

**MINUTES OF THE REGULAR MEETING
RIVER OAKS CITY COUNCIL
DECEMBER 8, 2009**

MEMBERS PRESENT:

MAYOR HERMAN EARWOOD
MAYOR PRO TEM JOE CREWS
COUNCIL MEMBER JOANN BUTLER
COUNCIL MEMBER STEVE HOLLAND
COUNCIL MEMBER R.R. "BOB" MINTER
COUNCIL MEMBER JOANN GORDON

STAFF PRESENT:

CITY SECRETARY MARVIN GREGORY
POLICE CHIEF DAN CHISHOLM
PUBLIC WORKS SUPERINTENDENT JAMES HATLEY
OFFICE MANAGER PAULA BAGWELL
SECRETARY SUSAN STEWART
ATTORNEY MATTHEW WALLIS (FOR BETSY ELAM)

STAFF ABSENT:

FIRE CHIEF BILL CREWS

1. CALL TO ORDER

With a quorum present, Mayor Earwood called the Regular Meeting of the River Oaks City Council to order at 7:00 p.m. on Tuesday, December 8, 2009 at the River Oaks City Hall, 4900 River Oaks Blvd., River Oaks, Texas 76114.

2. INVOCATION

Mayor Pro Tem Crews delivered the Invocation.

3. PLEDGE OF ALLEGIANCE TO UNITED STATES FLAG AND THE TEXAS FLAG

Council Member Holland led the pledges of allegiance to the United States and the Texas Flags.

4. **READING OF PROCLAMATION(S) BY MAYOR:**

None.

5. **CONSENT AGENDA:** ALL ITEMS UNDER THIS SECTION ARE RECOMMENDED FOR APPROVAL FOR THE "CONSENT AGENDA". THESE ITEMS ARE OF A ROUTINE NATURE AND REQUIRE ONLY BRIEF DELIBERATION BY COUNCIL:

- A. MINUTES OF CITY COUNCIL MEETING NOVEMBER 24, 2009
- B. BILLS PAYABLE FOR PERIOD ENDING DECEMBER 8, 2009
- C. APPROVAL OF ANNUAL AGREEMENT WITH ALLIED COMPLIANCE SERVICES FOR DRUG AND ALCOHOL TESTING

Council Member Gordon requested to remove consent agenda item C.

Council Member Gordon moved, seconded by Council Member Minter, to approve consent agenda items A and B. All voted "Aye."

6. ITEMS TO BE WITHDRAWN FROM CONSENT AGENDA FOR SEPARATE DELIBERATION: COUNCIL RESERVES THE RIGHT TO REMOVE ANY ITEM ON THE CONSENT AGENDA FOR FURTHER DELIBERATION.

Council Member Gordon noted that the word "December" appears randomly throughout the agreement with Allied Compliance Services.

Council Member Gordon moved, seconded by Council Member Butler, to approve entering into an agreement with Allied Compliance Services for drug and alcohol testing once the contract has been reviewed and corrected by Staff as noted. All voted "Aye."

PERSONAL APPEARANCES AND ITEMS REQUIRING COUNCIL APPROVAL/ACTION:

7. CONSIDER APPROVAL OF RATE INCREASE FOR COMMERCIAL GARBAGE SERVICE WITH IESI EFFECTIVE JANUARY 1, 2010

A representative for IESI was present to request a rate adjustment for commercial garbage disposal of 4.09%. CS Gregory reported that the increase would not affect the rate charged to commercial customers by the City.

Mayor Pro Tem Crews moved, seconded by Council Member Gordon, to approve a 4.09% rate increase for commercial garbage service effective January 1, 2010 as presented. All voted "Aye."

8. CITIZEN APPEARANCE OF ANDY WHEELER IN REFERENCE TO THE WOOLRIDGE PARK PROJECT

Anthony Wheeler, 4905 Lawther, was present to express concerns regarding the development of Woolridge Park. The residential property owned by Mr. Wheeler adjoins the park property on two sides. Mr. Wheeler stated that he had expressed opposition and he did not receive satisfactory answers to some of his questions at a recent Park Board Meeting. Mr. Wheeler voiced numerous concerns such as lighting, security, noise, and a sewer vent from the proposed restroom that would be eye-level with his backyard.

Mayor Earwood assured Mr. Wheeler that the City would consider the concerns of the citizens and neighbors when developing the park area. Mayor Earwood stated that some of the goals of developing the park area are to increase property value and quality of life for the citizens of River Oaks.

Mayor Pro Tem Crews informed Mr. Wheeler that the City Council has only approved the concept of the Woolridge Park Project. The funding for the proposed project is subject to EDC Contributions, grants, and private contributions.

Council Members discussed park hours that are set from dawn to dusk with the

exception of ball field rentals. Mayor Pro Tem Crews added that only security lighting is planned for Woolridge Park since the park would be closed after dark.

No action was taken.

9. CONSIDER APPROVAL TO CONTRACT WITH GILCO FOR PAINTING OF THE BACK STORAGE TANK AT 2257 ROBERTS CUT OFF RD.

CS Gregory presented the proposal of Gilco to paint the back storage tank at a discounted rate of \$49,800. The original budgeted amount to paint only the front storage tank was \$120,000 and the bid was recently awarded to Gilco to paint the front storage tank at a cost of \$64,950. CS Gregory stated that the cost of painting both tanks remains under the budgeted amount. CS Gregory reported that CA Elam stated that the project would not have to be competitively bid if a separate contract was submitted and the project remained under \$50,000.

Mayor Pro Tem Crews moved, seconded by Council Member Minter, to approve entering into a contract with Gilco to paint the second storage tank at 2257 Roberts Cut Off in the amount of \$49,800 as presented. All voted "Aye."

Citizen inquiries led Staff to report that the storage tanks would be painted beige to match the water tower.

10. CONSIDER APPROVAL OF CONTRACT WITH TXU ENERGY IN ORDER TO CONSOLIDATE INDIVIDUALLY BILLED CITY ACCOUNTS INTO A SUMMARY BILLING ACCOUNT.

CS Gregory requested the Council consider consolidating several individual accounts with TXU at a rate of \$0.07300 per KWH into one 29-month contract. CS Gregory made one correction to information previously supplied to the Council, stating that the water treatment plant is not one of these individual accounts.

Council Member Holland moved, seconded by Mayor Pro Tem Crews, to approve entering into a contract with TXU Energy to consolidate individually billed account as presented. All voted "Aye."

PUBLIC HEARINGS / ACTION FROM PUBLIC HEARINGS:

11. **PUBLIC HEARING:** IN ORDER TO RECEIVE TESTIMONY AND COMMENTS FROM THE PUBLIC REGARDING THE PROPOSED SITE PLAN APPLICATION OF **TWICE THE ICE/NICE ICE** FOR AN ICE STORAGE BUILDING ON THE PROPERTY AT **5121 BLACK OAK LANE** LOCATED IN A C-2 COMMERCIAL ZONING DISTRICT (ZONING CASE 09-02)

At 7:48 p.m. Mayor Earwood opened the public hearing.

Derrick Buenish, franchise owner of Twice the Ice, was present to request the Council consider approving the site plan application in order to install a 204 square foot ice storage building on the property at 5121 Black Oak Lane. Mr. Buenish currently owns two ice storage locations, one on Highway 80 and one in Fort Worth. Mr. Buenish indicated that commercial contractors frequently use these types of facilities.

Mayor Pro Tem Crews noted that he had visited the two locations Mr. Buenish owns and both are unsightly.

Council Member Butler cited a traffic safety concern for vehicles leaving the proposed location due to the inability to see traffic coming off of River Oaks Blvd.

CS Gregory included that a screening fence would be required between this commercial property and the adjoining residential property.

Citizen Christy Alvarado, 5105 Black Oak Lane, expressed concerns about having additional traffic on Black Oak. Mrs. Alvarado commented that allowing a 24-hour business used by commercial contractors could compromise the safety of the neighborhood.

Attorney Wallis noted that two written oppositions had been received from property owners within 200-feet of the proposed project.

Citizen Sheryl King, 813 Merritt, spoke in opposition to the proposal, citing safety concerns of having a 24-hour business in a residential area, additional traffic on a residential street, and a concern that existing local businesses may suffer a loss in revenues if the proposed business is allowed.

Mayor Earwood allowed Mr. Buenish to describe the benefits of this business to the community. Mr. Buenish predicted sales of approximately \$80,000 per year that could produce sales tax revenue for the City of \$1,600.

At 8.19 p.m. Mayor Earwood closed the public hearing.

12. **ACTION FROM PUBLIC HEARING:** CONSIDER APPROVAL OF THE PROPOSED SITE PLAN APPLICATION OF **TWICE THE ICE/NICE ICE** FOR AN ICE STORAGE BUILDING ON THE PROPERTY AT **5121 BLACK OAK LANE** LOCATED IN A C-2 COMMERCIAL ZONING DISTRICT (ZONING CASE 09-02)

Mayor Earwood stated that the Planning and Zoning Commission recommended to the City Council to approve the site plan application with stipulations on parking, ingress and egress requirements, and removal of the building upon the closure of the business.

Mayor Earwood stated that two written oppositions had been received from neighbors within 200 feet of the proposed project.

Council Member Holland requested to seek advice from the city attorney in executive session.

[At 8:19 p.m. Mayor Earwood convened into executive session pursuant to Section 551.071.]

[At 8:31 p.m. Mayor Earwood reconvened into regular session.]

Citizen James Myrick, 5825 Meandering Rd., expressed concern that the parking area may not be adequate enough to accommodate multiple vehicles, specifically commercial vehicles. Mr. Myrick stated that parking on Black Oak could cause an additional safety concern and should be prohibited. CS Gregory stated that the lease provided by Mr. Buenish includes a provision allowing for overflow parking on an adjacent property.

Citizen Sheryl King added that commercial contractors frequent use this type of business during the early morning hours especially during the summer months.

PC Chisholm cited traffic concerns related to school pick-up and drop-off hours since access to River Oaks Blvd from Black Oak is already limited. PC Chisholm offered the concept of no parking on Black Oak on one side of the street. PC Chisholm commented that this type of 24-hour, coin-operated business is subject to vandalism and theft if not properly secured with sufficient lighting and security cameras.

CS Gregory read the site plan review requirements from the Zoning Ordinance: In granting or denying an application for a site plan approval, the zoning administrator, the planning and zoning commission and the city council, as appropriate, shall take into consideration the following factors:

- a. Safety of the motoring public and of pedestrians using the facility and the area immediately surrounding the site;
- b. Safety from fire hazards, and measures of fire control;
- c. Protection of adjacent property from flood water damage;
- d. Noise producing elements, and glare of vehicular and stationary lights and the effect of such lights on the established character of the neighborhood;
- e. Location, lighting and-type of signs; relation of signs to traffic control and the adverse effect on adjacent properties;
- f. Street size and adequacy of pavement width for traffic reasonably expected to be generated by the proposed use around the site and in the immediate neighborhood;
- g. Adequacy of parking, as determined by requirements of this Ordinance for off-street parking facilities; location of ingress/egress points for parking and off-street loading spaces; and protection of public health by all weather surfacing on all parking areas to control dust; and
- h. Such other measures as will secure and protect public health, safety, morals and general welfare.

Mayor Pro Tem Crews made the following motion, "I move to deny the site plan application based on conditions in the Zoning Ordinance for site plan review, specifically items a) Safety of the motoring public and of pedestrians using the facility and the area immediately surrounding the site; d) Noise

producing elements, and glare of vehicular and stationary lights and the effect of such lights on the established character of the neighborhood; e) Location, lighting and-type of signs; relation of signs to traffic control and the adverse effect on adjacent properties; and g) Adequacy of parking, as determined by requirements of this Ordinance for off-street parking facilities; location of ingress/egress points for parking and off-street loading spaces; and protection of public health by all weather surfacing on all parking areas to control dust.” Motion seconded by Council Member Butler. All voted “Aye.”

STAFF REPORTS:

13. STAFF REPORT ON SUBSTANDARD PROPERTIES AT:

- 4833 OHIO GARDEN RD. – CS Gregory reported that a building permit to renovate the back building has been obtained. This building remains in substandard condition and civil penalties continue to accrue until compliance is met. No permits have been issued for the main structure, which is not under substandard order.
- 1129 ST. EDWARDS – Attorney Wallis reported that the foreclosing bank has opted to write off the remaining mortgage as bad debt.
- 1728 HILLSIDE – CS Gregory reported that this property remains in substandard condition and will be presented to the City Council on January 12, 2010 for consideration.
- 5060 RIVER OAKS BLVD. – CS Gregory reported that the underground storage tanks and all structures have been removed as requested by the City Council. One sign remains and the owner has not paid the required substandard fee.

14. SUBSTANDARD PROPERTIES UNDER VOLUNTARY COMPLIANCE AT:

- 1412 LAWRENCE – CS Gregory reported that this property remains in substandard condition and will be presented to the City Council on January 12, 2010 for consideration if permits are not obtained to bring the property into compliance.

15. REPORT ON PROPERTIES UNDER SUBSTANDARD CONSIDERATION AT:

- 724 THERSA – CS Gregory reported that this property remains in substandard condition and will be presented to the City Council on January 12, 2010 for consideration if permits are not obtained to bring the property into compliance.
- 4804 ARC – CS Gregory reported that Inspector Sanders is working with the family of the owner to bring the substandard accessory structure into

compliance. The house has been satisfactorily repaired and is no longer substandard.

16. **SUBSTANDARD PROPERTIES RELEASED:**

- 5406 DARTMOUTH – CS Gregory reported that the substandard accessory building has been removed and the property has been released from substandard.

17. CITY ATTORNEY REPORT ON CITATIONS # 108101, 108102 AND 108103 AT 700 GUSTAV (CITY OF RIVER OAKS VS. RAY SANCHEZ)

Mayor Earwood stated that Code Enforcement Officer Olmo had issued numerous citations to a commercial business following repeated verbal warnings for multiple violations. The City Court Administrator proceeded with a jury trial at the request of the defendant. The prosecuting attorney bargained with the defendant and did not take the case to trial.

Attorney Wallis relayed that the prosecuting attorney made the plea bargain following discussions with witnesses and after considering that the defendant had not received any additional citations for violations. The citations were pleaded down to one case for which the defendant was placed on probation for 90-days. During the probationary period, if violations occur, the defendant would not have the option of another jury trial and if convicted by the judge could assess the maximum penalty for the initial violation and any additional violations that may have occurred.

Council Member Holland requested that a process be developed that would include consultation with City Staff specifically in cases that a jury trial is requested.

QUESTIONS RELATED TO STAFF REPORTS INCLUDING:

18. **POLICE DEPARTMENT MONTHLY ACTIVITY REPORT** INCLUDING PATROL ACTIVITY, RESPONSE CALLS, NUMBER OF CRIMINAL INVESTIGATION CASES, WARRANTS ISSUED AND ANIMAL CONTROL CALLS FOR SERVICE INCLUDING CITATIONS ISSUED

No discussion or action.

19. **FIRE DEPARTMENT MONTHLY ACTIVITY REPORT** INCLUDING NUMBER OF CALLS FOR SERVICE

No discussion or action.

20. **INSPECTIONS AND CODE COMPLIANCE MONTHLY ACTIVITY REPORTS** INCLUDING NUMBER OF PERMITS ISSUED AND CODE VIOLATIONS WORKED

No discussion or action.

21. **LIBRARY MONTHLY ACTIVITY REPORT** INCLUDING NUMBER OF BOOKS, VIDEOS, PAPERBACKS, AND INCLUDING NUMBER OF PATRON ASSISTANCE

No discussion or action.

22. **MUNICIPAL COURT** INCLUDING COURT ACTIVITY FROM FINES, BONDS, WARRANT FEES, COURT TAXES, COURT FEES, ARREST FEES, COURT SECURITY FEES, COURT TECHNOLOGY FEES, PAYMENT PLANS, STATE COURT COSTS AND AGENCY COLLECTION FEES

No discussion or action.

23. **PUBLIC WORKS MONTHLY ACTIVITY REPORT** INCLUDING ROAD REPAIRS COMPLETED, SIGNS INSTALLED, WATER PRODUCTION, WATER MAIN AND SERVICE LEAKS REPAIRED, NUMBER OF FIRE HYDRANTS AND DEAD END LINES FLUSHED, NUMBER OF SEWER OVERFLOWS AND STOPPAGES, CUBIC TONS OF SOLID WASTE COMPACTED AND PUBLIC WORKS EQUIPMENT REPAIRS

Public Works Superintendent Hatley reported that the sewer line replacement on Montrose and Melba is scheduled to begin the first week of January 2010.

No action was taken.

24. **PARK BOARD MONTHLY ACTIVITY REPORTS** INCLUDING BALLFIELD RENTALS AND QUESTIONS PERTAINING TO MINUTES FROM THE PARK BOARD

Park Board Chairman Makarwich stated that the fence project at McGee Park has been postponed due to inclement weather.

No action was taken.

25. **COMMUNITY CENTER ACTIVITY REPORTS** INCLUDING NUMBER OF COMMUNITY CENTER RENTALS, EVENTS AND ACTIVITIES

No discussion or action.

26. **CITY SECRETARY MONTHLY ACTIVITY REPORT** INCLUDING REVENUE FROM SALES TAX, DOLLAR DONATIONS, EDC SALES TAX, TEX POOL AND CRIME SALES TAX

No discussion or action.

27. **EDC MONTHLY ACTIVITY REPORT** INCLUDING FUNDED PROJECT UPDATES, UPCOMING PROJECTS AND BIG IMPROVEMENT GRANT APPLICATIONS

No discussion or action.

28. **STORM WATER TASK FORCE MONTHLY ACTIVITY REPORT INCLUDING ACTIONS TAKEN UNDER THE MS4 PERMIT, COMMUNITY EDUCATION AND PROMOTIONAL EVENTS REGARDING STORM WATER PREVENTION POLLUTION**

No discussion or action.

PUBLIC FORUM:

29. CITY COUNCIL INVITES CITIZENS TO SPEAK ON ANY TOPIC; HOWEVER, UNLESS THE ITEM IS SPECIFICALLY NOTED ON THIS AGENDA, THE CITY COUNCIL IS REQUIRED UNDER THE TEXAS OPEN MEETINGS ACT TO LIMIT ITS RESPONSE WITH A STATEMENT OF SPECIFIC FACTUAL INFORMATION, RECITING THE CITY'S EXISTING POLICY ON THAT ISSUE, OR DIRECTING THE PERSON MAKING THE INQUIRY TO VISIT WITH CITY STAFF ABOUT THE ISSUE. **NO COUNCIL DELIBERATION IS PERMITTED**

Council Member Gordon expressed appreciation for the website report supplied as with the monthly reports.

Council Member Holland inquired about website "hits" during the time the website was under construction. Staff replied that website administrators were frequently viewing and analyzing website content during that time period.

Mayor Earwood stated that the Annual Christmas Parade was a success.

Mayor Earwood stated that the Annual Employee Christmas Banquet would be held on Friday December 11, 2009 at the Community Center.

Mayor Earwood stated that the Annual Chamber of Commerce Banquet would be held on Thursday December 10, 2009 at the Lions Club.

Mayor Earwood relayed funeral arrangements for Dusty's (Dusty's Diner) mother that would be held in Decatur with visitation on December 9, 2009 from 6:00 p.m to 8:00 p.m. and the funeral on December 10, 2009 at 1:00 p.m.

CS Gregory presented stone and brick options for budgeted median improvements on River Oaks Blvd. Council Member Holland requested samples of the different options as well as a list of examples for Council Members to drive by and view.

EXECUTIVE SESSION:

30. CONVENE IN EXECUTIVE SESSION PURSUANT TO CHAPTER 551, TEXAS GOVERNMENT CODE: THE COUNCIL RESERVES THE RIGHT TO CONVENE IN EXECUTIVE SESSIONS(S) FROM TIME TO TIME ON ANY POSTED AGENDA ITEM TO RECEIVE ADVICE FROM ITS ATTORNEY AS PERMITTED BY LAW DURING THIS MEETING. THE COUNCIL MAY CONVENE IN EXECUTIVE SESSION TO DISCUSS THE FOLLOWING:

- a. Section 551.071 Pending or contemplated litigation or to seek advice from attorney:
- b. Section 551.072 Discussion regarding possible sale, lease or acquisition of real estate:
- c. Section 551.074 Personnel matters – To deliberate the appointment, employment, evaluation, reassignment of duties, discipline or dismissal of a Public Officer or Employee or to hear a complaint or charge against an Officer or Employee
- d. Section 551.076 Deliberation regarding security devices

[Executive Session was convened during agenda item 12.]

RECONVENE:

[Regular Session was reconvened during agenda item 12.]

31. CONSIDER APPROVAL OF ANY ACTION FROM EXECUTIVE SESSION

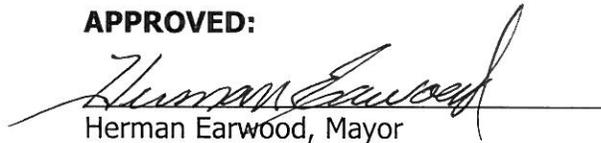
Refer to agenda item 12 for action from executive session.

ADJOURN:

32. ADJOURN

At 9:15 p.m. Mayor Pro Tem Crews moved, seconded by Council Member Gordon, to adjourn the meeting. All voted "Aye."

APPROVED:


Herman Earwood, Mayor

ATTEST:


Marvin Gregory, City Secretary