

**CITY OF COPPERAS COVE  
CITY COUNCIL REGULAR MEETING MINUTES  
February 19, 2008 – 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 Somera gave the Invocation, and led the Pledge of Allegiance.

**C. ROLL CALL**

**ALSO PRESENT**

Roger P. O'Dwyer  
Bob Reeves  
Larry D. Sheppard  
Mark E. Peterson  
Charlotte Heinze  
Ray Don Clayton  
Fred Harris  
Frank D. Somera, Jr.

Andrea M. Gardner, City Manager  
James R. Thompson, City Attorney  
Jane Lees, City Secretary

**D. ANNOUNCEMENTS**

**E. PUBLIC RECOGNITION**

1. Employee Service Awards. **Andrea M. Gardner, City Manager**

January 2008 Recipients: Jennifer Henry, Court Clerk, 5 years; Michael Eric Watson, Fire Lieutenant, 5 years; Michael Holt, Fire Captain, 5 years; Dan Woolard, Parks & Recreation Laborer, 10 years.

February 2008 Recipients: Patrick Bray, Wastewater Lab Technician, 10 years; John Oster, Police Corporal, 10 years; Kathy Weber, Administrative Assistant—Building & Development Department, 25 years.

Each recipient was presented with a pin and congratulated on their service to the City of Copperas Cove. Andrea Gardner, City Manager, explained that this Public Recognition is a new program this year developed to recognize employees for their service on a monthly basis. The pins have the City logo on them and are silver plated for 5-year recipients, silver plated with a sapphire for 10-year recipients, and silver plated with a sapphire and ruby for 15-year recipients. Recipients with 20 years service receive a gold plated pin, those with 25 years receive a gold plated pin with one diamond, and those with 30 years receive a gold plated pin with two diamonds.

2. Proclamation: Vet Center Day, February 22, 2008. **Roger P. O'Dwyer, Mayor**

Mayor O'Dwyer read the proclamation and urged everyone to support the new area Vet Center located in Harker Heights. He added that he would be reading the proclamation again at the grand opening celebration on February 22, 2008.

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| 3. Proclamation: Severe Weather Awareness Week in Texas, February 24 – March 1, 2008. <b>Roger P. O'Dwyer, Mayor</b> |
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Mayor O'Dwyer read the proclamation and presented it to Deputy Fire Chief Robert O'Dell. Deputy Chief O'Dell thanked the Mayor and Council for their continued support for this proclamation each year. He stated that the goal this year is to help citizens learn and prepare for themselves for severe weather situations. Further information will be posted soon on the City's website. In addition, Central Fire Station has numerous pamphlets available for citizens and personnel that will help answer any questions they may have.

**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.

None.

**G. CONSENT ITEMS**

Council Member Reeves made a motion to move the Consent Agenda after Agenda item **J. Staff Reports**. Council Member Clayton seconded the motion, and with a unanimous vote, motion carried.

**H. PUBLIC HEARINGS/ACTION**

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| 1. Public hearing, consideration and action on Ordinance No. 2008-05, abandoning a portion of North 5 <sup>th</sup> Street that reaches from south of Avenue A to the north boundary of an alley way that extends from North 3 <sup>rd</sup> Street westward to North 7 <sup>th</sup> Street, providing a savings clause; and declaring an effective date.<br><b>Scott Wallace, Interim City Planner</b> |
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Scott Wallace, Interim City Planner gave an overview of agenda item H-1.

Mayor O'Dwyer opened the public hearing.

Speaking for: Pastor Mark Kemp, First Baptist Church. He stated that the church is requesting that the City abandon this portion of North 5<sup>th</sup> Street so that the church can make preparations for future expansion and maintain the property as well.

Speaking Against: None.

Mayor O'Dwyer closed the public hearing.

Council Member Clayton made a motion to approve item H-1. Council Member Somera seconded the motion, and with a unanimous vote, motion carried.

The Ordinance caption is as follows:

**ORDINANCE NO. 2008-05**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, ABANDONING A PORTION OF NORTH 5TH STREET THAT REACHES FROM SOUTH OF AVENUE A TO THE NORTH BOUNDARY OF AN ALLEY WAY THAT EXTENDS FROM NORTH 3RD STREET WESTWARD TO NORTH 7TH STREET, PROVIDING A SAVINGS CLAUSE; AND DECLARING AN EFFECTIVE DATE.**

2. Public hearing, consideration and action on Ordinance No. 2008-06, providing a zoning change for a tract of land, locally known as 808 Leonhard, that is located directly behind Auto Zone and across Leonhard Street from Ben's Service Center, consisting of 0.586 acre, from R-1 Single Family Residential District to B-5 Business District, providing a savings clause; and declaring an effective date. **Scott Wallace, Interim City Planner**

Scott Wallace, Interim City Planner gave an overview of agenda item H-2. While the Planning and Zoning Commission voted to recommend approval of this zone change, City Staff recommendation is to deny Ordinance 2008-06.

Mayor O'Dwyer opened the public hearing.

Speaking for: Willie Goode, Planning and Zoning Commissioner. Mr. Goode said that the Commission voted to recommend that the zoning be changed to B-5 because the storage of the gases in question will be stored behind a cinderblock wall and the area would be fenced so that the neighbors would not be affected.

Ted Montoya. Mr. Montoya requested that the City Council approve Ordinance 2008-06.

Speaking Against: None.

Mayor O'Dwyer closed the public hearing.

Council Member Peterson made a motion to table this issue to March 11, 2008 in order to obtain further information. Council Member Reeves seconded the motion. Further discussion followed. A vote was taken with the following results:

Bob Reeves	For tabling
Larry Sheppard	Against tabling
Mark Peterson	For tabling
Charlotte Heinze	Against tabling
Ray Don Clayton	Against tabling
Fred Harris	Against tabling
Frank Somera, Jr.	For tabling

The vote was 4 to 3 against tabling this agenda item.

Council Member Peterson made another motion to deny approval of Ordinance No. 2008-06. There was no second. Discussion followed. Council Member Peterson withdrew his motion.

Council Member Peterson made a third motion to table this issue to March 11, 2008 in order to obtain further information. Council Member Reeves seconded the motion, and with a unanimous vote, motion carried.

The Ordinance caption is as follows:

**ORDINANCE NO. 2008-06**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, PROVIDING A ZONING CHANGE FOR A TRACT OF LAND, LOCALLY KNOWN AS 808 LEONHARD, THAT IS LOCATED DIRECTLY BEHIND AUTO ZONE AND ACROSS LEONHARD STREET FROM BEN'S SERVICE CENTER, CONSISTING OF 0.586 ACRE, FROM R-1 SINGEL FAMILY RESIDENTIAL DISTRICT TO B-5 BUSINESS DISTRICT, PROVIDING A SAVINGS CLAUSE; AND DELCARING AN EFFECTIVE DATE.**

3. Public hearing concerning a request for voluntary annexation of an 11.01 acre tract of land known as Big Divide Road. **Scott Wallace, Interim City Planner**

Scott Wallace, Interim City Planner gave an overview of agenda item H-3.

Mayor O'Dwyer opened the public hearing.

Speaking for: Neal Dorroh, 3610 Big Divide Road. Mr. Dorroh inquired as to the exact location of the land being annexed. City Attorney Thompson explained that it was the road itself being annexed, which is a 60-foot width running from the City Limits, just off Highway 190 to the Northern City Limits, approximately 4,866 feet.

Speaking Against: None.

Mayor O'Dwyer closed the public hearing.

**I. ACTION ITEMS**

1. Consideration and action on the reappointment of three members of the library Advisory Board for the period March 1, 2008 – February 28, 2011. **Peg Fleet, Library Director**

Peg Fleet, Library Director gave an overview of agenda item I-1.

Council Member Heinze made a motion to reappoint Elizabeth Snow, Peggy Youngs, and Leslie Noel for the period March 1, 2008 to February 28, 2011. Council Member Reeves seconded the motion, and with a unanimous vote, motion carried.

2. Consideration and action on Ordinance No. 2008-07, amending the City of Copperas Cove's Code of Ordinances, Chapter 19, Vehicles For Hire, Article III, Wrecker Service, Section 19-66, Maximum Fees – Generally; providing a savings clause and declaring an effective date. **Mike Heintzelman, Deputy Police Chief**

Mike Heintzelman, Deputy Police Chief gave an overview of agenda item I-2.

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

The Ordinance caption is as follows:

**ORDINANCE NO. 2008-07**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, AMENDING THE CITY OF COPPERAS COVE'S CODE OF ORDINANCES, CHAPTER 19, VEHICLES FOR HIRE, ARTICLE III, WRECKER SERVICE, SECTION 19-66, MAXIMUM FEES – GENERALLY; PROVIDING A SAVINGS CLAUSE AND DECLARING AN EFFECTIVE DATE.**

3. Consideration and action on approving Amendment No. 1 to the Publicity and Tourism Agreement between the City of Copperas Cove and the Copperas Cove Chamber of Commerce, changing the payment amount from \$80,000 to \$110,000. **Wanda Bunting, Director of Financial Services**

Andrea Gardner, City Manager gave an overview of agenda item I-3.

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

4. Consideration and action on the appointment of a City Staff member to the Central Texas Council of Government's Solid Waste Advisory Committee. **Wanda Bunting, Director of Financial Services**

Andrea Gardner, City Manager gave an overview of agenda item I-4.

Council Member Clayton made a motion to appoint Mike Mundell to the Solid Waste Advisory Committee for the period of one year. Council Member Reeves seconded the motion, and with a unanimous vote, motion carried.

5. Consideration and action on Resolution No. 2008-02, ordering a general election to be held May 10, 2008 and, if necessary, a runoff election to be held on June 7, 2008; establishing a polling location; naming the presiding judge and alternate; and establishing procedures for said elections. **Jane Lees, City Secretary**

Jane Lees, City Secretary gave an overview of agenda item I-5.

Council Member Heinze made a motion to approve agenda item I-5 with an amendment stating that if the school district cancelled their election, the City Secretary would administer the election instead of the County. Council Member Somera seconded the motion. A vote was taken with the following results:

Bob Reeves	Against
Larry Sheppard	For
Mark Peterson	For
Charlotte Heinze	For
Ray Don Clayton	For
Fred Harris	For
Frank Somera, Jr.	For

Motion carried, six to one.

The Resolution caption is as follows:

**RESOLUTION NO. 2008-02**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, ORDERING A GENERAL ELECTION TO BE HELD MAY 10, 2008 AND, IF NECESSARY, A RUNOFF ELECTION TO BE HELD ON JUNE 7, 2008; ESTABLISHING A POLLING LOCATION; NAMING THE PRESIDING JUDGE AND ALTERNATE; AND ESTABLISHING PROCEDURES FOR SAID ELECTIONS.**

6. Consideration and action on Ordinance No. 2008-01, ordering a special election to be held May 10, 2008, in conjunction with the general election, for the purpose of proposing amendments to the Charter of the City of Copperas Cove to the qualified voters of the City. ***Jane Lees, City Secretary***

Jane Lees, City Secretary gave an overview of agenda item I-6.

Council Member Peterson made a motion to approve agenda item I-6. Council Member Sheppard seconded the motion, and with a unanimous vote, motion carried.

The Ordinance caption is as follows:

**ORDINANCE NO. 2008-01**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, ORDERING A SPECIAL ELECTION TO BE HELD MAY 10, 2008, IN CONJUNCTION WITH THE GENERAL ELECTION, FOR THE PURPOSE OF PROPOSING AMENDMENTS TO THE CHARTER OF THE CITY OF COPPERAS COVE TO THE QUALIFIED VOTERS OF THE CITY.**

7. Consideration and action on Resolution No. 2008-05, determining the current rates of the Atmos Energy Corporation, Mid-Tex Division to be unjust and unreasonable; providing for a reasonable notice and hearing; finding that the meeting complied with the open meetings act; and declaring an effective date. ***Andrea M. Gardner, City Manager***

Andrea M. Gardner, City Manager gave an overview of agenda item I-7.

Council Member Peterson made a motion to approve agenda item I-7. Council Member Harris seconded the motion, and with a unanimous vote, motion carried.

The Resolution caption is as follows:

**RESOLUTION NO. 2008-05**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, DETERMINING THE CURRENT RATES OF THE ATMOS ENERGY CORPORATION, MID-TEX DIVISION TO BE UNJUST AND UNREASONABLE; PROVIDING FOR A REASONALBE NOTICE AND HEARING; FINDING THAT THE MEETING COMPLIED WITH THE OPEN MEETINGS ACT; AND DECLARING AN EFFECTIVE DATE.**

8. Consideration and action on Resolution No. 2008-06, approving a Settlement Agreement between Atmos Energy Corporation, Mid-Tex Division and Atmos Texas Municipalities; declaring existing rates to be unreasonable; adopting rate adjustments consistent with the settlement agreement; finding the rates to be set by the attached tariffs to be just and reasonable; finding that the meeting complied with the open meetings act; declaring an effective date; and requiring delivery of this resolution to the company and legal counsel. **Andrea M. Gardner, City Manager**

Andrea M. Gardner, City Manager gave an overview of agenda item I-8.

Council Member Heinze made a motion to approve agenda item I-8. Council Member Somera seconded the motion, and with a unanimous vote, motion carried.

The Resolution caption is as follows:

**RESOLUTION NO. 2008-06**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, APPROVING A SETTLEMENT AGREEMENT BETWEEN ATMOS ENERGY CORPORATION, MID-TEX DIVISION AND ATMOS TEXAS MUNICIPALITIES; DECLARING EXISTING RATES TO BE UNREASONALBE; ADOPTING RATE ADJUSTMENTS CONSISTENT WITH THE SETTLEMENT AGREEMENT; FINDING THE RATES TO BE SET BY THE ATTACHED TARIFFS TO BE JUST AND REASONABLE; FINDING THAT THE MEETING COMPLIED WITH THE OPEN MEETINGS ACT; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.**

**J. STAFF REPORTS**

1. Boys & Girls Club of Copperas Cove year end report for FY 2006-2007. **Francie Charles, Boys & Girls Club of Copperas Cove**

Francie Charles and John Charles of the Boys & Girls Club of Copperas Cove gave the year end report for FY 2006-2007 and an overview of what is being planned for FY 2008.

2. Presentation of the Racial Profiling Report. **Tim Molnes, Police Chief**

Tim Molnes, Police Chief gave a presentation of the Racial Profiling Report.

**G. CONSENT ITEMS**

1. Consideration and action on approval of minutes from February 5, 2008 regular council meeting. **Jane Lees, CMC, City Secretary**

2. Consideration and action on authorizing the release of funds in the amount of \$27,500 from the Hotel Occupancy Tax Fund to the Copperas Cove Chamber of Commerce to satisfy the quarterly installment due for period ending December 31, 2007. **Wanda Bunting, Director of Financial Services**

3. Consideration and action by City Council to make a revision to the bylaws for the Keep Copperas Cove Beautiful Commission. **Silvia Rhoads, Executive Director, Keep Copperas Cove Beautiful**

Council Member Heinze made a motion to approve consent items G-1, G-2, and G-3. Council Member Somera seconded the motion, and with a unanimous vote, motion carried.

**K. REPORTS OF ADVISORY COMMITTEES AND BOARDS – None.**

**L. ITEMS FOR FUTURE AGENDAS**

Council Member Clayton requested that a workshop be held to discuss changing the City zoning to do a specific use permit to accommodate businesses that don't fit exactly. Council Members Harris and Somera concurred.

**M. EXECUTIVE SESSION**

1. 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—Presentation of an investigative report regarding allegations that the Mayor interfered with administration of the City. **James R. Thompson, City Attorney**

Mayor O'Dwyer requested that this Executive Session item be held in open session.

James Thompson, City Attorney, stated that through the City Manager's Office, he has asked Chief Molnes to come forward and set forth rules for this portion of the meeting. Chief Molnes said that there will be no interruptions by members of the audience during any presentation that comes from either the dais or the speakers' podium or dais during the presentation. All those in attendance are asked to keep their comments to themselves so as not to prevent, disrupt, interrupt, or interfere with this session. Any person in attendance that attempts to prevent, disrupt, interrupt, or interfere with this

session, by either physical action or verbal utterance will be asked to leave the Council Chambers immediately. Chief Molnes thanked everyone in advance for their cooperation.

Mr. Thompson continued by saying that the presentation will be conducted at the workshop table so that the Council may view the slides and hear the portions which are on audio.

After a short break, the Council reconvened at 9:08 p.m. Mr. Thompson began by saying that over the last nine months he had received repeated requests from various members of the City Council to provide a written legal report on the activities of the office of the mayor. As a result, in November 2007, he hired Mr. Charles Zech of the law firm Denton, Navarro, Rocha & Bernal of San Antonio. Mr. Thompson said that Charles Zech is well-versed in municipal law and handles matters such as this throughout the State of Texas. He said that the hiring of Mr. Zech was necessary in order to provide an unbiased report to the Mayor and Council. Mr. Zech is here tonight to present his report. Mr. Zech will not be available to answer any questions this evening. Mr. Thompson specifically asked that there be no discussion or questions at this meeting. Please allow Mr. Zech to make his report.

After presenting a short biography of Mr. Zech, Mr. Thompson introduced Mr. Zech. Mayor O'Dwyer requested that Mr. Thompson tell him under what authority he hired Mr. Zech and what funding was used. Mr. Thompson said that the City paid for it.

Mr. Zech thanked Mr. Thompson for the introduction, adding that as part of his work for his Master's degree, he has been researching home rule charters in the State of Texas. Mr. Zech said he was asked by Mr. Thompson to do an investigation as to whether or not some of the activities of the mayor may have violated the city's charter. He did a documented review and did not interview anybody to prepare this report. Mr. Zech said he examined some 130 documents and Mr. Thompson asked him to give a legal analysis with respect to the legality of the proceedings that occurred on May 15, 2007, which was the meeting where a discussion item was placed on the agenda by the mayor and a motion was made eventually to vacate the mayor's position on the council.

First, Mr. Zech discussed specific sections of the City Charter. Section 2.08 which deals with prohibiting the mayor from giving orders to officers or employees subject to control of the City Manager, and allows the City Council as a "whole" to give direction to the City Secretary, City Judge, City Attorney and City Manager. He also discussed the policy in place which provides procedures for requesting research, information and providing policy direction as outlined in the Code of Ordinances, Chapter 2, Article III, Section 2-61.4.

Second, Mr. Zech said that during his review of all the documents provided to him, there appeared to be a consistent pattern of interference by the Mayor. However, he identified nine specific tangible acts that he felt was evidence of interference with administration. Those nine tangible acts are summarized as follows: (1) Talking Points memorandum dated July 23, 2006; (2) Letter to Secretary of State Condoleezza Rice dated December 5, 2006; (3) Direction to the City Attorney to discontinue with the creation of a report for the Impact Fee Committee dated January 25, 2007; (4) E-mail sent to Steve Alexander on February 27, 2007 regarding the need for an individual to attend a County Commissioners meeting with policy direction regarding the make up of the Ground

Water District's Board of Governors; (5) E-mail sent to Robert O'Dell showing evidence of orders given to the Deputy Fire Chief regarding a scheduled workshop, Dated April 10, 2007; (6) Memorandum from City Secretary Lees to City Attorney Thompson on July 11, 2007, evidencing an order given to the City Secretary on July 10, 2007 on the preparation of an agenda item; (7) E-mail on September 25, 2007 from City Secretary Lees to City Attorney Thompson regarding an order to the City Secretary to keep council notes made during council meetings; (8) E-mail message from Dennis Haas, Fire Chief, dated December 11, 2007, evidencing an attempt to circumvent and interfere with the City Manager's authority as the chief administrative officer of the City; and (9) Letter appointing Copperas Cove Solid Waste Superintendent to the CTCOG Solid Waste Advisory Committee, dated February 1, 2007.

Finally, Mr. Zech presented his legal analysis regarding the council meeting of May 15, 2007. In summary, since the Mayor was the individual who was the subject of the discussion of a forfeiture of office, he was therefore disqualified to participate and vote in the proceeding, including specifically, the motion to table the item. This issue before the Council was "a matter which directly and immediately affected him [the Mayor] individually." The City Charter does not provide express authority for the Mayor to vote if the vote involves the Mayor. If the Charter did provide for such authority, it would be preempted based on case law, *Hager v. State Ex Rel. Tevault*.

Mr. Zech stated that, "The cumulative information provided supports evidence of a consistent interference with the City's day-to-day administrative affairs and of acts taken by the Mayor outside the scope of authority granted by the City's Charter." He also stated, "The actions taken by the City Council on May 15, 2007 are a nullity as a result of the Mayor's participation."

Mr. Thompson asked the council to honor the request to not ask questions regarding this report at this time. Council Member Sheppard requested that the presentation be backed up to the first three items. Mr. Thompson said "no." Council Member Sheppard stated, "in other words this is not America." Mr. Thompson stated that this presentation is a report, not a trial. Council Member Sheppard said, "We haven't had a report, you haven't given us anything, all we've got's what's up there and you can't even back it up. We've got problems folks." Mr. Thompson continued by saying that based on this report there will be a statement of allegations and charges filed in the City Secretary's Office regarding the Mayor. Since the Mayor and his office are the subject of this action and immediately affects him directly, Mr. Thompson requested that he be disqualified from participation in this process, except individually in his defense. Mr. Thompson proposed that the Council do this either now or wait and go back to the dais and do it there. Mr. Thompson said that he would like to go forward with a proposal and ask for consensus of the Council on how to follow through with this matter that they have asked him to present this evening. Council Member Sheppard stated to Mr. Thompson that this was not voted on by the Council. Mr. Thompson said that was correct. Council Member Sheppard said that maybe one or two asked him and according to the first PowerPoint, that's illegal. He then asked, "So is it illegal or is it not? It definitely says in there and we didn't approve paying his fee and I think you've got a problem buddy; you need to pay that man out of your pocket. I'm serious as I can be, you can grin all you want." Mr. Thompson said to Council Member Sheppard that he made his point. Council Member Sheppard said, "I'm just telling you that you won't back it up and you won't give us a copy of it." Mr. Thompson said that the Council will all receive a copy of the report when he was done speaking. Mr. Thompson continued and said that he was proposing an

opportunity at the March 11, 2008 meeting, to present witnesses in support of the allegations that were made and to allow the Mayor to present witnesses and any evidence in his defense. At that meeting, I will plan an agenda item for consideration and action on whether Mayor O'Dwyer violated prohibitions, Section 2.08 of the Charter, and allow for a vote. The format of that meeting will be that of an administrative board with relaxed rules. He will present witnesses in support of the allegations and Mayor O'Dwyer will have an opportunity to cross-examine those witnesses. Mayor O'Dwyer will then have an opportunity to present his defense to the allegations and I will have the same right to cross-examine. Any verbal rebuttal will be done according to the rules of administrative board hearings. Both sides will have an opportunity to make a summation to the Council. The Council will have an opportunity during these proceedings to ask questions of the witnesses upon being recognized by the Chair, however, I strongly recommend that the Council withhold any questions and allow the evidence to be presented. Asking questions in the middle of an action like this is very disruptive and could cause the hearing to go on forever. The action item will provide for discussion and a vote when evidence is done being presented.

Mr. Thompson said that if there is a finding that the Mayor did not violate the Charter, the matter will be over and I will do everything within my influence to see that these matters do not arise in the future. If there is a finding that Mayor O'Dwyer violated Section 2.08, Prohibitions of the Charter, he will have a duty to resign under our Charter. If he does not resign within three days of that meeting, I will ask that an agenda item be placed on the March 25, 2008 City Council meeting for consideration and action on whether the office of the Mayor should be forfeited by Mr. O'Dwyer. Mr. Thompson asked for a consensus on whether he should proceed in that manner. Council Member Sheppard stated, "I think you need to find something better to do with your time." Mr. Thompson stated that he received consensus. Council Member Sheppard said, "Whoever has asked for this to be done, I intend to see if we can't find a lawyer because City funds were expended for this man's investigation, and to my knowledge there has not been City Council action on it. Now if two or three can go together or if Mr. Thompson can do it on his own, we've got a problem. Maybe there is something being hidden and we need to find out what it is."

Mayor O'Dwyer stated that the Council would reconvene up at the dais.

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

Council Member Peterson made a motion as follows: "I move that since Mayor O'Dwyer and his office is the subject of action brought before the Council that affects him immediately and directly, he be disqualified from participating in these matters, tonight and in the future, except individually in his defense." The motion was seconded by Council Member Clayton. Mayor O'Dwyer stated that Council Member Sheppard brought up a point about the expenditure of funds. He said he would like to know how that occurred and who brought the item to the City Attorney. Mayor O'Dwyer said that he should be provided funds. If the City provides funds to remove him, he should be provided funds as well. He stated that he spent \$11,000 during the last go around. Mr. Thompson called a point of order saying that the Mayor could discuss the motion before the Council and nothing else at this time. Mayor O'Dwyer said that he believed a

defendant has a right to say just about anything he or she wants. Mr. Thompson said he may have that opportunity, but not in this motion. Mayor O'Dwyer said, "O.K., this is not the United States of America."

A vote was taken with the following results:

Bob Reeves	For
Larry Sheppard	Against
Mark Peterson	For
Charlotte Heinze	For
Ray Don Clayton	For
Fred Harris	For
Frank Somera, Jr.	For

Motion carried, six to one.

Mayor O'Dwyer asked that he be given a copy of the report. Mr. Thompson gave a copy of the report to each Council Member. Council Member Sheppard requested to know where the funds came from to pay the outside attorney and who authorized them to be expended. He continued by saying that, "if the City Manager authorized them, she needs to be dealt with. If the City Attorney authorized them, he needs to be dealt with. This was not approved by the City Council of the City of Copperas Cove, and I take great offense at what's going on here. We voted this down once, two of you wasn't on here, and it just keeps coming up and up and up and up, and I'm tired of it. And that there [holding up the report] doesn't come cheap from that lawyer. We can't take care of our flooding in the City of Copperas Cove, but we can spend money with a lawyer in San Antonio over something that don't amount to a hill of beans; and that's my say."

## **O. ADJOURNMENT**

There being no further business, Mayor O'Dwyer adjourned the meeting at 9:41 p.m.

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Roger P. O'Dwyer, Mayor

ATTEST:

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Jane Lees, City Secretary