

**MINUTES OF REGULAR CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS**



MONDAY, FEBRUARY 7, 2011

7:00 P.M.

1.0 Call to Order

The Council meeting was called to order by Mayor Gretchen Fagan. Other members present were:

Councilman Quinn
Councilman Stoll
Councilman Brown
Councilman Townsend
Councilman Dodson

Others present:

City Manager – George Shackelford
Assistant City Manager – Christal Klierer
City Secretary – Doris Speer
City Attorney – Scott Bounds
Chief of Police – Robert Hauck
Director of Public Works – David Kauffman
Fire Chief – Randy Parr
Finance Director – Glenn Windsor
Assistant to City Manager – Shawn Cox
City Planner – Kelly Violette
Assistant City Engineer – Lori Lakatos
E&P Administrative Assistant – Brandy Pate

2.0 The invocation was led by Pastor Terry Johnson, First Baptist Church

3.0 Pledges to the U. S. and Texas flags were led by Randy Parr and Robert Hauck.

4.0 The following public comments were received:

Bill Webb
915 Baker, 77375

- Read Sec. 7.01C.(1) of the Home Rule Charter

Rick Davis
22103 Holly Lakes Drive, 77377

- Expressed his interest in serving on the Downtown Tomball Advisory Committee (DTAC)

Chris Gray
18807 Fortrose Garden Ct., 77377

- Harris County detention ponds; how many does City of Tomball need and is there enough land for all the detention basins needed?

5.0 Reports and Announcements:

- February 10, 2011 – **Mayor's Coffee** – 5:30 p.m. at Nona's Italian Grill, 1025 Alma Street (**New Location**)
- February 12, 2011 – First Day to Apply for Place on Ballot for May 14, 2011 General City Election
- February 12, 2011 – **2nd Saturday at the Depot** – 5:00 p.m.
- February 12, 19, and 26, 2011 – **Walk Tomball!** – Depot Plaza – 9:00 a.m.
- February 13, 2011 – **Unveiling of the Beckendorf Statue** – 2:00 p.m., reception to follow, 2:00 p.m.-3:30 p.m., at the Community Center, hosted by Rose Hill United Methodist Church
- February 22, 2011 – **Trail Ride Reception** – 12:00 p.m. at the Depot
- February 24, 2011 - **Reception honoring Betty Reinbeck, Executive Director-TEDC**, at the Chamber of Commerce, 2:00-4:00 p.m.
- February 28, 2011 – Special Meeting of the **Tourism Advisory Committee**, 6:00 p.m.
NOTE: Also a special meeting on February 16, 2011 at 6:00 p.m.
- April 9, 2011 – **3rd Annual City of Tomball Bunny Run 5K and Kids 1 Mile**
- Tomball Police Department Annual Data Capture Report (SB 1074)
- Reports by City staff and members of council about items of community interest on which no action will be taken
 - Lisa Coe provided information regarding the Youth Opportunities Fair, hosted by City of Tomball, on March 31, 2011, from 2:00 p.m.-4:30 p.m.
 - Shawn Cox reported on the first meeting of the Tourism Advisory Committee (TAC), held on January 24, 2011.

7.0 Motion was made by Councilman Brown, second by Councilman Stoll, to approve the minutes of the following meetings:

- Special City Council and Planning and Zoning Commission Meeting – January 17, 2011
- Regular City Council Meeting – January 17, 2011

Motion carried unanimously.

7.0 Old Business:

Mayor Fagan requested motion to move discussion of Item 7.3 before Item 8.4. Motion was made by Councilman Dodson, second by Councilman Townsend, to move consideration of Item 7.3 before Item 8.4.

Motion carried unanimously.

- 7.1 Mayor Fagan presented the proposed Agreement. Motion was made by Councilman Townsend, second by Councilman Dodson, to Approve Settlement Agreement between the City of Tomball, Partners in Building, L.P., Gary Smith, and Mark Mayworn regarding the Drainage Way Adjacent to North Star Subdivision.

Motion carried unanimously.

- 7.2 Doris Speer presented an overview of the proposed Ordinance. Motion was made by Councilman Townsend, second by Councilman Dodson, to read Ordinance No. 2010-26 by caption only on first reading.

Motion carried unanimously.

Motion was made by Councilman Townsend, second by Councilman Dodson to adopt, on First Reading, Ordinance No. 2010-26, an Ordinance of the City of Tomball, Texas, adding Chapter 15, "Commercial Filming" to the Code of Ordinances of the City of Tomball, to Require a Permit for Commercial Filming in the City of Tomball, to Establish Policies, Procedures and Regulations as They Relate to Filming; Providing a Penalty in an Amount of Not More Than \$500 for Violation of any Provision Hereof; Providing for Savings and Severability; Providing for Publication; and Making other Provisions and Findings related Thereto. Vote was as follows:

Councilman Townsend	<u>Aye</u>
Councilman Dodson	<u>Aye</u>
Councilman Quinn	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>

Motion carried unanimously.

- 7.3 Item 7.3 will be considered before Item 8.4, in the same Executive Session.
- 7.4 George Shackelford and Lori Lakatos presented the proposed parking lots. Discussion was held regarding various parking lot locations and development options.

Consensus of Council was unanimous for City staff to get information on lease costs for proposed lots CS and BN, purchase cost of lot DN, and cost of construction on lot AN.

8.0 New Business

- 8.1 Mayor Fagan presented an overview of the proposed Appointments. Motion was made by Councilman Townsend, second by Councilman Stoll, to re-appoint Tana Ross, Rick

Tomlinson, Brett Tynes, and Evelyn Torres-Chervenak to their current positions on the City of Tomball Board of Adjustments (BOA).

Motion carried unanimously.

- 8.2 Lori Lakatos presented an overview of the proposed Replat. Motion was made by Councilman Townsend, second by Councilman Dodson, to approve **STAR TOMBALL REPLAT NO. 1**; A subdivision of 0.6503 acre of land; Being a replat of restricted Reserve "A" of Star Tomball as recorded in Volume 345, page 114, Harris County Map Records, located in the Joseph House Survey, Abstract Number 34, City of Tomball, Harris County, Texas.

Motion carried unanimously.

- 8.3 Doris Speer presented an overview of the proposed Resolution. Motion was made by Councilman Dodson, second by Councilman Brown, to Approve Resolution No. 2011-02, Designating the Tomball-Magnolia Tribune as the Official City Newspaper for Fiscal Year 2010-2011. Vote was as follows:

Councilman Quinn	<u>Nay</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Aye</u>
Councilman Dodson	<u>Aye</u>

Motion carried, 4 votes Aye, 1 vote Nay.

- 8.4 Mark McClure presented a written request that Item 8.4, Section 551.074. Personnel Matters: Deliberation of the Appointment, Employment, Evaluation, Duties and Dismissal of a Public Officer or Employee - the Director of Engineering and Planning, be discussed in public hearing/open session.
- 7.3/8.4 Executive Session: The City Council recessed at 8:12 p.m. p.m. to meet in Executive Session, as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purposes:
- Section 551.072. Deliberations Regarding Real Property: Discussion on the Purchase, Sale, or Trade of Real Property in Downtown Tomball; Deliberations Regarding Real Property: Discussion on the Leasing of Property for Communications Facilities; and
 - Section 551.071. Consultation with Attorney on a Matter in which the Duty of the Attorney to the City Council under the Texas Rules of Professional Conduct of the State Bar Clearly Conflicts with the Chapter related to Dismissal of Director of Engineering and Planning; and

Upon reconvening into regular session at 902 p.m., the Mayor announced that no action was taken in the executive session on any of the matters discussed under Items 7.3 (Real Property) and 8.4 (Attorney Client Communication).

- 8.4 (Personnel - Deliberations regarding dismissal of Director of Engineering and Planning - continued). Scott Bounds stated that this matter was being discussed in open meeting at the written request of Mark McClure. Article 7 of the Home Rule Charter provides that the City Manager may appoint department heads subject to City Council approval; however, the City Charter does not define "department heads". Article 7 of the Charter does specifically provide for various departments or offices of the City and the appointment of the person for that office, such as Assistant City Manager, Chief of Police, City Secretary, City Treasurer, and Director of Public Works. Within the City Budget, the City has approved an staff organization chart that shows additional positions such as "assistant to manager", human resources director, and director of engineering and planning that are not charter positions. Although City Council has historically approved the persons designated by charter, the City Council has not approved the other positions shown on the staff chart in similar positions to them. In particular, the City Council did not approve the appointment of Mark McClure as Director of Engineering and Planning. Mark McClure advised the City Manager, however, that McClure believed that the City Manager did not have authority to remove him from his position without City Council approval. Because of the ambiguity in the charter definition of "department head", Scott Bounds advised the City Manager that this action item be placed on the City Council's agenda to approve the dismissal of Mark McClure as Director of Engineering and Planning.

The City Manager asked that City Council approve the termination of Mark McClure as Director of Planning and Engineering.

The Mayor called upon Mark McClure to respond to the City Manager's request that the City Council approve the termination of Mark McClure. Mark McClure confirmed that he requested that Council conduct the deliberations in open session.

- 8.5 Motion was made by Councilman Stoll, second by Councilman Townsend, to approve City Manager's Removal of Mark McClure as Director of Engineering and Planning.

Mayor Fagan requested Council's desires regarding listening to public comments about this item. Consensus of Council was unanimous to not hear public comments regarding this item.

Motion to approve City Manager's Removal of Mark McClure as Director of Engineering and Planning carried unanimously.

9.0 Motion was made by Councilman Dodson, second by Councilman Brown, to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 21st day of February 2011.

Doris Speer
Doris Speer, TRMC
City Secretary

Gretchen Fagan
Gretchen Fagan
Mayor