

VICTORIA CITY COUNCIL
November 1, 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, November 1, 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
 David A. Smith, City Attorney
 Miles Risley, Senior Assistant City Attorney
 Gilbert P. Reyna, Jr., Director, Finance
 John Johnston, Director, Public Works
 John Kaminski, Director, Planning
 Vance Riley, Director, Fire and EMS
 Rick Henrichs, Director, IT
 Lynn Short, Director, Utilities
 Andrew Jacob Assistant Finance Director
 Ray Miller, Assistant Planning Director
 Scarlet Swoboda, City Secretary

APPROVAL OF MINUTES

The minutes of the regular meeting of October 18, 2005 were approved as presented.

CITIZENS COMMUNICATION

Smoking Ban

Leon Gilner, M.D., Neurological Surgeon, 206 CreekrIDGE Drive, urged Council to support the ordinance. He advised that he had emailed several articles of information to them in regards to the economic impact of smoking bans in general. He advised that everyday he sees the effects of primary and secondhand smoke with related illnesses. Dr. Gilner then read several studies that help support smoking ordinances. He indicated that the total cost for health conditions relating to smoking were over \$5 million in direct cost and over \$5 billion in indirect costs. The studies show that economic impacts indicate no decline in total restaurant or bar revenue occurred after smoking bans had been implemented in municipal revenues. He stated that although he would rather see a smoking ban in all businesses, this is a health issue and the ordinance would be a good first step.

The following individuals also spoke in favor of the proposed smoking ban and encouraged Council approval:

- (1) Susan Brook, 103 Ashford Drive, stated that smoking in enclosed public places should not be allowed, this is a health issue and businesses need to recognize that.
- (2) Roxanna Mccutchan, 405 E. Forrest, she advised that she has lung problems, but should have the right to go into a restaurant or store without the fear of having to be hospitalized because of exposure to secondhand smoke. She stated that she has the right to breath.
- (3) Taylor Starkey, M.D., 404 W. Guadalupe, sited breathing and cancer cases involving his patients and stated that smoking is a problem and needs to be addressed.
- (4) Sarah Stewart Johnston, 111 Pasadena Drive, stated that we needed to think of others and not ourselves in regards to secondhand smoke.
- (5) Robert Harvey, M.D., 115 Creekside, stated that his specialty deals with individuals that have difficulty with the quality of air. He stated that 90% of his patients can not walk into a restaurant without having adverse health effects.
- (6) Peggy Miller, 6102 Country Club Drive, stated that she is a cancer survivor and thanked Council for their courage and concern for the health and safety of the citizens.
- (7) Richard Fritz, 401 Woodwind Drive, stated that in most restaurants if you go to the restroom you have to pass through the smoking section.

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The following individuals spoke in opposition of the proposed smoking ban:

- (1) Jack A. Mullins, 224 Ridgewood Drive, acknowledged that secondhand smoke was a substantial health risk, but as long as tobacco money was coming into Texas the State Legislature would not ban smoking in the state. He questioned how a smoking ban would be enforced. He also suggested putting it to the voters as a referendum question at the May election.
- (2) Lloyd Hurst, 1 Circle Lane and Owner of the Score Board Sports Bar in Victoria Mall, stated that most of his customers smoke and if an individual knows that smoking is allowed it should be their choice whether to patronize that business or not. He stated that his sports bar derives 60% from sales of food and 40% from alcoholic beverage, those percentages would require a smoking ban in his establishment.

Aneska Vavrusa, 707 Duck Drive, suggested making a list available for the public, which states which restaurants allow smoking and which do not, citizens could then make their own choices.

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

City Attorney, David A. Smith, 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. Second Reading. Cm. Philip Guittard.

Cm. Buckert moved to amend the ordinance by excluding bowling alleys, bingo parlors, private clubs, civic and religious organizations, outdoor dining, and contractors who provide food to any of those entities, with Cm. Guittard seconding the motion. The ordinance was amended by the following vote:

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

Cm. Buckert moved that the ordinance pass on second reading, with Cm. Guittard seconding the motion. The ordinance passed, as amended, on second 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.

ITEMS FROM COUNCIL

Cm. Buckert stated that she was recently affected by the permitting process by placing a banner sign at her place of business, but eventually took it down. She reminded Council that they really need to think through the ordinances before taxing citizens with these types of permits.

Cm. Wyatt asked all in attendance to stand in respect for a great fallen leader Rosa Parks in remembrance of the contributions she made for civil rights.

Cm. Russell requested a work session to go over the list of improvements suggested for emergency responses.

PUBLIC HEARINGS

Mayor Armstrong opened a public hearing on the following items:

ORDINANCE 2005-2006B – AMENDING THE 2005-2006 FISCAL YEAR BUDGET OF THE CITY OF VICTORIA TO PAY FOR SIDEWALK INSTALLATION COSTS

The ordinance considers amending the 2005-2006 Fiscal Year Budget of the City of Victoria by transferring \$88,341.92 to pay for sidewalk installation costs exceeding the original estimate in the amount of \$88,341.92 and authorizing payments. Andrew Jacob.

Mayor Armstrong asked if there were any questions from Council or the audience. There were none.

ORDINANCE 2005-23 – DENYING CENTERPOINT ENERGY ENTEX'S REQUESTED RATE CHANGES AND AUTHORIZING INTERVENTION IN ANY APPEAL OF THE CITY'S ACTION TO THE RAILROAD COMMISSION

The ordinance considers denying CenterPoint Energy Entex's requested rate changes and authorizing intervention in any appeal of the City's action to the Railroad Commission. David A. Smith.

Mayor Armstrong asked if there were any 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, answered questions that Council had about some of the projects and their status from the Capital Improvement Plan Projects Report that they received at the last meeting.

Report on Region "L" Water Plan

Mayor Armstrong introduced former Mayor Gary Middleton, advising that he was currently serving a five-year term on the Region "L" Water Board, South Texas Regional Committee. The responsibilities of this board are to develop a regional water plan for South-Central Texas and identify both short and long term water supply needs and recommends water management strategies to address those needs. Mr. Middleton is the chairperson on the South Texas Regional Water Advisory Committee, which is an advisory group of the Edwards Aquifer Authority, as well as the chairperson of the Guadalupe Basin Coalition, which determines and supports policies of the coalition to protect downstream interests along the Guadalupe and San Marcos Rivers.

Mr. Middleton advised that he represents the municipal interest of these boards and committees throughout the region, which consist of the 22 ½ counties that make up Region "L". He advised that it was their responsibility to develop a fifty-year plan to meet the regions water needs, and that plan would be sent to the Water Development Board where they must identify resources in the region. He stated that there are 100,000 plus acre feet of water rights that exist in the Guadalupe River that is not being used, but is already permitted and has a senior permit dating back into the 1950's. The Guadalupe Blanco River Authority (GBRA) in recent board action authorized environmental studies that deal with in-stream flow, bay and estuary needs, along with the endangered species needs in San Antonio Bay. He advised that verbally GBRA has committed to honor and be stewards of those needs, should there be a shortfall.

Mr. Middleton stated that transferring water to San Antonio because of growth in that area was what the whole issue was about. He stated that the Edwards Aquifer was suppose to guarantee continuous minimum spring flow that is sufficient to sustain the endangered species and have a plan in place to do that by 2012. He advised that the farmers in the west are guaranteed water out of the Edwards Aquifer, but they have been so efficient with the water, that some of the excess water was not being consumed. His concern was that the excess water and more would be leased or sold back to San Antonio over time. Mr. Middleton stated that San Antonio does a good job in the conservation and reuse of water, but unless they develop an additional alternative water supply to the Edwards Aquifer, if the drought of record were to be repeated, those communities along the river could be in harms way and would have to go back to well water. He mentioned that 70% of the

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water at the Victoria gauge during the drought of 1996 was contributed to spring flow. He also encouraged the citizenry to vote in favor of the groundwater district at the upcoming election.

Mayor Armstrong thanked Mr. Middleton for his efforts on behalf of the City.

RESOLUTION 2005-172R – AWARDING THE NAVARRO STREET WATER AND SEWER LINE REPLACEMENT PROJECT TO BRH GARVER CONSTRUCTION, L.P.

The resolution awards the Navarro Street Water and Sewer Line Replacement Project (Mockingbird Lane to North Street) to BRH Garver Construction, L.P., of Houston, Texas, in the amount of \$2,988,281. Lynn Short.

Cm. Wyatt moved that the resolution be adopted, with Cm. Buckert 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 2005-173R – AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH VICTORIA ENGINEERING, INC. D/B/A URBAN ENGINEERING FOR CONSTRUCTION PHASE OF THE NAVARRO WATER AND SEWER LINE REPLACEMENT PROJECT

The resolution authorizes a Professional Services Agreement with Victoria Engineering, Inc. d/b/a Urban Engineering for construction phase services for the Navarro Street Water and Sewer Line Replacement (Mockingbird Lane to North Street) Project, in the amount of \$50,000. Lynn Short.

Cm. Russell moved that the resolution be adopted, with Cm. Neitsch 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 2005-174R – AUTHORIZING THE PURCHASE OF COMPUTERS, SOFTWARE, PHONES, EQUIPMENT AND SUPPLIES FROM THE TEXAS DEPARTMENT OF INFORMATION RESOURCES (DIR)

The resolution authorizes the purchase of computers, computer software, computer peripheral equipment, supplies, and phones through the Texas Department of Information Resources (DIR) in the amount not to exceed \$338,261. Rick Henrichs.

Cm. Russell moved that the resolution be adopted, with Cm. Neitsch 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 2005-175R – AUTHORIZING THE TRANSFER OF LIENS FROM THE HOME 2003 PROGRAM GRANT TO THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (TDHCA)

The resolution authorizes the transfer of liens from the HOME 2003 Program Grant to the Texas Department of Housing and Community Affairs (TDHCA). John Kaminski.

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

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

NAYS: None

**RESOLUTION 2005-146R – ADOPTING AMENDED PROGRAM GUIDELINES FOR THE
CDBG MORTGAGE ASSISTANCE PROGRAM**

The resolution adopts the amended program guidelines for the CDBG Mortgage Assistance Program, which will, among other changes, limit permissible mortgage payments under this program to a maximum of 33% of a household's monthly gross income. John Kaminski.

Cm. Wyatt moved that the resolution be adopted, with Cm. Buckert 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 2005-177R – AUTHORIZING AN ADVANCED FUNDING AGREEMENT
FOR THE INSTALLATION OF A TRAFFIC SIGNAL AT THE WALMART MAIN
ENTRANCE**

The resolution authorizes an "Advance Funding Agreement for a Safety Bond Project" for the installation of a traffic signal at the Walmart main entrance and North Navarro (US 77) and other improvements to be negotiated, with the Texas Department of Transportation (TxDOT), in the estimated amount of \$65,899.50. John Johnston.

Cm. Wyatt moved that the resolution be adopted, with Cm. Neitsch 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 2005-178R – AUTHORIZING THE PURCHASE OF DEFIBRILLATORS
FROM MEDTRONIC EMERGENCY RESPONSE SYSTEMS**

The resolution authorizes a contract with Medtronic Emergency Response Systems to purchase 6 Medtronic Physio-Control LifePak 12 defibrillators, in the amount of \$17,245 apiece, purchase 4 BSS2, 120 Volt AC's in the amount of \$1,339 apiece, and trade-in 6 Medtronic Physio-Control LifePak II defibrillators in the amount of \$1,000 apiece, for a total purchase price of approximately \$103,105.47, with approximately \$40,000 to come from the M.G. and Lillie A. Johnson Foundation, Inc. and approximately \$60,000 to come from Citizens Medical Center, and (2) authorizes the City Manager to execute such documents, contracts, and/or interlocal agreements with Citizens Medical Center to receive and/or transfer the \$60,000 therefrom. Vance Riley.

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

**RESOLUTION 2005-179R – AUTHORIZING A SUPPLEMENTAL ENVIRONMENTAL
PROJECT AGREEMENT WITH THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY (TCEQ) TO FUND RETROFITTING SOLID WASTE TRUCKS FOR NITROUS
OXIDE EMISSIONS**

The resolution authorizes the City Manager to execute a Supplemental Environmental Project Agreement with the Texas Commission on Environmental Quality to provide Supplemental

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Environmental Project funds for the Retrofit of City of Victoria Solid Waste Trucks to reduce the nitrous oxide emissions of those vehicles. Jerry James.

Cm. Wyatt moved that the resolution be adopted, with Cm. Buckert 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 2005-2006B – AMENDING THE 2005-2006 FISCAL YEAR BUDGET OF THE CITY OF VICTORIA TO PAY FOR SIDEWALK INSTALLATION COSTS

City Attorney, David A. Smith, read the caption of Ordinance 2005-2006B, which amends the 2005-2006 Fiscal Year Budget of the City of Victoria by transferring \$88,341.92 from the General Fund fund balance to the Street Department Sidewalks line item to provide funding for additional amounts owed pursuant to the “Advance Funding Agreement for a Transportation Enhancement Project” (Sidewalk and Pathway Improvements) with the Texas Department of Transportation (TxDOT), authorizes the City Manager to pay costs exceeding that agreement’s original estimate in the amount of \$88,341.92. Emergency Reading. Andrew Jacob.

Cm. Wyatt moved that the ordinance pass on emergency reading, with Cm. Neitsch seconding the motion. The ordinance passed on emergency 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 \$88,341.92 FROM THE GENERAL FUND FUND BALANCE TO THE STREET DEPARTMENT SIDEWALKS LINE ITEM TO PROVIDE FUNDING FOR ADDITIONAL AMOUNTS OWED PURSUANT TO THE “ADVANCE FUNDING AGREEMENT FOR A TRANSPORTATION ENHANCEMENT PROJECT” (SIDEWALK AND PATHWAY IMPROVEMENTS) WITH THE TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT), AUTHORIZING THE CITY MANAGER TO PAY COSTS EXCEEDING THAT AGREEMENT’S ORIGINAL ESTIMATE IN THE AMOUNT OF \$88,341.92, REPEALING ALL CONFLICTING ORDINANCES, PROVIDING FOR SEVERABILITY, DECLARING AN EMERGENCY, AND DECLARING AN EFFECTIVE DATE.

ORDINANCE 2005-23 – DENYING CENTERPOINT ENERGY ENTEX’S REQUESTED RATE CHANGES AND AUTHORIZING INTERVENTION IN ANY APPEAL OF THE CITY’S ACTION TO THE RAILROAD COMMISSION

City Attorney, David A. Smith, read the caption of Ordinance 2005-23, which denies CenterPoint Energy Entex’s requested rate changes; authorizes intervention in any appeal of the City’s action to the Railroad Commission; provides a requirement for a prompt reimbursement of costs incurred by the City; finds that the meeting at which this ordinance is passed is open to the public as required by law; and provides for notice of this ordinance to CenterPoint Energy Entex. Emergency Reading. David A. Smith.

Cm. Russell moved that the ordinance pass on emergency reading, with Cm. Wyatt seconding the motion. The ordinance passed on emergency reading by the following vote:

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

NAYS: None

Caption:

AN ORDINANCE DENYING CENTERPOINT ENERGY ENTEX'S REQUESTED RATE CHANGES; AUTHORIZING INTERVENTION IN ANY APPEAL OF THE CITY'S ACTION TO THE RAILROAD COMMISSION; PROVIDING A REQUIREMENT FOR A PROMPT REIMBURSEMENT OF COSTS INCURRED BY THE CITY; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING FOR NOTICE OF THIS ORDINANCE TO CENTERPOINT ENERGY ENTEX; DECLARING AN EMERGENCY; AND PROVIDING AN EFFECTIVE DATE.

EXECUTIVE SESSION

Mayor Armstrong announced that Council would recess into executive session at 7:10 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 and regulations of the Texas Department of Licensing and Regulation that affect the construction of sidewalks, a potential gas rate case before the Texas Railroad Commission, and potential claims involving construction at/near intersection of Navarro Street & West Outfall). David A. Smith.

Section 551.074, Texas Government Code, with regard to personnel matters (including, without limitation, the appointment, employment, evaluation, and duties of the Judge of the Municipal Court of the City of Victoria). David A. Smith.

Section 551.087, Texas Government Code, to discuss or deliberate the offer of a financial or other incentive to a business prospect that the City Council seeks to have, locate, stay, or expand in or near the territory of the City of Victoria and with which the City of Victoria is conducting economic development negotiations (including, but not limited to, offers involving property on Highway 77, North Navarro Street, near Wal-Mart). David A. Smith.

Cm. Buckert left the meeting prior to the executive session and was not in attendance when the Council reconvened in regular session at 8:09 p.m. to consider the following:

RESOLUTION 2005-176R - GRANTING A VARIANCE TO THE SUBDIVISION REQUIREMENTS TO LAKE FOREST SUBDIVISION OWNED BY VBRD DEVELOPMENT

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.

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

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

There being no further business, the meeting was adjourned at 8:10 p.m.

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

ATTEST: Scarlet Swoboda
SCARLET SWOBODA, City Secretary
