

**MINUTES OF THE  
REGULAR CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS  
August 25, 2010**

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, August 25, 2010 at 9:00 a.m. in the Council Chamber, City Hall, Tyler, Texas, with the following present:

Mayor:	Barbara Bass
Mayor Pro Tem:	Ralph Caraway
Councilmembers:	Martin Heines
	Donald Sanders
	Mark Whatley
	Sam Mezayek
	Jason Wright
City Manager:	Mark McDaniel
Asst. City Manager:	Scott Wall
City Attorney:	Gary C. Landers
Deputy City Attorney:	Steve Kean
Development Services Engineer:	Michael Wilson
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:	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
City Clerk:	Cassandra Brager

**INVOCATION**

The Invocation was given by Mayor Pro Tem Caraway.

Motion by Mayor Pro Tem Caraway to approve the August 11, 2010 minutes; seconded by Councilmember Sanders; motion carried 7 - 0 & approved as presented.

**EMPLOYEE AWARDS – RECOGNITIONS, SERVICE**

**A-1 Service Awards**

We would like to recognize the following employees for their years of service and commitment to the City of Tyler. At this important milestone, we express our sincere appreciation for your dedication and for the special contribution you make to our organization. These employees represent over **50-years** of service with the City of Tyler.

Service Awards

DATE OF HIRE:	FIRST NAME:	LAST NAME:	POSITION:	DEPARTMENT:	YEARS OF SERVICE:
8/16/1985	David	Admire, Sr.	Fire/Driver/ Engineer IV	Fire	25
8/16/1985	Mickey	Haisten	Fire Captain IV	Fire	25

**A-2 Request that the City Council consider recognizing Deputy City Attorney, Steven Kean for receiving Statewide Recognition at the Summer Texas City Attorney’s Association (TCAA) Bi-Annual Meeting as the Galen Sparks Award recipient for sustained contributions to the profession.**

**A-3 Request that the City Council consider accepting recognition for its involvement of the 2010 United State Census from the United States Census Bureau.**

ZONING

**Z-1 APPLICATION C07-10-010 STUART REEVES (IMPROVED ALLEY)**

**Request that the City Council consider closing an improved alley connecting West Erwin Street and West Elm Street.**

Jack Durrett Jr., 177 S. Bay – Stated that he was not sure why the owner was considering closing it.

Don Smith, 108 S. Palace – Stated that he was against the closure because this is his property also and he thinks it just needs to be cleaned up.

Motion by Councilmember Sanders; seconded by Mayor Pro Tem Caraway; motion carried 7 - 0 & denied as presented

**Z-2 APPLICATION Z07-10-053 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.**

Rochelle Stretch, 2142 Haverhill Dr. – Stated that she did not understand why the applicant wanted to put a duplex in the area and she knew everyone on that street was opposed to the change.

Motion by Councilmember Whatley; seconded by Mayor Pro Tem Caraway; motion carried 7 - 0 & denied as presented.

**Z-3 APPLICATION Z07-10-054 BOBBY STRICKLAND (1505 EAST GRANDE BOULDEVARD AND 6301 CIRCLE DRIVE**

August 25, 2010

**Request that the City Council consider a zoning change from "AG", Agricultural District to "C-1", Light Commercial District and "RPO", Restricted Professional Office District. O-2010-82**

Motion by Councilmember Whatley; to remove from the table; seconded by Councilmember Wright; motion carried 7 - 0 & approved as presented.

Motion by Councilmember Wright; seconded by Councilmember Whatley; motion carried 7 - 0 & approved as presented.

**Z-4 APPLICATION Z08-10-058 CARMEN PEREZ (214 SOUTH THOMPSON AVENUE)  
Request that the City Council consider changing the zoning from "R-MF", Multi-Family Residential District to "R-1D", Single-Family Detached and Attached Residential District. O-2010-83**

Motion by Councilmember Heines; seconded by Councilmember Wright; motion carried 7 - 0 & approved as presented.

**Z-5 APPLICATION Z08-10-061 STANGER PROPERTIES (1595 EAST GRANDE BOULEVARD)  
Request that the City Council consider changing the zoning from "AG", Agricultural District to "C-2", General Commercial District. O-2010-84**

Motion by Councilmember Whatley; seconded by Councilmember Wright; motion carried 7 - 0 & approved as presented

**Z-6 APPLICATION Z08-10-062 HARRIS LEGACY (1582 EAST GRANDE BOULEVARD)  
Request that the City Council consider changing the zoning from "RPO", Restricted Professional Office District to "C-2", General Commercial District. O-2010-85**

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

**Z-7 APPLICATION Z08-10-063 JUDI'S CARRIER (8336 PALUXY DRIVE)  
Request that the City Council consider changing the zoning from "AG", Agricultural District to "C-1", Light Commercial District. O-2010-86**

Motion by Councilmember Whatley; seconded by Councilmember Sanders; motion carried 7 - 0 & approved as presented.

**Z-8 APPLICATION Z08-10-065 SIMON PROPERTY GROUP (4601 SOUTH BROADWAY AVENUE)**

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**Request that the City Council consider approving a site plan amendment on Lot 2B of NCB 1293 totaling approximately 46.17 acres of land located at the southeast intersection of Old Bullard Road and West Southwest Loop 323 (4601 South Broadway). O-2010-87**

Motion by Mayor Pro Tem Caraway; seconded by Councilmember Wright; motion carried 7 - 0 & approved as presented

**Z-9 APPLICATION Z08-10-066 GLEN McDOWELL (3217 LIBBIE STREET)  
Request that the City Council consider changing the zoning from "R-1A", Single-Family Residential District to "AR", Adaptive Reuse District. O-2010-88**

Motion by Councilmember Whatley; seconded by Mayor Pro Tem Caraway; motion carried 7 - 0 & approved as presented

## **PUBLIC HEARINGS**

**H-1 Request that the City Council consider conducting a public hearing on the proposed fiscal year 2010-2011 Budget and on the proposed property tax rate of \$0.208865 per \$100 of taxable property value.**

**City Manager, Mark McDaniel** – Gave a brief overview of the presentation on the proposed fiscal year 2010-2011 budget.

**Richard Blake, Grassroots America - We the People** – Stated in a statement that they compliment the Mayor and Council, City Manager, and Staff for scaling back the proposed budget by approximately \$3.5 million from the current budget. We know this took a lot of hard work, and we thank you for those efforts. We are strong believers that government must live within its means and not deficit spend. Taxpayers already hit hard by the continuing economic recession are having their household and business budgets reduced even further by higher taxes from every level of government. We therefore urge you to adopt the current tax rate for the proposed 2010-11 budget and not raise taxes.

As a local watchdog group, they have concerns about the City's ability to meet future operational requirements if the slow-down in our local economy continues. We note that 67% of the General Fund budget comes from sales and use taxes. The slow-down in revenue from these sources is immediate; therefore, you do not have the time to recover as entities that are primarily funded by property taxes do. According to the presentation Councilmen Heines and Wright made to their organization last Friday, they understand that the City Manager and Chief Financial Officer meet with department leaders monthly to monitor revenue and spending. They are pleased to hear that and urge you to continue to keep ahead of the game and cut expenses immediately when necessary.

Looking at employee benefit packages for local government, they are concerned that the

current retirement systems are out of sync with the private sector. If there are private sector retirement systems in our area as lucrative as the City's, they would be surprised. They believe the City should take immediate steps to reduce the retirement system's impact on taxpayers. The first step is to go to one-to-one matching and in future years reduce the percentage of matching by the City.

Reviewing various operating funds in the City, they notice that the Cemetery Operating Fund requires transfers from other funds to remain solvent. They understand this is because the Cemetery Trust Fund has not generated enough interest to operate the cemetery. Is there a real alternative to the dependence upon tax dollars to keep this Fund operational?

It is very easy to increase utility and fee rates higher than necessary in order to make transfers to other funds that are not generating sufficient revenues to support their operation. They are not opposed to increasing utility income to cover pure utility costs – but utility rates should not subsidize other parts of your operations. Also, as we understand it, the Solid Waste Fund has one of the lowest monthly fees of cities the size of Tyler, but we also notice the Solid Waste Fund makes transfers to other funds as well. They urge the City to take a look at these transfers and hold the line on Solid Waste fees.

Finally, they urge the City to renew the original Half-Cent Sales Tax pledge to dedicate these funds to pay cash for infrastructure and not economic development. We also urge the Council to review the Half-Cent Sales Tax projects to ensure drainage and streets are the top priority for funding.

The Watchdog Committee looks forward to working with the City of Tyler in the coming months to offer recommendations to keep this a taxpayer friendly place to live and grow a business.

## H-2 TYLER PARTICIPATION IN TEXAS ENTERPRISE ZONE PROGRAM



**Request that the City Council hold a public hearing on Tyler's continued participation in the Texas Enterprise Zone Program and consider approving an Ordinance authorizing continued participation in the Texas Enterprise Zone Program with some incentive tool changes. O-2010-89**

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

## RESOLUTION



### R-1 TRANE US, INC.

**Request that the City Council consider nominating this project to the Governor's Office of Economic Development and Tourism, which is a procedural step required under the Enterprise Zone Act. R-2010-22**

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



**R-2 UNIVERSAL CABLE HOLDINGS, INC (SUDDENLINK)**

**Request that the City Council consider nominating this project to the Governor's Office of Economic Development and Tourism, which is a procedural step required under the Enterprise Zone Act. R-2010-23**

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

**ORDINANCE**

**O-1 Request that the City Council consider adopting an Ordinance amending Tyler City Code Chapter 4 to prohibit the use, purchase, possession and sale of illegal smoking products containing certain plant, plant products or derivatives, chemical compounds applied to plants, and plant products and their derivatives or other substances, that mimic the effects produced by smoking marijuana, and ingestion devices used in connection with the illegal smoking products, providing for certain exceptions, and establishing a \$2,000.00 fine for violations. O-2010-90**

**Anthony Rivera, 13658 Conway Lane** – Stated that he was all in favor of regulation rather than total ban of the product. There is going to be this agenda for the State of Texas. As the City passes this ban before it comes to the agenda for the State, the City taxpayers are going to be the one responsible for paying to process and prosecute these new cases. There is one lab in the country with the facility equipped to test for this JWH 18 and the cost is 320.00 per test and the taxpayers of the City of Tyler will be financially responsible for that and he urge for a regulation instead of a total ban. It should not be sold to people under 18, it should not be sold to be smoked, it is an incense and should be sold to people that are legal adults. If it is necessary to ban this product then business owners should be given 30 days or so to sell their existing stock.

**Police Chief Gary Swindle** – Stated that once the ordinance is passed he will immediately develop flyers, go back to all 61 convenience stores and let them know that now it is illegal to have and sale this product. The convenience stores will be given a week or two notice that it is illegal and the fine is up to \$2,000.00. The mere possession or the attempt to sale the product would be a fine up to \$500.00.

Motion by Councilmember Sanders; seconded by Councilmember Whatley; motion carried 7 - 0 & approved as presented.

**MISCELLANEOUS**

**M-1 Request that the City Council consider approving the 2010-2040 Tyler Parks, Recreation and Open Space Master Plan and approving the required Texas Parks and Wildlife Resolution accepting the Plan R-2010-24**



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Mark Spencer, MHS Planning and Design - 212 W. 9<sup>th</sup> St – Gave a brief update o the Tyler Parks, Recreation and Open Space Master Plan.

Motion by Councilmember Heines; seconded by Councilmember Sanders; motion carried 7 – 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 sign and acknowledge a permanent right-of-way use agreement with Tyler Junior College for the placement of a conduit for fiber optic communications under Lake Street, Mahon Avenue and Apache Pass in the City of Tyler right-of-way. ©
- C-A-2** Request that the City Council consider authorizing the City Manager to sign and acknowledge a permanent right-of-way use agreement with Tyler Junior College for the placement of a conduit for fiber optic communications under Blackwell Avenue and East Devine in the City of Tyler right-of-way. ©
- C-A-3** Request that the City Council consider authorizing the City Manager to award a Professional Services Contract to the firm of Aerostar Environmental Services, Inc., for a Wildlife Hazard Assessment at Tyler Pounds Regional Airport for a fee of \$74,520, and that the Half Cent Sales Tax Board consider funding the maximum local obligation of \$3,726. ©
- C-A-4** Request that the City Council consider authorizing the City Manager to execute Work Order No. 13 for engineering services with Wisenbaker, Fix and Associates for the 2011 Security Fencing Improvements Project at Tyler Pounds Regional Airport in an amount not to exceed \$150,318, and that the Half Cent Sales Tax Board consider funding the maximum local obligation of \$7,515.90. ©
- C-A-5** Request that the City Council consider ratifying the application for TxDOT State/Local Urban Public Transportation Fiscal Year 2011 Project Grant Agreement No. URB 1101(10) in the amount of \$288,914 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 Caraway; seconded by Councilmember Sanders; motion carried 7 - 0 & approved as presented.

**BOARD APPOINTMENTS**

**B-1 Request that the City Council consider making appointments and reappointments to the various City Boards.**

**AIRPORT ADVISORY BOARD**

Councilman Mezayek made the motion; seconded by Mayor Pro Tem Caraway; motion carried 7-0 to reappoint the following board members:

**Kelly Walker  
David Jones  
Douglas Shryock**

**BOARD OF ADJUSTMENT**

Councilman Wright made the motion; seconded by Councilman Mezayek; motion carried 7-0 to reappoint the following board members:

**Mary Endres  
David Pierson**

Councilman Wright made the motion; seconded by Councilman Mezayek; motion carried 7-0 to appoint the following board members:

**Amber Owen  
Natasha Tobler**

**CIVIL SERVICE COMMISSION**

Mayor Pro Tem Caraway made the motion; seconded by Councilman Sanders; motion carried 7-0 to reappoint the following board member:

**Darryl Bowdre**

**CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS**

Councilman Mezayek made the motion; seconded by Councilman Whatley; motion carried 7-0 to appoint the following board members:

**Mark Medina  
Chip Clark  
Bobby Johnson  
Ed Kopal  
Michael Barham**



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Councilman Mezayek made the motion; seconded by Councilman Whatley; motion carried 7-0 to appoint **Mark Medina** as chairman.

**DISABILITY ISSUES REVIEW BOARD**

Councilman Heines made the motion; seconded by Councilman Mezayek; motion carried 7-0 to reappoint the following board member:

**Juanita Fletcher**

Councilman Heines made the motion; seconded by Councilman Mezayek; motion carried 7-0 to appoint the following board members:

**Amy Harrison  
Rhonda McKinzie  
Shjuania Stewart  
Bob Peters**

Councilman Heines made the motion; seconded by Councilman Sanders; motion carried 7-0 to reappoint **Juanita Fletcher** as chairman.

**HEALTH FACILITIES DEVELOPMENT CORPORATION BOARD OF DIRECTORS**

Councilman Heines made the motion; seconded by Councilman Wright; motion carried 7-0 to reappoint the following board members:

**Clark Stowe III  
Herbert Buie  
Allen Bell  
Tim Alexander  
Larry Bolton**

**HISTORICAL PRESERVATION BOARD**

Councilman Heines made the motion; seconded by Councilman Mezayek; motion carried 7-0 to reappoint the following board members:

**Daniel Noteware  
Kristopher Jason Jennings**

Councilman Heines made the motion; seconded by Councilman Mezayek; motion carried 7-0 to appoint the following board members:

**T. Chad Cargile  
Jim Robertson  
Ellen Moore Musselman**

**KEEP TYLER BEAUTIFUL – APPOINT MEMBERS AT THE NEXT MEETING**

Councilman Heines made the motion; seconded by Councilman Wright; motion carried 7-0 to appoint **Marjorie Mustard** as chairman.

**LIBRARY BOARD**

Councilman Heines made the motion; seconded by Mayor Pro Tem Caraway; motion carried 7-0 to reappoint the following board members:

**Gail McGlothin**  
**Shirley Gardner**

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

**Sebetha Jenkins Booker**

**NEIGHBORHOOD REVITALIZATION BOARD**

Councilman Heines made the motion; seconded by Councilman Mezayek; motion carried 7-0 to reappoint the following board members:

**Eugene White**  
**Robert H. “Robbie” Campbell III**

Councilman Heines made the motion; seconded by Councilman Mezayek; motion carried 7-0 to appoint the following board members:

**Charles Ainsworth**  
**Gary L Choice Sr.**

Councilman Heines made the motion; seconded by Councilman Mezayek; motion carried 7-0 to appoint **Robert H. “Robbie” Campbell III** as chairman.

**NORTHEAST TEXAS PUBLIC HEALTH DISTRICT**

Councilman Whatley made the motion; seconded by Councilman Heines; motion carried 5-0 to reappoint the following board member:

**James Hartung**

**PARK BOARD**

Councilman Whatley made the motion; seconded by Councilman Mezayek; motion carried 7-0 to reappoint the following board members:

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**Helen Marie Israel  
Amy Woldert  
Walter Wilhelmi**

Councilman Whatley made the motion; seconded by Councilman Mezayek; motion carried 7-0 to appoint the following board member:

**Keith McCoy**

Councilman Mezayek made the motion; seconded by Councilman Heines; motion carried 7-0 to reappoint **Walter Wilhelmi** as chairman.

### **PLANNING & ZONING BOARD**

Councilman Whatley made the motion; seconded by Councilman Heines; motion carried 7-0 to reappoint the following board member:

**Eleno Licea Jr.**

Councilman Whatley made the motion; seconded by Councilman Heines; motion carried 7-0 to appoint the following board members:

**John Nix  
Donald Warren**

### **TRAFFIC SAFETY BOARD**

Councilman Whatley made the motion; seconded by Councilman Mezayek; motion carried 7-0 to reappoint the following board member:

**Gary W. Cross**

Councilman Whatley made the motion; seconded by Councilman Mezayek; motion carried 7-0 to appoint the following board members:

**Thomas Johnson  
Roger Troue  
Monty Small**

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

**RECESS FOR EXECUTIVE SESSION** – City Council convened into executive session at 10:57 am

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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. Appeal of Condemnation & TCEQ docket involving TTUC (Algonquin)

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 11:11 am with no action taken.

ADJOURNMENT

Motion by Councilmember Whatley to adjourn the meeting at 11:11 am; seconded by Councilmember Wright; motion carried 7 - 0 & meeting adjourned.

  
BARBARA BASS, MAYOR OF  
THE CITY OF TYLER, TEXAS

ATTEST:

  
CASSANDRA BRAGER, CITY CLERK

