

**CITY OF COPPERAS COVE
CITY COUNCIL REGULAR MEETING MINUTES
MAY 1, 2007 – 7:00 P.M.**

A. CALL TO ORDER

Mayor, Roger P. O'Dwyer called the regular meeting of the City Council of the City of Copperas Cove Texas to order at 7:00 p.m.

B. INVOCATION AND PLEDGE OF ALLEGIANCE

Council Member Sheppard gave the Invocation, and led the Pledge of Allegiance.

C. ROLL CALL

ALSO PRESENT

Bob Reeves
Larry D. Sheppard
John Gallen
James Stockman
R. Ray Gatewood
Fred Harris
Frank D. Somera, Jr.

Steven J. Alexander, City Manager
James R. Thompson, City Attorney
Jane Lees, City Secretary

D. ANNOUNCEMENTS

1. Notification of findings and future intentions with regard to a quo warranto suit against Copperas Cove Mayor, Roger P. O'Dwyer. ***Brandon S. Belt, Coryell County Attorney***

Brandon S. Belt, Coryell County Attorney made the following statement to the Council: "I received a letter back in March requesting that my office investigate the filing of a quo warranto suit to remove the City of Copperas Cove Mayor from office based on a Charter violation. That letter was received from Corbin & Associates, on behalf of William Thomas, a resident of Copperas Cove. I have performed an investigation in that endeavor. I have reviewed an extensive amount of documentation as well as interview several witnesses and spoken to several individuals concerning these allegations. As you all know, the Charter has a forfeiture provision in Section 2.07 (b) which states that if a Council Member or the Mayor violates an express provision of the Charter that they forfeit their position. Section 2.08 (c) is the provision that Mr. Corbin's office believes had been violated, which expressly forbids the Mayor or a City Council Member from giving any employee or officer of the City a directive or an order. Section 2.07 (b)(2) of the City Charter states that the Council may, by a vote of five members declare a Council Member or the Mayor's position forfeited and vacated and provides for a provision to fill that vacancy. I have read law on this subject until I've been blue in the face. Quo warranto is an extraordinary remedy under Title III of the Civil Practice and Remedies Code that is titled as such because it is an extraordinary thing to remove an elected official from a position that they have been elected to serve. It states that a public officer can be removed through a quo warranto suit for performing an act that by law causes a forfeiture of his office. That little word 'by law' is not well defined but the best I can tell means a state statute, not a city charter provision. The documents that I have been provided and the information that I have been

provided, I believe, does show that the Mayor has violated the City Charter. I do not believe that he has violated the law, he has not violated a State statute that I've been able to find or that anybody has brought to my attention. Under the quo warranto act I believe that he has to violate a State law to be removed through that proceeding. There are several cases on point that I won't bore the Council with, but the Supreme Court has held that where there is a city charter provision placing an item within the discretion of the city council, that a district court's judgment discretion shall not override that of a city council's. I believe in this case there is a permissive power reserved in the City Council. The City Charter provision says that the Council may, by a vote of five members, remove a Council Member or the Mayor for violation of the City Charter. That also, in my opinion, entails that they may not, if they choose not to. The case law is fairly substantial in that a district judge's discretion not be substituted for that of a city council where that permissive power is reserved in the city council. I believe also that this is a matter that needs to be passed upon by the City Council. I think the citizens of Copperas Cove, the City employees, the City Staff, the City Council have been through this long enough. I have never received so much advice on an issue that has been taken up by my office as this issue. I have gotten advice from one end of the spectrum to the other, I assure you, and I appreciate that, I suppose. I am here tonight, basically, to try to bring some closure to this issue. I think that it is time for this to be over with. As far as I'm concerned, my case file is going to be closed. I do not believe that under the law that I can proceed at this time in any manner. If there are other instances that have not been brought to my attention, and they are brought to my attention, I will investigate them. I fully intend to do my job that I've been elected to do. I will be available here the rest of the night. If the Council has any questions or concerns or comments for me regarding the documents in my possession, during or after the Executive Session, I'll be more than happy to provide those documents or answer any questions. With that said, I will leave this in your hands. Thank you."

Council Member Gatewood reminded everyone that the Cove track team are still doing great things and will be going to State.

City Manager Steve Alexander, introduced David Whitehead to the Council. He is our new City engineer who started this week.

Mayor O'Dwyer said that this coming Thursday, May 3, at Holy Family Catholic Church during the Noon hour, the National Day of Prayer will be observed.

E. PUBLIC RECOGNITION

1. Retirement: William L. MacDonald, effective April 30, 2007. ***Roger P. O'Dwyer, Mayor***

Mayor O'Dwyer read a bio of Sgt. MacDonald's career with CCPD. He presented Sgt. MacDonald with a framed art work and thanked him for his service to the community of Copperas Cove. Sgt. MacDonald thanked the Council and the City.

2. Proclamation: Tourette Syndrome Awareness Month, May 15 – June 15, 2007. ***Roger P. O'Dwyer, Mayor***

Mayor O'Dwyer read the proclamation and stated that it would be mailed to the Tourette Syndrome Association of Texas in Richmond.

3. Proclamation: World AIDS Orphans Day, May 7, 2007. **Roger P. O'Dwyer, Mayor**

Mayor O'Dwyer read the proclamation and stated that it would be mailed to FXB USA, in New York, an organization whose mission is to fight poverty and AIDS.

F. CITIZENS' FORUM citizens are allowed to speak on any matter other than personnel matters, matters under litigation, or matters on the regular agenda, for a length of time not to exceed five minutes per person. Thirty minutes total has been allotted for this section.

Bob McFarland. He stated that everyone needs to get out and support the Dawgs baseball team.

Diane Steele, 905 N. 4th Street. She said that many of her neighbors who lost carpets during the recent rains received tickets for placing them on the curbs. She said that she called Andrea Gardner and it was taken care of. She said that the help was much appreciated. She stated that she believes the City Charter is a mess and asked the Council to form a committee to review it soon. Steve Alexander said that if any citizen feels something is amiss, please call City Hall. We are here to work for you and resolve help resolve issues. Mayor O'Dwyer said that he has discussed the City Charter with his attorney and Mr. Belt and consensus is that our Charter needs to be reviewed and revised.

Frank Sefford, Cottonwood. He asked that everyone help support the food drive coming up on May 12, conducted by the USPS and the Letter Carriers Union. They will collect non perishables at your mailbox on Saturday, May 12. Reminders will be in mailboxes around May 10th.

Mayor O'Dwyer requested that Executive Session Item M-4 be discussed next on the agenda. A motion was made by Council Member Gatewood to move Item M-4 next on the agenda, seconded by Council Member Sheppard, and passed unanimously.

The Council adjourned to Executive Session at 7:33 p.m.

M. EXECUTIVE SESSION

4. Pursuant to §551.074 of the Open Meetings Act. *Tex. Gov't Code*, Council will meet in Executive Session to discuss the duties and responsibilities of the Mayor.

The Council reconvened the Open Meeting at 8:49 p.m. and the following announcement was made by Mayor Pro Tem Stockman: "Mr. Mayor, City Council, and citizens of Copperas Cove, we have met in Executive Session and will place an agenda item on the next City Council meeting agenda to respond to Mr. Belt's comments on the Mayor's actions under the City Charter."

G. CONSENT ITEMS

1. Consideration and action on approval of minutes from April 17, 2007. **Jane Lees, City Secretary**

2. Consideration and action on Resolution No. 2007-15, designating the Chief of Police to be the individual authorized to apply for exempt license plates from the Texas Department of Transportation for certain police vehicles. **Tim Molnes, Police Chief**

3. Consideration and action on Resolution No. 2007-19, authorizing the City Manager to enter into an agreement with Grant Developmental Services to apply for and manage a grant, if funded, for the Texas Parks and Wildlife, Texas Recreation and Parks Account Funds, for the construction of a Recreation Center and Regional Park. **Ken Wilson, Director of Community Services**

4. Consideration and action on Resolution No. 2007-20, authorizing the submission of a grant application to Texas STEP for a grant enabling the City of Copperas Cove Police Department to reduce the use and distribution of tobacco products pertaining to minors. **Lt. Danny Austin, Crime Prevention Officer**

5. Consideration and action on authorizing the release of funds in the amount of \$5,500 from the Hotel Occupancy Tax Fund to the Copperas Cove Country Opry to satisfy the quarterly installments due for periods ending December 31, 2006 and March 31, 2007. **Andrea Gardner, Assistant City Manager/Finance Director**

6. Consideration and action on authorizing the release of funds in the amount of \$20,000 from the Hotel Occupancy Tax Fund to the Copperas Cove Chamber of Commerce to satisfy the quarterly installment due for the period ending March 31, 2007. **Andrea Gardner, Assistant City Manager/Finance Director**

Council Member Gallen made a motion to approve consent items G-1, G-2, G-3, G-4, G-5 and G-6. Council Member Reeves seconded the motion, and with a unanimous vote, motion carried.

The Resolution caption reads as follows:

RESOLUTION NO. 2007-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, DESIGNATING THE CHIEF OF POLICE TO BE THE INDIVIDUAL AUTHORIZED TO APPLY FOR EXEMPT LICENSE PLATES FROM THE TEXAS DEPARTMENT OF TRANSPORTATION FOR CERTAIN POLICE VEHICLES.

The Resolution caption reads as follows:

RESOLUTION NO. 2007-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH GRANT DEVELOPMENT SERVICES TO APPLY FOR AND MANAGE A GRANT, IF FUNDED, FOR THE TEXAS PARKS AND WILDLIFE, TEXAS RECREATION AND PARKS ACCOUNTS FUNDS, FOR THE CONSTRUCTION OF A RECREATION CENTER AND REGIONAL PARK.

The Resolution captions reads as follows:

RESOLUTION NO. 2007-20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO TEXAS STEP FOR A GRANT ENABLING THE CITY OF COPPERAS COVE POLICE DEPARTMENT TO REDUCE THE USE AND DISTRIBUTION OF TOBACCO PRODUCTS PERTAINING TO MINORS.

H. PUBLIC HEARINGS/ACTION

1. Public hearing, consideration and action on Ordinance No. 2007-10, an ordinance of the City of Copperas Cove, Texas adopting the 2007 Comprehensive Plan Update along with its subordinate units including the Water Model, Drainage Master Plan and Parks Master Plan; and providing an effective date. **John C. Adel, AICP, City Planner**

John C. Adel, AICP, City Planner gave an overview of agenda item H-1. Dan Sefko gave a summary of the updates to the Plan. Discussion followed on whether or not to adopt the Plan when the drainage master plan and the water model were still in need of updates and are part of the Comprehensive Plan. Also, Mr. Alexander said that the City will need to have a sewer model done in the coming fiscal year.

Council Member Reeves made a motion to table Item H-1 until the next meeting. Council Member Somera seconded the motion, which failed unanimously.

Mayor O'Dwyer opened the Public Hearing.

Speaking for: None.

Speaking against: None.

Mayor O'Dwyer closed the Public Hearing. Drainage master plan, sewer model needs to be done, water model being updated.

Council Member Reeves made a motion to table Item H-1 until the updates are made to it and the Council has more time to study it. Council Member Gallen seconded the motion, and with a unanimous vote, motion carried.

2. Public hearing, consideration and action regarding Ordinance No. 2007-11, providing a zoning change for Lot 1, Block 1 Boardwalk, from R-3 Multi-Family Residential District to B-2 Local Retail District, and PDD Planned Development District, providing a savings clause; and declaring an effective date. **John C. Adel, AICP, City Planner**

John C. Adel, City Planner gave an overview of agenda item H-2.

Mayor O'Dwyer opened the Public Hearing.

Speaking for: gene dane, architect for _____, said he would be happy to answer any questions the Council may have.

Speaking against: None.

Mayor O'Dwyer closed the Public Hearing.

Council Member somera made a motion to approve agenda item H-2. Council Member Gallen seconded the motion, and with a unanimous vote, motion carried.

The Ordinance caption reads as follows:

ORDINANCE NO. 2007-11

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, PROVIDING A ZONING CHANGE FOR LOT 1, BLOCK 1 BOARDWALK, FROM R-3 MULTI-FAMILY RESIDENTIAL DISTRICT TO B-2 LOCAL RETAIL DISTRICT, AND PDD PLANNED DEVELOPMENT DISTRICT, PROVIDING A SAVINGS CLAUSE; AND DECLARING AN EFFECTIVE DATE.

3. Public hearing, consideration and action regarding Ordinance No. 2007-12, providing a zoning change for an 18.9 acre tract our of the M.F. Richardson Survey, Abstract No. 1361, from R-1 Single Family Residential District to R-3 Multi-Family Residential District, providing a savings clause; and declaring an effective date. **John C. Adel, AICP, City Planner**

John C. Adel, City Planner gave an overview of agenda item H-3.

Mayor O'Dwyer opened the Public Hearing.

Speaking for: Mike Kreigel representing the developer, said he was available to answer any questions the Council may have.

Speaking against: None.

Mayor O'Dwyer closed the Public Hearing.

Council Member Gallen made a motion to approve agenda item H-3. Council Member Harris seconded the motion, and with a unanimous vote, motion carried.

The Ordinance caption reads as follows:

ORDINANCE NO. 2007-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, PROVIDING A ZONING CHANGE FOR AN 18.9 ACRE TRACT OUR OF THE M.F. RICHARDSON SURVEY, ABSTRACT NO. 1361, FROM R-1 SINGLE FAMILY RESIDENTIAL DISTRICT TO R-3 MULTI-FAMILY RESIDENTIAL DISTRICT, PROVIDING A SAVINGS CLAUSE; AND DECLARING AN EFFECTIVE DATE.

I. ACTION ITEMS

1. Consideration and action on Resolution No. 2007-21 in support of an Economic Development Administration (EDA) Grant application. **Jerry Conner, Executive Director, Copperas Cove Economic Development Corporation**

Jerry Conner, Executive Director of the Copperas Cove Economic Development Corporation gave an overview of agenda item I-1.

Council Member Gallen made a motion to approve agenda item I-1. Council Member Reeves seconded the motion, and with a unanimous vote, motion carried.

The Resolution caption reads as follows:

RESOLUTION NO. 2007-21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, IN SUPPORT OF AN ECONOMIC DEVELOPMENT ADMINISTRATION (EDA) GRANT APPLICATION.

2. Consideration and action on authorizing street closures for 7th Street and Avenue D and the 17th Street crossing for the Copperas Cove High School Shattered Dreams Project. **Tim Molnes, Police Chief**

Tim Molnes, Police Chief gave an overview of agenda item I-2.

Council Member Somera made a motion to approve agenda item I-2. Council Member Harris seconded the motion, and with a unanimous vote, motion carried.

3. Consideration and action on Ordinance No. 2007-13, to amend Section 3-61 of the Code of Ordinances, Vaccination of impounded animals, to include specific language that addresses adopted animals. **Jim Thompson, City Attorney**

Jim Thompson, City Attorney gave an overview of agenda item I-3.

Council Member Gallen made a motion to approve agenda item I-3. Council Member Somera seconded the motion, and with a unanimous vote, motion carried.

The Ordinance caption reads as follows:

ORDINANCE NO. 2007-13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, TO AMEND SECTION 3-61 OF THE CODE OF ORDINANCES, VACCINATION OF IMPOUNDED ANIMALS, TO INCLUDE SPECIFIC LANGUAGE THAT ADDRESSES ADOPTED ANIMALS.

4. Consideration and action on Ordinance No. 2007-14, of the City Council of the City of Copperas Cove, Texas, authorizing the issuance and sale of City of Copperas Cove, Texas General Obligation Refunding Bonds, Series 2007, levying a tax in payment thereof; authorizing the execution and delivery of a purchase agreement;

calling certain bonds for redemption; and enacting other provisions relating thereto.
Andrea Gardner, Assistant City Manager/Finance Director

Andrea Gardner, Assistant City Manager/Director of Finance gave an overview of agenda item I-4.

Council Member Gallen made a motion to approve agenda item I-4. Council Member Reeves seconded the motion, and with a unanimous vote, motion carried.

The Ordinance caption reads as follows:

ORDINANCE NO. 2007-14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, AUTHORIZING THE ISSUANCE AND SALE OF CITY OF COPPERAS COVE, TEXAS GENERAL OBLIGATION REFUNDING BONDS, SERIES 2007, LEVYING A TAX IN PAYMENT THEREOF; AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AGREEMENT; CALLING CERTAIN BONDS FOR REDEMPTION; AND ENACTING OTHER PROVISIONS RELATING THERETO.

5. Consideration and action on Ordinance No. 2007-15, providing for the issuance and sale of City of Copperas Cove, Texas, Combination Tax & Revenue Certificates of Obligation, Series 2007; levying a tax in payment thereof; prescribing the terms and provisions of said certificates; awarding the sale thereof; and enacting other provisions relating to the subject. **Andrea Gardner, Assistant City Manager/Finance Director**

Andrea Gardner, Assistant City Manager/Finance Director gave an overview of agenda item I-5.

Council Member Gallen made a motion to approve agenda item I-5, adding in the amount of \$5.3M. Council Member Somera seconded the motion, and with a unanimous vote, motion carried.

The Ordinance caption reads as follows:

ORDINANCE NO. 2007-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, PROVIDING FOR THE ISSUANCE AND SALE OF CITY OF COPPERAS COVE, TEXAS COMBINATION TAX & REVENUE CERTIFICATES OF OBLIGATION, SERIES 2007; LEVYING A TAX IS PAYMENT THEREOF; PRESCRIBING THE TERMS AND PROVISIONS OF SAID CERTIFICATES; AWARDING THE SALE THEREOF; AND ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT.

J. STAFF REPORTS

1. Water Improvements at Central Texas College. **Bob McKinnon, Director of Water/Wastewater**

Bob McKinnon, Director of Waste/Wastewater gave a report on the water improvements to Central Texas College. CTC has been the City's largest water user, which has been supplied by

an eight-inch line. When CTC connected to the new 30-inch line they found they had difficulty obtaining pressure. They have been connected back to the eight-inch line for the time being and a 200,000 elevated storage tank and pump has been proposed. Once completed, CTC will be put onto the 30-inch line.

2. Financial Report for the Month ended March 31, 2007. **Andrea Gardner, Assistant City Manager/Finance Director**

Andrea Gardner, Assistant City Manager/Finance Director gave the financial report for the month ended March 31, 2007.

K. REPORTS OF ADVISORY COMMITTEES AND BOARDS – None.

L. ITEMS FOR FUTURE AGENDAS

Council Member Gatewood requested that two items be placed on the next meeting agenda: The formation of a Charter Review Committee and a review of the Council Rules of Order and Procedures. Mr. Alexander said that these two items will be on the agenda.

M. EXECUTIVE SESSION

1. Pursuant to §551.072 of the Open Meetings Act. *Tex. Gov't Code*, Council will meet in Executive Session for deliberations regarding the purchase of real property.

2. Pursuant to §551.074 of the Open Meetings Act. *Tex. Gov't Code*, Council will meet in Executive Session to discuss the duties and responsibilities of the City Manager.

3. Pursuant to §551.074 of the Open Meetings Act. *Tex. Gov't Code*, Council will meet in Executive Session to discuss the duties and responsibilities of the City Attorney.

Mayor O'Dwyer announced the City Council would adjourn from the regular meeting to enter into executive session at 10:03 p.m.

N. RECONVENE INTO OPEN SESSION FOR POSSIBLE ACTION RESULTING FROM ANY ITEMS POSTED AND LEGALLY DISCUSSED IN EXECUTIVE SESSION

Mayor O'Dwyer announced the City Council had reconvened at 11:04 p.m., and stated that there was no action to be taken on the discussion from Executive Session.

O. ADJOURNMENT

There being no further business, Mayor O'Dwyer stated the meeting adjourned at 11:05 p.m.

Roger P. O'Dwyer, Mayor

Attest:

Jane Lees, City Secretary