

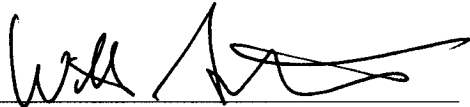
stay on staff on that basis, while we work through some of these issues. I would like to do that at least until the end of the ~~physical~~<sup>fiscal</sup> year and then we can work on a month to month basis after that.”

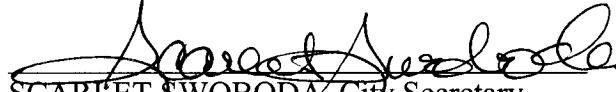
David A. Smith responded “Very good, and I hope to be able to come back to Council after this coming Wednesday with an electrical proposal that will save this city many hundreds of thousands of dollars in each of the next few years.”

Mayor Armstrong responded “Thank you.”

There being no further business, the meeting was adjourned at 6:58 p.m.

Correction to minutes  
at May 6, 2008 meeting

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

ATTEST:   
SCARLET SWOBODA, City Secretary

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VICTORIA CITY COUNCIL  
May 6, 2008

**CALL TO ORDER**

A regular meeting of the Victoria City Council was called to order by Mayor Will Armstrong at 5:00 p.m. Tuesday, May 6, 2008 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
- Paul Polasek
- David Hagan
- Jim Wyatt
- Tom Halepaska

**STAFF PRESENT**

- Charles E. Windwehen, City Manager
- Charmelle Garrett, Deputy City Manager
- Miles Risley, Senior Assistant City Attorney
- Gilbert P. Reyna, Jr., Director, Finance
- John Kaminski, Director, Planning
- Doug Cochran, Director, Parks and Recreation
- Bruce Ure, Police Chief
- James Stewart, Director, Library
- Rick Henrichs, Director, IT
- Steve Trevino, Director, IMS
- Jerry James, Director, Environmental Services
- John Johnston, Deputy Director, Public Works
- Jimmy Roach, Deputy Dir., Public Works (Operations)
- Michael Belt, Battalion Chief, Administrative Services
- Ken Gill, City Engineer
- Scarlet Swoboda, City Secretary

**APPROVAL OF MINUTES**

The minutes of the regular meeting of April 15 2008 and the special meeting of April 21, 2008 were approved as corrected. The April 15<sup>th</sup> meeting, page 132 was corrected to change a typo from overly to overlay. The April 21<sup>st</sup> meeting, page 134 was corrected to change the word attorney to Mayor, and page 136 was corrected to change the word physical to fiscal.

**CITIZENS COMMUNICATION**

**Retirement Insurance**

David A. Smith, 505 N. Washington, asked to explain how the issue of the retirement insurance came about. He advised that as he was trying to calculate a retirement date, Mr.

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**CITY COUNCIL MINUTES****May 6, 2008**

Windwehen as City Manager, suggested to him that he would be allowed to have a retirement insurance premium based upon a 20 year retiree, although he had only work for the City for 12 years. That would save him approximately \$200 a month under the present scheme, which he understood could be changed each fiscal year. He accepted Mr. Windwehen's offer and figured that into his budget and has already submitted all the forms to the insurance company and paid his first premium based upon that. Mr. Smith wanted the Council to understand the series of events that led up to that agreement, it was Mr. Windwehen's idea, he appreciated it and accepted it. He requested Council ratification on that agreement tonight.

Mayor Armstrong noted that an employment contract through the end of the fiscal year would be considered later in the meeting, and questioned whether the retirement insurance request would extend beyond September. Mr. Smith responded yes it would, as it had been done with at least one other employee in the past, and would be extended as long as he paid the premium for the insurance.

**Nuclear Power Support**

Ken Schustereit expressed support of the prospect of a nuclear project in Victoria County and encouraged Council to do whatever necessary to promote the project. He advised that he had spent a lot of time and money researching the prospect, and had prepared a report on every aspect of the project. He supports the project because Victoria needs it for economic development and creating commerce. He believes the project would be an insulator against bad economic times. Cm. Neitsch stated that Mr. Schustereit's report was very well done in laymen terms.

**ITEMS FROM COUNCIL****New Garbage Cans**

Cm. Polasek inquired about the garbage can deliveries for the new automated collection. Director of Environmental Services, Jerry James indicated that things were going well. Some customers were asking questions, but each metered user received their own cart and a complimentary paper bag for yard waste. Additional paper yard waste bags could be purchased at local stores as needed.

**Cm. Wyatt's Comments**

Cm. Wyatt requested the opportunity to apologize to his colleagues for the last meeting. He felt that for his personality and who he stood for he was obligated to do this. He would not go into any further detail, but the other members would understand and hopefully would accept his apology.

He also wanted to express concern with the editorial in the Victoria Advocate, concerning his reputation as a City Council Member. He advised that he has served off and on since 1988, and attended numerous workshops and seminars on open meetings and the open records act. It was stated in the newspaper that he, and he was not including any other Council Member, may have acted dishonestly in his evaluation of the City Manager. However, through training, he knows that during the performance evaluation of any city employee, it is important for Council to share with them their strengths and weaknesses. In saying that, it was indicated that Council set media policy in executive session. He wanted to go on record that he did not set a media policy. During the evaluation of the City Manager, it was suggested that the media policy that was currently used should be reviewed, there were some flaws and weaknesses in it.

Cm. Wyatt further commented on the sale of the street to the hospital. An editorial suggested that Council did not take a public vote on the street, in which they know they didn't. He took issue with the ensuing phrase, "what else could they have done behind closed doors." He stated unequivocally, that it was important to him to be honest, and for his reputation which was something that he took very serious, he has never been dishonest, taken a bribe, or done anything unethical while sitting on the City Council. He has never mistreated the citizens of the community and he merits that trust. He had never done anything illegal, and he knew that Council has taken the advise of both the City Attorney and Assistant City Attorney when they have been in executive session to make sure that they were following the guidelines and the rules. He wanted that on public record, because that was important to him, because his reputation was very important to him, and what he

May 6, 2008

does for the citizens of Victoria, as a servant, as a steward for this position it was important to say what he said.

### **Budget**

Cm. Wyatt also commented on budget preparation. He had shared with staff that his concerns were like any other concerns of families and community, to look at the budget and make sure that everywhere we can tighten our belt, we do. He requested staff to look for opportunities to reduce cost and expenditures. One thing brought to his attention was the transit system, and today they have been asked to relocate. They would also be asking the City for additional funding and one of the things that he recognized was that the transit system has enhanced the ability for a segment of the community to get to the merchants on the other side of town, and go to school. He asked Council to be in tune with that.

### **Boy Scout Troop**

Mayor Armstrong welcomed Joshua Hunter and Ethan Lueckemeyer, members of Boy Scout Troop 108 to the Council meeting.

### **Proclamation**

Mayor Armstrong presented a proclamation declaring the month of May 2008 as "Mental Health Month" to increase public awareness of mental health disorders.

### **Mayor Armstrong's Statement**

Mayor Armstrong read the following statement concerning the sale of a street to Citizens Hospital:

David Tewes (with the Victoria Advocate) called me. David said that he had been reviewing a plan that Citizens Hospital has having to do with an expansion. When he did this review he came across the fact that there was a city street involved with it, and also that we had sold that city street to the county. He said did you discuss it in executive session and vote on it? I said we didn't vote on it. I am sure it was discussed in executive session, and more than once. I want to tell you how this situation evolved. Over two years ago, David Smith, Charles Windwehen, Lynn Short, Vance Riley, Judge Pozzi, David Brown and I met in Citizens boardroom. We talked about this project. We decided to start working on it - start putting it together, and I was not opposed to it at all, in any way form or fashion, because right across the street is Victoria College. The Victoria College campus is larger than the Citizens complex and they control everything, all their internal streets, everything. As Citizens Hospital expanded, I saw no problems with them being in control of everything, There were some issues having to do with oversized pipes, water pressure, where to put fire hydrants, how to get emergency vehicles into the hospital, if there was a fire or something of that nature. It was an administrative thing to work out these details. As work progressed and I am talking about a period of two years, we discussed the issue and it was always what I refer to as a work-in-progress. The plans were being considered by our engineering department and the county's engineering consultant. Other times work was being done by our legal department and the county's legal department. When all the details were worked out, we got paid for the street, and we gave a deed to the County. We made a mistake because it never came to the City Council for a formal vote. It is on the agenda now to ratify what we have already done. ---- On a lighter note, I just want to say that we have some other streets that we would like to sell to the county, and we have a couple of streets that we will give to the county and we will give them some money if they will take them.

### **PUBLIC HEARINGS AND ACTION**

Mayor Armstrong opened a public hearing on the following items:

**ORDINANCE 2008-3 – AMENDING SECTION 24-141 TO ADD A \$5.00 PER MONTH FEE FOR EACH ADDITIONAL GARBAGE CART PROVIDED TO EACH RESIDENCE FOR THE AUTOMATED SOLID WASTE COLLECTION SYSTEM**

Senior Assistant City Attorney, Miles Risley, read the caption of Ordinance 2008-3, which adds a \$5.00 per month fee for each additional garbage cart provided to each residence for the automated solid waste retrieval system. Second and Third Reading. Jerry James.

Cm. Wyatt moved that the ordinance pass on second and third reading, with Cm. Halepaska 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 AMENDING SECTION 24-141 TO ADD A \$5.00 PER MONTH FEE FOR EACH ADDITIONAL GARBAGE CART PROVIDED TO EACH RESIDENCE FOR THE AUTOMATED SOLID WASTE RETRIEVAL SYSTEM; REPEALING CONFLICTING PARTS OF EXISTING ORDINANCES, PROVIDING FOR SEVERABILITY, PROVIDING FOR CODIFICATION AND SAVINGS, AND DECLARING AN EFFECTIVE DATE.**

**ORDINANCE 2008-4 – AUTHORIZING AND RATIFYING A SPECIAL WARRANTY DEED TO TRANSFER PARCELS OF PROPERTY TO THE COUNTY OF VICTORIA**

Senior Assistant City Attorney, Miles Risley, read the caption of Ordinance 2008-4, which authorizes and ratifies the act of the City Manager to execute a Special Warranty Deed to transfer the following parcels of property to the County of Victoria, which is the abutting property owner and is a political subdivision of the State of Texas with powers of eminent domain, in exchange for \$156,750 and other consideration:

- (1) Hospital Drive that extends from Rio Grande Boulevard to Red River Street
- (2) A portion of Citizens Drive as shown per attached plat,
- (3) A portion of Continental Drive as shown per attached plat. First Reading. Miles Risley.

David Smith endorsed everything that the Mayor said earlier and wanted to add a critical piece of information. The City received the check from the County in June 2007, there were many other details that needed to be worked out, months of negotiations on easements, and some other issues involving the hospital property. It was not until almost a year later that everything came together, and the deal was made from the administration side. Mr. Smith went to the City Manager to sign the deed. That was when it was done, the money had been here for nearly a year during which time it had been discussed with Council. He thought it had been submitted to the open session, but it had not. Mayor Armstrong added that he always considered it an administrative thing.

Cm. Hagan explained that his vote had nothing to do with the hospital or County. The fact of the matter, there was a right way to do things and a wrong way to do things. He was there to uphold the rule of law, and say we must stand for doing things the right way, not the easy way. If the price of redoing the process again correctly was inconvenient, he felt that was a small price to pay for seeking to restore taxpayer confidence in the City and City Council.

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

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

NAYS: Council Member Hagan

Caption:

**AN ORDINANCE AUTHORIZING AND RATIFYING THE ACT OF THE CITY MANAGER TO EXECUTE A SPECIAL WARRANTY DEED TO TRANSFER THE FOLLOWING**

PARCELS OF PROPERTY TO THE COUNTY OF VICTORIA, WHICH IS THE ABUTTING PROPERTY OWNER AND IS A POLITICAL SUBDIVISION OF THE STATE OF TEXAS WITH POWERS OF EMINENT DOMAIN, IN EXCHANGE FOR \$156,750 AND OTHER CONSIDERATION:

(1) HOSPITAL DRIVE THAT EXTENDS FROM RIO GRANDE BOULEVARD TO RED RIVER STREET

(2) A PORTION OF CITIZENS DRIVE AS SHOWN PER ATTACHED PLAT,

(3) A PORTION OF CONTINENTAL DRIVE AS SHOWN PER ATTACHED PLAT,

REPEALING ALL CONFLICTING ORDINANCES, PROVIDING FOR SEVERABILITY, AND DECLARING AN EFFECTIVE DATE.

**ORDINANCE 2008-5 – AMENDING SECTION 23-75 OF THE CITY CODE TO ESTABLISH MAXIMUM ALLOWABLE RATES FOR THE CITY’S TOW TRUCK ROTATION LIST**

Senior Assistant City Attorney, Miles Risley, read the caption of Ordinance 2008-5, which amends Section 23-75 of the Victoria City Code to establish maximum allowable rates for the members of the City’s tow truck rotation list. First Reading. Miles Risley.

Mr. Risley pointed out that wording in the ordinance would authorize the City Manager in the future to increase the allowable maximum rates based on the consumer price index without having to come back to the City Council.

Cm. Wyatt moved to delete the City Manager adjustment allowable out of the ordinance. The motion died for lack of a second.

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

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

Caption:

AN ORDINANCE AMENDING SECTION 23-75 OF THE VICTORIA CITY CODE TO ESTABLISH MAXIMUM ALLOWABLE RATES FOR THE MEMBERS OF THE CITY’S TOW TRUCK ROTATION LIST, REPEALING CONFLICTING ORDINANCES, PROVIDING FOR SEVERABILITY, PROVIDING FOR CODIFICATION AND SAVINGS, AND DECLARING AN EFFECTIVE DATE.

**ORDINANCE 2008-6 – AUTHORIZING ANNEXATION OF APPROXIMATELY 21.33 ACRES OF LAND AT THE REQUEST OF VICTORIA INDEPENDENT SCHOOL DISTRICT**

Senior Assistant City Attorney, Miles Risley, read the caption of Ordinance 2008-6, which provides for the extension of certain boundary limits of the City of Victoria, Texas and the annexation of certain territory consisting of approximately 21.33 acres of land, at the request of Victoria Independent School District (VISD), adopting a service plan for the territory to be annexed. First Reading. John Kaminski.

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

- AYES: Council Members Guittard, 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 21.33 ACRES OF LAND, AT THE REQUEST OF VICTORIA INDEPENDENT SCHOOL DISTRICT (VISD), 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.**

Mayor Armstrong closed the public hearings.

### CITY MANAGER REPORTS

- **Proposed criteria for funding outside agencies** – City Manager Charles E. Windwehen advised that information was gathered from other cities and the local United Way Fund, and a comprehensive list of data was provided to the Council. The general consensus was favorable from the council members. Staff would provide the information to those agencies that do not qualify to receive hotel/motel tax monies as soon as possible.
- **Education and Governmental Channel Report** – Public Information Officer, O.C. Garza provided Council with a handout and gave a short update on the new channel. He reported that any day after May 22, 2008, the City should be able to move over to Channel 15 on Suddenlink. The channel would only be available on the Suddenlink cable system; it would not be available via satellite or broadcast over the air. Cm. Polasek suggested doing a program on the automatic garbage collection system.
- **Sportsplex at Community Center** – Director of Parks and Recreation, Doug Cochran reported that work continued on the concession stand, parking facilities, and some additional dirt work. The project was still on track for June or July completion.
- **Lone Tree Road Reconstruction, Laurent Street Reconstruction, and Lone Tree Channel Improvements & Trail** – City Engineer, Ken Gill reported that paving work on the Lone Tree Road project was being done eastbound from Ben Wilson to Delmar. Also working on the sanitary and storm sewers in that same section, and the intersection at Delmar and Lone Tree Road. One lane of Lone Tree Road would be closed to one lane from Anthony to Delmar in a few weeks. The contractor on the Laurent Street Reconstruction was working on the water line from Rio Grande towards Red River, things were going well and he was doing a good job. Work had begun on the bridge at Airline Road and the channel has been cleared from Airline to Miori on the Lone Tree Channel project.
- **Duck pond, fountains, and other park amenities** – Mr. Cochran reported on the continuing problems of vandalism of water fountains in the numerous parks throughout the City. Although the public uses the water fountains, they are costly to repair or replace, which has caused him to reevaluate whether to place water fountains along the hike/bike trail on Lone Tree Creek.
- **Library Renovation** – Deputy City Manager, Charmelle Garrett reported that the Library would be closed May 15-19, 2008 for renovation work.

### RESOLUTION 2008-77R – AUTHORIZING A 2009 PERMINANT EMERGENCY MEDICAL SERVICE ENDOWMENT FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES FOR LIFE SUPPORT TRAINING AIDS

The resolution authorizes all documents necessary to apply for and accept a grant from the Texas Department of State Health Services 2009 Permanent Emergency Medical Service and Trauma Care Tobacco Endowment, which will provide for the purchase of (1) Advanced Life Support training aids, with a total cost not to exceed \$17,249, subject to a local match not to exceed 50% thereof or \$8,624.50 and (2) Basic Life Support training aids, with a total cost not to exceed \$4,200, with no City matching funds required. Michael Belt.

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Cm. Neitsch moved that the resolution be adopted, with Cm. Polasek 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 2008-78R – AUTHORIZING AN INTERLOCAL AGREEMENT WITH THE UNIVERSITY OF TEXAS FOR AIR QUALITY RESEARCH ACTIVITIES FUNDED BY TCEQ**

The resolution authorizes an Interlocal Agreement between the University of Texas and the City of Victoria for Air Quality Research Activities, in the amount of \$504,000, funded entirely by the Texas Commission on Environmental Quality (TCEQ). Jerry James.

Cm. Polasek moved that the resolution be adopted, with Cm. Halepaska 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 2008-79R – AUTHORIZING AN AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY GRANT FROM THE TEXAS DEPARTMENT OF TRANSPORTATION**

The resolution authorizes an Automobile Burglary and Theft Prevention Authority Grant from the Texas Department of Transportation Auto Theft Prevention Authority in an amount of approximately \$70,520 from the state, which will require a City match in an amount not to exceed \$17,640. Bruce Ure.

Cm. Polasek 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 2008-80R – GRANTING A VARIANCE FROM THE SIDEWALK REQUIREMENTS TO 4603 E. JUAN LINN OWNED BY J.W. OPERATING, LTD.**

The resolution grants a variance from Section 21-54(e) of the Victoria City Code, which requires sidewalks along lots abutting perimeter streets, to Lot 1, Block 1, Welex Subdivision, located at 4603 E. Juan Linn, which is owned by J.W. Operating, Ltd., conditioned on the owner's and subsequent owners execution of a Sidewalk Agreement and Covenant with the City of Victoria, obligating the owner(s) to pay a pro-rata share of the cost of constructing a sidewalk along the street(s) adjacent to the subject property at such time in the future when the sidewalk is constructed. John Kaminski.

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 2008-81R – APPOINTING TWO MEMBERS TO THE VICTORIA CITY/COUNTY BOARD OF HEALTH**

The resolution reappoints Amy Wuest and Jeff Cano to the Victoria City/County Board of Health. Scarlet Swoboda.

**CITY COUNCIL MINUTES****May 6, 2008**

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 2008-82R – APPOINTING ESMERALDA “RUBY” OCHOA AS A DEPUTY TO THE CITY SECRETARY**

The resolution appoints Esmeralda “Ruby” Ochoa as a deputy to the City Secretary. Scarlet Swoboda.

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

**EXECUTIVE SESSION**

Mayor Armstrong announced that Council would recess into Executive Session at 6:02 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 (including, but not limited to, utilities issues and other selected legal matters). 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 party (including, but not limited to, the proposed purchase of land for a fire station and the possible purchase of properties at 303 E. Juan Linn and near Riverside Park). Miles Risley.

Section 551.074, Texas Government Code, with regard to personnel matters (including, but not limited to, the appointment, employment, evaluation, reassignment, and duties of the Interim City Attorney, City Attorney, Deputy to the City Secretary, and two members of the Victoria City/County Board of Health). Scarlet Swoboda.

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. 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 party (including, but not limited to, the proposed acquisition of the property next to Lone Tree Creek [in addition to previously listed items]). Miles Risley.

The Council reconvened in regular session at 7:32 p.m. and considered the following:

**RESOLUTION 2008-84R – AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH DAVID A. SMITH TO PROVIDE LEGAL AND CONSULTING SERVICES**

The resolution authorizes a Professional Services Agreement (PSA) with David A. Smith to provide for the performance of legal and consulting services related to the South Texas Aggregation Project, related utilities issues, and other selected legal matters, with such modifications as are

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approved by the interim City Attorney. It increases the amount to \$2,300 per month and moves the laptop, cell phone and LexisNexis subscription provisions from the retirement contract to the professional services agreement, and eliminates the retirement contract provision from the resolution.

Cm. Hagan inquired what it benefited to retain David Smith as a consultant. He was reminded of the last meeting where the Council discussed his email and numerous other incidences of poor judgment and poor counsel on his part, counsel and poor consultation that led the Council to illegally sell a public road. Really this was not about David Smith or him, it was about what was fair and right for the taxpayers of Victoria. He felt they could accomplish business without Mr. Smith and needed a clean break from the past.

Mayor Armstrong stated that the City had been well served by Mr. Smith. The job they were contracting with him to be involved with, was something that no one on City staff was familiar with. It was complex and involves something that Mr. Smith has handled with considerable knowledge of, perhaps more so than anyone in the State of Texas. If these successful contract negotiations go forward, the City of Victoria would save thousands of dollars, as would other cities that are in the negotiating group. He had no hesitancy whatsoever recommending that Council go forward with Mr. Smith's service through the end of the fiscal year, plus what other time was necessary, and his services could be used on a month to month basis.

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, Wyatt, Halepaska, and Mayor  
Armstrong

NAYS: Council Member Hagan

#### **RESOLUTION 2008-83R – APPOINTING MILES RISLEY CITY ATTORNEY**

The resolution appointed Miles Risley as City Attorney. Scarlet Swoboda.

Mayor Armstrong requested a motion to amend the resolution to hire Mr. Risley as the City Attorney at a salary of \$103,000 per year instead of interim City Attorney as noted on the agenda.

Cm. Hagan stated that he had the utmost respect for Mr. Risley and had hoped one day to see him become the City Attorney, although he felt that there was a process for everything. He felt that something as serious as a senior attorney required a process of going through and looking at the best candidates. He stated that Mr. Risley was imminently qualified, and a good man, but Council needed to follow a process so that the public sees they were doing things with due diligence. Especially, in light of other things recently that have happened. Carrying things out in a process would reassure the public that Council was putting the taxpayer's interest first, and not rushing to any hasty decisions. Having a wise and prudent counsel in that position shows what a critical decision it is, and there needs to be no rush to judgment. He felt they should appoint Mr. Risley as interim as they do their due diligence, and take their time to do it as thoroughly, and carefully as possible. He felt like he was put in a position to vote against this action.

Mayor Armstrong stated that Mr. Risley had 14 years of experience; he knows the town and the job. There would be a honeymoon period if they put a new person in that position. He suggested that they all knew Mr. Risley was the person they were going to hire. He did not think the public would question their management decision, in being able to step up to the plate, and make a decision. Although he completely and totally honored and respected Cm. Hagan's position, he differed with him. He thought that it would be a situation where if they did not hire Mr. Risley and they were so unfortunate as to make a mistake, there would be a honeymoon period, a discovery period, and it would be very expensive, spending the taxpayer's money. He thought it behooved them to make a decision that they would make three-months or six-months from now. He suggested going ahead and getting down to business, because there were lots of important things to discuss this summer, and they could spend that energy on those other important items that need to be worked on.

Cm. Wyatt suggested that he philosophically differed with Mayor Armstrong's position. He too thought Mr. Risley has done an outstanding job as assistant attorney for Victoria. But, in his

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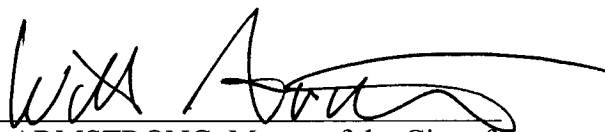
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going and coming in the community, and to those constituents he encounters, they feel that a closed process, where Council arbitrarily picks a person on staff, and says that is the best person for the job without going through the process, has not always set well. Because of that perception and his representation of those individuals, he concurred that they should go out and look. He stated that he had been through three city attorneys during his tenure, and Council had been able to manage the case load, and in some cases an attorney was put on retainer to help out. He believed for the process to be open, they needed to look, and maybe Mr. Risley would be the best candidate. However, he would hope that his colleagues would look at this and make certain that as a government they were willing to look at every opportunity to enhance City personnel. He just did not see Council continuing to have that good ole boy system in the City of Victoria.

Cm. Neitsch moved to adopt the resolution to hire Miles Risley as City Attorney at a salary of \$103,000, with Cm. Halepaska seconding the motion. The resolution was adopted by the following vote:

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

There being no further business, the meeting was adjourned at 7:45 p.m.

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

ATTEST:   
 SCARLET SWOBODA, City Secretary

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