

MINUTES OF THE  
SPECIAL CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS  
February 6, 2008

A special called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, February 6, 2008 at 9:00 a.m. in the Council Chamber, City Hall, Tyler, Texas, with the following present:

Mayor: Joey Seeber  
Mayor Pro Tem: Chris Simons  
Council Members: Nathaniel Moran  
Donald Sanders  
Ralph Caraway  
Steve Smith  
Charles Alworth (**absent**)

City Manager: Bob Turner  
Deputy City Manager: Mark McDaniel  
City Attorney: Gary Landers  
Deputy City Attorney: Steve Kean  
Assistant City Attorney: Deborah Pullam  
Assistant City Attorney: Karen Stead  
Business Service Manager: ReNissa Wade  
Development Services Engineer: Michael Wilson  
City Fire Chief: Neal Franklin  
Director of Utilities & Public Works: Greg Morgan  
City Clerk: Cassandra Brager

**INVOCATION**

The Invocation was given by Councilmember Caraway.

**ORDINANCES**

- O-1** Request that the City Council consider adopting an Ordinance amending Tyler City Code Chapter 4 to adopt new smoking regulations prohibiting smoking in public places and in places of employment/workplaces, and providing for some exceptions. (0-2008-19) *Approved 5:1 on preliminary vote on adding Amendment #4 Patios to Motion; Approved 6:0 to adopt ordinance with 4 recommended amendments)*

**Mayor Seeber** – Stated that the history of the smoking ordinance in the City of Tyler is that we have been respectful of individual's rights, property owners and business owners and the approach over the years that certainly business owners and businesses may voluntarily prohibit smoking in the work places or in restaurants if they chose to do so, but that the City has not enforced them to do so. In the last few years there has been some additional, compelling evidence about the risk of second hand smoke.

**Councilman Moran** – The Task Force was formed in December and one of the important facets of the Task Force was that it was made up of people from various sectors of our community so that the committee could get a very good perspective on the proposed ordinance.

(Task Force Committee – Mayor Pro Tem Simons, Dr. Bruce Carter, Bobby Curtis, Rick Eltife, Dr. Johnathon McClements, Brian McCalla, Felecity Reedy, Bob Westbrook)

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Councilman Moran stated that once the Task Force was assigned the task of reviewing the ordinance, the Task Force set out to inform themselves of the information or data that was out there. The health effects were looked at in the first meeting and having reviewed the health effects, we then moved on to the economic effects and what other cities had done in the State of Texas and what economic effects, whether positive or negative, might be out there from a statistical stand point to show how our businesses here in Tyler might be affected. Then we had public input where citizens showed up at different meetings to give their input.

**Mayor Pro Tem** – Thanked the Tasked Force and everyone that was involved.

**Mayor Seeber** – Read a statement from Councilman Alworth stating that he supports a general smoking ban in public places and the workplace.

**Mary Gammell** – Stated that she wanted to thank the committee for all of their hard work and for looking into making Tyler a safer place to live and breathe.

As a Board member of the Smith County American Heart association she wanted to talk about the cardiovascular effects of 2<sup>nd</sup> hand smoke. The mission statement with the American Heart Association is to REDUCE death and disability by 25% by the year 2010.

The number one preventive step people can do to reduce their risk of having a heart attack or stroke is to stop smoking!

The American Heart Association Supports a comprehensive ban on smoking in all public places including bars, restaurants and patios that serve food and beverages.

Right now 438,000 Americans died this year as a result of smoking or exposure to secondhand smoke, and for each person who dies from a smoking-related disease, about 20 more are living with a smoking-attributable illness. The estimated costs of smoking-related medical expenses and loss of productivity exceed \$167 billion annually.

65,000 Non smokers will die this year because of Exposure of 2<sup>nd</sup> hand smoke!

Even half an hour of secondhand smoke exposure causes heart damage similar to that of habitual smokers, when you start breathing 2<sup>nd</sup> hand smoke.

1. Your heart arteries constrict diminishing the ability of the heart to give life-giving blood;
2. Your blood platelets stick together and your blood starts to clot;
3. Decreases HDL (good) cholesterol;
4. Increases blood pressure;
5. Increase in the progression of atherosclerosis;
6. Also damages the lining of your blood vessels;
7. The risk of ischemic stroke is nearly doubled; and
8. It creates a higher risk for peripheral arterial disease (PAD) and aortic aneurysm.

In your heart, these bad changes can cause a deadly heart attack.

Non smokers regularly exposed to 2<sup>nd</sup> hand smoke suffer death or morbidity rates 30% higher than unexposed non smokers.

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People who have heart disease should be very careful not to go where they will be around secondhand smoke. The bottom line is that breathing secondhand smoke makes it more likely that you will contract heart disease, have a heart attack, and die early.

The evidence indicates that we have the ability to reduce the health and economic burdens of tobacco. One of the easiest ways to do this is to reduce exposure to secondhand smoke by implementing a comprehensive ban on smoking in all public places. By doing this it has proven effective in promoting cessation of smoking among people of all ages, which will save the city, and the tax payers, thousands, if not millions of dollars each year in health costs.

**Larry Lowry** – Stated that this is a public health issue and the evidence in the Surgeon Generals report is overwhelming. The workers in smoking establishments are at much more risks than the casual person that goes into a restaurant or bar. One of the biggest asthma triggers is secondhand smoke.

**Keith Pyron**- Stated that the smoking ban just takes away the rights of the individual and property owners and basically just ticks people off.

**Ron Schoembrum** – Stated that he did not want to subject himself and his kids to the dangers of secondhand smoke. Mr. Schoembrum stated that he had been hired to represent a client that owns a business in Tyler. A lot of us can get in a position that if it doesn't directly affect me economically, then I'm not concerned about the situation. Mr. Schoembrum asked that an exemption be considered for Clicks Billiard and that the language for the patio issue be looked at and allow smoking on an outdoor patio as written in the Arizona ordinance.

**Bodie Scott** – Stated that he wanted the public to be aware of the risk of people losing their jobs because of the smoking ban.

**Robin Griffith** – Stated that she and her husband own a pool hall in town and primarily their customers are smokers and this would be detrimental to their business if they did not allow smokers.

**Alan Utz** – Stated that with the selection of the people on the Task Force that it was pre-destined to go the way that it has. Mr. Griffith also referenced the ordinance where it calls for if it is within 20 feet away from any entrance you would allow smoking on a patio. What do the bar and restaurant owners do that don't have that option? how can this be fair to someone with a patio that would allow smokers and those that do not have the physical capabilities of that patio? There is a physical way to separate smoking and non smoking via construction and mechanical means. Mr. Utz asked City Council to table this decision today, place consideration on the smoker, the non smoker and the business owner equally.

**Sandy Mason** – Stated that she had talked to a few citizens that said they would agree to an age limit of a smoking section. This will infringe upon the business owner, the economic impact and tax dollars will be lost and smokers will go elsewhere.

**Dr. Philip Huang** – Stated that he was here as a resource. This is a public health issue so all considerations are based on that fact. Short term exposure to second hand smoke can cause cardiovascular effects and affect the body's ability to provide blood to the heart. Clearly separating smokers from non smokers, cleaning the air and ventilating buildings does not protect so the technology is not there to protect. There are new studies that if you are standing next to a lit cigarette in close proximity in an outdoor setting then there is significant exposure.

**Chris Chase** – Stated that there are certain restaurants that you can go to to smoke and be out in public, now City Council are taking that away from the minorities so she will just stay at home.

**Tom Pyle** – Stated that he would like to see City Council not pass this ordinance today and have the City Accounting Dept. evaluate the potential loss of future revenue to the City as a direct result of the adoption of this proposed ordinance. The biggest factor here is when a smoker is not allowed to smoke in public he is going to smoke in his home and the revenue will go down. By passing the non

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smoking ordinance, addicted smokers will not be stopped from smoking. The City is just merely forcing them to rearrange their schedules and smoke at home, or they will patronize establishments outside the city limits which will provide them with services they currently enjoy in Tyler. The economic loss of tax revenue to the City of Tyler can be partially reduced by granting exceptions to bars and pool halls which rely heavily on smokers for their survival.

**Art Burke** – Spoke in favor of the smoking ordinance.

**Todd Sigmon** – Did not speak.

**Heidi McKellar** – Stated that as adults and leaders in our community we have an obligation to be leaders and put in effect things that are difficult to put in effect but are the right things to put into effect.

**Bob Westbrook** – Stated no comments.

**George Roberts** – Stated that he appreciated the City Council taking this on and he strongly encourages Council to pass the ordinance and move forward.

**Rush Uzzel** – Stated that the respect he feels need to be considered in this situation regarding the smokers is the exemption factor. This could be approached in a way in which maybe the owner of a restaurant that had a long standing clientele that has been smoking take a survey from their people and get a justifiable feedback to the City regarding giving them an exemption and have a sign to the effect that this is a smoking facility and enter at your own risk.

**Colten Parsell** – Stated that more than 20% of the population in Tyler smokes and the City has bigger issues than saying the citizens cannot smoke in bars and restaurants.

**Rick Eltife** – Stated that a ban of some degree is necessary and that he is for it but that it must be fair and based on scientific evidence. Second hand smoke is definitely a health hazard no question about it. The issue he takes with the ordinance submitted by the task force is the ban on outdoor facilities and he has not found anything regarding the effects of secondhand smoke in the open air or the outdoors. This ordinance should be directed at indoor private facilities only as have all other ordinances from all other cities. Mr. Eltife stated that he was in favor of the ban and if his bar has to go non smoking then he is all for it because he thinks it is a health issue but outdoors he does not see any evidence that states that outdoor smoking is a public health issue.

**Mayor Seeber** – Asked as a member of the task force and owner of a restaurant and bar, set aside the outdoor issue for a moment and you start making exceptions what is the effects on that?

**Rick Eltife** - Stated that the effects on exceptions is that if a smoker can't smoke in any restaurant you will not lose business to a restaurant that allows it.

**Brenda Elrod, Public Health District**– Stated that she sees smoking in a public facility as a public health hazard because when the employee smokes a cigarette and gets his hands up around his mouth and then goes and serve food they need to be sure they wash their hands properly because it can be marked as a violation when an inspection is done.

**Dr. Bruce Carter** – Stated that as some of the statistics are looked at the City needs to come back and remember to focus on the health issue and that is the good people of Tyler who come in to my office for a cough because of the health risk that they face from second hand smoke as well as smoking.

**Susan Brizendine** – Stated that this is a public health issue and this issue has been supported by many for years.

**Sam Wells** – Stated that he does not drink or smoke but he designed a restaurant to satisfy everybody along with the City of Tyler. He stated that he did not know for sure if having a smoking ordinance would help his business.

**Mayor Seeber** – Stated that no one on this Council would pretend to tell any one individual business, this is going to help you. Based upon the studies and evidence from other cities, it appears that overall businesses are not affected, that bars and restaurants in general have an increase in their business there are no guarantees about this business or any other business with regards to this ordinance. The City

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Council understands that there will be economic impacts depending upon your business and your clientele and how you choose to do that and that's why it has been taken seriously. What has changed his opinion about this issue is the evidence that there are no safe levels of second hand smoke. There are some very compelling cases here but the problem is drawing the line on an exemption.

Councilman Moran made the motion seconded by Mayor Pro Tem Simons to approve the ordinance as recommended by the Task Force with the following three changes. The discussion of these changes with remarks to say most of these changes are still in keeping with what the Task Force wants to do but language needed to be moved to make it clearer in the ordinance. This is not changing the substance of the ordinance but making it clearer as to how it will be applied. So in the whereas Section 4-44 and adding provisions in Section 4-46 the following items would be changed or added.

1. Make the changes to the list of cities with recent no smoking ordinance
- 2.a Sect. 4-44 Clarify where smoking prohibited outdoors and what
- 2b. City property
3. Private organization exempt not apply to such a group if just created to get around the regulations.

The effective date for this ordinance is June 1, 2008

Mayor Seeber made the motion, seconded by Councilman Smith to amend the motion and add item number four (4) that would prohibit smoking in a closed area but with the exception if there is open air or no ceiling a person would be allowed to smoke. Sect. 4-46(e) would allow smoking in areas that are adjacent to bars or restaurants and at least 20 feet away and if there is no roof and at least one side open. So this would cover patios; motion carried 5-1 (Councilman Moran voted against amendment); motion approved and incorporated in the motion on the ordinance.

**Councilman Smith** – Stated that he would like to see no smoking period, indoors or outdoors.

**Councilman Caraway** - Stated that this is tough and this is a situation where some win and some lose and it is a hard decision.

**Councilman Sanders** – Stated that he was glad to see City Council make the step in the right direction.

**Councilman Smith** – Stated that he is glad that City Council is voting on this ordinance and bringing it forward and he also thanked the Task Force, the Mayor, Councilman Simons and Councilman Moran for a job well done.

**Councilman Simons** – Stated that the evidence was compelling enough for him to go in this direction. This is actually a public health and work place issue so in order to protect those folks that work in these establishments then the City Council is moving in the right direction.

**Councilman Moran** – Stated that this is a step toward educating the public about the dangers of second hand smoke. As City Council sees this ordinance going into effect and how it is applied, the City Council may need to re-visit it in the future.

**Donald Griffith** – Stated that City Council should go after the tobacco industry and not the business owners and ban tobacco in Tyler.

***Mayor: Unless Council objects, the next regular City Council meeting will begin at 8:00 (rather than 9:00) on February 13, 2008. No Objection.***

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**ADJOURNMENT**

Mayor Pro Tem Simons made the motion to adjourn the meeting at 11:28 a.m.; seconded by Councilman Moran; motion carried 6-0; meeting adjourned.

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**JOSEPH O. SEEBER, MAYOR OF  
THE CITY OF TYLER, TEXAS**

**A T T E S T:**

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**CASSANDRA BRAGER, CITY CLERK**