

June 3, 2008

in a series of 300 to 500<sup>Foot</sup> spacing. He pointed out what the costs could be if the speed humps were removed and noted that they slow down emergency response. There would also be the potential of redirecting traffic through a neighborhood, which would not be desired.

Speed tables are similar to speed humps, but span the entire wheelbase of the vehicle, and were more expensive than the speed humps. Speed cushions are a variation of the speed hump and speed table, and allow for emergency vehicles to straddle the device to reduce delay times. Costs would be slightly less, and as with the others, would need to be installed in a series.

Assistant Director of Planning, Ray Miller reported on narrowing the streets or curb extensions at intersections to restrict the roadway as a way to slow down traffic and allow pedestrians to safely cross the roadway. They have minimal impact on emergency response. Raised crosswalks or textured pavement are other ways to bring attention to an intersection and slow down traffic.

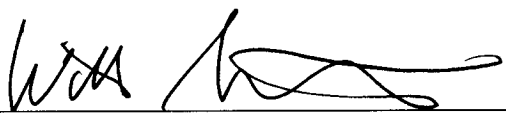
Mr. Johnston advised that the last technique to consider was radar speed signs. They are solar powered and cost approximately \$7,500, with \$600 per year for maintenance. They are similar to the school crossing lights, and could be placed at any location. They remind drivers of the speed they are traveling, and also let neighbors in the neighborhood see what speed a driver is going.


Mayor Armstrong advised that the presentation was presented at his request and Council had been briefed. If someone wanted to request some of these devices and they were willing to pay for them, they could contact the engineering department for the information. Members of Council were in agreement.

**REGULAR SESSION**

Cm. Neitsch requested going back into regular session and suggested developing a committee to review the sign ordinance. He suggested a committee of City staff, Council Members, and Planning Commission member. He advised that he would volunteer to serve on the committee and asked that the Mayor appoint individuals to serve on the committee as well. Cm. Polasek also volunteered along with Tom Willis from the Sign industry.

There being no further business, the regular meeting and work session were adjourned at 7:29 p.m.

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

ATTEST:   
SCARLET SWOBODA, City Secretary

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VICTORIA CITY COUNCIL  
June 17, 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, June 17, 2008 in the Council Chambers, 107 W. Juan Linn, Victoria, Texas. The pledge of allegiance was said, and all citizens were welcomed.

**CITY COUNCIL MINUTES**

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**MEMBERS PRESENT**

Will Armstrong, Mayor  
 Lewis Neitsch, Mayor Pro-Tem  
 Philip Guittard  
 Paul Polasek  
 David Hagan  
 Jim Wyatt  
 Tom Halepaska

**OTHERS PRESENT**

Art Pertile, Attorney with  
 Olson & Olson, L.L.P.

**STAFF PRESENT**

Charles E. Windwehen, City Manager  
 Charmelle Garrett, Deputy City Manager  
 Miles Risley, City Attorney  
 Gilbert P. Reyna, Jr., Director, Finance  
 Doug Cochran, Director, Parks and Recreation  
 John Kaminski, Director, Planning  
 Bruce Ure, Police Chief  
 Vance Riley, Fire Chief  
 James Stewart, Director, Library  
 Steve Trevino, Director, IMS  
 Jerry James, Director, Environmental Services  
 John Johnston, Deputy Director, Public Works  
 Donald Reese, Public Services Manager, Public Works  
 Scarlet Swoboda, City Secretary

**APPROVAL OF MINUTES**

The minutes of the special meeting of May 29, 2008, the special meeting of May 30, 2008 and the regular meeting of June 3, 2008 were approved as presented.

**CITIZENS COMMUNICATION**

The following individuals expressed opposition to the City paying the legal expenses of the City official, employees, and former employee that had been indicted: Russell Pruitt, 402 Sherwood, Charles Carder, 108 Lake Forest Drive, Jack Mullins, 224 Ridgewood Drive, Coolidge Gerdes, 1103 Lawndale, and Jeff Hutt, 801 Kelly Crick.

Their concerns were that it was a conflict of interest and taxpayers should not have to pay the legal fees. Tax dollars should be used for the benefit of the community. There was a question as to what law allowed taxpayers money to pay for the defense of City employees and City officials. It was suggested that the defendants should pay their own expenses, then if found not guilty be reimbursed. However, the defendant should not have the right to find the most expensive lawyer to represent them. Council was asked if they would consider placing a cap on the amount allocated for defense of the accused. They were asked at what level of defenses would this pertain to in the future, and which employees in the future would it cover? It was suggested that this action would set a terrible precedence and Council was encouraged to vote it down. Mr. Pruitt advised Council that he would push for a recall election for any of the Council Members that voted to use taxpayer's money to pay legal fees for the defendants.

Gary Melson, 1906 Sam Houston, President of the Police Officers Organization, spoke in favor of paying the legal fees and expressed the support of police officers for those accused. He understood taxpayer's concerns, but what they may not understand, is that when they are following the policies which the City has gone by, and are still being accused of a crime, that is when the City should step in and support them. They did nothing wrong, they followed policy to the letter; it is the District Attorney's Office going after police officers in the City. He asked Council to support the resolution; the Police officers support the accused and support the Council to authorize paying the legal fees.

**ITEMS FROM COUNCIL**

Cm. Polasek questioned whether the new automatic garbage collection could be used in the City parks and asked staff to look into it.

Mayor Pro-Tem Neitsch commented that he was disturbed that the Transit system shut down on Friday, June 6, 2008, for the funeral of one of their employees. He wanted the citizens to understand that it was the City's transit system, but the City had nothing to do with shutting it down on a Friday. People depended on that service to get to work and get to doctor appointments. He did not want to show disrespect for the deceased, but he wanted to express his opinion that it not happen again. Assistant Planning Director, Ray Miller advised that he had already expressed concern on the

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City's behalf. It was nothing the City had a decision in. There was a suggestion to make it a policy to limit interruption of services.

Cm. Hagan commented that discussion amongst Council concerning the resolution to pay legal fees for the four accused could be held in open or closed session. He suggested having all discussion in open session, because the public had the right to hear the pros and cons concerning the burden placed in the Councils hands. There should be a separate motion and separate discussion on each of them, since the circumstances were unique for each one. He did not feel that the citizens should assume the expense of the former City Attorney, since he was no longer an employee, and wondered what precedent it would set for other former employees. He did not feel that any legal expenses should be incurred for the Police Chief while on active duty and he should be placed on administrative leave. He did not want the City to incur any further legal expenses due to remaining on active duty while under indictment. This had nothing to do with the fine men and women in blue who were serving the City with great distinction. His actions were not to punish the Chief, but felt it was not prudent to have him serve in a command position, while under felony indictments. He also had concerns about how the Mayor became involved and whether he was acting as the Mayor or a private citizen.

**CONSIDERATION OF RESOLUTION 2008-101R – PROVIDING LEGAL REPRESENTATION IN DEFENSE OF THE PROSECUTION OF INDICTED OFFICIAL, EMPLOYEES, AND EX-EMPLOYEE**

Mayor Armstrong removed himself from the discussion and the chair, turning the meeting over to Mayor Pro-Tem Neitsch. He then went and sat out in the audience.

Art Pertile, Attorney with the law firm of Olson & Olson, 2727 Allen Parkway Houston, Texas advised that his firm was asked to provide a legal opinion for the City on certain issues that the community was facing in regards to employees and officials that had been indicted by the Victoria County District Attorney. The three questions were:

1. May the City legally pay for criminal defense attorneys to defend indictees from the charges alleged in the indictments?
2. If the City pays for those criminal defense attorneys, may their legal fees be paid as they are incurred or must the City wait until the indictees are exonerated?
3. If the City may pay for these defense attorneys, what are the necessary legal prerequisites in order for the City to pay for those attorney fees?

Mr. Pertile advised that a complete opinion from his firm was included in the Council packet. He told the members of Council that the first question they must answer was whether or not to provide the legal expenses of those employees and ex-employees, and does that serve the public interest. Only the Council could make that determination. The law reserves that opinion that only the Council can determine whether or not it serves the public interest to pay the legal expenses.

Then second, they must determine whether or not, once it meets the public interest test in Council's opinion, those employees were acting in the course and scope of their duties. Council's decision is not based upon whether or not they did right, or whether or not they did wrong. The decision is based upon whether or not they did what they were employed to do, whether they followed the city procedures, whether or not they did what they were supposed to do in the course and scope of their employment. Were the things they were doing something that City employees and City officials do? Council has the right to make that determination, and once you find those two issues, once you determine that it was in the public interest and that they in good faith were operating in the course and scope of their employment, then Council can decide to pay. There is no law that says you must pay, the law allows you to determine whether or not you will, or will not pay, and that would be solely up to the Council as a whole. Council is vested with that discretionary power.

The third issue was whether Council could pay as fees are incurred or wait until they are exonerated. The City has the option to either hire an attorney, pay somebody to represent them, or to reimburse them. The only guidance is Council's collective guidance. Council can find that it is in the public interest to protect their city employees if they get indicted for offenses that they were doing in the course and scope of their duties. If Council does not do that, then what message does that send to the employees? If they are doing what they are paid to do, and based upon someone else

## CITY COUNCIL MINUTES

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that they have no control over, decides that the action they were doing was a criminal act and brings charges against them. Does the City leave that employee out there, or do they pay for that employee's legal expense? That is the decision that only the Council can make.

A Texas Attorney General's opinion suggests that a city should wait until after disposition of the charges. Tex. Att'y Gen. Op. No. JC-294 (2000). The Attorney General's reasoning and opinion in JC-294 overlooks or disregards the powers conferred by the Texas Constitution to home-rule cities for self governance and for that reason Mr. Pertile's firm believes that opinion is in error. The Council has the authority to do what is in the public's interest.

In conclusion it was their opinion that the City may pay the legal expenses of the Mayor, former City Attorney, Police Chief, and Police Lieutenant, currently under criminal indictment, provided the City Council determines that the cases against them involve a public interest requiring a vigorous defense, or that paying the legal expenses service a public interest, not just individual interests. The City Council must also determine that the accused committed the acts alleged in the indictments in good faith and within the scope of their official duties. If those findings are made, the City of Victoria, as a home-rule city, has the authority to pay the legal fees on the indicted as they are incurred.

Cm. Polasek inquired about the Attorney Generals opinion and how it came about. Mr. Pertile advised that the opinion dealt with a general-law city and the Attorney General being used to dealing with counties and governmental bodies looked to a statute for their authority. There was no statute and since there was no law out there, he had to look at statutes from other states. A home-rule city looks at limitations.

Cm. Wyatt inquired on how to determine whether the Mayor was within the scope of his duties, and make sure that Council was within their legal rights. Mr. Pertile recommended seeking information surrounding the circumstances of why the Mayor was there, why the meeting was called, and what action did the Mayor take at the meeting. Then, if he was representing the City in his capacity as the Mayor, the question could be answered.

Cm. Hagan inquired whether in most cities it was within the scope of the duties of a Mayor to get involved in an investigation being run by another governmental entity, in which he was not party to, and was not a criminal investigator or peace officer. Mr. Pertile advised that was a question that Council had to look at to determine how Victoria was run. There are instances when the highest ranking official would not ordinarily be involved. But for some meetings, the highest ranking person is brought in because these are important issues, when they are there, they are in their capacity. If it was a City purpose and part of what they do, as part of their duties, then they were not outside their scope. If they were acting as private citizens, and not doing official business, that would be another decision that the Council would have to determine.

Cm. Halepaska asked how with no evidence being released, how Council could make that determination. Mr. Pertile advised that Council could ask the employees, just take the position away from being Mayor, Police Chief, or City Attorney from the situation. If it were some other employee, what questions would Council ask? Were they performing their job, what does their job entail, and what were they doing there? If the reason why they were there connects with the job, then they were performing their duties, if it wasn't, then they were not. What was that employee or official responsible for in the City, if it was part of what they were responsible for and that was part of what they do, then it was within the scope. The question is not whether that employee was right or wrong, the question is were they doing what they are allowed to do. This has to be collective judgment solely of the Council

Cm. Wyatt ask while trying to make that determination, if it was done in open session the propensity for self incrimination may take place, and wanted a suggestion of how or when they should do it. Mr. Pertile advised that their rights under self incrimination would always be there in an open or closed meeting, but what Council could do was connect those people that were familiar with the situation. The City Attorney knows the facts of the situation, and the circumstances of the meetings. If there were further questions, the Council could ask the accused questions.

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Cm. Hagan felt the taxpayers had a pertinent and vital interest in why Council was considering this. There was nothing that he would say in closed session that he would not say in open session.

Cm Polasek stated that it was his opinion that the questions Mr. Pertile had raised regarding whether the accused were acting in the scope of their duties, could affect the case. There was a lot that he would be willing to talk about in open session, but to ascertain and get to that, could affect pending litigation.

Mr. Pertile recommended discussing personnel issues in executive session. That is why the statutes allow handling personnel issues in executive session, because you are directly affecting the lives of those people that you control.

Mayor Pro-Tem Neitsch asked the other members whether they wanted to go into Executive Session as he did not want to jeopardize anyone's case. Council Members Wyatt, Guittard, Halepaska, and Polasek did, Cm. Hagan did not.

### EXECUTIVE SESSION

Mayor Pro-Tem Neitsch announced that Council would recess into Executive Session at 6:05p.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, legal issues related to indicted official, employees and ex-employee). Miles Risley & Art Pertile.

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. Miles Risley.

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 551.074, Texas Government Code, with regard to personnel matters. Scarlet Swoboda.

The Council reconvened in regular session at 6:59 p.m. and considered the following:

Mayor Pro-Tem Neitsch thanked Mr. Pertile for being at the meeting and guiding the Council through this difficult time. One of the things he looked at when he first got the resolution was whether the acts were committed viciously, or were they done in good faith for the City. There was no doubt in his mind that they were acting in their capacity for the City. He wanted all four men included in Council considerations.

Cm. Wyatt agreed and thought one thing was very important, if you were a City employee in the City of Victoria acting in your official capacity, you may not have the resources to fight the accusations and pay for those fees. If as a City, we are to continue to have quality and qualified employees, it was obligated upon the Council to look favorably on trying to make sure that these individuals are taken care of and not afraid to come to work for the City. He also felt placing a cap on the amount was a good idea.

Cm. Hagan had no problem with the Chief and Lieutenant having their legal fees paid by the City, so long as they were placed on administrative leave with pay. The former City Attorney should be responsible for his own fees, he is no longer an employee and it sets a poor precedent. Regarding the Mayor, he was not convinced how his actions fit into his scope of being Mayor and did not support paying his legal fees.

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Cm. Halepaska disagreed, stating that the former City Attorney was an employee at the time that the indictment mentions, so whether he was currently employed should not be the determining factor.

Cm. Polasek stated that the executive session was very beneficial to help determine the fact of whether or not the accused were acting within the scope of their duties. With respect to the Mayor, all seven Council Members are subject to any question, any bit of information, or any complaint, and in his opinion it was a very wide latitude of their duties. There is very little that is not within the scope of the Mayor's duties, or Council's, in respect to the City. He was comfortable with that; Council can not operate out of a climate of fear. The thought of litigation was always hanging over their shoulders, the City is a business, and they had to stand behind their folks.

Cm. Guittard felt that all four individuals defense should be funded by Council. He did not see how they could do anything else, keeping in mind the rest of the employees of the City and how this might relate to future employees of the City.

**RESOLUTION 2008-101R – PROVIDING LEGAL REPRESENTATION IN DEFENSE OF THE PROSECUTION OF INDICTED OFFICIAL, EMPLOYEES, AND EX-EMPLOYEE**

The resolution authorizes providing legal representation in the defense of the prosecution of indicted official, employees and ex-employee. Miles Risley and (Art Pertile).

The following recommendation was presented: Authorizing \$200,000, with \$50,000 cap per indictee.

City Attorney, Miles Risley advised that the resolution could be considered as presented with the amendment of \$50,000 per indictee. If legal proceedings are terminated against any of the aforementioned indictees prior to expending the aforementioned maximum amount per indictee, then the unexpended amount for said indictee may be used to pay for the legal fees of the remaining indictees in a manner approved by the Director of Finance.

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

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

NAYS: Council Members Hagan

Cm. Polasek asked the public to be patient with this; his intent in executive session was to determine whether or not the individuals were acting within the scope of their duties. He does not know the evidence, and does not need to, and asked all to be patient and let the process take its course.

Mayor Armstrong returned to his seat at the Council dais and resumed presiding over the meeting.

**PUBLIC HEARING AND ACTION**

Mayor Armstrong opened a public hearing on the following item:

**RESOLUTION 2008-97R – ISSUING MEDICAL TRANSFER SERVICE PERMIT TO MP AMBULANCE SERVICE, INC.**

The resolution authorizes the issuance of a Medical Transfer Services Permit to Marilyn D. Porter d/b/a MP Ambulance Service, Inc. Scarlet Swoboda.

Cm. Guittard moved that the resolution be adopted, with Cm. Hagan 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

Mayor Armstrong closed the public hearing.

### CITY MANAGER REPORTS

- **Report on the “Draft” Community Development Block Grant (CDBG) One-Year Action Plan for Fiscal Year 2008-2009 and selection of the 2008-2009 CDBG Target Neighborhood** – Director of Planning, John Kaminski advised that the action plan included the proposed budget and identified the programs and activities undertaken in the next fiscal year. The entire draft was included in the Council packets. He recommended Lone Tree Acres neighborhood as next fiscal years Target Neighborhood. It was the consensus of Council to accept his recommendation.
- **Lowe Baseball Field** – Director of Parks and Recreation, Doug Cochran reported on Lowe ball field, which is directly behind Riverside Stadium. He proposed extending the backfield, and replacing the fence with six-foot fence to mirror Riverside Stadium. His proposal also included replacing the sports lighting and reshaping the infield. The Friends of Victoria Baseball would be assisting with the project. The cost for the improvement would be approximately \$100,100. Excess funds from the Lone Tree Trails construction could be used to fund the project. Improvements were needed because of the number of games held this year. The Continental Baseball League would like to contract for games at the stadium. University of Houston-Victoria would use Lowe field as a practice field. Staff recommended making Riverside Stadium a game field only. If staff receives a decision from Council to move forward, they could start the process to hire an electrical engineer to design the sports lighting. Mayor Pro-Tem Neitsch requested the costs to maintain those fields before a resolution comes to Council. He also suggested looking at the cost of synthetic turf at Riverside Stadium for some time in the future. It was the consensus to move forward with the recommendation.
- **Budget calendar for the Fiscal Year 2008-2009 Budget** – City Manager, Charles E. Windwehen reported that it was included in packet.
- **Fire Marshal Services** – Fire Chief, Vance Riley reported that a proposal has come forth to not replace the County Fire Marshall, and expand the existing City/County contract involving the Victoria Fire Department (VFD). VFD would perform the services that were normally performed by a County Fire Marshall, such as investigation of fires, public safety education issue, and fire inspections. This could be a good partnership and win/win for both the City and County. VFD currently works with volunteer fire departments already, and could assist with their training.

### RESOLUTION 2008-98R - AWARDING ANNUAL SUPPLY CONTRACT FOR BAGGED TYPE I PORTLAND CEMENT TO ALAMO CEMENT COMPANY

The resolution awards an Annual Supply Contract for Bagged Type I Portland Cement to Alamo Cement Company of San Antonio, in the amount of \$6.55 per 93-pound bag, for a total of approximately \$52,400. Donald Reese.

Cm. Wyatt moved that the resolution be adopted, with Cm. Hagan 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 2008-99R – AWARDING ANNUAL SUPPLY CONTRACT FOR PROCESS BASE TO CW&A, INC.

The resolution awards an Annual Supply Contract for Process Base to CW&A, Inc., of Victoria, in the amount of \$11.50 per ton, for a total of approximately \$92,000. James Roach.

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

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

NAYS: None

**RESOLUTION 2008-100R – AWARDING ANNUAL SUPPLY CONTRACT FOR FOLD WATER METERS TO BADGER METER, INC.**


The resolution awards an Annual Supply Contract for Cold Water Meters to Badger Meter Inc., of Milwaukee, Wisconsin, in a total amount of approximately \$84,780. James Roach.


Cm. Wyatt moved that the resolution be adopted, with Cm. Hagan 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

There being no further business, the meeting was adjourned at 7:38 p.m.

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

ATTEST:   
SCARLET SWOBODA, City Secretary

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