

**MINUTES OF THE
REGULAR CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
July 23, 2008**

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, July 23, 2008 at 9:00 a.m. in the Council Chamber, City Hall, Tyler, Texas, with the following present:

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

City Manager: Bob Turner
City Manager Designate: Mark McDaniel
City Attorney: Gary Landers
Deputy City Attorney: Steve Kean
Assistant City Attorney: Deborah Pullam
Airport Manager: Davis Dickson
Budget/Human Resources Director: ReNissa Wade
Development Services Engineer: Michael Wilson
Director of Neighborhood Services: Brenda Johnson
Capital /City Projects Coordinator: Bill Ward
Chief Information Officer: Benny Yazdanpanahi
City Engineer: Carter Delleney
City Police Chief: Gary Swindle
Communications Director: Susan Guthrie
Director of Parks and Recreation: John Webb
Director of Planning and Zoning: Barbara Holly
Director of Solid Waste: Dan Brotton
Housing Service Manager: Andy Davis
Internal Auditor: Keidric Trimble
Manager of Water Quality and Production: Mitch Marable
Director of Utilities & Public Works: Greg Morgan
City Clerk: Cassandra Brager

INVOCATION

The Invocation was given by Councilmember Moran.

Motion by Councilman Simons to approve the minutes for June 11th, June 25th and July 9, 2008; seconded by Councilman Sanders; motion carried 6 - 0 & approved as presented.

ZONING

Z-1 APPLICATION Z07-08-071A ST PAUL'S CHILDREN'S FOUNDATION

Request that the City Council consider a request from "R-2" Two-Family Residential District to "PCD" Planned Commercial Development District with final site plan approval on Lots 4 and 10A of NCB 536, totaling approximately 2.5 acres located at the northeast intersection of East Richards Street and South Horace Avenue (1358 East Richards Street). (O-2008-86)

Motion by Councilman Simons; seconded by Councilman Moran; motion carried 6 - 0 & approved as presented.

Z-2 APPLICATION Z05-08-060B MIKE WILLINGHAM

Request that the City Council consider a request to change the zoning from “M-1” Light Industrial District to “R-1B” Single Family Residential District on Tax Lot 7 of NCB 1403, one lot totaling approximately 0.877 acres located one lot east of the southeast intersection of Erwin Street and Loop 323 (2803 East Erwin Street). (O-2008-87)

Motion by Councilman Smith; seconded by Mayor Pro Tem Alworth; motion carried 6 - 0 & approved as presented.

Z-3 APPLICATION Z07-08-066A FRANK STOGLIN



Request that the City Council consider a request to change the zoning from “C-1” Light Commercial District to “PCD” Planned Commercial Development District with final site development plan approval on Lot 5 of NCB 470, one lot totaling approximately 0.24 acres located at the southeast intersection of Tyler Avenue and Martin Luther King Boulevard (105 East MLK Boulevard). (O-2008-88) hours changed in the plan from 7:00 am -5:00pm to 7:00 am -9:00pm

Motion by Councilman Moran; seconded by Councilman Sanders; motion carried 6 - 0 & approved as presented.

Z-4 APPLICATION Z07-08-067A DARRELL ABRAHAMS ENTERPRISES



Request that the City Council consider a request to amend the existing site plan on property zoned “PCD” Planned Commercial Development District and located on Lot 6A of NCB 1548, totaling approximately 0.57 acres located one lot east of the southeast intersection of Grande Boulevard and Old Jacksonville Highway (2320 West Grande Boulevard). (O-2008-89)

Motion by Mayor Pro Tem Alworth; seconded by Councilman Smith; motion carried 6 - 0 & approved as presented.

Z-5 APPLICATION Z07-08-068A JOSE ALFARO



Request that the City Council consider a request to change the zoning from “M-1” Light Industrial District to “C-2” General Commercial District on Lots 2B of NCB 669N, one lot totaling approximately 1.32 acres located two lots south of the southwest intersection of West Gentry Parkway and North Glenwood Boulevard (1106 and 1110 North Glenwood Boulevard). (O-2008-90)

Motion by Councilman Sanders; seconded by Mayor Pro Tem Alworth; motion carried 6 - 0 & approved as presented.

Z-6 APPLICATION Z07-08-069A BROADWAY SOUTH DEVELOPMENT “A” No. 2, LTD
Request that the City Council consider a request to approve a preliminary parcel development plan on property zoned “PCD” Planned Commercial Development District on Tract 2C totaling approximately 10.22 acres located at the northeast intersection of

U.S. Highway 69 and Loop 49. The applicant is requesting approval of a preliminary parcel development plan in accordance with the approved Cumberland Park Commercial Standards and Guidelines. (O-2008-91)

Larry Meckley, 401 Sutherland – Spoke in favor of the project.

Motion by Mayor Pro Tem Alworth; seconded by Councilman Simons; motion carried 6 - 0 & approved as presented.

PRESENTATIONS



P-1 Request that the City Council consider designating Senator Tomas Glover Pollard as a Half Mile of History recipient.

Barbara Holly, Director of Planning & Zoning – Stated that The Half Mile of History is a cultural and historic landmark program paying tribute to people, places and events that have contributed to the City of Tyler and/or Smith County. The Half Mile of History is a permanent, outdoor walk-around loop that covers an approximate one-half mile stretch of sidewalk surrounding the square in the heart of downtown Tyler. People, places and events chosen for the Half Mile of History are honored with a commemorative plaque placed in the sidewalk.

One of the responsibilities of the Tyler Historical Preservation Board is to recommend people, places and events to be included in the Half Mile of History Preservation Program. On July 2, 2008, the Tyler Historical Preservation Board voted unanimously to recommend Senator Tomas Glover Pollard for inclusion in the Half Mile of History Preservation Program.

Motion by Mayor Pro Tem Alworth; seconded by Councilman Moran; motion carried 6 - 0 & approved as presented.

P-2 Request that the City Council receive a presentation on the status of the Half Cent prioritization project and an update regarding the Five Year Half Cent Capital Improvement Program (CIP).

Kevin Johnson, Freese & Nichols – Gave a brief update/status report on the overall Capital Improvement Program process.

RESOLUTION

R- 1 Request that the City Council consider adopting a Resolution suspending the August 8, 2008 effective date of the proposal by ONCOR Electric Delivery Company to increase system-wide transmission and distribution rates by \$275 million, and authorize further administrative action as set forth in the Resolution. (R-2008-14)

Gary Landers, City Attorney – Stated that Oncor Electric Delivery Company ("Oncor" or "the Company") filed an application on or about June 27, 2008, with cities retaining original jurisdiction seeking to increase system-wide transmission and distribution rates by \$275

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million. Until last year, Oncor was known as Texas Utilities (TXU) Electric Delivery Company. The Company asks the City to approve a 17.6 percent increase in residential rates, a 9.1 percent increase in commercial rates, and a 5.8 percent increase in street lighting rates. According to Oncor, annual rates would increase by approximately \$60.00 for an average residential customer.

The Resolution suspends the August 8, 2008, effective date of the Company's rate increase for the maximum period permitted by law to allow the City of Tyler, working in conjunction with the Steering Committee of Cities Served by Oncor, to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy, including settlement, to pursue.

The law provides that a rate request made by an electric utility cannot become effective until at least 35 days following the filing of the application to change rates. The law permits a municipality to suspend the rate change for 90 days after the date the rate change would otherwise be effective. If a municipality fails to take some action regarding the filing before the effective date, Oncor's rate request is deemed administratively approved.

Motion by Mayor Pro Tem Alworth; to suspend the rates following the recommendations from City staff; seconded by Councilman Smith; motion carried 6 - 0 & approved as presented.

R- 2 Request that the City Council consider adopting a Resolution agreeing to the sale of certain tracts of land located within the City of Tyler city limits and owned by taxing entities including the City of Tyler. (R-2008-15)

Motion by Mayor Pro Tem Alworth; seconded by Councilman Moran; motion carried 6 - 0 & approved as presented.

ORDINANCE

O-1 Request that the City Council consider adopting an ordinance amending Tyler City Code Section 16-13 to adopt a monthly surcharge of \$2.00 for Solid Waste customers not receiving automated solid waste collection service for residential units; and also implementing a Fuel Recovery Fee for Tyler Solid Waste customers. (O-2008-92)

Dan Brotton, Director of Solid Waste – Stated that at present, the Solid Waste Department currently serves a total of 798 customers who do not use wheeled carts for residential solid waste collection. Additional resources are necessary to pick up solid waste when the carts are not used and non-automated service has more potential for costly injuries. In order to have a more fully automated collection service we want to encourage the use of carts. It is recommended that those Solid Waste customers that do not use the garbage carts be charged a monthly surcharge of \$2.00. The surcharge shall become effective January 1, 2009, after the Solid Waste Department has made every effort to convert everyone to automated service. This surcharge will not apply to Packout or Driveout customers.

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During the past year oil prices have continuously increased and Tyler Solid Waste has absorbed the full impact of these increases to date. However, the magnitude of these costs has now become so significant that the City of Tyler Solid Waste Department has found it necessary to request a fuel recovery fee to cover the increase in fuel costs associated with solid waste collection by solid waste trucks.

A fuel recovery fee is a revolving charge based on the escalating cost of fuel and associated items. (e.g. lubricants, solvents, etc.) The price of fuel is unpredictable and therefore can not be incorporated in base charges or scheduled rate adjustments.

If approved, a flexible fuel recovery fee would begin at \$2.77 per gallon (this is zero percent on the index) and would be adjusted every month to stay in line with future movements using the actual price paid for diesel. The fuel recovery fee is based upon adding .05 percent for every cent that the average price of diesel fuel rises above \$2.77 per gallon. Conversely, if the average price of diesel decreases, the fuel recovery fee would decrease .05 percent for every cent that the average price of diesel fuel decreases but remains above \$2.77 per gallon.

The FY 2007-2008 fuel consumption forecast for Residential Collection is \$489,763.00, which is \$248,594.00 more than the actual consumption for FY 2006-2007 (\$241,169.00). The FY 2008-2009 fuel forecast for Residential Collection is \$621,800.00 with fuel cost per gallon projected to be \$4.50, which is equivalent to an 8.65 percent fuel recovery fee. On a residential garbage bill of \$11.97, the fuel recovery fee at 8.65 percent would be \$1.04. As of July 16, 2008, the price of diesel fuel was \$4.44 per gallon which would equate to an 8.35 percent fuel recovery fee. The Department will determine the average price per gallon of diesel fuel at the beginning of the first billing cycle of each month.

The Department would use the above calculation for Residential Service to set the fuel recovery fee for all Solid Waste services. If approved, the fuel recovery fee would be implemented immediately with the August billing, which begins with cycle 1 on July 30, 2008.

Motion by Councilman Moran; seconded by Mayor Pro Tem Alworth; motion carried 6 - 0 & approved as presented.

O-2 Request that the City Council consider adopting an ordinance approving the Housing Choice Voucher Program's Administrative Plan and Annual Plan FY 2008-2009. (O-2008-93)

Motion by Councilman Simons; seconded by Councilman Sanders; motion carried 6 - 0 & approved as presented.

O-3 Request that the City Council consider adopting an ordinance adopting the FY 2008-2009 Community Development Block Grant (CDBG) and HOME Programs and adopt the budget as recommended. (O-2008-94)

Motion by Councilman Sanders; seconded by Mayor Pro Tem Alworth; motion carried 6 - 0 & approved as presented.

MISCELLANEOUS



M-1 Request that the City Council consider approval of a Certificate of Appropriateness for the proposed alteration of a historic landmark known as the Saleh-Witt home, located at 1208 South College Avenue.

Motion by Councilman Simons; seconded by Mayor Pro Tem Alworth; motion carried 6 - 0 & approved as presented.

(These items are considered to be routine or have been previously discussed, and can be approved in one motion, unless a Council Member asks for separate consideration of an item).

C-A-1 Request that the City Council consider authorizing the City Manager to enter into a renewal maintenance agreement with NEC Technologies for hardware and software associated with the Automated Fingerprint Identification System at the Police Department in the amount of \$6,936. ©

C-A-2 Request that the City Council consider authorizing the City Manager to award Contract No. TYL-276 to Red River Construction Company in the amount of \$113,900.00 for the expansion of the Gilley Creek Lift Station. ©

Motion by Councilman Moran; seconded by Mayor Pro Tem Alworth; motion carried 6 - 0 & approved as presented.

CITY MANAGER'S REPORT

1. Family Fun Fish Day, July 26, 2008 – 9:00 am – Noon @ Glass Recreation Center
2. Reading Club Wrap Up Party, July 25, 2008, 1:30 – 3:30

RECESS FOR EXECUTIVE SESSION – City Council convened into Executive Session at 10:00 am

As allowed by the Texas Open Meetings Law, Chapter 551 of the Government Code, the City Council may consider the following:

-under section 551.071 "Litigation" deliberation regarding the following:

-pending or contemplated litigation involving Cascades and/or Western Rim developments

Litigation is, by its nature, an on-going process, and questions may arise as to trial tactics, which need to be explained to the City Council. Upon occasion, the City Council may need information from the City Attorney as to the status of the pending or contemplated litigation subjects listed above

-under section 551.087 "Economic Development" deliberation regarding the following:

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Possible offer of financial or other incentive to a business prospect and to consider financial information about that prospect with which the City is conducting economic development negotiations that could lead to a development in Tyler

-under Section 551.072 “Real Estate”, deliberation regarding the following:

Discuss the purchase, exchange, lease or value of real property, the public discussion of which would have a detrimental effect on the negotiating position of the City, related to the development of municipal facilities and encouragement of private investment

City Council reconvened from executive session back into public session at 10:45 am with the following motions taken place.

Motion by Councilman Simons for the City Manager to execute a lease/purchase of 110 W. Erwin for \$1,325.00 a month for 10 years, with an option to purchase in year six, the property will be used for City run Main Street program offices, a downtown visitors center and an arts center subject to executing a new services contract with Heart of Tyler, which is anticipated to be on the August 13th meeting; seconded by Mayor Pro Tem Alworth; motion carried 6 - 0 & approved as presented.

Motion by Councilman Moran; seconded by Mayor Pro Tem Alworth; motion carried 6 - 0 & approved as presented to authorize the City Manager to:

1. Execute a contract to purchase Lots 13, 14, 15, 16 & 17, Block 91, City of Tyler, TX, and lot 17, Block 187, City of Tyler, TX from the Weldon Gladney Pool Estate, et. al. for \$575,000.00 plus buyer closing costs from the Oil & Natural Gas Fund., and
2. Execute a contract to purchase Lot 19A, New City Block 91, lots 18 & 19, New City Block 92, Lots 1-A & 2, New City Block 91 and Lot 2-A, New City Block 90 of King Chevrolet Addition from the King Living Trust and BHK Loyalty Trust for \$1,100,000.00 plus buyer closing costs from the Oil & Natural Gas Fund, and
3. Purchase services from Freese & Nichols, Inc. for limited Phase II Environmental Site Assessment (ESA) for several properties in downtown Tyler for \$10,000.00 from the Oil & Natural Gas Fund.

ADJOURNMENT

Motion by Councilman Moran to adjourn the meeting at 10:50 am; seconded by Mayor Pro Tem Alworth; motion carried 6 - 0 meeting adjourned.

**BARBARA BASS, MAYOR OF
THE CITY OF TYLER, TEXAS**

A T T E S T:

CASSANDRA BRAGER, CITY CLERK