

**MINUTES OF THE
REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
FEBRUARY 8, 2006**

A regular meeting of the City Council of the City of Tyler, Texas, was held Wednesday, February 8, 2006 at 9:00 a.m. in the Council Chamber, City Hall, Tyler, Texas, with the following present:

Mayor: Joey Seeber
Mayor Pro Tem: Derrick Choice
Council Members: Nathaniel Moran
Joyce Armstrong Scurry
Steve Smith
Chris Simons
Charles Alworth

City Manager: Bob Turner
Deputy City Manager: Mark McDaniel
City Attorney: Gary Landers
Deputy City Attorney: Steve Kean
Assistant City Attorney: Deborah Pullam
Business Service Manager: ReNissa Wade
Development Services Engineer: Michael Wilson
Chief Financial Officer: Daniel Crawford
City Engineer: Dan Peden
City Fire Chief: Neal Franklin
City Police Chief: Gary Swindle
Communications/Media Services Coordinator: Laura Krantz
Director of Planning and Zoning: Stephanie Rollings
Director of Solid Waste: Dan Brotton
Manager/Water Utilities Business Office: Joan Roberson
Operations Manager: Greg Morgan
Street Superintendent/Labor Pool: Tommy Cornstubble
Traffic Engineer: Kirk Houser
City Clerk: Cassandra Brager

INVOCATION

The Invocation was given by Councilmember Smith.

Councilwoman Scurry made the motion to approve the minutes for the October 12, 2005 City Council meeting; seconded by Councilman Simons; motion carried 6-0; approved as presented.

EMPLOYEE AWARDS – RECOGNITIONS

A-1 Employee Service Awards

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Retirees

Richard A. Johnson

April 13, 1983 to January 31, 2006

Richard A. Johnson went to work for the City of Tyler on April 13, 1983 as a Semi-skilled Laborer in the Street Department. He was promoted to Lead man on December 26, 1983 and to Foreman II on July 27, 1992. We are pleased to present Richard with a Certificate of Retirement for his years of service with the City of Tyler.

Sandra L. Valerio

August 10, 1992 to January 31, 2006

Sandra L. Valerio went to work for the City of Tyler on August 10, 1992 as a Records Clerk in the Police Department. On March 25, 1994 she was promoted to Investigative Assistant. On October 1, 1998 she was promoted to Public Service Officer. We are pleased to present Sandra with a Certificate of Retirement for her years of service with the City of Tyler.

20 years

Choice arrive

Ignacio T. Medina

January 27, 1986 to January 27, 2006

Ignacio T. Medina went to work for the City of Tyler on January 27, 1986 as a Laborer in the Street Department. On October 1, 1989 his position was reclassified to Semi-Skilled Laborer. He was promoted to Crew Leader on March, 27, 1994, the position he now holds. We are pleased to present Ignacio with a 20 year service pin for his many years of service with the City of Tyler.

These employees represent over 56 years of service with the City of Tyler.

A-1 The following employees were hired by the City of Tyler during the months of November and December 2005 and January 2006.

We would like to take this opportunity to welcome these new employees.

Wesley Gilbert	Firefighter I	Fire
Kristi Flippin	Special Projects Coordinator	Solid Waste
Sarawut Tangadunrat	GIS Technician	Solid Waste
Angela Wright	Clerk	Housing
Jeremy English	IT Specialist II	Computer Services
Sammy Henderson	Vehicle Fleet Specialist	Police
George Carson	Crew Leader	Streets
Raymond Stallings	Plant Operator I	Water Plant
Natalio Gaona, Jr.	Traffic Signal Technician	Traffic
Kenneth Johnson	Plant Operator I	Water Plant
Marlena Murphy	Customer Service Representative	Water Office
Deland Wynn	Truck Driver	Water Distribution

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**Kenneth Horrell
Carthil Leaton
Pamela Lee
Jodie Lynn Lively
Rolando Rodriquez**

**Combination Inspector
PS Telecommunicator II
Senior Utility Specialist
PS Telecommunicator II
Semi-Skilled Laborer**

**Building Inspections
Police
Water Administration
Police
Streets**

ZONING ITEMS

Z-1 MASTER STREET PLAN AMENDMENT - CITY OF TYLER

Request that the City Council consider a request for an amendment to the Master Street Plan, which was approved in April, 2005, on a portion of a 130 foot proposed right-of-way (major arterial) located 1243± feet south of the intersection of New Copeland Road and Dolores Street, extending west and northwest 2065± feet, also extending east 2750± feet to align with the existing right-of-way of New Copeland Road and extending to Paluxy Drive, then extending 1615± feet east and northeast from Paluxy Drive to realign with the approved Master Street Plan route. ***(Remove from Table – Approved 7:0) (Ord. 0-2006-16)***

Councilman Alworth made the motion to remove the item from the table from the January 25th meeting; seconded by Mayor Pro Tem Choice; motion carried 7-0; motion removed from table.

Councilman Smith made the motion to approve; seconded by Councilman Moran; motion carried 7-0; approved as presented.

PRESENTATIONS

P-1 Request that the City Council receive a presentation from Keep Tyler Beautiful regarding the 2005 Tyler Recycles Day.

Sunny Davidson, Keep Tyler Beautiful – Gave a presentation on the Tyler Recycle Day held in Tyler on November 12, 2005.

Keep Tyler Beautiful collected more than 15,500 pounds of goods, including 13,300 pounds of electronics, 1,000 pounds of reusable items that were given to Goodwill Industries, 1,200 pounds of cardboard, 400 pounds of aluminum cans, 200 pounds of plastic bottles and milk jugs, 50 pounds of glass bottles and jars, 150 pounds of paper and 500 pounds of newspaper.

The event was attended by more than 200 people, not including the 20 volunteers that served all day to make this an outstanding event.

P-2 Request that the City Council receive a presentation of the 2003 Drive-By Radio Read Meter program, Phase 2 Electrical Consumption Reduction program Installation Phase, First Annual Benefit Analysis and authorize acceptance of an installation rebate check from Johnson Controls, Incorporated in the amount of \$70,977.51.

Greg Morgan, Operations Manager – Gave a brief presentation on the 2003 Drive-By Radio Read Meter program.

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In April 2003, the City Council authorized the execution of the performance contract with Johnson Controls, Incorporated for upgrading the water meters to radio read meters and installing electrical upgrades, including replacement of all traffic signals at 29 City facilities. The projected revenue recovery and reductions in electrical costs were estimated at \$1,967,817 annually.

City Staff requested that the City Council receive a presentation of a summary of the installation and first year benefit analysis, and authorize acceptance of the second (final) rebate check, in the amount of \$70,977.51, associated with the electrical upgrades..

Councilman Alworth made the motion to accept; seconded by Councilwoman Scurry; motion carried 7-0; approved as presented.

ADOPTION OF RESOLUTION

R-1 Request that the City Council consider adopting a Resolution ratifying the Extension and Modification of the Settlement Agreement and Agreement to Resolve Outstanding Franchise Issues, both dated January 19, 2006, between the Cities' Steering Committee and TXU Electric Delivery. (R-2006-3)

City Attorney, Gary Landers – Stated that the City of Tyler is a member of a 109-member city coalition known as the Steering Committee of Cities Served by TXU. The Steering Committee has negotiated a settlement agreement with TXU Electric Delivery Company (TXU) to delay the filing of a rate case in exchange for terms that benefit the City and the public. The purpose of this report is to seek authorization for the City to ratify the settlement agreement between the Steering Committee and TXU.

After months of consideration in 2004, the Steering Committee recommended that TXU be forced into a full scale review of its historic cost of service, something that had not occurred in more than a decade. In the fall of 2004, twenty Steering Committee cities passed resolutions requiring TXU Electric Delivery to show cause why the non-bypassable transmission and distribution charges should not be reduced. The rate inquiry was justified by several factors. First, the PUC categorized municipal accounts with broader commercial services accounts in the 2001 rate proceedings that led to the deregulated environment. This led to application of unfair demand ratchets and higher charges for municipal water pumping. It also led to extremely high charges for street lighting. Second, TXU had filed earnings monitoring reports at the PUC that established the Company was over-earning. Third, the Company had recently gone through massive reorganization and the hypothetical cost structures the PUC had used to justify current rates in 2001 were no longer valid.

The Steering Committee and TXU reached a settlement in early 2005 to delay the filing of rate information by TXU until the summer of 2006. The settlement terms called for TXU to work with cities on certain items of concern and to make annual cash payments of \$8 million to the Steering Committee, which was then dispersed to member cities.

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Over the past several months, TXU and the Steering Committee have been discussing the possibility of modifying and extending the terms of the original settlement agreement and delaying TXU's July 2006 rate case filing. After comparing the benefits to be derived from accepting the settlement and delaying the rate case against the likelihood of success in achieving positive outcomes for residential and city-specific issues in a rate case initiated in July 2006, the Steering Committee approved acceptance of the settlement agreement earlier this month. Key items of the Settlement Agreement are:

1. TXU will file a rate case in June 2008 with a December ending test year.
2. TXU will continue to make annual \$8 million payments to the Steering Committee until a final order is entered in the 2008 rate case, which probably will not be until the end of 2009. This is a two year extension to the previously negotiated agreement. This reimburses Cities for excessive street lighting and water pumping rates. It brings approximately \$38 million in value to the Steering Committee members between 2005 and 2009.
3. TXU will make two payments of \$9 million to Steering Committee cities before January 31, 2007 for "beneficial public use."
4. All unexpired provisions of the last agreement will be preserved and the task forces referenced in the earlier agreement will still be created.
5. The Company will reimburse up to \$40,000 per month to the Steering Committee for participation at ERCOT and the PUC. This is worth over \$2 million.
6. Separate from the rate settlement, but linked in benefit under the Settlement Agreement, is the Company's commitment to increase franchise fee factors and permit all Cities who desire to receive quarterly franchise fee payments as opposed to annual payments to obtain that result. The franchise fee factor increase will produce approximately \$27 million in benefit to Steering Committee members between 2006 and 2009 and approximately \$12 million annually thereafter.

The Steering Committee concluded that delaying a comprehensive rate case until June 2008 and immediately capturing beneficial financial terms was the optimal course of action.

Councilman Alworth made the motion; seconded by Councilman Smith; motion carried 7-0; approved as presented.

ADOPTION OF ORDINANCE

O-1 Request that the City Council consider adopting an Ordinance amending Tyler City Code Chapter 8, "Parks", Article I, "In General", by excluding from Parks Board advisory authority over LeGrand Grounds recreation area; adding references in Chapter 8 to

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regulations in City Code Chapter 16 governing LeGrand Grounds; amending Tyler City Code Chapter 8, “Parks”, Article V., “Fees” by adding references to regulations in City Code Chapter 16 for rates and charges for LeGrand Grounds recreation area; and also amending Tyler City Code Chapter 16, “Solid Waste”, Article I., “Solid Waste Disposal Regulations” by increasing the size of the board; adding advisory authority for LeGrand Grounds to the duties of the Keep Tyler Beautiful Board; adding specific regulations for the operation and maintenance of LeGrand Grounds recreation area, adding references in Chapter 16 to regulations in City Code Chapter 8 applicable to LeGrand Grounds. (Ord. 0-2006-17)

Deputy City Manager, Mark McDaniel – Stated that the City Solid Waste Ordinance, in City Code Section 16-27, establishes the Keep Tyler Beautiful Board and provides the purposes and duties of the Board. The proposed amendment increases the Keep Tyler Beautiful Board size from 9 to 11 members, adds advisory authority for LeGrand Grounds recreation area to the duties of the Keep Tyler Beautiful Board, and renumbers current Section 16-18 as Section 16-23. Additionally, City Code Chapter 8, Parks, Article II., “Prohibited Acts”, and Article III., “Concessions” contain specific rules and regulations for the protection against certain acts, the operation of concessions, and the conduct of special events in public parks and recreation areas. These rules and regulations would similarly benefit the operation and maintenance of the LeGrand Grounds recreation area, therefore the proposed amendment also adds new sections 16-18 through 16-22 to regulate the operation and maintenance of the LeGrand Grounds recreation area and makes Chapter 8, Articles II and III applicable to the LeGrand Grounds recreation area.

Mayor Pro Tem Choice made the motion; seconded by Councilwoman Scurry; motion carried 7-0; approved as amended.

O-2 Request that the City Council consider adopting an Ordinance amending Chapter 15, “Franchises”, Article II, “Cable Television Franchise”, by consenting to a Transfer of the Cox Southwest Holdings, L.P. (“Grantee”) Cable Franchise to Cebridge Acquisition Company, L.P.(“Cebridge LLC”) d/b/a Cebridge Connections (“Cebridge”), subject to Cebridge LLC and Cebridge’s compliance with the provisions contained therein; requiring a written Acceptance by the Cox the Grantee, Cebridge LLC and Cebridge; requiring a Guarantee by Cebridge Acquisition Company LLC; and establishing an effective date. (Ord. 0-2006-18)

Councilman Simons made the motion; seconded by Councilman Smith; motion carried 7-0; approved as presented.

O-3 Request that the City Council consider an Ordinance amending Tyler City Code Chapter 10, “Planning and Zoning”, Article III., “Development”, Division A., “Subdivision Rules”, by amending the Subdivision Ordinance to include an exemption to certain Public Improvement requirements including curb and gutter, street improvements and escrow requirements; clarifying regulations related to street name signs and street widths; and adding references to the Development Services Engineer; and amending Tyler City Code Chapter 10, “Planning and Zoning”, Division B., “Master Street Plan”, by clarifying the exemption to Master Street Plan right-of-way dedication requirements for Major and Minor Arterials. (Ord. 2006-19)

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Director of Planning & Zoning, Stephanie Rollings – Stated that this Subdivision Ordinance was recently amended to allow specific exemptions with regard to right-of-way dedication as required by the Master Street Plan. In order to provide a more unified development approach Staff is proposing an additional amendment that will be of the same nature. This amendment will allow any property being subdivided, which has an existing building on the lot, to be exempt from public improvements requirement. Public improvements are those including curb and gutter, sidewalks, street improvements and escrow requirements. Again, this amendment would only apply to property that is proposed to be platted and has an existing building on the lot being platted. Additionally, clarification to the definition of building was added to the Ordinance. Several questions had been raised as to what type of building would have to be on the property in order for the exemption to apply. Staff is proposing that an existing building be defined as: a building that is designed and built for the support, enclosure, shelter, protection or use for permanent or continuous occupancy by persons for assembly, business, education, industrial, institutional, mercantile or residential purposes.

Other suggested changes are considered “clean-up” in nature. These changes include those associated with the shifting of responsibilities related to the creation of the Development Services Department.

1. Adding a definition for, and references to, the Development Services Engineer;
2. Section 10-40.d.2(j)(3). Clarifying that street name signs shall be installed by the City upon acceptance of the development street improvements;
3. Section 10-40.d.4. Amending the Street Widths Chart to include references to Note 3 relating to Commercial Use.
4. Section 10-44.c.3. Removal of the reference to “final plat” in the provision on necessary off-site easements or dedicated easements required for City maintained facilities.

Councilman Smith made the motion; seconded by Councilman Moran; motion carried 7-0; approved as presented.

CONSENT AGENDA

(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).

A. BID FOR MATERIALS, SUPPLIES, EQUIPMENT, AND SERVICES

C-A-1 Request that the City Council consider approving the withdrawal of funds from the S.A. Lindsey Fire and Police Trust Fund for the purpose of holding an Awards Banquet.

C-A-2 Request that the City Council consider authorizing the purchase of police uniforms from, the low bidder Nardis, Incorporated, of Kilgore, Texas in the amount of \$21,576.

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- C-A-3** Request that the City Council consider authorizing the City Manager to purchase two Full Size Regular Cab 3/4 Ton Trucks with Utility Beds from the low bidder Hall Pontiac Buick GMC, of Tyler, Texas in the amount of \$37,900.00.
- C-A-4** Request that the City Council consider authorizing the City Manager to purchase six intermediate four door sedans from the low bidder Hall Pontiac Buick GMC, of Tyler, Texas in the amount of \$95,520.00.
- C-A-5** Request that the City Council consider ratifying the purchase of 13 light bars for Police Patrol Units from Earl Owen Company of Dallas, Texas, in the amount of \$24,999.00.
- C-A-6** Request that the City Council consider awarding bid number 06-003, opened on October 25, 2005, for Crushed Limestone with Dust to J & S Sand and Gravel, of Tyler, Texas, in the amount of \$67,500.00.
- C-A-7** Request that the City Council consider authorizing the City Manager to purchase one Sensus VXU radio read unit from National Water Works Incorporated of Tyler, Texas in the amount of \$14,000.00.
- C-A-8** Request that the City Council consider authorizing the City Manager to execute a professional services contract with Yvonne Newman Engineering, Incorporated in an amount not to exceed \$15,755.10 for the first year of the contract for the provision of a Traffic Data Collection program for the Tyler Area Metropolitan Planning Organization.
- C-A-9** Request that the City Council consider authorizing the City Manager to purchase 94 electronic parking meters from J. J. MacKay Limited, of Dallas, Texas in the amount of \$15,870.00 as a part of Phase II of the five year Parking Meter Replacement Program.
- C-A-10** Request that the City Council consider authorizing the City Manager to accept a Grant in the amount of \$112,500.00 from the Federal Emergency Management Agency (FEMA) under the Assistance to Firefighters Grant Program.
- C-A-11** Request that the City Council consider authorizing the City Manager to accept a Grant from Homeland Security for Urban Area Homeland Security Strategy for the City of Tyler and Smith County in the amount of \$161,579.72.
- C-A-12** Request that the City Council consider ratifying the Emergency Purchase of five radios and one transmitter from East Texas Medical Center Emergency Management System, in the amount of \$11,000.00.
- C-A-13** Request that the City Council consider ratifying the sell of Caterpillar Loader 928G, to Roadrunner Equipment of Bullard, Texas in the amount of \$78,500.

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Councilman Alworth made the motion to approve the entire consent agenda; seconded by Mayor Pro Tem Choice; motion carried 7-0; approved as presented.

BOARD APPOINTMENTS

B-1 Request that the City Council consider making appointments to the Keep Tyler Beautiful Board, due to the increase in the size of the board.

KEEP TYLER BEAUTIFUL BOARD

Councilman Smith made the motion; seconded by Mayor Pro Tem Choice; motion carried 7-0 to appoint the following board members:

Pat parsons
Lonnie Beasley

CITY MANAGER'S REPORT

1. *C. Simons – Grande Phase 1 completion – no date yet*
2. *Tyler TAP RR Group Membership Drive 2/12/06*

RECESS FOR EXECUTIVE SESSION - City Council convened into executive session at 9:45 a.m.

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:

1. **Centerpoint-Entex v. City & RRC (appeal to Austin Court of Appeals)**
2. **Centerpoint-Reliant (Entex) Railroad Commission case and appeals filed by both parties**
3. **Centerpoint v. City; recent rate request denial challenge and appeal**
4. **Contemplated possible litigation involving purchase, delivery and performance of Solid Waste trucks**

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 10:21 a.m. with no action taken.

ADJOURNMENT

Councilwoman Scurry made the motion to adjourn the meeting at 10:21 a.m.; seconded by Mayor Pro Tem Choice; motion carried 7-0; meeting adjourned.

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

A T T E S T:

**_____
CASSANDRA BRAGER, CITY CLERK**