

VICTORIA CITY COUNCIL
July 15, 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, July 15, 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
 Lewis Neitsch, Mayor Pro-Tem
 Philip Guittard
 David Hagan
 Jim Wyatt
 Tom Halepaska

STAFF PRESENT

Charles E. Windwehen, City Manager
 Charmelle Garrett, Deputy City Manager
 Miles Risley, City Attorney
 Gilbert P. Reyna, Jr., Director, Finance
 Lynn Short, Director, Public Works
 John Kaminski, Director, Planning
 Danette Respondek, Director, Human Resources
 Rick Henrichs, Director, IT
 Steve Trevino, Director, IMS
 Jerry James, Director, Environmental Services
 Ken Gill, City Engineer
 Jesse Turner, Captain, Police Department
 Michael Belt, Battalion Chief, Administrative Services
 Scarlet Swoboda, City Secretary

MEMBERS ABSENT

Paul Polasek

APPROVAL OF MINUTES

The minutes of the regular meeting of July 1, 2008 were approved as presented.

CITIZENS COMMUNICATION

Vicki Smith, 4007 Halsey, Executive Director of the Community Action Committee (CAC), advised that CAC has done an outstanding job assisting the City with Community Development Block Grant (CDBG) projects. She expressed concern that changing who administers the program would weaken the program and the clients would lose out. She indicated that CAC would like to continue administering the program.

Russell Pruitt, 402 Sherwood, expressed concern with last years tax rate increase and the Charter limits of 5%. During those discussions last year the City hired attorney's McCall, Parkhurst, and Horton. He and his group felt that was a conflict of interest and stated that at the time, and then ended up losing their argument. The City then hired another law firm, and once again that firm agreed that the City did not adopt a tax rate that violated the State law. Then Art Pertile was hired to advise Council concerning whether they could appropriate funds for indicted City officials. Mr. Pertile contended that the City Charter allows them to do that. Mr. Pruitt wanted to know where Mr. Pertile was when they were saying the same thing about the tax rate limitations and Charter requirements.

Mr. Pruitt noted that the Charter spells out that the City Attorney is the attorney for the City officials, and in a sense Council hired additional attorneys for City officials. He felt that was contradicting the City Charter, and he and his group have been concerned about the City Council being able to hire numerous attorneys. He felt there had to be some restraints, suggesting Council did not approve hiring these attorneys through an ordinance or resolution.

Mayor Armstrong advised that the City has hired outside consulting firms many times, and it was not unusual for Council to find it necessary to hire outside experts, whether it was for legal, water, engineering, or trash pickup, it was just the complex world we live in.

City Manager Windwehen advised that the firm of McCall, Parkhurst, & Horton were already on retainer as the City's bond and tax attorney's, so they were the most logical ones to ask for an opinion on the tax rate, because they are the experts in the field.

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Mr. Pruitt felt it was a conflict of interest to hire an already existing law firm to make an independent decision over their issue of the City exceeding the charter limits. He also added that his group had determined that it would not be feasible to petition for a recall election because of the timeline requirements of the charter and election code. He felt that if Council Members listened to their constituents, they would not be voting the way they were voting, and voters would be reminded at election time.

Jack A. Mullins, 224 Ridgewood Drive, comments addressed the open meetings statutes, Texas Government Code § 551.071, Consultation with Attorney; and Texas Government Code § 551.074, Personnel Matters. He stated that all discussion at a Council meeting had to be in open session unless there was an exception in Chapter 551 of the Texas Government Code. He stated that none of the exceptions applied to the subject under discussion at the June 17 meeting dealing with whether to pay for the defense of the indicted individuals. He felt it was a violation of the open meetings act and suggested that Council apologize to the citizens of Victoria. Mr. Mullins felt that the Council went beyond consultation, a decision was made in that Executive Session, and the public was entitled to hear the deliberations and the decision in open meeting.

ITEMS FROM COUNCIL

Mayor Armstrong introduced guests in attendance: Ernest Guajardo, with the Board of Directors, Victoria College; Dale Fowler, Executive Director, Victoria Economic Development Corporation; and Bill Scott, Director of Affairs, Exelon Corporation.

Mayor Armstrong requested that a report on the police incident on Callis street be placed on the agenda for the July 29th Special Meeting.

Cm. Wyatt stated that some cities were looking at four day weeks, with only significant work being done for the fifth day. He asked staff to look to see if that was something that could be considered. Some cities were reaping benefits of 20% or greater in fuel costs. He also noted that the City could not keep up with inflation with wages and salaries, however he thought his suggestion could be seen as a benefit to the employees.

PUBLIC HEARINGS AND ACTION

Mayor Armstrong announced that he would be abstaining from any discussion or action on the following ordinance. He turned the meeting over to Mayor Pro-Tem Neitsch and stepped away from the dais and sat in the audience. Mayor Pro-Tem Neitsch opened a public hearing on the following item:

ORDINANCE 2007-2008J – AMENDING THE 2007-2008 FISCAL YEAR BUDGET BY TRANSFERING FUNDS TO THE LEGAL DEPARTMENT PROFESSIONAL SERVICES LINE ITEM TO PROVIDE FUNDING FOR LEGAL REPRESENTATION IN THE DEFENSE OF THE PROSECUTION OF INDICTED OFFICAL, EMPLOYEES AND EX-EMPLOYEE

City Attorney, Miles Risley, read the caption of Ordinance 2007-2008J, which amends the 2007-2008 Fiscal Year Budget of the City of Victoria, by transferring \$200,000 from the General Fund fund balance to the Legal Department Professional Services line item to provide funding for legal representation in the defense of the prosecution of indicted official, employees and ex-employee. Second and Third Reading. Andrew K. Jacob.

The following amendment was proposed:

The City Council finds that the release of details of the investigation of Michael Lewis Ratcliff by any of the aforementioned indicted persons was for the municipal governmental purpose of warning the citizens of Victoria of the presence of a suspected sex offender employed by the office of the District Attorney who potentially had access to various law enforcement information systems containing sensitive data on the citizens of the City of Victoria. The City Council further finds that such release was for the municipal public purpose of providing police protection and

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control; therefore, said public release further constituted a governmental function as declared by Texas Civil Practice and Remedies Code § 101.0215

Mayor Pro-Tem Neitsch asked if there were any questions from Council or the audience.

Cm. Hagan expressed concern with the proposed amendment to the ordinance and the long-term affect it would have on the City and taxpayers. He felt that the purpose of the ordinance was an attempt to interfere or subvert the justice system. He stated for the record that the language to the ordinance did not correspond to the actual statements made by certain individuals during Council Executive Session deliberations on whether or not to pay the legal fees for the indicted City officials. He also wanted to make it clear that under Texas law, neither this, nor any other city council can makeup their own definition of governmental purpose. The definition of governmental purpose is to find by law, not by some retroactive pronouncement of this Council. While he had repeatedly said, that it was his sincere hope that the indicted officials would be acquitted and that this matter would be put behind them. He was fearful that even the formal consideration of this proposed ordinance that attempts to re-interpret history was improper, and at best could be construed as an unwarranted and unlawful interference in a criminal prosecution.

Cm. Hagan read a portion of an email from the City Attorney sent to the Mayor and Members of Council regarding the reason for the proposed amendment. Mr. Risley explained that the purpose of it was to expressly declare something that they might otherwise have to defend at greater expense to the City in an actual trial. The only purpose of this was to eliminate the need for trial, and in doing so, provide service to the City of Victoria, a service to the citizens of Victoria, by reducing the expenditures, and arguably provide a service to the District Attorney by allowing him to reallocate resources in a more efficient manner across the board to other deserving defendants.

Cm. Hagan wanted to know if Mr. Risley asked the defendants or their attorney's what the City of Victoria could do to assist them in the proceedings and whether he had run it by the District Attorney. Mr. Risley responded that it was his legal analysis and the only goal in drafting the recommended finding was to reduce the expenditures of the City of Victoria. Cm. Hagan also questioned why the attorney hired to advise Council on these matters had not been consulted, and suggested that no further action be taken on the amendment until Council heard directly from him, to hear his opinion and advice on this matter. He urged the Council to table the proposed amendment, or he would vote no on adoption.

Mr. Mullins stated that he spent years in the prosecution of cases for the Federal government and was shocked that a proposal like this was made, particularly by an attorney, and particularly without even talking to the other party, or the prosecutor. He suggested that a reasonable rate of interest be charged to any of the indicted upon conviction for use of City fund for defense. He stated "this whole thing smelled, the idea of a governmental body interfering in what is an exclusive providence of the District Attorney, was repulsive."

Mayor Pro-Tem Neitsch moved to amend the ordinance as proposed, with Cm. Guittard seconding the motion. The ordinance was amended by the following vote:

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

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

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

Caption:

AN ORDINANCE AMENDING THE 2007-2008 FISCAL YEAR BUDGET OF THE CITY OF VICTORIA BY TRANSFERRING \$200,000 FROM THE GENERAL FUND FUND BALANCE TO THE LEGAL DEPARTMENT

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PROFESSIONAL SERVICES LINE ITEM TO PROVIDE FUNDING FOR LEGAL REPRESENTATION IN THE DEFENSE OF THE PROSECUTION OF INDICTED OFFICIAL, EMPLOYEES AND EX-EMPLOYEE, PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, AND DECLARING AN EFFECTIVE DATE.

Mayor Armstrong returned to the Council dais and presided over the remainder of the meeting. He expressed appreciation for some of the support he had received from Council and for the other City officials involved. He felt it was important for City officials to get involved in a situation that resulted in hundreds of cases backlogging in the District Attorney's Office. He stated that it was very troubling for four City officials to be indicted, and they were premature in congratulating themselves on the mediation process directed by Judge Skipper Koetter. He regretted that Victoria tax dollars were being directed towards lawyer's fees, and would work hard to get the matter resolved as soon as possible.

Cm. Wyatt responded to the comment made by Mr. Mullins, stating that Council has the right to go into closed session to deliberate personnel matters, and had no qualms in discussing the items that they did.

ORDINANCE 2008-7 – AUTHORIZING THE ANNEXATION OF APPROXIMATELY 7.044 ACRES OF LAND, AT THE REQUEST OF R. L. DENISON, JR. AND ADOPTING A SERVICE PLAN

City Attorney, Miles Risley, read the caption of Ordinance 2008-7, which authorizes for the extension of certain boundary limits of the City of Victoria, Texas and the annexation of certain territory consisting of approximately 7.044 acres of land, at the request of R. L. Denison, Jr., adopting a service plan for the territory to be annexed. First 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 first reading, with Cm. Guittard seconding the motion. The ordinance passed on first reading by the following vote:

AYES: Council Members Guittard, Neitsch, 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 7.044 ACRES OF LAND, AT THE REQUEST OF R.L. DENISON, JR., 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 hearing.

CITY MANAGER REPORTS

- **Capital Improvements Projects Under Construction or in Design at end of the Second Quarter of 2008.** City Engineer, Ken Gill advised that the complete report was included in the packet.
- **Victoria Transit, State and Federal Highway Funding, MPO Projects and other transportation issues.** Assistant Planning Director, Ray Miller presented a power point presentation and brief summary of the report. The complete report was included in the packet. He advised that ridership on Victoria Transit has been increasing and new routes have been added. Their proposed budget request for fiscal year 2009 was \$230,684. He

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noted projects on the State Highway funding list: Salem Road Overpass; expansion of Zac Lentz Parkway to freeway section from U.S. 87 to Lower Mission Valley Road; and bridge extension project on U.S. 59 and Guadalupe River. The Texas Department of Transportation (TxDot) should have \$24 million at their disposal for Victoria to use over the next 20 years. TxDot would like to build an overpass at Salem Road, and one at Mockingbird, as one project because of traffic concerns with the new high school. Parks Commission and Planning Department have been working on a hike/bike trail master plan and incorporating bike lanes on City streets.

- **Possible Sale of City-owned Properties at 8505 N. Navarro (Navarro del Norte) and at Huvar Street and Dairy Road.** City Manager Windwehen recommended selling the properties for private development and the City could move their facilities to sites that were more ideal for their function. It was the consensus of Council to move forward with the recommendation.
- **Proposed One-Year Action Plan for Community Development Block Grant (CDBG) Program.** Director of Planning, John Kaminski reported on the possibility of administering the program in-house. CAC has been administering the program, but it was his conclusion that it could be done, however, the one-year action plan would have to be changed to reflect that change. The complete report was included in the packet. Cm. Wyatt requested that Council look at administering the program in-house for one year. It was the consensus of Council to move forward with the request.
- **Health Insurance.** The report was brought back to Council with nothing new to present. It was the consensus of Council to move forward with the original retiree recommendations.

RESOLUTION 2008-107R – AUTHORIZING PROFESSIONAL SERVICES AGREEMENT WITH CIVILCORP, LLC FOR SURVEYING SERVICES FOR THE SAM HOUSTON RECONSTRUCTIVE PROJECT

The resolution authorizes a Professional Services Agreement with CivilCorp, LLC., of Victoria, Texas, for surveying services for the Sam Houston Drive Reconstruction Project, in the amount of \$326,640. Lynn Short.

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

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

RESOLUTION 2008-108R – AUTHORIZING LONE TREE CREEK EXPANSION – PIPELINE RELOCATION LETTER AGREEMENT WITH CROSSTEX GULF COAST TRANSMISSION, LTD. FOR THE LONE TREE CHANNEL IMPROVEMENTS PROJECT, PHASE II

The resolution authorizes a Lone Tree Creek Expansion - Pipeline Relocation Letter Agreement with Crosstex Gulf Coast Transmission, Ltd., in an amount not to exceed \$277,000, for the relocation of a 14” gas pipeline in the Lone Tree Channel Improvements Project Phase II to a depth of at least 5 feet below the grade of the proposed channel. Lynn Short.

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

RESOLUTION 2008-109R – AUTHORIZING DEDUCTIVE CHANGE ORDER TO THE LONE TREE CHANNEL IMPROVEMENT PROJECT, PHASE II

The resolution authorizes a deductive Change Order #1 to the Lone Tree Channel Improvements Project – Phase II, to extend water lines, increase water line diameters, remove concrete slabs at Timberlane Drive, add excavation, eliminate three rest areas, two water fountains,

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two chin-up bars, two picnic tables, and two litter receptacles, and decrease the amount of the contract by \$38,495.25, bringing the new contract amount to \$7,425,809.01. Lynn Short.

Mayor Pro-Tem Neitsch 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, Hagan, Wyatt, Halepaska, and Mayor
Armstrong

NAYS: None

RESOLUTION 2008-110R – AWARDING CONSTRUCTION OF METAL BUILDING ON EXISTING SLAB AT 2902 BLUFF STREET TO B & B METAL BUILDINGS, INC.

The resolution awards a contract for the Construction of Metal Building on Existing Slab at 2902 Bluff Street to B&B Metal Buildings, Inc., of Victoria, Texas in the amount of \$91,297. Lynn Short.

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

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

NAYS: None

RESOLUTION 2008-111R – AUTHORIZING TRANSFER OF OWNERSHIP OF EIGHT SURVIVAIR SELF CONTAINED BREATHING APPARATUS (SCBA) TO THE VICTORIA COLLEGE FOR PUBLIC SAFETY TRAINING

The resolution authorizes the City Manager to transfer ownership of 8 Survivair Self Contained Breathing Apparatus (SCBA) to the Victoria College District for public safety training. Michael Belt.

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

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

NAYS: None

RESOLUTION 2008-112R – AUTHORIZING CONTRACT WITH HARRISON, WALDROP AND UHEREK, L.L.P. TO PERFORM THE CITY'S ANNUAL AUDIT FOR FISCAL YEAR 2007-2008

The resolution authorizes a contract with Harrison, Waldrop and Uherek, L.L.P., to perform the City's annual audit for the year ending September 30, 2008 in an amount of approximately \$43,250. Andrew K. Jacob.

Mayor Pro-Tem Neitsch moved that the resolution be adopted, with Cm. Guittard seconding the motion. The resolution was adopted by the following vote:

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

NAYS: None

RESOLUTION 2008-113R – RATIFYING THE CONTRACT WITH SIRIUS COMPUTER SOLUTIONS TO PROVIDE FOR A NEW AS-400 SERVER AND ASSOCIATED HARDWARE & SOFTWARE FOR THE LAW ENFORCEMENT INFORMATION SYSTEM

The resolution ratifies a contract with Sirius Computer Solutions of San Antonio, Texas, via the Texas Department of Information Resources (DIR/TXMAS), to provide a new AS-400 server

and associated hardware and software for the law enforcement information system, in an amount not to exceed \$44,900. Jesse Turner.

Mayor Pro-Tem Neitsch 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, Hagan, Wyatt, Halepaska, and Mayor Armstrong

NAYS: None

EXECUTIVE SESSION

Mayor Armstrong announced that Council would recess into Executive Session at 6:35 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, legal issues related to the payment of fees for the defense of the prosecution of indicted official, employees and ex-employee; legal issues related to the South Texas Aggregation Project, Inc. (STAP); and legal issues related to the acquisition of property adjacent to the Lone Tree Creek Drainage Facility). 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 purchase and value of property adjacent to the Lone Tree Creek Drainage Facility). 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 (including, but not limited to, the appointment of members to the Victoria Health Facilities Development Corporation, Building and Standards Commission & Planning Commission). Scarlet Swoboda.

The Council reconvened in regular session at 8:10 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
