

**MINUTES OF THE
REGULAR CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
April 12, 2017**

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, April 12, 2017 at 9:00 a.m. in the City Council Chambers, 2nd floor of City Hall, Tyler, Texas, with the following present:

Mayor: Martin Heines
Mayor Pro Tem: John Nix (absent)
Councilmembers: Mark Whatley
Linda Sellers
Darryl Bowdre
Ed Moore
Don Warren

City Manager: Edward Broussard
City Attorney: Deborah G. Pullum
Deputy City Attorney: Steve Kean
Sr. Assistant City Attorney: Sharon Roberts
Chief Information Officer: Benny Yazdanpanahi
City Engineer: Carter Delleney
City Fire Chief: David Coble
Police Chief: Jimmy Toler
Managing Director of Culture, Recreation and
Tourism Services: Stephanie Rollings
Water Business Office Manager: Jim Yanker
Director of Utilities: Lisa Crossman
Managing Director of Utilities and Public Works: Greg Morgan
Traffic Engineer: Peter Eng
City Clerk: Cassandra Brager

INVOCATION

The Invocation was given by Councilmember Bowdre.

MINUTES

Motion by Councilmember Whatley to approve the March 8, 2017 minutes; seconded by Councilmember Sellers; motion carried 6 - 0 & approved as presented.

ZONING

Z-1 Z17-005 RODRIGO LOPEZ (4119 FRY AVENUE) Request that the City Council consider approving a zone change from "R-1A", Single-Family Residential District to "RPO", Restricted Professional Office District. (DENIED)

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Norma Fraire, 5101 Foxglove Circle – Stated that she was the realtor representing Mr. Lopez and they have requested rezoning to PRO. Ms. Fraire stated that if she tried selling a house on the Loop she would not be able to sell it because there are 68,000 cars passing by daily. She stated that she has spoken with TxDOT, but they can just recommend, they don't enforce, so it is up to the City Council. Ms. Fraire stated that the Council has the authority and the power to rezone. She stated that even though there are deed restrictions on the property the City Council has the authority to rezone.

Randy Cook, 4111 Fry Ave – Stated that he unanimously objects to this request because he would like City Council to preserve the integrity of the neighborhood as a residential neighborhood. Mr. Cook stated that the current R-1A zoning is the only zoning consistent with the deed restrictions that governs all of the lots in his neighborhood. He stated that when the property was developed in the early 60's there were covenants imposed on all of them that prohibit commercial activity and limit construction to single family homes.

Councilmember Whatley – Stated that if the deed restrictions say that something can't be done it's not for the City to get involved in those matters and overrule it. Councilmember Whatley stated that deed restrictions will stand on their own, so he was not in favor of changing the zoning on this item.

Councilmember Warren - Stated that the thought of changing this zoning to RPO does not appeal to him at all.

Mayor Heines - Stated that anywhere in the City where he knowingly had deed restrictions on any residential lot, no matter where it was in the community, he has voted against it in the past. He stated that he will be consistent and vote against this item as well.

Motion by Councilmember Warren to deny Z-1; seconded by Councilmember Whatley; motion carried 6 - 0 to deny the zone change.

Councilmember Warren introduced Dr. Mark Owens, Professor in the UT Tyler Political Science Department, and stated that Dr. Owens brought a number of his students to the City Council meeting to experience government in action.

RESOLUTION

R-1 Request that the City Council consider adopting a Resolution initiating annexation proceedings, authorizing creation of a service plan, and setting the dates, times and places for two required public hearings to consider the annexation of West Cumberland located at the intersection of West Cumberland Road and Old Jacksonville Highway. (R-2017-10)

Motion by Councilmember Bowdre; seconded by Councilmember Sellers; motion carried 6 - 0 & approved as presented.

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- R-2 Request that the City Council consider supporting a Resolution authorizing the Transportation Alternative Set-Aside Program (TA Set-Aside) grant application for the City of Tyler BikeStripe project to be filed with the Texas Department of Transportation, and committing the local matching funds. (R-2017-11)**

Motion by Councilmember Warren; seconded by Councilmember Moore; motion carried 6 - 0 & approved as presented.

- R-3 Request that the City Council consider 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 & Theft Prevention Authority for twenty-fifth year funding in the East Texas Auto Theft Task Force, and authorize the City Manager to enter into a working agreement regarding the same. (R-2017-12)**

Motion by Councilmember Whatley; seconded by Councilmember Bowdre; motion carried 6 - 0 & approved as presented.

- R-4 Request that the City Council consider adopting a Resolution suspending the April 27, 2017 effective date of the proposal by ONCOR Electric Delivery Company to increase system-wide transmission and distribution rates by approximately \$317 million, and authorize further administrative action as set forth in the Resolution. (R-2017-13)**

Councilmember Whatley asked if this was the normal process, because it seems like the Council is asked to approve a suspension every time.

City Attorney, Deborah Pullum – Stated that it was a normal process because the cities involved in the coalition hire experts and they need time to review the rate filing before making a recommendation about whether the rates are fair and reasonable.

Motion by Councilmember Sellers; seconded by Councilmember Whatley; motion carried 6 - 0 & approved as presented.

ORDINANCE

- O-1 Request that the City Council consider adopting an ordinance canceling the election for City Council districts one and three scheduled for May 6, 2017, and declaring the unopposed candidates for City Council districts one and three elected to office. (O-2017-31)**

Motion by Councilmember Warren; seconded by Councilmember Whatley; motion carried 6 - 0 & approved as presented.

- O-2 Request that the City Council consider adopting an Ordinance amending Tyler City Code Chapter 1 to update current City Board provisions and making other clean-up changes. (O-2017-32)**

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Motion by Councilmember Bowdre; seconded by Councilmember Warren; motion carried 6 - 0 & approved as presented.

- O-3 Request that the City Council consider approving an Ordinance denying the change in Sanitary Sewer Rates requested by Liberty Utilities (Tall Timbers Sewer) Corporation and provide notice of the Ordinance to Liberty Utilities (Tall Timbers Sewer) Corporation. (O-2017-33)**

Greg Morgan, Managing Director of Utilities and Public Works – Stated that on September 2, 2016, Liberty Utilities Corporation (also known as Tall Timbers Sewer) (Utility) filed with the City of Tyler an Application and Statement of Intent to increase sanitary sewer rates within the City. He stated that the Application also seeks approval of alternate rate methodologies that would allow the rates to be based on a combined cost of service of the Utility and Liberty Utilities (Woodmark Sewer Corporation). He stated that would permit phased rates to allow the Utility to add investment capital assets that were not in service during the test year or before the application was filed.

Mr. Morgan stated that the Utility was notified that the City does not have the authority to approve rates based on alternate rate-making methodologies and was requested to amend its Application to remove the request for the approval of rates using alternative rate-making methodologies. He stated that the Utility refused to amend their Application.

Mr. Morgan stated that on January 25, 2017, the City Council voted to suspend the Application to allow time for consideration of the Application, but that actions before the Public Utility Commission make it clear that the Utility will not amend their Application and are proceeding with the Application as submitted. He stated that he is now requesting that the City Council approve the Ordinance denying the rate change application.

Geoff Kirshbaum, Terrill & Holding – Stated that he was here representing Liberty Utilities and was disappointed that the City of Tyler has denied the application.

Motion by Councilmember Whatley to approve the Ordinance denying the rate change application; seconded by Councilmember Sellers; motion carried 6 - 0 & approved as presented.

- O-4 Request that the City Council consider adopting an ordinance amending City Code Chapter 17, by increasing the speed limit from 30 miles per hour to 40 miles per hour on two sections of Old Noonday Road, from 1st Street to State Highway 155, and from State Highway 155 to Lake Placid Road. (O-2017-34)**

Motion by Councilmember Bowdre; seconded by Councilmember Whatley; motion carried 6 - 0 & approved as presented.

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MISCELLANEOUS

M-1 Request that the City Council consider approving a tax abatement agreement with Trane U.S., Inc. and authorizing the City Manager to sign all documents necessary to implement the tax abatement amended agreement.

Motion by Councilmember Warren; seconded by Councilmember Bowdre; motion carried 6 - 0 & approved as presented.

M-2 Request that the City Council consider authorizing the City Manager to execute an engineering services contract with Pipeline Analysis, LLC and execute Work Order No. 1, with a maximum cost of \$1,000,000 per year, for Staff Support Services.

Motion by Councilmember Whatley to approve contract with a one (1) year contract with option of approval of nine (9) more annual renewals; seconded by Councilmember Moore; motion carried 6 - 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 execute a contract with ADK Consulting & Executive Search for the recruitment of the Airport Manager position in an amount not to exceed \$30,900.

C-A-2 Request that the City Council consider ratifying staff action in executing Amendment No. 1 for Work Order No. 9 with Wisenbaker, Fix and Associates in an amount not to exceed \$12,375.00 to increase preliminary design services from \$91,800.00 to \$104,175.00 for the Instrument Landing System Relocation of the Runway 4/22 Rehabilitation Project at Tyler Pounds Regional Airport.

C-A-3 Request that the City Council consider authorizing the City Manager to enter into a Commercial Purchasing Card Agreement with Regions Bank to replace the current agreement with Bank of America.

C-A-4 Request that the City Council consider authorizing the City Manager to declare Tyler Water Utilities scrap brass, copper, ductile iron, cast iron and miscellaneous metals as surplus and award Bid Number 17-014, to Tyler Iron & Metal Co. of Tyler, Texas.

C-A-5 Request that the City Council consider adoption of a Resolution to authorize continued participation by the City of Tyler with the Steering Committee of Cities Served by Oncor, and authorizing the annual assessment payment of 11 cents per capita to the Steering Committee. (R-2017-14)

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- C-A-6** Request that the City Council consider authorizing the City Manager to execute a new five year lease agreement with the Tyler Ski Club for a portion of Old Omen Bay on Lake Tyler East.
- C-A-7** Request that the City Council consider authorizing the City Manager to award a construction contract in the amount of \$322,168 to Crown Civil Construction for the Hillcreek Road Erosion Control project.
- C-A-8** Request that the City Council consider authorizing the City Manager to award a construction contract in the amount of \$282,892 to Reynolds & Kay, Ltd. for the Lake Palestine Raw Water Pump Station Erosion Control.
- C-A-9** Request that the City Council consider authorizing the City Manager to execute a “Letter of Engagement for Professional services” with Stearns, Conrad and Schmidt Consulting Engineers, Inc., to perform the City of Tyler Residential Solid Waste rate study for a combined maximum fee including all out of pocket expenses not to exceed \$30,000.
- C-A-10** Request that the City Council consider adopting a resolution suspending the May 29, 2017 effective date of the CenterPoint Gas Beaumont/East Texas Division Interim Gas Reliability Infrastructure Program (GRIP) rate adjustments and requiring delivery of this resolution to CenterPoint and legal counsel. (R-2017-15)

Motion by Councilmember Bowdre; seconded by Councilmember Whatley; motion carried 6 - 0 & approved as presented.

BOARD APPOINTMENTS

- B-1** Request that City Council consider making an appointment to the Half Cent Sales Tax Board.

Motion by Councilmember Warren to approve Nicanor (Nick) Pesina, Jr; seconded by Councilmember Whatley; motion carried 6 - 0 & approved as presented.

CITY MANAGER'S REPORT

1. Municipal Court will place an employee at Faulkner Park Police Station.
2. Grand & Palace project continues forward with Grand Opening in May.
3. 28 trees cleared from the storm at Donnybrook and the Loop
4. NBS had an open house to celebrate Fair Housing Month last Friday.
5. Fire Fighter of the year – Damon Daughtery

RECESS FOR EXECUTIVE SESSION – City Council convened into executive session at 10:32 am

Executive Item No. 1:

Under Tex. Gov't Code Section 551.072 “Real Estate” deliberation regarding the following:

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Discuss the purchase, exchange, sale, lease or value of real property, the public discussion of which would have a detrimental effect on the negotiating position of the City, related to the development of municipal facilities.

Executive Item No. 2:

Under Tex. Gov't Code section 551.087 "Economic Development" deliberation regarding the following:

Possible offer of financial or other incentive to a prospect, and to consider financial and other information about that prospect/project with which the City is conducting economic development negotiations that could lead to a partnership in Tyler.

Any final action to be taken by the City Council will be taken in open session.

City Council reconvened from executive session at 11:47 a.m. with the following action taken:

Mayor Heines stated that the City Council has received an offer to sell a portion of the King Chevrolet property. It is for the northwest corner of Erwin and Bonner; there is an offer on the table for approximately three acres of buildable area and about .75 acres that will be non-buildable green space. The contract is subject to a 60 day feasibility period and subject to receiving a PMXD2 zoning, which includes a site plan approval. The offer price is \$539,055.00 with an escrow amount provided by the buyer for \$32,760.00 that will be utilized for their portion or a portion to be determined of off-site improvements. The City of Tyler is not providing any financial incentives to the contract and there is no agreement on the public offsite improvements by the City at this time.

Motion by Councilmember Whatley to approve the sale of property of approximately three acres plus an additional .75 acres on Erwin Street for the contract price of \$539,055.00 plus an escrowed amount of \$32,760.00 for off-site street/lighting improvements; seconded by Councilmember Bowdre; motion carried 6 -0 & approved as amended.

ADJOURNMENT

Motion by Councilmember Bowdre to adjourn the meeting at 11:53 am; seconded by Councilmember Whatley; motion carried 6-0 & meeting adjourned.


MARTIN HEINES, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:


CASSANDRA BRAGER, CITY CLERK

