



# City of Rowlett Meeting Minutes City Council

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Tuesday, October 21, 2008

5:30 PM

Municipal Building - 4000 Main Street

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As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item herein.

The City of Rowlett reserves the right to reconvene, recess or realign the Regular Session or called Executive Session or order of business at any time prior to adjournment.

## 1. CALL TO ORDER

*Mayor Harper called the meeting to order at 5:30 p.m.*

*Item 3E was added to the Executive Session agenda.*

**Present:** Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

## CONVENE INTO EXECUTIVE SESSION

*Convened into Executive Session at 5:32 p.m.*

## 2. EXECUTIVE SESSION

- 2.-A. The City Council shall convene into executive session pursuant to the TEXAS GOVERNMENT CODE, §551.071, legal advice, and §551.087, economic development, to seek legal advice from the City Attorney to discuss terms of economic development grants and financial offers and incentives to business prospects. (15 minutes)
- 2.-B. The City Council shall convene in Executive Session pursuant to the TEXAS GOVERNMENT CODE, §551.071 and §551.087 to seek legal advice and to deliberate on economic development incentives and financial prospects for property located at or around Pecan Grove Park. (10 minutes)
- 2.-C. The City Council shall convene into executive session pursuant to the TEXAS GOVERNMENT CODE, §551.071 and §551.072 to discuss with the City Attorney potential litigation, real property deliberations and acquisition of property to wit: Elgin B. Robertson Park. (10 minutes)
- 2.-D. The City Council shall convene into executive session pursuant to the TEXAS GOVERNMENT CODE, §551.071 to seek legal advice from the City Attorney and discuss litigation related to GOFF vs. BICKERSTAFF. (5 minutes)

- 2.-E. The City Council shall convene into executive session pursuant to the TEXAS GOVERNMENT CODE, §551.074(a)(1), Personnel, to deliberate the appointment of the City Manager and to consider City Manager search options. (10 minutes)

### RECONVENE INTO OPEN SESSION

*The City Council reconvened into open session at 6:30 p.m.*

### 3. WORK SESSION ITEMS (6:15 P.M.)

- 3.-A. Update from the Mayor: Financial Position, Major Projects, Operational Issues, Upcoming Dates of Interest (10 minutes)

*Mayor Harper briefly commented on the Texas Attorney General's opinion regarding the wording for updates from the Mayor and the City Manager.*

*Mayor Harper gave a brief update concerning the potential fee increases, the rate increase from the City of Garland for wastewater treatment, President George Bush Turnpike (PGBT) Eastern Extension, the Bond Committee, the performance of IESI has improved, reporting of code enforcement violations, ordinance enforcement, the evaluations of the Municipal Court Presiding Judge, Juvenile Judge, and Prosecutor will occur on November 4th, October 23rd ribbon cutting for Jason's Deli, October 28th Dallas Area Rapid Transportation (DART) Board Meeting, October 31st ribbon cutting for Travel Leader, and November 4th Election Day and City Charter Propositions.*

- 3.-B. Update to the Capital Improvement Plan (CIP) construction projects. (10 minutes)

*Staff briefly highlighted the Capital Improvement Projects including Rowlett Road Phase I, Miller Road, Asphalt Rehabilitation Project, Point Royal, Kenwood Heights, and the Princeton Road and Chaha Road designs.*

*Council asked staff about the homeowner association (HOA) subdivision walls along Miller Road.*

*Staff stated they are working with Harborview HOA regarding the requirements to restore the wall. Stated the wall was on the Miller Road punch list; the City will not accept the improvements until the wall has been addressed.*

*Council questioned staff regarding the location of the combination brick and wood fence on Miller Road; asked if the fence was on City property or the subdivision property.*

*The Interim City Manager stated he would provide the Council with the information.*

*Council questioned staff regarding the reappearing cracks in the roadways of the asphalt overlays.*

*Council questioned staff regarding the annual budget for alleys this fiscal year.*

Staff stated approximately \$2M.

Staff stated as part of the Water Master Plan update, it has been recommended that the waterline along Princeton Road from Liberty Grove to Dalrock should interconnect other transmission lines. Staff is looking at installing the line while doing the road construction instead of coming back in years later to install the line.

Council asked the additional cost of doing the water line now rather than putting it off.

Staff stated the cost of the materials will increase and the estimated cost will be \$2M.

**3.-C.** Quarterly report of investment in Neighborhood Roads and Streets. (10 minutes)

Council stated they would like a statement of goal, a multi-year goal, to eradicate any CIPs between PSI 65 - 80. Therefore, the City would have all roads either below 65 which means they will have to be completely rebuilt or above 80 which means they are in maintenance condition.

**3.-D.** Discuss a Staging Area Agreement with the North Texas Tollway Authority for the use of a construction staging area on City owned property located south of the Kirby Road Elevated Water Storage Tank for construction of Section XXX (30) of the Eastern Extension of the President George Bush Turnpike from north of Merritt Road to south of Main Street. (5 minutes)

Mayor Harper stated this item was requested by the North Texas Tollway Authority (NTTA) so they could do the work on the PGBT Eastern Extension. NTTA has no obligation for reimbursement to the City for using the property as the Interlocal Agreement does not address compensation other than NTTA will return the property in as good or better condition than they found it.

**3.-E.** Discuss a proposed 24 year electric power contract with Cities Aggregation Power Project, Inc. ("CAPP") for base electric capacity (approximately 60% of City's current needs), methods of payment for electrical power, and an additional contract for electric power needed by the City in 2009-2013 in excess of the amount obtained under long term contract. (10 minutes)

Staff gave a brief overview of the proposed CAPP contract.

Jay Doegey, Chairman of CAPP, stated the contract was designed to allow the cities to buy electricity directly from generators; it allows for the cities to buy electricity that is more reflective of what it actually costs to produce it. Stated the twenty-four (24) year agreement was designed to bring budget stability to cities and to fix the price of the energy portion of the electricity contract.

**3.-F.** Discuss sales tax collection from monthly financial report. (10 minutes)

Staff stated they believe the City would be on target on the General Fund; if funds fall short, staff believes it would be less than \$100,000. Stated their guess would be that the fund balance would be between 9.8% and 10.2%.

Council asked staff to reiterate why they believe the City of Rowlett will avoid a drop in sales taxes when other cities are projecting a drop.

Staff stated the City is a bedroom community, the City does not have the high-volume sales outlets; people will tend to spend locally; and once the PGBT construction really begins, there will be additional workers make purchases throughout the City.

Staff stated currently they project property taxes to be approximately \$200,000 above budget and sales taxes approximately \$205,000 below budget. Staff predicts the month of September to be approximately 4% below which is still about 10% below budget.

Staff gave a brief overview of the Selected Revenue Trends as of September 30, 2008.

**3.-G.**

Discuss amending the Master Fee Schedule for water, sewer, drainage and refuse rates and other miscellaneous fees. (10 minutes)

*This item followed Item 3J.*

*At this time, Mayor Harper met with Webelos Troop #244 in his office and Mayor Pro Tem Gottle presided over the Work Session.*

*Staff spoke concerning the proposed rate letter received from the City of Garland regarding the wastewater rate increase. Stated staff has researched and will be proposing to increase several fees including fees for insufficient funds, residential utility deposit, late penalties, tampering fee, after hour service fee, credit card fee, and additional fees. Stated if fees went into effect they could offset the sewer treatment from the City of Garland.*

*Deputy Mayor Pro Tem Maggiotto stated "Mayor, after we get through all of the Work Session agenda items, I'd like to go into Executive Session with the City Attorney for the last portion."*

*Council asked if the City incurred a charge for the bank that the City uses for insufficient checks.*

*Staff answered in the negative.*

*Council questioned staff regarding electronic check payments.*

*Staff stated they have looked into the electronic check payment process but the credit card fee has caused problems. Stated there is a limitation in the City's software that it will not allow a fee unless you charge across all payment method types as required by contracts with credit card vendors.*

**3.-H.**

Discuss the Rowlett Community Centre's Membership Fees, Facility Rental Fees and Program Fees. (5 minutes)

*Staff briefly went over the history of the Community Centre fees. Stated the fees will not change the senior for membership fees, and the athletic fees for basketball and volleyball will be changed as a range to be in line with the other programming fees.*

- 3.-I. Discuss a service rate adjustment of 3.8% to the IESI Corporation solid waste collection contract. (5 minutes)

*Staff briefly discussed the service rate adjustment with IESI Corporation.*

*Council questioned staff concerning the lower cost of fuel for IESI.*

*It was stated that it has been twenty-three (23) weeks since the last fuel rate increase and if the rates were averaged since the surcharge was approved it would show that the twenty-three (23) week average increased by three cents (3¢).*

*Staff stated they would continue to monitor the situation; staff stated they believed the 3.8% rate increase was fair.*

- 3.-J. Update on Downtown Event Series. (5 minutes)

*This item followed Item 3L.*

*Staff updated the Council regarding the Downtown Event Series and briefly walked through the schedule.*

- 3.-K. Discuss the budget line item for a Drainage Engineer. (10 minutes)

*At this time, Mayor Harper returned to the Work Session following his meeting with Webelos Troop #244.*

*Concerns were brought up concerning the Drainage Engineer position. Questioned whether it is the right time to have a reoccurring salary and support for not only this year but every year after. Stated the drainage fees have been increased and those fees are to go to fund drainage purposes and one of those purposes was the Drainage Engineer. Asks what the best use for the fees would be.*

*Council requested this item be brought back as a work session item at the November 18th meeting.*

- 3.-L. Discuss the City Council vote to table agenda item from October 7, 2008. (Consider approving a resolution supporting the 2008 Rockwall County Road Bond Election to be held November 4, 2008). (5 minutes)

*This item followed Item 3F.*

*Mayor Harper stated the October 7th agenda item to "Consider approving a resolution supporting the 2008 Rockwall County Road Bond Election to be held November 4, 2008" was misreported in the Rowlett Lakeshore Times and on the internet. This item was tabled indefinitely at the October 7, 2008 Council meeting.*

- 3.-M. Discuss the requirements for additional training of Planning and Zoning Commission members and the frequency of mandatory open meetings training for all other Boards and Commissions. (5 minutes)

*Staff updated the Council on the Commission members that have completed their additional external training for the Planning and Zoning Commission; stated the extra required training was established by local ordinance.*

*A member of council suggested the Commissioners be allowed to make a request to be exempted from the training and the City Council would look at each individual case by case but it should be only on a rare occasion. Another member of Council suggested the required mandatory training be completed from the Council of Governments within 12 - 18 months of appointment.*

4. **DISCUSS REGULAR SESSION ITEMS**

*Items 9M and 9N were removed from the Consent Agenda to be considered individually.*

*Item 9N will be discussed in an Executive Session.*

*Work Session adjourned at 8:16 p.m.*

**CONVENE INTO THE COUNCIL CHAMBERS (7:30 P.M.)**

*Reconvened into the Regular session at 8:20 p.m.*

5. **INVOCATION**

*The invocation was led by Mayor Pro Tem Gottel.*

6. **PLEDGE OF ALLEGIANCE**

*The Pledge of Allegiance was led by Webelos Troop #244.*

7. **PRESENTATIONS AND PROCLAMATIONS**

- 7.-A. Proclamation recognizing Eagle Scout Dwain Cearley.

*The proclamation was not presented due to a conflict of scheduling for the Cearley family.*

- 7.-B. Recognizing Charlena Cearley for representing Rowlett in Japan through People to People and receiving her Gold Award through Girl Scouts.

*The proclamations were not presented due to a conflict of scheduling for the Cearley family.*

- 7.-C. Proclamation recognizing the 2008 Texas Chamber of Commerce Week.

*A proclamation was presented to Mary Alice Ethridge and Drew Howard from the Rowlett Chamber of Commerce.*

- 7.-D. Update from the Mayor: Financial Position, Major Projects, Operational Issues, Upcoming Dates of Interest.

*Mayor Harper brought forth an update regarding the City's financial position; the PGBT Eastern Extension; bids open for the DART Blue Line on October 28th by the DART Board of Directors; the possible purchase of the northern portion of Elgin B. Robertson Park; the City Charter Amendments are on the ballot for the November 4th election; the search for the new City Manager continues; Veterans' Day celebration on November 11th; Main Street Holiday Parade on November 22nd from 9 am - 2 pm; and City offices will be closed on November 27th - 28th.*

## 8. CITIZENS' INPUT

*Jeffrey Sheldon - 7242 Liberty Grove Road - spoke concerning the City Charter Propositions.*

## 9. CONSENT AGENDA

*Mayor Harper explained the procedure regarding the Consent Agenda and the rights of each Councilmember and each citizen to have any consent agenda item removed to be considered individually.*

*Items 9M and 9N were removed from the Consent Agenda to be considered individually.*

*City Secretary read items into the record.*

- 9.-A. Consider approving minutes from the June 6 and June 7, 2008 Council Retreat, the October 7, 2008 Regular Council Meeting and the October 8, 2008 Special Council Meeting.

**This Matter was approved on the Consent Agenda.**

- 9.-B. Consider a resolution authorizing the City Manager to enter into an Economic Development Agreement with Inder Sangha (Waterview Plaza) development of a 16,575 square foot retail center.

**This Matter was adopted as RES-124-08 on the Consent Agenda.**

- 9.-C. Consider a resolution authorizing the City Manager to enter into an interlocal agreement with Dallas County for Mosquito Ground Control for Fiscal Year 2009.

**This Matter was adopted as RES-125-08 on the Consent Agenda.**

- 9.-D. Consider a resolution approving the purchase of chemicals for the drip system to eliminate hydrogen sulfate gas in existing lift station to Weatherford Engineered Chemistry in an estimated annual amount of thirty-eight thousand dollars (\$38,000) for the Wastewater Department.

**This Matter was adopted as RES-126-08 on the Consent Agenda.**

- 9.-E. Consider a resolution authorizing the City Manager to execute a Staging Area Agreement with the North Texas Tollway Authority for the use of a construction staging area on City owned property located south of the Kirby Road Elevated Water Storage Tank for construction of Section XXX (30) of the Eastern Extension of the President George Bush Turnpike from north of Merritt Road to south of Main Street.

**This Matter was adopted as RES-127-08 on the Consent Agenda.**

- 9.-F. Consider a resolution awarding the bid to purchase emergency medical supplies and medication to Bound Tree Medical in the unit prices bid as adjusted to conform to the bid and an estimated amount of forty thousand dollars (\$40,000) and authorizing the City Manager to issue appropriate purchase orders.

**This Matter was adopted as RES-128-08 on the Consent Agenda.**

- 9.-G. Consider a resolution supporting DART's State Legislative Agenda for the 81st Session of the Texas Legislature.

**This Matter was adopted as RES-129-08 on the Consent Agenda.**

- 9.-H. Consider a resolution supporting the request to members of the 81st Legislative Session of the State of Texas to support increased funding for the Texas Recreation and Parks Account (TRPA) Local Park Grant Program and the Texas State Park System.

**This Matter was adopted as RES-130-08 on the Consent Agenda.**

- 9.-I. Consider a resolution authorizing Cities Aggregation Power Project, Inc. (CAPP), to negotiate an electric supply agreement for deliveries of electricity and necessary, related services effective January 1, 2009; authorizing CAPP to act as an agent on behalf of the City to enter into a contract for electricity; approving CAPP contracting with FPL Energy and Direct Energy and authorizing the chairman of CAPP to execute an electric supply agreement for deliveries of electricity effective January 1, 2009; committing to budget for energy purchases and to honor the City's to

commitments purchase power through CAPP for its electrical needs beginning January 1, 2009 through December 31, 2013.

**This Matter was adopted as RES-131-08 on the Consent Agenda.**

- 9.-J. Consider a resolution finding that Oncor Electric Company's requested increases to its electric transmission and distribution rates and charges within the City should be denied; finding that the City's reasonable rate case expenses shall be reimbursed by the Company; finding that the meeting at which this resolution is passed is open to the public as required by law; and requiring notice of this resolution to the Company and legal counsel.

**This Matter was adopted as RES-132-08 on the Consent Agenda.**

- 9.-K. Consider an ordinance amending Chapter 70. Utilities of the Municipal Code regarding penalties, security deposits and other matters.

**This Matter was approved as ORD-041-08 on the Consent Agenda.**

- 9.-L. Consider a resolution amending the Master Fee Schedule for Rowlett Community Centre's Membership Fees, Facility Rental Fees and Program Fees.

**This Matter was adopted as RES-133-08 on the Consent Agenda.**

### **Passed The Consent Agenda**

**A motion was made by Councilmember Rushing, seconded by Councilmember Phillips, including all the preceding items marked as having been adopted on the Consent Agenda. The motion carried by the following vote:**

**Ayes:** 7 - Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

- 9.-M. Consider a resolution to approve a service rate adjustment of 3.8% to the IESI Corporation solid waste collection contract.

*Mayor Harper read the item into the record.*

*Councilmember Kilgore stated "My difficulty with this particular provision...let me back up. This is a provision in the contract with IESI that allows them to seek annually a rate increase based on the Consumer Price Index (CPI) and they have done that. The City staff has*

done a good job with working with them about this and reducing the increase to reflect the recent fuel surcharge fee that we gave them. Nevertheless, the request is based on a simple reading of the CPI and is not supported by any objective information about additional costs and that sort of thing. If we approve a rate increase tonight, we are basically passing that rate increase onto our citizens to pay the bill. My difficulty is there is no objective basis for this. If for example, the actual expenses and costs over the year to IESI or for example less than the CPI, then the rate increase that our citizens would be paying would be for purely profit for the company. Just generally coming in and saying we need an increase based on the CPI; if we did that with everyone that we bought services from we would be hiking up virtually everything in town and I think that's an issue. And basically what I'm looking for is some sort of justification. I don't have any doubt that IESI can come in and provide that justification but as we sit here tonight, I don't have it. And on that basis, Mayor, I'd like to make a motion."

Mayor Harper replied "And your motion is?"

Councilmember Kilgore stated "My motion is to table Item 9M until a future date at which IESI can either direct me or through City staff present to us some justification for the requested rate increase."

Mayor Harper asked "And is there a second to that?"

Councilmember Jackson seconded the motion.

Mayor Harper stated "Seconded by Mr. Jackson. Any discussion? I'd like to have a presentation by Mr. Funderburk on this question. Mr. Funderburk, my reading of the material that you provided didn't cause me to draw the same conclusions. Tell me what you know about the issue being raised."

Brian Funderburk, Director of Financial Services stated "We were asked a little while ago in the meeting about what the CPI is. I was able to get it from the internet during the break. For September, the CPI for the United States was 4.9%. For the Dallas area, which is what the contract is based on, was 5.7%. When we got the letter in May and we ran the May Report at that time, the Dallas area was 5% and so based on 4.4% plus the realization that we were going to negotiate on that fuel portion, we felt like the 4.4% or the net affective rate of 3.8% was appropriate. Now as far as proof, having them turn in payroll records or expense records or whatever proving that they're paying that much more, the contract does not specify that and so I'm doing a strict interpretation of the contract."

Mayor Harper stated "So the contract doesn't call for that level of justification?"

Mr. Funderburk replied "No,"

Mayor Harper stated "What we have as a check and balance is to review the CPI for the Dallas area?"

Mr. Funderburk answered in the affirmative.

Mayor Harper continued "And you've done that and you find that 3.8% is appropriate."

Mr. Funderburk answered in the affirmative.

Mayor Harper continued "Does that match up with what other cities around us are doing with IESI?"

Mr. Funderburk replied "That I don't know. I really don't know, Mayor. I know that when we were looking at the fuel surcharge we did contact several other cities about that but I have not contacted them about their CPI."

Mayor Harper stated "Now this is an annual increase as I have recalled from the contract. And by the way, for those of you watching present and at home, this is a contract that was renewed I believe in 2006. Is that correct?"

Mr. Funderburk answered in the affirmative.

Mayor Harper continued "And it's a five (5) year contract and so the provisions of that contract are in place until, I believe, 2012 even though I said it was a five (5) year contract for some reason I thought it was ending in 2012. I may be wrong about that. It was actually executed in early 2007. Regardless, we have a contract. We have terms and conditions and I'm trying to figure out what we as a Council can do to go into that contract and change those terms and conditions. Do you believe based upon your reading of the contract, and maybe I need to ask the same of the City Attorney, that we have the authority to get more justification than what you've been provided so far."

Mr. Funderburk replied "Well the only thing that the contract does say is that the proposed rate will not be unreasonably withheld. If we have reason then I believe we can withhold or at least continue discussion. That is the only stipulation in the agreement that I can call out tonight for consideration."

Mayor Harper stated "Are we up against a deadline on this?"

Mr. Funderburk replied "I can't answer that."

Mayor Harper stated "Have they said that they want the rate to be retroactive or be effective on a certain date?"

Mr. Funderburk replied "They actually submitted the letter in May to go into effect on October 1st in our new fiscal year. And the contract does specify that."

Mayor Harper stated "If I could ask you a question, Mr. Kilgore. I'm just trying to figure out what it is you would want that we have access to that we can legitimately ask for. And that's not to say that we don't have a contract that could be improved."

Councilmember Kilgore replied "I don't think we have the right to specifically say what we are asking for but the contract says we will not unreasonably withhold the request. However, that implies to me that the request has to be reasonable or we can withhold it. And I don't have any evidence that it's a reasonable request. The CPI is very general; it includes certain industries. I doubt that it includes the waste removal industry so I need some sort of presentation that this is a reasonable request for some reason other than that's the CPI."

Mayor Harper stated "And this is where I may be confused; you probably know better than I but I'll ask Mr. Funderburk. Is the CPI the measure that's designated in the terms and conditions of the contract?"

Mr. Funderburk replied in the affirmative.

Mayor Harper stated "Okay. So as faulty as it is, we agreed to follow the CPI."

Councilmember Kilgore replied "Well the contract doesn't say we shall give them the CPI every year and again, I'm personally...either the Council can agree or disagree with

*this, asking for some sort of presentation to justify it to show that the request is reasonable."*

*Mayor Harper stated "Okay, anything else you'd like to say Mr. Funderburk."*

*Mr. Funderburk replied in the negative.*

*Mayor Harper stated "Council, anybody else have questions or comments?"*

*Councilmember Rushing replied "Yes, Mayor. I just have one question for Mr. Funderburk. This contract was originally awarded in 2002 and then renewed later on to give it the contract that we currently have. Has IESI ever come to us before and ask for this percentage increase which they've had the right to ask for each year?"*

*Mr. Funderburk replied "Yes, ma'am, they have."*

*Councilmember Rushing stated "Okay, and how many times over the course of the contract, do you know?"*

*Mr. Funderburk replied "I know that...I believe it was 2005 for sure we did. The following year, I think, that it got wrapped up into the negotiation of extending the contract so there is not a specific piece of legislation by Council agreeing to a new increase. There was merely the adopting of the resolution to extend the agreement. I cannot recall before 2005. There may have been, I just don't remember."*

*Councilmember Rushing stated "But we haven't had a yearly increase since 2005 other than the renegotiation in 2006 when we went back to the use of the landfill, the bulk pickup and things like that?"*

*Mr. Funderburk replied "And we may be off a year, it may be 2007 but I think it was actually 2006. But I do know we had at least one. When I went back into our agenda item to prepare for this one, I know that there was at least one item where we did award the annual increase. I don't remember, Dick..."*

*Mayor Harper stated "Dick, do you mind joining us and coming forward. This is Dick Demien who is our IESI representative and I apologize for putting this on either of you on short notice, but I'm confused by what I'm hearing. So can you help us out?"*

*Dick Demien, Municipal Marketing Manager for IESI replied "I'll be glad to help. We have approached...our contract as he correctly stated allows us to request a CPI increase equal to the CPI each year on the anniversary date of the contract. Each year on the anniversary date of the contract we have requested that and I think have gotten it. The one exception of that is during the negotiations for the renewal of the contract, as an offer to help get the contract renewed, we skipped the CPI the year that the contract was renewed. So it was pulled off the table that year as a component of the negotiations. Other than that, we've...the standard practice here, as well as, in all the other twenty-three (23) cities that I'm over, is to present the data for year over year CPI, take that percentage difference and request that as an increase to our rates. It's very standard policy throughout the entire region and in fact, Rowlett is a little bit different and that the Council actually has to approve it. In most of our cities, it's automatically put into place without any Council action. So that is where that stands."*

*Mayor Harper stated "You know, Councilman Kilgore, makes an excellent point and the only thing that I'm hesitating on, Mr. Kilgore, is what are we appropriately able to ask IESI to provide. If we were to table this and to ask you to come back and make a presentation, what kind of information would you provide to us?"*

Mr. Demien replied "I don't know the answer to that. As I've said, the contract...the written contract calls for it to be equal to the CPI for this region, which is what we've done. And actually in negotiating back off of that to some degree based on the extracting the fuel component out of it. With no other direction given to me to determine what my changes in costs have been, I would just basically have to try to generate some type of information out of hole cloth that would satisfy you."

Mayor Harper stated "I believe, Mr. Kilgore, you mentioned payroll records and such as that."

Councilmember Kilgore stated "I did not, Mr. Funderburk mentioned that. I personally think that would be up to them. I basically asked them to come here and make their case for the 3.8%, also I'd like that in a dollar figure, not just the 3.8%. If that case can't be made, I can't...you know because we're passing this on to our citizens to pay I have to know that it's justified because the contract is written to allow us to not pass that on or not grant it if it's reasonable to do so."

Mayor Harper stated "It sounds like we might want to ask Mr. Berman to give us some advice if we table this as well because the reading of the contract needs to enable us one way or the other. Mr. Berman, you were going to say something?"

David Berman, City Attorney replied "No, I'll be ready next week at our next meeting."

Mayor Harper stated "Okay, thanks to both of you. We do have a motion and a second to table. Any other conversation; any other comments? Mr. Maggiotto."

Deputy Mayor Pro Tem Maggiotto replied "Mayor, only to support the philosophy that the Council is entrusted to do due diligence and I think that this motion represents that due diligence. And I don't think based on Mr. Funderburk's testimony that a two (2) week period is going to effect, adversely, IESI. Thank you, Mayor."

Mayor Harper stated "My only dilemma, Mr. Maggiotto, is asking for something that we're not entitled to. As we talk about it and as we have a review by our City Attorney, I'll feel better about it. Again, we may have a bad contract; we may not have...maybe we should not have agreed to complying or depending upon the CPI but nevertheless, it appears to me we did do that and I don't know. I fully understand your request and I fully understand your comment about due diligence and I appreciate both of those. Any other comments or concerns? Let us call the question."

**A motion was made by Councilmember Kilgore, seconded by Councilmember Jackson, that this matter be postponed until the November 4, 2008 meeting. The motion carried by the following vote:**

**Ayes:** 4 - Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Jackson and Councilmember Kilgore

**Noes:** 3 - Mayor Harper, Mayor Pro Tem Gottle and Councilmember Rushing

9.-N.

Consider a resolution amending the Master Fee Schedule for water, sewer, drainage, and refuse rates and other miscellaneous fees.

Mayor Harper read the item into the record.

Mayor Harper stated "I want to make a comment on Item 9N. Item 9N was on the

*Consent Agenda but taken off for Individual Consideration. We're going to take that up in Executive Session which we'll do after we finish agenda Item 10A."*

*This item followed Item 10A.*

*The Council convened into Executive Session at 9:18 to discuss this item.*

*Council reconvened into open session and took the following action:*

**A motion was made by Deputy Mayor Pro Tem Maggiotto, seconded by Councilmember Kilgore, that this matter be adopted as amended as RES-134-08 to approve the Master Fee Schedule as presented with the exception of the credit card fee which will remain at the same rate. The motion carried by the following vote:**

**Ayes:** 7 - Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

## 10. ITEMS FOR INDIVIDUAL CONSIDERATION

- 10.-A. Consider appointing and/or removing members to the Planning and Zoning Commission and the Youth Advisory Council as listed by Resolution No. RES-098-08.

*Mayor Harper read the item into the record.*

*The following appointees, upon their acceptance, are named to the various boards and commissions:*

*Planning and Zoning Commission:*

*Four (4) regular member positions and two (2) alternate member positions are available to be filled for the Planning and Zoning Commission.*

*Council stated that the ordinance will be changed to address the training issues for the Planning and Zoning Commission.*

*Regular member positions:*

*Nominations were made for regular member positions:*

*Mayor Pro Tem Gottel motioned to nominate Greg Peebles, Charles Alexander and Kevin Moore as regular members.*

*Greg Peebles, Charles Alexander and Kevin Moore were appointed, by acclamation, as regular members.*

*Mayor Pro Tem Gottel motioned to nominate Greg Landry as a regular member.*

*Greg Landry was appointed, by acclamation, as a regular member.*

*The regular member appointees for the Planning and Zoning Commission are (in alphabetical order):*

*Charles Alexander*

*Greg Landry*

*Kevin Moore*

*Greg Peebles*

*Alternate member positions:*

*Nominations were made for alternate member positions:*

*Mayor Pro Tem Gottel motioned to nominate Jeff Thomas and Joe Charles as alternate members.*

*Jeff Thomas and Joe Charles were appointed, by acclamation, as alternate members.*

*The alternate member appointees for the Planning and Zoning Commission are (in alphabetical order):*

*Joe Charles  
Jeff Thomas*

*Youth Advisory Council:*

*Three (3) regular member positions and four (4) alternate member positions are available to be filled for the Youth Advisory Council.*

*Regular member positions:*

*Mayor Pro Tem Gottel motioned to nominate Jordan Russell, Matthew McKone, and Bobby Merriman as regular members.*

*Jordan Russell, Matthew McKone, and Bobby Merriman were appointed, by acclamation, as regular members.*

*The regular member appointees for the Youth Advisory Council are (in alphabetical order):*

*Matthew McKone  
Bobby Merriman  
Jordan Russell*

*At this time, Council adjourned and reconvened into Executive Session regarding Item 9N. (See Item 9N for any action taken).*

## **TAKE ANY NECESSARY OR APPROPRIATE ACTION ON CLOSED/EXECUTIVE SESSION MATTERS**

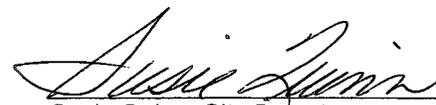
*No actions were taken following the first Executive Session.*

*See Item 9N for the action taken following the second Executive Session.*

### **11. ADJOURNMENT**

*Mayor Harper adjourned the meeting.*

  
\_\_\_\_\_  
John E. Harper, Mayor

  
\_\_\_\_\_  
Susie Quinn, City Secretary

Date Approved: November 4, 2008