

VICTORIA CITY COUNCIL
December 18, 2007

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, December 18, 2007 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
 Lewis Neitsch
 Paul Polasek
 David Hagan
 Jim Wyatt
 Tom Halepaska

MEMBERS ABSENT

Philip Guittard

OTHERS PRESENT

Randy Vivian, Chamber of Commerce
 William "Bill" Scott, Director of Public Affairs, Exelon

STAFF PRESENT

Charmelle Garrett, Deputy City Manager
 David A. Smith, City Attorney
 Miles Risley, Senior Assistant City Attorney
 Gilbert P. Reyna, Jr., Director, Finance
 John Kaminski, Director, Planning
 John Johnston, Deputy Director, Public Works
 Vance Riley, Fire Chief
 Doug Cochran, Director, Parks and Recreation
 James Stewart, Director, Library
 Lynn Short, Director, Public Works
 Rick Henrichs, Director, IT
 Jerry James, Director, Environmental Services
 Roy Boyd, Deputy Chief of Police
 Scarlet Swoboda, City Secretary

Mayor Armstrong introduced Bill Scott, Director of Public Affairs with Exelon. Mr. Scott thanked him for the opportunity to address Council. He advised that Exelon representatives had announced earlier in the day that Victoria County had been chosen as the primary site to build a nuclear power plant. Victoria would be listed in their license application to the Nuclear Regulatory Commission, to allow for the construction of the new nuclear power plant in Victoria County. Victoria was selected after a rigorous study of Victoria and Matagorda County, noting that the Matagorda site had some problems that did not exist in Victoria County. He advised that the Victoria Economic Development Corporation (VEDC) had been the first in the State to respond to their proposal, and the community had really welcomed them. Mr. Scott stated that Exelon was very committed to working with the Council and community, and he would be available if there were any questions about the project. He further advised that this announcement did not represent a commitment to build, as there were a number of critical path items that needed to be cleared, but they were committed to the application process.

Mayor Armstrong advised that the Council and Victoria County Commissioners had passed resolutions in support of the project. This project would put Victoria on the map and give our grandchildren a chance for meaningful jobs. Cm. Wyatt advised that the African American Chamber of Commerce likewise had passed a resolution in support.

WORK SESSION

Mayor Armstrong announced that Council would recess into a Work Session at 5:09 p.m.

Citizen Communication Concerning City's Tax Rate

Russell Pruitt addressed Council on the City tax rate, and the notice that was posted in the Victoria Advocate in August, for a public meeting to discuss the tax rate of 5.9%. At the same time he and some of his group called Mayor Armstrong to set up a meeting. They met with Mayor Armstrong and Director of Finance, Gilbert P. Reyna, Jr. to discuss the tax rate. They went over the numbers together and the numbers were the same all the way, but disagreed with the financial folks about being able to separate the maintenance and operating portion from the bonded indebtedness, and still be legal with the City Charter. Mr. Pruitt advised that they would make their case at a Council Meeting.

Mr. Pruitt's group felt that Article IV, Section 4, of the City Charter was very clear that the City could not go over the 5% limit without the vote of the people. Mr. Pruitt felt that the oath that

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the Council Members took went along with what the Charter said, and all of the Councilmen were bound by the Charter. He said that the City Attorney disagreed, by stating that State law allows cities to separate maintenance and operating, from debt service.

Mr. Pruitt advised that at the September 18, 2007 meeting he presented the Council with a copy of the Texas Constitution pertaining to the tax code, and read the portion where State law would not override a city charter. He also, reminded the Council of the "Coalson vs. City of Victoria" case, which ended up in the Supreme Court. At that meeting he told Council that filing a suit against the City would not be beneficial for anyone, and the advice that the attorney's were giving was wrong. Mr. Pruitt and his group had the opinion that this was a dangerous precedent, and a rollback attempt would not be worthwhile to pursue this year. He did suggest that Council make amends next year by modifying the rate. Mr. Pruitt indicated that the tax rate has increased the citizen's costs by approximately \$40 a year. He suggested that the tax base was going to increase based on the projected growth.

Mr. Pruitt stated that he and his group had requested some information from the City Attorney, however they felt that they had not gotten all the information they requested. He further suggested that it was a conflict of interest for attorneys with McCall, Parkhurst, and Horton to give an opinion because they were contracted as the City's bond attorneys. He stated that the minutes were not verbatim as he thought they would be, and were dissatisfied with a lot of things in the City Charter. He felt the Charter was the valid instrument that rules the City and the voters of the City could not allow the Council to go against their Charter. Mr. Pruitt stated that the documents the firm of McCall, Parkhurst and Horton provided did not show anything that allowed the City to go against the Charter.

Mayor Armstrong stated that he voted for a small tax decrease last year and again this year by joining Cm. Polasek and Cm. Hagan and it didn't happen. He stated that his vote had nothing to do with any of the concerns of Mr. Pruitt's group. S

O. D. Atwell, 202 Cottonwood, questioned why there were not two separate bills if the tax rate could be broken out in two separate accounts.

Report Concerning Legality of City's Tax Rate

Noel Valdez, with the Law Firm of McCall, Parkhurst, and Horton reported that his firm was specifically tasked to look at one particular provision in the City Charter. That provision states that "The City shall not adopt a tax rate that exceeds the rate calculated in accordance with Article 72.44c, Section 1 V.T.C.S. by more than 5%." Mr. Valdez advised that Article 72.44c gives a formula by which you arrive at a total tax rate. It is Article 72.44c that is mentioned in the Charter, and what was analyzed in their memorandum. Article 72.44c provides that a total tax rate would be arrived at by using two components of that tax. One would be for maintenance and operation, and one would be for current year debt service. Maintenance and operation is adjusted by the value that has been added and subtracted since the last tax year. The debt service component is that rate that would produce the amount of taxes to pay the principle. Mr. Valdez advised that the City actually takes a more conservative approach than the Charter prescribes and he stands by his analysis.

Tom Spurgeon, a Partner in the firm of McCall, Parkhurst, and Horton advised that a key to the Charter provision was the portion of the Charter that refers to "be calculated in accordance with Article 72.44c", which existed at the time in 1981. It does not say that the tax rate from one year to the next can not exceed 5% from the total tax rate from the year before. Because of the way the two different components are calculated you can not look at the tax rate of 2006 and multiply it by 1.05 and say that is our tax rate. The bottom line of that statute is that the debt service for the current year is added on top of the tax rate. He agreed with Mr. Pruitt that the City can not violate the Charter, but his firm does not think the City has violated the Charter.

Mr. Pruitt questioned how the City gets get around the provision in the Charter addressing a vote of the people to go over 5%. He and his group fully disagreed that the tax rate could be split up.

Mr. Valdez read two sentences from Article 72.44c, Section 1e. "The assessor shall add the debt service rate calculated as provided by subsection c (located in 72.44c of this section), and operating expense rate calculated provided by subsection d (of this section). That total rate is the tax

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rate that is subject to the tax rate limitations provided by this act.” He advised that the splitting of the tax rate into a debt service tax rate and a maintenance operating tax rate was not something that was done in their memo, it was something that was done with Article 72.44c.

Finance Director, Gilbert P. Reyna, Jr. advised that if he had followed step by step the calculation in Article 72.44c, the tax rate would have ended up at \$0.6876, instead of \$0.6750. As a result of that he would have been in violation of the current law, which is capped at \$0.6750.

Ron Walker, with Walker, Keeling, and Carroll advised that as a neutral party, he was tasked with seeing if he could find fault with what the City and other lawyers determined. He came to the conclusion that what the City generally does, was follow the current State law in setting the tax rate, and they were following the law. He explained that the City puts that calculation aside, and then they look at the Charter language to see if that rate fits in with the Charter. The City Charter is very specific; Article 72.44c is somewhat a moving target when it comes to the tax rate year-to-year. The reason is the people have a voice, in setting the Charter and setting the debt service tax rate. When following the Charter, they take the maintenance and operation from the last year, and then they take the debt service rate for the present year. State policy does not want any city to fail on their debt obligations, so the debt service rate is set on what it takes to meet their debt service obligation. That number changes when the citizen’s vote on a bond issue and the debt service for that year increases. Mr. Walker advised that the way the City has calculated the tax rate complies with current State law, which can not be more than 8%. The City staff applied the 5% rate on the State law, and voluntarily set a much stricter standard in complying with current State law. He concluded that the tax rate not only complies with current State law, it complies with the City Charter, and the debt service is set by the people when voting on bonds.

It was the consensus of Council that this issue had been reviewed several times, the City was in compliance with State law and the Charter, and they were not interested in reviewing it again.

Mr. Pruitt thanked the Council for allowing him the opportunity to address them on this matter again, suggesting that maybe it wasn’t the Council, but the State Legislature that had let them down. He expressed his appreciation to the attorney’s for their reports. He suggested that he had a better understanding than the last time he addressed Council.

The Work Session ended and Council reconvened in regular session at 5:55 p.m.

APPROVAL OF MINUTES

The minutes of the regular meeting of December 4, 2007 were approved as presented.

CITIZENS COMMUNICATION

No one wished to address Council.

ITEMS FROM COUNCIL

There were no items from Council.

PUBLIC HEARINGS AND ACTION

Mayor Armstrong opened a public hearing on the following items:

RESOLUTION 2007-203R – ISSUANCE OF MEDICAL TRANSFER SERVICE PERMITS

The resolution authorizes the issuance of Medical Transfer Services Permits to ALS Ambulance Services, Inc. d/b/a Regional Ambulance Service, Craig Le Blanc d/b/a SouthernCross Ambulance, Inc., Charles Sargent d/b/a Quality Ambulance Service, Jaime Rios d/b/a Americana Ambulance, Inc., and Beeville Angel Care Ambulance Service, Inc., d/b/a/ Angel Care Ambulance. Scarlet Swoboda.

Fire Chief, Vance Riley reported that in the November-December issue of the Texas EMS Magazine, there was a report that two of the ambulance services being considered had received

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disciplinary violations from the Department of State Health Services (DSHS). Regional Ambulance Service was fined because they were missing one piece of equipment. Quality Ambulance Service had two vehicles that had issues with them. One of those vehicles would be used in Victoria and had eight items wrong with it. Chief Riley indicated that he was not asking Council to take any action at this time, but wanted to make Council aware of the report. He advised that the issues had been corrected, fines paid, and the DSHS cases closed. He advised that his staff would be paying closer attention in the future.

Mayor Armstrong asked if there were any questions from Council or the audience.

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

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

NAYS: None

ORDINANCE 2007-28 – EXTENDING THE CITY LIMITS OF VICTORIA BY ANNEXATION OF 26.973 ACRES

City Attorney, David A. Smith read the caption of Ordinance 2007-28, which provides for the extension of certain boundary limits of the City of Victoria, Texas and the annexation of certain territory consisting of approximately 26.973 acres of land, at the request of the DGMP, Inc., and adopts a service plan for the territory to be annexed. Second and Third Reading. John Kaminski.

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

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

NAYS: None

Caption:

AN ORDINANCE PROVIDING FOR THE EXTENSION OF CERTAIN BOUNDARY LIMITS OF THE CITY OF VICTORIA, TEXAS AND THE ANNEXATION OF CERTAIN TERRITORY CONSISTING OF APPROXIMATELY 26.973 ACRES OF LAND, AT THE REQUEST OF THE DGMP, INC., ADOPTING A SERVICE PLAN FOR THE TERRITORY TO BE ANNEXED, REPEALING ALL CONFLICTING ORDINANCES, PROVIDING FOR SEVERABILITY, PROVIDING FOR PUBLICATION, AND PROVIDING AN EFFECTIVE DATE.

PUBLIC HEARING ON COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT

The public hearing addressed the Community Development Block Grant (CDBG) Consolidated Annual Performance and Evaluation Report for the period of October 1, 2006 to September 30, 2007. John Kaminski.

Director of Planning, John Kaminski advised that Housing and Urban Development (HUD) requires that CDBG grantees to have a public hearing prior to the submittal of the annual report. He went over the following:

- Summary of Resources and Accomplishments
- Status of actions taken during the program year
- Evaluation of progress made toward the identified priority needs and objectives

Mr. Kaminski reported that expectations for most activities were met or exceeded. Code enforcement worked 950 cases, four homes were demolished with demolition funds, two homes were repaired to avoid demolition, twenty-four home buyers received mortgage assistance, 13 homes were repaired through the Owner-Occupied Rehab Program, eleven children received scholarships to

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attend the City's Youth Summer Day Camp Program, and the first three homes had been sold in the Swan Crossing Housing Initiative.

Mayor Armstrong asked if there were any questions from Council or the audience.

Cm. Polasek stated that he had expressed his opinion about the Owner-Occupied portion of the program before and asked the Council to consider modifying the plan to use some of the Owner-Occupied Rehab money for Habitat for Humanity projects to help out with the infrastructure in those subdivisions. Mr. Kaminski explained what was involved in changing the program, and to amend the five-year plan. If the approach was going to be changed, it would have to be done in the next couple of months.

Cm. Wyatt stated that he was not opposed to looking at different venues, and enhancing infrastructure, but with the reduction of funds coming from the Federal Government to the program, reduces the opportunity. His emphasis would be to continue with the current program because it was seriously needed in his district. It was the consensus of Council to go ahead and look at options.

Mayor Armstrong closed the public hearing.

CITY MANAGER REPORTS

- **Swan Crossing Subdivision** - Director of Planning, John Kaminski reported that the three homes built have been sold. Two of the three homes were sold to income qualified home buyers. One was to a non-income qualified home buyer who purchased the lot. A fourth home buyer had been approved for mortgage and the builder had committed to building that home and two additional spec homes. With increased building costs the builder was setting a price increase of \$2,500 for each floor plan. The homes range from \$78,700 to \$88,000, which was still within the affordability range. The builder was also planning to build a fourth style home in the 1,000 to 1,200 square foot range. There had been some tightening in the lending market, but his department was still working on this project.
- **Construction Standards for Streets, Curbs, Drainage, Sidewalks, and Other Public Improvements** – Deputy Director of Public Works, John Johnston reported that on December 4, 2007 a Work Session was held to discuss Street Standards. He provided information at that meeting and asked if Council had any questions concerning that report. Cm. Polasek advised that a new subdivision had cost estimates come in cheaper than asphalt. Mayor Armstrong requested that this topic be placed on an agenda in January or February 2008 for discussion.
- **Reconstruction/Reclaim/Overlay of Streets in Willows of Colony Creek** – Director of Public Works, Lynn Short reported on a situation that had occurred while the contractor was trying to reclaim and overlay the streets of the subdivision. Additional investment would be needed to put the streets in and make them last. The base was not holding up because the ground was not providing a good foundation. He advised that if they continue with the traditional method of rebuilding that street, it would not last more than a year. The street was built in 1996 over unstabilized subgrade, which was the street standard at that time. There were two options:
 1. Remove and dispose of the reclaimed base there now, dig up and stabilize the subgrade, bring in limestone, then finish in the traditional method of applying sealcoat and hotmix overlay. That would cost an estimated \$250,700.
 2. Not stabilize the subgrade, remove and discard the stabilized base and asphalt, apply a GEO grid material over the un-stabilized subgrade, which provides a solid foundation, then bring in a limestone base, and rebuild the road in the traditional manner. That cost estimate was \$223,760. Staff recommended Option 2. Council agreed with the recommendation.

Cm. Halepaska left the meeting at 6:25 p.m. because of another commitment.

RESOLUTION 2007-204R – AUTHORIZING THE LOAN STAR LIBRARIES GRANT FROM THE TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

The resolution authorizes the Texas State Library and Archives Commission Loan Star Libraries Grant in the amount of \$25,296, with no City matching funds required. James Stewart.

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

RESOLUTION 2007-205R – AUTHORIZING AN AGREEMENT WITH THE VICTORIA CHAMBER OF COMMERCE FOR BRAND DEVELOPMENT PROJECT

The resolution authorizes a Hotel/Motel Occupancy Tax Revenue Tourism/Convention Promotion Services Agreement with the Victoria Chamber of Commerce for Brand Development Project, in the amount of \$40,000. Randy Vivian.

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

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

RESOLUTION 2007-206R – AUTHORIZING CHANGE ORDER NO. 2 TO THE UTILITY REPLACEMENTS FOR KING ADDITION CONTRACT WITH MERCER CONSTRUCTION

The resolution authorizes Change Order No. 2 to the Utility Replacements for King Addition contract with Mercer Construction for the emergency replacement of a collapsed sewer line in the 2100 block of Houston Hwy. in the amount of \$39,692. Lynn Short.

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 Neitsch, Polasek, Hagan, and Wyatt
NAYS: None
ABSTENTION: Mayor Armstrong

RESOLUTION 2007-207R – AUTHORIZING AN INTERLOCAL AGREEMENT FOR PARTIAL FUNDING FOR E-911 SERVICE

The resolution authorizes an interlocal Agreement with Golden Crescent Regional Planning Commission and the Commission on State Emergency Communication for partial funding for E-911 Service. Roy Boyd.

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

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

RESOLUTION 2007-208R – AWARDING SUPPLY CONTRACT FOR UNIVERSAL/NESTABLE CONTAINERS TO TOTER, INC.

The resolution awards a supply contract for Universal/Nestable Containers to Toter, Inc. of Statesville, N.C., in an amount of \$49.60 per container, totaling \$992,000 for 20,000 containers. Jerry James.

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

RESOLUTION 2007-209R – AUTHORIZING FRAZER, LTD., TO REMOUNT AND REFURBISH AMBULANCE

The resolution authorizes all documents necessary to provide for Frazer, Ltd. of Houston, Texas, to remount the City’s Frazer Type I 12’ GPM E-1122 ambulance module onto the City's new 2007 Chevy C3500 gasoline chassis and refurbish said module, through the Houston-Galveston Area Council Buying Cooperative (HGAC) in the amount of \$45,275. Vance Riley.

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

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

RESOLUTION 2007-210R – AUTHORIZING SETTLEMENT OF A LAWSUIT WITH HEYL CONSTRUCTION, LTD.

The resolution authorizes the City Manager to settle the case of Heyl Construction, Ltd., A Texas Limited Partnership v. City of Victoria, et al., in the 267th District Court of Victoria County, Texas, for an amount up to \$120,000 plus costs of court upon receipt of a full and final release of all claims and provides for a dismissal with prejudice of the cause of action satisfactory to the City Attorney. David A. Smith

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

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

EXECUTIVE SESSION

Mayor Armstrong announced that Council would recess into Executive Session at 6:40 p.m., in accordance with:

Section 551.071, Texas Government Code, consultation with attorney on matter involving pending or contemplated 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.

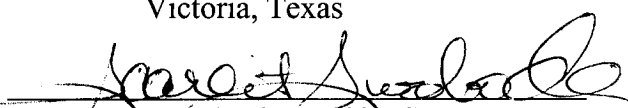
Section 551.072, Texas Government Code, to deliberate the purchase, exchange, lease, or value of real property interests due to the fact that deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third party. David A. Smith.

Section 551.087, 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.

Section 551.074, Texas Government Code, with regard to personnel matters (including, but not limited to, appointment(s) and evaluation(s) of Municipal Court Judge). Scarlet Swoboda.

The Council reconvened in regular session at 8:05 p.m., with no action taken and nothing to report. There being no further business, the meeting was adjourned.

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

ATTEST: 
SCARLET SWOBODA, City Secretary