

**MINUTES OF THE
REGULAR CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
March 28 2012**

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, March 28, 2012 at 9:00 a.m. in the Council Chamber, City Hall, Tyler, Texas, with the following present:

Mayor:	Barbara Bass
Mayor Pro Tem:	Sam Mezayek
Councilmembers:	Martin Heines
	Donald Sanders
	Mark Whatley
	Ralph Caraway
	Jason Wright
City Manager:	Mark McDaniel
City Attorney:	Gary C. Landers
Deputy City Attorney:	Steve Kean
Assistant City Attorney:	Deborah Pullum
Assistant City Attorney:	Karen Stead
Airport Manager:	Davis Dickson
Main Street Director:	Beverly Abell
Human Resources Director:	ReNissa Wade
Development Services Engineer:	Michael Wilson
Neighborhood Services Manager:	Brenda Johnson
Chief Financial Officer:	Daniel Crawford
Chief Information Officer:	Benny Yazdanpanahi
City Engineer:	Carter Delleney
City Fire Chief:	Tim Johnson
City Librarian:	Chris Albertson
Managing Director for Public Safety & Police Chief:	Gary Swindle
Managing Director of External Relations & Communications Director:	Susan Guthrie
Director of Parks and Recreation:	Stephanie Rollings
MPO Executive Director:	Barbara Holly
Director of Solid Waste:	Dan Brotton
Manager of Vehicle Services:	Russ Jackson
Housing Service Manager:	Andy Davis
Budget/Internal Auditor:	Keidric Trimble
City Planner:	Heather Nick
Water Quality and Production Manager:	Jimmie Johnson
Water Business Office Manager:	Jim Yanker
Municipal Court Administrator:	Cam McCabe
Managing Director for Utilities/Public Works and Utilities:	Greg Morgan
Street Department Manager:	Robin Smart
Traffic Engineer:	Peter Eng
City Clerk:	Cassandra Brager

INVOCATION

The Invocation was given by Councilmember.

MINUTES

- a. Minutes 03 07 2012
- b. Minutes 03 19 2012 - Special Called Joint Meeting (Work Session)

Motion by Councilmember Caraway to approve the March 7, 2012 and March 19, 2012 Special Called Meeting; seconded by Councilmember Sanders; motion carried 7 - 0 & approved as presented.

RECESS

City Council convened into executive session at 9:02 am

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:

Possible or contemplated litigation relating to the resolution of extraterritorial jurisdiction boundaries with the Smith County Municipal Utility District No.1 and City of Winona.

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

RECONVENE

City Council reconvened from executive session at 9:14 am with the following motions.

1. Motion by Caraway, 2nd by Whatley to move that an Interlocal Agreement between Tyler and the City of Winona which again approves the dividing of ETJ between the two cities (as was originally done in January 2012, but prior to later board action by the SCMUD #1 relating to ETJ) be approved. 7:0 ©
2. Motion by Caraway, 2nd by Whatley to move that a "Compromise Settlement Agreement" between SCMUD #1 and the City of Tyler be approved. 7:0 ©

ZONING



Z-1 APPLICATION A04-11-002 UNIVERSITY OF TEXAS HEALTH AND SCIENCE CENTER AT TYLER ANNEXATION

Request that the City consider adopting an Ordinance providing for the voluntary annexation of the University of Texas Health and Science Center at Tyler. The proposed annexation area consists of approximately 593.11 acres lying adjacent to the present boundary limits of the City of Tyler at the southwest intersection of State Highway 271 and State Highway 155. Also consider recommending:

- A. The new boundary of the City Limits.**
- B. The new boundary of the Extraterritorial Jurisdiction.**
- C. The new boundary of the City Council District No. 3.**
- D. The Future Land Use Guide be updated to reflect General Commercial Land Use.**
- E. Original zoning of "INT", Institutional District and "C-2" General Commercial District. (O-2012-16)**

Dr. Kirk Calhoun, President – Stated that on the behalf of the Board of Regents of the University of Texas Systems he wanted to thank the City Council for considering their request and for taking action today. The University of Texas Health Science Center at Tyler is a regional resource however, we felt a very important part of the City of Tyler family and now we are legal in the family. This will present us with an opportunity to work with you with other healthcare providers in this community and with other educational institutions as part of the City of Tyler family. This will allow us to work on all sorts of issues to improve educational opportunities, healthcare opportunities and the quality of life in our City.

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

Z-2 APPLICATION Z03-12-016 BROADWAY SOUTH DEVELOPMENT (9098 SOUTH BROADWAY AVENUE)

Request that the City Council consider approving a site plan amendment for property zoned "PCD", Planned Commercial Development District. (O-2012-17) Councilmember Whatley abstain

Motion by Councilmember Wright; seconded by Mayor Pro Tem Mezayek; motion carried 6-0-1 & approved as presented.



Z-3 APPLICATION Z03-12-017 HUMBERTO REAL (1405 EAST COMMERCE STREET)
Request that City Council consider approving a zone change from "R-2", Two-Family Residential District to "R-1B", Single-Family Residential District. (O-2012-19)

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

- Z-4 APPLICATION Z03-12-019 GENECOV DMLT, LTD (2413, 2419, 2501, 2515, & 2523 EAST 5TH STREET)**
Request that the City Council consider approving a zone change from “C-1”, Light Commercial District to “C-2”, General Commercial District. (O-2012-18)
Councilmember Whatley abstain

Motion by Councilmember Heines; seconded by Councilmember Caraway; motion carried 6-0-1 & approved as presented.

- Z-5 APPLICATION Z03-12-020 TEXAS COLLEGE (1809 & 1901 NORTH GASTON AVENUE AND 1900 NORTH CONFEDERATE AVENUE)**
Request that the City Council consider approving a zone change from “R-2”, Two-Family Residential District and “R-1B”, Single-Family Residential District to “INT”, Institutional District. (O-2012-20)

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

- Z-6 APPLICATION C03-12-002 CARSON & SMITH (ROBERTA DRIVE)**
Request that the City Council consider closing an unimproved portion of Roberta Drive right-of-way. (O-2012-21)

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

- Z-7 APPLICATION C03-12-003 MANZIEL FAMILY (REEVES STREET AND BECKHAM AVENUE)**
Request that the City Council consider closing unimproved portions of Reeves Street and Beckham Avenue rights-of-way. (O-2012-22)

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

PRESENTATIONS

- P-1 Request that the City Council considers approving the Comprehensive Annual Financial Report for the fiscal year ending on September 30, 2011, as presented by Henry & Peters, P.C.**

Jana Broussard, Henry & Peters, 3310 S. Broadway – Stated that they had a clean opinion on the financial statements and the City of Tyler should be congratulated on a great year and a great report.

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

ORDINANCE

- O-1 Request that the City Council consider adoption of an Ordinance canceling the Mayor/ At Large, District Four, and District Six Election scheduled for May 12, 2012, and declaring the unopposed candidate for the Mayor / At Large, District Four, and District Six, elected to office. (O-2012-23)**

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

- O-2 Request that the City Council consider adopting an Ordinance amending the Tyler City Code Section 18-31 to make certain maintenance, health, and screening regulations applicable to the commercial storage facilities exception. (O-2012-24)**

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

- O-3 Request that the City Council consider adopting an Ordinance amending Tyler City Code Chapter 18 to add definitions and to establish procedures for abatement and removal of certain trees on private property or within the adjacent parkway, and, due to condition, disease, damage or insect infestation or other factors, constitute threats to the public health and safety on public property or public right-of-way. (O-2012-25)**

City Attorney, Gary Landers – Stated that this item is an extension of regulations of trees growing close to streets and right of ways. Across the City of Tyler sometimes our streets are owned by the City with a deed, but most of our streets are owned by the adjacent property owners and the deed goes out to the middle of the street. It is not unusual to have regulations regulating what we call the right of way or parkway. This one is a health and safety issue and there is authority for it under state law. Literally the steps you go through if a specific tree is determined to be so dangerous and a danger of falling over then it becomes a public nuisance, and it's the authority of a City through the State to regulate nuisances.

Councilmember Heines – Asked if this would get to the point that if two homeowners have a tree and one of the homeowner's tree is hanging over on the other person's lot maybe falling over on someone else's house then we will not get into that with this ordinance.

City Attorney, Gary Landers- Stated that this is not what this ordinance is aimed at, this ordinance is aimed at covering the situation where there is a tree that is becoming a nuisance or danger to the publicly traveled areas.

Councilmember Mezayek – Stated that it was discussed that a lot of the lots and streets were owned where the deed of the property goes out to the middle of the street, and I know that's part of what the City has, a majority of them are streets that the City owns the right of way or the right of way is dedicated to the City. Councilmember Mezayek stated that he was a little concerned because the City is telling a private citizen that if a tree is sitting in the City right of way maybe by their front yard, or grass they mow, or between the sidewalk and street that the

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homeowner now will be responsible to remove the tree if its deemed by the Arborist to be a nuisance?

City Attorney, Gary Landers – Stated, “Yes, because the homeowner is already responsible for maintaining or taking care of the property anyway.” This provides a way for the City to actually step in when there is a nuisance, when the owner is not maybe being a responsible owner and not taking care of that tree.

Councilmember Mezayek – Stated that in a 60 foot right of way the street is typically 33 foot wide and you would have from behind the curb to the property line and the home owner would be about 13 ½ feet on each side. The way the ordinance is written that if a tree is sitting in that right of way not actually on the person’s property the homeowner would basically be responsible for the tree.

Councilmember Whatley – Asked what instances have come up that is driving this ordinance

City Manager, Mark McDaniel - Stated that we received one major complaint regarding a lot of dead trees that had a threat of falling into the roadway but they were on private property. With the drought that we had there are a lot of dead trees and we just want to get ahead of things. The area that’s in front of your house a lot of times will have easements for utilities and all sorts of things but the property owner still owns it, it’s just an easement. If the tree is in the easement that the property owner still owns that’s the kind of case where we will be requiring the owner to deal with it. If it’s clearly a right of way issue and it’s really our tree most of the time Robin will just go out there and take the tree out because he doesn’t need permission to because it’s on our right of way.

Councilmember Mezayek – Stated that he does not have an issue with that but if it’s on someone private property and its definitely an health and safety issue and the City says look you need to take care of this, then that’s okay. But the way the ordinance is written talks about the right of way, anything in the right of way and that could mean the City right of way, is the way it’s written. The City of Tyler has a lot of lots in the city right of way that the city owns.

City Manager, Mark McDaniel – Stated that this definitely was a gray area because that area is defined in different ways and different parts of town whether it’s a parkway, an easement, or a right of way, whether we own it out right or not.

Councilmember Mezayek – Asked if there was a way that it can be defined if it’s outside the cities property line?

City Attorney, Gary Landers – Stated that the ordinance also refers to property owner so in the situation where the City is the property owner of that right of way we should be talking to ourselves and that is the situation normally now if there is situations like that we would research it and if it’s the City responsibility then the street department will take care of it.

Councilmember Caraway – Asked if it has already been determined who it actually belongs to either the City or the property owner?

City Attorney, Gary Landers – Stated that would have to be part of this process.

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

- O-4 Request that the City Council consider adopting an Ordinance amending City Code Chapter 6 by amending the fencing and enclosure requirements related to swimming pools in Single-Family Residential Zones, and amending the definition of "swimming pool" to conform to State law. (O-2012-26)**

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

- O-5 Request that the City Council consider adoption of an Ordinance amending Tyler City Code Chapter 3, to amend the Civil Service Classification Plan and number of authorized Civil Service Positions by adding a new Captain position in the Fire Department. (O-2012-27)**

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

MISCELLANEOUS

- M-1 Request that the City Council consider authorizing the City Manager to execute an Interlocal Fuel Purchasing Agreement between Emergency Services District No. 2 and the City of Tyler ©**

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

- M-2 Request that the City Council consider authorizing the City Manager to contract with Catapult, Nuance, Complete Automation, Dell, IBM, Scale, and Xerox for SharePoint Document Management Integration and Implementation in an amount not to exceed \$250,000 ©**

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

- M-3a Request that the City Council consider authorizing the City Manager to execute Work Order No. 1 with Wisenbaker, Fix & Associates in the amount of \$177,500 for a Preliminary Study for Lake Tyler and Lake Tyler East Dam Improvements. ©**
- b Request that the City Council consider authorizing the City Manager to execute Work Order No. 1 with Wisenbaker, Fix & Associates in the amount of \$81,500 for a Preliminary Study for Bellwood Lake Dam Improvements. ©**

Motion by Mayor Pro Tem Mezayek; seconded by Councilmember Caraway; 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 adoption of a Resolution ratifying the acceptance of TxDOT Project Grant Agreement No. ED 1205(10)07 in the amount of \$17,184 and any grant amendments to increase the grant amount for the purpose of providing public transportation for the City of Tyler. (R-2012-10)

C-A-2 Request that the City Council ratify staff action authorizing payment in the amount of \$53,147.45 to Siemens Company for Robicon Cell Repairs at Lake Tyler Raw Water Pump Station.

C-A-3 Request City Council consider ratifying staff action authorizing payment in the amount of \$180,000 to Sensus Metering Systems for Smart Point MXU's associated with FlexNet meter upgrade project and authorize the purchase of an additional 1000 Smart Point MXU's at a negotiated price of \$90.00 each.

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

BOARD APPOINTMENTS

B-1 Request that the City Council consider appointing a Chairman for the Keep Tyler Beautiful Board.

Motion by Councilmember Caraway to appoint Phyllis Carlyle as Chairman; seconded by Mayor Pro Tem Mezeyek; motion carried 7 - 0 & approved as presented.

CITY MANAGER'S REPORT

- 1. Police Dept. accreditation conference last weekend resulted in 17th year of accreditation;**
- 2. Mayor honored as NETexas Stateman for her efforts in this area;**
- 3. UTHSCT now Tyler's newest corporate citizen with celebration on April 25th @ 11:00 am.**

ADJOURNMENT


**BARBARA BASS, MAYOR OF
 THE CITY OF TYLER, TEXAS**

ATTEST:


CASSANDRA BRAGER, CITY CLERK

