

**CITY COUNCIL MINUTES  
June 12, 2006**

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

ATTEST: Wendi Duvall  
WENDI DUVALL, Deputy City Secretary

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**VICTORIA CITY COUNCIL  
June 20, 2006**

**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, June 20, 2006 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  
David Hagan  
Jim Wyatt  
Tom Halepaska

**STAFF PRESENT**

Charles Windwehen, Assistant City Manager  
Charmelle Garrett, Director, Human Resources  
David A. Smith, City Attorney  
Miles Risley, Senior Assistant City Attorney  
John Johnston, Director, Public Works  
John Kaminski, Director, Planning  
Jack Rouse, Police Captain  
Vance Riley, Director, Fire and EMS  
Doug Cochran, Director, Parks and Recreation  
James Stewart, Director, Library  
Gilbert P. Reyna, Jr., Director, Finance  
Steve Trevino, Director, IMS  
Jerry James, Director, Environmental Services  
David Martyn, Emergency Management  
Shane Simon, Community Center Manager  
Brian Jahn, Traffic Engineer  
Ken Gill, City Engineer  
Scarlet Swoboda, City Secretary

**APPROVAL OF MINUTES**

The minutes of the regular meeting of June 6, 2006 were approved as presented.

**PUBLIC HEARINGS**

Mayor Armstrong opened a public hearing on the following items:

**RESOLUTION 2006-83R – ISSUANCE OF A MEDICAL TRANSFER SERVICES PERMIT TO JAIME RIOS D/B/A AMERICANA AMBULANCE**

The resolution considers issuance of a Medical Transfer Services Permit to Jaime Rios d/b/a Americana Ambulance. Scarlet Swoboda.

No action taken.

**ORDINANCE 2006-10 – CANVASSING THE RETURNS AND DECLARING THE RESULTS OF THE RUNOFF ELECTION FOR CITY COUNCIL MEMBER DISTRICT 3 HELD ON JUNE 10, 2006**

The ordinance considers canvassing the returns and declaring the results of the Runoff Election of the City of Victoria for City Council District 3 held June 10, 2006. Scarlet Swoboda.

George Matthews, Election Administrator, reported that copies of the precinct by precinct returns of the Runoff Election held on June 10, 2006 were before them. There were a total of 1,011 voters with Brick Wall receiving 326 and Paul Edward Polasek receiving 685.

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

**ORDINANCE 2006-10 – CANVASSING THE RETURNS AND DECLARING THE RESULTS OF THE RUNOFF ELECTION FOR CITY COUNCIL MEMBER DISTRICT 3 HELD ON JUNE 10, 2006**

City Attorney, David A. Smith, read the caption of Ordinance 2006-10, which canvasses the returns and declares the results of the Runoff Election of the City of Victoria for City Council Member District 3, held June 10, 2006, approves said election and the results thereof. Emergency Reading. Scarlet Swoboda.

Miles Risley, Senior Assistant City Attorney, advised that the motion would need to specify that the ordinance distributed tonight corrects one typographical error and the canvass presented tonight be attached as exhibit “A”.

Cm. Russell moved to adopt the ordinance with the correction according to the document in front of Council along with the attachment as exhibit “A” 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, Hagan, Wyatt, Halepaska, and Mayor Armstrong  
NAYS: None

Caption:

**AN ORDINANCE CANVASSING THE RETURNS AND DECLARING THE RESULTS OF THE RUNOFF ELECTION OF THE CITY OF VICTORIA FOR CITY COUNCIL MEMBER DISTRICT 3, HELD JUNE 10, 2006, APPROVING SAID ELECTION AND THE RESULTS THEREOF, DECLARING AN EMERGENCY, AND PROVIDING AN EFFECTIVE DATE.**

Cm. Russell relinquished his position on Council and left the meeting.

**OATH OF OFFICE**

Scarlet Swoboda, City Secretary, administered the Oath of Office to Paul Polasek the newly elected City Council Member. Mr. Polasek introduced his wife Michelle and then took his place on Council.

**ELECTION OF MAYOR PRO-TEM**

Cm. Halepaska nominated Cm. Neitsch for Mayor Pro-Tem. There were no other nominations. Cm. Neitsch was elected Mayor Pro-Tem by the following vote:

AYES: Council Members Guittard, Neitsch, Polasek, Hagan, Wyatt, Halepaska, and Mayor Armstrong  
NAYS: None

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**CITIZENS COMMUNICATION**

**Smoking discussion**

The following individuals addressed Council in opposition to the smoking ban.

Jimmy Brannan, 105 Arroyo Drive  
Guadalupe Cisneros, 1516 Bowie  
Ed Covorri, 110 Fieldstone  
Lanell Etzler, 104A Westwood  
Stacy Riley, 4709 Evergreen  
Rick Caputo, 8609 N. Navarro  
Paula Hutson, 402 W. Power  
Wayne Tipton, 603 Alamogordo Drive  
Amy Wuest, 302 Hampshire Lane

Mary Green, 1604 E. Stayton  
Clint Reyes, 1110 Taylor  
April Rigeski 1602 E. Guadalupe  
Lisa Davis 101 S. Ben Jordan  
Corey Garcia, 505 S. Bridge Street  
Rudy Lopez, 1905 N. East Street  
John Abel, 5609 John Stockbauer  
Eleanor Hurst, no address given  
Sandra Speck, 104-B Westwood

The majority felt that bars should be exempted from the ban. Some stated that the Council was trying to take rights away from the business owners, while others suggested that Council was trying to intrude in their lives, take away legal personal choices, and possibly violating their constitutional rights. Concerns were expressed that smaller establishments would go out of business and employees would lose their jobs or not make enough money to pay their bills or feed their families. It was suggested that business owners who own their own building could add an outdoor smoking area but those establishments that lease bar space did not have that option. Some stated that their civil liberties were being taken away and that was not what government should do. Separate ventilation systems were suggested as a solution for those businesses that wanted to allow smoking. A few pointed out that tax dollars were going to be lost and it was suggested that it would be unsafe to banish their customers to the parking lots and streets in order to smoke. One business owner requested clarity of the ordinance concerning whether she could display souvenir matches on her counter for advertising purposes. Many felt that the ordinance was not written clearly and people did not understand the ramifications. One business owner stated that nothing had been given to them in writing with the rules of the ordinance.

Bill Sutherland, 171 Raab Road, addressed Articles of the City Charter that dealt with the duties of the City Attorney, referendum power, initiative power, and duties and authority of the Council. He reminded Council that they were elected by the people, they are therefore for the people and Council should not be dictators. He suggested that the City Attorney should resign or be removed and the Mayor should be recalled.

Mayor Armstrong advised that a smoking ban ordinance was already in place, which was voted in by the people, and even if the ordinance considered tonight was not voted on there was one already in effect.

The following individual's expressed appreciation to the Council for passing the smoking ban and asked that they uphold that decision. Sympathy was expressed for the business owners, but more sympathy was expressed for asthmatics, those with emphysema, and those with other lung problems who can not be around smoke. A few stated that they fought for civil liberties too and those liberties are also for the non-smokers.

Jan Densman, 42 Pear Street  
Lawrence David Jones, 121 Riata  
Guadalupe Mireles, 603 Larkspur

**ORDINANCE 2006-9 – ADDING SECTION 10-30 OF THE VICTORIA CITY CODE TO PROHIBIT SMOKING IN ALL PUBLIC BUILDINGS**

City Attorney, David A. Smith, read the caption of Ordinance 2006-9, which adds Section 10-30 to the Victoria City Code to prohibit smoking in all public buildings; repealing Section 10-69 of the Victoria City Code, which prohibits smoking in some food establishments. Second and Third Reading. David A. Smith.

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Cm. Polasek stated that this was his first meeting as a member of Council but he had been an observer in this whole process. He stated that from the beginning he felt this was a property rights issue not a smoking issue. He supported the referendum to let the people decide and they have. They have given a mandate and despite how anyone thinks that process went; the people have given a mandate to Council.

Cm. Wyatt stated that he originally supported a smoking ban in restaurants, but had not supported a ban in private business. It went to the voters and voters have spoken and he was going to support the ordinance.

Cm. Hagan stated that he too had been an observer through most of this process. He recently took office on May 16, 2006, but was compelled to be respectful and honor the wishes of the majority of his constituents, who overwhelmingly supported the measure. For that reason he would vote affirmative on the ordinance.

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

AYES: Council Members Guittard, Neitsch, Polasek, Hagan, Wyatt, Halepaska, and Mayor Armstrong

NAYS: None

Caption:

**AN ORDINANCE ADDING SECTION 10-30 TO THE VICTORIA CITY CODE TO PROHIBIT SMOKING IN ALL PUBLIC BUILDINGS; REPEALING SECTION 10-69 OF THE VICTORIA CITY CODE, WHICH PROHIBITS SMOKING IN SOME FOOD ESTABLISHMENTS, PROVIDING FOR SEVERABILITY; PROVIDING FOR SAVINGS AND CODIFICATION; PROVIDING FOR A PENALTY AND PUBLICATION; AND DECLARING AN EFFECTIVE DATE.**

### **OTHER CITIZENS COMMUNICATION**

#### **Compliment to City Departments**

John Swanson, 205 Cannon, complimented the Engineering staff and the Parks Department telling Council that there are many good things that are done in the City.

### **ITEMS FROM COUNCIL**

Cm. Wyatt briefly updated the Council on his trip to Washington D.C., stating that he met with Senator John Cornyn and Senator Kay Bailey Hutchinson on the Cable Franchise concerns with Senate Bill 5. He stated that both Senators were using that as the model by Federal regulations on telecommunications. He advised that recently a city had been sued by Time Warner who was saying that the Federal Act would not allow the 1% franchise fee, and that was thrown out of court. He further mentioned that due to the school finance reform it will cost the City more for the Appraisal Board costs, because the City's percentage cap would go up based on the State reducing the amount of tax on them. Lastly, TML did a membership satisfaction survey and 99% of the respondents felt that they were doing an excellent job, and 89.7% thought that the TML should be in the process of helping cities to lobby at the State Legislature.

David A. Smith, City Attorney, stated that he was pleased that Cm. Wyatt had been involved with TML and with the telecommunication issue. It is a huge issue, there are going to be a lot of consequences to municipalities and he appreciates that council members are active on this matter.

Mayor Armstrong announced that he and the City Attorney would be attending a meeting with AEP in Corpus Christi on Thursday.

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**CITY MANAGER REPORTS**

Jerry James, Director of Environmental Services advised that the update on the R.W. Beck Report concerning solid waste issues would be addressed when resolution 2006-88R was considered later in the meeting.

**RESOLUTION 2006-82R – APPOINTING SUSAN HEBERT AS DEPUTY MUNICIPAL COURT CLERK**

The resolution appoints Susan Hebert as a Deputy Municipal Court Clerk. David A. Smith.

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, Polasek, Hagan, Wyatt, Halepaska, and Mayor  
Armstrong

NAYS: None

**RESOLUTION 2006-83R – AUTHORIZING ISSUING A MEDICAL TRANSFER SERVICES PERMIT TO JAMIE RIOS D/B/A AMERICANA AMBULANCE**

The resolution authorizes issuing a Medical Transfer Services Permit to Jaime Rios d/b/a Americana Ambulance. Scarlet Swoboda.

No action taken.

**RESOLUTION 2006-84R – ACCEPTING THE BID FOR THE ANNUAL SUPPLY CONTRACT FOR GASOLINE AND DIESEL FUEL FROM OIL PATCH PETROLEUM, INC.**

The resolution accepts the bid submitted by Oil Patch Petroleum, Inc., of Corpus Christi, Texas, for an annual supply contract for gasoline and diesel fuel in the amount of the Oil Price Information Service Placedo-Victoria Price Per Gallon (OPISPVPPG) + \$0.2243 for gasoline and OPISPVPPG + \$0.1843 per gallon for diesel, for a total of approximately \$1,245,312. Steve Trevino.

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, Polasek, Hagan, Wyatt, Halepaska, and Mayor  
Armstrong

NAYS: None

**RESOLUTION 2006-85R – ACCEPTING THE BID SUBMITTED BY VICTORIA AIR CONDITIONING, LTD FOR THE COMMUNITY CENTER CHILLER REPLACEMENT PROJECT**

The resolution accepts the low bid submitted by Victoria Air Conditioning, Ltd., of Victoria, Texas, for the Community Center Chiller Replacement project in the amount of \$104,385. Shane Simon.

Cm. Guittard 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, Polasek, Hagan, Wyatt, Halepaska, and Mayor  
Armstrong

NAYS: None

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**RESOLUTION 2006-86R – APPROVING AN AMENDMENT TO THE BYLAWS AND PROCEDURES OF THE VICTORIA SALES TAX DEVELOPMENT CORPORATION**

The resolution approves an amendment to the Bylaws of the Victoria Sales Tax Development Corporation and approving procedures related thereto. Miles Risley.

Cm. Neitsch 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, Polasek, Hagan, Wyatt, Halepaska, and Mayor Armstrong  
NAYS: None

**RESOLUTION 2006-87R – APPROVING ADDED AND MODIFIED VICTORIA SALES TAX DEVELOPMENT CORPORATION PROGRAMS AND EXPENDITURES FOR FISCAL YEAR 2005-2006**

The resolution approves added and modified Victoria Sales Tax Development Corporation programs and expenditures for Fiscal Year 2005-2006. Miles Risley.

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, Polasek, Hagan, Wyatt, Halepaska, and Mayor Armstrong  
NAYS: None

**RESOLUTION 2006-88R – AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH R.W. BECK FOR SOLID WASTE CONSULTING SERVICES**

The resolution authorizes a Professional Services Agreement with R.W. Beck for solid waste consulting services to review landfill gas proposals, residential solid waste collection services, brush and bulky collection services, and fees for said services, at hourly rates not to exceed a total of \$60,000. Jerry James.

Jerry James, Director of Environmental Services, reported that this work was described to Council at a recent work session at which time he was given the go ahead to pursue this project. One concern that came up during that work session was that the consultant was addressing the marketability of the landfill. He stated that the landfill is marketable, but more information needed to be brought to the Council, which was what this contract was all about. The information would affect how the rates may be structured and how that rate may be balanced with the fees that are charged at the landfill. Concurrently with this process would be a Request for Proposal (RFP) process for a contract operator for the landfill. Things like automation and semi-automation in certain areas of the City would be looked at along with how it would work, which could affect what rate should be charged. Mr. James stated that this contract would put all of these questions in a coherent manner yet would not delay the process of finding a new site manager.

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, Polasek, Hagan, Wyatt, Halepaska, and Mayor Armstrong  
NAYS: None

**RESOLUTION 2006-89R – GRANTING A VARIANCE FROM THE DRIVEWAY REQUIREMENTS FOR 207 SOUTH MOODY STREET OWNED BY JOSE E. VARA-MUNOZ**

The resolution grants a variance from section 20-82(b) of the Victoria City Code, which defines the maximum number of driveways for commercial land uses, to Lot 1, Block 66, Original Townsite of Victoria, Texas located at 207 South Moody St., which is owned by Jose E. Vara-

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Munoz, conditioned on no more than two driveways being installed on West Juan Linn Street from said lot and no driveways being installed on South Moody Street from said lot. Brian Jahn.

Cm. Neitsch 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, Polasek, Hagan, Wyatt, Halepaska, and Mayor Armstrong

NAYS: None

**RESOLUTION 2006-90R – AUTHORIZING AN INTERJURISDICTIONAL MUTUAL AID AGREEMENT WITH VICTORIA COUNTY**

The resolution authorizes an Interjurisdictional Mutual Aid Agreement with Victoria County. David Martyn.

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, Polasek, Hagan, Wyatt, Halepaska, and Mayor Armstrong

NAYS: None

**RESOLUTION 2006-91R – AUTHORIZING A COMPUTER HARDWARE UPGRADE GRANT FROM THE TEXAS STATE LIBRARY AND ARCHIVES COMMISSION**

The resolution authorizes a Gates Public Access Computer Hardware Upgrade Grant (PAC HUG), Grant Type B-Multiple Priority Award from the Texas State Library & Archives Commission in an amount of approximately \$21,250. James Stewart.

Cm. Guittard 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, Polasek, Hagan, Wyatt, Halepaska, and Mayor Armstrong

NAYS: None

**RESOLUTION 2006-92R – SELECTS AN OPTION FOR IMPROVEMENTS TO A ROADSIDE DITCH ALONG PART OF VINE STREET NEXT TO 410 W. CRESTWOOD OWNED BY DON THEUS**

The resolution selects among 6 options for improvements to a roadside ditch along part of Vine Street, next to 410 W. Crestwood, owned by Don Theus. John Johnston.

Don Theus, 410 W. Crestwood, stated that the issue was at 3600 N. Vine, and was disappointed that none of the Council came by to see him in the last few weeks to talk about the issues.

There was discussion concerning the possibility of setting a precedent by doing more than what staff recommended. It was further suggested to limit the amount to \$7,000 to remedy this problem.

Cm. Polasek moved to amend Option 4 as follows: To allow for an expenditure of up to \$7,000 and that solution could be making the 130 linear feet of concrete less, and the issue at the end by the pipe could be incorporated into that \$7,000, with Cm. Neitsch seconding the motion. The resolution was amended by the following vote:

AYES: Council Members Guittard, Neitsch, Polasek, Hagan, Halepaska, and Mayor Armstrong

NAYS: Council Member Wyatt

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Cm. Guittard moved to adopt Option 4 of the resolution as amended, with Cm. Neitsch seconding the motion. The resolution was adopted, as amended, by the following vote:

AYES: Council Members Guittard, Neitsch, Polasek, Hagan, Halepaska, and Mayor Armstrong

NAYS: Council Member Wyatt

**EXECUTIVE SESSION**

Mayor Armstrong announced that Council would recess into Executive Session at 7:07 p.m., in accordance with:

Section 551.071, Texas Government Code, consultation with attorney on matter involving litigation, potential litigation or other 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. David A. Smith.


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 party. David A. Smith.


Section 551.074, Texas Government Code, with regard to personnel matters. 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. David A. Smith.

The Council reconvened in regular session at 8:07 p.m. and considered the following:

There being no further business, the meeting was adjourned at 8:08 p.m.

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

ATTEST:   
SCARLET SWOBODA, City Secretary

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