

**MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF THE
CITY OF BAYTOWN**

October 08, 2009

The City Council of the City of Baytown, Texas, met in a Regular Meeting on Thursday, October 08, 2009, at 6:35 P.M. in the Council Chamber of the Baytown City Hall, 2401 Market Street, Baytown, Texas with the following in attendance:

Lena Yopez	Council Member
Lynn Caskey	Council Member
Brandon Capetillo	Council Member
David McCartney	Council Member
Scott Sheley	Council Member
Stephen H. DonCarlos	Mayor
Garrison C. Brumback	City Manager
Bob Leiper	Deputy City Manager
Kevin Troller	Assistant City Manager
Ignacio Ramirez	City Attorney
Leticia Garza	Interim City Clerk
Keith Dougherty	Sergeant at Arms

Council Member Terry Sain was absent from the October 08, 2009, City Council Regular Meeting.

Mayor DonCarlos convened the October 08, 2009, Regular Meeting with a quorum present at 6:35 P.M.

Pledge of Allegiance, Texas Pledge and Invocation was led by Council Member Sheley.

Mayor DonCarlos remembered Sergeant Drude.

1. MINUTES

a. Approve Minutes of the City Council Work Session and Regular Meeting held on September 24, 2009.

Motion was made by Council Member McCartney, seconded by Council Member Caskey approving the minutes from the September 24, 2009, City Council Work Session and Regular Meeting. The vote was as follows:

Ayes: Council Members: Yepez, Caskey, Capetillo, McCartney, Sheley and Mayor DonCarlos

Nays: None

The motion carried.

2. RECOGNITIONS AND CITIZENS COMMUNICATIONS

a. Proclamation: National Community Planning Month - Planning and Development Services.

City Manager, Garry Brumback presented the agenda item and read the proclamation presented to Ms. Kelly Carpenter, Planning and Development Director, which stated that the City of Baytown proudly supports the American Planning Association (APA) in its endorsement of October as National Community Planning Month. This designation allows the community to highlight the contributions that sound planning and plan implementation make to the quality of life for the citizens of Baytown. Planning is a critical function of local government that allows the community to be actively involved with elected officials and professional staff members in guiding development to provide better choices for how people work and live. Whether it is preparing for the next storm event or developing a series of land use designations that incentivize new economic development while protecting existing business interests, the public officials and professional planners in Baytown are intimately involved in fostering cohesion and sustainability in the community. Celebrating National Community Planning Month also gives us the opportunity to publicly recognize the participation and dedication of the members of the Planning and Zoning Commission, the Board of Adjustment, the Unified Land Development Code Committee, the staff of the Planning and Development Services Department, as well as every other professional and citizen planner that has contributed their time to improving the City of Baytown.

Ms. Carpenter indicated that there is presentation in the back up that will be put on the website to be used as a learning tool to learn more about planning and zoning in the City of Baytown. Ms. Carpenter extended an invitation to everyone for open house at the Planning and Zoning Commission prior to the meeting on October 21st at 5:30 P.M to celebrate community planning month.

Mayor DonCarlos expressed thanks to Ms. Carpenter and the Planning Department for the work that they do with notes from the ULDC as being extremely impressed with the professionalism, preparedness, and information provided for the meetings.

3. REPORTS

a. Unified Land Development Code (ULDC) Task Force Update - ULDC Task Force Member.

There was no Unified Land Development Code (ULDC) Task Force report.

4. PROPOSED ORDINANCES

a. Baytown City Hall Addition/Renovation Project - Administration.

City Manager, Garry Brumback presented the agenda item and stated that Ordinance No. 11,213 awards a construction contract to R. Hassell Builders, Inc. for the City Hall Expansion Project. The bid amount for the contract was \$1,474,130.00 including the base bid and alternates 1, 4, 5, & 6. The scope of work includes the expansion of City Hall by constructing an 11,618 square foot addition to the north side of the existing City Hall building and remodeling the current administration area. The overall cost based on the addition is about \$127 per square foot. This Project has a duration of 300 calendar days.

Mr. Brumback indicated that 15 bids were received and with all alternatives included was 35% less than our original engineers estimate.

Gil Chambers requested to speak before Council regarding item 4.a. Mr. Chambers presented maps and posed a question of the floor elevation of the proposed plan and whether the floor elevation needs to be raised to meet current building standards. This site is in a high risk of flooding.

Mr. Leiper indicated that the building code states that the building elevation is 18 inches above the 100 flood plain and there are no exceptions or changes in standards. Mr. Chambers stated that the base floor is 21 feet.

Mr. Sheley had (2) inquires:

- (1) He requested an explanation for all alternates being included except 2 & 3; and
- (2) How does the new building relate to the being green initiative?

Mr. Leiper explained that there was no need for alternates 2 and 3 because the 2nd alternate was a deduct alternate that was put in just in case a change in brick was needed and the 3rd alternate was to get roll down shutters but a decision to go with storm rated window fixtures were chosen instead. In addressing the green initiative question, Mr. Leiper stated that the new building continues the energy efficient codes and standards for new construction.

Motion was made by Council Member Caskey, seconded by Council Member Capetillo approving Ordinance No. 11,213. The vote was as follows:

Ayes: Council Members: Yopez, Caskey, Capetillo, McCartney,
Sheley and Mayor DonCarlos

Nays: None

The motion carried.

ORDINANCE NO. 11,213

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS, AUTHORIZING AND DIRECTING THE CITY MANAGER AND INTERIM CITY CLERK TO EXECUTE AND ATTEST TO A CONTRACT WITH R. HASSELL BUILDERS, INC., FOR THE CITY HALL EXPANSION PROJECT; AUTHORIZING PAYMENT OF A SUM OF ONE MILLION FOUR HUNDRED SEVENTY-FOUR THOUSAND ONE HUNDRED THIRTY AND NO/100 DOLLARS (\$1,474,130.00); MAKING OTHER PROVISIONS RELATED THERETO; AND PROVIDING FOR THE EFFECTIVE DATE THEREOF.

b. Heavy-Duty Tow Truck Agreement Amendments - Administration.

Council Member Caskey abstained from discussion and vote.

City Manager, Garry Brumback presented the agenda item and stated that this Ordinance would approve amendments to the City of Baytown Heavy-Duty Tow Truck Agreement.

The changes would make the Heavy Duty Tow Truck Agreement closer to uniformity throughout Harris County and encourages companies to apply for the heavy duty tow list. To this end, the heavy duty contract requires three (3) basic tenets: (1) an annual inspection of the truck, (2) a vehicle storage facility that meets state regulations and requirements; and is located in the City limits, and (3) compliance with all state laws and regulations. Lastly, this contract also has a provision for a default fee to be used in the event that the vehicle driver/operator is incapable of negotiating a fee.

This contract was reviewed and approved by the Tow Truck Committee on September 29, 2009.

Motion for approval was made by Council Member McCartney, Council Member Capetillo seconded the motion and recommended two amendments to the motion: (1) in regards to the Heavy Duty Tow Truck agreement section 6.03(c) referencing insurance coverage; the City should go with same standards as the state which is \$50,000 instead of

\$100,000. and (2) to clarify the language in 2.03(e) referencing if an operative vehicle is pulled over and brought in possibly for DUI, and later found that they were not guilty; the City should pay the Tow Truck operator.

The Council discussed this item briefly and requested that staff return the contract to the Tow Truck Committee for clarification and approval of the two recommended amendments.

The motion and second was withdrawn and this item will be tabled pending the Tow Truck Committee decision to cleanup those two provisions and bring back.

Ayes: Council Members: Yopez, Capetillo, McCartney,
Sheley and Mayor DonCarlos

Nays: None

Abstained: Council Member Caskey

The motion carried.

ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS, APPROVING A STANDARD FORM HEAVY DUTY TOW TRUCK AGREEMENT CORRESPONDING TO ARTICLE III "TOW TRUCKS" OF CHAPTER 102 "VEHICLES FOR HIRE" OF THE CODE OF ORDINANCES OF THE CITY OF BAYTOWN, TEXAS; CONTAINING A REPEALING CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE THEREOF.

c. Professional Services for the N.C. Foote Family Aquatic Center - Parks and Recreation.

City Manager, Garry Brumback presented the agenda item and stated that Ordinance No. 11,214 authorizes the Third Amendment to the Standard Form of Agreement with Kimley-Horn and Associates, Inc., dated January 26, 2007, amended on October 23, 2007, and on January 10, 2008, to prepare construction documents, to advertise for bid and to provide services related to the construction of the new aquatic facility at N.C. Foote Park.

The Parks and Recreation Department plans to replace the pool located at N.C. Foote Park with the new N.C. Foote Family Aquatic Center. The preliminary cost estimate for the project including engineering fees is \$3.56 million and is expected to open for the summer swim season of 2011. The construction at N C Foote Park follows the Aquatics Facilities Master Plan adopted by Council on July 26, 2007.

The Third Amendment, not to exceed \$369,875.00, includes the following tasks:

Professional Fees Summary

Basic Services:

- Task I Coordination and Design Management \$25,675
- Task II Programming & Conceptual Plans \$0 (Completed as Amendment #2)
- Task III Schematic Design \$27,675
- Task IV Design Development \$38,575
- Task V Construction Documents \$50,175
- Task VI Bidding \$14,850
- Task VII Basic Construction Phase Services \$19,200
- Task VIII Monthly Construction Meetings \$20,750
- Total Task I-VIII \$196,900

Expenses:

- Counselman-Hunsaker \$60,000
- Davis & Davis \$42,000
- The Core Group \$12,000
- Engineering Associates \$16,000
- Total \$130,000
- Multiplier x1.1
- Total \$143,000

Reimbursable \$29,975

Total Basic Services and Expenses \$369,875

Reimbursable expenses associated with this Third Amendment shall not exceed \$29,975.00. Upon completion of the services detailed in the Third Amendment, the City will have constructed the aquatic facilities at N.C. Foote Park and will have standard operating procedures for and training on the new facilities. The original agreement with Kimley-Horn was for the development of the Aquatic Facilities Master Plan at a cost not to exceed \$65,000. The First Amendment was for programming and conceptual plans together with the associated coordination and design management at a cost not to exceed \$32,000. The Second Amendment was to prepare construction documents, to advertise for bid, and to provide services related to the construction of the new aquatic facility at the Wayne Gray Sports Complex (Pirates Bay Water Park) at a cost not to exceed \$613,000.

Based on this design plan the schedule for the Family Aquatics Center Construction at N.C. Foote Park is as follows:

May 2009	N.C. Foote Park Pool opens for its final season.
August - October 2009	N.C. Foote Park pool closes and is demolished by City crews. Site will be cleaned and graded
October 2009	Contract Signed /Authorization to Proceed
March 2010	Construction Documents Complete
April 2010	Advertise for Bids
June 2010	Receive Bids /Award Contract / Begin Construction
April 2010	Construction Complete
May 2011	Grand Opening of the N.C. Foote Family Aquatics Center

Motion was made by Council Member Yopez, seconded by Council Member Caskey approving Ordinance No. 11,214. The vote was as follows:

Ayes: Council Members: Yopez, Caskey, Capetillo, McCartney, Sheley and Mayor DonCarlos

Nays: None

The motion carried.

ORDINANCE NO. 11,214

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS, AUTHORIZING THE THIRD AMENDMENT TO THE STANDARD FORM OF AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC., DATED JANUARY 26, 2007, AND AMENDED ON OCTOBER 23, 2007, AND JANUARY 10, 2008, TO PREPARE COMPLETION CONSTRUCTION DOCUMENTS, TO ADVERTISE FOR BID AND TO PROVIDE SERVICES RELATED TO THE CONSTRUCTION OF THE NEW AQUATIC FACILITY AT N.C. FOOTE PARK; AUTHORIZING PAYMENT BY THE CITY OF BAYTOWN OF AN AMOUNT NOT TO EXCEED THREE HUNDRED SIXTY-NINE THOUSAND EIGHT HUNDRED SEVENTY-FIVE AND NO/100 DOLLARS (\$369,875.00); AND PROVIDING FOR THE EFFECTIVE DATE THEREOF.

5. PROPOSED RESOLUTIONS

a. Consider Petition for Disannexation of a Portion of ExxonMobil Property - Administration.

City Manager, Garry Brumback presented the agenda item and stated that Resolution No. 2014 grants a petition from ExxonMobil for disannexation of a portion of their property that is in the city limits and also in Industrial District No. 1.

Prior to the legislative changes that created appraisal districts (like H-CAD) the City received no bond-rating benefit for property in our industrial districts. To assist the City in getting bond-rating benefit for the property values in the industrial districts, the City and some facilities agreed to allow the City to annex portions of the plants and then provide a credit for ad valorem taxes paid off the IDA payments. This provision was included in previous IDAs.

Since the net payment is not impacted and the annexed value is no longer needed for bond rating, it is simpler to disannex the affected property and remove the in-city tax payment credit section from the new IDA form of agreement. This petition begins the process of removing sections of the ExxonMobil complex that are within the fence line and also within the city limits. This disannexation needs to be completed prior to December 31, 2009, so the property will not be included in ExxonMobil's 2010 ad valorem tax bills. There is no reduction in the net IDA payment calculation since credit was previously given for the in-city taxes paid.

There is approximately \$132 million in ExxonMobil property values in both Industrial District No. 1 and the City limits. The initial base value in ExxonMobil's IDA will exclude this property since they will be paying full ad valorem taxes for 2009. Upon disannexation the value will be added to the base value for the remaining six years of the contract.

The disannexation process follows a similar path as annexations. Two public hearings will be held and two readings of the ordinance are required. At the time of posting, the City had yet to receive the petition for disannexation. Upon receipt, the petition will be forwarded to the Council.

Motion was made by Council Member Capetillo, seconded by Council Member Caskey approving Resolution No. 2014. The vote was as follows:

Ayes: Council Members: Yopez, Caskey, Capetillo, McCartney,
Sheley and Mayor DonCarlos

Nays: None

The motion carried.

RESOLUTION NO. 2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS, GRANTING THE PETITION OF EXXON MOBIL CORPORATION CONCERNING THE DISANNEXATION OF PROPERTY SITUATED IN INDUSTRIAL DISTRICT NO. 1, HARRIS COUNTY, TEXAS; AND PROVIDING FOR THE EFFECTIVE DATE THEREOF.

Mayor DonCarlos inquired about a specific base evaluation put in the IDA that was previously approved for the life of the IDA. Mr. Leiper explained that unless a change is made, there is language that states if disannexation the base is adjusted.

b. Baytown Representative to H-GAC 2010 General Assembly and Board of Directors - Administration.

City Manager, Garry Brumback presented the agenda item and stated that Resolution No. 2015 designates a Baytown representative and alternate to the Houston-Galveston Area Council (H-GAC) 2010 General Assembly and Board of Directors.

H-GAC's bylaws authorize each member City with a population of at least 25,000 but not in excess of 99,999 to elect one member of its governing body as its representative and another as an alternate to its General Assembly and Board of Directors. The newly appointed member will begin serving in this capacity on January 1, 2010.

Currently, Council Member Brandon Capetillo serves as the Baytown Representative to H-GAC and Mayor DonCarlos is his alternate.

Motion was made by Council Member Caskey, seconded by Council Member Yopez approving Resolution No. 2015 designating Brandon Capetillo as a Baytown Representative and Mayor DonCarlos as his alternate. The vote was as follows:

Ayes: Council Members: Yopez, Caskey, McCartney, and Sheley

Nays: None

Abstained: Council Member Capetillo and Mayor DonCarlos

The motion carried.

RESOLUTION NO. 2015

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS, DESIGNATING THE CITY OF BAYTOWN'S REPRESENTATIVE AND ALTERNATE TO THE GENERAL

ASSEMBLY OF THE HOUSTON-GALVESTON AREA COUNCIL
FOR THE YEAR 2010; AND PROVIDING FOR THE EFFECTIVE
DATE THEREOF.

c. CCAD Nomination - City Management.

City Manager, Garry Brumback presented the agenda item and stated that Resolution No. 2016 nominates one or more candidates for positions on the Board of Directors of the Chambers County Appraisal District.

Motion was made by Council Member Caskey, seconded by Council Member McCartney approving Resolution 2016 nominating Joe Brazil as the candidate for the position of Board of Directors of the Chambers County Appraisal District. The vote was as follows:

Ayes: Council Members: Yepez, Caskey, Capetillo, McCartney,
Sheley and Mayor DonCarlos

Nays: None

The motion carried.

Mayor DonCarlos suggested that background information for Mr. Brazil be gathered and sent to Goose Creek, Lee College School Board, and other voting entities to promote his election.

RESOLUTION NO. 2016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BAYTOWN, TEXAS, NOMINATING ONE OR MORE CANDIDATES
FOR POSITIONS ON THE BOARD OF DIRECTORS OF THE
CHAMBERS COUNTY APPRAISAL DISTRICT; AND PROVIDING
FOR THE EFFECTIVE DATE THEREOF.

6. CONSENT

Council Member Sheley requested to pull items 6.a. and 6.d. out for purpose of discussion and made a motion, seconded by Council Member McCartney approving Consent Items: 6.b, 6.c., 6.e., and 6.f. The vote was as follows:

Ayes: Council Members: Yepez, Caskey, Capetillo, McCartney,
Sheley and Mayor DonCarlos

Nays: None

The motion carried.

b. Ordinance No. 11,215: Pre-Disaster Contract for Stormwater System Restoration - Emergency Management.

Ordinance No. 11,215 authorizes the City Manager to negotiate with and execute up to three (3) no-upfront costs, standby contracts for Emergency Inspection, Clearing, and Restoration of disaster damages to the City's stormwater collection, conveyance and discharge system after a hurricane or other disaster.

The City is requesting formal proposals (RFP) for these services in a published notice as prepared and supervised by the Purchasing Division.

A three person review committee will review each of the compliant proposals and recommend the best, to the City Manager, for negotiation towards securing up to three standby contracts.

FEMA requires that all contracts for post-disaster services be publicly advertised and awarded to ensure competition and fair pricing. By complying with the FEMA requirements, the City remains eligible for post-disaster financial assistance in the amount of 75% of eligible costs in the aftermath of a presidentially declared disaster.

The contracts executed would be eligible for activation upon the declaration of a state of disaster by the Mayor, City Manager, or Emergency Management Coordinator in accordance with Chapter 22 of the Baytown City Code.

There will be future similar 'standby' contract requests for post-disaster services to assist City Staff in responding to and recovering from disasters. There would be no budget or financial impact unless the contract(s) are activated.

ORDINANCE NO. 11,215

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE UP TO THREE (3) NO-UPFRONT COST, STANDBY CONTRACTS FOR EMERGENCY INSPECTION, CLEARING, AND RESTORATION OF DISASTER DAMAGES TO THE CITY'S STORMWATER COLLECTION, CONVEYANCE AND DISCHARGE SYSTEM AFTER A HURRICANE OR OTHER DISASTER; AND PROVIDING FOR THE EFFECTIVE DATE THEREOF.

c. Ordinance No. 11,216: Purchase of 9-1-1 Dispatch Center Radio - Emergency Management.

Ordinance No. 11,216 authorizes the purchase of radio equipment to replace obsolete and unreliable backbone infrastructure in the 9-1-1 Telecommunications Center from Motorola Corporation. This purchase is made through the H-GAC Cooperative

Purchasing Agreement and is compliant with the Harris County Radio System requirements pursuant to our contract with Harris County.

The purchase will use funds approved under the Capital Improvement Program 2007, General Obligation Bond for Year 2, FY2008-2009, under project Radio System Upgrade in the amount of \$2.1M. Advance Funding of this project was previously authorized by the City Council on April 7, 2009.

This purchase will replace all of the consoles, base stations and similar telecommunications infrastructure required for the 9-1-1 center to function reliably. The current radio infrastructure is past its design lifespan and has been suffering from repeated failures. Radio repair costs have been escalating as this equipment is no longer in production or supported by the manufacturer. This purchase will provide current technology with a life span of 10 or more years.

ORDINANCE NO. 11,216

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS, AUTHORIZING THE PAYMENT OF TWO MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,100,000.00) TO MOTOROLA CORPORATION THROUGH THE HOUSTON-GALVESTON AREA COUNCIL FOR THE PURCHASE OF RADIO EQUIPMENT, INCLUDING CONSOLES, BASE STATIONS AND SIMILAR TELECOMMUNICATIONS INFRASTRUCTURE; MAKING OTHER PROVISIONS RELATED THERETO; AND PROVIDING FOR THE EFFECTIVE DATE THEREOF.

e. Ordinance No. 11,217: Purchase of Five Freightliner Trucks - Public Works.

Ordinance No. 11,217 authorizes the purchase of five (5) 2010 Freightliner trucks from Houston Freightliner/Sterling, through the Houston-Galveston Area Council (H-GAC), for a total amount of \$421,579. The H-GAC fee of \$1,000 is assessed per each purchase order and included in the total amount. All trucks are described as follows:

H-GAC SUPPLIER	NEW VEHICLE DESCRIPTION	NEW PRICE	BUDGETED AMOUNT	ORG/ACCT#	DEPART	VEHICLE REPLACED
Freightliner	4500 gal Tanker Truck	\$147,756	150,000	35022-84043	Public Works	New Unit, funds from ExxonMobil
Freightliner	12 ft. Stake bed Dump	\$75,711	\$75,000	32010-84043	Solid Waste	New Unit, Clean Team Truck, Supplement to Budget

Freightliner	Utility Truck	\$83,309	\$100,000	30410-84043	Water Distr.	Replaces Unit #59822, 1998 IH Utility Truck
Freightliner	Cab & Chassis for Patch Truck	\$57,673	\$160,000	35022-84043	Street Dept.	Replaces Unit #2111, 1996 GMC w/Pothole Patch Body
Freightliner	Cab & Chassis for Wash Truck	\$56,130	\$111,000	35022-84043	Waste Water Collection	Replaces Unit #69698, 1996 GMC Wash Truck -199,467 miles

ORDINANCE NO. 11,217

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS, AUTHORIZING THE PAYMENT OF FOUR HUNDRED TWENTY-ONE THOUSAND FIVE HUNDRED SEVENTY-NINE AND NO/100 DOLLARS (\$421,579.00) TO HOUSTON FREIGHTLINER/STERLING, THROUGH THE HOUSTON-GALVESTON AREA COUNCIL FOR THE PURCHASE OF FIVE 2010 FREIGHTLINER TRUCKS; MAKING OTHER PROVISIONS RELATED THERETO; AND PROVIDING FOR THE EFFECTIVE DATE THEREOF.

f. Ordinance No. 11,218: Purchase of Cab Tractor and Flail Mower - Parks and Recreation.

Ordinance No. 11,218 authorizes the purchase of one (1) 2009 New Holland T5050 2wd cab tractor, and one (1) Alamo Right Hand Interstater with 88" flail head mower for the Parks and Recreation Department from Lansdowne-Moody Company, L.P., for a total amount of \$63,500.

This purchase is through Houston-Galveston Area Council (H-GAC), which meets all competitive requirements. The new tractor and mower replaces Unit # 570, 2001 New Holland Model 6610 with approximately 2600 hours.

ORDINANCE NO. 11,218

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS, AUTHORIZING THE PAYMENT OF SIXTY-THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$63,500.00) TO LANSDOWNE-MOODY COMPANY, L.P.,

THROUGH THE HOUSTON-GALVESTON AREA COUNCIL FOR THE PURCHASE OF ONE (1) 2009 NEW HOLLAND T5050 2WD CAB TRACTOR AND ONE (1) ALAMO RIGHT HAND INTERSTATER WITH 88" FLAIL HEAD MOWER FOR THE PARKS AND RECREATION DEPARTMENT; MAKING OTHER PROVISIONS RELATED THERETO; AND PROVIDING FOR THE EFFECTIVE DATE THEREOF.

a. Ordinance No. 11,219: 22nd Annual Car Show on Texas Avenue Agreement and Variances - Administration.

Ordinance No. 11,219 authorizes an Agreement for Advertising Services and Promotion of the Arts with Bayshore Fine Rides, Inc., for its 22nd Annual Car Show on Texas Avenue to be held on April 9th and 10th, 2010; approves the budget for operations funded by hotel occupancy tax revenues; grants a variance to the distance requirements contained in the Live Outdoor Exhibition Ordinance for such event; exempts such event from the application of the City's Peddlers and Solicitors Ordinance, and designates the event as a City co-sponsored event for which off-premise signs may be placed on property pursuant to Chapter 118 "Signs," Article III "Regulations," Division 4 "Location," Subdivision IV "Off-Premises Signs," Section 118-358 "New Signs" of the Code of Ordinances, Baytown, Texas, contingent upon the filing of the requisite application and an assumption of liability.

The City of Baytown received a request for funding from Bayshore Fine Rides, Inc. for its 22nd Annual Car Show on Texas Avenue to be held April 9, 2010, from 5:00 p.m. to 10:00 p.m., and April 10, 2010, from 9:00 a.m. to 6:00 p.m., between Felton and Commerce Streets. Ordinance No. 11,219 grants such request by authorizing an agreement for funding up to \$15,000 of hotel occupancy tax revenues.

Additionally, Ordinance No. 11,219 grants to Bayshore Fine Rides, Inc., a variance to Section 42-286(e) of the Code of Ordinances pertaining to the distance requirements for live outdoor exhibitions and to Chapter 74 of the Code of Ordinances pertaining to peddlers and solicitors. The live outdoor exhibition ordinance regulations prohibit any live outdoor exhibition activity within 500 feet from property used as a residence, school, hospital or church. Because this event will be within the prohibited distance of residences, a variance from Section 42-286(e) is necessary for the event to occur on Texas Avenue. Additionally, the outdoor vendor ordinance requires permitting, bonding, and insurance from each merchant selling goods or services at the event. A variance from Chapter 74 of the Code of Ordinances is necessary in order to exempt such merchants from complying with such requirements. Granting the variances contained in the proposed resolution is consistent with the action Council took with respect to the 18th, 19th, 20th and 21st Annual Car Show on Texas Avenue.

Lastly, Ordinance No. 11,219 designates the car show as a City co-sponsored event for which off-premise signs may be placed on city property pursuant to Chapter 118 "Signs," Article III "Regulations," Division 4 "Location," Subdivision IV "Off-Premises Signs,"

Section 118-358 "New Signs" of the Code of Ordinances, Baytown, Texas, contingent upon the filing of the requisite application and an assumption of liability. This action would authorize the placement of banners across Decker Drive and W. Texas Avenue commencing 14 days prior to the event and three days following the event.

ORDINANCE NO. 11,219

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AND THE INTERIM CITY CLERK TO ATTEST TO AN AGREEMENT FOR ADVERTISING SERVICES AND PROMOTION OF THE ARTS WITH BAYSHORE FINE RIDES, INC., FOR ITS 22ND ANNUAL CAR SHOW ON TEXAS AVENUE TO BE HELD ON APRIL 9, 2010, AND APRIL 10, 2010; AUTHORIZING PAYMENT OF HOTEL OCCUPANCY TAX REVENUES IN AN AMOUNT NOT TO EXCEED FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00); APPROVING THE BUDGET OF BAYSHORE FINE RIDES FOR OPERATIONS FUNDED BY HOTEL OCCUPANCY TAX REVENUES; GRANTING A VARIANCE TO CHAPTER 42 "HEALTH AND SANITATION," ARTICLE V "LIVE OUTDOOR EXHIBITIONS," SECTION 42-286 "PERMIT REQUIRED" OF THE CODE OF ORDINANCES, CITY OF BAYTOWN, TEXAS, TO WAIVE THE DISTANCE REQUIREMENT FOR BAYSHORE FINE RIDES, INC.'S 22ND ANNUAL CAR SHOW ON TEXAS AVENUE CONTINGENT UPON THE FILING OF THE REQUISITE APPLICATION; GRANTING A VARIANCE TO EXEMPT BAYSHORE FINE RIDES, INC.'S 22ND ANNUAL CAR SHOW ON TEXAS AVENUE FROM THE PROVISIONS OF CHAPTER 74 "PEDDLERS AND SOLICITORS" OF THE CODE OF ORDINANCES, BAYTOWN, TEXAS, CONTINGENT UPON THE FILING OF AN APPLICATION AND RECEIVING A PERMIT FOR A LIVE OUTDOOR EXHIBITION; DESIGNATING THE 22ND ANNUAL CAR SHOW ON TEXAS AVENUE AS A CITY CO-SPONSORED EVENT FOR WHICH OFF-PREMISE SIGNS MAY BE PLACED ON CITY PROPERTY PURSUANT TO CHAPTER 118 "SIGNS," ARTICLE III "REGULATIONS," DIVISION 4 "LOCATION," SUBDIVISION IV "OFF-PREMISES SIGNS," SECTION 118-358 "NEW SIGNS" OF THE CODE OF ORDINANCES, BAYTOWN, TEXAS, CONTINGENT UPON THE FILING OF THE REQUISITE APPLICATION AND ASSUMPTION OF LIABILITY; DESIGNATING PROPERTIES ON WHICH SUCH SIGNS MAY BE PLACED; AND PROVIDING FOR THE EFFECTIVE DATE THEREOF.

d. Ordinance No. 11,220: Purchase of School Speed Limit LED Blinking Signs and Equipment - Public Works.

Ordinance No. 11,220 authorizes the purchase of twenty-seven (27) school speed limit LED blinker signs and equipment for the Traffic Department in the amount of \$60,400 from Traffic and Parking Control, Inc. (TAPCO), through the USA General Services Administration (GSA). All school speed limit equipment is funded by the Red Light Camera Program.

The Local Preparedness Acquisition Act (P.L. 110-248) amended the Federal Property and Administrative Services Act to authorize the use of Federal Supply Schedule 84 contracts by state and local entities under the GSA Cooperative Purchasing Program.

The General Services Administration Acquisition Manual, Part 538.7001, defines state and local government as: The States of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities, school districts, colleges, and other institutions of higher education, council of governments, regional or interstate government entities. By this definition the City of Baytown qualifies as a state and local government entity and, as such, is qualified to participate in the GSA Cooperative Purchasing Program.

ORDINANCE NO. 11,220

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BAYTOWN, TEXAS, AUTHORIZING THE PAYMENT OF SIXTY THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$60,400.00) TO TRAFFIC AND PARKING CONTROL, INC., THROUGH FEDERAL SUPPLY SCHEDULE 84 OF THE UNITED STATE'S GENERAL SERVICES ADMINISTRATION FOR THE PURCHASE OF TWENTY-SEVEN (27) SCHOOL SPEED LIMIT LED BLINKER SIGNS AND EQUIPMENT FOR THE TRAFFIC DIVISION OF THE PUBLIC WORKS/UTILITIES DEPARTMENT; MAKING OTHER PROVISIONS RELATED THERETO; AND PROVIDING FOR THE EFFECTIVE DATE THEREOF.

Motion was made by Council Member Sheley, seconded by Council Member McCartney to approve Consent Items: 6.a and 6.d. The vote was as follows:

Ayes: Council Members: Yopez, Caskey, Capetillo, McCartney, Sheley and Mayor DonCarlos

Nays: None

The motion carried.

7. APPEALS

a. Appeal of Interim Floodplain Administrator's decision concerning the City's floodplain regulations) - Planning and Development Services.

Mayor DonCarlos stated that the Council would consider an appeal of the Interim Floodplain Administrator's decision under the provisions of Chapter 110 "Floods" of the Baytown Code of Ordinances.

Mr. Jerry Fallin, the new owner of property at 601 S. Burnett, is appealing the decision of the Interim Floodplain Administrator concerning the denial of a permit for repair on the single family residence, which was determined to be 50 percent or more damaged. Mr. Fallin asserts that the structure at 601 S. Burnett was less than 50 percent damaged. Chapter 110 of the Baytown Code of Ordinances sets forth the floodplain regulations, including definitions and standards for "substantially damaged" structures. Baytown uses the FEMA software "Residential Substantial Damage Estimator" for estimating substantial damage. City inspectors enter damage as seen on site into the program and enter the pre-storm value of the improvement only from HCAD. Section 110-102 requires that substantially damaged structures be elevated to at least 18 inches above the base flood elevation. "Substantially damaged" means that the cost of restoring the structure equals or exceeds 50 percent of the market value of the before-damage condition of the structure.

The appeal section of the floodplain regulations states that the "City Council shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision or determination made by the floodplain administrator...." Internal review of the actions and decisions of staff in this case find no error in requirement, decision or determination in this case and that the staff followed all internal procedures in its determinations on this case. The RSDE information for 601 S. Burnett was attached hereto and so was the appeal letter of Mr. Fallin.

Mr. Fallin indicated that the City originally deemed the property to be damaged at 42% and due to varying factors changed their minds to more damage. He stated that he applied for a permit and was rejected, then applied for a permit to secure the property until the property could be taken care of and the matter can be put to rest of which the permit hasn't been denied, but has not been issued even though he was told that he didn't need a permit to board up the property. Mr. Fallin explained that the first bid he had to remodel the property was about \$42,000 which came in at 39.46%. He stated that per 2008 HCAD value of \$126,959, subtract the land from that of \$19,140, left an improvement only of \$107,819, the cost to repair the structure \$42,549, multiply out is 39.42%. He retained a public adjuster who came up with \$46,832 which is still less than 50%. He had a 3rd company come out called D-RAN Engineering whose report stated: the exposed portion of the building was covered with LSB; the structure appeared to be in very good condition and the framing appears to be oak growth wood, likely superior to the #2 low panel we get today; it appears there is no sagging in the roof at all; the structure will require no substantial modifications and recommended adding hurricane straps; the duct

work may need to be repaired; the electrical work may need to be repaired but he (Mr. Fallin) would personally prefer to completely rewire; and some minor installation and window repairs are needed.

Mayor DonCarlos asked how big the house was and how much square footage. Mr. Fallin indicated it was 2600 sq. feet and stated that if the home in question is not used this will cause him and his family hardship because his son intends to move into it. Mr. Fallin requested that his attorney, Mr. Dennis Albright, and his builder Mr. Dolan Webster be allowed to speak before Council.

Mr. Dolan Webster stated that he is a builder in the state, holds a license for HVAC for over 15 years, and also licensed through the railroad commission. Mr. Webster stated that he surveyed the property and read the engineers report and that there is no slab damage, the structure itself is not damaged twisted, or leaning in anyway, and there was no shingle loss or lift. Mr. Webster stated that he could put this building back in good working order for \$16 to \$18 per sq. ft. and with surprises to the renovations of \$20 per sq. ft.

Mr. McCartney indicated that he has been in the insurance business for 22 years and the cost estimators are on national averages which are rather high to which Mr. Webster stated that he is prepared to make repairs now and could have house done in 6 weeks.

Mr. Fallin also stated that he is ready to make repairs, the house is secured, grass is mowed, and cleaning has been done as much as possible considering the circumstances.

Planning and Development Services Director, Kelly Carpenter indicated that in this appeal the code read by Mr. Fallin refers to variance and is therefore not applicable to the situation at hand and that the decision made on this appeal could negatively affect all Baytown citizens.

Ms. Carpenter stated that to perform substantial damage estimates, surveys were done throughout the City between September 17th through the month of October. The inspectors that visited the site in question on September 17, 2008, and declared that the property was considered destroyed. In October, the FEMA Residential Substantial Damage Estimate (RSDE) Program was instituted as the best practice to use after Hurricane Ike and was applied to every single property that was presumed destroyed or where a request for inspection be done.

The FEMA Residential Substantial Damage Estimate (RSDE) Program is a national software program prepared by FEMA that allows for modification considering local conditions every step of the way. Inspectors use a tabulation sheet, which they estimate in about 12 categories. The Interim Floodplain Administrator used conservative estimates based on the "Marshal and Swift Construction Cost Data Book" resulting in a cost of construction at \$47.50, this estimate did not take into account the depreciation as allowed by the RSDE, which would have resulted in a higher cost. The Planning Department made a decision to not add the depreciation step because it would have made it a lot harder for the people in Baytown to rebuild.

On November 19, 2008, a substantial “damage” estimate was performed and assessed at 54.6% substantial damage meaning it was destroyed pursuant to City’s Floodplain Regulations and can not be rebuilt without elevating the home to meet floodplain regulations of the City and FEMA. Ms. Carpenter stated that to date there is a total of (7) reconstructed homes.

Ms. Carpenter presented pictures taken on November 9, 2008, of the home and stated that there was 5% roof damage and that was not the major cause of damage, but instead was that of the surge, which appeared to have had 4 ft. of water in this house. The inspector findings are the following:

Foundation 0%,
Framing/Masonry 40%
Roofing 5%
Insulation 30%
Exterior 80%
Interior/Drywall 90%
Doors/windows 100%
Finished Lumber 100% (base boards and door jams)
Hardware 100%
Cabinet and Countertops 100%
Floor Covering 100%
Plumbing 30%
Electrical 25%
Built-In Appliances 100%
Heating and Cooling 100%
Paint 25%

Ms. Carpenter stated that another assessment was done on July 31, 2009, because a decision had been made to not enforce codes until (6) months after the storm. In March of 2009, all property owners who assessed damages, and had not taken action to remedy the damages were contacted, including the property at hand. This property was not secured and was exposed to elements from September 13, 2009 until July 31, 2009. The findings for the assessment of July 31, 2009, were as follows:

Foundation 10%
Framing 40%
Roofing 5%
Insulation 100%
Exterior 100%
Interior 100%
Doors/Windows 100%
Finished Lumber 100% (base boards and door jams)
Hardware 100%
Cabinet and Countertops 100%

Floor Covering 100%
Plumbing 40%
Electrical 100%
Built-In Appliances 100%
Heating and Cooling 100%
Paint 100%

Ms. Carpenter indicated that as of the July 31, 2009, assessment the damages were at 71.8% because it sat unattended.

Council Member Sheley asked if there were any demolition to the building between September 13th and July 31, 2009, due to the fact that some pictures on September 19th show sheet rock and July 31, 2009 none. Ms. Carpenter responded that the law states that what's damaged from any origin is what is considered in the substantial damage assessment and staff does not know who did what.

In June of 2009, the owner informed the planning staff that they were letting the credit union foreclose on the structure. On August 3rd, the Urban Rehabilitation Standards Review Board Agenda had this item to consider staffs recommendation to demolish 601 S. Burnet but was the board tabled the item to the October 5th meeting because Mr. Fallin appeared at the hearing asserting that he would be the owner of the structure in two days. Ms. Carpenter stated that the Community Resource Credit Union made it clear that they would support this demolition and Mr. Ronnie Anderson was present at this meeting.

Ms. Carpenter indicated that on August 10, 2009, Mr. Fallin applied for building permit for renovation and remodeling at 601 S. Burnet and on August 11, 2009, Interim Chief Building Official and Floodplain Administrator denied the permit based on the findings that the structure cannot be rebuilt unless it is elevated because it is 50% or more damaged. On August 23, 2009, staff sent two notices of violations concerning: (1) failure to obtain a building permit for securing a structure, occupying a structure that has a placard stating that structure is uninhabitable and "do not occupy", and (2) someone boarded up the structure without a permit sometime prior to August 23, 2009. Ms Carpenter indicated that on October 07, 2009, Mr. Fallin, applied for an "after the fact" permit to board up the structure at 601 S. Burnet and that this permit is pending. Ms. Carpenter introduced Mr. Bill Vola, Director of Emergency Management, to make comments.

Mr. Vola stated that he's going to point out the possible consequences to the approval of this appeal to the community. He indicated very clearly that this home was not damaged, but destroyed by the storm surge of Hurricane Ike and will be again damaged by another storm, if it is not elevated above the floodplain. Mr. Vola also stated that making an exception through the approval of this appeal would put the community insurance rating at risk, as well as the availability of flood insurance in this City.

Mayor DonCarlos stated that he received a letter from FEMA after Hurricane Ike that very clearly stated that if the City of Baytown did not follow their guidelines, they would recommend that no flood insurance be allowed in this City.

Mr. Sheley asked who were the assessments done by and Ms. Carpenter indicated that the assessments were done by City staff with guidelines from FEMA software.

The Council discussed the points presented by the appellant and staff at length.

Motion was made by Council Member Caskey, seconded by Council Member Sheley to affirm the decision of the Interim Floodplain Administrator and deny the appeal. The vote was as follows:

Ayes: Council Members: Yopez, Caskey, Capetillo,
Sheley and Mayor DonCarlos

Nays: None

Not Vote: Council Member McCartney

The motion carried.

8. APPOINTMENTS

a. Community Development Advisory Committee - Interim City Clerk.

City Manager, Garry Brumback presented the agenda item.

Considered (1) appointment to the Community Development Advisory Committee (CDAC).

The Community Development Advisory Committee (CDAC) is a nine member board that shall represent the low-income to moderate-areas of the City, as defined by the Department of Housing and Urban Development. Members serve two year terms with at least one member serving from each of the six council districts.

Mr. Robert Sorenson resigned from the CDAC Board on September 14, 2009; his term was set to expire on January 1, 2011 and is a District 6 appointment.

Mr. McCartney had no nomination at this time.

9. MANAGER’S REPORT

a. Company Cup 5K - Parks and Recreation.

City Manager, Garry Brumback presented the agenda item.

The Annual Company Cup 5K will be held at the Baytown Community Center on Saturday, October 17, 2009, at 8:00 a.m.

This year, we have added two youth divisions – Youth 12 & Under and Youth 13 to 17. Please keep in mind that only kids that are able to complete the 5K race should be registered. Also, we have expanded the age divisions to include Adults 18 to 29 years, Adults 30 to 39 years, Adults 40 to 49 years, Adults 50 & Up, and Adult Walker.

Registration is \$10 per person and includes a continental breakfast and an event t-shirt for each participant on the team; team registrations are due by Monday, October 5, 2009. For more information contact the Parks and Recreation Department at 281-420-6597.

Organize a team or create one just in your department, either way come out and run!

Mr. Brumback introduced Mr. Miquell Guerrero, a Paramedic from the C Shift, who video taped some of the National’s Night Out events. The video was presented.

10. ADJOURN

Motion was made by Council Member Caskey, seconded by Council Member Yopez adjourning the October 08, 2009, Regular Meeting. The vote was as follows:

Ayes: Council Members: Yopez, Caskey, Capetillo, McCartney,
Sheley and Mayor DonCarlos

Nays: None

The motion carried.

Mayor DonCarlos adjourned the Regular City Council Meeting of October 08, 2009 at 9:01 P.M.