding it didn't mean that as the requirements changed, a property was required to come into compliance with those rules. He indicated the rules had gone through three or four updates, which placed a lot of development as non-conforming developments. He stated the Development Code said nonconforming development couldn't be enlarged or altered in such a way that increased the non-conformity, but may be enlarged or altered in such a way that satisfied the code or decreased the non-conformity. He advised that the elements of nonconforming development in the application included parking, landscaping, and façade issues, all of which would be brought closer to or in conformance with the Development Code, noting that was demonstrated in the record. He indicated the appeal didn't specify how or which driveway was non-conforming and there was no proposal to alter those as part of the application.

Mr. Locke reviewed the third appeal issue, which asserted a traffic study was required on land use applications which when the average daily trips increased by 300, noting the expansion would result in more than 600 daily trips. It further asserted that the Oregon Department of Transportation (ODOT) hadn't demonstrated why a traffic study was not required. Mr. Locke indicated the staff response was that there was ample information from Scott Nelson, ODOT Region 2 Development Review Coordinator that in fact the trip generation estimates didn't reach ODOT thresholds for a traffic study. He stated one key was that ODOT was the road authority for East Ellendale and Kings Valley Highway, where three of Walmart's four exits were located. He explained ODOT didn't require a traffic study, so the Planning Commission made the finding that because ODOT didn't require a study, the issue had been satisfied. Mr. Locke indicated another appeal issue related to collecting actual traffic counts and data from other stores. He stated this was an assertion of an argument presented in the record, but with no basis in approval criteria. He commented that the Development Code stated traffic impacts were to be estimated based on the Institute of Transportation Engineers manual, which was what applicant did use.

Mr. Locke stated that based on their analysis of the arguments, staff recommended the Council deny the appeal and direct staff to draft a final order upholding the Planning Commission Final Order in the matter.

Mayor Dalton asked for the appellants' presentation.

Sean Malone, attorney for the appellants, 259 E 5th Ave, Suite 200-G, Eugene, Oregon 97401, indicated he had provided 15 copies of their written testimony prior to the meeting.

He advised that the letter of appeal raised the issues but was not meant to be a full-fledged argument, which was submitted in written testimony and supplemented at the public hearing.

Mr. Malone stated the Dallas Development Code was very clear. Section 4.1.090 set forth the rationale for why a Traffic Impact Analysis (TIA) was required, including protecting the transportation facilities in Dallas and mitigating any potential adverse impacts. He quoted sections of Dallas Development Code 4.1.090, noting subsection (A) set forth when a study was required. He indicated this granted the city and road authority a permissive authority to require a TIA at any time, but did not permit the road authority or local government to not require one when it was. He then read the conditions under which a TIA was required, including when a land use application involved an increase in site traffic volume generation by 300 average daily trips (ADT) or more. He stated there was no disagreement on how many ADT would occur as a result of the expansion; more than double the requirement. He explained subsection (B) set forth the preparation requirements of the TIA. Assumes TIA will be prepared. Subseciton b provides no authority for ODOT to absolve local govt of its own requirements. No evidence as to whether ODOT understood local code required TIA. Report never stated trigger of avg daily trips was required. Email to Mr. Locke never indicated that Scott Nelson understood TIA was already required by local code. No evidence in record that ODOT understands local govt code requires TIA. Increasing amt of dialy trips by over 100% more than the trigger. Applicant states ODOT

said a TIA was not required. Email from Scott Nelson says nothing about whether a TIA is required or not required. Plannign staff that subsection a & b need to be read together. That is general statutory rule of interpretation. Under Oregon case law, look at text of code. Look at language. Is it clear? Shall and must. Nothing to negate that in the code. Second step of interpretation is legislative history. Don't have nay. Only look if text ambiguous. Here it is clear. If further ambiguity, look to maxims of statutory construction. Don't have to get to that point because code text is clear. Never get to rules of statutory construction. Rationale is to protect city of Dallas drivers. Mitigate adverse impacts.

Issue of trip generation manual & requirement for use of local data. Clear about using most current trip generation manual. Most recent manual specifically requires local data be used. Here range of data is for stores in range of 125,000 to 225,000 sq foot. Approx is 98,100 sq ft. Outside range in trip gen manual. TGM states must use local data. Need to go to other walmarts & get actual data from other types of supercenter stores. Appellant submit if local data is used, will have dramatic increase from already doubling of trigger – 642 – likely to go even higher. Rationale to protect Dallas drivers & transp facilities. LUBA has already addressed this issue before. Cited consistent with appellants.

Issue of stormwater – appellants suggested conditions. All fertilizers, ... be stored in covered area where not in contact w/ rainwater. Biobags or bark bags @ stormdrains to prevent oils from entering storm drain from impervious surfaces.

Non-conforming use/ development issue. Rely on previous comments on that issue. Appellants offered other conditions & adopted by planning commission.

Ask council reverse PC decision. Thanked for opportunity. If applicant request period of time to respond to written, appellants like opportunity to reply to that.

Applicant rep –

Greg Hathaway. Did get memo from Mr. Malone that submitted. Not opportunity to review. First, many issues before you on appeal are technical, complex issues that have legal connotation. Not as much fun as looking at new facade or new parking lot. Easiest approach is to look at way staff has looked at this. Lot of work done by Walmart. Applicant has burden of proof to demonstrate legal compliance. Once submit application, staff reviews the application to determine if complete & whether can make recommendation to PC for approval w/ conditions. That what happened in this case. Presented to PC. Staff recommended approval with conditions. Walmart had complied w/ all legal requirements. PC heard both sides & determined – final order that Walmart complied w/ all legal requirements. Issues – PC had before them. PC accepted staff recommendation, adopted own findings. Final Order very thorough. PC determined all standards had been satisfied. Some issues raised here were raised @ PC.

First, on TIA. Mr. Malone arguing PC erred in interpretation of code that said when road authority (ODOT) says as authority over roads to store – doesn't require TIA, your code specifically says when they say not required, it's not required. Makes sense. If road authority says not required because traffic going to be minimal, city has to honor that. Code recognizes deference to that authority. Important city takes care of roads. Not city road, it's ODOT road. ODOT determined when rec'd info from Walmart traffic engineers, such minimal impact, didn't require new access permit or TIA. Took advice of staff. They asked us to talk to ODOT. Provided a lot of traffic info to ODOT as required. Feb 23 of 2011 memo for Walmart traffic engineers. ODOT said don't need TIA. Under code, TIA is not required. Mr. Malone spent time talking about legal interpretation... complicated for lawyers. Short version of rules of construction when local govt interprets own code. Leading case in Oregon on issue on how local govt interprets own code (like PC). Medford. Supreme Court of Oregon case. Medford approved Walmart. Challenged interpretation of Medford. Supreme Court ruled in favor of Medford. Interpreted own code. If have ambiguity (may have one), city has authority to interpret its own code to figure out what it meant. If appealed to LUBA or supreme court, as matter of law, appellant courts must give deference to city when interpreting own code. Not for state statute. 7:47. If interpretation is reasonable. Believe PC has properly interpreted your code. If appealed, would give that deference. PC spent time looking at issue. Way staff interpreting & City Atty, TIA not required under these circumstances. Asking to affirm PC interpretation of traffic impact issue.

Non-conforming use issue. When 1st saw appeal. As Mr. Locke indicated, located in commercial zone. What doing & wants to do is allowed by right in zone. It's conforming use, because doing what code says can do. When city amended code few years ago to put gen commercial zone, was done improperly. Contrary to old zone. Telling – zone change granted number of years ago is final. Not before you tonight. For consideration, assuming underlying zoning (GC) is proper.

Proposal is in conformance w/ zone. Not non-conforming use.

Other argument is under code, have non-conforming development. Use can conform, but dev stds have changed since store built in 1994. Code diff in 2012. If remodel or expand, can't do it unless alteration is in conformance w/ current code or alteration makes store less non-conforming (not making worse). Mr. Malone asserts that no evidence Walmart has complied w/ code or made more conformance. Disagree. PC looked at issue very carefully. Every time alteration proposed, specific finding by PC demonstrates complies w/ current standards or decreasing non-conformity. Other reason is in appeal, doesn't identify what doesn't conform. Appeal is deficient. Walmart has complied w/ code requirements. Record is clear.

Stormwater. Locke indicated stormwater issue – when originally built, had 30% more detention than required. When approved, was approved for 133,000 sq foot store. Only portion has been built. Lot of infrastructure oversized in anticipation of expansion. In compliance w/ city requirements & will continue to be in compliance. Add more landscaping, so less impervious area. Less stormwater. Large detention to accommodate.

Request Council to reject appeal & affirm PC decision w/ conditions.

Beth – Dallas Dv Code requires TIA if increase of 300. Did ODOT understand that requirement of code? Greg – doesn't matter. Para a of 4.1.090 talks about that trip requirement. On face, TIA required. Go down to (b) & read w/ (a). That's ambiguity. Says must check with road authority. Interpretation required there. Fact that ODOT may or may not have known about 300 avg daily trip requirement. PC saying once road authority, regardless of other section of code – decide TIA not required because no adverse impact, must give them deference.

Beth – can city still request TIA? Greg – can & have provided it. Form of TIA. Based on Mr. Malone's presentation, sounds like Walmart didn't provide any info. For ODOT to determine whether require TIA, had to do scoping memo. – use ITE & trip generation rates to assess impacts to road system. ODOT had lot of info from traffic engineers to determine if more info was required. They determined nothing further required. At PC, PC at first meeting asked same question. Still concerned with roads. Don't we still have some say? At that point, City Attorney had discussions... explained under code, if ODOT says TIA not required, City can't require. What Walmart did, submitted supplemental traffic report in record. Not full TIA (only had week). Demonstrates meet level of service requirements.

Beth – what if turns out to be wrong? City determines are adverse effects to traffic? Greg – once decision is made, there are no further examination of that unless want to further expand store. If issues dealing with access, ODOT has control over that. Perfectly frank, city doesn't have authority to require full TIA. If approved & shown to be incorrect later (shouldn't – they're professionals). That's why add'l info in record. There is info in record that show impacts won't be adverse.

Lane – trip generation memo & supporting data on pages 180-202 in record. Trip generation memo at back of record. 8:00.

Jim – lane – places bothered on interpretations? Lane – Hathaways arguments consistent w/ arguments before PC & area reasonable.

Invited those with standing to testify.

Tim Grimes asked to testify. Mayor Dalton determined he did not have standing. Only those that participated in previous meetings were allowed to testify.

MOrty Federer couldn't testify as he didn't.

David George.

Lane – opportunity for all-comers public hearing for comments, raise evidence. All occurs before PC. PC had 3 hearings. Once past PC, evidentiary for all-comers hearing. Limited on appeal to those who testified previously. In order to participate in appeal – not new hearing for new evidence. Appeal of what taken place. Participants limited to those who participated by written testimony or oral.

Nancy Cruickshank. Traffic is insane. Bank is next to Walmart. Trying to get out, was almost hit 3 times. If more cars, more incidents of wrecks. Takes 10-15 minutes to get out depending on when you go.

Lydia Graber, 2414 Maplewood Drive. Brought to her attention that when original traffic study done, was done with 3 entrances with Walmart. One truck entrance, one off Ellendale. Everyone goes through Ellendale entrance, which leads to more congestion. Think traffic study is invalid,

since not all entrances used equally. Walmart asked to put up money in case issue.

Kathy Mc Gavock. Written email with some concerns. Remember when Walmart introduced in Dallas as possibility. Issue was not about runoff. Issue at that time was about large parking lot to be built on wetlands. Interesting that issue is stormwater & not wetlands. One other thing - at PC, VP Peterson expressed issues about leaving Walmart & had difficulties. Urge to consider that issue if Walmart has no responsibility after approved. Possibly no left-turn allowed. Much increased traffic from all outlying areas.

Ryan Waddell – 788 Brich. Go at all different hours. Had to wait on Ellendale max of 30 seconds. Almost hit once, but not Walmart's fault – inconsiderate driver. Have used all 4 entrances. Are other exits that have used & always easily accessible.

Greg Hathaway. What if something happens & needs to be done. If after store expands, there are safety issues. Talked to transportation engineer. Way works, ODOT has access permits to that road. Only way Walmart has right to use those ODOT roads, is because have access permits granted by state of OR. Under access permit process, if safety issues, ODOT has jurisdiction to monitor all access permits. If safety concern raised by community or city – go to ODOT & form to deal with that issue. Not that nothing can be done. Process if safety concerns related to this expansion, there is some vehicle to address that.

Regards to conditions of approval recommended by Mr. Malone. Stormwater issues – indicated Walmart agree to condition regards to keeping all fertilizers, chemicals inside. Policy of store & done at this time. Willing for that condition imposed. One of conditions MR. Malone suggested. Would not have a problem... may work with staff or exact language. Concept of keeping all inside so not in contact w/ rainwater – willing to do that.

Regarding second item – suggesting there already requirements for it. When constructing store, but willing to work with staff to draft condition. Wouldn't have problem because do that anyway. Only during construction. Not appropriate after construction.

Regards other – already requirements have to comply with except waiver of remonstrance. Came before PC. City Atty determined not proper condition.

Delcared Pub Hearing closed at 8:18 p.m.

Opportunity for deliberation or motion & further discussion.

Move by Fairchild. Was seconded. Lane – include conditions on Page 5 of Malone's memo that Walmart receptive too. Jim – some included. Lane – page 6. All but last. Amend if want to add fertilizers... bark bags during construction. Lane – two conditions on bottom of page 5 of memo dated March 5. Include conceptually. One point to be clear – second re bark bags during construction, but not permanent. Jim – modify motion & others except last one. Second agreed. Jackie – concur with conclusion that city cannot require traffic study. Lane – in part. Isn't question. Under code under section a trigger says will do TIA. Section b says if TIA requirement, consult with road authority. TIA in conformance w/ requirement of road authority. They directed to do. Submitted to ODOT. ODOT said no further analysis. Position of staff, supportable, functionally satisfies code. Road authority says don't require TIA. Settles it. AS practice matter, follows from interpretation. One of purposes of TIA to indicate change of facility to accommodate. If Dallas on own to order TIA done to own standards. If Dallas TIA say have to add lane or light, don't have authority over ODOT or require that be implemented. Why code defers to road authority. We don't have authority. Jackie – can't request them to add other entrance because road authority....

Jim – speaking of motion – number 1 – recognize when we make changes, things will happen & don't know what all are. Goes through change. As a council, if bad things happen, will take care of it. If good happens, maybe we can take credit for it. In listening to back & forth, feel we set up list of rules & said people must follow. Right now – don't care if Walmart or Sally Lue. What must be done for big/small. Walmart has followed rules & that's where he's coming from.

Lane – for record. Clarify council is interpreting the dev code consistent with recommendation with staff report. You have authority to interpret your own code. LUBA & court of appeals. Clarify on record you are concurring of interpretation of code in staff report.

Motion carried unanimously.

City's final decision. Final written order mailed to applicant & all participants. Got lot of productive info. Thanked for participation & for all comments greatly appreciated.

Mayor Dalton recessed the meeting.

Mayor Dalton reconvened the meeting at 8:37 p.m.

Council President Scroggin was excused from the meeting at 8:37 p.m.

QUESTIONS OR COMMENTS FROM THE AUDIENCE

Chelsea Pope, Executive Director of the Dallas Area Chamber of Commerce, stated the Community Award Ceremony had been well-attended. She announced Home Comfort was named Business of the Year, with Dick and Sherry Fobert receiving First Citizen honors.

Ms. Pope thanked the Mayor for presenting the State of the City at the previous Chamber luncheon. She reviewed past and upcoming ribbon cutting events in Dallas.

Ms. Pope thanked Mayor Dalton for his participation in the recognition of the DHS wrestlers the past week. She commended the community for really standing behind our students, athletes, and each other.

Mary Christensen stated she had lived in Dallas her whole life and was disappointed that the Walmart process happened so fast, noting she was out of town for three months. She commented that she was disappointed that ODOT didn't require a traffic study. She asked if the Walmart lawyer talked to ODOT or if it was someone on the Council. Mr. Shetterly noted the report was developed by staff and the Council did not have contact with ODOT. Mr. Wyatt clarified that staff met with ODOT, which was why the record was so thick. Ms. Christensen asked why the Council didn't do something that would prove a traffic study wasn't needed. She asked why they didn't demand that it be done. She stated she would never go there, adding she would go to her local store where they cared about the community. She commented that it was ridiculous if the Council didn't think it wasn't going to be a problem because it had impacted local businesses.

Steve Milligan introduced himself and indicated he was running for County Commissioner. He reviewed his platform and qualifications for the position.

Diane Weaver advised the Council they would be seeing her a lot from now on. She expressed her concern with the City's stormwater and sewer situation. She indicated it had affected her personally to the tune of \$75,000 for the last two incidents. She stated that whether or not the City's insurance said the sewer system was in good shape, some people with the City said it leaked a lot of ground and surface water which did impact when the storm sewers overflowed and went into the sanitary sewers.

Tim Grimes stated that as a capitalist, he understood Walmart's opportunity to expand where there was low hanging fruit and they could scoop a lot of bucks without a large expenditure. He commented that there was also some truth to previous statements that very large footprints did impact smaller businesses. He indicated equal treatment under laws and regulations was one thing, but allowing outside entities to build another conduit to funnel money from local pockets out of state was not always the best decision. He stated just because someone wanted to come in and do what they will with property, even if they owned it, didn't mean it was the right thing. He commented that it was a slippery slope that the Council just took a swan dive on.

CONSENT AGENDA

Councilor Lawson requested that the report of the Public Works Committee meeting be removed from the Consent Agenda.

It was moved by Councilor Wilson and seconded by Councilor Marshall to approve items a and b of the Consent Agenda. The motion CARRIED UNANIMOUSLY.

Items approved by the Consent Agenda: a) the February 21, 2012, City Council minutes; b) report of February 27, 2012, Public Safety Committee Meeting; and

ITEMS REMOVED FROM CONSENT AGENDA

REPORT OF FEBRUARY 27, 2012, PUBLIC WORKS COMMITTEE MEETING

Councilor Lawson asked about a rate or fee chart in regards to different sizes of restaurants for the FOG program. Mr. Wyatt explained it would come to Council soon but was not in place now.

It was moved by Councilor Lawson and seconded by Councilor Wilson to approve the report of the February 27, 2012, Public Works Committee meeting. The motion CARRIED UNANIMOUSLY.

REPORTS OR COMMENTS FROM COUNCIL

Councilor Fairchild announced that on Friday, March 9 from noon to 2:00 p.m., the League of Oregon Cities was holding a regional meeting at Independence City Hall.

REPORTS FROM CITY MANAGER AND STAFF

CHAMBER/VISITOR CENTER REQUEST FOR SUMMER EVENTS

Mr. Wyatt reviewed the requests from the Chamber and Visitor Center for assistance with Bounty Market, Summerfest, and Art in the Park in 2012. Councilor Woods and Mr. Shetterly reminded Ms. Pope that the insurance binder needed to contain the correct identity for Art in the Park at the time of the event.

It was moved by Councilor Lawson and seconded by Councilor Marshall to approve the requests and direct the City Manager to work with Ms. Pope to facilitate the events. The motion CARRIED UNANIMOUSLY.

OTHER

Mr. Wyatt stated the City did take access to businesses very seriously and staff did invest a lot of time in regard to the access to Walmart. He noted ODOT had a whole division for access management. He pointed out any business at any time could trigger an access or traffic review if it changed use, increased size, and many other triggers. He stated again access was very serious, noting that was why the record was so thick. He wanted the Council to understand that staff did look at it and did take it very seriously.

RESOLUTIONS

Resolution No. 3242: A resolution establishing a schedule of rates and fees to be paid by person using the Dallas Aquatic Center, and repealing Resolution No. 3152.

A roll call vote was taken and Mayor Dalton declared Resolution No. 3242 to have PASSED BY A UNANIMOUS VOTE with Councilor Jim Fairchild, Councilor Beth Jones, Councilor Jackie Lawson, Councilor Kevin Marshall, Councilor Murray Stewart, Councilor LaVonne Wilson, and Councilor Ken Woods, Jr. voting YES.

FIRST READING OF ORDINANCE

Ordinance No. 1744: An Ordinance regulating the display for sale of drug paraphernalia; and declaring an emergency.

Councilor Lawson asked for a legal explanation as to why the Council needed to pass this ordinance when drug use was already illegal. Mr. Shetterly explained state law said it was illegal to sell drug paraphernalia, but under the state statute, an element of the crime is that the seller must have known the paraphernalia was specifically intended to be used with a controlled substance. He commented that it obviously made it a limited criminal statute. He advised that since the state regulated the sale of drug paraphernalia, it preempted cities from outright prohibiting it. The County network brought this up, which proposed regulating the display of paraphernalia and requiring it be removed from view. He explained the city wouldn't say they couldn't sell it, but were saying they couldn't display it in the open. He noted it also applied to things such as garage sales.

Councilor Stewart asked if there was a definition of displaying or showing a product. He asked if it would apply to having a poster or picture of the paraphernalia in sight. Mr. Shetterly advised the ordinance didn't get at displaying pictures, adding that type of restriction could get into first amendment issues. He commented that if posters and such became an issue, the Council could look into it more closely.

Councilor Marshall asked for a list of exact items that could be considered drug paraphernalia. Mr. Shetterly directed him to Section 1 (2) (a)-(i) of the ordinance for a list, noting that was the state definition of drug paraphernalia.

Mayor Dalton declared Ordinance No. 1744 to have passed its first reading.

SECOND READING OF ORDINANCE

OTHER BUSINESS

There being no further business, the meeting adjourned at 9:11 p.m.

Read and approved this _____ day of _____ 2012.

Mayor

ATTEST:

City Manager