

**MINUTES OF CALLED MEETING OF THE CITY COUNCIL OF THE
CITY OF LUFKIN, TEXAS, HELD ON THE
28TH DAY OF JANUARY, 1994 AT 9:00 A.M.**

On the 28th day of January, 1994 the City Council of the City of Lufkin, Texas, convened in a Called Meeting in the Council Chambers of City Hall with the following members thereof, to wit:

Louis A. Bronaugh	Mayor
Don Boyd	Mayor pro tem
Percy Simond	Councilman, Ward No. 1
Larry Kegler	Councilman, Ward No. 3
Bob Bowman	Councilman, Ward No. 4
Jack Gorden, Jr.	Councilman, Ward No. 5
Tucker Weems	Councilman, Ward No. 6
C. G. Maclin	City Manager
Ron Wesch	Asst. City Manager/Public Works
Darryl Mayfield	Asst. City Manager/Finance
Bob Flournoy	City Attorney

being present when the following business was transacted.

1. Meeting was called to order by Mayor Louis Bronaugh.

2. **PUBLIC HEARING - GRANT APPLICATION - TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS - TEXAS DEPARTMENT OF COMMERCE**

Mayor Bronaugh opened Public Hearing to consider the City's application to the Texas Department of Housing and Community Affairs and the Texas Department of Commerce for funds to improve the downtown area.

There was no one present who spoke for or against the application.

Mayor Bronaugh closed Public Hearing.

3. **CHARTER REVIEW - DISCUSSED**

Mayor Bronaugh stated that the next item for consideration is the Charter review. Mayor Bronaugh stated that, at the request of Councilman Simond, the Council has gone through the Charter and made some changes to bring it up to date.

Mayor Bronaugh stated that if there are any changes other than gender and that pertain to State and Federal laws, these will be the changes that there will have to be a consensus of the Council. Mayor Bronaugh stated if there are major changes in the Charter, then they will be taken as recommended changes by the Charter Review Committee, which is the Council, to the voters on May 7th. City Manager Maclin stated that the next step will be for the City Attorney to draft the Ordinance and have two readings of the Ordinance. City Attorney Flournoy stated that he had some suggestions and opinions about some of the proposed changes.

City Manager Maclin stated that nomenclature - changing Commission to Council is one item; gender neutrality is the second item; and, conformity to State and Federal laws including the election procedures established by Federal Court. City Manager Maclin stated that these are the things that this body, through the meetings we had to date, have already reached a consensus of opinion on. City Manager Maclin stated that there were four items that were going to be left for discussion, which is the primary purpose for today's meeting, and then any other comments Council wants to make. City Manager Maclin stated that basically the intent for

today would be to resolve those four items plus any others that Council wants to discuss so that the City Attorney can have the Election Ordinance ready for the February 15th meeting. City Manager Maclin stated that this will give staff just enough time under the window of opportunity to have the second reading on March 1st.

Mayor Bronaugh stated that on page 3 of the packet is the list of four items for consideration.

City Manager Maclin stated that the only other thing that was left pending at the last Council meeting was Article 9 - Section 12 relating to unauthorized gifts. City Manager Maclin stated that he had spoken to TML and they sent him a packet of information from the Texas Ethics Commission, and a copy of a Charter Amendment that the City of San Marcus adopted, which is basically the adoption of a Code of Ethics. City Manager Maclin stated that the bottom line is that when he expressed the feelings and comments from Council at that meeting, the TML attorney said that basically under the new ethics law if you wanted to do like they did you would consider adding a sentence to Section 12 that says that an employee or member of the Council would not receive anything with the understanding that it would be in return for granting special treatment. City Manager Maclin stated that the way the Ethics Law is worded, technically, a legislator or elected official could receive a gift of nominal value (less than \$250) as long as that gift was not being given, and was not being received, in order to receive special treatment. The question is proving whether or not, if they did receive a gift, were they receiving it for that purpose or not. City Manager Maclin stated that the attorney seemed to think that the Ethics Commission and the ethics law that the State legislature is now acting under uses the "catch all phrase" that it had nothing to do with special favors. City Manager Maclin stated that the attorney suggested adding a clause or statement that would give some definition that you cannot receive a gift if you are going to give special favors. City Manager Maclin stated that he had reviewed all the material furnished by TML and none of it is exactly what the Council is looking for other than anything less than \$250 did not have to be documented. City Manager Maclin stated that Council is trying to find a way that negates any improper perception.

In response to question by Councilman Bowman, City Manager Maclin stated that "conflict of interest" is addressed on pages 48 and 49. City Manager Maclin stated that on page 49, in order to give Council what he thinks they are asking for, Section 12 could be changed to read: "No employee of the City of Lufkin, nor any member of the City Council, shall receive a gift or anything of value with the understanding that receipt of that gift is for purposes of preferential treatment...". City Manager Maclin stated perhaps the City Attorney could go through the information from TML and come up with some wording that would be acceptable to Council. Councilman Simond stated that he did not have any problem with that but he would like the City Attorney to go through the TML information and see what would fit the Council's situation. Councilman Simond stated that he did not particularly care about any recommendation from the State legislators on this, since they are the ones who stood on the Senate floor and accepted \$100 bills to vote for legislature that was favorable to Pilgrims' Pride. Councilman Simond stated that, in his opinion, each political subdivision or Council could make their own rules according to this particular thing. City Manager Maclin stated that there is not any State legislation that would apply specifically to the City's Charter. City Attorney Flournoy stated that he did not think that Council could put a dollar amount on gifts. City Attorney Flournoy stated that the whole idea is that gifts cannot be made if they are used for the purpose of influencing the person who is receiving the gift. City Attorney Flournoy stated that this is a small town and technically if a person buys a Councilman's or employee's dinner they are in violation. City Attorney Flournoy stated that there must be some language saying that if the gift is given for the purpose of influencing, or received in that way, then there is a violation. City Attorney Flournoy stated that there is always going to be a fact question to be determined at that particular time, and this is too harsh and is unworkable. City

Manager Maclin suggested asking the City Attorney to rewrite this section and then Council can vote on it at First Reading of the Election Ordinance on the February 15th meeting.

In response to question by Mayor Bronaugh, Councilman Weems stated that one item he would like to bring up is term limitations, something that the public is conscious of at this time. Councilman Boyd stated that he was not in favor of term limitations, because if the voters do not want you, they will vote you out.

Mayor Bronaugh stated that out of this meeting will come recommendations to the voters to be voted on May 7th and they will be able to vote on individual items. City Manager Maclin stated that the items will be listed as: Nomenclature changes from Commission to Council; Gender neutral; and an item that is a housekeeping item, that the Charter accurately reflects State and Federal law to include the date for the elections. City Manager Maclin stated that according to Susan Horton, these three items must be voted on separately.

In response to question by Councilman Kegler, City Attorney Flournoy stated that each item voted on today must receive four affirmative votes in order to be placed on the ballot.

Councilman Simond stated that if six of the Councilmembers vote against the age change, then Councilman Boyd's suggestion would not be on the ballot, and, in his opinion, this is not legal. Councilman Simond stated that even the United States Constitution says that even though a majority says something, the minority has the right for their position to be heard. City Manager Maclin stated that if you look at the City Charter where it talks about amending the Charter - there are two ways a Charter can be amended (1) By the Council adopting an Ordinance like they are in the process of doing now, and (2) the other way is to have 25% of the people who voted in the last election submit a petition. City Manager Maclin stated that if the Council voted not to include dropping the age from 25 to 21 on the Charter, if there was a petition that was gotten together (in this case) with approximately 1,000 names, then this would over ride the Council's vote and it would still have to be put on the Charter Amendment.

Councilman Simond stated that this is just one case where it might be that there are some things that he might like to see on the ballot to have the people decide. City Manager Maclin stated that there are two ways of going about this - (1) to get 3 other people on the Council to agree with him that it needs to go on the ballot, or (2) to get a petition up to over ride the Council.

In response to question by Councilman Gorden, City Manager Maclin stated that the public will be voting on amending the Charter as it stands today.

Mayor Bronaugh stated that under Article III - The Commission, Section 3. Qualifications, it presently reads that each member of the Council shall at the time of his election to office, be at least twenty-five years of age, and the recommendation by Councilman Boyd is that the age requirement be reduced to twenty-one years of age. Councilman Boyd stated that, in his opinion, it should be reduced to the age of twenty-one because a person can fight for his country at the age of eighteen, but cannot serve on the Council until he is twenty-five years of age.

Councilman Bowman stated that he would like to see the age requirement stay at twenty-five because a twenty-five year old has a lot more maturity than a twenty-one year old. Councilman Boyd stated that there are people who are thirty-five years old who are not mature, and in his opinion, the public should make this decision.

City Attorney Flournoy stated that what the Council is sending out as a Charter Commission to the public, through the Ordinance, is a recommendation.

Mayor Bronaugh stated that he did not have a problem with twenty-five, and really

did not have a problem with twenty-one, but he would lean towards twenty-five for no other reason than it has been a sensible age for the last 26 years and he does not think it has changed that much. Councilman Simond stated that it did not matter to him whether it was twenty-five or fifty-five, but since the Mayor is presiding he did not believe that he should express an opinion as to how the vote should go. Councilman Simond stated that the Council should discuss the issue and vote the way they want to and the Mayor should vote the way he wants to.

Mayor Bronaugh stated that, in his opinion, he had given the issue to Councilman Boyd first and waited and when no one else spoke up, he made his comment. Councilman Simond stated that whatever the way the Mayor wanted the vote to go, it would go that way, because he is that powerful. Councilman Simond stated that he did not think that the Mayor should try to influence the vote in any way. Mayor Bronaugh stated that he lets the person who makes the presentation speak first and then anyone else who wants to comment, and he is the last to comment. Mayor Bronaugh stated that is the procedure he has always followed.

Motion was made by Councilman Don Boyd and seconded by Councilman Percy Simond that Council present to the voters the recommendation that the age requirement of 25 years of age be lowered to 21 years of age. The following vote was recorded:

Aye: Councilmen Boyd, Simond, Kegler, Mayor Bronaugh

Nay: Councilmen Weems, Gorden and Bowman

Motion carried with a 4 to 3 vote.

Mayor Bronaugh stated that the next item is Article III - The Commission, Section 9. Compensation.

City Attorney Flournoy stated that this is obviously a public service, and his personal feeling is that the demands on the members of the Council are great and they are growing everyday. Mr. Flournoy stated he did not believe it was right to call upon people without some fair compensation. Mr. Flournoy stated that if we expect Councilmen to spend the amount of time they do to address the problems with the City, he believed that there should be some compensation for it. Mr. Flournoy stated that this is not a full time job, and the compensation should not provide enough compensation so that it is all they will do and will try to live on the compensation. Mr. Flournoy stated that to attract good people to the Council there seems to be some need to fairly compensate them. Mr. Flournoy stated that there should be some adequate compensation, a reasonable amount.

Councilman Simond stated that he did not have a strong feeling either way about the compensation. Councilman Simond stated that he had proposed the \$10 set as compensation in the Charter be eliminated since it had caused more problems than it was worth. Councilman Simond stated that the City of Lufkin needs to get away from the East Texas backwoods thinking. Councilman Simond stated that earlier today he had seen the Mayor of Beaumont on television in Washington, D. C. talking to the President, and in his opinion, our Mayor should have been in Washington too. Councilman Simond stated that a lot of people do not even know where Lufkin is and that needs to be corrected.

City Attorney Flournoy stated that to serve on the Council a person must either be retired or independently wealthy to be able to serve and spend the amount of time to do the things that Councilman Simond is speaking about. Mr. Flournoy stated that this is a small amount of money to pay the Council to be able to do these things.

City Attorney Flournoy stated that one of the problems has been that people have perceived this as being so much pay per Council meeting and the amount of time a person spends in a Council meeting is insignificant to the other amount of time they have spent. Mr. Flournoy stated that he understood that the Council would be

uncomfortable recommending that there should be some type of compensation. Mr. Flournoy stated that there should be some limits. Mr. Flournoy stated that it will become more and more difficult to get good people to serve when so much will be demanded of them.

Mayor Bronaugh stated that Lufkin is not being as well represented in Austin as it should. Councilman Simond stated that he did not feel too good that every time he is up for re-election no one runs against him, and maybe if there was compensation someone might consider running for the position. Mr. Flournoy stated that the compensation should not be high enough to entice someone to run, but should be high enough to allow them to run. Councilman Gorden asked if anyone had gone to the trouble to calculate, under the Charter the Council is working under now, what that would compute to on an inflated basis today? Councilman Gorden stated that another thought he had that would go into effect only after the present Council is out of office, is that there should be some compensation. Councilman Kegler stated that he is a "lame duck" Councilman, and he could say for himself that there is so much time spent that, as a citizen in 1995, which he will be, he will not have any objections to compensation for the Council. Councilman Kegler stated that the public does not understand the amount of time a person spends as a Councilmember, especially when you have a full time job. Councilman Kegler stated that he had observed from attending TML and NLC workshops that the Lufkin City Council is not representative of Lufkin's makeup. Councilman Kegler stated that one of the reason that women and minorities do not run for office is because of the time involved with the long hours spent away from work and home, and the lack of compensation.

Mr. Flournoy stated it would be a shame for what the Councilmembers are doing to be perceived as just a means of the members of the Council to get some money. Mr. Flournoy stated that we are talking about the Charter and trying to put in place something that will attract and allow the best of our citizenry to come in and participate and lead this City. Mr. Flournoy stated that this is for the long run so Councilmembers should forget about themselves and even if it was set up so that no one on this Council would receive anything, the purpose is to show the public that the present Councilmembers are not trying to put money in their pocket. Mr. Flournoy stated that one of the big problems is that most people who run for the Council do not know what the demands of the position are.

Councilman Bowman stated that he would concur with what everyone has said, but the challenge is how to create a reasonable compensation in the mind of the public. Councilman Bowman stated that he thinks the public perceives the City Council as a public service body and it is a big leap to go from that perception to a new perception that there are going to be paid Councilmen regardless of how much they are paid. Mr. Flournoy stated that Congressmen and Senators call themselves public servants and they are compensated. Councilman Weems stated that the Council hires a City Manager to manage the City, and even though he understands what is being said, if he had to voice his opinion he would vote to let it remain as a public service. Councilman Weems stated that if the amount of compensation is to be changed it should probably be placed on the price index increase since 1966 as to what the \$10 would be to bring it up to present. Councilman Weems stated that he considers serving on the Council as a public service. Councilman Weems stated that serving on the Council has required more time than he anticipated when he first came on the Council.

In response to question by Councilman Simond, Councilman Weems stated that the \$10 compensation in 1966 would equate to \$160 at today's prices. Councilman Simond stated that the City of Texas City gives their Councilmen \$100 per meeting for each meeting regardless of how meetings are held each month. Councilman Bowman stated that the Council needs to find the level the public feels comfortable with. Councilman Bowman stated that the public still perceives the Council as a public body the same as a school board.

Mayor Bronaugh stated that when he came on the Council he received \$10 per meeting and that was raised to \$15 per meeting when he was elected Mayor. Mayor Bronaugh stated that the biggest change was when the City could no longer pay for spouse's expenses on trips because of an Attorney General's ruling. Councilman Kegler stated that most of the Councilmen's wives are very supportive of their husbands being on the Council. Councilman Boyd stated that Attorney General Maddox was the one who made this ruling, and in his opinion, this punishes the Councilmen from smaller towns. Councilman Boyd stated that Attorney General Morales should be contacted in an effort to get this changed. Councilman Gorden stated that industry has also quit paying for spouse's travel.

Motion was made by Councilman Larry Kegler and seconded by Councilman Percy Simond that each Councilman shall receive an amount calculated by the City Attorney to take into account the matter of inflation since the time the Charter was originally drafted.

The following vote was recorded:

Aye: Councilmen Kegler, Simond, Boyd, Gorden, and Mayor Bronaugh

Nay: Councilmen Bowman and Weems

Motion carried by a vote of 5 to 2.

Mayor Bronaugh stated that the next item is Article III - The Commission, Section 11. Rules of Procedure. Mayor Bronaugh stated that this is the item about whether or not a Councilmember can abstain. Mayor Bronaugh stated that a person can recuse himself from voting because of conflict of interest.

Councilman Boyd stated that on most of the Boards he has served on, you have the right to abstain in addition to voting "yes" or "no". Councilman Gorden stated that in this type of situation he believes that a person should not be allowed to abstain. Councilman Boyd stated that this is "small town mentality". Councilman Gorden stated that if everyone abstained nothing would get done. Councilman Bowman stated that he would concur with Councilman Gorden.

City Attorney Flournoy stated that he feels very firm that everybody needs to vote unless they have a conflict of interest, otherwise you would not effectively be able to get legislation passed. Mr. Flournoy stated that we are looking to the future and people who are elected to the Council should be expected to take a position one way or the other. Councilman Weems stated that you should vote your conscious unless you have a problem.

Councilman Simond stated that he is kind of swayed by Mr. Flournoy's argument. Mr. Flournoy stated that the public has the right to expect that someone it elects will take a position.

Motion was made by Councilman Don Boyd and seconded by Councilman Jack Gorden, Jr. that the recommendation that every member should be able to abstain from voting without giving a reason be withdrawn from consideration.

Councilman Kegler asked if the part about "any Councilmember refusing to vote shall be entered into the minutes of such meeting as voting in the affirmative" could be removed from the Rules of Procedure. Mr. Flournoy stated that it says that if you don't vote, it is counted as an affirmative vote. Councilman Simond stated that if you don't vote, nobody can make you vote, but you have to be counted.

A unanimous affirmative vote was recorded.

Mayor Bronaugh stated that the next item is Article IV - Administrative Organization, Section 4. Directors of Departments. Mayor Bronaugh stated that this is the item where the City Council would be involved in the appointment and

removal of Department Heads. Councilman Boyd stated that some members might say that this would take away the authority of the City Manager, but this is not true because the City Manager would have the right to appoint individuals that he wants as Department Heads, but with the approval of the City Council.

Councilman Bowman stated that the present way the Department Heads are hired has worked well for many years, and if you make this change you open up a "Pandora's Box". If the Council is suddenly approving the hirings and firings, you will get a lot of telephone calls from the public wanting to influence that process through the City Council.

City Attorney Flournoy stated that you need to look at what the Council/City Manager form of government is supposed to do. Mr. Flournoy stated that you will run aground of other portions of the Charter if you try to change this. Mr. Flournoy stated that, for instance Article 3, Section 7 talks about interference in personnel matters - one of the sacred things about the City Manager/Council form of government is that you hire a professional and give him the authority in personnel matters. Mr. Flournoy stated that you can have independent people like the City Attorney and the Municipal Judge. The Charter recognizes that those two need the approval of the City Council, but beyond that, any time the Council has the right to approve or disapprove of the appointment of a Department Head, what is really happening is the Council is interfering in personnel matters. Mr. Flournoy stated that Article IV - Section 2 also addresses the powers and duties of the City Manager to appoint and remove any officer or employee of the City. Mr. Flournoy stated that this is an area that has been recognized as necessary to maintain separateness for the City Manager and if you don't like him, then get rid of him, instead of imposing the Council's judgment about whether a person should be a Department Head or not.

Councilman Simond stated that if there were any positions other than City Judge, he would have some strong reservations. Councilman Simond stated that the position of Chief of Police is the most sensitive position that a City has. Councilman Simond stated that the Council is fortunate that Mr. Westerholm selected the person he did in hiring Chief Collins. Councilman Simond stated that, in his opinion, the Council should have some input into the selection of the Police Chief. Councilman Simond stated that if there were any positions to be changed he would like to see the Police Chief in the same category as the City Judge.

Mayor Bronaugh stated that he is very much opposed to changing from what the Council is presently doing. Mayor Bronaugh stated that, in his opinion, the Council/City Manager form of government is an excellent form of government. Mayor Bronaugh stated that all seven Councilmembers have been given consideration and asked their opinion on Department Heads by the City Manager.

Councilman Kegler stated that he did not have any lack of confidence in C. G., but thought it would help add to him if the Council did approve his appointments. Councilman Kegler stated that the City Manager/Council form of government was doing fine for the City, and he did not have any qualms with that.

Motion was made by Councilman Bob Bowman and seconded by Councilman Jack Gorden, Jr. that this section be left as it is.

Councilman Gorden stated that he did not think that this group, or any future group, would be timid if there was a flagrant wrong being committed by the Chief of Police or any Department Head.

Councilman Simond stated that he had every confidence that Mr. Maclin will do the right thing, and once Councilmembers feel that he is not doing the right thing, it only takes four votes to remove him.

City Manager Maclin stated that he agrees that the Police Chief's position, based on his 21 years of experience, is the most politically sensitive position. City Manager

Maclin stated that any astute City Manager will recognize that and will make sure that a decision of that magnitude has the support of everyone who will participate in the process. City Manager Maclin stated he went through firing a Police Chief in Wharton, and went to everyone of the Councilmembers and talked to them at length before he followed through on that decision.

A unanimous affirmative vote was recorded.

Councilmember Weems stated that he would like to withdraw the item of term limitation at this time, but it might be discussed at a future meeting.

In response to question by Councilman Bowman, City Manager Maclin stated that the Charter review will be considered in Ordinance form at the February 15th meeting on First Reading and on March 1 for Second Reading.

5. COMMENTS

Councilman Bowman suggested putting the Bond Election for streets back on the agenda for discussion, and perhaps putting it on the ballot. Councilman Bowman stated that he would like to see the streets separated out where they are listed individually.

Councilman Kegler stated that he has recently attended a number of meetings where the need for a housing authority has been discussed. Mayor Bronaugh stated that the administration has asked the Texas Department of Community Affairs for assistance and they have promised to send a facilitator.

City Manager Maclin stated that as a point for clarification, City Secretary Atha Stokes is in Austin attending the Election Law Seminar. City Manager Maclin stated that the Councilmembers packets are ready if they would like to stop by the City Secretary's office and pick them up.

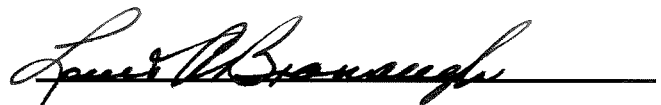
Mayor Bronaugh reminded Councilmembers of the DETDA meeting at 6:30 p.m., Thursday night at Crown Colony, where David Burnsen will be speaking. Councilman Bowman stated that C. G. Maclin will be installed as the new president of DETDA. Also, the Regional Review Committee will be meeting in the Council Chambers next Wednesday and the City will be making their presentation at 2:30 p.m.

6. There being no further business for consideration, meeting adjourned at 10:30 a.m.

ATTEST:



Atha Stokes - City Secretary



Louis A. Bronaugh - Mayor