I. SPECIAL SESSION (EXECUTIVE SESSION) – 6:00 P.M.

A. CALL TO ORDER AND ANNOUNCEMENT OF A QUORUM – Mayor Cindy Siegel.

Mayor Cindy Siegel called the City Council of the City of Bellaire, Texas, to order at 6:06 p.m. on Monday, November 17, 2008. The Bellaire City Council met at that time and on that date in Special Session (Executive Session) under the Texas Government Code, Chapter 551, Open Meetings Act, Section 551.074, Personnel Matters, to deliberate the evaluation of the City Attorney of the City of Bellaire, Texas. The open portion of the Special Session (Executive Session) was held in the Council Chamber, First Floor of City Hall, 7008 South Rice Avenue, Bellaire, Texas 77401. Mayor Siegel announced that a quorum was present consisting of herself and the following members of City Council:

Councilman Will Hickman, Position No. 1;  
Councilman James P. Avioli, Sr., Position No. 2;  
Mayor Pro Tem Peggy Faulk, Position No. 3;  
Councilman Phil Nauert, Position No. 4; and  
Councilman Pat McLaughlan, Position No. 5.

Councilman John Jeffery, Position No. 6, was absent. Other officials present were City Attorney Alan P. Petrov and City Clerk Tracy L. Dutton.

(Note: City Clerk Dutton did not participate in the closed portions of the Special Session (Executive Session))

B. CONVENE in Executive Session (Closed Session to be held in the Council Conference Room) under the Texas Government Code, Chapter 551, Open Meetings Act, Section 551.074, Personnel Matters, to deliberate the evaluation of the City Attorney of the City of Bellaire, Texas – Members of City Council.

MOTION TO CONVENE IN EXECUTIVE SESSION:

A motion was made by Mayor Pro Tem Peggy Faulk and seconded by Councilman Phil Nauert to convene in Executive Session under the Texas Government Code, Chapter 551, Open Meetings Act, Section 551.074, Personnel Matters, to deliberate the evaluation of the City Attorney of the City of Bellaire, Texas.
VOTE ON MOTION TO CONVENE IN EXECUTIVE SESSION:

Motion carried unanimously on a 6-0 vote as follows:

FOR: Siegel, Cindy
     Hickman, Will
     Avioli, James P., Sr.
     Faulk, Peggy
     Nauert, Phil
     McLaughlan, Pat

OPPOSED: None

ABSENT: Jeffery, John

The Bellaire City Council convened in Executive Session in the Council Conference Room (located directly behind the Council Chamber), First Floor of City Hall, 7008 South Rice Avenue, Bellaire, Texas 77401.

C. RECONVENE (Open Session to be held in the Council Chamber) and consider taking possible action on the adoption of an ordinance appointing Alan P. Petrov as City Attorney and authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, a Legal Service Contract by and between Johnson Radcliffe Petrov & Bobbitt PLLC and the City of Bellaire, Texas, for a term beginning November 1, 2008, and ending October 31, 2009, said details of which will be discussed in Executive Session – Members of City Council.

The Bellaire City Council reconvened in Open Session in the Council Chamber, First Floor of City Hall, 7008 South Rice Avenue, Bellaire, Texas 77401, at 7:06 p.m. on Monday, November 17, 2008.

SUMMARY:

Mayor Cindy Siegel advised that the Bellaire City Council had met in Executive Session to evaluate the performance of the City Attorney and to discuss the City Attorney’s contract. She noted that the City had enjoyed a long, good relationship with City Attorney Alan P. Petrov. The contract that was reviewed by City Council was identical to the contract the City had entered into during the previous year with the exception of the flat monthly fee. That fee would increase under the new contract by $500 per month (i.e., from $6,000 per month to $6,500 per month).
MOTION TO APPOINT CITY ATTORNEY AND ADOPT ORDINANCE:

A motion was made by Councilman Pat McLaughlan and seconded by Councilman James P. Avioli, Sr., to appoint Alan P. Petrov as City Attorney for the City of Bellaire, Texas, and to adopt an ordinance authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, a Legal Service Contract by and between Johnson Radcliffe Petrov & Bobbitt PLLC and the City of Bellaire, Texas, for a one-year term beginning November 1, 2008, and ending October 31, 2009.

VOTE ON MOTION TO APPOINT CITY ATTORNEY AND ADOPT ORDINANCE:

Motion carried unanimously on a 6-0 vote as follows:

FOR: Siegel, Cindy
     Hickman, Will
     Avioli, James P., Sr.
     Faulk, Peggy
     Nauert, Phil
     McLaughlan, Pat

OPPOSED: None

ABSENT: Jeffery, John

{Ordinance was subsequently numbered: 08-068}

D. ADJOURNMENT.

MOTION TO ADJOURN:

A motion was made by Mayor Pro Tem Peggy Faulk and seconded by Councilman Phil Nauert to adjourn the Special Session (Executive Session) of the City Council of the City of Bellaire, Texas, at 7:07 p.m. on Monday, November 17, 2008.

VOTE ON MOTION TO ADJOURN:

Motion carried unanimously on a 6-0 vote as follows:

FOR: Siegel, Cindy
     Hickman, Will
     Avioli, James P., Sr.
     Faulk, Peggy
     Nauert, Phil
FOR (CONT.): McLaughlan, Pat
OPPOSED: None
ABSENT: Jeffery, John

II. REGULAR SESSION – 7:00 P.M.

A. CALL TO ORDER AND ANNOUNCEMENT OF A QUORUM – Mayor Cindy Siegel.

Mayor Cindy Siegel called the City Council of the City of Bellaire, Texas, to order at 7:08 p.m. on Monday, November 17, 2008. The Bellaire City Council met at that time and on that date in Regular Session in the Council Chamber, First Floor of City Hall, 7008 South Rice Avenue, Bellaire, Texas 77401. Mayor Siegel announced that a quorum was present consisting of herself and the following members of City Council:

Councilman Will Hickman, Position No. 1; Councilman James P. Avioli, Sr., Position No. 2; Mayor Pro Tem Peggy Faulk, Position No. 3; Councilman Phil Nauert, Position No. 4; and Councilman Pat McLaughlan, Position No. 5.

Councilman John Jeffery, Position No. 6, was absent. Other officials present were City Manager Bernard M. Satterwhite, Jr., City Attorney Alan P. Petrov, and City Clerk Tracy L. Dutton.

B. INSPIRATIONAL READING AND/OR INVOCATION – Councilman Phil Nauert.

Councilman Phil Nauert advised that he had not had an opportunity to prepare an inspirational reading for this evening.

C. PLEDGES TO THE FLAGS – Councilman Phil Nauert.

1. U.S. PLEDGE OF ALLEGIANCE.

2. PLEDGE TO THE TEXAS FLAG.

Councilman Phil Nauert led the audience and City Council in the U.S. Pledge of Allegiance and the Pledge to the Texas Flag.
D. APPROVAL OR CORRECTION OF MINUTES:

APPROVAL of minutes of the Special Session (Public Hearing) and Regular Session of the City Council of the City of Bellaire, Texas, held Monday, November 3, 2008 – Item submitted by City Clerk Tracy L. Dutton.

MOTION TO APPROVE MINUTES:

A motion was made by Councilman James P. Avioli, Sr., and seconded by Councilman Pat McLaughlan to approve the minutes of the Special Session (Public Hearing) and Regular Session of the City Council of the City of Bellaire, Texas, held Monday, November 3, 2008.

VOTE ON MOTION TO APPROVE MINUTES:

Motion carried unanimously on a 6-0 vote as follows:

FOR: Siegel, Cindy
     Hickman, Will
     Avioli, James P., Sr.
     Faulk, Peggy
     Nauert, Phil
     McLaughlan, Pat

OPPOSED: None

ABSENT: Jeffery, John

D. PERSONAL/AUDIENCE COMMENTS.

Lynn McBee, 5314 Evergreen Street, Bellaire, Texas:

Ms. McBee addressed City Council regarding a spec house that was built next to her home and completed in June of 2007. During the hurricane, the fence between her property and the new house fell over on her property. Bellaire’s Building Official, Lee Cabello, had been very helpful in assisting her to find out who was responsible for fixing the fence. While tracking that, she discovered that a bank in Connecticut owned the property, and the house was currently undergoing foreclosure proceedings.

Ms. McBee indicated that she became interested in finding out how many homes were in foreclosure in Bellaire. She approached the City and no one in the City offices had checked into it or knew how to check into it. The Houston Chronicle’s website did carry a foreclosure section, however, she was not sure how accurate that section of the
website was. The website reported that there were 247 foreclosures during 2007 in Bellaire.

Ms. McBee also found out that Linda Barbour, Bellaire’s Code Enforcement Officer, recently attended a conference dealing with foreclosure and property enforcement. This was apparently a “hot topic” around the country with respect to the maintenance of such properties while undergoing foreclosure. Linda Barbour found a report that indicated that there eight properties in Bellaire undergoing an auction process.

Ms. McBee expressed concern that there were foreclosures going in Bellaire, and the City had no idea as to whether the foreclosures were growing, shrinking, or no problem at all. She felt that this was a trend that City Council might wish to watch. She suggested that City Council ask the Community Development Director or some other City office to find a reasonably accurate source for this information and to report back to City Council timely and frequently.

The City Council might very well have to do something about those properties if the properties were to fall into great disrepair and affect other properties around them.

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**Jo Monday, 7807 South Rice Avenue, Bellaire, Texas:**

Ms. Monday addressed City Council and advised that she wanted her tax dollars to go to certain services that she used. She stated that she would like to have access to a certain facility, the Elaine Wood Therapy Pool, on a year-round basis like she did with the library or the parks or the other larger pool complex.

Ms. Monday advised that there was a core group of residents that had used the Evergreen Therapy Pool continuously since last June. She asked those residents that were present in the audience this evening in support of the Therapy Pool to please raise their hands. [A number of hands were raised in response to Ms. Monday’s request]

Ms. Monday continued and noted that the therapy pool was a City asset. She did not mind her tax dollars going to many things, but the legacy of the Elaine Wood Therapy Pool was to provide a more heated environment for those who needed it.

The City had staffed and heated another pool and Ms. Monday urged City Council not to forget about the therapy pool. Many residents wanted access to a year-round therapy pool.
Additionally, City Staff seemed to be inconsistent about its communications concerning both pools. One day in early November when a number of residents had been using the larger pool complex because the heater had not been repaired at the therapy pool, a staff member that Ms. Monday did not know (i.e., a young lifeguard) told her at 8:00 a.m. that the therapy pool was closed until February 2009. For that reason, she had not been going to any pool. This evening, her friends told her that the therapy pool was now heated and up and running, and she was glad to hear that.

In closing, Ms. Monday stated that the residents were asking City Council to please give more attention to the Elaine Wood Therapy Pool and to help City Staff have the correct information to allow people to know the truth about its availability.

Juliann G. Wohlford, 5218 Valerie Street, Bellaire, Texas:

Ms. Wohlford addressed City Council and advised that she simply wanted to tell City Council that the therapy pool was really needed by many people for a variety of reasons. She discovered in 1994 after shoulder surgery and lots of therapy on land that nothing was working. After doing the same exercises in water, she noted a great improvement. She also had had cancer and still battled it every day, noting that water therapy really worked. To deny access year-round to the therapy pool would be a detriment to her, as well as many other residents.

Cindy Cozewith, 4810 Welford Drive, Bellaire, Texas:

Ms. Cozewith addressed City Council and noted that earlier in the day she had picked up a notice for closings of the aquatics facility and Elaine Wood Therapy Pool for the winter season from the Recreation Center. The notice stated that the Bellaire Town Square Aquatic Center would close around the Thanksgiving Holiday (November 25th) and reopen on December 1st. The Bellaire Town Square Aquatic Center would close again between Christmas and New Year. However, the Elaine Wood Therapy Pool would close right before Thanksgiving and was not scheduled to reopen until January 5th. It seemed to Ms. Cozewith that the Bellaire Town Square Aquatic Center and the Elaine Wood Therapy Pool should have the same schedule.

Ms. Cozewith continued and addressed the reasons that the two pools were not equivalent:
1. The water temperature at the Aquatic Center was 84 degrees whereas the water temperature at the Therapy Pool ranged from 88 to 89 degrees. The difference might seem small to many people, but it was actually a huge difference when one was in the water during the winter season. For people who suffered from arthritis or had recently had surgery, the warmer water was essential for therapy.

2. The Therapy Pool had a ramp that provided easy access for people on walkers or people who could not walk up or down steps to get into the pool. The Aquatic Center pool did not have a ramp.

3. The Therapy Pool had one very shallow end. The Aquatic Center had a much deeper depth at its most shallow point.

4. The Therapy Pool had windbreak curtains, which were wonderful when the air temperature was cold and people needed to get in and out of the pool whereas the Aquatic Center had no such curtains.

5. There was also a railing in the Therapy Pool for people to hold onto while exercising. There was no such railing in the Aquatic Center pool. The Aquatic Center pool did have a ledge, but it was difficult to hold onto.

6. The Therapy Pool had water jets, similar to a Jacuzzi, with a shelf to sit on in front of the jets for back therapy. This was not available at the Aquatic Center pool.

In closing, Ms. Cozewith reiterated that the two pools were not interchangeable. The reasons for the usage at each pool were quite different. The Aquatic Center pool was really meant for lap swimmers. The therapy pool was really meant for people with therapeutic needs. Ms. Cozewith advised that the City might think that people with therapeutic needs could use the Aquatic Center pool in the interim when the therapy pool was closed. She advised that it really did not work that way.

**Mayor Cindy Siegel** read the following two written comments into the record:
Kay Humphries, 4705 Welford Drive, Bellaire, Texas:

To the Mayor, Members of City Council, and the City Manager:

My name is Kay Humphries (4705 Welford Drive, Bellaire, Texas). I have been a resident at this address since 1989. I would be at the meeting tonight in person, but less than two weeks ago, I had extensive surgery on my right foot as a result of nerve damage from one of my three hip replacement surgeries. As many of you already know, I have been an avid user of the therapy pool and it has helped my rehabilitation through many surgeries. Imagine my shock and disappointment in discovering that you are planning to close the therapy pool for a lengthy time during the winter months.

I served for four years on the Parks & Recreation Advisory Board during the planning stages of the new aquatic facility, during the fundraising stages by the Patrons for Bellaire Parks, and even as far back as the many money-making projects for the therapy pool. During those years we were told in good faith that if we raised the money to build the therapy pool, it would be operated and maintained by the City of Bellaire as a year-round facility for the health and well-being of all those in need of therapy and water exercise.

And then during the planning stages for the new aquatic center, we had many discussions about whether or not Bellaire would be able to afford to maintain both the new facility and the existing therapy pool, and we were assured over and over by Jane Dembski and by our council liaisons, as well as Mayor Siegel, that the two facilities would compliment one another—not that one would take over for the other.

Consequently, the new pools were designed for different purposes. The lap pool is not heated sufficiently to be a therapy pool; it is too deep for many of the handicapped or elderly people to exercise in it. It has no easy access for entering the water or getting out of the pool. It was designed for lap swimming, not for therapy and aerobic exercise.

I hope you will reconsider your promise to us to keep the therapy pool open and heated on a year-round basis. Look elsewhere to try to save some money, if that is your goal.

The citizens of Bellaire deserve better from you. Thank you.

Eleanor Hoffman, 4602 Mimosa Street, Bellaire, Texas:

Dear Council Members:

I have been a resident of Bellaire since 1969.
I became involved with Elaine Wood to raise money for the Evergreen Therapy Pool. I worked tirelessly for almost five years at fund raising to raise sufficient money so this would not be a drain on Bellaire Tax Funds.

The Therapy Pool was especially designed for the handicapped and seniors.

1. It has a safe ramp pool entry.
2. A bar is provided in the pool for more stability.
3. The water is always a warm, comfortable temperature.
4. Places are available to place towels and robes since most of us early risers go to the pool already dressed in bathing suits.

This pool is ideal for arthritis sufferers and therapy for other disabilities and easy safe access for the elderly.

I made use of this pool all last winter because the weather was so mild.

More seniors would make use of the pool if they were aware of it.

Please do not close the pool.

F. REPORTS:

1. CITY MANAGER’S REPORT – presentation and discussion regarding the Rebuild Bellaire Program, Phase Two Project, plans to implement recycling at the Family Aquatics Center and other City facilities, introduction of the Community Development Director, winter operating schedule for the Therapy Pool located at Evergreen Park, and list of upcoming meetings and/or events – Presented by City Manager Bernard M. Satterwhite, Jr.

City Manager Bernard M. Satterwhite, Jr., presented the City Manager’s Report to City Council. See Appendix A appended hereto for a copy of the City Manager’s Report.
QUESTIONS/COMMENTS FROM CITY COUNCIL:

{Legend: A – Answer; C – Comment; Q – Question; R – Response}

Q: Councilman Pat McLaughlan referred to the therapy pool and the fact that it was well represented with comments this evening. In terms of the City Manager’s follow-up action, Councilman McLaughlan inquired as to whether the situation would be further evaluated.

A: City Manager Satterwhite advised that he really did not know. He heard a number of comments regarding what was needed, and, perhaps, he had not adequately evaluated the level of and the nexus for that need. He advised that if there were enough people that wanted to use the therapy pool during December, then the City would make it available.

C: Councilman James P. Avioli, Sr., advised that the City Manager made mention of moving ahead in the recycling process in the City. This had been a primary initiative in the Recycling Committee, and he felt that the Recycling Committee should be thanked, as well as Director of Public Works Joe Keene and his staff, and Director of Parks & Recreation Jane Dembski and her staff, and the City Manager for pulling this together. It really was a big step forward and one that he felt would be of great value to the City in the future. He thanked the Recycling Committee and City Staff for all of their hard work.

MOTION TO ACCEPT REPORT INTO THE RECORD:

A motion was made by Mayor Pro Tem Peggy Faulk and seconded by Councilman Pat McLaughlan to accept the City Manager’s Report as presented by City Manager Bernard M. Satterwhite, Jr., into the record.

VOTE ON MOTION TO ACCEPT REPORT INTO THE RECORD:

Motion carried unanimously on a 6-0 vote as follows:

FOR: Siegel, Cindy
     Hickman, Will
     Avioli, James P., Sr.
     Faulk, Peggy
     Nauert, Phil
FOR (CONT.): McLaughlan, Pat

OPPOSED: None

ABSENT: Jeffery, John

2. FINANCE REPORT for the City of Bellaire, Texas, covering the period ended October 31, 2008, and including discussion of revenues and expenditures in the General Fund, Enterprise Fund, Debt Service Fund, Vehicle, Equipment, and Technology fund, and Capital Improvement Program Fund, as well as a discussion on area housing statistics – Presented by Chief Financial Officer Donna Todd.

Chief Financial Officer Donna Todd presented the Finance Report for the City of Bellaire, Texas, covering the period ended October 31, 2008, to City Council. See Appendix B appended hereto for a copy of the Finance Report.

QUESTIONS/COMMENTS FROM CITY COUNCIL:

{Legend: A – Answer; C – Comment; Q – Question; R – Response}

Q: Councilman Pat McLaughlan referred to the purchase of police cars and inquired as to whether the City was self-insured with respect to the vehicles that it purchased. For example, if a vehicle were to be “totaled” in an accident, what would occur?

A: Chief Financial Officer Todd advised that the vehicles were covered through an automobile liability policy that the City had with the Texas Municipal League. In other words, the City was not self-insured.

Q: Councilman Phil Nauert referred to page 2 of the Finance Report and the $950,000 transfer from the Enterprise Fund to the Debt Service Fund. He stated that he had not noticed before that a portion of the transfer was made on a monthly basis.

A: Chief Financial Officer Todd advised that the monthly entry was started the previous year. However, when comparing to the previous year, it might look odd. This was due to the fact that last year the entry for the months of October and November were both made during the month of November.
Q: Councilman Nauert referred to page 21 of the Finance Report, Summary of Franchise Fees, and inquired as to the reason that the monthly fee for the telephone franchise appeared to be low.

A: Chief Financial Officer Todd stated that she believed the telephone franchise fees were paid quarterly, but was not certain, as she did not have those notes in front of her.

C/Q: Mayor Pro Tem Peggy Faulk referred to page 19 of the Finance Report, the housing information, and suggested that this might be an area, in combination with the Community Development Department, in which foreclosures could be reported. She inquired as to whether the City received information with respect to the number of homes for sale on a monthly basis.

A: Chief Financial Officer Todd stated that she pulled the information in response to a question that was asked by Councilman Hickman when she first arrived at the City and had continued pulling the information from the Houston Area Realtors website. She noted that there was a new section of data on that particular website related to foreclosures, however, there was only one reported for Bellaire. Chief Financial Officer Todd indicated that she would work with Community Development to get that information and include it in her report in the future. She also felt that there might be a better source than the one she had been using, noting that Ms. McBee had come up with different figures during her research on the issue.

Q: Mayor Cindy Siegel inquired as to whether Chief Financial Officer Todd could insert the numbers for housing for the previous year for comparison purposes.

A: Chief Financial Officer Todd advised that she could do that. She was not sure she had a collected data for a full year, but would look into it.

MOTION TO ACCEPT REPORT INTO THE RECORD:

A motion was made by Mayor Pro Tem Peggy Faulk and seconded by Councilman Pat McLaughlan to accept the Finance Report for the City of Bellaire, Texas, covering the period ended October 31, 2008, as presented by Chief Financial Officer Donna Todd into the record.
VOTE ON MOTION TO ACCEPT REPORT INTO THE RECORD:

Motion carried unanimously on a 6-0 vote as follows:

FOR: Siegel, Cindy
      Hickman, Will
      Avioli, James P., Sr.
      Faulk, Peggy
      Nauert, Phil
      McLaughlan, Pat

OPPOSED: None

ABSENT: Jeffery, John

G. NEW BUSINESS:

1. PROCLAMATION:

ISSUANCE of proclamation by Mayor Cindy Siegel proclaiming the week of November 9-15, 2008, as AORN Perioperative Nurse Week in the City of Bellaire, Texas, in dedication and recognition of the nation’s perioperative registered nurses who care for patients before, during, and after surgery – Issued and Presented by Mayor Cindy Siegel; Item submitted by City Clerk Tracy L. Dutton on behalf of the Association of Perioperative Registered Nurses (AORN).

Mayor Cindy Siegel read the proclamation she issued on behalf of the Association of Perioperative Registered Nurses (AORN) in its entirety as follows:

Whereas, believing that surgery today is highly technical, sophisticated, and exacting; and

Whereas, believing that the perioperative registered nurse is highly skilled in providing nursing care and managing the perioperative environment and that the surgical patient needs expert care for his mind, body, and spirit; and

Whereas, believing that the surgical patient and family are experiencing a major event in their lives and that the perioperative registered nurse is an expert in allaying the patient’s fears, preparing the patient for what will happen during surgery, providing family support, and discussing how the patient will feel during the entire surgical experience; and
Whereas, believing that perioperative registered nurses have a long tradition of working toward patient safety and improving the quality of patient care and that surgical patients rely on the skills, knowledge, and expertise of perioperative registered nurses;

Now, Therefore, I, Cynthia Siegel, Mayor of the City of Bellaire, Texas, do hereby proclaim November 9-15, 2008, as

**AORN Perioperative Nurse Week**

in the City of Bellaire, Texas, and call upon the citizens of Bellaire, Texas, to join with me in recognizing the nation’s perioperative registered nurses who care for patients before, during, and after surgery.

In Witness Whereof, I have hereunto set my hand and caused the seal of the City of Bellaire, Texas, to be affixed this 17th day of November, 2008.

Cynthia Siegel, Mayor
City of Bellaire, Texas

Joann Oliver, RN, accepted the proclamation on behalf of AORN. Ms. Oliver advised that she had worked in the surgical field all of her life. She noted that any time a patient underwent a surgical procedure, a registered nurse was required by the Texas Legislature to be in the room monitoring that patient’s care. The perioperative registered nurses worked very closely with hospitals, outpatient centers, the medical industry, etc., to make sure that the patient was provided with the greatest safety possible. The City of Bellaire had issued this proclamation in recognition of AORN for the last several years and the organization very much appreciated that. Mayor Siegel would be attending AORN’s meeting on Tuesday evening and would present the proclamation again to the entire membership.

2. **CONSENT AGENDA:**

Councilman Will Hickman requested that the two items listed on the Consent Agenda (and set forth below) be considered separately by City Council.
Bid Award(s)/Rejection(s)

a. CONSIDERATION of and possible action on a recommendation from the Bellaire Public Works Department to award Bid No. 09-001, 1.5 Mil Polyethylene Density Bags (Garbage Bags), to the lowest responsive bidder, Liner Lady, LLC, in an amount not to exceed $125,970.00, for a one-year period beginning on November 17, 2008, and expiring on November 16, 2009, and adoption of an ordinance authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, a Standard Form of Agreement ("Agreement") with Liner Lady, LLC, for said materials in an amount not to exceed $125,970.00. Approval of said bid award would include authorization for the City Manager of the City of Bellaire, Texas, to approve an extension of said bid award and Agreement for up to four years, one year at a time, based on mutual agreement of Liner Lady, LLC, and the City Manager, acting on behalf of the City of Bellaire, Texas – Item submitted by Director of Public Works Joe Keene.

MOTION TO APPROVE BID AWARD AND ADOPTION OF ORDINANCE:

A motion was made by Councilman Phil Nauert and seconded by Councilman James P. Avioli, Sr., to approve the recommendation to award Bid No. 09-001, 1.5 Mil Polyethylene Density Bags (Garbage Bags) to Liner Lady, LLC, in an amount not to exceed $125,970.00, for a one-year period beginning on November 17, 2008, and expiring on November 16, 2009, and to adopt an ordinance authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, a Standard Form of Agreement ("Agreement") with Liner Lady, LLC, for said materials in an amount not to exceed $125,970.00, including authorization for the City Manager of the City of Bellaire, Texas, to approve an extension of said bid award and Agreement for up to four years, one year at a time, based on mutual agreement of Liner Lady, LLC, and the City Manager, acting on behalf of the City of Bellaire, Texas.
DISCUSSION:

Councilman Will Hickman inquired as to whether the City had used Liner Lady, LLC, before. After learning from the City Manager that Liner Lady, LLC, was the City’s current vendor, Councilman Hickman inquired as to the price paid for garbage bags during the previous year.

Director of Public Works Joe Keene stated that the City had paid approximately $89,000 for garbage bags during the previous year.

VOTE ON MOTION TO APPROVE BID AWARD AND ADOPTION OF ORDINANCE:

Motion carried unanimously on a 6-0 vote as follows:

FOR: Siegel, Cindy
     Hickman, Will
     Avioli, James P., Sr.
     Faulk, Peggy
     Nauert, Phil
     McLaughlan, Pat

OPPOSED: None

ABSENT: Jeffery, John

{Ordinance was subsequently numbered: 08-069}

b. CONSIDERATION of and possible action on a recommendation from the Bellaire Public Works Department to award Bid No. 09-002, Purchase of City of Bellaire Recycling Materials, to the bidder providing the most favorable payment to the City of Bellaire, Texas, for its recycling materials, Greenstar North America, in the amount of $35.00 per ton for a one-year period beginning on November 17, 2008, and expiring on November 16, 2009, and adoption of an ordinance authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, a Standard Form of Agreement (“Agreement”) with Greenstar North America for the purchase of the City of Bellaire’s recycling materials in the amount of $35.00 per ton. Approval of said bid award would include authorization for the City Manager
of the City of Bellaire, Texas, to approve an extension of said bid award and Agreement for up to four years, one year at a time, based on mutual agreement of Greenstar North America and the City Manager, acting on behalf of the City of Bellaire, Texas – Item submitted by Director of Public Works Joe Keene.

MOTION TO APPROVE BID AWARD AND ADOPTION OF ORDINANCE:

A motion was made by Councilman James P. Avioli, Sr., and seconded by Councilman Pat McLaughlan to approve the recommendation to award Bid No. 09-002, Purchase of City of Bellaire Recycling Materials, to the bidder providing the most favorable payment to the City of Bellaire, Texas, for its recycling materials, Greenstar North America, in the amount of $35.00 per ton for a one-year period beginning on November 17, 2008, and expiring on November 16, 2009, and to adopt an ordinance authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, a Standard Form of Agreement (“Agreement”) with Greenstar North America for the purchase of the City of Bellaire’s recycling materials in the amount of $35.00 per ton, including authorization for the City Manager of the City of Bellaire, Texas, to approve an extension of said bid award and Agreement for up to four years, one year at a time, based on mutual agreement of Greenstar North America and the City Manager, acting on behalf of the City of Bellaire, Texas.

DISCUSSION:

Councilman Will Hickman referred to the bid tabulation sheet, noting that one vendor had bid $35.00 per ton and the other vendor had bid $62.91 per ton or an amount that would fluctuate with the market. He inquired as to why the City had selected the lower per ton price.

City Manager Bernard M. Satterwhite, Jr., advised that the City did not know what the market was and if it fluctuated how the City could test it. In other words, how would the City know that it was receiving the right price?
Councilman Hickman inquired as to the reason the City chose a “price per ton” versus revenue sharing.

Director of Public Works Keene indicated that the revenue sharing would occur once all of the bidder’s expenses had been taken into account.

Councilman Hickman inquired as to whether Director Keene felt that the City would be better off with a fixed price per ton versus revenue sharing.

Director Keene advised that he felt the City was better off with a fixed price. Additionally, a reason that the other bidder was not selected was that bidder would not pick up as many items, such as glass.

Councilman Hickman asked for confirmation that the City currently did not get any revenue for its recycling materials.

Director Keene advised that Councilman Hickman was correct.

Councilman Pat McLaughlan was pleased to see that more recycling materials would be picked up under the new contract. He inquired as when the City would start picking up the additional materials (i.e., glass and additional plastic items).

Director Keene indicated that he would like a little bit of time to educate the residents regarding the new materials to be picked up; however, residents could go ahead and start tonight if they wanted to.

**VOTE ON MOTION TO APPROVE BID AWARD AND ADOPTION OF ORDINANCE:**

Motion **carried** unanimously on a **6-0** vote as follows:

**FOR:** Siegel, Cindy
Hickman, Will
Avioli, James P., Sr.
Faulk, Peggy
Nauert, Phil
McLaughlan, Pat

**OPPOSED:** None
ABSENT: Jeffery, John

{Ordinance was subsequently numbered: 08-070}

3. ADOPTION OF RESOLUTIONS:

Municipal Setting Designations

a. CONSIDERATION of and possible action on the adoption of a resolution of the City Council of the City of Bellaire, Texas, in support of the application of RCWB Limited and Bohica Holdings, Ltd., d/b/a West Bellfort Center, to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Setting Designation (MSD) for property located at 8761 West Bellfort Street, Houston, Texas, and adjacent to public rights-of-way in Houston, Texas, and authorization for the Mayor of the City of Bellaire, Texas, to execute an Indemnity Agreement in favor of the City of Bellaire, Texas, Indemnitee, as prepared and executed by RCWB Limited and Bohica Holdings, Ltd., d/b/a West Bellfort Center, Indemnitor – Item submitted by City Clerk Tracy L. Dutton on behalf of City Attorney Alan P. Petrov.

MOTION TO ADOPT RESOLUTION IN SUPPORT OF MSD APPLICATION:

A motion was made by Councilman Phil Nauert and seconded by Councilman Pat McLaughlan to adopt a resolution of the City Council of the City of Bellaire, Texas, in support of the application of RCWB Limited and Bohica Holdings, Ltd., d/b/a West Bellfort Center, to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Setting Designation (MSD) for property located at 8761 West Bellfort Street, Houston, Texas, and adjacent to public rights-of-way in Houston, Texas, and authorization for the Mayor of the City of Bellaire, Texas, to execute an Indemnity Agreement in favor of the City of Bellaire, Texas, Indemnitee, as prepared and executed by RCWB Limited and Bohica Holdings, Ltd., d/b/a West Bellfort Center, Indemnitor.
DISCUSSION:

Councilman Will Hickman referred to page 2 of 2 of the letter prepared by Michael Marcon of InControl Technologies, dated October 23, 2008. He advised that the key sentence for him was “it is not possible for chemicals from the site to migrate to and become present in the Bellaire water supply at levels above the state and federal drinking water standards.” He asked if the chemicals could still migrate and become present in the water supply, but at small levels. He noted that he had hoped that the certification would indicate that it was not possible at all.

Christine Peach, InControl Technologies, stated that it would not be possible for the chemicals to migrate to Bellaire’s water supply.

Councilman Hickman asked why Michael Marcon had added the phrase “at levels above the state and federal drinking water standards.” He inquired as to whether Mr. Marcon would be willing to take that phrase out. He stated that what InControl Technologies and their applicant was asking the City to do was to allow the applicant to mitigate with the lower standard because there would be no effect on Bellaire’s drinking wells. What the statement allowed was the minimus effect. He asked if InControl Technologies would be willing to take out the statement “at levels above the state and federal drinking water standards.”

Ms. Peach stated that she would take the document back and ask if that would be possible.

Councilman Hickman referred to the map that showed the flow of water from the site to Bellaire. He inquired as to the direction of the subsurface flow.

Ms. Peach advised that the map did depict the subsurface flow.

Councilman Hickman asked for confirmation that the water was generally flowing from the site to Bellaire.

Ms. Peach stated that it was more of a cross gradient than directly toward the Bellaire wells. The gradient was .0001 feet per foot—or relatively flat.
Councilman Hickman inquired as to whether City Attorney Petrov had drafted the Indemnity Agreement.

City Attorney Petrov indicated that the applicant had provided the Indemnity Agreement.

Councilman Hickman referred to paragraph 2 of the Indemnity Agreement and advised that it stated that the applicant would hold the City harmless from any claims for remediation costs. He inquired as to whether this included or would cover personal injury.

City Attorney Petrov indicated that the agreement only related to the costs of cleaning the City’s well.

Councilman Hickman referred to the last sentence in paragraph 4. The sentence indicated that Bellaire must demonstrate that its wells had been affected by contaminants originating on the property or that contaminants migrated from the property to Bellaire’s wells. He noted that this seemed to be a very high standard for Bellaire to prove the source of the contaminants.

City Attorney Petrov stated that he did not disagree, but the flip side was why would the applicant agree to indemnify the City if it could not be shown that the source of the contamination was coming from them?

Councilman Hickman inquired as to the value of the Indemnity Agreement for Bellaire.

City Attorney Petrov stated that he did not consider the agreement to have much value. The applicant would have a common law responsibility under existing statutes to remediate if they did contaminate Bellaire’s wells. Bellaire did not require an Indemnity Agreement on the site approved at the last meeting. The applicant offered the agreement, but City Attorney Petrov did not know that it gave Bellaire anything beyond current law.

Councilman Hickman advised that the difference for him with the other one that was approved was the fact that the applicant’s professional consultant certified that there was no chance that any contaminants would migrate from their site to Bellaire’s well. Under the current certification, the applicant’s professional consultant indicated that it was possible, but the
contaminants would not be above state or federal levels. He inquired as to whether this was a fair statement.

City Attorney Petrov stated that he could see Councilman Hickman’s point, but he could not put words in Mr. Marcon’s mouth.

Councilman Hickman advised that as the certification was currently written, he could not support it. The applicant was asking the City to allow them to remediate at a lesser threshold based on the fact that it would not affect Bellaire’s groundwater. The certification allowed chemicals to come in at a lower level than state or federal limits. The consultant had not stated that there would be no chance for chemicals to migrate into Bellaire’s groundwater.

Councilman Pat McLaughlan referred to City Council’s similar consideration of a Municipal Setting Designation for a site off of Westpark Drive. He inquired as to whether InControl Technologies had consulted for that applicant.

City Attorney Petrov advised that InControl Technologies was not the consultant used by the previous applicant, Union Pacific Railroad Company.

Councilman McLaughlan noted that the issue was that the City did not want any contaminant to exceed a safe level as defined by the state. He did not quite know how to approach this agenda item.

Mayor Cindy Siegel advised that the issue was whether the City was willing to allow for the possibility of contaminants at a level that did not exceed the state level or whether the City wanted no contaminants.

Councilman McLaughlan advised that the City was playing with words. The City wanted to ensure that there was no violation of the minimum state and federal level drinking water standards.

Mayor Siegel advised that the current certification provided this evening would satisfy the minimum state and federal drinking water standards. The issue was whether the City wanted to hold to a higher standard than the state.
Councilman McLaughlan noted that if this issue never existed and the City tested the water levels, some contaminants might be found anyway.

Councilman Phil Nauert stated that professionals had established the state and federal standards. He was a firm believer in hiring the appropriate professionals, but at some point you had to trust in something (i.e., the state and federal drinking water standards). He was comfortable accepting that the certification presented this evening met those standards.

Mayor Pro Tem Peggy Faulk stated that if she recalled correctly, the consultant for this applicant indicated that it was impossible for the contaminants from this site to migrate to Bellaire’s water supply. For that reason, she wanted the certification to indicate that.

Ms. Peach referred to the last sentence of the certification, which indicated, “Therefore, InControl Technologies has concluded that the City of Bellaire municipal supply wells will not be impacted by this site.” She inquired as to whether that satisfied the City.

Mayor Pro Tem Faulk stated that it seemed to contradict the previous statement made by InControl Technologies.

Ms. Peach advised that contamination from the site would not be possible.

Councilman James P. Avioli, Sr., stated that Councilman Hickman had raised some good points. He inquired as to what exposure the City of Bellaire might have in future litigation should someone be harmed. His experience with environmental matters was that the litigant or the person harmed sued everyone. He was concerned with the exposure that Bellaire might have under the agreements. He felt the City needed to be completely clear as to what the City was agreeing to and signing off on.

MOTION TO POSTPONE:

A motion was made by Councilman Will Hickman and seconded by Mayor Pro Tem Peggy Faulk to postpone action on the adoption of a resolution of the City Council of the City of Bellaire, Texas, in support of the
application of RCWB Limited and Bohica Holdings, Ltd., d/b/a West Bellfort Center, to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Setting Designation (MSD) for property located at 8761 West Bellfort Street, Houston, Texas, and adjacent to public rights-of-way in Houston, Texas, and authorization for the Mayor of the City of Bellaire, Texas, to execute an Indemnity Agreement in favor of the City of Bellaire, Texas, Indemnitee, as prepared and executed by RCWB Limited and Bohica Holdings, Ltd., d/b/a West Bellfort Center, Indemnitor, to allow the applicant an opportunity to revise the professional certification submitted to indicate that it was not possible for chemicals from the site of the MSD to migrate to and become present in the City of Bellaire water supply.

**VOTE ON MOTION TO POSTPONE:**

Motion carried unanimously on a 6-0 vote as follows:

**FOR:** Siegel, Cindy
        Hickman, Will
        Avioli, James P., Sr.
        Faulk, Peggy
        Nauert, Phil
        McLaughlan, Pat

**OPPOSED:** None

**ABSENT:** Jeffery, John

b. CONSIDERATION of and possible action on the adoption of a resolution of the City Council of the City of Bellaire, Texas, in support of the application of Fondren Road Plaza, Ltd., to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Setting Designation (MSD) for property located at 7042 Bissonnet Street, Houston, Texas, and adjacent public rights-of-way in Houston, Texas, and authorization for the Mayor of the City of Bellaire, Texas, to execute an Indemnity Agreement in favor of the City of Bellaire, Texas, Indemnitee, as prepared and executed by Fondren Road Plaza, Ltd., as Indemnitor – Item submitted by City Clerk Tracy L. Dutton on behalf of City Attorney Alan P. Petrov.
MOTION TO ADOPT RESOLUTION IN SUPPORT OF MSD APPLICATION:

A motion was made by Councilman Phil Nauert and seconded by Mayor Pro Tem Peggy Faulk to adopt a resolution of the City Council of the City of Bellaire, Texas, in support of the application of Fondren Road Plaza, Ltd., to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Setting Designation (MSD) for property located at 7042 Bissonnet Street, Houston, Texas, and adjacent public rights-of-way in Houston, Texas, and authorization for the Mayor of the City of Bellaire, Texas, to execute an Indemnity Agreement in favor of the City of Bellaire, Texas, Indemnitee, as prepared and executed by Fondren Road Plaza, Ltd., Indemnitor.

MOTION TO POSTPONE:

A motion was made by Mayor Pro Tem Peggy Faulk and seconded by Councilman Phil Nauert to postpone action on the adoption of a resolution of the City Council of the City of Bellaire, Texas, in support of the application of Fondren Road Plaza, Ltd., to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Setting Designation (MSD) for property located at 7042 Bissonnet Street, Houston, Texas, and adjacent public rights-of-way in Houston, Texas, and authorization for the Mayor of the City of Bellaire, Texas, to execute an Indemnity Agreement in favor of the City of Bellaire, Texas, Indemnitee, as prepared and executed by Fondren Road Plaza, Ltd., Indemnitor, to allow the applicant an opportunity to revise the professional certification submitted to indicate that it was not possible for chemicals from the site of the MSD to migrate to and become present in the City of Bellaire water supply.

VOTE ON MOTION TO POSTPONE:

Motion carried unanimously on a 6-0 vote as follows:

FOR: Siegel, Cindy
Hickman, Will
Avioli, James P., Sr.
Faulk, Peggy
FOR (CONT.): Nauert, Phil  McLaughlan, Pat

OPPOSED: None

ABSENT: Jeffery, John

4. ADOPTION OF ORDINANCES:

Agreements and Contracts

a. CONSIDERATION of and possible action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, authorizing the Mayor of the City of Bellaire, Texas, to execute Amendment No. 1 to Services Agreement made by and between the City of Bellaire, Texas, and Beck Disaster Recovery, Inc., on January 21, 2008, and facilitated through the Houston-Galveston Area Council’s (H-GAC) Cooperative Purchasing Program Contract with R. W. Beck, Inc., for environmental, community planning, engineering, and homeland security consulting and related services, for the purpose of revising the rate schedule made a part of the original Services Agreement to reflect the rates most recently approved by H-GAC on September 3, 2008 – Item submitted by Chief Financial Officer Donna Todd.

SUMMARY:

Chief Financial Officer Donna Todd advised that the City had previously contracted with Beck Disaster Recovery, Inc., last January to perform debris monitoring services for the City, as well as other consulting activities, such as preparation of project worksheets for the Federal Emergency Management Agency (FEMA).

When the "Notice to Proceed" for consulting services was issued, a representative from Beck Disaster Recovery, Inc., pointed out that the rates had changed. Apparently, the Houston-Galveston Area Council (H-GAC) had approved new rates under the agreement with Beck Disaster Recovery, Inc., in early September (about ten days before Hurricane Ike struck the area). The debris monitoring rates decreased in most instances; however, the consulting rates had increased.
Accordingly, Beck Disaster Recovery, Inc., wanted Bellaire to operate under the new rate schedule.

Upon a review of the contract by both Chief Financial Officer Todd and City Attorney Alan P. Petrov, it was determined that the rates were subject to change, but only on the anniversary date of the contract. A new rate schedule was sent to Bellaire, and that rate schedule was what City Council would consider this evening.

MOTION TO ADOPT ORDINANCE:

A motion was made by Councilman Will Hickman and seconded by Councilman Phil Nauert to adopt an ordinance of the City Council of the City of Bellaire, Texas, authorizing the Mayor of the City of Bellaire, Texas, to execute Amendment No. 1 to Services Agreement made by and between the City of Bellaire, Texas, and Beck Disaster Recovery, Inc., on January 21, 2008, and facilitated through the Houston-Galveston Area Council’s (H-GAC) Cooperative Purchasing Program Contract with R. W. Beck, Inc., for environmental, community planning, engineering, and homeland security consulting and related services, for the purpose of revising the rate schedule made a part of the original Services Agreement to reflect the rates most recently approved by H-GAC on September 3, 2008.

DISCUSSION:

Councilman James P. Avioli, Sr., referred to the statement that there was a decrease in debris monitoring fees and an increase in certain other fees. He inquired as to the net effect of the schedule. In other words, was the net effect an overall increase in fees?

Chief Financial Officer Todd indicated that on the debris monitoring side, there should be a decrease. For example, the disposal site monitor was $50.00 per hour, where previously it had been at $55.00 per hour. A deputy project manager was at $120.00 per hour, but was now at $100.00 per hour. Other individual positions increased.

She advised that when working with Bellaire, teams of individuals were sent out, so it was difficult to state right
now which teams would be sent on either the debris monitoring or consulting side.

She next referred to the consulting side where there had been originally one set fee for administration. Under the new schedule, administration had been broken down into three categories, with three different fees.

**Councilman Avioli** inquired as to whether Chief Financial Officer Todd was satisfied with the new fee schedule.

**Chief Financial Officer Todd** advised that she was satisfied.

**Councilman Will Hickman** inquired as to whether Bellaire had its own contract with Beck Disaster Recovery, Inc., or whether Bellaire was a party to a contract or “tagging along” on the H-GAC contract.

**Chief Financial Officer Todd** stated that Bellaire had its own contract, however, the pricing went through the H-GAC contract.

**City Manager Bernard M. Satterwhite, Jr.**, indicated that Bellaire had its own contract, but it was done through the H-GAC Cooperative Purchasing Program, which meant that H-GAC actually bid the services. FEMA required all contracts to be competitively bid. Bellaire needed to follow the terms provided by H-GAC in order for FEMA to accept the contract as a legitimately bid contract.

**Councilman Hickman** advised that he was a little troubled by the timing.

**City Manager Satterwhite** advised that the fee schedule was adjusted before Hurricane Ike struck. Bellaire did not receive that information until after the storm.

**Councilman Hickman** asked for confirmation that Bellaire had its own contract, but the terms and rates were set by the H-GAC.

**Chief Financial Officer Todd** referred Councilman Hickman to a portion of the agenda packet where the original services agreement was attached, noting that
the agreement was being facilitated through the H-GAC's Cooperative Purchasing Program.

**Councilman Phil Nauert** referred to the approval of the original contract that occurred in January of 2008. The contract apparently indicated that the rates could be modified at the annual anniversary date. If the rates were allowed to be changed, why was the City of Bellaire considering this agenda item? In other words, could the City refuse to agree with the increased rate? He was not sure what the City Council was voting on—especially in light of the fact that the City had already given its permission to increase the rates.

**City Attorney Petrov** indicated that this was actually a contract modification. The provision that allowed H-GAC to increase Beck Disaster Recovery, Inc.'s, rates was based on a Consumer Price Index adjustment applied across the board. In other words, all of the rates would increase. The modification before City Council this evening was different in that some rates were lowered and others were increased.

**Councilman Nauert** inquired as to whether City Council could refuse to accept the increased rates and hold them to the rates that were originally agreed upon.

**City Attorney Petrov** advised from a legal contract standpoint, the City could refuse to accept the new rate schedule. He was not sure how FEMA would view the refusal. As the City Manager stated, these rates were negotiated through H-GAC and had gone through the FEMA approval system.

**Councilman Nauert** inquired as to the reason that Bellaire was considering it.

**City Attorney Petrov** advised that it was necessary to match up with the FEMA reimbursement.

**City Manager Satterwhite** noted that the City had to have bid the service. The City acknowledged that it had bid the service by approving the H-GAC contract in January. The City was approving the contract again due to the changes that were made in September. If City Council voted against this item, the City would probably not have a legitimately bid contract recognized by FEMA.
Chief Financial Officer Todd stated that from Beck Disaster Recovery, Inc.’s, perspective, this was not a problem. The City of Bellaire asked for the revised fee schedule to keep its records straight.

City Manager Satterwhite noted that it was important to keep our records straight for audit trail purposes as well.

VOTE ON MOTION TO ADOPT ORDINANCE:

Motion carried unanimously on a 6-0 vote as follows:

FOR: Siegel, Cindy
  Hickman, Will
  Avioli, James P., Sr.
  Faulk, Peggy
  Nauert, Phil
  McLaughlan, Pat

OPPOSED: None

ABSENT: Jeffery, John

{Ordinance was subsequently numbered: 08-071}

b. CONSIDERATION of and possible action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, authorizing the City Manager of the City of Bellaire, Texas, to execute an agreement with Humana, Inc., for the purpose of providing employee group medical insurance, dental insurance, long-term disability insurance, vision insurance, a health savings account, term life insurance and accidental death and dismemberment insurance (AD&D), as well as additional voluntary insurance programs, and authorization for the City to issue binding checks for the January 2009 premium in the total amount of $103,406.32 – Item submitted by City Manager Bernard M. Satterwhite, Jr.

SUMMARY:

City Manager Bernard M. Satterwhite, Jr., advised that the City had been looking for more flexibility in its ability to provide health insurance for the City employees at a better cost and with better options. A
few years ago, the City made a change to its Charter that was authorized by the State Legislature that would allow the City to go out for competitive proposals on health insurance versus competitive sealed bids. The problem with competitive sealed bids was that the City would not have the opportunity to create any real competition and/or to shop around. In this case, the City was able to seek competitive proposals and to negotiate a health insurance plan that would benefit the employees and the City. This plan would lower the employees’ out-of-pocket costs and provide them with better coverage across the board.

In this regard, the City was also switching its life insurance policy, dental insurance policy, and other programs because there was greater flexibility, as well as cost savings for both the employee and the City.

**Director of Human Resources Roberta Murray** advised that she was present this evening to provide City Council with some information with respect to a proposal the City received to change health insurance plans. The proposed provider was noted to be Humana, Inc.

Director of Human Resources Murray introduced two gentlemen who were present this evening and available to answer questions on this agenda item, Paul Sidelo of PBS Benefits and James McAdams with Humana, Inc.

The City had the opportunity this year to get involved in a process where the City’s insurance brokers, PBS Benefits, had done a remarkable job of soliciting proposals for the City’s health insurance.

As the City Manager mentioned, the plans that the City currently offered the employees were health insurance, dental insurance, life insurance, and long-term disability insurance. Those plans would continue to be offered at the same level as offered in the past or at a higher level. With that, the City was changing its health insurance concept from a HMO (health maintenance organization) to a HAS (health savings account).

The City’s dental insurance would be the same as the current policy, except for an increase in the annual allowable claims for each individual from $1,000 to $1,500. This was a nice benefit for the employees and
their families. The premium was also a little less than the City was currently paying.

With respect to life insurance, the City was still offering two times the employee’s annual salary, with a maximum of $200,000. The benefits under the City’s long-term disability insurance would increase if someone were off work for six months due to an illness or injury. The City’s current policy paid the individual 50% of their income before going on disability. The proposed plan with Humana, Inc., would actually pay 60% of their income before going on disability. The premiums for all of the referenced coverages were still less than the City paid for its current plans.

Director of Human Resources Murray noted that the City’s current health insurance plan was through Aetna. The life insurance and long-term disability insurance plans were currently with Standard, and the dental insurance was with Assurant. By bundling all of the coverages and going with Humana, Inc., as well as offering voluntary coverages, the City was saving an additional 5% off of its current premiums.

It was noted further that meetings had already been held with Department Heads in order to brief them on the concept being proposed. A meeting was also held with the employee insurance committee, comprised of eight employees—only one of which was a member of management. That committee was very favorably impressed with the health savings account.

The total savings for the City and employees by changing carriers and bundling all of the plans together was approximately $195,000 for this year.

The main difference in the health insurance plan was that instead of offering two HMOs, the City was going to offer a health savings plan and a point of service plan. The health savings plan had to be a high deductible plan. For employee only, the deductible for 2009 would be $1,150. The City was suggesting contributing $650 toward that employee only deductible. The employee would use the City’s $650 before having to contribute the rest toward their own deductible.

Preventive services “in network” would be paid at 100% before the deductible. Examples of preventive services
were noted to be inoculations for children, well woman exams, well man exams, different types of screenings, flu shots, etc.

Once a person had satisfied the deductible of $1,150, almost all of the remaining services would be paid at 100%. Every employee that elected to participate in the health savings plan would have their own account at United Missouri Bank in their name. In January, the City would deposit $650 in the account. The employee could also deposit contributions from their paycheck into the account to help fund their deductible. In most cases, the employees would realize a savings from their payroll deductions that were going toward their premiums this year and could route those savings into their health savings account. The contributions were pre-tax and earned interest tax-free. When those contributions were drawn out for medical expenses, no tax had to be paid on the contributions or interest.

Director of Human Resources Murray went through a few examples related to the health savings account for City Council at this point in her presentation.

Voluntary plans that would be offered to employees (and not contributed to by the City) were noted to be vision coverage, accident insurance, life insurance with critical illness benefits, and short-term disability insurance.

Since the health savings account was a new concept for the employees and if the proposal were accepted this evening by City Council, ten employee meetings would be scheduled on Wednesday, Thursday, and Friday of this week to educate the employees on the changes to their insurance plans. On December 1, 2, 3, and 4, Humana, Inc., would have a team of enrollment individuals on site at the City who would have a 30-minute private meeting with every employee in the City to explain the benefits and get them enrolled in whatever selections they desired. Spouses of employees would also be welcome to attend the meetings.

**MOTION TO ADOPT ORDINANCE:**

A motion was made by Councilman Will Hickman and seconded by Councilman James P. Avioli, Sr., to adopt an ordinance of the City Council of the City of
Bellaire, Texas, authorizing the City Manager of the City of Bellaire, Texas, to execute an agreement with Humana, Inc., for the purpose of providing employee group medical insurance, dental insurance, long-term disability insurance, vision insurance, a health savings account, term life insurance and accidental death and dismemberment insurance (AD&D), as well as additional voluntary insurance programs, and authorization for the City to issue binding checks for the January 2009 premium in the total amount of $103,406.32.

**Special Note:** Councilman Phil Nauert advised that, based on a discussion with City Attorney Alan P. Petrov, he was disclosing the fact that he had a dental business and might benefit from or be affected by the outcome of City Council’s vote this evening and would, therefore, recuse himself from any discussion or vote on this matter.

**DISCUSSION:**

Councilman Will Hickman inquired as to whether the City would be making a contribution toward the employees’ deductible on an annual basis (i.e., $650 deposit to be made in 2009).

Director of Human Resources Murray advised that the annual deposit for the employees would be reviewed each year. The deposit could increase or decrease.

City Manager Satterwhite indicated that at this point the $650 represented a balance of savings between the City and employee. The City would hope to maintain that deposit, but depending on the cost of the overall system in future years, the suggested deposit could fluctuate some.

Director of Human Resources Murray stated that it would not be related to whether or not the employee used the City’s annual contribution, but rather to the costs of the overall plan. She believed that Humana, Inc., did not really expect that the medical expenses of each employee in the City would meet or exceed $1,150 each year. The benefit to the employee was that they
could make their own cost saving decisions when using their plan.

**Councilman Hickman** referred to the second page of a handout provided by Director of Human Resources Murray and inquired as to whether the difference reflected a savings between the employee premium under the current plan versus the premium under the health savings account.

**Director of Human Resources Murray** advised that Councilman Hickman was correct. The amount reflected was an annual savings. She noted that a family on the health savings account plan would save $3,300 in annual premiums.

Councilman Hickman inquired as to whether each employee had a choice between the health savings account plan and the point of service plan.

**Director of Human Resources Murray** advised that Councilman Hickman was correct.

Councilman Hickman inquired as to how the benefit levels for the point of service plan compared to the 2008 plan.

**Director of Human Resources Murray** advised that the benefit levels were comparable.

**City Manager Satterwhite** indicated that the deductible was lower on the point of service plan and the benefits were better than the current HMO plan. He noted further that the new plans offered either equal or better benefits in all categories.

Councilman Hickman inquired as to whether the City’s costs had decreased under the new plans.

**Director of Human Resources Murray** advised that Councilman Hickman was correct.

Councilman Hickman inquired as to whether the dental insurance and other programs were voluntary.

**Director of Human Resources Murray** stated that the City paid dental insurance for employee only and all employees had dental insurance.
Under the City’s current HMO high plan for 2008, the City paid 75% of the employee-spouse premium, 75% of the employee-children premium, and 65% of the employee and family premium. Those same percentages were applied to the most expensive plan or the point of service plan. For example, the total premium for employee-spouse under the point of service plan would be $850.49 and the City was contributing $637.87 or 75% of the premium. Those percentages were applied under the health savings account plan as well.

Councilman Hickman inquired of City Manager Satterwhite if he was excited, as an employee, about the new plans. In other words, was this the plan the City Manager had?

City Manager Satterwhite advised that he did not have this plan—he was a special case. He was excited, however.

Councilman Hickman inquired as to whether the Director of Human Resources would have this plan and if she were excited.

Director of Human Resources Murray indicated that she was very excited and would sign up for the health savings account plan.

Councilman James P. Avioli, Sr., inquired as to whether all permanent employees qualified for health care.

Director of Human Resources Murray advised that all full-time regular employees qualified for health care.

Councilman Avioli inquired as to whether the employees qualified as soon as they were hired.

Director of Human Resources Murray indicated that the employee would be placed on the insurance plans on the first of the month following the date of their employment. If someone came on the job today, that person would have health insurance on December 1st.

Councilman Avioli referred to the savings associated with the new plan. He asked if the savings were compared to the existing plan or the amount budgeted.
Director of Human Resources Murray advised that the savings associated with the new plan were compared to the existing plan.

Councilman Avioli noted that the City was looking at $1.3 million per year in premiums. He inquired as to whether that was cheaper than what the City was currently paying.

Director of Human Resources Murray stated she was not sure about the number that was budgeted, but could state that the projected savings were $195,000 less than what the City would be spending if it stayed with the current plan.

Councilman Avioli noted that an employee could choose from a menu of services. He inquired as to the basic cost per month if an employee chose the basics for himself and his or her spouse.

Director of Human Resources Murray indicated that an employee and spouse under the health savings account plan would pay $160 per month for medical and $30 per month for dental or $190 per month. If the employee wanted any of the optional plans, the employee would pay 100% of the premiums for those plans.

All of the City’s employees except the City Manager would be enrolled in a health plan, dental plan, life insurance, and long-term disability.

Councilman Avioli asked if the premium quoted by Director Murray was just for the employee or for the employee and spouse.

Director of Human Resources Murray advised that she had quoted a premium for employee and spouse.

Councilman Avioli inquired as to the amount of premium the City would pay for that employee and spouse.

City Manager Satterwhite indicated that the City’s monthly subsidy for employee and spouse would be $637.88.
Director of Human Resources Murray advised that the total premium under the health savings account plan was $797.32. The City’s subsidy was $637.88.

Councilman Avioli inquired as to whether employees carried any of the benefits with them upon retirement.

Director of Human Resources Murray advised that the money that went into an employee’s health savings account would go with them upon retirement. As far as having the health insurance after they retired, they had the option of purchasing the health insurance, but the City no longer contributed toward their premiums after retirement.

City Manager Satterwhite stated that the money left in an employee’s health savings account could be used toward insurance premiums after retirement and not be taxed.

Mayor Cindy Siegel referred to the reason that the City Manager was not on the City’s health plan, noting that he had a policy with the military.

City Manager Satterwhite advised that when he first came to the City, he was offered more salary in lieu of insurance. He took that given the fact that he had retiree health coverage through his service with the military. Since his employment was part of a negotiated agreement, he had the opportunity to choose not to take the City’s health insurance.

**VOTE ON MOTION TO ADOPT ORDINANCE:**

Motion carried on a 5-0-1 vote as follows:

**FOR:** Siegel, Cindy  
Hickman, Will  
Avioli, James P., Sr.  
Faulk, Peggy  
McLaughlan, Pat

**OPPOSED:** None

**ABSENT:** Jeffery, John

**ABSTAIN:** Nauert, Phil*
*As noted earlier in this record of minutes, Councilman Phil Nauert disclosed the fact that he had a dental business and might benefit from the action this evening; therefore, he recused himself from the discussion and vote on this agenda item.

{Ordinance was subsequently numbered: 08-072}

**Code Amendment**
c. CONSIDERATION of and possible action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, amending Chapter 24, Planning and Zoning Regulations, Article VII, Variances, Special Exceptions, Appeals and Nonconformities, Division 1, Variances, Section 24-704, Standards, of the Code of Ordinances of the City of Bellaire, Texas, for the purpose of addressing zoning variance standards, including policy considerations, unnecessary hardships resulting from a special condition, and the effects of a requested variance on other properties, including the subject property – *Item submitted by City Clerk Tracy L. Dutton at the direction of City Council.*

**MOTION TO ADOPT ORDINANCE:**

A *motion* was made by Councilman James P. Avioli, Sr., and *seconded* by Councilman Will Hickman to *adopt an ordinance* of the City Council of the City of Bellaire, Texas, amending Chapter 24, Planning and Zoning Regulations, Article VII, Variances, Special Exceptions, Appeals and Nonconformities, Division 1, Variances, Section 24-704, Standards, of the Code of Ordinances of the City of Bellaire, Texas, for the purpose of addressing zoning variance standards, including policy considerations, unnecessary hardships resulting from a special condition, and the effects of a requested variance on other properties, including the subject property.

**DISCUSSION:**

Councilman Pat McLaughlan thanked the Planning and Zoning Commission and Committee, for putting forth a viable proposal. Personally, he had some concerns with the proposal.
Councilman McLaughlan continued and advised that he really believed that any time a change was made in a City ordinance, the change in that ordinance must benefit or make the community stronger. The citizens of Bellaire had an expectation that strong zoning would continue to exist.

The purpose of the proposed change was to allow greater flexibilities in the decision-making process by the City’s Board of Adjustment. This additional flexibility, in Councilman McLaughlan’s opinion, actually weakened the City’s zoning ordinance. He saw no problem with the current ordinance and really did not see how changing the ordinance would benefit the City’s current citizens. The change might benefit those desiring to move to Bellaire in the future. City Council’s goal was to protect its current citizens with the continuation of a strong zoning ordinance.

Councilman Will Hickman thanked the Planning and Zoning Commission and Committee for their work on the proposal. He inquired of Bill Thorogood, Chair of the Planning and Zoning Commission, as to whether he could imagine a situation where he could vote one way under the proposal versus another way under the previous ordinance (if he were on the Board of Adjustment).

Bill Thorogood, Chair, Planning and Zoning Commission of the City of Bellaire, Texas, stated that having never served on the Board of Adjustment, it would be difficult for him to respond. He had tried in his own mind to think of some conditions that might exist where the proposal would be of benefit. He asked City Attorney Petrov if he had seen any such conditions where the proposal might apply.

City Attorney Alan P. Petrov indicated that the current ordinance restricted the Board of Adjustment from voting for a variance unless there was something different about a parcel with respect to area, shape, or slope, and it was limited to those three factors. The main benefit he could see was instead of limiting the variance to those factors, the proposal made those factors descriptives by using the phrase “such as.” For example, the Board of Adjustment under the proposal could consider a parcel’s location.
Chair Thorogood advised that the conditions he thought of were those borders between different zoning districts, such as the border between the RM Zoning District and one of the Residential Zoning Districts. The proposal would give the Board of Adjustment a little more flexibility over the very straightforward standards.

Councilman Hickman, in addressing Councilman McLaughlan’s point, advised that the way he read the proposal, paragraphs one and two would allow an owner to develop a unique lot. Paragraph three would ensure there was no injury to the neighbors, and paragraph four would uphold the general zoning ordinance. He asked Chair Thorogood if he felt this was a benefit to the City.

Chair Thorogood stated that Councilman McLaughlan’s comments were very fair. What the City had seen on Board of Adjustment rulings over the last ten years were very tight “nos.” Current Board of Adjustment members were very favorable toward the proposal before City Council.

Chair Thorogood felt the proposal gave the Board of Adjustment a little leeway, but did not feel that it impaired the rest of the community or himself, as a citizen.

Councilman Hickman inquired as to whether Chair Thorogood felt that the proposal “drove a dagger” through the zoning ordinances.

Chair Thorogood advised that, in his opinion, the proposal did not “drive a dagger” through the City’s zoning ordinances.

**VOTE ON MOTION TO ADOPT ORDINANCE:**

Motion carried on a majority vote of **5-1** as follows:

**FOR:**
- Siegel, Cindy
- Hickman, Will
- Avioli, James P., Sr.
- Faulk, Peggy
- Nauert, Phil

**OPPOSED:**
- McLaughlan, Pat
E. ADJOURNMENT.

MOTION TO ADJOURN:

A motion was made by Mayor Pro Tem Peggy Faulk and seconded by Councilman Phil Nauert to adjourn the Regular Session of the City Council of the City of Bellaire, Texas, at 9:11 p.m. on Monday, November 17, 2008.

VOTE ON MOTION TO ADJOURN:

Motion carried unanimously on a 6-0 vote as follows:

FOR: Siegel, Cindy
     Hickman, Will
     Avioli, James P., Sr.
     Faulk, Peggy
     Nauert, Phil
     McLaughlan, Pat

OPPOSED: None

ABSENT: Jeffery, John

Respectfully submitted,

Tracy L. Dutton, TRMC
City Clerk
City of Bellaire, Texas

Approved:

Cynthia Siegel, Mayor
City of Bellaire, Texas