

VICTORIA CITY COUNCIL
October 18, 2005

CALL TO ORDER

A regular meeting of the Victoria City Council was called to order by Mayor Will Armstrong at 5:01 p.m. Tuesday, October 18, 2005 in the Council Chambers, 107 W. Juan Linn, Victoria, Texas. The pledge of allegiance was said, and all citizens were welcomed.

MEMBERS PRESENT

Will Armstrong, Mayor
 Philip Guittard
 Lewis Neitsch
 Bill Russell
 Shirley Buckert
 Jim Wyatt
 Tom Halepaska

STAFF PRESENT

Denny Arnold, City Manager
 Charles Windwehen, Assistant City Manager
 Miles Risley, Senior Assistant City Attorney
 Gilbert P. Reyna, Jr., Director, Finance
 John Johnston, Director, Public Works
 John Kaminski, Director, Planning
 Steve Trevino, Director, IMS
 Scarlet Swoboda, City Secretary

APPROVAL OF MINUTES

The minutes of the regular meetings of September 20, 2005 and October 4, 2005 were approved as presented.

CITIZENS COMMUNICATION

Tropical Acres – Lake Forest Subdivisions

Barbara Mickan, 202 Yucca, stated that she was representing the residents of Tropical Acres Subdivision and expressed their concern with an easement on Cactus Street in their subdivision. She stated that the developer of the Lake Forest Subdivision, which is next to their subdivision, had proposed extending Cactus Street to make a second entrance into his subdivision. Ms. Mickan advised that the proposal had been denied at the last meeting of the Planning Commission, but she had heard that the developer was appealing the decision. It was her fear and the rest of the residents that the proposed road would go through anyway, and she wanted the City Council to know of their opposition to any road being extended into their subdivision from the other subdivision.

She stated that Tropical Acres Subdivision was built many years ago when it was outside the city limits and does not have curbs and gutters, or sidewalks. She suggested that most people would exit the Lake Forest Subdivision through Tropical Acres as it would provide a straight direct line out of the subdivision, because their streets do not wind around like the ones in Lake Forest. She stated that there was concern that walkers, joggers, small children, and pets would be in danger of speeding vehicles down their streets. Ms. Mickan stated that each homeowner in the subdivision was willing to contribute money to acquire the Cactus Street easement, so that street would never connect the two subdivisions.

Cm. Russell stated that the legal staff would probably tell them that the City only has a right-of-way and does not own the property in question, so the City could not sell it, they could only abandon the right-of-way. Cm. Russell further advised that he had spoken with the attorney representing the developer, and it was his understanding from that conversation that they may be appealing some areas of the proposal. However, they understood the feelings of the residents of Tropical Acres and were not going to pursue an extension of Cactus Street into their subdivision.

Miles Risley, Senior Assistant City Attorney clarified that the variance that was being appealed was the requirement for a second entrance for a proposed subdivision phase. The developer originally proposed to have a second temporary entrance coming off of Cactus Street, that variance was denied and is a dead issue. Instead, the alternate entrance now being proposed would be a gravel road on the north side of the subdivision, not on the south side. He stated that any future variance requests would result in notification to all persons living within 200 feet of the subdivision.

Proclamation

Mayor Armstrong presented a proclamation to members of the Victoria Czech Heritage Society declaring October 2005 as "Czech Month" and congratulated this chapter on their 21st Anniversary.

ITEMS FROM COUNCIL

There were no agenda requests from Council.

PUBLIC HEARINGS

Mayor Armstrong opened a public hearing on the following item:

ORDINANCE 2005-22 – ADDING SECTION 10-69 TO THE CITY CODE TO PROHIBIT SMOKING IN RESTAURANTS

The ordinance considers adding Section 10-69 to the City Code to prohibit smoking and require signage in restaurants other than bars. Cm. Philip Guittard.

The following individuals spoke in favor of the ordinance:

Richard Fritz, 104 Woodwind Drive, encouraged all Council Members to approve the no smoking ordinance. He stated that it is a pleasure to dine in other cities with a smoking ban because you do not have to ask for a no smoking section or determine which restaurants have a no smoking policy. He stated that by approving this ordinance it would improve the health of the community especially those with allergies to smoke. He also stated that he would like to support the people in Tropical Acres, because it is very difficult to stop cross traffic and it is better for the subdivision if it never starts.

Susan Brook, 103 Ashford Drive, stated that she had lived in several different cities that have smoking bans and she enjoyed that environment. She stated that smoking is a health issue, and a ban does not diminish business if applied equally and fairly to all restaurants.

Larry Jones, 121 Riatta, stated that he was in favor of the smoking ban at restaurants. He stated that this is a health issue and secondhand smoke is dangerous.

Susan Rodriguez, 209 Yucca, applauded Council for bringing this issue up again, and stated that she would rather it be a City wide ban as secondhand smoke is a public health issue.

Megan Treadway, 707 Gardenia stated that she did not have an opinion either way, but she questioned why the smoking sections were usually in the front of the restaurant and suggested requiring that they be in the back, so that customers would not have to walk through the smoking area.

The following individuals spoke in opposition of the ordinance:

Chip Dence, 302 N. Hummel, stated that he has addressed Council on this issue before and once again spoke against any regulation on smoking by this body. He stated that he was tired of government trying to protect ourselves from ourselves. He reminded Council that smoking was a legal activity and the City benefits greatly from the sales tax on cigarettes. He suggested that if the City were to ban smoking they should also forego the tax revenues.

Amy Wuest, 302 Hampshire Lane, and a partner in Big Jim's Burger stated that she was adamantly against any government telling business owners what they can do under their roof. She stated that those individuals who are sensitive to smoke have the freedom of choice, but do not take away hers. She stated that although she had already made the decision to have a no smoking establishment, it should be up to each individual member of society to make choices for themselves, not the government's responsibility to make those choices for them. She stated that to have this topic brought up three times in less than a year was ludicrous, instead maybe an ordinance should be passed that after something's has been brought up twice and died twice it should not come back up for five years.

CITY COUNCIL MINUTES
October 18, 2005

Ms. Wuest then inquired what the signage requirements would be if the ordinance was adopted. That section of the ordinance was then read out loud for the benefit of those in attendance. She then asked for clarification on whether an outdoor dining area was included in the smoking ban. Ms. Wuest was told that the ordinance as written would include those outside dining areas, however if the Council chose to exclude outdoor dining areas an amendment would have to be made.

Cm. Halepaska inquired whether a bowling alley or bingo parlor that served food was considered a food establishment. In response Mr. Risley read the definition of "Food Establishment" from the Health and Safety Code.

Mayor Armstrong asked if there were any other questions from Council or the audience. There were none, and Mayor Armstrong closed the public hearing.

CITY MANAGER REPORTS

Capital Improvement Plan Projects Quarterly Report

John Johnston, Director of Public Works, advised that the 2005 Third Quarter Project Status Report was included in their packets. He stated that the report includes drainage, utilities, Texas Department of Transportation (TxDot) projects, and the projects that were currently one-year under warranty.

Proposed Sidewalks

John Johnston, Director of Public Works, stated that the Council set aside \$100,000 in the Fiscal Year 2005-2006 budget for closing sidewalk gaps. He reported that staff had identified numerous locations and presented maps of those areas for consideration. Cm. Buckert requested that staff also look at a few areas in Colony Creek where there were some gaps.

RESOLUTION 2005-171R – ENDORSING THE CREATION OF VICTORIA COUNTY GROUNDWATER CONSERVATION DISTRICT

The resolution endorses the creation of the Victoria County Groundwater Conservation District. Cm. Tom Halepaska.

Cm. Russell moved that the resolution be adopted, with Cm. Guittard seconding the motion. The resolution was adopted by the following vote:

AYES: Council Members Guittard, Neitsch, Russell, Buckert, Wyatt, Halepaska, and Mayor Armstrong

NAYS: None

RESOLUTION 2005-168R – GRANTING A VARIANCE FOR A BILLBOARD LOCATED AT 1904 N. NAVARRO OWNED BY BRUCE E. WOODS

The resolution grants a variance to Section 5-155(a)(3) of the Victoria City Code, which provides that no billboard shall be located less than 100 feet from any lot within a primarily residential area, to Lot 1, Block 72 of the North Heights Subdivision, located at 1904 N. Navarro Street, which is owned by Bruce E. Woods. Steve Trevino.

Steve Trevino, Director of Inspections and Maintenance Services, stated that the Sign Board had unanimously recommended approval.

There was discussion concerning the desire of Council when the billboard ordinance was passed, which was to have fewer billboards. There was further discussion concerning the ramifications of a billboard so close to a home, even though it was currently unoccupied. In response to a question about possibly limiting the variance to a specific length of time, Miles Risley, Senior Assistant City Attorney stated that it would not be enforceable.

Cm. Buckert moved that the resolution be adopted, with Cm. Wyatt seconding the motion. The resolution was adopted by the following vote:

AYES: Council Members Guittard, Buckert, Halepaska, and Mayor Armstrong
NAYS: Council Members Neitsch, Russell, and Wyatt

RESOLUTION 2005-169R – GRANTING VARIANCES FOR MULTIPLE ENTRIES TO SUBDIVISIONS AND OVERSIZED PIPES FOR LAKE FOREST SUBDIVISION, SECTION 1, PHASE III OWNED BY VBRD DEVELOPMENT, INC.

The resolution grants variances to Sections 21-54(a), 21-55(b)(5), 21-56, and 21-70 of the Victoria City Code, which require construction of streets in accordance with the City’s Design Standards and Specifications, multiple entries for subdivisions with more than 50 lots, compliance with the City of Victoria Stormwater Drainage Master Plan, and construction of oversize facilities in accordance with the City of Victoria Wastewater Master Plan to Lake Forest Subdivision, Section 1, Phase III, which is located on and next to Watermark Street, owned by VBRD Development, Inc. John Kaminski.

No action was taken on the resolution, but would be discussed in Executive Session.

RESOLUTION 2005-170R – AUTHORIZING SOUTH TEXAS AGGREGATION PROJECT, INC. (STAP) ELECTRIC SUPPLY AGREEMENT

The resolution authorizes the South Texas Aggregation Project, Inc. (STAP) to negotiate an electric supply agreement for deliveries of electricity effective January 1, 2006, authorizes the STAP to act as an agent on behalf of the City to enter into a contract for electricity; authorizes the Chairman of STAP to execute an electric supply agreement for deliveries of electricity effective January 1, 2006; and commits to budget for energy purchases in 2006 and, if practical, 2007; and to honor the City of Victoria’s commitments to purchase power for its electrical needs in 2006 and, if practical, 2007 through STAP. Miles Risley.

Cm. Buckert moved that the resolution be adopted, with Cm. Wyatt seconding the motion. The resolution was adopted by the following vote:

AYES: Council Members Guittard, Neitsch, Russell, Buckert, Wyatt, Halepaska, and Mayor Armstrong
NAYS: None

ORDINANCE 2005-2006A – AMENDING THE 2005-2006 FISCAL YEAR BUDGET TO ALLOW FUNDING FOR THE CITY’S ACQUISITION OF WATER RIGHTS

Senior Assistant City Attorney, Miles Risley, read the caption of Ordinance 2005-2006A, which amends the 2005-2006 Fiscal Year Budget of the City of Victoria by transferring \$123,500 from the Water/Wastewater fund to the Water Department Water Rights line item to provide funding for the City’s acquisition of water rights in the Guadalupe River. Second and Third Reading. Gilbert P. Reyna, Jr.

Cm. Wyatt moved that the ordinance pass on second and third reading, with Cm. Neitsch seconding the motion. The ordinance passed on second and third reading by the following vote:

AYES: Council Members Guittard, Neitsch, Russell, Buckert, Wyatt, Halepaska, and Mayor Armstrong
NAYS: None

Caption:

AN ORDINANCE AMENDING THE 2005-2006 FISCAL YEAR BUDGET OF THE CITY OF VICTORIA BY TRANSFERRING \$123,500.00 FROM THE WATER/WASTEWATER FUND TO THE WATER DEPARTMENT WATER RIGHTS LINE ITEM TO PROVIDE FUNDING FOR THE CITY’S ACQUISITION OF WATER RIGHTS IN THE GUADALUPE RIVER, REPEALING ALL CONFLICTING ORDINANCES, PROVIDING FOR SEVERABILITY AND DECLARING AN EFFECTIVE DATE.

CITY COUNCIL MINUTES
October 18, 2005

ORDINANCE 2005-22 – ADDING SECTION 10-69 TO THE CITY CODE TO PROHIBIT SMOKING IN RESTAURANTS

Senior Assistant City Attorney, Miles Risley, read the caption of Ordinance 2005-22, which amends Article III, "Food Establishments", of the Victoria City Code to add Section 10-69 to prohibit smoking and require signage in restaurants other than bars. First Reading. Cm. Philip Guittard.

Cm. Russell moved to amend the ordinance to apply to all public buildings, with the exclusion of residences, and not apply to any property in which the property owner or tenant has (1) obtained a permit issued by the City Inspections Department to allow smoking on the premises, and (2) post signs at each public entrance to say that smoking is allowed. The motion died for lack of a second.

It was the consensus of Council to have three separate readings of this ordinance.

Cm. Buckert moved that the ordinance pass on first reading, with Cm. Guittard seconding the motion. The ordinance passed on first reading by the following vote:

AYES: Council Members Guittard, Buckert, Wyatt, and Mayor Armstrong
NAYS: Council Members Neitsch, Russell, and Halepaska

Caption:

AN ORDINANCE AMENDING ARTICLE III, "FOOD ESTABLISHMENTS", OF THE VICTORIA CITY CODE TO ADD SECTION 10-69 TO PROHIBIT SMOKING AND REQUIRE SIGNAGE IN RESTAURANTS OTHER THAN BARS; PROVIDING FOR SEVERABILITY; PROVIDING FOR SAVINGS AND CODIFICATION; PROVIDING FOR A PENALTY AND PUBLICATION; AND DECLARING AN EFFECTIVE DATE.

EXECUTIVE SESSION

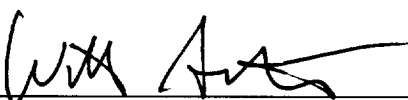
Mayor Armstrong announced that Council would recess into Executive Session at 6:19 p.m., in accordance with:

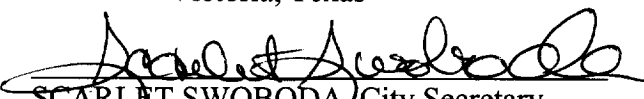
Section 551.071, Texas Government Code, consultation with attorney on litigation or potential litigation or a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act (including, but not limited to, legal issues related to the Lake Forest development, contract for the operation of the City landfill, and the requirements of Texas Transportation Code § 545.356 relating to engineering and traffic investigations). Miles Risley.

Section 551.072, Texas Government Code, to deliberate the purchase, exchange, lease, or value of real property interests due to the fact that deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person (including, but not limited to, possible City purchase of property adjacent to the City's landfill). Miles Risley.

The Council reconvened in regular session at 7:33 p.m. and had nothing to report.

There being no further business, the meeting was adjourned at 7:34 p.m.

APPROVED: 
WILL ARMSTRONG, Mayor of the City of
Victoria, Texas

ATTEST: 
SCARLET SWOBODA, City Secretary