

September 11, 2024

**MINUTES OF THE REGULAR CALLED MEETING OF
THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
September 11, 2024**

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, September 11, 2024 at 9:00 a.m. in the City Council Chambers, 2nd floor of City Hall, Tyler, Texas, with the following present:

Mayor:	Don Warren
Mayor Pro Tem:	Stuart Hene
Councilmembers:	Brad Curtis Shirley McKellar Petra Hawkins (absent) James Wynne Lloyd Nichols
City Manager:	Edward Broussard
Deputy City Manager:	Stephanie Franklin
Asst. City Manager:	Heather Nick
City Attorney:	Deborah G. Pullum
Deputy City Attorney:	Steve Kean
Senior Asst. City Attorney:	Alesha Buckner
Director of Organizational Development:	Regina Y. Moss
Main Street Director:	Amber Varona
Planning Director:	Kyle Kingma
Chief Financial Officer:	Keidric Trimble
Chief Information Officer:	Benny Yazdanpanahi
City Fire Chief:	David Coble
City Librarian:	Ashley Taylor
Police Chief:	Jimmy Toler
City Engineer:	Darin Jennings
Director of Utilities:	Kate Dietz
Director of Parks & Recreation:	Leanne Robinette
Director of Solid Waste, Transit:	Leroy Sparrow
Transit Manager:	Russ Jackson
Strategic Planner:	Blake Cathey
City Clerk:	Cassandra Brager

INVOCATION

The Invocation was given by Councilmember Wynne.

MINUTES

Motion by Councilmember Wynne to approve the July 17th and July 24, 2024 minutes; seconded by Councilmember McKellar; motion carried 6 - 0 & approved as presented.

RESOLUTION

R-1

Request that the City Council consider adopting a Resolution authorizing eminent domain proceedings for the acquisition of an easement interest across the property owned by Heritage Property Development, LLC, providing the necessity and public purpose for sanitary sewer system upgrades near Front Street as part of the Consent Decree Program. **(R-2024-39)**

Michael Tolbert - Stated that he was here to request that R-1 be tabled and require the City of Tyler Water and Utilities Department to negotiate in good faith and make a bona fide offer. The City Council is obligated to represent the citizens and hold the government accountable. The City has broad discretion and no obligation to respect the interests of private property owners. The only thing required by the Fifth Amendment of the U.S. Constitution is that they pay just compensation. He shared a copy of a document that talks about the valuation of the easements. There are two different documents, and on page 4D of the first document, there's an easement evaluation matrix. And if you look down in the 6th row, it talks about 11 to 25 percent percentage of the fee for all rights, water, or sewer lines. For easements that have a more severe impact on the surface, they're higher, ranging anywhere from 26 percent up to 100 percent. So that's the first document. That was written by Donald Sherwood. His designations are there. He's an M.A.I. The second document also talks about easement valuations that were written by Donald Sherwood. And that chart that you saw on the first document is also included on the fourth page of the second document and that is actually called the Sherwood Matrix. It gives a good guide for determining the value and how an easement affects the value of the property. So, there are those for your review reference. What he has next is basically a timeline of events. He first learned about this easement in March of 2022. He happened to be on his property and saw surveyors on the property. He went to ask them what they were working on. And the surveyor had a map, and he allowed him to take a picture of the map.

Councilmember McKellar- Stated that she did not have the second page that Mr. Tolbert had mentioned. Page 4 is missing from my document.

Mayor Warren: Asked Deborah if she could explain the procedure from this point going forward, what occurs?

City Attorney, Deborah Pullum- Stated in regards to eminent domain for local governments, we do an initial contact with the owners of the property generally through land agents. I know that the City of Tyler acquires property using appraisals. You can do it several different ways, but based on what the local government requirements are, appraising is the best process for the government to go out and determine the value. So that's what the City of Tyler does. And I don't even anticipate not getting an appraisal. And that's the only way. Following the appraisal, we follow all of the requirements of the statute, which contact the property owner and try to do negotiations with them. But if we can't reach a reasonable settlement based on the appraisal, then we have to come to the City Council in order to determine whether there is a desire to proceed with eminent

domain proceedings. And that's what this is. The Council will have the opportunity to hear from both sides. If you do decide to report within the domain, we would have to go on that and then the process will move forward through the courts.

Mayor Warren- Asked, "So, who determines the final amount? The appraisal, or is there another process for the final amount?"

City Attorney, Deborah Pullum- Stated that if you cannot get a settlement, it could go to the courts. There's a process where the court will appoint a committee to handle the first part of that process. There are several parts of the process. If the settlement, after the first part, is accepted, then there's not a second or a process to try. But there could be a second part. It's really kind of different as you go through it.

Mayor Pro Tem Hene – Stated that the court will appoint three special Commissioners, and then they have a condemnation hearing. And both sides get to present what they believe the value is of the property. And then the commissioners set that valuation. And if one side's not happy with it, then they can appeal it, and then it becomes a judicial proceeding. But he'll have this opportunity to present valuation and argument about what the value should be at the special commissioners hearing if we vote to proceed with it.

Councilmember McKellar: Asked Mr. Tolbert, so your issue this morning is that you don't think they're giving you enough funds for the property.

Michael Tolbert: Stated, "No, that's not the issue."

Councilmember McKellar- Asked, "Okay, what is the issue?"

Michael Tolbert- Stated that the issue is that they have not negotiated in good faith. And if you'll allow him to just show a couple of items on the appraisal, he can support that.

Mayor Warren- Stated go ahead.

Michael Tolbert- Stated that he showed the timeline just to show that the City was aware of this process back in March of 2022. As he mentioned before, they resisted sharing any information with him. He knows they went to the Attorney General to avoid sharing information. So finally, and he thinks it was November of last year, they contacted him, and they started the process. If you go into the document, let's see. The appraisal.

Mayor Warren- Stated we will give you a little time, but we're not going to read a book.

Michael Tolbert - Stated, okay. I'll just hit a couple of highlights. They valued it at \$143,000, \$2.20 per square foot. However, he valued the entire easement at the 25% reduction when a portion of it is in the interior of the property and should be in the 75% to 100% range. So, the basis for their offer is invalid because it has invalid information.

Mayor Warren - Stated, but it doesn't sound like we are the ones that are going to be determining the prices.

Michael Tolbert - Stated that all he was asking is to table this to compel the City to negotiate in good faith. Look at the errors in their appraisal and negotiate in good faith.

City Manager, Edward Broussard - Stated that any opportunities for errors that he may believe that are there or arguments against the appraiser that we've done for his own appraisal that he wants to bring from a certified appraiser to that is done, yes, through that court proceedings. I think Tiffany and Kate want to talk a little bit more kind of about just the process as per how we have kind of worked on this to kind of give clarity to it. Because Council knows that you all have done something similar with another condemnation recently that went through and that property was able to kind of be worked out through the system that the state has established. And so, we, especially on the consent decree work, this is kind of something that pops up now occasionally. I think Tiffany and Kate may want to have some quick questions.

Councilmember Wynne - Asked Mr. Tolbert if he sought his own appraisal from a certified appraiser for the valuation of the property?

Michael Tolbert - Stated, "No, I mean, I did get an estimate on it, and it was a couple of thousand dollars, and we're only talking about, you know, certified appraiser. But I can see the obvious errors and now I am, you know, experienced with real estate."

Tiffany Currie, Tyler Water Utilities - Stated that she wanted to clarify that this is for the Consent Decree capacity group two work that they been working on. Mr. Tolbert has reached out on a few occasions with public records requests, and they have responded to each of those requests with all of the information that was available at the time. The earlier requests were during preliminary design. They didn't have the alignment finalized at that time. As soon as the alignment was finalized, they have shared the alignment with him. They've shared the general engineering design and thought process behind our alignment. Dixon Services has been the primary point of contact. But Tiffany has personally invited Mr. Tolbert to meet with her so that she could explain the design face to face, and why they are locating the line where it's at and what they perceive as the impact to this property. That it does not diminish the value of the property. It actually enhances the value because there will now be a private, a lateral line across the entire front of the

property, which makes it more developable. But she has offered to meet multiple times face to face so that they could kind of hash that out a little bit more, and those offers have not been accepted.

Motion by Councilmember Wynne; seconded by Mayor Pro Tem Hene; motion carried 6 - 0 & approved as presented.

ORDINANCE

O-1 Request that the City Council consider conducting a public hearing, adopting the Fiscal Year 2024- 2025 proposed budget by roll-call vote, and consider authorizing the City Manager to execute the outside agency contracts for Fiscal Year 2024-2025. **(O-2024-83)**

City Manager, Edward Broussard – Gave a brief update to complete the final steps in the budget and tax rate adoption process.

Mayor opened the public hearing at 9:19 am with the following coming forward to speak.

Bob Brewer, 1800 DeCharles – Stated that he came here today on the training facility that we're going to have with the object that we all become better trained. He opposes a training facility that doesn't teach first law.

Mayor Warren closed the public hearing at 9:23 am, and no one else came forward to speak.

Motion by Councilmember Curtis made the motion to adopt the proposed fiscal year 2024-2025 annual budget and authorize the City Manager to execute particular outside agency contracts budgeted for fiscal year 2024-2025; seconded by Councilmember McKellar; motion carried 6 - 0 & approved as presented.

Mayor Pro Tem Hene - Aye
Councilmember McKellar - Aye
Councilmember Wynne - Aye
Councilmember Nichols - Aye
Councilmember Curtis - Aye
Mayor Warren - Aye

Motion by Councilmember McKellar to ratify the property tax increase reflected in the fiscal year 2024-2025 budget; seconded by Councilmember Wynne; motion carried 6 - 0 & approved as presented.

Mayor Pro Tem Hene - Aye
Councilmember McKellar - Aye
Councilmember Wynne - Aye
Councilmember Nichols - Aye
Councilmember Curtis - Aye
Mayor Warren - Aye

O-2 Request that the City Council consider conducting a public hearing, adopting an Ordinance setting the property tax rate for Fiscal Year 2024-2025 at \$.240085 per \$100 valuation by roll-call vote. **(O-2024-84)**

Mayor Warren opened up the public hearing at 9:25:25 am.
Mayor Warren closed the public hearing at 9:25:30 with no one coming forward to speak.

Motion by Councilmember Wynne to approve the property tax rate be increased by the adoption of a tax rate of \$0.240085, which is effectively a 3.5% percent increase in the tax rate; seconded by Councilmember McKellar; motion carried 6 - 0 & approved as presented.

Mayor Pro Tem Hene - Aye
Councilmember McKellar - Aye
Councilmember Wynne - Aye
Councilmember Nichols - Aye
Councilmember Curtis - Aye
Mayor Warren - Aye

O-3 Request that the City Council consider conducting a public hearing and consider adopting an Ordinance amending and updating fees and other applicable adjustments to Tyler City Code Chapter 6 relating to Buildings and Structures, Chapter 8 relating to Parks, Chapter 10 related to the Tyler Unified Development Code, Chapter 16 relating to Solid Waste Disposal Regulations, and Chapter 19 relating to Water and Sewer. **(O-2024-85)**

Mayor Warren opened up the public hearing at 9:26:55 am
Mayor Warren closed the public hearing at 9:27:01 am with no one coming forward to speak.

Motion by Councilmember Nichols; seconded by Councilmember Curtis; motion carried 6 - 0 & approved as presented.

MISCELLANEOUS

M-1 Request that the City Council consider authorizing the City Manager to execute a construction contract in the amount \$14,771,658.00 with Gracon

Construction, Inc., for the Southside Wastewater Treatment Plant Aeration Basin and Final Clarifier Improvements Project and adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt. **(R-2024-40)**

Motion by Councilmember Curtis; seconded by Mayor Pro Tem Hene; motion carried 6 - 0 & approved as presented.

M-2 Request that City Council consider authorizing the City Manager to execute a professional services contract in the amount of \$49,850.00, with HDR, Inc., for the Tyler Water Utilities Capital Improvements Plan Prioritization Project.

Motion by Councilmember Curtis; seconded by Mayor Pro Tem Hene; motion carried 6 - 0 & approved as presented.

BOARD APPOINTMENTS

B-1 Request that the City Council consider recommendations for appointment and re-appointment of members to the various City Boards. (Exhibit A)

Motion by Councilmember Nichols to appoint the slate of members presented; seconded by Councilmember Curtis; motion carried 6 - 0 & approved as presented.

CONSENT

(These items are considered to be routine or have been previously discussed, and can be approved in one motion, unless a Council Member asks for separate consideration of an item.)

C-A-1 Request that the City Council consider authorizing the City Manager to approve the reconciliation change order increasing the approved contract amount by \$110,671.00, from \$873,961.00 to \$984,632.01, and release the final invoice of \$10,878.86 and the retainage in the amount of \$49,231.60 to Crown Civil Construction Corp., for the 2023 Brick Streets Repairs Project.

C-A-2 Request that the City Council consider authorizing the City Manager to execute a contract with Jennings Architects for the design, construction administration, and observation of the new Police Department Training Center in the amount of \$82,000.

C-A-3 Request that the City Council consider authorizing the City Manager to apply for and accept Smith County 9 -1-1 District participation funding for facility and equipment upgrades for the Tyler Police Department and Tyler Fire Department, in the amount of \$49,511.92.

C-A-4 Request that the City Council consider authorizing the City Manager to approve the partial release of water and sanitary sewer easement across Old Jacksonville Highway on Lot 1-D, NCB 1570-Q that has been verified as no longer needed.

C-A-5 Request that the City Council consider reviewing and approving the Smith County 911 District Budget for the Fiscal Year beginning October 1, 2024 and ending September 30, 2025.

C-A-6 Request that the City Council consider adopting an Ordinance approving a negotiated settlement between the Atmos Cities Steering Committee and Atmos Energy Corp., Mid-Tex Division, regarding the Company's 2024 rate review mechanism ("RRM") filing. **(O-2024-86)**

Motion by Councilmember Curtis to approve the entire consent items as written; seconded by Councilmember McKellar; motion carried 6 - 0 & approved as presented.

CITY MANAGER'S REPORT

1. Ashley Taylor is back there, so I want to brag about something that has been done at the Library. Our Tyler Public Library staff have been working towards improving access to and preserve preservation of historical information through digitization. One such project includes reviewing and digitizing the map collections and other larger documents within the local and family history section. Our reference associate, T.J. Rankin, took on this project and maps and other documents. One such map includes a map of the 1856 depicting the original town of Tyler. To date, T.J.'s project has scanned 1,642 documents. T.J.'s done a tremendous job overseeing this project by ensuring a thorough review of each piece within our collection and taking careful time and consideration selecting what materials are being scanned. The City Librarian Ashley Taylor assesses the final review of items not chosen for digitization. So, a big thank you and kudos to T.J. for seeing this project through and preserving our history.
2. So, a couple of other items. The East Texas State Fair is about to open soon, and we've had a recent meeting with the Tyler ISD, the East Texas State Fair representatives, and the Smith County Sheriff's Department to talk about just kind of the proximity to Dixie Elementary and how the traffic flow is going to work and what protections there were to make sure for Dixie Elementary with the Fair being there across the street from them, how that was going to happen. The East Texas State Fair is doing a great job this year in terms of traffic coordination, reviews, and background checks on the people who come in to help operate the fair and carnivals. They were also able to work with Tyler ISD on any concerns they may have. The Fair won't be open during the daytime hours on that Monday through Thursday, so that'll help a lot with easing traffic over there as well. And then on Fridays, most of the time the Fair will be open. The largest amount of operations will be after school hours. So, we're looking forward to being able to work well together for this year.
3. And then finally, our own Tyler Mayor, Don Warren, and Longview's Mayor are holding a friendly peanut butter competition this month as part of the Hunger Action Month. This is to help fill the shelves of our pantries here in both Tyler and Longview. But we know that the City of Tyler will once again dominate over Longview and destroy them. You know, there is no destroying it from a friendly competition. Jars will be collected this month through September 27th at the East Texas Food Bank. Barrels will be available at Brookshire's, Super One Foods and Fresh locations of Tyler and Longview. Donors can also buy jars of peanut butter online at EastTexasFoodBank.org. As the Mayor has stated, life can get sticky, and sometimes you need a

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helping hand. Let's support each other as East Texans and spread generosity as smoothly as we spread peanut butter.

Mayor Warren- Thank you for the plug, and I will let you all know that at Brookshire's, there's actually a sale on Skippy peanut butter, you buy one, you get another for a penny. So, I do expect my friends and colleagues to go out and purchase peanut butter.

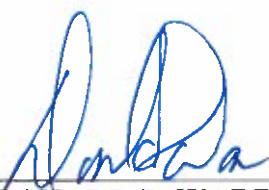
Councilmember Nichols- Asked, "Where do you bring them?"

MAYOR WARREN- Stated there are 12 grocery stores in Tyler and Longview. You'll be able to put the peanut butter in the East Texas Food Bank barrels. All the peanut butter is going to the Food Bank, so thank you all in advance for helping Tyler win. All right, anything else for the City Manager?

Councilmember McKellar- Stated, first, I don't want to embarrass her, but I want to make note, and I want the Council to know about the great work that Ms. Cassy, our City Clerk, is doing, and I call on her all the time, and usually it's on the weekends or on holidays, and she has a selfless service. She just jumps right in there and makes things happen for me, so I want the Council to know that. So, I want to say openly thank you to our City Clerk. She's right in there. And I'm so sorry I have to call you so much after hours, but I appreciate your support. The great work that you do. I also want to make mention that we have 500 Top Ladies of Distinction in our city. I want to thank our Police Chief and his staff for helping us to maneuver throughout the City. Thank you, Chief. We had about four officers that helped us all around Tyler, so the hospitality was amazing. And so, thank you, thank you, thank you, for a great weekend. And thank you, Mr. Mayor.

ADJOURNMENT

Motion by Councilmember Nichols to adjourn the meeting at 9:42 am; seconded by Councilmember McKellar; motion carried 6 - 0 & meeting adjourned.



**DONALD P. WARREN, MAYOR OF
THE CITY OF TYLER, TEXAS**

ATTEST:



CASSANDRA BRAGER, CITY CLERK



Exhibit "A" 2024 09 11
BOARDS AND COMMISSION RECOMMENDATION LIST

Yellow highlight and * denotes that the applicant is already serving on the board and would like to be reappointed.

Teal means that City Council has recommended this member in addition to the highlighted reappointed members.

Airport Advisory Board – 7 total members

Appoint a Chair- Jerry Irwin

Board Attendance Form Number of positions to fill 3

1st Choice

***C. Perry Marshall**

***Jerry Irwin (Chair currently)**

***Bryan Matus**

Robert Spivey – can continue to serve on the Traffic board

John Barber

Peggy Black

David Stewart

Alex De Ravel

Clark Hampe

2nd Choice

Ronald Shultz

Andy Krouse

John Taylor III

Zoning Board of Adjustment- 7 total members with 2 alternates

Appoint a Chair – Lawrence Levin

Board Attendance Form Number of positions to fill 6

1st Choice

***Jason Trimble**

***Timothy Hunt**

***Brent Brevard**

Stephen Dinger

Andy Krouse-Alternate

Corey Guidry-Alternate

Civil Service Commission - 3 total members

Board Attendance Form Number of positions to fill - 1

1st Choice

***Patrick Woods**

James Ledet

Exhibit "A" 2024 09 11
BOARDS AND COMMISSION RECOMMENDATION LIST

2nd Choice

Chris Moore

Historical Preservation Board – 9 total members

Appoint a Chair – Claudia Carroll

Board Attendance Form Number of positions to fill - 4

Leave a space for an Attorney to fill

1st Choice

*Don Garrett

*Carrie Caton Smith

Paige Engel

Denice Smith

Alex de Ravel

Andy Bergfeld-Heart of Tyler

Amanda Herterich – Historical Tyler

Henry Bell – Smith County Historical Society

2nd Choice

Jon Sanders

Library Board – 7 total members

Need to appoint a Chair – Toni Ferrell

Board Attendance Form Number of positions to fill - 2

1st Choice

*Glenda Malone

*Toni Ferrell (Current chair)

Ronald Shultz

Jon Sanders

2nd Choice

Alondra Rosales

Jamie Mims (already on NRB)

Amara Emenike

Jamie Cooper

Keep Tyler Beautiful Board – 11 total members

Board Attendance Form Number of positions to fill - 5

1st Choice

*Hawley Towns

*Steven Simmons

Alondra Rosales - Recommendation

Jamie Cooper - Recommendation

Exhibit "A" 2024 09 11
BOARDS AND COMMISSION RECOMMENDATION LIST

Troy Poppell – Recommendation

Sherry Woods
Shwana Flowers
Eleanor Johnson

2nd Choice

Mechele Mills
Jeannette Knight

Neighborhood Revitalization Board 5 total members

Appoint a Chair – Jamie Mims

Board Attendance Form Number of positions to fill 4

1st Choice

*Dorinda Henderson-Williams
*Jamie Mims (Current Chair)
Keenan Caldwell

2nd Choice

Shwana Flowers
Shonda Marsh
Denice Smith

Tyler Parks Board – 9 total members

Board Attendance Form Number of positions to fill- 2

1st Choice

Christi Khalaf- Recommendation
Shwana Flowers
Jamie Mims (already on NRB)
John Taylor III

2nd Choice

Sherry Woods- Recommendation
LaShanda McGee
Clay Luttrell
Hawley Towns

Planning and Zoning Commission – 7 total members

Appoint a Chair – David Hudson

Board Attendance Form Number of positions to fill - 3

1st Choice

*David Hudson
*Clint Childs

James Volberding – can continue to serve on the Traffic board

Exhibit "A" 2024 09 11
BOARDS AND COMMISSION RECOMMENDATION LIST

Anwar Khalifa
Russell Patterson

2nd Choice

Aaron Paul
Peggy Black
Roy Martinez - Recommendation

Northeast Texas Public Health District Board – 9 total members
Board Attendance Form Number of positions to fill - 1

1st Choice

Jeremy Butler
LaShanda McGee
Amara Emenike

2nd Choice

Bryan Matus
Shonda Marsh

Traffic Safety Board – 7 total members
Board Attendance Form Number of positions to fill- 4

1st Choice

*Dustin Wilson
*Matthew Vechione
Matthew Scheusner
Cody Baker

2nd Choice

Robert Ogden
James Volberding
Robert Spivey
James Ledet

Half Cent Sales Tax Board

1st Choice

Martin Heines
Broderick McGee
Eleno Licea
John Nix
Roy Martinez
Clay Luttrell

2nd Choice

Stephen Dinger

Exhibit "A" 2024 09 11
BOARDS AND COMMISSION RECOMMENDATION LIST

Dorinda Henderson-Williams

Boards that still need to be filled later

Animal Care Advisory Board – 7 total members
Board Attendance Form Number of positions to fill - 5

1st Choice

Jeannette Knight

2nd Choice

Eleanor Johnson

Construction Board of Adjustments and Appeals -7 total members

Appoint a Chair – David Socia

Board Attendance Form Number of positions to fill 7

1st Choice

David Socia
Max Slicker
Jion Dietz
John McKinney
Alfred Fred Pate
Chris Moore
Aaron Paul

2nd Choice

Timothy Hunt (ZBA)
Brent Brevard (ZBA)
Anwar Khalifa
Corey Guidry
Latonia Gaston

Disability Issues Review Board – 7 total members

Appoint a Chair

Board Attendance Form Number of positions to fill 7

1st Choice

Robert Ogden

2nd Choice

Jamie Mims (already on NRB)

Exhibit "A" 2024 09 11
BOARDS AND COMMISSION RECOMMENDATION LIST

Historical Preservation Board

Need an Attorney