

**MINUTES OF REGULAR MEETING OF THE CITY COUNCIL OF  
THE CITY OF LUFKIN, TEXAS, HELD ON THE  
20TH DAY OF SEPTEMBER, 1994 AT 5:00 P. M.**

On the 20th day of September, 1994 the City Council of the City of Lufkin, Texas, convened in a regular meeting in the Council Chambers of City Hall with the following members thereof, to wit:

Louis A. Bronaugh	Mayor
Percy Simond	Councilman, Ward No. 1
Don Boyd	Mayor pro tem
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
Ron Wesch	Asst. City Manager/Public Works
Darryl Mayfield	Asst. City Manager/Finance
Bob Flournoy	City Attorney
Atha Stokes	City Secretary

being present, and

C. G. Maclin	City Manager
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being absent when the following business was transacted.

1. Meeting was opened with prayer by Asst. City Manager Darryl Mayfield.
2. Mayor Bronaugh welcomed visitors present and recognized representatives of the Loral Vought Systems, Tommy Thompson (Plant Manager), John Gaughen (Human Resources Manager), and Ed Simon (Tax Manager).

3. **APPROVAL OF MINUTES**

Motion was made by Councilman Don Boyd and seconded by Councilman Larry Kegler that minutes of Regular Meeting of September 6, 1994 and Called Meeting of September 9, 1994 be approved as presented. A unanimous affirmative vote was recorded.

4. **PUBLIC HEARING - TAX ABATEMENT - R. H. DUNCAN - LORAL VOUGHT SYSTEMS - 1008 N. JOHN REDDITT DRIVE**

Mayor Bronaugh opened Public Hearing to consider request of R. H. Duncan on behalf of Loral Vought Systems for approval of Tax Abatement on approximately 10.058 acres of land designated as 1008 N. John Redditt Drive.

Mr. Duncan stated that he was representing R. H. Duncan Construction, Inc. who will own the building on this site, lease it to Loral Vought, and they will be responsible for the taxes on the building. Mr. Duncan stated that Loral Vought will own the machinery which will be a separate entity. Mr. Duncan stated that there will be two entities paying taxes - on the building and on the machinery.

There was no opposition to the request.

Mayor Bronaugh closed the Public Hearing.

5. **ORDINANCE - APPROVED - SECOND READING - ZONE CHANGE - DUNCAN CONSTRUCTION - RESIDENTIAL LARGE TO LIGHT MANUFACTURING - LOOP 287 - 904 AND 1014 N. JOHN REDDITT DRIVE**

Mayor Bronaugh stated that the next item for consideration was to consider Second

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Reading of an Ordinance to change the zoning from Residential large to Light Manufacturing on approximately 17.62 acres of land fronting the inside of Loop 287 and located between 904 and 1014 N. John Redditt Drive as requested by Duncan Construction.

Mr. Thompson stated that Loral Vought Systems has entered into a lease agreement with R. H. Duncan which provides for the construction of a 50,000 square foot manufacturing facility that will assist in the development and production of Loral Vought's ERINT missile. Mr. Thompson stated that there are expansion capabilities of another 50,000 square feet.

Mr. Thompson stated that the facility will be used to manufacture major sections of a new Army missile, Loral Vought's Extended Range Interceptor (ERINT), which was recently chosen by the Department of Defense as the new Patriot Advanced Capability (PAC-3) missile. Mr. Thompson stated that the new plant will employ the latest modern electronic production techniques, including computer-aided design and manufacturing. Mr. Thompson stated that other activities at the plant will include the manufacture of ground support test equipment, training systems and the environment testing of electronic assemblies.

Motion was made by Councilman Bob Bowman and seconded by Councilman Jack Gorden, Jr. that Ordinance be approved on Second and Final Reading as presented. A unanimous affirmative vote was recorded.

**6. ORDINANCE APPROVED - FIRST READING - REINVESTMENT ZONE - TAX ABATEMENT - R. H. DUNCAN - LORAL VOUGHT SYSTEMS - 1008 N. JOHN REDDITT DRIVE**

Mayor Bronaugh stated that the next item for consideration was First Reading of an Ordinance for Reinvestment Zone and Tax Abatement as requested by R. H. Duncan on approximately 17.62 acres of land fronting the inside of Loop 287 and located between 904 and 1014 N. John Redditt Drive as requested by Duncan Construction.

Asst. City Manager Ron Wesch stated that the City Planner and other staff members had worked on this request with Mr. Duncan and members of the Loral Vought Systems staff. Mr. Wesch stated that the staff recommendation is that the Reinvestment Zone No. 51 be established and the Tax Abatement be approved.

Mr. Wesch stated that Mr. Duncan and Loral Vought Systems have signed a five year lease with three five year options. Mr. Wesch stated that the 15,890 total points on the "Qualification Threshold Point Sheet" is well in excess of the 3,000 points needed to receive the maximum abatement.

Motion was made by Councilman Don Boyd and seconded by Councilman Larry Kegler that Ordinance for Reinvestment Zone and Tax Abatement be approved on First Reading as presented. A unanimous affirmative vote was recorded.

**7. RESOLUTION - APPROVED - TEXAS COMMUNITY DEVELOPMENT PROGRAM - SANITARY SEWER SYSTEM IMPROVEMENTS PROJECT**

Mayor Bronaugh stated that the next item for consideration was a Resolution for approval of matching funds for the Texas Community Development Program sanitary sewer system improvements project.

Mr. Wesch stated that the Angelina County Commissioners, on behalf of Commissioner I. D. Henderson, are submitting an application to the Texas Community Development Program Grant to apply for approximately \$249,000 in grant funds to extend the sanitary sewer system in the Cedar Grove Fresh Water Supply District area. Mr. Wesch stated that the City of Lufkin is responsible under contract for the operation and maintenance of the water and sewer system in the Cedar Grove area. Mr. Wesch stated that this grant application will extend sewer

to 22 new residences. Mr. Wesch stated that the City of Lufkin, under the Resolution, is being asked to fund \$12,525, 5% of the total amount. Mr. Wesch stated that in the Cedar Grove area the City has a lift station that is in excess of 20 years of age. The lift station will need to be replaced within the next 18 - 24 months. Mr. Wesch stated that if the grant application is awarded, the City of Lufkin would save approximately \$30,000 for the rehabilitation of the lift station.

County Commissioner I. D. Henderson was present and thanked the Council for their participation in the Resolution.

Motion was made by Councilman Larry Kegler and seconded by Councilman Don Boyd that Resolution be approved as presented. A unanimous affirmative vote was recorded.

#### **8. HEARING - EASTEX AMBULANCE SERVICE - CERTIFICATE OF PUBLIC NEED AND NECESSITY REVOKED**

Mayor Bronaugh stated that the next item for consideration was a Hearing as requested by Eastex Ambulance Service related to the revocation of their certificate of public need and necessity.

City Attorney Flournoy stated that under the Ordinance that was passed in 1989, the Council retained the authority to act as an appeals body over decisions that were made relating to non-emergency ambulance service. Mr. Flournoy stated that in this particular case, in February, 1993 a certificate was issued to Eastex EMS and, in August of this year notice was given to Eastex by the licensing officer appointed by this Council under the Ordinance with the authority to revoke their license. Mr. Flournoy stated that the licensing officer revoked the license for Eastex subject to an appeal. Mr. Flournoy stated that Eastex did appeal within the 10 day period, and they are present tonight for that purpose. Mr. Flournoy stated that the responsibility is now up to the Council after hearing any evidence or argument on either side or both sides to make a determination whether or not the license should be revoked. Mr. Flournoy stated that the procedure he would like to see followed would be for the appellant, Eastex Ambulance Service, submit its statement, argument and evidence, and then the City would have the opportunity to submit its case, followed by a rebuttal by Eastex. The Council would have the authority, either in closed session or in continued open session, to deliberate and issue its decision.

John Bryan stated that in 1989 there was an Ordinance passed that governed the operation of non-emergency ambulance services in the City of Lufkin. Mr. Brian stated at that time he was managing Eastex EMS, as he is at this time. Mr. Brian stated that at that time the City of Lufkin exhibited no interest in being involved in non-emergency ambulance service, and maintained that posture until late 1993. In February of 1993, Eastex EMS purchased an existing non-emergency ambulance service in the City with the full impression that the City was not interested in non-emergency ambulance service. Mr. Brian stated that in fact that had been reinforced by the hospitals in the City for the City to take up transfer service and their request being turned down. Mr. Brian stated that Eastex invested in between \$150,000 and \$200,000 in the initial purchase of the company, expansion of communication systems, man hours involved, expansion equipment, etc. In late 1993, Eastex had purchased the franchise to a system called Eastex Voice of Help (which is actually AMAC and is manufactured nationally and is growing in its popularity and use). Mr. Brian stated that it is an enhancement of a system similar to LifeLine, a system that can be used by someone who becomes disabled to call for help. Mr. Brian stated that without realizing that they should have asked if it would be all right for them to use the system in the City, they began to develop the system. Mr. Brian stated that before the first system was installed, he met with resistance from the Fire Chief, the Licensing Officer and the City Manager. Mr. Brian stated that at the time he did not understand their resistance because when the system is installed in

nursing homes it becomes a way for people to be able to contact ambulances much more easily. Mr. Brian stated that when he was told that he could not install the system in Lufkin, he did not. Mr. Brian stated that because the Licensing Officer is also the head of the City's non-emergency transfer service, Eastex has felt like since the City initiated the transfer service, which was a change in a position that had been held for some time and had been validated just prior to their purchase of an existing non-emergency ambulance service, that they were living under a very dark cloud. Mr. Brian stated that he felt that it was somewhat futile for him to come before the Council tonight because he felt like that since May of this year there had been a very concerted effort to stack up a preponderance of evidence or a preponderance of mishaps that could be used to disqualify Eastex from their permit to be a competitor with the City. Mr. Brian stated that when Eastex Ambulance started in February of 1993, the enforcement of the Ordinance was very relaxed. Some 60 to 90 days after Eastex became operational, they found that they had a glitch in their system that had not created a report for the license officer as is required by the Ordinance. At that time, the license officer told the Eastex Ambulance officer to get the reports together and get them to him when they could. Mr. Brian stated that in late 1993, there was a change in the atmosphere and the enforcement of the Ordinance became a little stricter. Mr. Brian stated that in May of this year, when the City began its transfer service, it became a very tense situation for him; he was now required to give a report of where all of the calls that he was generating came from to the man who was in charge of his biggest competitor. Mr. Brian stated that he had a problem with this and sought legal advice. Mr. Brian stated that his attorney recommended that he not be aggressive but to work within the framework and be competitive by delivering good service. Mr. Brian stated that he attempted to follow the Ordinance as best he could.

In August of this year, he received the revocation of his license based upon things that were brought out of the Texas Department of Health file that were three and four years old - things that were actually in the file at the time that their initial certificate of need was issued. Mr. Brian stated that there were some other issues that were more current that he was working on resolving. Also, listed in the letter to Mr. Maclin were the specifics of the complaint from the City of Lufkin Fire Department in regard to his operation. Mr. Brian stated that the first complaint was that the statement was made that Eastex Ambulance Service was attempting to circumvent the existing 911 system by placing their own communication system in area nursing homes. Mr. Brian stated that this was not the intent of what he was doing, but rather he was attempting to manipulate or captivate as much of the market for non-emergency service as he could get. Mr. Brian stated that Mr. Gaddy, his other competitor was present tonight, and he was trying to get as much business from Mr. Gaddy as he could, which is what competition is all about. Mr. Brian stated that when he was told in a letter from the license officer that he was denied the right to use that type of equipment in the City of Lufkin, he did not push the issue but tried to work within what he perceived as the system. The next statement says that there is the transfer of emergency patients by Eastex, instead of them contacting the City of Lufkin emergency service. Mr. Brian stated that in February of 1993 when he initiated his service in the City of Lufkin he saw this as a glaring problem within the Ordinance, because it says that Eastex will do non-emergencies and the emergencies will be done by the City of Lufkin Fire Department EMS. Mr. Brian asked how do you quantify or clarify what an emergency is? Mr. Brian stated that when the phone lines are answered in their dispatch center, unless the dispatcher is between two calls and is distracted they are answered "Eastex EMS, do you have an emergency?" At that time, he was told that it would be acceptable if the person calling said "no" then Eastex could consider that a non-emergency and could dispatch an ambulance. And if they said "yes", Eastex was to tell them to dial 911. Mr. Brian stated that there was a liability problem with following that advice and it would behoove him to take the information and notify the emergency dispatch in Lufkin themselves since they initially called Eastex. Mr. Brian stated that if the person calling was truly having an emergency and was unable to make the second call, Eastex had then put a block between them and their receiving emergency help. Mr. Brian stated that that was never fully clarified. He

did, however, attempt to see to it that emergency calls, as he perceived emergency calls, were turned over to the Fire Department. Mr. Brian stated that there were times when his personnel responded to situations that they felt like when they got there had either a) changed and became emergent, or b) that the caller had not really told the dispatcher what was going on and Eastex then called for the Fire Department personnel. This created a relationship problem between the Eastex crews and the Fire Department personnel because the Fire Department personnel did not want to do those calls and they would belittle the Eastex employees by asking them why they could not take care of it. Mr. Brian stated that after the City went into the non-emergency service late in 1993, a letter was received by the license officer again stating that Eastex was in violation of the Ordinance because they were transporting emergency patients. Mr. Brian stated that this opinion was arrived at from the report that Eastex was required to turn in on a monthly basis, which report had a different format than the format which the current Lufkin EMS transfer system uses. He was required to give some points of information that are not currently on that report. From that report, a one word explanation of what was wrong with the patient was how the license officer determined that Eastex was responding to emergency calls and failing to turn them over to the Fire Department EMS. Mr. Brian stated that there was never in his mind, or in his instructions to his employees, the intent that any emergency call be done by his service. Mr. Brian stated that the big problem is that there was never a clarification in the Ordinance as to what an emergency is.

Mr. Brian stated that the third point in the City of Lufkin's Fire Department complaints was that Eastex continually ignores our requests including written requests for information regarding their ambulance responses, with a note that they were again delinquent on reports. (This letter was written on September 13. Reports were turned into a Fire Department Secretary and they had been misplaced. This was the last set that was listed as being currently delinquent.) Mr. Brian stated that he submitted the report again. Mr. Brian stated that in the Ordinance there is no time given for when the reports are due. Mr. Brian stated that Eastex was not as efficient as they should have been on giving the report but there was never a time that when the report was asked for that Eastex did not initiate work on the report and get them in within the reasonable future. Now, after May, Eastex is expected to have their reports in within three days of the end of the month. Mr. Brian stated that since Eastex's call volume has dramatically reduced since the City went in competition with them, it is not as much trouble as it was when Eastex was initially the only provider and then a co-provider of non-emergency service in the City.

Mr. Brian read from point #4 - "Eastex allowed their certificate to operate an ambulance service to expire; they must continually be reminded and requested to comply with the EMS Ordinance." Mr. Brian stated that Eastex also operates under a permit in Beaumont and some 60 days before the permit expires he receives a letter of notification in the mail and a follow-up letter if all of the details that are required for compliance are not completed within 30 days. Mr. Brian stated that there is no notification process of when their certificate expires (from the Lufkin Fire Department). As soon as he was notified that the certificate had lapsed, Mr. Brian stated that he took steps necessary to get it current and in place.

Point #5 - Eastex allowed proper and adequate insurance coverage to expire and had to be told by us (Lufkin Fire Department) in writing to provide proper coverage. Mr. Brian stated that because of their initiation of service in the City of Lufkin did not correspond to a policy period, they had increased the amount of insurance in the middle of a term with an additional policy that was for a year. When that policy expired the person handling it did not know why Eastex had that coverage and thought that it was something that had been done that was actually not correct and did not re-instate it. Mr. Brian stated that when he was notified that the insurance had lapsed, he called his insurance agent and put him in touch with the license officer and Eastex had a policy in place. (Mr. Brian stated that the letter he has been quoting from is signed by the Fire Chief and not the license officer.)

Mr. Brian stated that there may be motivation on the part of the Fire Department, the license officer, or even the City that they would not want Eastex to be operating in the City of Lufkin now because they are doing something that they are doing. Mr. Brian stated that any calls that Eastex makes is a loss to the City. Mr. Brian stated that he does have a problem that for some six or seven years the City did not want to do emergency ambulance service, and then when two providers came into the City, obviously they had found a way to provide ambulance service and make money doing it, the City decided to go into that business also, and regulate how the other people do their business.

Mr. Brian stated that the City requested from the Texas Department of Health a complete copy of their (Eastex) records, which are public records and open to the City's survey. Mr. Brian stated that there are eight paragraphs referencing the Texas Department of Health and Eastex' file there. Mr. Brian stated that many of the things listed are not current and were not current when they received their certificate of need. Mr. Brian stated that he will address three of the points because it is very important to him that they be clarified:

#1 - There was a \$5,000 fine against Eastex for violation of TDH's requirements for subscription services. The action of revocation of their license, or City certificate of need, was pursuant to their attempting to get approval from the Commissioners Court for them to sell subscriptions in the City by approximately 10 days to 14 days. At the Commissioners Court the Fire Chief stood up and said that they were in the process of doing an internal investigation into Eastex service and asked that they delay their action until the City had taken its action. Mr. Brian stated that it appeared to him that it was an attempt to prevent Eastex from doing anything that would make them more competitive than they already were. Mr. Brian stated that Eastex, as of this time, has not paid a \$5,000 fine. Somewhere in the future Eastex will pay a \$5,000 fine, but the important thing is that it is entirely clear to the Council that the fine had nothing to do with patient care.

#2 - The filing of criminal charges against Eastex by private citizens for alleged improper procedures, Re; patient care and faulty equipment, with a note that the patient did not survive the incident. Mr. Brian stated that there have not been, nor do they anticipate, any criminal charges filed against any of their employees or their company in this issue. Mr. Brian stated that there has been a civil lawsuit filed in regard to this. Mr. Brian stated that this case is being defended and that his insurance company is paying those costs and that depositions have been taken and more will be taken. The attorney assigned to this case wrote a letter to the insurance company (with a copy to him) saying that we are in the middle of litigation in regard to a patient care issue, and that many of the allegations made by the plaintiff's attorney are being proven to be wrong and not correct. The letter states that the attorney recently met with the emergency room physician who was on call at the time that this particular case occurred. He believes that the patient was dying all day. He stated that he was told by the patient's wife that the patient had been feeling poorly for two days and that he had hurt all day long on the day that he passed away. According to the physician, there is nothing that he is aware of that the ambulance service could have done that would have kept the patient from going into ventricular fibrillation. Further down it states that he (the physician) does not feel that Eastex personnel were in any means negligent and based this upon his review of the chart and all depositions taken to date. Mr. Brian stated that what this boils down to is that there is a civil lawsuit in process over patient care delivered. Mr. Brian stated that he feels that the City has been involved in litigation before, and often times the initial accusations or charges are found to be highly exaggerated in an attempt to bring up the level of whatever the solution will be to the situation. Mr. Brian stated that the attorney's closing comments in the letter was "that things are looking up." Mr. Brian stated that there was a situation in that case that had to do with equipment failure and the physician stated that the equipment failure would not have significantly improved the patient's chance for survival on a long term basis. The equipment had been checked that morning as checked off by the employees morning inventory sheets. When sent to a repair

facility, they found no parts in need of repair, they calibrated the machine and sent it back to Eastex.

Mr. Brian stated that the other point is "abusive treatment of senior citizens by Eastex ambulance personnel." Mr. Brian stated that he has been involved in EMS since 1987 and their operating protocol states that every patient should be treated as a member of that employee's family. Mr. Brian stated that there was an unfortunate incident that occurred in which two employees behaved in an unprofessional manner in a hospital emergency room. A letter of complaint was received. The two employees, because of the nature of the complaint, were suspended pending further investigation of the complaint. Mr. Brian stated that the complaint was of a third party nature; the family of the patient complained to Eastex based on something that somebody else said they had seen and told them. Because he was not able to confirm the complaint, the two employees were reinstated.

Mr. Brian stated that he feels that while the Eastex Ambulance Service was not perfect, they have not substantiated the action that has been initiated with the revocation of the certificate of need. Mr. Brian stated that he feels that the Ordinance is unfairly vague and open to different interpretations depending upon the perspective of the reader. Mr. Brian stated that he trusted that at the end of this evening there will be a reversal of this decision and perhaps a clarification of how they are to proceed further if they are to be allowed to continue to deliver non-emergency service here in the City.

City Attorney Flournoy stated that as in any case it is always important to try to focus, and one of the ways to defend oneself is to raise a lot of superfluous, non-relevant issues, and it is important not to get sidetracked. Mr. Flournoy stated that the only thing before the Council tonight as an appellant body is to look at whether or not this revocation should be done, and whether or not it is due to violations of the Ordinance. Mr. Flournoy stated that Mr. Brian has stated that the City is trying to get rid of its competition. The City has given not only to Eastex, but also to Gaddy's, a certificate of need, and has authorized them to carry on their business in the City of Lufkin, but has put some requirements on them and that is that they must comply with the Ordinance that this Council has passed.

Mr. Flournoy stated that Mr. Brian excuses his conduct because he says there was relaxed enforcement. Mr. Flournoy stated that there are several letters in the files, which Councilmembers are welcome to look at, about the reports, which the Ordinance specifically says are to be prepared and submitted on a monthly basis.

Mr. Flournoy stated that the question about Eastex trying to circumvent the 911 system, is that Eastex is only authorized to provide non-emergency type services, and if they are allowed to avoid going through the 911 system there is no one there to determine if a call is an emergency or not an emergency. Mr. Flournoy stated that Mr. Brian has said that he can't determine what is an emergency, however, the Ordinance specifically defines an emergency and also defines what a non-emergency is.

Mr. Flournoy stated that when Mr. Brian complained that no one contacted him when his certificate expired is an indication of how he takes care of his business. He acknowledged that his insurance certificate expired and that he will have to pay a \$5,000 fine, but wants to suggest that it is not really important and it has nothing to do with patient care. Mr. Flournoy stated that it does have something to do with the way they operate their business. Mr. Flournoy stated that the City has advised Mr. Brian that he cannot do the subscription service that they are being fined for. Mr. Flournoy stated that they did not have approval from the State but went ahead and did it anyway.

Mr. Flournoy stated that the letter to Mr. Maclin is incorrect where it says that there are criminal charges against Eastex; it should have been civil charges, which he has

acknowledged.

Mr. Flournoy stated that as far as the abusive treatment to senior citizens, that is simply a complaint that was filed against them, and he has admitted that the complaints were filed against his employees.

Mr. Flournoy stated that since the Fire Chief Pete Prewitt and Christopher Carver from the Texas Department of Health would be giving testimony, he would swear them in. Chief Prewitt and Mr. Carver swore that they would tell the truth in their testimony.

Mr. Carver stated that he is with the Texas Department of Health, Emergency Medical Services, Region 4/5 North, in Tyler. Mr. Carver stated that he is the overseer of all programs that own ambulances, such as cities, fire departments, governments, and individually owned units. Mr. Carver stated that he oversees all subscription services, all investigations of providers, and all the inspections of ambulance vehicles. Mr. Carver stated that he has worked for the Health Department for three years, and has been in his present position for one year. Mr. Carver stated that his supervisor is Jim Arnold.

In response to question by Mr. Flournoy, Mr. Carver stated that he is familiar with Eastex EMS, and had reviewed their files, and inspected their facilities and equipment. Mr. Carver stated that the files contain inspection reports and letters to Eastex from the Health Department, and also include inter-office memos from the Health Department. In response to question by Mr. Flournoy, Mr. Carver stated that the files also contained letters of complaints from patients. Mr. Flournoy asked Mr. Carver to verify inspection reports from Eastex EMS relating to the City of Lufkin. Mr. Carver verified same.

In response to question by Mr. Flournoy, Mr. Carver stated that Eastex EMS owns and operates ambulances in other areas besides the City of Lufkin. Mr. Carver stated that Eastex rotates their ambulances whenever they need to, sometimes this is done because of vehicle maintenance. Mr. Flournoy handed out copies of a series of letters from the Texas Department of Health to Eastex Ambulance Service to Councilmembers and Mr. Brian. Mr. Flournoy stated that the first letter is dated October 20, 1993 addressed to Mr. John Brian signed by Mr. Ray Oatley of the Texas Department of Health. The letter pointed out different decrepitanacies and deficiencies in units that were stationed in Lufkin. The next letter was dated October 28, 1993, signed by Mr. Jim Arnold (Mr. Carver's supervisor). Mr. Flournoy read the following statement from the letter: "We found in those first spot inspections sufficient violations to warrant placing your firm in a high priority for random inspections. You agreed that you understood our reasons. You stated that you could not keep extra equipment and supplies in the station because the crews keep stealing them. .... Many of the crews are either lazy and just don't want to go to the trouble or were afraid to take responsibility for ordering something that they might have to pay for if they lost it or broke it.....(Mr. Brian stated) that if I didn't keep control of the equipment this way, those people would steal me blind. " In the next to last paragraph: "Whatever your solution to the problem may be it is imperative that every unit you have be fully equipped and stocked according to the rules every time it rolls on a call. It has become a serious concern to us that you are not operating Eastex EMS in a responsible manner. Too many violations have been found and you have been notified each time to correct the deficiencies. As I explained to you in my office yesterday, John, this is fair warning - if we find an Eastex unit in violation again through spot inspections or crew reported complaint we will take whatever disciplinary action is necessary to correct the problem before someone dies because of it." On January 18, 1994, a letter signed by Chris Carver states: "To say the least, I was very disappointed in the overall appearance and shape of the unit. " Mr. Flournoy stated that the letter also contained statements referring to the appearance of the ambulance, items that needed to be cleaned and operable, items that were expired, lacking fluids to meet medical protocol standards, etc. Mr. Carver asked in his letter "Is this system working?" and "I hope there is an

improvement in the appearance of 8901 and any other units."

Mr. Flournoy quoted from an interoffice memo from Jim Arnold to Vic Dwyer, Investigator for the Health Department, dated June 28, 1994: "Does it seem apparent to anyone else that Mr. Brian has a total disregard for the rules?" and on the next page: "We have no surety bonds, no letters of authorization, no copies of advertisements, and no copies of membership agreements or contracts on file. It also appears that he has been selling them for about a year now." "It is past time to do something about this firm...it is driving us crazy. It seems that at every turn, they are ignoring the rules and just doing whatever the hell they want to do and they are getting away with it." Mr. Flournoy stated that these are not letters or reports written by the City of Lufkin.

Mr. Flournoy stated that there have been many reports and complaints and deficiencies, delinquencies that have been attributed to Eastex. Mr. Carver stated that his experience has been that Eastex does not address these problems or complaints in a timely or cooperative manner. Mr. Carver stated that the Health Department conducted a mass inspection of over 10 units in Austin, and any unit that does not pass inspection must report to the Tyler office for reinspection. Mr. Carver stated that two of the Eastex ambulances were reinspected and one passed the inspection and the other did not. Mr. Carver stated that the person who was manning the vehicle opened up the back door and there was a large "Santa Claus" looking sack full of equipment that had not been placed in the vehicle.

In response to question by Mr. Flournoy, Mr. Carver stated that there are 55 EMS providers in his region. Mr. Carver stated that all complaints are investigated. Mr. Carver stated that there are substantially more complaints against Eastex than any other provider in the region.

Mr. Carver stated that a subscription service is an EMS provider that will give an application out to family members throughout the city or county they serve at a cost of \$45 to \$47. This is the only payment a family needs to make if an EMS unit is called to their house. Mr. Carver stated to become an EMS provider you must meet all the rules, and then have an agreement with the city or county you expect to serve in, and a surety bond. All applications, radio announcements, newspaper ads, TV announcements must be sent in to the Health Department for approval and authorization for a subscription service. In response to question by Mr. Flournoy, Mr. Carver stated that out of confidentiality for Mr. Brian and Eastex EMS, one of the penalties they did receive was a \$5,000 administrative penalty for a subscription service. (Included in the packet of material that was supplied to the Councilmembers and Mr. Brian is a copy of the letter dated July 27, 1994 from the Texas Department of Health proposing the \$5,000 administrative penalty for managing a subscription program that fails to comply with Section 157.16.)

In response to question by Mr. Flournoy, Mr. Carver stated that there is a morale problem with the members. Mr. Carver stated that he had also received a letter of complaint dealing with payments.

In response to question by Mr. Flournoy, Chief Prewitt stated that the City of Lufkin Fire Department has had continual problems with Eastex Ambulance Service in complying with the Ordinance. Chief Prewitt stated that Eastex has been told on more than one occasion that their reports were not being received in a timely manner. Chief Prewitt stated that Eastex had been informed through the Fire Department that they could not provide a subscription service in the City of Lufkin because they were not in compliance with State law.

Chief Prewitt stated that the Eastex Ambulance Service certificate of need was revoked solely because they violated the City Ordinance.

Mr. Brian stated that he would first like to address Mr. Carver. Mr. Brian asked Mr. Carver if in the fall of 1993 a letter was written by Jim Arnold stating that there was

a serious problem within their operation of resupply and daily inventory maintenance. Mr. Carver stated that he was not on the job at that time, but from what he has heard he would say "yes".

Mr. Brian asked if in the latter part of May of this year when the simultaneous spot inspections were held that there was a remarkable improvement in that interim period. Mr. Carver replied "yes". Mr. Brian asked if Gene Weatherall, the Bureau Chief, who did one of the inspections was surprised to the point that he complimented the employees on their appearance and on the condition of the unit which he found in Livingston. Mr. Carver replied "yes". Mr. Brian asked if the two units that were found to be out of compliance were they put back into service within the 10 days. Mr. Carver replied "yes". Mr. Brian asked if the original letter from the Texas Department of Health specified a proposed administrative penalty in lieu of suspension or probation for the subscription service, and this was amended following a meeting with himself, Jim Arnold, Vic Dwyer, Pam West, Jim Weatherall. Mr. Carver replied "yes".

Mr. Brian stated that he would like to ask the question as to why the license officer was not the one who was doing the reporting tonight? Chief Prewitt stated that the Fire Department EMS is licensed by the City of Lufkin, and the license officer is the Fire Chief or his designee. Chief Prewitt stated that his designee is Steve Howland, the EMS Chief. Mr. Brian stated that the first time his employee approached the license officer he was told to go ahead with the subscription service. Mr. Brian stated that he was told by one of his employees that Mr. Howland has said that he would deny this if asked.

Mr. Flournoy stated that the other problem the City had in the area of the subscription service is not only was Mr. Brian told that he could not do it but when they advertised large ads in the Lufkin paper, they advertised that they provided emergency services. Mr. Flournoy stated that Mr. Brian was contacted and told that he could not advertise "emergency services" because he did not have the right to provide emergency services under his certificate. Mr. Flournoy stated that Eastex then ran another ad on Thursday which still carried claims that they would provide emergency service.

Mayor Bronaugh asked if there are people in the City of Lufkin who have subscribed to the service who will now no longer be receiving the service. Mr. Brian replied "To the best of his knowledge, no." Mr. Brian stated that there may have been some subscriptions received which have either not been accepted or have been returned. Mr. Brian stated that any subscriptions received will be refunded if Eastex is not reinstated.

Mr. Brian stated that while not professing to perfection, or perhaps even the best, Eastex has made attempts, in Mr. Flournoy's opinion not successfully, to comply with the Ordinance. Mr. Brian stated that he in no manner intended or attempted intentionally to do anything that was outside the Ordinance for any reason for the simple fact that they did not want to find themselves in the position they are in right now. Mr. Brian stated that he feels that the Ordinance is unfairly vague - he referred to the requirement for the reports, and based a large amount of his efforts around that and come to find out that in the Ordinance there is no time within which those reports are to be submitted. Mr. Brian stated that he is current with the reports through the end of August. Mr. Brian stated that the bottom line is that Eastex did not deny that some of the things that he (Mr. Flournoy) proposed were in fact true. Mr. Brian stated that he did, however, point out that they have made massive strides since October of last year in their operation. Mr. Brian stated that part of the problem in October was due to the rapid expansion Eastex had made throughout the year into this area. Mr. Brian stated that at this time Eastex is working very closely with the Texas Department of Health to improve and insure their compliance with those regulations. Mr. Brian stated that he had also been attempting to insure that since there would be no reminder from the City of Lufkin about the compliance to those issues, that Eastex would be in compliance by self-

checking themselves. Mr. Brian stated that, in his opinion, Eastex should be reinstated, whether on a probationary basis or whether on a permanent basis. Mr. Brian stated that he feels that the playing field has not been level and would be more than happy to attempt to continue to compete in that environment given the opportunity to prove that the improvements made since October of last year until May as evidenced by those Texas Department of health inspections would continue.

Mr. Brian stated that his last remark would be that he would appreciate the opportunity to prove those things which have seemed so damning this evening to be incorrect and that Council might consider the fact that if Eastex had been so flagrantly violating the EMS Ordinance they would not have paid a reduced penalty or escaped suspension or probation of their license.

In response to question by Councilman Bowman, Mr. Brian stated that Eastex is currently operating in eight counties, which are: Jasper, Tyler, Newton, Hardin, San Augustine, Shelby, and Liberty. Mr. Brian stated that his company had been in operation since 1987.

Motion was made by Councilman Bob Bowman and seconded by Councilman Larry Kegler to deny the appeal by Eastex Ambulance Service, and the decision by the Fire Chief to revoke the license of Eastex Ambulance Service be upheld as presented. A unanimous affirmative vote was recorded.

(Motion was made after Council reconvened from Executive Session.)

Mayor Bronaugh stated that this Council is responsible to the City of Lufkin to furnish the best ambulance service available.

**9. DESIGNATED FUND BALANCE ITEMS -APPROVED - GENERAL FUND (STREET DEPARTMENT - PARKS & RECREATION - ACCOUNTING DEPARTMENT)**

Mayor Bronaugh stated that the next item for consideration was to discuss items for the designated fund balance.

Asst. City Manager Mayfield stated that every year some projects are not completed at the end of the fiscal year and are brought to Council for approval to be paid for in the next fiscal year.

Mr. Mayfield stated that as discussed in the budget presentation, the Street Department is projected to have an overrun in its budget expenditures for the current fiscal year. Mr. Mayfield stated that the overrun is directly attributable to the substantial increase in T U Electric costs for street lights prior to October 1, 1993. The estimated overrun is \$100,000.

Mr. Mayfield stated that the Parks and Recreation Department was authorized to spend \$10,000 for the purchase of flail mowers in the FY '94 budget, but the anticipated delivery will not be until after October 1, 1994.

Mr. Mayfield stated that in the current years budget Council approved a new financial system for the Accounting Department. Mr. Mayfield stated that due to technical problems completion is now scheduled for late November 1994. Mr. Mayfield stated that staff is requesting Council authorization to designate \$15,653 of General Fund fund balance to complete this project.

Mr. Mayfield stated that in the Water & Sewer Revenue Fund there are two projects that will not be completed until FY '95; repair of a blower at the Sewage Treatment Plant in the amount of \$40,000, and expansion of the laboratory in the amount of \$60,000, for a total of \$100,000. Mr. Mayfield stated that staff is requesting Council authorization to designate a total of \$100,000 of FY '94 Water & Sewer Revenue Fund fund balance for these two items.

Mr. Mayfield stated that in FY '94 Council approved a financing plan for the containers associated with the new Solid Waste Collection System. Mr. Mayfield stated that receipt of the containers will not be completed until late January, 1995 at which time the City must remit \$144,000. Mr. Mayfield stated that staff is requesting Council authorization to designate \$144,00 of FY '94 Solid Waste Fund Balance to complete the collection system project.

Motion was made by Councilman Bob Bowman and seconded by Councilman Tucker Weems authorizing staff to designate \$100,000 of FY '94 General Fund fund balance for payment of the estimated cost overrun in the Street Department; \$10,000 of FY '94 General Fund fund balance to purchase flail mowers in FY '95; and \$15,653 of FY '94 General Fund fund balance be authorized to complete the Accounting Department's financial system; that \$100,000 of FY '94 Water and Sewer Revenue Fund fund balance be designated for repair of a blower in the Sewage Treatment Plant (\$40,000) and the laboratory expansion (\$60,000); and, that \$144,000 of FY '94 Solid Waste Fund Balance be designated to complete the Solid Waste Collection System project. A unanimous affirmative vote was recorded.

#### **10. REVISED PRE-TREATMENT PROGRAM - APPROVED - EPA**

Mayor Bronaugh stated that the next item for consideration was approval of a revised Pre-Treatment Program for submittal to the EPA.

Asst. City Manager Ron Wesch stated that in 1983 Council approved a fairly extensive Industrial Pre-Treatment Program that was part of the EPA Permit at the Water Pollution Control Plant; since 1983 there have been numerous EPA changes, laws, policies, directives, etc. Under the new permit it is necessary to revise and update the 1983 Pre-Treatment Program to the 1994 laws.

Mr. Wesch stated that Bobby Mott has outlined the basic changes that have been made, and they were handed out in a separate binder with the Councilmember's packets.

In response to question by Councilman Weems, Mr. Wesch stated that he had a two-hour meeting recently with all local industries here at City Hall where Maury Stiver, the original engineer of the pre-treatment plant, gave a presentation on what the changes mean to them as far as their permitting process is concerned. Mr. Wesch stated that basically there are no changes in the permit as far as the numbers are concerned that directly effects their effluent. Mr. Wesch stated that this change will not be effective to the industries for at least a three year period.

Motion was made by Councilman Don Boyd and seconded by Councilman Larry Kegler that the revised Pre-Treatment Program (to include the Pre-Treatment Ordinance) be submitted to the EPA. A unanimous affirmative vote was recorded.

#### **11. EXECUTIVE SESSION**

Mayor Bronaugh recessed Regular Session at 6:43 p. m. to enter into Executive Session. Regular Session reconvened at 7:21 p. m. and Mayor Bronaugh announced that Council had discussed legal matters and appointments to Boards.

#### **12. APPOINTMENT AND REAPPOINTMENTS - APPROVED - EXAMINING AND SUPERVISING BOARD OF ELECTRICIANS - GARY FOREST - WILLIAM SCOTT - GARY ALEXANDER - JOE TREVATHAN - CHARLIE CAVER**

Motion was made by Councilman Bob Bowman and seconded by Councilman Larry Kegler that Gary Forest be appointed to an alternate position on the Examining and Supervising Board of Electricians, and that William Scott, Gary Alexander, Joe Trevathan and Charlie Caver be re-appointed for two year terms. A unanimous affirmative vote was recorded.

13. COMMENTS

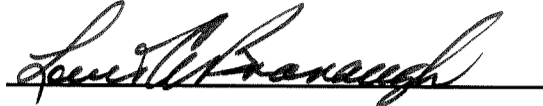
Councilmember Bowman stated that Speaker of the House Pete Laney will be speaking at the DETDA meeting in Nacogdoches at 6:30 p.m. on Friday.

14. There being no further business for consideration, meeting adjourned at 7:25 p.m.

ATTEST:

A handwritten signature in cursive script, appearing to read "Atha Stokes", written over a horizontal line.

Atha Stokes - City Secretary

A handwritten signature in cursive script, appearing to read "Louis A. Bronaugh", written over a horizontal line.

Louis A. Bronaugh - Mayor