

**MINUTES OF THE  
REGULAR CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF TYLER,  
TEXAS  
November 12, 2008**

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, November 12, 2008 at 9:00 a.m. in the Council Chamber, City Hall, Tyler, Texas, with the following present:

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

City Manager: Bob Turner (**absent**)  
City Manager Designate: Mark McDaniel  
City Attorney: Gary Landers  
Deputy City Attorney: Steve Kean  
Airport Manager: Davis Dickson  
Budget/Human Resources Director: ReNissa Wade  
Development Services Engineer: Michael Wilson  
Chief Financial Officer: Daniel Crawford  
Chief Information Officer: Benny Yazdanpanahi  
City Engineer: Carter Delleney  
City Fire Chief: Neal Franklin  
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  
Manager of Water Quality and Production: Mitch Marable  
Manager/Water Utilities Business Office: Joan Roberson  
Director of Utilities & Public Works: Greg Morgan  
City Clerk: Cassandra Brager

**INVOCATION**

The Invocation was given by Councilmember Caraway.

Motion by Mayor Pro Tem Alworth to approve the minutes for the October 8<sup>th</sup> and October 22<sup>nd</sup> minutes; seconded by Councilman Caraway; motion carried 7 - 0 & approved as presented.

**AWARDS**

**A-1** The following employees were hired by the City of Tyler during the month of October, 2008. We would like to take this opportunity to welcome these new employees.


<b>Beverly Abell</b>	<b>Main Street Program Director</b>	<b>Tyler Main Street Program</b>
<b>Jerome H. Bearden</b>	<b>Residential Equipment Operator</b>	<b>Solid Waste</b>
<b>Krystin P. Bridges</b>	<b>Planning Technician</b>	<b>Planning and Zoning</b>
<b>Brigido Flores</b>	<b>Meter Repairer</b>	<b>Water Distribution</b>

<b>Toska S. Graham</b>	<b>Police Recruit</b>	<b>Police</b>
<b>Melanie D. Lewis</b>	<b>Code Enforcement Officer</b>	<b>Code Enforcement</b>
<b>David R. Patterson</b>	<b>Police Recruit</b>	<b>Police</b>
<b>Eva H. Pevehouse</b>	<b>Accountant</b>	<b>Accounting</b>
<b>John M. Riggle</b>	<b>Police Recruit</b>	<b>Police</b>
<b>Stephen Smith</b>	<b>Truck Driver</b>	<b>Storm Water Management</b>
<b>Charles J. Turner, Jr.</b>	<b>School Crossing Guard</b>	<b>Traffic</b>
<b>Cody J. Wortham</b>	<b>Police Recruit</b>	<b>Police</b>

 **A-2 Presentation of Citation of Honor from Texas Society of Architects/American Institute of Architects in recognition of the Tyler 21 comprehensive plan.**

Mike Butler presented City Council with a certificate of honor from the Texas Society of Architects/American Institute of Architects in recognition of the Tyler 21 Comprehensive plan.

**RESOLUTION**

 **R-1 Request that the City Council consider adopting a resolution affirming “Blueprint” financial policies and approving the establishment of City of Tyler, Texas Guidelines and Criteria for Granting (Section 380) Business Incentives. (R-2008-27)**

**City Manager Designate** – Stated that the Tyler 21 includes a specific action item to develop and implement written guidelines for potential City-related incentives for business retention, expansion and attraction. Prior to adoption of Tyler 21, former Mayor Joey Seeber announced that the City was “open for business” and he would be asking the City Council to consider establishing guidelines and criteria for granting City funded incentives. Mayor Seeber appointed Councilman Moran and Councilman Caraway to serve on a committee of the Council to discuss these guidelines and criteria, as well as discuss working relations and other items of common interest/requests with the TEDC.

Subsequent to his announcement, Mayor Seeber recognized that the election of a new Mayor was imminent and asked that consideration of any new guidelines and criteria be delayed until a new Mayor and Council was provided sufficient time to formulate a final set of guidelines and criteria. Since that time, Mayor Bass, Councilman Moran, Councilman Caraway and City staff has met with TEDC representatives and community leadership on several occasions to refine a proposed set of Guidelines and Criteria for Granting Business Incentives (Guidelines).

While substantially unchanged since earlier drafts, the proposed Guidelines include the following major provisions:

- Potential incentive(s) based upon job creation and retention of at least 50 jobs and on a sliding scale based upon gross payroll.
- Applicant must be a primary employer with at least 70% of its goods and/or services sold to customers that are located more than 50 miles from the center of the City.

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- Potential incentives may include, but are not limited to land, facilities, and equipment & infrastructure grants in a form and schedule to be determined by the City on a case by case basis.
- Project must be implemented within two (2) years.
- City may cause a feasibility and economic impact study to be performed.
- City may terminate and recapture an incentive in the event of failure to meet agreement provisions.
- The project proposed for consideration must be inside City Limits within two years.
- City Council retains the sole discretion to approve or disapprove any incentive on a case by case basis regardless of any guidelines or criteria.

Appropriately, the proposed Guidelines also affirm the City's ongoing policy to build Tyler's future without debt by using the Half Cent Sales Tax only for public infrastructure improvements and not for direct business incentives, thus creating a business friendly environment by:

- Shifting the burden from property tax to sales tax
- Reducing property taxes
- Eliminating general obligation debt
- Practicing "pay-as-you-go" funding for capital improvements

Every Council since 1997 has affirmed this Blueprint financial policy, and the current Council is called upon to simply re-affirm this policy as part of its effort to establish new Guidelines. In keeping with Blueprint financial policy, the proposed Guidelines explicitly state that the City will not use the Half Cent Sales Tax for direct incentives.

**Councilman Moran**- Stated that this is not a shift in policy by the Council. This is putting in place on paper what the policies have been up to this point. When there is a great economic opportunity for Tyler the City Council has not and will not pass on it. This policy puts in place on paper what the expectations are as far as number of jobs and payout of jobs.

**Councilman Caraway** – Stated that this is a plan that is being brought to the Council that places the City in a position to say to the citizens that the intent of the revitalization of Tyler is a long term plan and has been well thought out.

**Mayor Pro Tem Alworth** – Stated that this document will continue to help the City of Tyler be a stable economic community.

Motion by Mayor Pro Tem Alworth; seconded by Councilman Caraway; motion carried 7 - 0 & approved as presented.

## **ORDINANCE**

- O-1 Request that the City Council consider adopting an ordinance amending Tyler City Code Chapter 6 to adjust the existing building permit fees for new construction, alteration, additions and repairs. (O-2008-140)**

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**Michael Wilson, Development Services Engineer** – Stated that Tyler City Code Chapter 6, Article I., contains certain regulations related to building permit fees. The current fees are assessed at a flat rate per unit measure, with one rate per unit of measure for new construction

and different rate per unit of measure for alteration, additions and repairs. The different rates per unit of measure have been created for some disproportionate permit fees when comparing projects of similar size and valuation.

The Development Services Department has reviewed the current provisions in City Code Chapter 6, Article I., and compared our current fee schedule to other Texas cities of similar size. Based on that comparison, a new fee schedule utilizing a de-escalating rate per unit valuation that results in a more proportional fee was proposed. The proposed fee schedule was then utilized to project estimated revenue with the goal of generating similar revenue as the current fee schedule over the past two fiscal years. Based on the results of the analysis and revenue projections, staff recommends the following changes to create a fee schedule that will result in building permit fees that are more proportional for projects of similar size and valuation.

Section 6-3. Schedule of Permit Fees. Amended to adjust the existing building permit fees for new construction and alteration, additions and repairs. The amendment proposes to replace the existing fees, which are a flat rate of \$5.00 per unit measure, with a de-escalating rate per unit measure. The new fee schedule will include two separate rates for new construction, one rate for residential construction and one rate for non-residential and commercial. The new fee schedule also includes a separate rate for residential alteration, additions and repairs.

The remaining changes relate to providing clarification to the definition of what is considered residential construction and what is non-residential and commercial construction. The Ordinance also provides guidance and authority to the Building Official for determining the valuation of a construction project in case the applicant provides a valuation number that does not appear to be consistent with business or industry-wide valuation standards.

Motion by Councilman Smith; seconded by Councilman Simons; motion carried 7 - 0 & approved as presented.

**O-2 Request that the City Council consider adopting an ordinance amending Tyler City Code Chapter 6 by adopting the 2008 National Electrical Code with amendments. (O-2008-141)**

Motion by Mayor Pro Tem Alworth to amend the ordinance in paragraph e. to include the word fault after arc; seconded by Councilman Smith; motion carried 7 - 0 & approved as amended with the correction.

**O-3 Request that the City Council consider the adoption of an ordinance to create a Tax Increment Reinvestment Zone Number 3 (TIRZ Number 3) on a 491 acre parcel of land located in the North End of Tyler and in the general area north of Martin Luther King, Jr. Blvd, (along North Broadway) to Loop 323, over to and including Texas College. (O-2008-142)**

Motion by Councilman Caraway; seconded by Councilman Sanders; motion carried 7 - 0 & approved as presented.



- O-4 Request that City Council consider conducting the annual investment policy review and consider approving an ordinance adopting the investment policy for fiscal year 2008-2009. (O-2008-143)**

**Daniel Crawford, Chief Financial Officer** – Stated that the only clarification is that the Retirees Health Benefits Fund is not subject to this investment policy.

Motion by Mayor Pro Tem Alworth; seconded by Councilman Moran; motion carried 7 - 0 & approved as presented.

- O-5 Request that the City Council consider adopting an ordinance amending the Fiscal Year 2008-2009 Budget to provide funding to complete various construction projects, motor vehicle purchases and other purchases not completed by September 30, 2008 as anticipated. (O-2008-144)**

Motion by Mayor Pro Tem Alworth; seconded by Councilman Smith; motion carried 7 - 0 & approved as presented.

### **MISCELLANEOUS**

- M-1 Request that the City Council consider reviewing and accepting the Revenue, Expenditure and Investment Report for the quarter ending September 30, 2008.**

Motion by Councilman Smith; seconded by Mayor Pro Tem Alworth; motion carried 7 - 0 & approved as presented.

- M-2 Request that the City Council consider authorizing the City Manager Designate to execute Change Order No. 1, in the amount of \$69,375.32 to the South Tyler Pedestrian and Bicycle Trail Project.**

**Mayor Pro Tem Alworth** – Stated that the additional expenditure of \$13,000.00 of the city's money will preserve trees in the city which is in keeping with the Tyler 21 Plan.

Motion by Mayor Pro Tem Alworth; seconded by Councilman Smith; motion carried 7 - 0 & approved as presented.



- M-3 Request that the City Council consider authorizing the City Manager Designate to execute Change Order No. 1, in the amount of \$35,505.96, to Heartbeat Construction, for the replacement of a 12 foot sanitary sewer line encountered during the construction of the drainage improvements to Black Fork Creek Tributary D1.1, N. Broadway to E. Queen. ©**

Motion by Mayor Pro Tem Alworth; seconded by Councilman Sanders; motion carried 7 - 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 approving the reconciliation change order and releasing final retainage for the Drainage Improvements West Mud Creek, Tributary M-6 at Rickety Lane and South Park Drive to Hartbeat Construction in the amount of \$19,138.70. ©**
- C-A-2 Request that the City Council consider approving the reconciliation change order and releasing final retainage in the amount of \$24,446.70 for the Front Street Sidewalk Improvements, from Shady Lane to Fenton Avenue. ©**
- C-A-3 Request that the City Council consider approving the reconciliation change order and releasing final retainage in the amount of \$19,345.67 for the Irish Meadows Drainage Improvements. ©**
- C-A-4 Request that the City Council consider approving the Re-subdivision of Lots No. 29, 30 and 31 of East Shore Estates on Lake Tyler East. ©**
- C-A-5 Request the City Council consider approving the expenditure of \$96,455.00 for Mandated Water Quality Assessment Fee to the Texas Commission on Environmental Quality.**
- C-A-6 Request that City Council consider authorizing the City Manager Designate to execute a letter of agreement extending the banking services contract with Southside Bank through December 31, 2009. ©**

Motion by Mayor Pro Tem Alworth; seconded by Councilman Caraway; motion carried 7 - 0 & approved as presented.

### **CITY MANAGER'S REPORT**

- CMR-1 Request that the City Council consider receiving a presentation from the City Manager Designate regarding the appointment of the Fire Chief.**

Motion by Mayor Pro Tem Alworth to appoint Neal Franklin as Fire Chief; seconded by Councilman Simons; motion carried 7 – 0 & approved as presented.

- 2 Homebuyer's assistance seminar held, very happy with it.**
- 3 3 year anniversary of Development Services Department. Congratulations to Michael Wilson**
- 4 CIP Summary Report handed out**

**RECESS FOR EXECUTIVE SESSION - City Council convened into Executive Session at 9:59 am**

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

-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

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

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

-pending or contemplated litigation involving the boundaries of the City's ETJ

-pending or contemplated litigation involving easement or real property acquisition

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.

City Council reconvened from executive session at 10:37 am with the following actions.

AFTER EXECUTIVE SESSION:

Councilman Moran moved and Mayor Pro Tem Alworth seconded the following motion:

Authorize the Purchase of Downtown Properties as described below:

1. Execute a contract to purchase Lots 12A, Block 343, City of Tyler, TX, (19,123 square feet) from Billy J Welk for \$53,000.00 plus buyer closing costs from the Oil & Natural Gas Fund and Seller pays commission and title insurance fees.
2. Execute a contract to purchase approximately 49,876 square feet on Erwin from the St. Louis Southwestern Railroad for \$206,473.00 plus buyer closing costs, title insurance, and billboard buyout from the Oil & Natural Gas Fund and Seller pays commission
3. Execute a contract to purchase *Lot 10, Blk 188 and Lot 17, Blk 188, City of Tyler, Texas (10,716 square feet) from Jacquelyn Kimberley for \$50,200.00 plus buyer closing costs from the Oil & Natural Gas Fund and Seller pays commission and title insurance.*
4. Execute a contract to purchase *Lot 12, Blk 188 and Lot 1B, Blk 91, City of Tyler, Texas (16,466 square feet) from Randy & Donna Thedford for \$125,00.000 plus buyer closing costs, commission, and title insurance from the Oil & Natural Gas Fund; and*
5. Execute a contract to purchase *Lot 11, Blk 188, City of Tyler, Texas (11,892 square feet) from the Ella Marie Alexander Estate for \$61,200.00 plus buyer closing costs and commission from the Oil & Natural Gas Fund and Seller pays for title insurance.*

Motion passed with 7 For and 0 Against.

**ADJOURNMENT**

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Motion by Mayor Pro Tem Alworth to adjourn the meeting at 10:41 am; seconded by Councilman Caraway; motion carried 7 - 0 & meeting adjourned.

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

**A T T E S T:**

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**CASSANDRA BRAGER, CITY CLERK**