

**MINUTES OF THE  
REGULAR CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS  
OCTOBER 28, 2009**

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, October 28, 2009 at 9:00 a.m. in the Council Chamber, City Hall, Tyler, Texas, with the following present:

Mayor: Barbara Bass  
Mayor Pro Tem: Donald Sanders  
Councilmembers: Charles Alworth  
Chris Simons  
Ralph Caraway  
Sam Mezayek

City Manager: Mark McDaniel  
City Attorney: Gary Landers  
Assistant City Manager: Scott Wall  
Assistant City Attorney: Karen Stead  
Airport Manager: Davis Dickson  
Budget/Human Resources Director: ReNissa Wade  
Development Services Engineer: Michael Wilson  
City Engineer: Carter Delleney  
City Fire Chief: Neal Franklin  
City Police Chief: Gary Swindle  
Communications Director: Susan Guthrie  
Director of Parks and Recreation: Stephanie Rollings  
Director of Planning and Zoning: Barbara Holly  
Director of Solid Waste: Dan Brotton  
Manager/Water Utilities Business Office: Joan Roberson  
Director of Utilities & Public Works: Greg Morgan  
Traffic Engineer: Peter Eng  
City Clerk: Cassandra Brager

**INVOCATION**

The Invocation was given by Councilmember Caraway.

**EMPLOYEE AWARDS – RECOGNITIONS, SERVICE**

**A-1 Request that the City Council consider recognizing a City employee as the Blueprint Blue Ribbon Award winner for October 2009, for placing the highest premium on responsiveness to citizens' needs.**

Mayor Bass presented Captain Steve Countryman with the Blueprint Blue Ribbon Award winner for October 2009, for placing the highest premium on responsiveness to citizens' needs.

**ZONING**

**Z-1 C09-09-008 TEXAS SPINE AND JOINT (EAST 6<sup>TH</sup> STREET)  
Request that the City Council consider closing a portion of East 6th Street connecting Roseland Boulevard and Donnybrook Avenue.**

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**Mark Priestner, Planning Concepts** – Stated that when this hospital was first built the parking lot on the southern half of the northern part was part of the parking lot of the overall. Since that time they have purchased three additional buildings. When they had initial parking issues in the beginning it was because of that additional parking was not available. Since that time they have taken out the fence and now that is open. When we met with the Bergfeld in the beginning, the biggest issue they had was the cross parking where patients and doctors were parking on their property and not utilizing this property. When this is built and done, they will dedicate employee parking spaces at the far end and that will be their “dedicated employee parking” spaces, which opens up the closer spaces to the building which will help alleviate that. In doing the plan what we have tried to do is open up and make the parking better, and access safer. Right now when you are parking in that parking lot you are crossing the street to get to Spine and Joint and this will make it a lot safer for patients, doctors and the public. The access points are open and as the cars were counted the majority of the pass-through cars were coming at noon time and early morning. At noon time most of the cars are coming through and going to Luby’s or CVS and that connection through there will remain open, it will be an inconvenience and slow traffic down, but if someone wants to still go through that section they will be able to do it. Under the “INT”, Institutional District if Spine and Joint are not able to go out into the roadway and reconfigure we have to go up and we feel like keeping the expansion that goes to the north at a single story is a lot better for the neighborhood then going up multiple stories on the southern portion of the sight.

**Julius Bergfeld, 2001 S. Donnybrook** – Stated that they protest the closing of the street and the reason for many have been discussed, some of them have been changed and rectified and some still exist. Primarily he doesn't think that a decision can be based entirely on what the traffic count is now because if they add 50,000 more square feet, people will still be coming to work in the 50,000 extra square feet, to get doctored in the 50,000 square feet. The traffic count, just because it is what it says it is today, may not be what it is to tomorrow or after this construction. Another inconsistency is the street according to Barbara would be considered part of the Institutional zoning. It seems to mean the street would be only Institutional zoning to the middle of the street and we are talking about 33,600 square feet approximately in the street and if you add more feet to the Institutional zoning where they have it, it means they can add more square feet to the building that they are going to be adding to and that’s a whole other issue. Institutional zoning is spot zoning and improper for a neighborhood area. Traffic is a concern of mine and I drive to work on Broadway every day and work a block away from where Spine and Joint is located. There is a lot of traffic on 4<sup>th</sup>, 5<sup>th</sup>, Broadway and Donnybrook and if anyone feels there are a lot of traffic counts on those streets they just need to drive them during workdays and experience it.

**Tabbotha McGee, 3827 Scenic Dr.** – Stated that as an employee of the Spine and Joint hospital we care for a vast number of patients. We love what we do and the patients and their family appreciate what we do. When I drive and see other medical facility construction sites going on I think wow what a wonderful way to better enhance the services to Tyler. We are asking that you support our expansion so that we can better serve Tyler and also enhance its natural beauty.

**Andy Bergfeld, 2001 S. Donnybrook** – Stated that the only real thing that he would ask the City Council to consider is in the Planning and Zoning meeting it was said that this happens all the time, we close streets all the time in Tyler. There has been seven closing of streets and three

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were for non-profit, and not one of those were in a master plan development that's functioning the way it should be, flowing the way it should be. This is unprecedented and we hope that you understand the concern. I think that we are all for pro growth. You don't have to be against growth to realize that something may be working the way it is right now. Can we not look at leaving the road there, building a parking garage, building a cross-over, or having a drop off for the patients that may have trouble crossing the street. There are other options, I just don't think that this is your only option.

**L Francis Kay, 321 W. 6<sup>th</sup> St.** – Stated that he has three points 1. There is bad traffic from 5<sup>th</sup>, 8<sup>th</sup> and from Donnybrook to Broadway, closing 6<sup>th</sup> Street will make it worse. 2. Goes to what Mr. Bergfeld stated, “We don't want private taking of public land.” 3. We don't want medical complex sprawl in our neighborhood.

**Susan Emge, 2003 Hilltop Dr.** – Stated that they take care of their patients and provide good service. Ms. Emge lives about four blocks from the hospital and does not have any problems getting to and from the hospital and she is in favor of this closure.

**Tony Wall, 1406 Brandywine** - Stated that they are here today after two months of discussion and planning with the Bergfelds, Virginia Shull and representatives from the Historical Society and everyone involved thinks that this is a great project. The hospital is not for sale. The rumor has been out there but is not true. The hospital is owned by physicians that have all been pillars of this community for many years and see no end to that in terms of their commitment to this community. All around us if you look at what was there when we first came there, it was an empty Montgomery Wards building, across the street from us was Elmo's. Each day in the mornings we had to clean up beer bottles and so forth and I think if you look at then and if you look at it now, we have made a tremendous improvement to that area. Most of our patients are Medicare and I think that some of the doctors that are going to speak are going to tell you that they do not want to go into a high rise, we want to maintain the look of the hospital and keep it one or two levels. When we talk about for profit or not for profit the main difference is that we pay taxes. One piece of equipment that Spine and Joint purchased cost over \$200,000 in sales tax. We estimate that with this project, if it is approved and we can go forward that we will pay over \$1,000,000 in additional sales and property tax with this expansion. We are providing jobs in this community, the physicians have already invested \$30 million in this area and we want to invest another 30 to 35 million. Sixty percent of our patients come from outside of Smith County so we are bringing revenues, sales tax, revenues to the businesses in our area. All around us is commercial and we don't have any issues with the neighborhood. We ask that you support this and we know that the precedents is out there, there has been many many closures and irregardless for profit or not for profit.

**Councilman Alworth** – Asked Mr. Wall if there were any plans to take it to a nonprofit organization since he stated that the hospital was not for sale?

**Tony Wall, 1406 Brandywine** - Stated that the answer is, “no.” Mr. Wall stated that he did numerous years with one of the big hospitals in town, they have to make a profit, and we make a profit. The only difference is, are you taxable or not and we pay our taxes.

**Mike Patterson, 210 Mockingbird Ln** - Stated that he was against the street closure because of the traffic and parking problems. Mr. Patterson doesn't think that this is friendly to the

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Neighborhood. He thinks its bad policy to give the street away. Despite what Mr. Wall stated he is concerned about them selling this project. It is hard to get up and talk against these doctors, some of whom has been in my home, and I have been in some of their homes. He doesn't know any other profession where we would allow somebody to put us to sleep and cut us open, so there is naturally a trust factor here. However, I'm concerned because this hospital is not a charitable hospital, it is a business. I have no problem with someone going out trying to make money but I think that we need to look at this as a business. Why would we give a street, that if was on open market would be worth hundreds of thousands of dollars, give it away to a business? We are talking about giving this street to a business that may surprise you to know is only paying \$41,000 a year in property taxes according to SCAD. They are on the tax rolls for less than 20 and the real estate and the personal property are a few million. Mr. Patterson thinks that it is a bad decision a bad policy to be giving away our streets to businesses. What if Brookshires down the street says, "We want to expand our grocery store?" Brookshires has been a good neighbor of this community and gives a lot of charity; it would be difficult to tell them no after you've done so by giving this street away. One of his concerns is that there doesn't seem to be any policy by the city of when we are going to give away a public street and when were not going to give it away. This is clearly as Mr. Bergfeld stated, "setting a policy of precedent different than what we have heard in the past." Despite what Mr. Wall has said about this business being for sale, it may not be for sale today October 27 at 9:35 but it has been for sale in the past. Someone on this council has been at a meeting in the last two months where they have talked about that. What concerns Mr. Patterson is that the original zoning request was asking for some mixed use that would allow them to build a 5 story 270,000 square-foot hospital, now that guy shot down. It would concern him that they can add onto this and turn what is a fairly neighborhood friendly commercial district into something that is not very neighborhood friendly. He would encourage the council to take a hard look at the precedent they are setting and ask do you really need to be giving away a street to help a business package itself in a more attractive fashion for some out of town buyer.

**Dr. Jan H. Garrett, 8440 Southland Dr.** – Stated that he is a founding partner of Spine and Joint Hospital and his main thrust is safety. Mr. Garrett stated that there is traffic that goes through there, most to the hospital, some cars go through at a fairly rapid clip and his patients and employees have to go across that at night despite the lighting that the City has provided. This does present a safety factor that concerns him and there is a danger that they can be hit and injured severely. Closure of this street would prevent that and traffic would be routed through a much safer route through the parking space if the people wish to go through there.

**Janie Menegay, 815 S. Broadway** – Stated that her main concern is the impact it will have on the surrounding national registered historic district neighborhoods. There was concern voiced by some of the members in 2000 when they heard the hospital was taking over the Montgomery Wards building. Ms. Menegay saw this as a plus and the physicians have done a great job around town. They have taken some of the old grocery stores, discount stores and department stores and have used this space to good advantage. Back then we were told that it would remain a contained facility with primary day surgery patients. We never dreamed that in 10 years we would be back here addressing this issue. They did not act like it would happen. Again what people have said, "It's not for sale, they don't have plans to expand beyond this." We don't know what's going to happen in the future and it needs to be planned now. The traffic issues do impact the close by neighbors as well as the people living way beyond the 200 feet. Ms. Menegay stated that she also has a problem with a five story building going in. This

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was built as a commercial shopping center, not a “Hospital District”. I don’t think that we can allow a noble cause to impact negatively on the neighborhoods.

**Nancy Hefner, 223 E. 3<sup>rd</sup>** – Stated that she lives in the heart of what is being discussed today and she is concerned about the traffic and the precedent of closing what has been a public street. After all the talk for Tyler 21 and the need to preserve this area, I can’t believe that it would even be discussed that a street would be closing. When Spine and Joint bought this property initially they knew the constraints that existed within those streets.

**Claire Tibiletti, 16690 Driftwood Dr.** – Stated that she has had the privilege of practicing medicine in Tyler for the past 24 years and also a privilege to be one of the owners of Texas Spine and Joint Hospital. Safety has been discussed and the only additional comment that she would like to make is there has been a suggestion in the past about crossing the street by constructing a cross walk over the street connecting the existing building to a proposed future building. That would be an option but it would not address the fact that a majority of employees, patients, and physicians would still continue to cross the street at ground level, entering the building on the first floor. Other concerns that have been voiced, that if they are allowed to expand the facility that they would negatively impact the appearance of the property. That is not the plan the plan is to protect the well landscaped facility. Our commitment is that they will transplant any tree when possible if it has to be relocated and if any tree cannot be relocated by transplantation they will replace with two trees in its place.

**Virginia Shull, 1310 Roseland Blvd** – Stated that she objected to Spine and Joint 8 or 9 years ago when they made their original request and she objected for these concerns. 1. Traffic-(she was told that would not be a problem and that it would be about the same as Montgomery Ward in its hay day). 2. Twenty four (24) hour business – (she was told that it was a day clinic and by name there would not be anyone staying over night except in the extreme rare circumstances). 3. Ambulances – (she was told there would be no emergency room, well there is an emergency room there). Mrs. Shull was concerned about a Hospital District being put down in the middle of a small retail shopping center with neighborhoods surrounding it. She was told by the sheer fact that they bought a land lock piece of property, how could they expand, that they would not be expanding. Here we are today and every one of her concerns has been met. Closing 6<sup>th</sup> Street for profit is not right. They decided where they wanted to build, they need to keep their original master plan in place. Their making a donation to Bergfeld Park is a very small item compared to what the neighborhood will get in return, more traffic. This was not deemed to be a Hospital District and people come into the area to see beauty and to show them a past that has been preserved here. Where is our neighborhood going to be and where is the heart of Tyler going to be when, for whatever reasons, they are putting together this package, down the line that someone else owns this?

**Gene Shull, 1310 Roseland Blvd** – Stated that his business is all about growing Tyler and he loves the Azalea District and is a part of it and wants to continue to be a part of it regardless of whether we continue to live there or not. Someone earlier talked about medians and how great they are but you are not going to put a median in that section of the roadway without hampering traffic. The City and Tyler 21 want to redevelop the growth of downtown Tyler and one of your main arteries of the downtown is South Broadway. Looking at the big picture of the traffic, its not just about one block of 6<sup>th</sup> Street. If you continue to grow a Hospital District in

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this area, you are going to continue to put pressure on the Bergfeld area of Broadway, which is going to create a big bottleneck even worse than what it is today for traffic getting into the redevelopment of downtown. Mr. Shull asked City Council to vote against zoning change.

**Bobby Curtis, 5816 Quail Creek** – Stated that he is the Chairman of Planning & Zoning and his biggest concern was closing the street and another tremendous problem, if this moves forward, is the parking. In the medical district now the parking lots are full and the streets are lined on both sides because we are not requiring enough parking. Regardless if we close this street or not, the parking requirements need to be addressed for the medical district.

**Mike Carmichael, 1208 S. College Ave.** – Stated that he owns eleven (11) of the eighteen (18) duplexes out of the Donnybrook Historic District. There is no question that this will definitely impact the traffic flow that has continued over the last ten (10) years to get worse and worse. What concerns him from a business stand point as well as a historical standpoint is that over time those duplexes along Donnybrook, as that continues to get busier and busier because of a bigger facility, what will happen with that historic district? He stated that he is against this and feels this will negatively impact the traffic flow as well as the potential harm that it will do to the historic district just because of the influx of more traffic and more problems that that creates.

**Mike Russell, MD, 5930 Brixworth Dr.** – Stated that change and growth is not easy but that's what today is about. With any business you must grow. That is not an option. If we do not grow we will slowly fade away. Charity work is done at Spine and Joint and percentage wise they do very similar to bigger hospitals. Safety is an issue and they own both sides of the street and what they are asking to do is include this into their parking. Where those rumors started about selling the facility is two or three years ago we were interested in whether we needed a strategic partner, specifically looking at partnering with one of the two not for profits here in town. It turns out that the two hospitals here were not interested, so in hiring a Consultant to look at that issue everybody got the idea that we were trying to sell but in fact we were just looking for a strategic partner.

**M. de la Garza-Graham, 533 Wilder Way** – Stated that they do the same amount of charity work as they do at the other two hospitals. A couple of the neighbors around Spine and Joint were happy that we were there. A couple of the neighbors hated living there when Montgomery Wards was empty because there were always homeless people and teenagers drinking. Before we got there Luby's was getting ready to close. When Spine and Joint moved in there they improved and hired more employees. The difference between us and the other hospital is that we are for profit just like they are but we do pay taxes into this community and we all live and work here.

**David Hudson, 412 Rose Circle** – Stated that this has nothing to do with the practice of medicine. These people that are here today that run the Spine and Joint Hospital are wonderful people and they do great work in this community. But that's not the issue. The issue is the street closing. The issue is the commitment of this community to preserve the neighborhoods, the quality of life that we have. The issue is Tyler 21 and closing this street or a comparable street has never been the kind of thing that would have been contemplated during that process. Despite the comments that have been made, the parking situation is not going to be resolved by this and they will continue to have problems with parking. The first hearing that was held at Planning and Zoning on this question, Mr. Priestner stated, "Closing this street was not

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necessary to accomplish this process.” If it is not necessary why are we doing it? Growth is an issue and no decision made by Council today will stop growth in Tyler Texas, its going to continue to happen. The question is how do we direct and control that growth so that we protect the neighborhoods and the quality of life that we have here already? Mr. Hudson is firmly convinced that if the street closing is approved that there will come a time in Tyler, Texas when people in town will say I can’t believe they did that, so the answer to that is don’t do it.

**Travis Booher, 622 W. Camellia** – Stated that he opposed the street closure for a couple of reasons and traffic was one of the reasons. Mr. Booher stated that he is a driver and heading North on Broadway between 7:30 and 8:00 in the morning and sitting through a few lights, getting stuck in the middle of the intersection, and you will be glad that there are as many arteries running east and west as possible to help elevate that traffic. Second, he assumes the property, the street, is an asset of the City of Tyler. This has been framed as a street closure. I think this should be framed as a street closure and a gift from the City of Tyler to a for profit business. What’s going to be the evaluation moving forward? Is it going to be before we close a street we like to see 40 new jobs and 20 million dollars invested, or is it going to be we would like to see this particular type of business. There are other alternatives for Spine and Joint and I think those options need to be explored because the road closure is a bad idea.

**Mary Endres, 1610 S. Wall** – Stated that she is against the proposed closure of the street and affirmed all of the statements made by the prior speakers who have made very good points as to why this Council should not grant this application to close the street. Its bad policy to give public property for private use and this is an unprecedented manner in which you have been asked to do it.

**Carolyn Cole, 713 N. Englewood** – Stated that as she listened this morning to the things that have been said from the audience, what a blessing it would be if she lived in that neighborhood and Spine and Joint was there. This is a hospital that takes very good care of their patients and a place where during the Katrina and Rita hurricanes they were preparing to receive people from the hurricane if they were sent to their facility.

**Councilman Alworth** – Asked the City Engineer what was the summary of the BWR study

**Peter Eng, Traffic Engineer** – Stated the he concurs with their findings and believes that the impact based on their study would be minimal and he agrees with their methodology.

**Councilman Alworth** – Asked what about the traffic flow in and out of the parking lot associated with Spine and Joint?

**Justin Smith** – Stated that he conducted the analysis of the traffic along 6<sup>th</sup> Street and cars coming in and out of the driveway and 25 percent of the vehicles that are on 6<sup>th</sup> Street are actually entering the parking lot.

**Councilman Alworth** – Asked if we assumed that there is an increase in traffic due to an increase in the square footage area do you have any guess estimate as to what that would be or will we have to get the program out and blow dust off of it?

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**Peter Eng, Traffic Engineer** – Stated that he believes the increase will probably be proportional to the square footage and the number of patients that they plan to take care of. Long term that is not a very significant impact to the traffic on Broadway, not closing the street or closing the street.

**Councilman Alworth** – Asked Barbara Holly to clarify what she was recommending as far as either improving the parking or putting some restrictions on the parking.

**Barbara Holly, Director of Planning & Zoning**, - Stated that Spine and Joint will meet today's parking standard for the entire facility not just the expansion, which is all that we would normally require but they would come under today's standards. Our parking in the past for medical was a 1 to 400 ratio and today it is 1 to 200 and voluntarily they will go ahead and meet that standard. They will also meet the standard of 1 parking space ratio for every 4 beds plus 1 parking space for 2 of their employees on the peak shift.

**Councilman Alworth** – Asked Barbara Holly to explain the zoning that is involved here because there is zoning to the North of the existing 6<sup>th</sup> Street, zoning to the South of the existing 6<sup>th</sup> Street and each of those two zonings have their own requirements as far as building heights.

**Barbara Holly, Director of Planning & Zoning** - Stated that the zoning to the North is C-1 and is allowed to be 2 1/2 stories. The zoning change that they had applied for would have allowed them to extend the hospital North across 6<sup>th</sup> Street, which would conferred 5 story development improval to the north of 6<sup>th</sup> Street but that was denied and the applicant did not appeal it. The existing zoning had been a community hospital which has transitioned into "Institutional" with the new Unified Development Code. That allows them the existing right to build a 5 story building on the property where the hospital currently sits. That zoning goes to the midline of 6<sup>th</sup> Street and the Institutional Zoning will extend to the middle of 6<sup>th</sup> Street and it does today whether the street closes or doesn't close.

**Councilman Simons** – Stated that as far as this expansion goes he was in favor of growth and expansion of businesses but where he is starting to have a serious concern is the wing that would be facing the North that intrudes into 6<sup>th</sup> Street and severing a through street that the City of Tyler has had since its inception with the street. Councilman Simons also stated that this is setting a precedent and that is a huge concern.

**Councilman Caraway** – Stated that Spine and Joint has done a great job but a lot of the people that have made valuable comments don't live with the day in and day out that the people in that neighborhood have to deal with. I hope there is another way that we can accomplish what we need to accomplish. We need economic development but at the same time there are some things here that affects more than just Spine and Joint, it affects the whole neighborhood and the City.

Motion by Councilman Simons to deny the motion; seconded by Councilman Caraway; motion failed 2-4 as presented so item Not Denied.

Motion by Mayor Pro Tem Sanders to table until further discussion on the item; seconded by Councilman Alworth; motion carried 4-2 & item tabled.

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Mayor Pro Tem Sanders left

**Z-2 APPLICATION C10-09-010 PHIL BURKS**

**Request that the City Council consider closing unimproved right of way sections of Rieck Road and Eagles Nest Boulevard. (O-2009-107)**

Motion by Councilman Simons; seconded by Councilman Mezayek; motion carried 5 - 0 & approved as presented.



**Z-3 Z10-09-059 PHIL BURKS (5836, 5866, 5950, 5961 EAGLES NEST BOULEVARD and 1621, 1721, 1821 E RIECK ROAD**

**Request that the City Council consider changing the zoning from “R-MF”, Multi-Family Residential District to “RPO”, Restricted Professional Office District on Lots 2, 3A, and 4A of NCB 1474A, from “R-1D” Single-Family Detached and Attached Residential District to “RPO”, Restricted Professional Office District on Lots 1, 2, and 3A of NCB 1474C, and from “C-1”, Light Commercial District to “RPO”, Restricted Professional Office District on Lot 4 of NCB 1474B, seven lots totaling approximately seven lots totaling approximately 29.29 acres located at the platted intersection of Rieck Road and Eagles Nest Boulevard (5836, 5866, 5950, 5961 Eagles Nest Boulevard and 1621, 1721, 1821 E Rieck Road). (O-2009-108)**

Motion by Councilman Mezayek; seconded by Councilman Caraway; motion carried 5 - 0 & approved as presented.

**Z-4 APPLICATION Z10-09-058 JOHNNY WILLIAMS (2227 OLD GLADEWATER HIGHWAY)**

**Request that the City Council consider changing the zoning from “M-2”, General Industrial District to “C-1”, Light Commercial District. (O-2009-109)**

Motion by Councilman Caraway; seconded by Councilman Mezayek; motion carried 5 - 0 & approved as presented.

**Z-5 APPLICATION Z10-09-057 HEATH HENRY (2124 and 2130 HAVERHILL DRIVE)**

**Request that the City Council consider changing the zoning from “R-1B”, Single-Family Residential District to “R-1D”, Single-Family Detached and Attached Residential District.**

Motion by Councilman Alworth seconded by Councilman Mezayek; motion carried 5 - 0 & denied as presented.

**Z-6 APPLICATION Z10-09-060 EDWARD JACOBS (3922 McDonald Road)**

**Request that the City Council consider changing the zoning from “PMF”, Planned Multifamily District and “R-1B”, Single-Family Residential District to “R-1D”, Single-Family Detached and Attached Residential District. (O-2009-110)**

Motion by Councilman Mezayek; seconded by Councilman Simons; motion carried 5 - 0 & approved as presented.

**PUBLIC HEARINGS**



**H-1 Request that the City Council consider conducting a public hearing to consider an Ordinance of the City of Tyler, Texas, renewing the designation of Reinvestment Zone No. 6/Brookshire Grocery Company, for Commercial/Industrial Tax Abatement, City of Tyler, Texas, establishing the boundaries thereof and other matters relating thereto. (O-2009-111)**

Motion by Councilman Simons; seconded by Councilman Alworth; motion carried 5 - 0 & approved as presented.

**RESOLUTION**

**R-1 Request that the City Council consider adopting a Resolution ratifying submission of an application for and accepting Federal Aviation Administration (FAA) Grant Funds totaling \$790,508.00 for the purpose of acquiring land necessary to improve the Runway Safety Areas on Runway 4/22 at Tyler Pounds Regional Airport. This Resolution also accepts any grant amendments to increase the grant funding levels, as well as authorizing the City's match payment not to exceed 5 percent for proposed grant projects.(R-2009-31)**

Motion by Councilman Alworth seconded by Councilman Caraway; motion carried 5 - 0 & approved as presented.

**ORDINANCE**

**O-1 Request that the City Council consider adopting an ordinance amending Tyler City Code Chapter 18 to add additional health and safety regulations related to private swimming pools and spas, including water clarity, and providing for liens and recovery of costs to correct such violations. (O-2009-112)**

Motion by Councilman Alworth seconded by Councilman Mezayek; motion carried 5 - 0 & approved as presented.



**O-2 Request that the City Council consider adopting an Ordinance amending Tyler City Code Chapter 2 to add a specific reference to the local bidder preference available under State law for certain competitive bids. (O-2009-113)**

Motion by Councilman Alworth seconded by Councilman Mezayek; motion carried 5 - 0 & approved as presented.

**O-3 Request that the City Council consider adopting an Ordinance approving a negotiated settlement between the Atmos Cities Steering Committee and Atmos Energy Corporation, Mid-Tex Division regarding the Company's rate review mechanism filing in all cities exercising original jurisdiction and adopting tariffs that reflect rate adjustments consistent with the negotiated settlement. (O-2009-114).**

Motion by Councilman Alworth seconded by Councilman Simons; motion carried 5 - 0 & approved as presented.

**MISCELLANEOUS**



**M-1** Request that the City Council consider authorizing the City Manager to execute a professional services contract with Freese and Nichols Incorporated, of Fort Worth, Texas to provide two area development plans for Texas College and University of Texas at Tyler for an amount not to exceed \$163,754. ©

**Wendy Shabay, Freese and Nichols** – Gave a brief presentation and stated that these plans will help guide future expansion plans and goals of UT Tyler and Texas College. These plans will consider the impacts on land use, infrastructure, and pedestrian connections within the college areas. The Texas College area development plan is for approximately 92 acres surrounding the campus and the UT Tyler plan is for approximately 3,050 acres surrounding the campus. The outcome will adhere to the Tyler 21 Plan goals and objectives.

The scope of the Area Development Plans will include the following elements:

- Public/Stakeholder Involvement
- Land Use/Zoning
- Transportation/Pedestrian Connections
- Environmental/Aesthetic Design Issues



Motion by Councilman Simons; seconded by Councilman Caraway; motion carried 5 - 0 & approved as presented.

**M-2** Request that the City Council consider authorizing the City Manager to execute an agreement for Professional Services, in the amount of \$149,600, with Freese and Nichols, Incorporated for the development of a Lake Tyler Master Plan. ©

**Murphy Parks, Freese and Nichols** – Gave a brief presentation and stated that the purpose of the project is to develop a master plan for Lake Tyler which will Build on Tyler 21 Plan and seek input from Tyler citizens and local stakeholder groups. It will also develop a usable plan for future uses of City land, protection of water quality, recreation enhancement and city services.

Motion by Councilman Caraway; seconded by Councilman Mezayek; motion carried 5 - 0 & approved as presented.



**M-3** Request that the City Council consider authorizing the City Manager to execute Contract TYL-301, Work Order No. 1, in the amount of \$435,000, with Wisenbaker, Fix and Associates for the development of Emergency Action Plans for the Lake Tyler, the Lake Tyler East and the Lake Bellwood Dams. ©

**Greg Morgan, Director of Utilities & Public Works** – Stated that the City of Tyler Water Utilities owns, operates and maintains three lakes, Lake Tyler, Lake Tyler East and Bellwood Lake. These lakes are manmade and are instrumental to supplying the water needs of the citizens of the City of Tyler and the surrounding area.

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Recently, through their Dam Safety Program, the Texas Commission on Environmental Quality enacted regulations requiring the development of Emergency Action Plans (EAP) to reduce the risk to lives and property from the consequences of a dam failure. As owner of the aforementioned three dams, Tyler Water Utilities is responsible for preparing the EAP's which will include (but not limited to) the following:

- Development of an HMR52 model to compute Probable Maximum Precipitation;
- Develop HEC-HMS model to compute runoff and generate hydrographs
- Develop digital terrain models for study area;
- Generate cross sections for lakes and dams using GIS 3D Analyst and Surface Analyst software;
- Assemble and calibrate HEC-RAS unsteady state model for lakes, dams and receiving streams
- Determine breach parameters
- Perform Dam breach analysis using HEC-RAS unsteady state model for three conditions (i.e. dry weather breach, barely overtopping breach and Probable Maximum Flood breach);
- Generate Inundation Maps for three breach conditions;
- Develop response plans in the event of a breach.



Motion by Councilman Alworth, noting that the federal government in its infinite wisdom doesn't fund these projects; seconded by Councilman Mezayek; motion carried 5 - 0 & approved as presented.

**M-4 Request that the City Council consider authorizing the City Manager to award a construction contract for Briarwood Estates Sewer Lines to the low bidder, Reynolds and Kay, Ltd., in the amount of \$446,124.68. ©**

Motion by Councilman Simons; seconded by Councilman Alworth; motion carried 5 - 0 & approved as presented.



**M-5 Request that the City Council consider authorizing the City Manager to execute a contract with SENSUS Meter Company for the upgrade of approximately 19,000 Tyler Water Utilities meters from drive-by Radio Automated Meter Read (AMR) system to fixed based FlexNet Advanced Metering Infrastructure (AMI) system. ©**

Motion by Councilman Mezayek; seconded by Councilman Alworth; motion carried 5 - 0 & approved as presented.

## CONSENT

**(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 award an annual contract to Aqua Metric Sales Company, of Schertz, Texas, for the purchase**

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of water meters, transceiver units and register units during fiscal year October 1, 2009 thru September 30, 2010. ©

- C-A-2 Request that the City Council consider authorizing the City Manager to extend the various annual price agreements for copy paper, office furniture and uniforms/mat service for one year, October 1, 2009 thru September 30, 2010, to the listed vendors.
- C-A-3 Request that the City Council consider authorizing the Tyler Police Department to purchase its annual police uniform order from Nardis Public Safety.
- C-A-4 Request that the City Council consider authorizing the City Manager to purchase one TORO Groundsmaster 4000-D mower.
- C-A-5 Request that the City Council consider authorizing the City Manager to purchase six new Ford Crown Victoria Police sedans to replace the current six sedans at the Police Department.
- C-A-6 Request that the City Council consider authorizing the City Manager to purchase two Street Sweepers.
- C-A-7 Request that the City Council consider authorizing the City Manager to award the purchase of office supplies for the fiscal year, October 1, 2009, thru September 30, 2010, from Office Depot of Fort Worth, Texas, through the U.S. Communities contract.
- C-A-8 Request that the City Council consider declaring certain City of Tyler Information Technology Services equipment as surplus and authorize for disposal.

Motion by Councilman Caraway; seconded by Councilman Simons; motion carried 5 - 0 & approved as presented.

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

1. Bond Issue for Water & Sewer, rates so good, plan to issue \$20,000,000 full amount rather than \$10,000,000.
2. Bond rating trip to Dallas resulted in upgrade to Double AA Plus Revenue bonds.
3. Taking another look at sign ordinances (holiday decorations and banners).
4. Mayor-City Council serve as volunteers, appreciation to City Council and staff for participating at TML and at Community events.
5. Mayor – appreciation to all volunteers for what you do(particularly those Board members who were recognized at appreciation event last night)

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**ADJOURNMENT**

Motion by Councilman Mezayek to adjourn the meeting at 11:38 am; seconded by Councilman Alworth; motion carried 5 - 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**