

**CITY OF COPPERAS COVE
CITY COUNCIL REGULAR MEETING MINUTES
August 5, 2008 – 7:00 P.M.**

A. CALL TO ORDER

Mayor Pro Tem Robert L. Reeves 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 Seffrood gave the Invocation and led the Pledge of Allegiance.

C. ROLL CALL

ALSO PRESENT

Robert L. Reeves
Larry D. Sheppard
Mark E. Peterson
Charlotte Heinze (excused absence)
Ray Don Clayton
Willie C. Goode
Frank Seffrood

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

D. ANNOUNCEMENTS

Council Member Peterson thanked the Fire Department and all the volunteer organizations that participated this past weekend in the "Shots Through the Firehouse." Over 110 families received immunizations that they needed. Also 144 Kiddo Cards were issued during that event. He reminded everyone that Music at the Gap will be held this coming Saturday, with dinner at 6:00 p.m. and music starting at 7:00 p.m.

City Manager Gardner introduced the new City Engineer/Projects Director, Wesley Wright, to the City Council and the citizens.

E. PUBLIC RECOGNITION

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.

Mayor Pro Tem Reeves reminded the citizens that there no longer a requirement to fill out the piece of paper at the back of the Council Chambers in order to speak at Citizens' Forum. He asked that all citizens speaking state their name and their residence address when at the podium.

Bill Waltz, 315 Chestnut Drive. Mr. Waltz stated that he is the District Junior Vice Commander of the VFW, which has over 5,000 members in this area. On September 13, 2008, at 11:00 a.m., the VFW will be dedicating the stone at the Killeen Memorial Cemetery. He asked that all veterans and veterans organizations plan on being there for that dedication. This dedication is long overdue and the VFW has been working for about six months to get it going, and raise

money to get the stone. After the dedication, if you are familiar with Post 9192 in Killeen, there is going to be a lunch/dinner after the ceremony. It would be nice to see Copperas Cove residents and Council Members at this dedication.

Roger O'Dwyer, 1703 Highland Drive. Mr. O'Dwyer said that at the July 15, 2008 Council Meeting, the Texas Attorney General Opinion JC-0318 (TAGO JC-0318) was hastily added, during the meeting, to the agenda package and that parts of it were quoted from during the meeting. He said he obtained a copy of that Opinion and read and examined it in detail. He also stated that he discussed it with his own and other competent attorneys and he now wished to make a statement regarding what that Opinion and other similar ones contain.

"The members of the City Council, including those that are the subject of the recall petition, have a ministerial duty to restore me to the position of Mayor. And that Mr. Reeves immediately step down to his Place One City Council position on the dais, right now; so, that I might assume the duties of mayor, from which, in my opinion, I was unlawfully denied by them (meaning the Council Members subject to recall) and Mr. Frank Somera and Mr. Fred Harris.

My restoral is properly done in accordance with the Texas Attorney General Opinion JC-0318, an item brought to and distributed to them, the Copperas Cove City Council and Copperas Cove City Attorney, by Ms. Jane Lees, then the Copperas Cove City Secretary, at the July 15, 2008 City of Copperas Cove City Council Regular Meeting. TAGO JC-0318 requires forfeiture of office for violations of the Texas Constitution or Texas State laws for the provisions of "de jure" not to apply. If no State Statute or law has been violatate "de jure" must apply.

I humbly request this action according to Mr. Belt's statements made to the Copperas Cove City Council at its meeting on May 1, 2007. Those statements by County Attorney Belt being that I, Roger P. O'Dwyer, did not violate any State of Texas laws or incur any constitutional disqualification for mayoral office.

A full copy of County Attorney Belt's statement can be found on the City's website in the City of Copperas Cove, City Council Regular Meeting Minutes, May 1, 2007, 7:00 p.m.

Therefore, I should immediately be reinstated to the position of Mayor as a "de jure" officer until such time as the special election occurs as provided for by Texas Attorney General Opinions' JC-0318, DM-377, WW-1253, and H-161.

Should the Council fail to reinstate me immediately, I will explore the possibility of a mandamus remedial action in the morning with the appropriate Coryell County or State officials. It's your move Mr. Reeves."

Mr. O'Dwyer said that since Mr. Reeves chose not to act on what he asked him to do he had something else to speak about. He said that in the last week he was contacted by a father and mother who had children that had won "Voice of Democracy" prizes at the local VFW. One is now in his second year of law school and the other is entering into pre-med. I advised everyone out to take advantage of these scholarships by going to the VFW website at vfw.org and applying. The deadline is November 1 and he urged those in the audience take advantage of this opportunity.

Bob McFarland, 25 Cactus Drive. Mr. McFarland said that we need to bring honor when we salute the flag. He said that the proper way to do this when holding a hat that you have removed from your head, is to be sure that your hand is over your heart, not your hat. Be sure to teach

your children proper respect for the flag as well. If you are in uniform you can legally salute, and even if you are a civilian you can render the hand salute. Please consider these things and pass the word along to the young people that a lot of people gave their lives and blood for the flag.

Bill Thomas, 1110 Cummings Avenue. We seem to have a misunderstanding that a certain political group keeps trying to push. I don't know of anyone on the Council who has ever accused our former mayor of a crime. There was never a trial; there wasn't supposed to be a trial. There was an administrative hearing to do an administrative job that took this Council a great deal of courage and integrity to do properly. Except for the fact that they leaned over backwards to be overly fair, and it came back to bite them. If the Charter is violated, then you can be removed from office. We are not talking about a crime. There was no judge, no jury, no conviction, nobody going to jail. This was violation of the Charter. Who determines what is a violation of the Charter? The people. How do they make that determination? They make that determination through their elected City Council which is the only governing authority of this town and every single other town that has a home rule charter. This business of 'I didn't commit any crime' is deceptive. No one ever said you did.

G. CONSENT ITEMS

1. Consideration and action on rejecting RFP (Request for Proposal) No. 2008-09-75, Uniform Services, and awarding to G & K Services of Coppell, Texas, for a three (3) year period, on a BuyBoard (State Coop) contract with a 2% price increase on June the 1st of each year. **Wanda Bunting, Director of Financial Services**

Council Member Peterson made a motion to approve consent item G-1. Council Member Seffrood seconded the motion, and with a unanimous vote, motion carried.

H. PUBLIC HEARINGS/ACTION – None.

I. ACTION ITEMS

1. Consideration and action on Ordinance No. 2008-24, adding a new Section 18-16.8, changing the speed limit on Big Divide Road and Grimes Crossing Road to a maximum speed of thirty-five (35) miles per hour. **James A. Trevino, Street/Drainage Superintendent**

James A. Trevino gave an overview of agenda item I-1.

Council Member Peterson made a motion to approve agenda item I-1. Council Member Seffrood seconded the motion. A roll call vote was taken as follows:

Larry D. Sheppard	For
Mark E. Peterson	For
Ray Don Clayton	For
Willie C. Goode	Against
Frank Seffrood	For

Motion carried four to one.

The Ordinance caption is as follows:

ORDINANCE NO. 2008-24

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, ADDING A NEW SECTION 18-16.8, CHANGING THE SPEED LIMIT ON BIG DIVIDE ROAD AND GRIMES CROSSING ROAD TO A MAXIMUM SPEED OF THIRTY-FIVE (35) MILES PER HOUR.

2. Consideration and action on authorizing the City Manager to execute a Letter of Intent with ZEST-TX, LLC. **Andrea M. Gardner, City Manager**

Andrea M. Gardner, City Manager gave an overview of agenda item I-2.

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

3. Consideration and action on authorizing the Mayor Pro Tem to execute a contract with the Office of Rural Community Affairs (ORCA) for a sewer improvements project to be constructed within the city limits. **Andrea M. Gardner, City Manager**

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

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

4. Consideration and action on Resolution No. 2008-29, approving the abatement of water and trash fees for the Optimist Club of Greater Copperas Cove Area #06341. **Andrea M. Gardner, City Manager**

Andrea M. Gardner, City Manager, said she was presenting this item at the request of three Council Members. She said that abatements have been issued earlier this year for the YMCA and the Boys & Girls Club. She turned the item over to Council Member Goode. Council Member Goode stated that the Optimist Club is a non-profit organization that operates a small store in Cove Terrace Shopping Center. The funds from that store benefit children in our area that have cancer and other disabilities.

Council Member Peterson said that he respected the efforts of the Optimist Club and what they do for our community; however, they are a retail shop, unlike the Boys & Girls Club and YMCA. He stated that the bill should not put an undue burden on the Club as they are only open 26.5 hours a week. He said that the shop is staffed by a few volunteers who have control over their water usage. Many other organizations have less control over the water usage due to the hundreds that visit their facilities every day. He said that not every non-profit organization in our community deserves a water abatement and that the \$54 a month average water bill is not an undue burden on the Optimist Club.

Council Member Sheppard made a motion to approve agenda item I-4. Council Member Seffrood seconded the motion. A roll call vote was taken as follows:

Larry D. Sheppard For
Mark E. Peterson Against

Ray Don Clayton Against
Willie C. Goode Recused
Frank Seffrood For

The vote on the motion was two to two, motion fails.

The Resolution caption is as follows:

RESOLUTION NO. 2008-29

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, APPROVING THE ABATEMENT OF WATER AND TRASH FEES FOR THE OPTIMIST CLUB OF GREATER COPPERAS COVE AREA #06341.

5. Consideration and action on the approval to purchase an International, 6-8 yard dump truck from Santex Truck Center, San Antonio, Texas, in the amount of \$58,208. **Robert M. McKinnon, Public Works Director**

Robert M. McKinnon, Public Works Director gave an overview of agenda item I-5.

Council Member Clayton made a motion to approve agenda item I-5. Council Member Seffrood seconded the motion, and with a unanimous vote, motion carried.

6. Consideration and action on the approval to purchase a Caterpillar 20E Backhoe Loader from Holt Caterpillar, Waco, Texas, in the amount of \$86,508.24. **Robert M. McKinnon, Public Works Director**

Robert M. McKinnon, Public Works Director gave an overview of agenda item I-6.

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

7. Certification of petitions for the Recall of Council Members Robert L. Reeves, Mark E. Peterson, Charlotte Heinze, and Ray Don Clayton. **Jane Lees, City Secretary**

Jane Lees, City Secretary gave an overview of agenda item I-7. Ms. Lees certified each petition as follows:

Petition to recall Council Member Robert L. Reeves
Sufficient with 762 valid signatures

Petition to recall Council Member Mark E. Peterson
Sufficient with 772 valid signatures

Petition to recall Council Member Charlotte Heinze
Sufficient with 772 valid signatures

Petition to recall Council Member Ray Don Clayton
Sufficient with 757 valid signatures

All other aspects of the petitions were valid and the signature requirement was for 51% of the number of those voting at the last regular municipal election, or signed by 750 qualified voters, whichever is greater. No action was required by the Council.

8. Consideration and discussion on conducting an annual evaluation for the Municipal Judge. **Kelli Sames, Human Resources Director**

Kelli Sames, Human Resources Director gave an overview of agenda item I-8.

Council Member Clayton made a motion to postpone this item to the August 19, 2008 Council Meeting. Council Member Goode seconded the motion, and with a unanimous vote, motion carried.

9. Consideration and discussion on conducting an annual evaluation for the City Attorney. **Kelli Sames, Human Resources Director**

Kelli Sames, Human Resources Director gave an overview of agenda item I-9.

Council Member Clayton made a motion to postpone this item to the August 19, 2008 Council Meeting. Council Member Goode seconded the motion, and with a unanimous vote, motion carried.

10. Consideration and action on calling for Public Hearings on the proposed tax increase for the 2008-2009 fiscal year to be held on August 19, 2008 and September 2, 2008 at City Hall at 7:00 p.m. **Wanda Bunting, Director of Financial Services**

Wanda Bunting, Director of Financial Services gave an overview of agenda item I-10.

Council Member Goode made a motion to postpone this item to the Special Meeting scheduled for August 8, 2008. Council Member Peterson seconded the motion, and with a unanimous vote, motion carried.

11. Consideration and action on the appointments to the City of Copperas Cove TIRZ Number One Board Member Positions One through Four. **Andrea M. Gardner, City Manager**

Andrea M. Gardner, City Manager gave an overview of agenda item I-11. Mayor Pro Tem Reeves made the following nominations:

Position 1, Chair	Dan Yancey
Position 2	Frank D. Somera Jr.
Position 3	Gene Dane
Position 4	Jack Smith

Council Member Clayton made a motion to approve agenda item I-11. Council Member Peterson seconded the motion. A roll call vote was taken as follows:

Larry D. Sheppard	Against
Mark E. Peterson	For
Ray Don Clayton	For

Willie C. Goode For
Frank Seffrood For

Motion carried four to one.

Council Member Clayton announced that he recused himself from agenda items I-12 through I-15 and that the proper paperwork was filed with the City Secretary. Council Member Clayton left the Council Chambers.

Mayor Pro Tem Reeves called a recess at 7:58 p.m. to consult with the City Attorney and the City Manager.

Mayor Pro Tem Reeves called the meeting back to order at 8:18 p.m.

12. Consideration and action on authorizing the City Manager to enter into an agreement for professional services with Blackwell Environmental, LLC in an amount not to exceed \$8,500 for assisting the City with a new/revised Oil & Gas Ordinance and to obtain municipal legal assistance through Denton, Navarro, Rocha & Bernal in an amount not to exceed \$8,000 and oil & gas legal assistance through Hays & Owens in an amount not to exceed \$7,000. **Andrea M. Gardner, City Manager**

Mayor Pro Tem Reeves announced that a quorum was not present; therefore, no action could be taken.

13. Consideration and action on authorizing the Mayor Pro Tem to issue drilling permits on the applications of Central Basin Oil Investments, Inc. and Halek Energy LLC for Atkinson #3CB through #8CB to drill for oil and gas within the corporate limits of the City of Copperas Cove. **James R. Thompson, City Attorney**

Mayor Pro Tem Reeves announced that a quorum was not present; therefore, no action could be taken.

14. Consideration and action on authorizing the Mayor Pro Tem to issue a drilling permit on the application of Central Basin Oil Investments, Inc. and Halek Energy LLC for re-entry drill on Williams #1 within the corporate limits of the City of Copperas Cove. **James R. Thompson, City Attorney**

Mayor Pro Tem Reeves announced that a quorum was not present; therefore, no action could be taken.

15. Consideration and action on authorizing the Mayor Pro Tem to issue drilling permits on the applications of Central Basin Oil Investments, Inc. and Halek Energy LLC for Moten #1CB through #13CB to drill for oil and gas within the corporate limits of the City of Copperas Cove. **James R. Thompson, City Attorney**

Mayor Pro Tem Reeves announced that a quorum was not present; therefore, no action could be taken.

Council Member Ray Don Clayton returned to the Council Chambers and Mayor Pro Tem Reeves declared that a quorum was present at 8:25 p.m.

16. Consideration and action on Resolution No. 2008-28, ordering a Special Election to be held November 4, 2008, in conjunction with the Special Election ordered by Resolution 2008-26 on July 15, 2008, for the purpose determining whether Council Members Robert L. Reeves, Mark E. Peterson, Charlotte Heinze, and Ray Don Clayton shall be recalled; establishing polling locations; and establishing procedures for said election. **Jane Lees, City Secretary**

Jane Lees, City Secretary gave an overview of agenda item I-16.

Council Member Goode made a motion to approve agenda item I-16. Council Member Peterson seconded the motion. Council Member Clayton said he wanted to explain why he feels he should vote against putting his recall petition on the ballot. He stated that he believes the reasons stated for his removal from office are not legal or valid and that he did not try to take over any meeting from any mayor, or tell a citizen of Copperas Cove, "thank you, I've heard enough." Those words were spoken to Mr. O'Dwyer's lawyer when during an executive session discussion. What the lawyer was saying was not relevant to the proceedings. Council Member Clayton said that his agenda for the executive session that evening was to warn Mr. O'Dwyer again about his actions that he felt were against the Charter.

A roll call vote was taken as follows:

Larry D. Sheppard	For
Mark E. Peterson	For
Ray Don Clayton	Against
Willie C. Goode	For
Frank Seffrood	For

Motion carried four to one.

The Resolution caption is as follows:

RESOLUTION NO. 2008-29

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, ORDERING A SPECIAL ELECTION TO BE HELD NOVEMBER 4, 2008, IN CONJUNCTION WITH THE SPECIAL ELECTION ORDERED BY RESOLUTION 2008-26 ON JULY 15, 2008, FOR THE PURPOSE DETERMINING WHETHER COUNCIL MEMBERS ROBERT L. REEVES, MARK E. PETERSON, CHARLOTTE HEINZE, AND RAY DON CLAYTON SHALL BE RECALLED; ESTABLISHING POLLING LOCATIONS; AND ESTABLISHING PROCEDURES FOR SAID ELECTION.

J. STAFF REPORTS

1. Chamber of Commerce 2nd Quarter Report for 2008. **Marty Smith, President, Copperas Cove Chamber of Commerce**

Marty Smith, President of the Copperas Cove Chamber of Commerce gave the Chamber of Commerce 2nd Quarter Report for 2008.

2. K-TUTS update. *Robert L. Reeves, Mayor Pro Tem*

Mayor Pro Tem Reeves gave an update on K-TUTS. Since the report Mr. Skopik at the June 3, 2008 council meeting, where he discussed TxDOT's funding difficulties, a special K-TUTS meeting was called on July 2, 2008 to discuss funding for the area. The discussion was that TxDOT agreed to fund the northern reliever route, which is Tank Destroyer to FM116. The cost has gone up from the original estimate of \$7M to \$24M, because of the addition of several bridges to be built in the low water crossings. The other good news that came out of the July 2 meeting is that we are supported by the Mayor and Mr. Blackburn of Temple and the Killeen delegation, including Mayor Hancock, Mr. Cospers and Mr. Green. The southern reliever route is the only project that is funded in the allocation of money for this year at \$53M. Discussion at the meeting included a pledge that the City had made back in 2000 with a previous Council. We have the money to do the project. K-TUTS and TxDOT asked us if we still intended to do what the previous city councils had volunteered to do. There were several numbers mentioned and the City was able to go back and substantiate the lower number. We anticipate groundbreaking for the southern reliever route late this year or early next year. We were also able to change the sequencing of the reliever route. The reliever route was originally to start at FM3046 and work towards Highway 190. We discussed this with Mr. Skopik and he is amiable to doing the flyover at Highway 190 first, which should be good news for the EDC. The City is very happy with the way the special meeting and the vote turned out. Mayor Pro Tem Reeves publicly thanked Ms. Gardner for all her work behind the scenes and making this happen. Ms. Gardner added that the original project numbers for the northeast bypass were \$33,750M and it was reduced down to \$24M as a result of an engineering study conducted last year, it was determined that the number of tank crossings could be reduced, thereby reducing the cost. The total pledged previously by the City is \$6.5M, of which \$1M has already been issued. In total, the City will receive about \$70M in TxDOT funding. Without the support of our surrounding communities, this would not have been possible. This will be a big asset to the City in the foreseeable future.

K. REPORTS OF ADVISORY COMMITTEES AND BOARDS – None.

L. ITEMS FOR FUTURE AGENDAS

Council Member Seffrood requested to schedule items I-12 through I-15 on this agenda for a special meeting as soon as possible. All Council Members present agreed. The City Secretary will contact all Council Members to get a special meeting called as soon as possible.

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 evaluation of the City Manager.

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

The Council adjourned to Executive Session at 8:48 p.m.

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

The Council reconvened the open meeting at 9:09 p.m. Mayor Pro Tem Reeves stated that there was no action to be taken on the discussion from Executive Session.

O. ADJOURNMENT

There being no further business, Mayor Pro Tem Reeves adjourned the meeting at 9:09 p.m.

Robert L. Reeves, Mayor Pro Tem

ATTEST:

Jane Lees, City Secretary