



**CITY OF TYLER  
CITY COUNCIL COMMUNICATION**

**Agenda Number:** O-4

**Date:** February 27, 2008

**Subject:** Request that the City Council consider adopting an Ordinance amending City Code Chapter 2 relating to the City's Investment Policy and amending City Code Chapter 3 establishing the Lindsey Police and Firefighters' Fund Board.

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**Item Reference:** Section 82 of the City Charter provides that it shall be the duty of the City Council to provide for advisory boards as needed. The S.A. Lindsey Police And Firemen's Trust was terminated by court order and is being replaced by the Lindsey Police and Firefighters' Endowment Fund along with the establishment of a new Lindsey Police And Firefighters' Fund Board.

The S.A. Lindsey Police and Firemen's Trust was created by Louise Lindsey Merrick on July 20, 1971 for the purpose of making awards to police officers and firefighters employed by the City of Tyler for outstanding service and to aid them and their families if they are injured in the line of duty. However, the S.A. Lindsey Police and Firemen's Trust was terminated by court order on September 24, 2007, on the petition of the Trustee, Bank of America, due to new legislation making continuation of the trust economically infeasible.

Under the Lindsey Police and Firemen's Trust an advisory board was established consisting of the Fire Chief, the Chief of Police and one civilian appointee. The remaining members of the trust established board desire to contract with the East Texas Communities Foundation to receive and manage the assets distributed from the termination of the S.A. Lindsey Trust, and to create an Endowment Fund designed to meet the primary purposes outlined in the originating trust document.

Because the Lindsey Police and Firefighters' Endowment Fund would be separately organized and managed by contract with an investment company as directed by the Lindsey Police and Firefighters' Fund Board, it should be excluded from the City of Tyler's Investment Fund policy.

It is considered to be in the public interest to create a special advisory board for the purpose of continuing the charitable purposes of the original S.A. Lindsey Trust to select, recognize, aid and/or award outstanding service by Tyler Police Officers and Firefighters.

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**Recommendation:**

It is recommended that the City Council adopt the attached Ordinance amending City Code Chapter 2 relating to the City's Investment Policy and amending City Code Chapter 3 establishing the Lindsey Police and Firefighters' Fund Board.

**Drafted/Recommended By:**  
**Department Leader**

  
**Neal Franklin, Fire Chief**

**Edited/Submitted By:**  
**City Manager**

LINDSEY POLICE AND FIREMEN'S ENDOWMENT FUND  
OF  
EAST TEXAS COMMUNITIES FOUNDATION

THE STATE OF TEXAS	§	LINDSEY POLICE AND FIREMEN'S
	§	ENDOWMENT FUND OF
	§	EAST TEXAS COMMUNITIES
COUNTY OF SMITH	§	FOUNDATION

This Agreement is entered into by and between the CITY OF TYLER, TEXAS, a municipal corporation, on behalf of the S.A. Lindsey Police and Fireman Trust, (hereinafter called "DONOR") and EAST TEXAS COMMUNITIES FOUNDATION, a Texas nonprofit corporation (hereinafter called the "FOUNDATION").

**Whereas**, the S.A. Lindsey Police And Firemen's Trust was created by LOUISE LINDSEY MERRICK in July 20, 1971 for the charitable purpose of making awards to police officers and firefighters employed by the City of Tyler for outstanding service and to aid them and their families injured in the line of duty; and

**Whereas**, the S.A. Lindsey Police And Firemen's Trust was terminated by court order on September 24, 2007, on the petition of the Trustee, Bank of America, due to new legislation making continuation of said trust economically infeasible; and

**Whereas**, the Lindsey Police And Firemen's Board, first established under the Trust, desires to contract with the East Texas Communities Foundation to receive and manage the assets distributed from the termination of the S.A. Lindsey Police And Firemen's Trust, and to create a Endowment Fund designed to meet the primary purposes outlined in the originating trust document;

**NOW, THEREFORE**, the parties hereto agree:

- 1. Fund Name.** The Donor hereby contributes the assets listed in Addendum 1 to the Foundation to establish a Endowment Fund to be known as the Lindsey Police and Firemen's Endowment Fund (herein after called the "Fund").
- 2. Purpose.** The purpose of this gift is to support the charitable work begun by the creation of the S.A. Lindsey Police And Firemen's Trust, established July 20, 1971 and terminated by court order on September 24, 2007, specifically to make awards to police officers and firefighters employed by the City of Tyler for outstanding service, and to aid and relieve police officers and firefighters employed with the City of Tyler and their families if they should be killed or injured or incapacitated in the line of duty and no other means is available for such purpose.
- 3. Distributions.** The Fund is defined as a Permanent Endowment. The permanent portion or corpus of the Fund shall be \$25,000, with the remaining amount of the Fund to be considered as Accumulated Earnings. Distributions from the Fund shall be made from the Accumulated Earnings so that the corpus of the fund will not be exhausted or depleted.

Distributions may only be made to the City of Tyler, Texas, the nonprofit entity. Ordinary distributions to the City of Tyler shall be made from the Fund once per calendar year in the amount requested by the City of Tyler up to a cumulative limit of five percent (5%) of the value of the Fund determined as of the preceding December 31. Any portion of the Accumulated Earnings available for distribution which is not withdrawn by the City of Tyler in one year may be withdrawn in a subsequent year. No additional distributions shall be made from the fund. To the extent possible, the Donor intends to preserve the permanent portion or corpus of the Fund by limiting distributions to 5% per year.

4. **Ownership and Administration.** This contribution is irrevocable and the Foundation shall be the sole and exclusive owner of the Fund. The Fund shall be administered in accordance with the Foundation's Articles of Incorporation, Bylaws and Policy for Endowment Funds, as amended from time to time, copies of which shall be provided to the Donor upon request.
5. **Variance Power.** In accordance with IRS regulations and the Bylaws of the Foundation, the Board of Directors shall have the power to modify any restriction or condition imposed by a donor on the investment or distribution of assets if, in the sole judgment of the Board of Directors, such restriction or condition becomes illegal, unnecessary, uneconomical, impossible to perform, or inconsistent with the charitable needs of the community or areas served, and such modification would more effectively serve the charitable purposes of the Foundation taking into consideration the wishes of the Donor.
6. **Recommendations.** The Donor hereby designates the Lindsey Police and Firefighters' Fund Board to serve as Advisors to the Foundation to make recommendations regarding the investment of the Fund and/or distribution of the Fund to the City of Tyler. However, such recommendations are advisory only, and the Foundation shall not be bound by such recommendations.
7. **Fees.** The Foundation shall charge the Fund an annual administration fee of 1.75%, plus any out-of-pocket expenses incurred directly by the Fund.
8. **Remainder.**
  - a. **Nonprofit Termination.** If the Nonprofit ceases to exist with no successor, or if the Nonprofit ceases to qualify as a public charity as defined in Section 170(b)(1)(A) of the Internal Revenue Code, and such condition is not cured within 30 days following written notice delivered by the Foundation to the Nonprofit at its last known address, then the Fund shall terminate and its assets shall become unrestricted assets of the Foundation.
  - b. **Foundation Termination.** If the Foundation ceases to exist with no successor, or if the Foundation ceases to qualify as a public charity as defined in section 170(b)(1)(A) of the Internal Revenue Code, and such condition is not cured within 30 days, then the assets of the Fund shall be transferred to the Nonprofit to be used as an endowment fund.
9. **Applicable Law.** This agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought to enforce or interpret this Agreement shall

be in Smith County, Texas. The Foundation shall comply with all applicable federal, state, and local laws in the performance of this Agreement.

10. **Severability and No Assignment.** If any provision herein is held by a court to be void or unconstitutional, such holding shall not affect the remaining provisions of this Agreement which shall remain in full force and effect. Neither Party to this agreement shall assign this agreement without prior written approval of the other Party.

11. **Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes all other agreements or understandings, oral or written. This agreement shall be binding upon the parties hereto, their successors, heirs and permitted assigns.

The parties hereto have executed this agreement on this \_\_\_ day of \_\_\_\_\_ 2008.

DONOR: City of Tyler on behalf of the S.A. East Texas Communities Foundation:  
Lindsey Trust.

\_\_\_\_\_  
BOB TURNER  
CITY MANAGER

\_\_\_\_\_  
KYLE PENNEY, PRESIDENT  
East Texas Communities Foundation

ATTEST:

\_\_\_\_\_  
CASSANDRA BRAGER, CITY CLERK

APPROVED:

\_\_\_\_\_  
CITY ATTORNEY'S OFFICE

RECOMMENDED:

\_\_\_\_\_  
FIRE CHIEF, TYLER FIRE DEPARTMENT  
POLICE CHIEF, TYLER POLICE DEPARTMENT

**STATE OF TEXAS**                   §  
**COUNTY OF SMITH**               §

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20 \_\_\_\_, by \_\_\_\_\_, on behalf of the FOUNDATION.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**ORDINANCE NO. 0-2008-37**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 2, "FINANCE AND TAXATION", ARTICLE V., "INVESTMENT POLICY", OF THE CODE OF ORDINANCES, CITY OF TYLER, TEXAS, BY EXCLUDING THE LINDSEY POLICE AND FIREFIGHTERS' ENDOWMENT FUND FROM THE CITY'S INVESTMENT POLICY, AND AMENDING CHAPTER 3, "PERSONNEL/CIVIL SERVICE/TMRS", ARTICLE III. "CIVIL SERVICE FOR FIREFIGHTERS AND POLICE OFFICERS", OF THE CODE OF ORDINANCES, CITY OF TYLER, TEXAS, BY ADDING A NEW SECTION 3-33 TO BE TITLED "LINDSEY POLICE AND FIREFIGHTERS' FUND BOARD", RESERVING SECTIONS 3-34 THROUGH 3-39 FOR FUTURE USE; ESTABLISHING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the S.A. Lindsey Police And Firemen's Trust was created by LOUISE LINDSEY MERRICK in July 20, 1971 for the charitable purpose of making awards to police officers and firefighters employed by the City of Tyler for outstanding service and to aid them and their families injured in the line of duty; and

**WHEREAS**, under the Lindsey Police And Firemen's Trust an advisory board made recommendations for awards to police officers and firefighters from the Trust funds to the Tyler City Council; and

**WHEREAS**, the S.A. Lindsey Police And Firemen's Trust was terminated by court order on September 24, 2007, on the petition of the Trustee, Bank of America, due to new legislation making continuation of said trust economically infeasible; and

**WHEREAS**, the remaining members of the Lindsey Police And Firemen's Board, created under the Trust, desires to contract with the East Texas Communities Foundation to receive and manage the assets distributed from the termination of the S.A. Lindsey Police And Firemen's Trust, and to create a Endowment Fund designed to meet the primary purposes outlined in the originating trust document; and

**WHEREAS**, because the Lindsey Police and Firefighters' Endowment Fund is separately organized and managed by contract with an investment company as directed by the Lindsey Police and Firefighters' Fund Board, it should be excluded from the City of Tyler's Investment Fund policy; and

**WHEREAS**, it is considered to be in the public interest to create a special advisory board for the purpose of continuing the charitable purposes of the original S.A. Lindsey Trust and making nominations to the City Council as to who shall be entitled to receive benefits and the amount of said benefits from the newly established Lindsey Police and Firefighters' Endowment Fund managed by contract with an investment company selected by the Board, and

**WHEREAS**, Section 82 of the City Charter provides that it shall be the duty of the City Council to provide for advisory boards that will consult and advise on matters submitted to them by City administrative officers, as may be required by act of the City Council;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:**

**PART 1:** That City Code Chapter 2, “Finance And Taxation”, Article V., “Investment Policy”, be amended to read as follows:

**ARTICLE V. INVESTMENT POLICY**

**Sec. 2-46. Introduction And Scope.**

The Public Funds Investment Act, Chapter 2256, Texas Government Code, requires each city to adopt a written investment policy that includes a written investment strategy, quarterly reports to City Council with market values, an annual review of the policy by Council and an annual compliance audit among other requirements. This policy shall apply to the investment and management of all City funds under its control, other than those expressly excluded within this document or by applicable law or valid agreement. The Fire Pension Fund is excluded from this policy because it is separately organized and managed by contract with investment companies as directed by the Fire Pension Board, and the Lindsey Police and Firefighters’ Endowment Fund is also excluded from this policy because it is separately organized and managed by contract with an investment company as directed by the Lindsey Police and Firefighters’ Fund Board. The Employees Deferred Compensation Agency Fund is also excluded. This Policy shall not supersede the restrictions on investment of specific funds because of legal limits, created by grants, bond covenants or similar regulations. In the event of conflict, the more restrictive policy shall be followed. (Ord. No. 0-98-21; 3/18/98) (Ord. No. 0-2000-21; 3/22/00) (Ord. No. 0-2002-54, 11/13/2002) (0-2003-65, 11/26/03) (Ord. 0-2004-87, 11/10/04) (Ord. 0-2005-91, 11/9/05) (Ord. No. 0-2006-93, 11/8/06) (Ord. No. 0-2007-130, 11/14/07) (Ord. No. 0-2008-37, 2/27/08)

**PART 2:** That City Code Chapter 3, “Personnel/Civil Service/TMRS”, Article III, “Civil Service For Firefighters And Police Officers” is hereby amended by adding a new Section 3-33 to read as follows:

**Sec. 3-33. Lindsey Police and Firefighters’ Fund Board.**

a. Purpose. The Lindsey Police and Firefighters’ Fund Board consisting of three (3) members is hereby created for the purpose of selecting who shall be entitled to receive awards, recognition, or benefits and determining the amount to be distributed from the Lindsey Police and Firefighters’ Endowment Fund for such awards, recognition, or benefits. The Lindsey Police and Firefighters’ Endowment Fund is a separately organized and managed fund designed to meet the primary purposes outlined in the originating document, the S.A. Lindsey Police And Firemen’s Trust, established July 20, 1971 and terminated by court order on September 24, 2007. The Lindsey Police and Firefighters’ Endowment Fund shall be managed by contract with an investment company approved by the Board.

b. Appointment/procedures.

1. The City Council hereby creates the Lindsey Police and Firefighters’ Fund Board consisting of three (3) members appointed by the City Council. Members shall include: the City Manager or his appointee; the City of Tyler Fire Department Chief or his appointee; and the City of Tyler Chief of Police or his appointee. If it is not possible to fill the membership of the board in all the categories listed above, the City Council may select the remaining membership.

2. A staff coordinator from the Tyler Fire Department shall act as staff liaison for the Lindsey Police and Firefighters’ Fund Board.

c. Duties. The duties of the Board are:

1. To select police officers and firefighters employed by the City of Tyler who shall be entitled to receive awards, recognition, or benefits for outstanding service, including but not limited to services above and beyond the call of duty, from year to year as a means of encouraging and stimulating police officers and firefighters in the performance of their duties and to reward them when they have done so.

2. To select police officers and firefighters employed with the City of Tyler who shall be entitled to receive aid to relieve them and their families if they should be killed or injured or incapacitated in the line of duty and no other means is available for such purpose.

3. To determine the amount to be distributed from the Lindsey Police and Firefighters' Endowment Fund for awards, recognition, benefits, or aid to police officers and firefighters employed with the City of Tyler.

4. The Board shall consult with the approved investment company managing the fund from time to time, but not less than annually, and may receive recommendations of the investment company as to the amount available for disbursement.

5. The Board shall keep proper records of its meetings and decisions.

d. Fund Limitations.

1. The Board shall not use or recommend the use of any part of the Lindsey Police and Firefighters' Endowment Fund for political purposes, propaganda, or to influence the passage of legislation or the passage of city ordinances or for pleasure purposes.

2. Disbursements from the Lindsey Police and Firefighters' Endowment Fund may be made only from the net income so that the corpus of the fund will not be exhausted or depleted. The corpus of the Lindsey Police and Firefighters' Endowment Fund is and shall be TWENTY FIVE THOUSAND DOLLARS \$25,000

e. By-laws; Subcommittees.

The Board may adopt by-laws addressing time and place for regular meetings; the establishment of subcommittees; procedures for transacting business during meetings, and other matters.

The board may appoint subcommittees as it deems necessary to accomplish the purposes and objectives of the Board. Said subcommittee members shall serve at the pleasure of the Board.

f. Finance. The Board may accept cash contributions for use in fulfilling its objectives. These funds shall be deposited with the Lindsey Police and Firefighters' Endowment Fund managed by the approved investment company. (Ord. No. 0-2008-37, 2/27/08)

**PART 3:** That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

**PART 4:** That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall be published in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be February 29, 2008.

**PASSED AND APPROVED** this the 27<sup>th</sup> day of February, A. D., 2008.

\_\_\_\_\_  
JOSEPH O. SEEBER, MAYOR OF  
THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

\_\_\_\_\_  
CASSANDRA BRAGER, CITY CLERK

\_\_\_\_\_  
CITY ATTORNEY