

**MINUTES OF THE
REGULAR CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
APRIL 22, 2009**

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, April 22, 2009 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
Councilmembers: Donald Sanders
Chris Simons
Ralph Caraway
Nathaniel Moran
Steve Smith

City Manager: Mark McDaniel
City Manager Emeritus: Bob Turner
City Attorney: Gary Landers
Deputy City Attorney: Steve Kean
Airport Manager: Davis Dickson
Budget/Human Resources Director: ReNissa Wade
Development Services Engineer: Michael Wilson
Director of Neighborhood Services: Brenda Johnson
Chief Financial Officer: Daniel Crawford
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
Director of Utilities & Public Works: Greg Morgan
City Clerk: Cassandra Brager

INVOCATION

The Invocation was given by Councilmember Moran.

MINUTES

Motion by Mayor Pro Tem Alworth to approve the minutes for the February 4, 2009 (joint meeting with Longview) and February 11, 2009 minutes; seconded by Councilman Sanders; motion carried 7 - 0 & approved as presented.

AWARDS

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

Mayor Bass presented Chris Lennon with the Blueprint Blue Ribbon Award for April 2009, for placing the highest premium on responsiveness to citizens' needs.

ZONING



Z-1 APPLICATION Z04-09-021 EDNA JONES

Request that the City Council consider changing the zoning from “R-2”, Two-Family Residential District to “R-1B”, Single-Family Residential District on Lot 43 of NCB 665B, one lot totaling approximately 0.25 acres of land located two lots north of the northeast intersection of Grove Street and South Englewood Avenue (630 South Englewood Avenue). (O-2009-39)

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

Z-2 APPLICATION Z04-09-023 DELEK REFINERY

Request that the City Council consider changing the zoning from “R-1B”, Single-Family Residential District to “M-2”, General Industrial District on Lot 1 of NCB 1413A and Lot 1 of NCB 1418A, two lots totaling approximately 19.6 acres of land located one lot south of the southwest intersection of Loop 323 NNE and Duncan Street (3001 Duncan Street). (O-2009-40)

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

Z-3 APPLICATION Z04-09-026 EDWARD WALLACE

Request that the City Council consider a zone change from “R-1B”, Single-Family Residential District to “PMF”, Planned Multi-Family District on Lot 1 of NCB 367B, one lot totaling approximately 7,600 square feet of land located at the southwest intersection of North Gaston Avenue and Gray Street (126 North Gaston Avenue), and approval of a final site development plan. The applicant is requesting a zoning change to allow for the construction of a duplex. (O-2009-41)

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

Z-4 APPLICATION C04-09-001 WAR-MAC CIRCLE

Request that the City Council consider closing an unimproved right-of-way known as WAR-MAC Circle. The unimproved right-of-way is located four lots east of the northeast intersection of Lavender Road and Everett Drive. The applicant is requesting the closure in order to incorporate the undeveloped right-of-way into adjacent lots. (O-2009-42)

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

Z-5 APPLICATION C04-09-002 SECOND STREET

Request that the City Council consider closing a portion of a partially improved right-of-way known as Second Street beginning at the southeast corner of the intersection of South

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Fleishel Avenue and Second Street, continuing easterly for approximately 625 feet and terminating at the intersection with Magnolia Drive. (O-2009-43)

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

Z-6 APPLICATION F04-09-035 LAND O’AARON

Request that the City Council waive escrow requirements for a substandard street located nine lots south of the southeast intersection of County Road 285 and Canopy Oaks Drive as part of the Land O’Aaron Subdivision.

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



Z-7 APPLICATION A04-09-001 U.S.A.C.E.

Request that the City Council consider annexing, pursuant to Texas Local Government Code Section 43.028, owner requested territory constituting approximately 49 acres of land contained in the W. Cox Survey, A-234, E. Holland Survey, A-478, T. Largent Survey, A-611, J. Dean Survey, A-291, and R. Alston Survey, A-043 and Lot 5 of the Phelps Subdivision, recorded in Cabinet D, Slide 92, of the Public Records of Smith County, Texas.

Also consider establishing:

- A. The new boundary of the City Limits.**
- B. The new boundary of the Extraterritorial Jurisdiction.**
- C. The new boundaries of the City Council Districts Numbers 2 and 3.**
- D. The Land Use Guide to reflect Agricultural and Industrial land use.**
- E. Original zoning of approximately 24 acres of “AG”,**

Agricultural District and approximately 25 acres of “M-1”, Light Industrial District.

- 1. Union Pacific Railroad: a five foot strip containing .04 acres. (O-2009-44)**

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

- 2. Billy Ray Ellis: a five foot strip containing .172 acres together with a 5’ strip of land across Spur 164. (O-2009-45)**

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

- 3. Patsy and Kenneth Lewis: a five foot strip containing .242 acres, together with a 5’ strip of land across Spur 164. (O-2009-46)**

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

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4. Armor Materials: a five foot strip containing .545 acres. (O-2009-47)

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

5. Gascoigne; a five foot strip containing .078 acres. (O-2009-48)

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

6. Kelly Springfield portion: a five foot strip on the east side of FM 206 together with a 5' strip of land across FM 206. (O-2009-49)

Motion by Councilman Sanders; seconded by Councilman Smith; motion carried 7 – 0 & approved as presented.

7. Kelly Springfield portion: a five foot strip on the west side of FM 206, together with a 5' strip of land across FM 206 and a 5' strip of land across Highway 31 West. The total acreage of the two Kelly Springfield portions to be annexed is 1.247 acres. (O-2009-50)

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

8. East Texas Oak, LP (U.S. Army National Guard) containing approximately 45 acres, together with a 5' strip of land across Highway 31 West. (O-2009-51)

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

PRESENTATIONS

P-1 Request that the City Council receive a presentation on the upcoming Texas Blues Festival.

Beverly Abell gave an update on the upcoming 13th Annual Texas Blues Festival.



P-2 Request that the City Council consider designating Charles Evan Coleman, Sr. as a Half Mile of History recipient.

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



P-3 Request that the City Council consider designating Sidney Earl (S.E.) Palmer as a Half Mile of History recipient.

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

RESOLUTION

- R-1 Request that the City Council adopting a Resolution authorizing the Police Department to participate with other law enforcement agencies in the submission of a grant request from The Texas Automobile Burglary and Theft Prevention Authority and to include authorizing the City Manager to enter into a cooperative working agreement regarding the same. (R-2009-08)**

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

- R-2 Request that the City Council consider adopting a Resolution proclaiming the City of Tyler's commitment to historic preservation and tourism, and declaring the City of Tyler's intention to become a Preserve America Community. (R-2009-9)**

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

ORDINANCE

- O-1 Request that the City Council consider adopting an Ordinance amending Tyler City Code Section 1-4 by including various Code sections related to public health, safety, sanitation and zoning in the Section 1-4 list of violations having maximum fines of \$2,000. (O-2009- 52)**

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 authorizing the City Manager to award the construction contract for the CDBG Neighborhood Improvements in the Herndon Hills Area, to the low bidder, Crown Construction, in the amount of \$159,808.00. ©**

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

- M-2 Request that the City Council consider declaring the Water Rate/Tariff Change Application filed by Southern Utilities Company on January 26, 2009 as administratively incomplete for failure to use the appropriate test year and authorize the City Manager to return the application to Southern Utilities Company.**

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

- M-3 Request that the City Council consider authorizing the City Manager to award the construction contract for the North Tyler Water and Sewer Improvements to the low bidder, A.E. Shull & Company, in the amount of \$1,661,671.17. ©**

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

- M-4 Request that the City Council consider ratifying the acceptance/execution of Texas Department of Transportation (TxDOT) Project Grant Agreement No. ED 0902 (10) in the amount of \$50,671.00 and any grant amendments to increase the grant amount for the purpose of providing public transportation for the City of Tyler. ©**

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

- M-5 Request that the City Council consider reviewing and accepting the Revenue, Expenditure and Investment Report for the quarter ending March 31, 2009.**

Larry Meckley, 409 Sutherland – Stated that the city should cut cost.

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

- M-6 Request that the City Council consider authorizing the City Manager to sign a Memorandum of Understanding with Smith County for the purpose of making an application for and accepting the Edward Byrne Memorial Justice Assistance Grant for the Year 2009 in the amount of \$451,613, of which \$225,806.50 is the City of Tyler's portion. ©**

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



- M-7 Request that the City Council consider approving an extension to the Certificate of Appropriateness for the proposed rehabilitation of a historic landmark located at 1302 West Oakwood Street, Tyler, Texas.**

Motion by Councilman Sanders; seconded by Mayor Pro Tem Alworth; 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).

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- C-A-1** Request that the City Council consider authorizing the City Manager to make a payment to Flowers Davis, P.L.L.C. in the amount of \$27,027.00 for acquisition of right-of-way owned by TFW Golf Course Holdings, LLC located on the Old Omen Road project in final settlement of the lawsuit pending to acquire that tract.
- C-A-2** Request that the City Council consider declaring Lot 4, NCB 1031–M located on the north side of Barbee Drive and east of Broadway Avenue, part of Robert E. Lee Heights Subdivision as surplus property and authorize the City Manager to advertise for bids to sell the property to the highest bidder.
- C-A-3** Request that the City Council consider declaring the attached list of City of Tyler vehicles and miscellaneous vehicle parts as surplus and ready for auction.
- C-A-4** Request Council authorize the City Manager to make an application for, accept, and enter into an agreement with the Texas Department of Transportation for a grant in the amount of \$7,993.40 to enforce seat belt and child safety seat usage. ©
- C-A-5** Request that the City Council consider authorizing the City Manager to approve an Amendment to the Fixed Base Operator Lease between the City of Tyler and Tyler Executive Hangars, LLC, to include a provision regarding cables serving the Federal Aviation Administration navigational facilities. ©

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

APPOINTMENTS TO BOARDS

- B-1** Request that the City Council approve Mayor Bass' nomination to the Tyler One-Half Cent Sales Tax (Half Cent) Corporation Board and appoint a President to the Half Cent Corporation Board of Directors.

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

CITY MANAGER'S REPORT

1. Sights & Sounds of North End at Zoo on 4-30-09 at 5:30 and unveil Reflection Program.
2. Audit Committee meet after meeting today.
3. Comments from City Council regarding Councilmember Smith completing City Council service due to term limits

City Council members expressed gratitude to Councilman Smith for his years of service on the City Council.

Mayor Bass- Thanked him and his family for his service.

Councilman Simons – Stated that their relationship has grown and whenever you talk with Steve he makes you stop and think. It has been a real honor to serve with him.

Mayor Pro Tem Alworth – Stated that they became friends within the last four years. Councilman Smith has a character as a good man, husband and father. He is deliberate and displays thoughtfulness in his decisions and has been a pleasure to work with.

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Councilman Sanders – Stated that Councilman Smith has been a pleasure to work with and he is a very intelligent, sharp young man.

Councilman Caraway – Stated that Councilman Smith is a reflection of family, he is a great man and a very authentic person.

Councilman Smith – Stated that his time on the City Council has been fun and when he woke up this morning he felt sad until he arrived at City Hall. He thanked the citizens and stated that he was glad that he had a chance to fill the position as a Councilmember. Councilman Smith characterized each of the Councilmembers as follows:

Councilman Caraway – wisdom;

Councilman Sanders - commitment;

Mayor Pro Tem Alworth – passion;

Councilman Simons - love for the community;

Councilman Moran – knowledge; and

Mayor Bass - an example to others.

Councilman Smith also thanked former Mayor Joey Seeber for getting him involved and thanked City Manager Emeritus, Bob Turner and City Manager, Mark McDaniel. Councilman Smith stated that he will leave with the memory of how great of a staff the City of Tyler has.

RECESS FOR EXECUTIVE SESSION – No Executive Session

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

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

Pending or contemplated litigation involving enforcement of City Code

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

ADJOURNMENT

Motion by Councilman Moran to adjourn the meeting at 10:15 am; seconded by Councilman Sanders; 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:

CASSANDRA BRAGER, CITY CLERK