CITY OF BELLAIRE
CITY COUNCIL
Minutes of Meeting
December 7, 2009

REGULAR SESSION – 7:00 P.M.

A. CALL TO ORDER AND ANNOUNCEMENT OF A QUORUM – Mayor Pro Tem Peggy Faulk.

Mayor Pro Tem Peggy Faulk called the City Council of the City of Bellaire, Texas, to order at 7:00 p.m. on Monday, December 7, 2009. 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 Pro Tem Faulk announced that a quorum was present consisting of herself and the following members of City Council:

- Councilman James P. Avioli, Sr., Position No. 2;
- Councilman Phil Nauert, Position No. 4;
- Councilman Pat McLaughlan, Position No. 5; and
- Councilwoman Mandy Nathan, Position No. 6.

Mayor Cindy Siegel and Councilman Will Hickman, Position No. 1, were 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 – Mayor Pro Tem Peggy Faulk.

Mayor Pro Tem Peggy Faulk provided the inspirational reading for the evening.

C. PLEDGES TO THE FLAGS – Mayor Pro Tem Peggy Faulk.

1. U.S. PLEDGE OF ALLEGIANCE.

2. PLEDGE TO THE TEXAS FLAG.

Mayor Pro Tem Peggy Faulk led the audience and City Council in the U.S. Pledge of Allegiance and the Pledge to the Texas Flag.

D. PERSONAL/AUDIENCE COMMENTS.

Lynn McBee, 5314 Evergreen Street, Bellaire, Texas:

Ms. McBee addressed City Council and advised that she hoped that the City Manager, with the City Attorney’s assistance, could provide City Council with a total budget amendment to reflect every item approved this fiscal year that
was not included in the budget. She recalled two recent items that were not budgeted, one of which was an upgrade to the Evergreen Park Pool Bathhouse. A second item, if approved this evening, would be for a contract to provide a landscaping plan for the pavilion area in Paseo Park.

Kathryn Hardin, 823 North Third Street, Bellaire, Texas:

Ms. Hardin addressed City Council and urged them to consider approving the development of a proposed Master Plan for Paseo Park (i.e., agenda item for consideration later in the evening). Ms. Hardin noted that since there was no longer a pavilion in Paseo Park and since the lawn had been torn up due to street light renovations, this particular area needed to be addressed. She noted further that the area could also be used for donor recognition.

E. CITY MANAGER’S REPORT regarding residential safety (police activity report), public infrastructure/utilities (street and drainage projects update, Fire Station update, and Evergreen Park pool house rehabilitation update), cultural and recreational (Holiday in the Park), communications/technology (communication of crime information), employees (employee holiday luncheon), quarterly indicators (crime and building permits), current issues/information (counterfeit “red tags” showing up on signs), and upcoming City Council meetings/events – Presented by City Manager Bernard M. Satterwhite, Jr.

City Manager Bernard M. Satterwhite, Jr., presented the City Manager’s Report to City Council. A brief summary of the topics presented in his report has been set forth below.

Public Infrastructure/Utilities

City Manager Satterwhite advised that the Rebuild Bellaire Program was progressing in the 4500 block of Sunburst Street eastbound toward Newcastle Drive. The contractor was scheduled to pour concrete for the final 50% of the block this week, however, the weather needed to get a little drier. It was anticipated that the concrete work would be completed prior to Christmas.

Traffic on Second Street was open southbound. The water line on the west side of Second Street at Beech Street was currently being relocated and driveway approaches were completed. Sidewalks would be installed against the curb in this area.
Sidewalk work was ongoing along Bissonnet Street and Bellaire Boulevard. Fifth Street sidewalk work was expected to begin in January of 2010.

The Bellaire Fire Station demolition began on Friday, however, the snow event slowed things down a little bit. The debris from the demolition should be cleaned up completely within the next few days. The contractor would then begin preparing the ground for groundbreaking.

With respect to the Evergreen Park pool bathhouse rehabilitation project, it was noted that the contractor was pulling permits for the work and should be getting underway soon.

**Cultural and Recreational**

City Manager Satterwhite referred to the Holiday in the Park event and the Fire/Police Department Football Game event, the weather of which was good for both events. Holiday in the Park was hugely successful in spite of the fact that the Great Lawn was too wet to use and vendors had to squeeze into the north parking lot area.

**Communications/Technology**

During a previous City Council meeting, Ms. Johnnie Frazier suggested that the City of Bellaire consider communicating crime statistics and reports to the residents through the City’s website. City Manager Satterwhite demonstrated how residents could retrieve such information through the City’s website, specifically via a direct link to the Bellaire Police Department crime search webpage. He next demonstrated two different types of searches and the information each search would yield.

City Manager Satterwhite encouraged residents to visit the City’s website and to register for such services as “Bellaire News and Information.” It was noted that over 1,200 residents subscribed to various notification services through the City’s website.

It was noted further that the City calendar could be downloaded from the City’s website or picked up from City Hall.

**Employees**

The annual employee holiday luncheon was scheduled on Wednesday, December 16, 2009, from 11:30 a.m. until 1:00 p.m. at the Civic Center. Members of City Council were invited to help serve food to the employees.

**Current Issues/Information**

City Manager Satterwhite indicated that someone had gone to a great deal of trouble and expense to prepare some “red tags” citing an old City sign
ordinance that was no longer in effect and indicating that the “tagged” signs were illegal. The “red tags” had been placed on builders’ signs and political signs around town. City Manager Satterwhite advised that the City did not “red tag” signs and that the City was trying to track down the person who was placing the “red tags” on signs.

**Upcoming Meetings/Events**

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Type of Meeting</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/21/2009</td>
<td>6:00 p.m.</td>
<td>Official Canvass of Runoff Election</td>
</tr>
<tr>
<td>12/21/2009</td>
<td>6:15 p.m.</td>
<td>Public Hearing on Specific Use Amendment and Permit Request</td>
</tr>
<tr>
<td>12/21/2009</td>
<td>7:00 p.m.</td>
<td>Regular Session</td>
</tr>
<tr>
<td>01/04/2010</td>
<td>7:00 p.m.</td>
<td>Regular Session (Council Installation)</td>
</tr>
</tbody>
</table>

**Questions/Comments from City Council:**

Members of City Council asked questions and/or made comments related to the City Manager’s Report. Councilman Pat McLaughlan noted that a three-foot section of sidewalk was missing along Condit Elementary School. City Manager Satterwhite indicated that the section of sidewalk had blacktop in it temporarily and would be filled in shortly.

Councilman Phil Nauert referred to the “red tags” and wondered who would have a motive to go to the expense of printing the tags and taking the time to tag signs around town. City Manager Satterwhite indicated that the City did not know at the present time.

Councilman James P. Avioli, Sr., referred to a notice that he had received from a valve company in his packet indicating that the upper stems of the City’s fire hydrants might be corroding. He inquired as to whether the City had looked into the issue. City Manager Satterwhite advised that he had not seen the notice, but would look into it.

**MOTION TO ACCEPT REPORT INTO THE RECORD:**

A motion was made by Councilman Pat McLaughlan and seconded by Councilwoman Mandy Nathan 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 5-0 vote as follows:

**FOR:**
- Avioli, James P., Sr.
- Faulk, Peggy
- Nauert, Phil
- McLaughlan, Pat
FOR (CONT.): Nathan, Mandy

OPPOSED: None

ABSENT: Siegel, Cindy
Hickman, Will

F. CONSENT AGENDA – all items listed under the Consent Agenda are considered routine and are recommended for approval by a single motion of City Council, without discussion. If discussion is desired, any one or more members of City Council and/or the Mayor may request that an item be removed and considered separately.

Approval/Correction of Minutes

1. APPROVAL of the minutes of the Special Session (Public Hearing) of the City Council of the City of Bellaire, Texas, and the Planning and Zoning Commission of the City of Bellaire, Texas, held Monday, October 12, 2009 – Item submitted by City Clerk Tracy L. Dutton.

2. APPROVAL of the minutes of the Regular Session of the City Council of the City of Bellaire, Texas, held Monday, November 2, 2009 – Item submitted by City Clerk Tracy L. Dutton.

3. APPROVAL of the minutes of the Special Session (Executive Session) of the City Council of the City of Bellaire, Texas, held Monday, November 9, 2009 – Item submitted by City Clerk Tracy L. Dutton.

4. APPROVAL of the minutes of the Special Session (Official Canvass) and Regular Session of the City Council of the City of Bellaire, Texas, held Monday, November 16, 2009 – Item submitted by City Clerk Tracy L. Dutton.

Grant

5. CONSIDERATION of and possible action on the acceptance of a grant from the Fireman’s Fund Insurance Company under their Heritage Program in the amount of $15,000.00 to be utilized by the Bellaire Fire Department for the purchase of equipment for their new cascade vehicle and physical fitness equipment – Item submitted by Fire Chief Darryl Anderson.
Donation

6. CONSIDERATION of and possible action on the adoption of a resolution of the City Council of the City of Bellaire, Texas, accepting an unrestricted donation in the amount of $1,000.00 from the Bellaire Coin Club to be utilized by the Bellaire City Library and an unrestricted donation in the amount of $1,000.00 from the Bellaire Coin Club to be utilized by the Bellaire Parks & Recreation Department – Item submitted by City Clerk Tracy L. Dutton on behalf of the Bellaire Coin Club.

Councilwoman Mandy Nathan requested that Consent Agenda items 1 through 3 be considered separately as she was not a member of City Council during those meetings and wished to abstain from voting on the minutes.

Mayor Pro Tem Peggy Faulk requested that Consent Agenda item 6 be considered separately in order that City Council might recognize members of the Bellaire Coin Club who were present this evening.

MOTION TO APPROVE CONSENT AGENDA:

A motion was made by Councilman Pat McLaughlan and seconded by Councilman James P. Avioli, Sr., to approve the Consent Agenda dated December 7, 2009, consisting of the following two items:

- Minutes of the Special Session (Official Canvass) and Regular Session of the City Council of the City of Bellaire, Texas, held Monday, November 16, 2009; and
- Acceptance of a grant from the Fireman’s Fund Insurance Company under their Heritage Program in the amount of $15,000.00 to be utilized by the Bellaire Fire Department for the purchase of equipment for their new cascade vehicle and physical fitness equipment.

VOTE ON MOTION TO APPROVE CONSENT AGENDA:

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

FOR:  
Avioli, James P., Sr.  
Faulk, Peggy  
Nauert, Phil  
McLaughlan, Pat  
Nathan, Mandy

OPPOSED: None
ABSENT: Siegel, Cindy
Hickman, Will

INDIVIDUAL CONSIDERATION OF CONSENT AGENDA ITEMS 1-3:

Consent Agenda items 1 through 3 were considered in one motion as follows:

MOTION TO APPROVE MINUTES:

A motion was made by Councilman Phil Nauert and seconded by Councilman James P. Avioli, Sr., to approve the minutes of the Special Session (Public Hearing) of the City Council of the City of Bellaire, Texas, and the Planning and Zoning Commission of the City of Bellaire, Texas, held Monday, October 12, 2009; to approve the minutes of the Regular Session of the City Council of the City of Bellaire, Texas, held Monday, November 2, 2009; and to approve the minutes of the Special Session (Executive Session) of the City Council of the City of Bellaire, Texas, held Monday, November 9, 2009.

VOTE ON MOTION TO APPROVE MINUTES:

Motion carried on a 4-0-1 vote as follows:

FOR: Avioli, James P., Sr.
Faulk, Peggy
Nauert, Phil
McLaughlan, Pat

OPPOSED: None

ABSENT: Siegel, Cindy
Hickman, Will

ABSTAIN: Nathan, Mandy*

*Councilwoman Mandy Nathan abstained from voting on the minutes of City Council dated October 12, 2009, November 2, 2009, and November 9, 2009, due to the fact that she was not a member of City Council during those meetings and on those dates.

INDIVIDUAL CONSIDERATION OF CONSENT AGENDA ITEM 6:

CONSIDERATION of and possible action on the adoption of a resolution of the City Council of the City of Bellaire, Texas, accepting an unrestricted donation in the amount of $1,000.00
from the Bellaire Coin Club to be utilized by the Bellaire City Library and an unrestricted donation in the amount of $1,000.00 from the Bellaire Coin Club to be utilized by the Bellaire Parks & Recreation Department – Item submitted by City Clerk Tracy L. Dutton on behalf of the Bellaire Coin Club.

MOTION TO ACCEPT DONATION AND ADOPT RESOLUTION:

A motion was made by Councilman Phil Nauert and seconded by Councilman James P. Avioli, Sr., to adopt a resolution of the City Council of the City of Bellaire, Texas, accepting an unrestricted donation in the amount of $1,000.00 from the Bellaire Coin Club to be utilized by the Bellaire City Library and an unrestricted donation in the amount of $1,000.00 from the Bellaire Coin Club to be utilized by the Bellaire Parks & Recreation Department.

Mayor Pro Tem Peggy Faulk invited Dr. Garth Clark, President of the Bellaire Coin Club, to the podium to say a few words.

Dr. Garth Clark, President of the Bellaire Coin Club, indicated that the Bellaire Coin Club was very appreciative of the Bellaire City Library and Bellaire Parks & Recreation Department for the use of City facilities for coin shows and regular meetings of the club. He indicated that this had been a good year for the Bellaire Coin Club and they wished to give back to the community.

VOTE ON MOTION TO ACCEPT DONATION AND ADOPT RESOLUTION:

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

FOR:         Aovi, James P., Sr.
             Faulk, Peggy
             Nauert, Phil
             McLaughlan, Pat
             Nathan, Mandy

OPPOSED:     None

ABSENT:      Siegel, Cindy
             Hickman, Will

{Resolution was subsequently numbered: 09-13}
G. ADOPTION OF RESOLUTIONS AND ORDINANCES:

1. Harris County Appraisal District Board of Directors

   a. PRESENTATION of qualifications of nominees nominated to serve as a member of the Board of Directors of the Harris County Appraisal District representing cities, other than the City of Houston, participating in the appraisal district, and discussion and questions related to said qualifications – Presentation by Nominees Ed Heathcott and Chris Presley; Item submitted by City Clerk Tracy L. Dutton on behalf of the Harris County Appraisal District.

   Ed Heathcott, Nominee for a Member of the Board of Directors of the Harris County Appraisal District, addressed City Council and advised that he was seeking a second term on the Harris County Appraisal District as a representative of cities, other than the City of Houston. He indicated that he was a mechanical engineer and had worked in the manufacturing area all of his life. He had been a business owner for ten years and an elected official as Mayor of the City of Jersey Village, Texas. He indicated that he understood the issues that small cities had. It was noted that he currently resided in the City of West University Place, Texas.

   Mr. Heathcott also advised that the position was a volunteer position and that he received no compensation. Appraisal districts were created by the State of Texas and were chartered to value property at the fair market value. The Harris County Appraisal District set property values and the various taxing authorities (county, cities, schools, districts, etc.) set tax rates and raised revenues.

   Questions/Comments from City Council:

   Members of City Council asked questions of Mr. Heathcott regarding his duties as a member of the Harris County Appraisal District (HCAD) Board, the number/frequency of meetings he would be expected to attend, communications between the Board and HCAD members (such as Bellaire), and Board input, if any, with respect to property values.

   Chris Presley, the second nominee to the HCAD Board representing cities other than Houston, Texas, was not able to be present this evening.

   b. CONSIDERATION of and possible action on the adoption of a resolution of the City Council of the City of Bellaire,
Texas, casting its ballot for the election of a person to the Board of Directors of the Harris County Appraisal District for a two-year term commencing on January 1, 2010, and ending on December 31, 2012 – Item submitted by City Clerk Tracy L. Dutton

MOTION TO ADOPT RESOLUTION CASTING A BALLOT FOR THE ELECTION OF A PERSON TO THE HCAD BOARD:

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, casting its ballot for the election of Ed Heathcott to the Board of Directors of the Harris County Appraisal District for a two-year term commencing on January 1, 2010, and ending on December 31, 2012.

DISCUSSION ON MOTION TO ADOPT RESOLUTION CASTING A BALLOT FOR THE ELECTION OF A PERSON TO THE HCAD BOARD:

Councilman Pat McLaughlan noted that Ed Heathcott had taken time out of his schedule to be with Bellaire this evening. He had also shown his dedication and experience over the last two years. Councilman McLaughlan indicated that he supported the casting of Bellaire’s ballot in favor of Ed Heathcott.

VOTE ON MOTION TO ADOPT RESOLUTION CASTING A BALLOT FOR THE ELECTION OF A PERSON TO THE HCAD BOARD:

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

FOR:   Avioli, James P., Sr.
       Faulk, Peggy
       Nauert, Phil
       McLaughlan, Pat
       Nathan, Mandy

OPPOSED: None

ABSENT:   Siegel, Cindy
          Hickman, Will

{Resolution was subsequently numbered: 09-14}
Paseo Park Improvements

2. CONSIDERATION of and possible action on the recommendation from the Parks & Recreation Advisory Board of the City of Bellaire, Texas, to accept and approve a fee proposal from Clark Condon Associates, Inc., for landscape architectural design services associated with improvements to the western end of Paseo Park at South Rice Avenue in an amount not to exceed $6,500.00 for basic design services and reimbursable expenses not to exceed $1,500.00, and on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, a *Standard Form of Agreement* with Clark Condon Associates, Inc., for said services in a total amount not to exceed $8,000.00 – *Item submitted by Director of Parks & Recreation* Jane L. Dembski on behalf of the Parks & Recreation Advisory Board of the City of Bellaire, Texas.

**MOTION TO ADOPT ORDINANCE ACCEPTING FEE PROPOSAL:**

A *motion was made by* Councilman James P. Avioli, Sr., and *seconded by* Councilwoman Mandy Nathan to *accept and approve* a fee proposal from Clark Condon Associates, Inc., for landscape architectural design services associated with improvements to the western end of Paseo Park at South Rice Avenue in an amount not to exceed $8,000.00, 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* with Clark Condon Associates, Inc., for said services in a total amount not to exceed $8,000.00.

**DISCUSSION ON MOTION TO ADOPT ORDINANCE ACCEPTING FEE PROPOSAL:**

Discussion ensued among members of City Council regarding the proposal for landscape architectural design services for the western end of Paseo Park. Councilman Pat McLaughlan asked the City Manager and Director of Parks & Recreation to work with the City’s traffic engineers to ensure that conduit, boxes, and meters associated with the street light project were in harmony with any proposed conceptual plan to be developed by Clark Condon Associates, Inc.

Leslie Little, Chair, Parks & Recreation Advisory Board, addressed City Council and advised that with the demolition of the pavilion at the western end of Paseo Park, there was currently an opportunity to put a conceptual plan in place for the area between South Rice Avenue and Third Street. This proposed project received the support of the
Patrons for Bellaire Parks, Inc., the Bellaire Arts Commission, and the Bellaire Historical Society, and Ms. Little thanked each organization for that support.

City Council continued discussion of a conceptual plan for the area. It was noted that Clark Condon Associates, Inc., would take approximately six weeks to develop the conceptual plan. It would then be presented to the Parks & Recreation Advisory Board and City Council. Councilman McLaughlan expressed his vision for the plan, noting that the purpose was to set some basic goals for what would become a multi-year development process. He noted again that the intersection of South Rice Avenue and Bellaire Boulevard was a prime intersection in the City of Bellaire. It served as a dividing line between the residential and commercial development and many good things could be done in that area.

Mayor Pro Tem Peggy Faulk inquired as to funding for the development of a conceptual plan. City Manager Bernard M. Satterwhite, Jr., indicated that the funds for developing a plan had not been budgeted. However, if City Council approved the agenda item this evening, the funding would come from the City’s Capital Improvement Program fund balance. He advised further that a few years ago, the City had budgeted $100,000 to improve the Trolley Pavilion that existed at the intersection of South Rice Avenue and Bellaire Boulevard. The Trolley Pavilion was ultimately demolished at a cost of $45,000, and the monies remaining from the $100,000 budget were carried in the fund balance. The Capital Improvement Program fund balance was stated to currently total $2.8 million.

Mayor Pro Tem Faulk inquired as to priorities for the City and whether Paseo Park had a higher priority than Bellaire Town Square. City Manager Satterwhite indicated that City Staff had asked City Council to defer all projects that were not critical for fiscal year 2010. Most of the projects deferred were parks-related projects for Bellaire Town Square. A large portion of funds for the Bellaire Town Square projects was expected to come from fundraising events sponsored by the Patrons for Bellaire Parks, Inc. It was difficult in today’s economy to raise private funds; therefore, those projects were deferred.

Since the History Walk, proposed by the Bellaire Arts Commission, had already been approved and scheduled for completion during 2009, City Manager Satterwhite recommended approving the conceptual plan for Paseo Park so that City Staff could ensure that plinths related to the History Walk could be installed in locations that fit the long-term vision for Paseo Park.
AMENDMENT (NO. 1) TO MOTION TO ADOPT ORDINANCE ACCEPTING FEE PROPOSAL:

An amendment (no. 1) was made by Councilman Pat McLaughlan and seconded by Councilman James P. Avioli, Sr., to amend the Standard Form of Agreement with Clark Condon Associates, Inc., to include the following sentence at the end of the paragraph describing the project on page one:

The Bellaire Arts Commission and the Bellaire Historical Society shall also cooperate in recommendations as a part of the conceptual plan process.

DISCUSSION REGARDING AMENDMENT (NO. 1) TO MOTION TO ADOPT ORDINANCE ACCEPTING FEE PROPOSAL:

Councilman McLaughlan advised that he wished to make the amendment because he felt that it was important for the Bellaire Historical Society and Bellaire Arts Commission to be involved in the conceptual plan process. By adding the sentence he had suggested in his amendment, the cooperative effort of all three groups (i.e., Bellaire Parks & Recreation Advisory Board, Bellaire Arts Commission, and Bellaire Historical Society) would be tied together.

Councilman Nauert indicated that he believed that this was a good idea; however, he could not support more people being involved. In his experience, the more people involved in a project, the larger the project would become. He also expressed concern that the cost of the project might increase with more group involvement. Councilwoman Mandy Nathan agreed with Councilman Nauert, but noted that she fully expected that the Bellaire Arts Commission and the Bellaire Historical Society would have an opportunity to contribute to the final plan and hoped that it would happen.

Councilman McLaughlan argued that adding more citizen involvement from the Bellaire Arts Commission and Bellaire Historical Society would not delay the process. Instead, the project would be richer as a result of the additional input.

VOTE ON AMENDMENT (NO. 1) TO MOTION TO ADOPT ORDINANCE ACCEPTING FEE PROPOSAL:

Motion failed on a 2-3 vote as follows:

FOR: Avioli, James P., Sr.
     McLaughlan, Pat

OPPOSED: Faulk, Peggy
OPPOSED (CONT.):  Nauert, Phil  
Nathan, Mandy  

ABSENT:  Siegel, Cindy  
Hickman, Will  

VOTE ON ORIGINAL MOTION:  

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

FOR:  Avioli, James P., Sr.  
Faulk, Peggy  
Nauert, Phil  
McLaughlan, Pat  
Nathan, Mandy  

OPPOSED:  None  

ABSENT:  Siegel, Cindy  
Hickman, Will  

{Ordinance was subsequently numbered: 09-084}  

Code Amendment  

3. CONSIDERATION of and possible action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, amending Chapter 30, Traffic and Vehicles, Article II, Traffic Control Regulations, Division 1, Generally, of the Code of Ordinances of the City of Bellaire, Texas, by adding a new Section 30-34, Electronic messaging while driving, thereto, for the purpose of making it unlawful to send electronic messages while driving – Item submitted by City Attorney Alan P. Petrov on behalf of Councilman Pat McLaughlan.  

MOTION TO ADOPT ORDINANCE:  

A motion was made by Councilman Pat McLaughlan and seconded by Councilman James P. Avioli, Sr., to adopt an ordinance of the City Council of the City of Bellaire, Texas, amending Chapter 30, Traffic and Vehicles, Article II, Traffic Control Regulations, Division 1, Generally, of the Code of Ordinances of the City of Bellaire, Texas, by adding a new Section 30-34, Electronic messaging while driving, thereto, for the purpose of making it unlawful to send electronic messages while driving.
DISCUSSION ON MOTION TO ADOPT ORDINANCE:

Councilman Pat McLaughlan indicated that he had asked for this item to be placed on the agenda and noted that many communities were looking at bringing about safer driving by limiting texting while driving. The City of West University Place, Texas, was considering a very similar ordinance to the one presented to the Bellaire City Council.

Mayor Pro Tem Peggy Faulk advised that she was typically opposed to too many laws. This one, however, was one that she could support. She inquired as to the consequences of breaking this law, how the public would be educated about the new law, and when the law would go into effect.

City Attorney Alan P. Petrov advised that a citation issued for texting while driving would be a Class C misdemeanor subject to a fine of up to $500. The Bellaire Municipal Court would set the exact amount of the fine. City Manager Bernard M. Satterwhite, Jr., advised that the text of the ordinance would be publicized as a legal notice in the newspaper. Signage would also have to be posted by the City to inform motorists that texting while driving was prohibited in the corporate limits of Bellaire. City Attorney Petrov noted, too, that the City’s Charter directed the publication of the ordinance and that the ordinance would technically become effective ten days after publication in the newspaper. The Bellaire Police Department, however, would not be able to begin enforcement until the signage was installed.

Councilman James P. Avioli, Sr., noted that implementation of the ordinance might be a little challenging and that motorists might have questions as to the interpretation of the ordinance regarding whether or not they were actually “texting” and/or “driving while texting.” City Attorney Petrov responded that he had drafted Bellaire and West University Place’s ordinances on an ordinance that was passed by Austin in October. The original ordinance he had presented to the City of West University Place contained some affirmative defenses that placed the burden on citizens to prove that the defenses were in place. The City of West University Place wanted their ordinance rewritten to remove the affirmative defenses and to add language indicating that it would still be a violation to text while at a stop sign or stoplight.

Councilman Nauert commended Councilman McLaughlan for bringing this item to the Council table. He agreed that there was no safe way to text while driving and suggested that Bellaire consider amending the ordinance before them to include the language that the City of West University Place had added to their ordinance.
AMENDMENT (NO. 1) TO MOTION TO ADOPT ORDINANCE:

An amendment (no. 1) was made by Councilman Phil Nauert and seconded by Councilwoman Mandy Nathan to add the language in bold typeface to subsection (b) of Section 30-34, Electronic messaging while driving (Appendix A to Ordinance):

(b) A driver of a motor vehicle may not use a wireless communication device to view, send, or compose an electronic message while operating a motor vehicle in a driving lane, including when stopped (for example, at a stop sign or traffic light), except for:

VOTE ON AMENDMENT (NO. 1) TO MOTION TO ADOPT ORDINANCE:

Motion carried on a 4-1 vote as follows:

FOR:  Avioli, James P., Sr.
       Nauert, Phil
       McLaughlan, Pat
       Nathan, Mandy

OPPOSED:  Faulk, Peggy

ABSENT:  None

VOTE ON ORIGINAL MOTION, AS AMENDED:

Original motion, as amended, carried unanimously on a 5-0 vote as follows:

FOR:  Avioli, James P., Sr.
       Faulk, Peggy
       Nauert, Phil
       McLaughlan, Pat
       Nathan, Mandy

OPPOSED:  None

ABSENT:  Siegel, Cindy
          Hickman, Will

{Ordinance was subsequently numbered: 09-085}
H. COMMUNITY INTEREST ITEMS FROM THE MAYOR AND CITY COUNCIL.

Councilman Phil Nauert congratulated all things that made Bellaire a neat small town, such as the Bellaire Police and Fire Department fundraiser, Holiday in the Park, and the City’s commitment to the new Fire Station. Councilman Pat McLaughlan and Mayor Pro Tem Peggy Faulk echoed the comments made by Councilman Nauert. Mayor Pro Tem Faulk also encouraged everyone to participate in the City’s Runoff Election, noting that early voting would end on Tuesday and that the polls would be open on Election Day, Saturday, December 12, 2009, from 7:00 a.m. until 7:00 p.m.

Councilman James P. Avioli, Sr., gave a special thanks to those that fought and died for America 68 years ago at Pearl Harbor. He advised that the liberty we had today was due to the reaction of those fighting at Pearl Harbor.

I. ADJOURNMENT.

MOTION TO ADJOURN:

A joint motion was made by Councilman Phil Nauert and Councilman Pat McLaughlan and seconded by Councilwoman Mandy Nathan to adjourn the Regular Session of the City Council of the City of Bellaire, Texas, at 8:27 p.m. on Monday, December 7, 2009.

VOTE ON MOTION TO ADJOURN:

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

FOR: Avioli, James P., Sr.  
      Faulk, Peggy  
      Nauert, Phil  
      McLaughlan, Pat  
      Nathan, Mandy

OPPOSED: None

ABSENT: Siegel, Cindy  
         Hickman, Will

Respectfully submitted,

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