

**RESOLUTION NO. R-2011-4**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS DIRECTING THE DIRECTOR OF UTILITIES AND PUBLIC WORKS TO INVESTIGATE TALL TIMBERS UTILITY COMPANY, INCORPORATED, AND TO NEGOTIATE A UTILITY FRANCHISE AGREEMENT, AND AUTHORIZING THE EXERCISE OF ENFORCEMENT POWERS PURSUANT TO SECTIONS 7.351 AND 7.352 OF THE TEXAS WATER CODE**

**WHEREAS**, pursuant to §13.042 of the Texas Water Code, the City of Tyler has exclusive original jurisdiction over all water and sewer rates, operations, and services provided by water and sewer utilities providing services within its corporate limits, and pursuant to §§26.171 and 26.173 of the Texas Water Code authorizes the City of Tyler to investigate persons who have wastewater discharges permits to determine whether these persons are in compliance with the requirements of their permits; and,

**WHEREAS**, pursuant to §§7.351 and 7.352, if the City Council adopts a resolution authorizing the exercise of the power, the City of Tyler may institute a civil suit in the same manner as the Texas Commission on Environmental Quality (TCEQ) in a district court for injunctive relief, civil penalties or both for violations or threats violations of Chapter 26 of the Texas Water Code; and,

**WHEREAS**, Tall Timbers Utility Company, Inc. (TTUC) is a public sewer utility that provides retail sewer service inside and outside the City of Tyler pursuant to Sewer Certificate of Convenience and Necessity No. 20694 issued by the TCEQ and a retail tariff filed with the City of Tyler; and,

**WHEREAS**, TTUC owns and operates a wastewater treatment plant that is located inside the City of Tyler and that discharges to waters in the state that are located inside the City of Tyler as authorized by a wastewater discharge permit issued by TCEQ; and,

**WHEREAS**, TTUC has previously charged rates not authorized by its tariff and refused to extend utility service as required by its tariff as found in the City Council's Resolution R-2009-27; and,

**WHEREAS**, the Director is concerned that TTUC is not currently providing service inside the City of Tyler in compliance with its tariff and other applicable rules and laws and that TTUC is not operating its wastewater treatment plant in accordance with the permit issued by TCEQ; and,

**WHEREAS**, TTUC uses the public rights-of-way located inside the City of Tyler to provide retail sewer service without a franchise granted by the City of Tyler as required by the Charter of the City of Tyler.

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

**PART 1:** The City Council authorizes the City Manager to investigate Tall Timbers Utility Company, Inc., using all the power and authority available to the City of Tyler, to determine whether TTUC is complying with its sewer utility tariff and other applicable laws,

ordinances and rules relating to the provision of retail sewer service inside the City of Tyler, and to report to the City Council the findings of such investigation and make recommendations regarding enforcement or other methods to bring TTUC into compliance. Any failure by TTUC to provide information requested by the Director, within ten (10) days of receipt of request, will be considered a violation of Section 15-4 of the City of Tyler Code of Ordinances.

**PART 2:** The City Council directs the City Manager to investigate TTUC, using all the power and authority available to the City of Tyler, to determine whether TTUC is in compliance with its wastewater discharge permit, and if not, to request the City Attorney to seek civil penalties, injunctive relief, or both against TTUC using Subchapter D of Chapter 7 of the Texas Water Code to bring TTUC into compliance.

**PART 3:** The City Council, pursuant to §§ 7.351 and 7.352 of the Texas Water Code, hereby authorizes the City of Tyler to institute a civil suit under Subchapter D of Chapter 7 of the Texas Water Code in the same manner as the TCEQ against any wastewater discharge permit holder who has violated, is violating or is threatening to violate its permit or Chapter 26 of the Texas Water Code. The City Council delegates to the City Manager the authority to determine if a civil suit should be instituted based on the recommendations of the Director and City Attorney.


**PART 4:** The City Council directs the City Manager to negotiate a franchise agreement with TTUC consistent with the Charter and Chapter 15 of the Tyler Code of Ordinances and to present the negotiated agreement to the City Council by January 15, 2011. If the Director and TTUC are unable to agree on a franchise agreement by January 15, 2011, the City Council will adopt a franchise ordinance using its powers granted by Charter.

**PART 5:** The City Council requests the advice and assistance of the Texas Commission on Environmental Quality, as authorized by Texas Water Code §13.085, with regard to matters addressed by this resolution.

**PART 6:** Copies of this Resolution shall be sent to TTUC and the Texas Commission on Environmental Quality.

**PART 7:** That this Resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED** this 26<sup>th</sup> day of January, 2011.

  
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BARBARA BASS, MAYOR OF  
THE CITY OF TYLER, TEXAS

ATTEST:

  
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CASSANDRA BRAGER, CITY CLERK



APPROVED:

  
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GARY C. LANDERS, CITY ATTORNEY