

**MINUTES
CITY OF GAINESVILLE
CITY COUNCIL MEETING
200 South Rusk
Gainesville, Texas 76240
October 21, 2008**

The City Council of the City of Gainesville, Texas met in regular session on October 21, 2008 at 6:30 p.m. with the following persons in attendance:

MEMBERS PRESENT: Mayor Glenn Loch
Council Members Charles Draper, Jim Goldsworthy, Carolyn Hendricks, Ray Nichols, Vince Rippey, Beverly Snuggs

STAFF PRESENT: Barry Sullivan, City Manager; Kay Lunnon, City Secretary; Bill Harris, City Attorney

OTHERS PRESENT: Ashley Fleeks, Chirag Bhakta, Daniel Sciantarelli, Chris Lewis, Garrett Laird, Karon Sullivant, Mike McHorse, Elaine McHore, Don Pettigrew, Lynette Pettigrew, Betty Kay Schlesinger, Gary Schlesinger, Walter Fuller, Joe and Darlene Seale, Kaycia Gleaton, Roy Tyler, Steve Key, Harriett Dickson, Cathy Farquhar, Kathy Shaw, Jim King, Ben Willingham, Aaron Davis

CALL TO ORDER

Mayor Loch called the meeting to order at 6:30 p.m. with all members present.

INVOCATION & PLEDGE OF ALLEGIANCE

Councilman Charles Draper gave the invocation. Mayor Loch led the pledge to the flag.

REPORTS

Mike McHorse, Chairman of the Medal of Honor Host City Board of Directors, spoke about the success of the program that reveres the courage, honor, and patriotism of the living recipients of the Congressional Medal of Honor, and invites them to visit Gainesville, Texas, so that citizens and students have the opportunity to meet and talk to a real American hero and patriot. The City of Gainesville Host City Program is the only program of its kind. At its inception in 2001, there were over 150 living Medal of Honor recipients. Today, there are only 100 living recipients. The program offers a stipend and airfare for each recipient to visit Gainesville. McHorse said recognition of the Gainesville program has been far reaching, and many more recipients have expressed interest in visiting Gainesville. Twenty-two Medal of Honor recipients have been invited to the annual celebration in April 2009. He said the committee works year-round in planning events for the annual celebration. Opportunities for financial support of the program include book signing events, challenge coins, and a new DVD, filmed and produced locally and showcasing the City of Gainesville Medal of Honor Host City Program. McHorse thanked the City Council for their continuing support of the program. The new DVD was introduced and viewed by the City Council and audience.

CONSENT AGENDA

Council reviewed the Minutes of the Regular City Council Meeting of October 7, 2008 and approved them as written.

GAINESVILLE HOUSING AUTHORITY BOARD APPOINTMENT

Mayor announced that due to lack of information at this time, the appointment to the Gainesville Housing Authority Board would not be considered at this meeting.

Councilmember Snuggs moved to **approve the Consent Agenda**, and was seconded by Councilmember Draper. Motion carried by vote of 7 Ayes, 0 Nays.

RESOLUTION NO. 10-21-2008 – ADOPTING AN IDENTITY THEFT PROGRAM POLICY

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS, ADOPTING A WRITTEN IDENTITY THEFT PROGRAM POLICY AND AUTHORIZING THE CITY MANAGER TO APPROVE CHANGES IN THE POLICY.

City Manager Barry Sullivan stated that the City is subject to the Federal Trade Commission (FTC) rules on the Fair and Accurate Credit Transaction Act (FACT) of 2003 and therefore is required to adopt a written identity theft program policy for detection of possible risks, “red flags”, of identity theft, and appropriate responses. A municipal water utility account is considered a “covered account” because it provides a service before the consumer pays for it. The program is to ensure a process to identify, detect, prevent, diminish, and respond to identity theft in connection with the opening of an account. The policy applies to all City employees and service providers that have access to personal information for customers of the Utility Billing Department. The Administrative Services Director will conduct annual review of the program and report to the City Manager.

Councilmember Draper moved to **approve the resolution**, and was seconded by Councilmember Nichols. Motion carried by vote of 7 Ayes, 0 Nays.

RESOLUTION NO. 10-21-2008 A – INSTRUCTING THE CITY ATTORNEY TO INSTITUTE CONDEMNATION PROCEEDINGS AS NECESSARY FOR PROPERTIES WITHIN THE PECAN CREEK FLOOD DAMAGE REDUCTION PROJECT

A RESOLUTION INSTRUCTING THE CITY ATTORNEY TO INSTITUTE CONDEMNATION PROCEEDINGS, IF NECESSARY, TO OBTAIN TITLE TO ALL PROPERTIES LOCATED IN THE CITY OF GAINESVILLE, TEXAS, TO BE UTILIZED IN THE PECAN CREEK FLOOD DAMAGE REDUCTION PROJECT AS DESCRIBED IN AN AGREEMENT, BETWEEN THE UNITED STATES ARMY CORP OF ENGINEERS AND THE CITY OF GAINESVILLE, TEXAS.

The City is in the process of purchasing properties for the Pecan Creek Flood Reduction Project. It is necessary that the City Attorney be authorized to utilize condemnation proceedings, if necessary, to obtain title to properties needed for the Pecan Creek Flood Damage Reduction Project. The City is obligated under the agreement with the U.S. Corps of Engineers to acquire the real property needed for the Pecan Creek Flood Reduction Project. Each property is independently appraised and most property owners will accept the offer of appraised value. Some properties may require condemnation, and with this resolution, the City Attorney is instructed to initiate condemnation or eminent domain proceedings if necessary to acquire all necessary real property to complete the project.

Councilmember Snuggs moved to **approve the resolution**, and was seconded by Councilmember Rippey. Motion carried by vote of 7 Ayes, 0 Nays.

RESOLUTION NO. 10-21-2008 B – DENY ONCOR ELECTRIC COMPANY RATE INCREASE

A RESOLUTION OF THE CITY OF GAINESVILLE, TEXAS FINDING THAT ONCOR ELECTRIC COMPANY’S REQUESTED INCREASES TO ITS ELECTRIC TRANSMISSION AND DISTRIBUTION RATES AND CHARGES WITHIN THE CITY SHOULD BE DENIED;

FINDING THAT THE CITY'S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY THE COMPANY; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.

Council denied the rate increase requested by Oncor Electric Delivery Company. Oncor's application seeks a 17.6 % increase in residential rates, a 9.1% increase in commercial rates, and a 5.8% increase in street lighting rates. According to Oncor, annual rates would increase by approximately \$60 for the average residential customer. Three months ago, the City suspended the effective date for the rate increase to allow for a ninety-day review period. The review was completed by the Oncor Cities Steering Committee, which determined that there is not enough supporting evidence to justify the rate increases and recommended denial. This resolution denies the requested rate increase and requires Oncor to maintain the current rates for all customers within the City. Oncor is expected to appeal the denial to the Public Utility Commission. The Steering Committee will challenge the rate increase in front of the Public Utility Commission.

Councilmember Draper moved to **approve the resolution**, and was seconded by Councilmember Goldsworthy. Motion carried by vote of 7 Ayes, 0 Nays.

RESOLUTION NO. 10-21-2008 C – AUTHORIZE 5 YEAR CAPP ELECTRIC SUPPLY AGREEMENT WITH FPL ENERGY AND DIRECT ENERGY

A RESOLUTION OF THE CITY OF GAINESVILLE, TEXAS, AUTHORIZING THE CITIES AGGREGATION POWER PROJECT, INC. (CAPP) TO NEGOTIATE AN ELECTRIC SUPPLY AGREEMENT FOR DELIVERIES OF ELECTRICITY AND NECESSARY, RELATED SERVICES EFFECTIVE JANUARY 1, 2009; AUTHORIZING CAPP TO ACT AS AN AGENT ON BEHALF OF THE CITY TO ENTER INTO A CONTRACT FOR ELECTRICITY; APPROVING CAPP CONTRACTING WITH FPL ENERGY AND DIRECT ENERGY AND AUTHORIZING THE CHAIRMAN OF CAPP TO EXECUTE AN ELECTRIC SUPPLY AGREEMENT FOR DELIVERIES OF ELECTRICITY EFFECTIVE JANUARY 1, 2009; COMMITTING TO BUDGET FOR ENERGY PURCHASES AND TO HONOR THE CITY'S COMMITMENTS TO PURCHASE POWER THROUGH CAPP FOR ITS ELECTRICAL NEEDS BEGINNING JANUARY 1, 2009 THROUGH DECEMBER 31, 2013. Sullivan recommended authorizing the Cities Aggregation Power Project (CAPP) to negotiate a five-year electric power contract for the City's electric power needs. The electric supply agreement is with Direct Energy and FPL Energy for a fixed cost for electric power for the period January 1, 2009 through December 31, 2013. Sullivan said the fixed cost is estimated to be lower than the current year's average power cost and will save the City approximately \$260,000 of its funds budgeted this year for electricity. Sullivan added that if Council decides to also enter into the long-term (24 year) contract for power with Luminant, this contract will be used to provide the 30 to 40% of power needed by the City that is not covered by the Luminant contract. Sullivan said, either way, the five year contract is excellent for the City.

Councilmember Goldsworthy moved to **approve the resolution**, and was seconded by Councilmember Nichols. Motion carried by vote of 7 Ayes, 0 Nays.

TABLED ON SECOND READING THE ORDINANCE FOR LONG TERM CONTRACT FOR PURCHASE OF ELECTRIC ENERGY POWER SUPPLY

SECOND READING OF AN ORDINANCE OF THE CITY OF GAINESVILLE, TEXAS APPROVING AN ELECTRIC POWER CONTRACT WITH CITIES AGGREGATION POWER PROJECT, INC. ("CAPP") FOR ELECTRIC CAPACITY AND ENERGY, PROVIDING CAPACITY PAYMENTS AS PUBLIC PROPERTY FINANCE CONTRACTUAL OBLIGATIONS OF THE CITY, PLEDGING AND LEVYING AN AD

VALOREM TAX TO SUCH PAYMENTS, PROVIDING FOR ENERGY PAYMENTS FOR ELECTRIC ENERGY SUBJECT TO ANNUAL APPROPRIATION BY THE CITY, PROVIDING FOR THE ASSIGNMENT OF SUCH CAPACITY PAYMENTS TO SUPPORT DEBT ISSUED BY CAPP INCURRED TO ACQUIRE ELECTRIC CAPACITY RIGHTS FROM LUMINANT GENERATION COMPANY AND RELATED ENTITIES PURSUANT TO A 24-YEAR POWER PURCHASE AGREEMENT (“PPA”); AUTHORIZING THE CITY MANAGER OR OTHER APPROPRIATE CITY OFFICER OR EMPLOYEE TO EXECUTE AND DELIVER THE MEMBER CONTRACT; FURTHER AUTHORIZING THE CITY MANAGER OR OTHER APPROPRIATE CITY OFFICER OR CITY EMPLOYEE TO SIGN ADDITIONAL AGREEMENTS ARRANGED BY CAPP FOR ELECTRIC POWER NEEDED BY THE CITY IN THE PERIOD 2009-2011 IN EXCESS OF THE AMOUNT OBTAINED UNDER THE MEMBER CONTRACT; ACKNOWLEDGING, AUTHORIZING AND DIRECTING THE CITY MANAGER OR APPROPRIATE CITY OFFICER OR CITY EMPLOYEE TO SIGN AND RETURN CAPP’S DISCLOSURE LETTER; FURTHER AUTHORIZING THE CITY MANAGER OR APPROPRIATE CITY OFFICER OR OTHER CITY EMPLOYEE TO ACCEPT CONFORMING CHANGES TO THE MEMBER CONTRACT DEPENDENT ON THE FINAL TERMS OF THE CAPP PPA; PROVIDING FOR VALIDITY AND SUFFICIENCY OF CITY EMPLOYEE’S OR CITY OFFICER’S SIGNATURE IF THE OFFICER OR EMPLOYEE LEAVES OFFICE OR EMPLOYMENT PRIOR TO THE DELIVERY OF THE MEMBER CONTRACT; ADOPTING A SAVINGS CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT.

Sullivan reviewed the contract considerations and the risks for the City in entering into the long-term agreement. He reported the deadline for Council’s decision has been extended until December 17, 2008, and recommended tabling further action until the second Council meeting in November (November 18, 2008) to give Council and staff time to review recent developments in the economy and energy markets, and to evaluate participation in the contract. Following brief discussion of some concerns with the contract, Council decided to table the ordinance.

Councilmember Draper **moved to table the ordinance until the second regular Council meeting in November.** The motion was seconded by Councilmember Rippy and carried by vote of 7 Ayes, 0 Nays.

ORDINANCE NO. 1215-10-2008 – AMENDMENT TO INVESTMENT POLICY ORDINANCE

FIRST READING OF AN ORDINANCE AMENDING THE CITY OF GAINESVILLE CODE OF ORDINANCES, CHAPTER 2 ADMINISTRATION, ARTICLE I IN GENERAL, SECTION 2-14 INVESTMENT FUNDS POLICY, SECTION 2-14.1 INTRODUCTION; PROVIDING FOR REPEAL OF SECTION 2-14.2 THRU SECTION 2-14.10; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND AN OPEN MEETING FINDING.

State law requires annual review of the City’s investment policy. The ordinance amends current code to provide for the City’s Investment Policy to be governed by the City Council and presented annually and approved in the form of a resolution. The City Council will establish a written Investment Policy that will be reviewed annually in open meeting, and approved with any changes as required by the State.

Councilmember Draper **moved to suspend the Charter requirement of readings on three separate occasions,** and was seconded by Councilmember Snuggs. The motion carried by vote of 7 Ayes, 0 Nays.

