

MINUTES OF THE CITY COUNCIL

CITY OF AUSTIN, TEXAS

Regular Meeting

July 3, 1968

10:00 A.M.

Council Chamber, City Hall

---

The meeting was called to order with Mayor Akin presiding.

Roll Call:

Present: Mayor Akin, Councilmen Janes, LaRue, Long, Nichols  
Absent: None

Present also: R. M. Tinstman, City Manager; Doren R. Eskew, City Attorney

Invocation was delivered by FATHER RICHARD McCABE, Catholic Charities Headquarters.

Councilman LaRue moved that the receipt of Financial Statement for eight months period ending May 31, 1968, be noted. The motion, seconded by Councilman Nichols, carried by the following vote:

Ayes: Mayor Akin, Councilmen Janes, LaRue, Long, Nichols  
Noes: None

The Council had before it the following:

"July 1, 1968

M & C # 8 (Supplement)

"Honorable Mayor and  
Members of the City Council  
City of Austin  
Austin, Texas

"Police Policies and Procedures:  
Apprehension and Use of Fire Arms

"Gentlemen and Mrs. Long:

"This should be considered as supplemental to the previous Communication submitted to you under date of May 9, 1968 on this same subject.

"After further study and review with various interested parties, you will find attached a revised special order that would be issued by the Chief of Police concerning apprehension and use of fire arms, etc.

"This revised document is regarded as an improvement over the previous document. It differs primarily in the inclusion of verbatim portions of pertinent State statutes. In addition, some additional revision has been made as to the procedures

July 3, 1968

that would be followed in the event of a person being injured as a result of discharge of a police fire arm.

"Copies of this special order would be made available to every commissioned police officer in the Department and would be included as a significant subject in cadet and in service training in the Police Department.

"Your prompt endorsement of this revised special order is recommended.

Respectfully submitted,

/s/ R. M. Tinstman  
City Manager"

"POLICE DEPARTMENT

DEPARTMENTAL PROCEDURE IN THE USE OF FORCE AND FIRE ARMS

I. POLICY IN GENERAL

"A. Persons arrested shall be protected in their rights, given humane treatment and no verbal abuse or unnecessary physical force shall be directed against them. No officer shall wilfully mistreat - or use unnecessary force upon any person.

"B. Charges are occasionally made that officers use unreasonable force in carrying out their duties. These charges usually result from situations where physical force is used to effect an arrest. Accusations of excessive force are sometimes accompanied by charges that police are arbitrary in their enforcement of the law, that they harass people or that they use objectionable language.

"C. It is too much to expect that everyone who is the subject of police action will agree that police conduct is always proper. Everyone, however, should recognize that there are cases in which police must use force in protecting themselves and the public or in preserving peace and order while enforcing the law.

It is recognized that police have no right to inflict punishment or to use more force than is necessary to effect an arrest. It is the policy of this Department that excessive force will not be tolerated. Appropriate action will result when an investigation shows such charges to be true. The guidelines on which this policy is based are as follows:

II. DEFENSE AGAINST ATTACKS

"A. By law, officers are required to arrest violators. They are required to use such force as is necessary to effect the arrest. They are not permitted to use more force than is needed. If no resistance is offered then no force will be used.

"B. This Department will not permit attacks on police engaged in the performance of their official duties. They are permitted and directed to defend themselves when physically attacked.

"C. In a case where an officer must defend himself from physical attack the policy is as follows: Any action taken by an officer in defending himself will be considered warranted, providing each of the following factors are present, taking into account any special circumstances.

- "1. He is acting officially as a policeman and is within the boundaries of his legal authority.
2. He has sufficient cause, as would appear real and reasonable to a prudent police officer, to fear for his personal safety or that of another person.

- "3. The means and force used by him is such that a prudent officer would not consider it to be excessive, unreasonable or unnecessary.
- "4. The officer sees no alternative available to him, considering his obligation not to retreat from his official duty, his inherent right to protect himself and his duty to protect others.

#### "III. USE OF FORCE IN OVERCOMING RESISTANCE

"A. In a case where there is no physical attack on the officer, but when force must be used in overcoming resistance in the lawful performance of his duties and there is no immediate or apparent danger calling for self defense, his actions would fall within the definition of necessary force, provided that each of the following factors are present, taking into account any special circumstances:

- "1. He is acting officially as a policeman within the restrictions imposed upon him by law.
- "2. He carries out his duties impartially.
- "3. He is firm without being unreasonable.
- "4. He provides reasonable opportunity for compliance with the law.
- "5. He uses proper force only after all other means have failed.
- "6. The force used by him is not more than is needed to produce compliance.
- "7. "Lawful violence" as defined in Art. 1142 of the Penal Code is quoted verbatim below.

#### "Art. 1142 PC: LAWFUL VIOLENCE

Violence used to the person does not amount to any assault or battery in the following cases;

- 1. In the exercise of the right of moderate restraint or correction given by law to the parent over the child, the guardian over the ward, the master over his apprentice, the teacher over the scholar.
- 2. To preserve order in a meeting for religious, political or other lawful purposes.
- 3. To preserve the peace, or to prevent the commission of offenses.
- 4. In preventing or interrupting an intrusion upon the lawful possession of property.
- 5. In making a lawful arrest and detaining the party arrested, in obedience to the lawful order of a magistrate or court, and in overcoming resistance to such lawful order.
- 6. In self defense, or in defense of another against unlawful violence offered to his person or property.
- 7. Where violence is permitted to effect a lawful purpose, only that degree of force must be used which is necessary to effect such purpose.

"B. Officers when not in uniform must take steps to clearly identify themselves.

#### IV. USE OF IMPROPER LANGUAGE

"A. Another type of situation is that in which the officer is charged with using discourteous, abusive, or insulting language. It is the policy of this Department that officers will not use such language under any circumstances. Officers are trained to enforce the law impartially and impersonally. When it is necessary for them to give orders or otherwise address people, they will do so in professional business-like language. The policy of this matter is as follows:

- "1. An officer will not use profanity or derogatory terms in the performance of his duties.
2. An officer will not address people in harsh, belittling terms nor use undue familiarity in the performance of his duties.
3. When it is necessary for an officer to issue orders, give warnings, or request co-operation, he will do so in clear positive terms using normal civil language. He is expected to speak positively and emphatically as the circumstances require it.

"B. The use of profanity, obscenity or other form of verbal abuse directed against an officer shall never be considered as justification for the officer striking or abusing a person. When such statements are made, however, and constitute a violation of the law the officer may file appropriate charges.

#### V. USE OF DEADLY FORCE

It should be remembered by all officers that a life once taken cannot be returned and that all other possible means should be taken before deadly force is used.

Homicide by an officer is justified only under the conditions as prescribed in the following statutes of the Penal Code and the Code of Criminal Procedures which are quoted verbatim below:

##### A. Generally

Art. 1207 PC - When justifiable

Art. 1208 PC - Killing a public enemy

##### B. When Making Arrests

Art. 14.05 CCP - Rights of officer

Art. 15.24 CCP - What force may be used

Art. 1210 PC - By officer in execution of lawful order

Art. 1211 PC - Even though order is erroneous

Art. 1212 PC - Qualification of foregoing

Art. 15.26 CCP - Authority to arrest must be made known

Art. 1213 PC - Order may be written or verbal

Art. 1214 PC - "Written Order"

Art. 1215 PC - Verbal order justifies only in felony

Art. 1216 PC - Persons aiding officer justified

Art. 1217 PC - Persons aiding escape

Art. 1219 PC - In suppressing riots

Art. 8.04 CCP - Dispersing Riot

Art. 8.06 CCP - Means adopted to suppress

##### C. In Defense of Persons or Property

Art. 1221 PC - In defense of person or property

Art. 1222 PC - In preventing felonies, etc.

Art. 1223 PC - Presumption from Weapon of Deceased

Art. 1224 PC - Defense against milder attack

Art. 1225 PC - Retreat not necessary

Art. 1226 PC - Requisites of the attack

Art. 1227 PC - Defense of property

Art. 1228 PC - "Excusable Homicide"

##### A. GENERALLY

Art. 1207 PC - When Justifiable

Homicide is justifiable in the cases enumerated in the succeeding Articles of this chapter.

Art. 1208 PC: Killing A Public Enemy:

It is lawful to kill a public enemy, not only in the prosecution of war, but when he may be in the act of hostile invasion or occupation of any part of the State. A public enemy is any person acting under the authority or enlisted in the service of any government at war with this State or with the United States. Homicide of a public enemy by poison or by the use of poisoned weapons is not justifiable. Homicide of a public enemy who is a deserter or prisoner of war or the bearer of a flag of truce is not justifiable.

"B. WHEN MAKING ARRESTSArt. 14.05 CCP: Rights of Officer

In each case enumerated where arrests may be lawfully made without warrant, the officer or person making the arrest is justified in adopting all the measures which he might adopt in cases of arrest under warrant.

Art. 15.24 CCP: What Force May be Used

In making an arrest, all reasonable means are permitted to be used to effect it. No greater force, however, shall be resorted to than is necessary to secure the arrest and detention of the accused.

Art. 1210 PC: By Officer in Execution of Lawful Order

Homicide by an officer in the execution of lawful orders of magistrates and courts is justifiable when he is violently resisted and has just grounds to fear danger to his own life in executing the order.

Art. 1211 PC: Even Though Order is Erroneous

The officer is justifiable though there may have been an error of judgment on the part of the magistrate or court, if the order emanated from proper authority.

Art. 1212 PC: Qualifications of the Foregoing

The rule set forth in the two preceding articles is subject to the following restrictions:

1. The order must be that of a magistrate or a court having lawful authority to issue it.
2. It must have such form as the law required to give it validity.
3. The person executing the order must be some officer duly authorized by law to execute the order, or some person specially appointed in accordance with law for the performance of the duty.
4. If the person executing the order be an officer and performing a duty which no other person can by law perform he must have taken the oath of office and given bond, where such is required by law.
5. The order must be executed in the manner directed by law, and the person executing the same must make known his purpose and the capacity in which he acts.
- \*\*6. If the order be a written one, and the person against whom it issues, before resistance offered, wishes to see the same or hear it read the person charged with its execution shall produce the order and show it or read it. (See Art. 15.26 CCP on the following page for a revision of this section.)

7. In making an arrest under a written order, the person acting under such order shall, in all cases, declare to the party against whom it is directed the offense of which he is accused, and state the nature of the warrant, unless prevented therefrom by the act of the party to be arrested.
8. The officer or other person executing an order or arrest is required to use such force as may be necessary to prevent an escape when it is attempted, but he shall not in any case kill one who attempts to escape, unless in making or attempting such escape the life of the officer is endangered, or he is threatened with great bodily injury.
9. In overcoming a resistance to the execution of an order, the officer or person executing the same may oppose such force as is necessary to overcome the resistance, but he shall not take the life of the person resisting unless he has just ground to fear that his own life will be taken or that he will suffer great bodily injury in the execution of the order.
10. A prisoner under sentence of death or of imprisonment in the penitentiary or attempting to escape from the penitentiary may be killed by the person having legal custody of him, if his escape can in no other manner be prevented.

**\*\*Art. 15.26 CCP: Authority to Arrest Must be Made Known**

In executing a warrant of arrest, it shall always be made known to the accused under what authority the arrest is made. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, provided the warrant was issued under the provisions of this code, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of arrest he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued.

**Art. 1213 PC: Order May be Written or Verbal**

The order referred to in this chapter may be either written or verbal, where a verbal order is allowed for the arrest of a person.

**Art. 1214 PC: "Written Order"**

Under written orders are included all process in a criminal or civil action which directs the seizure of the person or of property.

**Art. 1215 PC: Verbal Order Justifies Only in Felony**

No officer or other person ordered verbally to arrest another is justified in killing except the arrest be in a case of felony or for the prevention of a felony.

**Art. 1216 PC: Persons Aiding Officer Justified**

Persons called in aid of an officer, in the performance of a duty are justified in the same manner as the officer himself.

**Art. 1217 PC: Persons Aiding Escape**

All persons opposing the execution of the order, or aiding in an escape, may be treated in the same manner as the person against whom the order is directed or who is attempting to escape.

(It will be noted that the above article applies to all arrests when legally made, with or without a warrant of arrest.)

"Art. 1219 PC: In Suppressing Riots

Homicide is justifiable when necessary to suppress a riot when the same is attempted to be suppressed in the manner pointed out in the Code of Criminal Procedure, and can in no way be suppressed except by taking life.

Art. 8.04 CCP: Dispersing Riot

Whenever a number of persons are assembled together in such a manner as to constitute a riot, according to the penal law of the State, it is the duty of every magistrate or peace officer to cause such persons to disperse, this may either be done by commanding them to disperse or by arresting the persons engaged, if necessary, either with or without warrant.

Art. 8.06 CCP: Means Adopted to Suppress

The officer engaged in suppressing a riot, and those who aid him are authorized and justified in adopting such measures as are necessary to suppress the riot, but are not authorized to use any greater degree of force than is requisite to accomplish that object.

"C. IN DEFENSE OF PERSONS OR PROPERTY

Art. 1221 PC: In Defense of Person or Property

Homicide is permitted in the necessary defense of person or property, under the circumstances and subject to the rules herein set forth.

Art. 1222 PC: In Preventing Felonies, Etc.

Homicide is justifiable when inflicted for the purpose of preventing murder, rape, robbery, maiming, disfiguring, castration, arson, burglary and theft at night, or when inflicted upon a person or persons who are found armed with deadly weapons and in disguise in the night time on premises not his or their own, whether the homicide is committed by the party about to be injured or by another in his behalf, when the killing takes place under the following circumstances.:

1. It must reasonably appear by the acts or by words coupled with the acts of the person killed that it was the purpose and intent of such person to commit one of the offenses above named.
2. The killing must take place while the person killed was in the act of committing the offense, or after some act done by him showing evidently an intent to commit such offense.
3. It must take place before the offense committed by the party killed is actually completed, except that in case of rape the ravisher may be killed at any time before he has escaped from the presence of his victim, and except also in the cases hereinafter enumerated.
4. Where the killing takes place to prevent the murder of some other person, it shall not be deemed that the murder is completed so long as the offender is still inflicting violence, though the mortal wound may have been given.
5. If homicide takes place in preventing a robbery, it is justifiable if done while the robber is in the presence of the one robbed or is flying with the property taken by him.
6. In cases of maiming, disfiguring or castration, the homicide may take place at any time while the offender

is mistreating with violence the person injured, though he may have completed the offense.

7. In case of arson the homicide may be inflicted while the offender is in or at the building or other property burnt, or flying from the place before the destruction of the same.
8. In cases of burglary and theft by night, the homicide is justifiable at any time while the offender is in the building or at the place where the theft is committed, or is within reach of gunshot from such place or building.
9. When the party slain in disguise is engaged in any attempt by word, gesture or otherwise to alarm some other person or persons and put them in bodily fear.

Art. 1223 PC: Presumption From Weapon of Deceased

When the homicide takes place to prevent murder, maiming, disfiguring or castration, if the weapon or means used by the party attempting or committing such murder, maiming, disfiguring or castration are such as would have been calculated to produce that result, it is to be presumed that the person so using them designed to inflict the injury.

Art. 1224 PC: Defense Against Milder Attack

Homicide is justifiable also in the protection of the person or property against any other unlawful and violent attack besides those mentioned, and in such cases all other means must be resorted to for the prevention of the injury, and the killing must take place while the person killed is in the very act of making such unlawful and violent attack, and any person interfering in such case in behalf of the party about to be injured is not justified in killing the aggressor unless the life or person of the injured party is in peril by reason of such attack upon his property.

Art. 1225 PC: Retreat Not Necessary

The party whose person or property is so unlawfully attacked is not bound to retreat in order to avoid the necessity of killing his assailant.

Art. 1226 PC: Requisites of the Attack

The attack upon the person of an individual in order to justify homicide must be such as produces a reasonable expectation or fear of death or some serious bodily injury.

Art. 1227 PC: Defense of Property

When under Article 1224 a homicide is committed in the protection of property, it must be done under the following circumstances:

1. The possession must be of corporeal property, and not of a mere right, and the possession must be actual and not merely constructive.
2. The possession must be legal, though the right of the property may not be in the possessor.
3. If possession be once lost, it is not lawful to regain it by such means as result in homicide.
4. Every other effort in his power must have been made by the possessor to repel the aggression before he will be justified in killing.

"Art. 1228 PC: "Excusable Homicide"

Homicide is excusable when the death of a human being happens by accident or misfortune, though caused by the act of another who is in the prosecution of a lawful object by lawful means.

(It should be noted that this statute is applicable to all of the other statutes enumerated above.)

Every reasonable effort should be made to effect the apprehension of an offender without the use of deadly force or unnecessary risk or danger to other persons. Under no circumstances should an officer interpret these statutes in such a manner as to jeopardize his own life, his personal safety or that of another.

"VI. REPORTING PROCEDURE WHEN PERSONAL INJURIES ARE INVOLVED OR FIRE ARMS ARE DISCHARGED"

A. The procedure set forth below will be followed in all cases when one or more of the following incidents occur during the apprehension or attempted apprehension of a person.

1. When such force is used in making the arrest as to require that the prisoner receive medical attention before being placed in jail; or
2. When the officer is the victim of an aggravated assault; or
3. Whenever an officer discharges a firearm for any reason.

"B. The procedure in such cases will be as follows:

1. The officer involved will immediately notify his immediate supervisory officer and also submit a written memorandum to him which fully explains the incident. This memorandum will be forwarded through channels without delay, to the Chief of Police.
2. The officer's supervisor will immediately notify the Captain of Police or the officer acting in that capacity. That supervisor will call CID between the hours of 7:00 A.M. and 1:00 A.M. for an investigator to be assigned to make the investigation. Between the hours of 1:00 A.M. and 7:00 A.M. the initial investigation will be made by any supervisory officer or CID investigator designated by the Captain of Police.
3. When the incident involves the discharge of a firearm, the officer responsible will appear, along with his supervisory officers, before the Chief of Police and designated members of his staff on the morning of the next day to personally render an account of his actions. At that time consideration will be given a possible suspension or restricted duty, pending further investigation, or referral to the County Attorney or District Attorney for consideration by the Grand Jury.
4. When the incident involves the discharge of a firearm and the wounding or killing of an alleged offender, or when the injuries sustained by the offender prove fatal, the arresting officer will be automatically suspended, without prejudice, with pay pending a thorough investigation of the incident by his supervisory officers, the Chief of Police and designated members of his staff on the morning of the next day. Upon completion of the investigation, consideration will be given to a possible indefinite suspension, restricted duty or referral to the County or District Attorney for consideration by the

"Grand Jury. Consideration will also be given to restoring the officer to active duty, depending upon the results of the investigation.

"C. Nothing contained herein shall be construed as requiring any officer to waive any of the constitutional, statutory, or procedural rights and privileges to which all persons are entitled."

The City Manager stated this was a revised and improved document which was in the form of a special order that would be issued by the Chief of Police pursuant to any endorsement by the City Council. He said they had met with interested parties concerning the document previously submitted to the Council and the most significant change was the inclusion with verbatim quotation of various state statutes, as in the document previously submitted there were considerable less portions of state statutes which were quoted verbatim for the guidance and observance of the individual police officer and included also were additional state statutes which the officer should be aware of and should be conscious of as he performs his duties.

Councilman Long stated she thought this certainly strengthened the police policies and procedures and she moved that the Council accept the policy and congratulate the City Manager. The motion was seconded by Councilman Nichols. Councilman LaRue asked for a little more time to study stating in reality he had only one day to look at this and he would be opposed to the passage of a procedural matter such as this being passed out to all of the police officers of the City and establishing this as the policy of the City without having had more than one day to study it. Mayor Akin stated he considered this a good piece of work and he thought it strengthened the policies for guidance of police officers. Councilman Nichols commended Chief Miles and stated he appreciated his face to face dialogue with interested citizens in order to come up with the solution to the procedures. Councilman Janes stated he had read the document and he felt there was no basic change but spells them out in detail. The City Manager stated they still might not have the most perfect document for the Council's consideration but any document of this type should be subject to review and change for purposes of improvement whenever the need would arrive and he would not hesitate to bring to the Council any further recommendations for change or improvement.

Roll call on Councilman Long's motion that the Council accept the policy and congratulate the City Manager carried by the following vote:

Ayes: Councilmen Janes, Long, Nichols, Mayor Akin  
Noes: Councilman LaRue

#### ANNUAL REPORT OF THE POLICE DEPARTMENT

The City Manager noted the Annual Report of the Police Department for 1967 had been sent to the Council. Councilman Janes moved that the receipt of the report be noted and commended the Department for the Report. The motion, seconded by Councilman Nichols, carried by the following vote:

Ayes: Councilmen LaRue, Long, Nichols, Mayor Akin, Councilman Janes  
Noes: None

#### ANNEXATION

Mayor Akin brought up the following ordinance for its third reading.

AN ORDINANCE PROVIDING FOR THE EXTENSION OF CERTAIN BOUNDARY LIMITS OF THE CITY OF AUSTIN AND THE ANNEXATION OF CERTAIN ADDITIONAL TERRITORY CONSISTING OF 47.45 ACRES OF LAND, SAME BEING OUT OF AND A PART OF THE HENRY P. HILL LEAGUE IN TRAVIS COUNTY, TEXAS; WHICH SAID ADDITIONAL TERRITORY LIES ADJACENT TO AND ADJOINS THE PRESENT BOUNDARY LIMITS OF THE CITY OF AUSTIN, IN PARTICULARS STATED IN THE ORDINANCE.

The ordinance was read the third time and Councilman LaRue moved that the ordinance be finally passed. The motion, seconded by Councilman Nichols, carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilmen Janes, LaRue  
Noes: Councilman Long

Councilman Long voting "no" stated that it was against her policy to vote "aye" when it was only partially requested.

#### ZONING ORDINANCES

Mayor Akin brought up the following ordinance for its second reading:

AN ORDINANCE ORDERING A CHANGE IN USE AND HEIGHT AND AREA AND CHANGING THE USE AND HEIGHT AND AREA MAPS ACCOMPANYING CHAPTER 39 OF THE AUSTIN CITY CODE OF 1954 AS FOLLOWS: 5-1/2 ACRES OF LAND, MORE OR LESS, OUT OF THE JAMES W. MITCHELL ONE-THIRD LEAGUE, SURVEY NO. 17, LOCALLY KNOWN AS 8132-8160 BALCONES DRIVE AND REAR OF 8132-8160 BALCONES DRIVE, FROM INTERIM "A" RESIDENCE DISTRICT AND INTERIM FIRST HEIGHT AND AREA DISTRICT TO "BB" RESIDENCE DISTRICT AND FIRST HEIGHT AND AREA DISTRICT; SAID PROPERTY BEING LOCATED IN AUSTIN, TRAVIS COUNTY, TEXAS; AND SUSPENDING THE RULE REQUIRING THE READING OF ORDINANCES ON THREE SEPARATE DAYS.

The ordinance was read the second time and Councilman Nichols moved that the ordinance be passed to its third reading. The motion, seconded by Councilman Long, carried by the following vote:

Ayes: Councilmen Nichols, Janes, Long  
Noes: Mayor Akin, Councilman LaRue

Mayor Akin introduced the following ordinance:

AN ORDINANCE ORDERING A CHANGE IN USE AND CHANGING THE USE MAPS ACCOMPANYING CHAPTER 39 OF THE AUSTIN CITY CODE OF 1954 AS FOLLOWS:  
LOTS 5, 6, 7, BLOCK N OF THE JAMES E. BOULDIN ADDITION, LOCALLY KNOWN AS 909-913 WEST MARY STREET, FROM "A" RESIDENCE DISTRICT TO "B" RESIDENCE DISTRICT; SAID PROPERTY BEING LOCATED IN AUSTIN, TRAVIS COUNTY, TEXAS; AND SUSPENDING THE RULE REQUIRING THE READING OF ORDINANCES ON THREE SEPARATE DAYS.

The ordinance was read the first time and Councilman Nichols moved that the rule be suspended and the ordinance be passed to its second reading. The motion, seconded by Councilman Long, carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilmen Janes, LaRue, Long  
Noes: None

The ordinance was read the second time and Councilman Nichols moved that the rule be suspended and the ordinance be passed to its third reading. The motion, seconded by Councilman Long, carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilmen Janes, LaRue, Long  
Noes: None

The ordinance was read the third time and Councilman Nichols moved that the ordinance be finally passed. The motion, seconded by Councilman Long, carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilmen Janes, LaRue, Long  
Noes: None

The Mayor announced that the ordinance had been finally passed.

The Mayor introduced the following ordinance:

AN ORDINANCE ORDERING A CHANGE IN USE AND CHANGING THE USE MAPS ACCOMPANYING CHAPTER 39 OF THE AUSTIN CITY CODE OF 1954 AS FOLLOWS: A 10.04 ACRE TRACT OF LAND OUT OF THE JAMES P. WALLACE SURVEY NO. 57, LOCALLY KNOWN AS 8300-8314 GEORGIAN DRIVE AND THE REAR OF 8316-8402 GEORGIAN DRIVE, FROM "A" RESIDENCE DISTRICT TO "B" RESIDENCE DISTRICT; SAID PROPERTY BEING LOCATED IN AUSTIN, TRAVIS COUNTY, TEXAS; AND SUSPENDING THE RULE REQUIRING THE READING OF ORDINANCES ON THREE SEPARATE DAYS.

The ordinance was read the first time and Councilman Nichols moved that the rule be suspended and the ordinance be passed to its second reading. The motion, seconded by Councilman Long, carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilmen Janes, LaRue, Long  
Noes: None

The ordinance was read the second time and Councilman Nichols moved that the rule be suspended and the ordinance be passed to its third reading. The motion, seconded by Councilman Long, carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilmen Janes, LaRue, Long  
Noes: None

The ordinance was read the third time and Councilman Nichols moved that the ordinance be finally passed. The motion, seconded by Councilman Long carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilmen Janes, LaRue, Long  
Noes: None

The Mayor announced that the ordinance had been finally passed.

The Mayor introduced the following ordinance:

AN ORDINANCE ORDERING A CHANGE IN USE AND HEIGHT AND AREA AND CHANGING THE USE AND HEIGHT AND AREA MAPS ACCOMPANYING CHAPTER 39 OF THE AUSTIN CITY CODE OF 1954 AS FOLLOWS: A 7500 SQUARE FOOT TRACT OF LAND, LOCALLY KNOWN AS 1404 CLEARFIELD DRIVE, FROM INTERIM "A" RESIDENCE DISTRICT AND INTERIM FIRST HEIGHT AND AREA DISTRICT TO "B" RESIDENCE DISTRICT AND FIRST HEIGHT AND AREA DISTRICT; SAID PROPERTY BEING LOCATED IN AUSTIN, TRAVIS COUNTY, TEXAS; AND SUSPENDING THE RULE REQUIRING THE READING OF ORDINANCES ON THREE SEPARATE DAYS.

The ordinance was read the first time and Councilman Nichols moved that the rule be suspended and the ordinance be passed to its second reading. The motion, seconded by Councilman Long, carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilmen Janes, LaRue, Long  
Noes: None

The ordinance was read the second time and Councilman Nichols moved that the rule be suspended and the ordinance be passed to its third reading.

Ayes: Councilman Nichols, Mayor Akin, Councilmen Janes, LaRue, Long  
Noes: None

The ordinance was read the third time and Councilman Nichols moved that the ordinance be finally passed. The motion, seconded by Councilman Long, carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilmen Janes, LaRue, Long  
Noes: None

The Mayor announced that the ordinance had been finally passed.

The Mayor introduced the following ordinance:

AN ORDINANCE ORDERING A CHANGE IN USE AND HEIGHT AND AREA AND CHANGING THE USE AND HEIGHT AND AREA MAPS ACCOMPANYING CHAPTER 39 OF THE AUSTIN CITY CODE OF 1954 AS FOLLOWS: A 20,000 SQUARE FOOT TRACT OF LAND OUT OF THE GEORGE W. DAVIS SURVEY, ABSTRACT 217, LOCALLY KNOWN AS THE REAR OF 8443-8457 U. S. HIGHWAY 183 AND 8506 BEECH DRIVE, AND A 15,000 SQUARE FOOT TRACT OF LAND OUT OF THE GEORGE W. DAVIS SURVEY, ABSTRACT 217, LOCALLY KNOWN AS 1400-1402 CLEARFIELD DRIVE AND 8400-8402 BEECH DRIVE, FROM INTERIM "A" REISDENCE DISTRICT AND INTERIM FIRST HEIGHT AND AREA DISTRICT TO "B" RESIDENCE DISTRICT AND FIRST HEIGHT AND AREA DISTRICT; SAID PROPERTY BEING LOCATED IN AUSTIN, TRAVIS COUNTY, TEXAS; AND SUSPENDING THE RULE REQUIRING THE READING OF ORDINANCES ON THREE SEPARATE DAYS.

The ordinance was read the first time and Councilman Nichols moved that the rule be suspended and the ordinance passed to its second reading. The motion, seconded by Councilman Long, carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilmen Janes, LaRue, Long  
Noes: None

The ordinance was read the second time and Councilman Nichols moved that the rule be suspended and the ordinance be passed to its third reading. The motion, seconded by Councilman Long, carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilman Janes, LaRue, Long  
Noes: None

The ordinance was read the third time and Councilman Nichols moved that the ordinance be finally passed. The motion, seconded by Councilman Long, carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilman Janes, LaRue, Long  
Noes: None

The Mayor announced that the ordinance had been finally passed.

The Mayor introduced the following ordinance:

AN ORDINANCE ORDERING A CHANGE IN USE AND HEIGHT AND AREA AND CHANGING THE USE AND HEIGHT AND AREA MAPS ACCOMPANYING CHAPTER 39 OF THE AUSTIN CITY CODE OF 1954 AS FOLLOWS:  
TRACT 1: LOTS 1, 2 AND 3, LAWMONT SUBDIVISION, LOCALLY KNOWN AS 2129-2235 LAWMONT AVENUE, FROM "A" RESIDENCE DISTRICT AND FIRST HEIGHT AND AREA DISTRICT TO "B" RESIDENCE DISTRICT AND SECOND HEIGHT AND AREA DISTRICT; TRACT 2: LOTS 4 AND 5, LAWMONT SUBDIVISION, LOCALLY KNOWN AS 2130-2316 NORTH LOOP BOULEVARD, FROM "A" RESIDENCE DISTRICT AND FIRST HEIGHT AND AREA DISTRICT TO "LR" LOCAL RETAIL DISTRICT AND SECOND HEIGHT AND AREA DISTRICT; SAID PROPERTY BEING LOCATED IN AUSTIN, TRAVIS COUNTY, TEXAS; AND SUSPENDING THE RULE REQUIRING THE READING OF ORDINANCES ON THREE SEPARATE DAYS.

The ordinance was read the first time and Councilman Nichols moved that the rule be suspended and the ordinance be passed to its second reading. The motion, seconded by Councilman Long, carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilmen Janes, LaRue, Long  
Noes: None

The ordinance was read the second time and Councilman Nichols moved that the rule be suspended and the ordinance be passed to its third reading. The motion, seconded by Councilman Long, carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilmen Janes, LaRue, Long  
Noes: None

The ordinance was read the third time and Councilman Nichols moved that the ordinance be finally passed. The motion, seconded by Councilman Long, carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilmen Janes, LaRue, Long  
Noes: None

The Mayor announced that the ordinance had been finally passed.

## RELEASE OF OPTION

The Council had before it for consideration the request for release of option on property at I. H. 35 and Riverside Drive. Mr. Tinstman stated he had heard nothing more from either Cecil Warren or his attorney. Councilman Long moved to put this on the pending agenda and when and if they come up with a proposition that is worthy of discussion or that can be recommended the Council then hear it; and authorize the City Manager to write a letter to Mr. Warren indicating the Council's willingness to consider any new proposal. The motion, seconded by Councilman Janes, carried by the following vote:

Ayes: Mayor Akin, Councilmen Janes, LaRue, Long, Nichols  
Noes: None

## STREET VACATION

On Councilman Long's request the Director of Public Works, Mr. Reuben Rountree, explained a strip of land was dedicated some time ago for street purposes but was never used. In the meantime the alignment of Georgian Drive was changed and this is not now needed. After discussion Mayor Akin introduced the following ordinance:

AN ORDINANCE VACATING AND PERPETUALLY CLOSING FOR PUBLIC USE THAT CERTAIN PORTION OF GEORGIAN DRIVE IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS; SUSPENDING THE RULE REQUIRING THE READING OF AN ORDINANCE ON THREE SEPARATE DAYS; AND DECLARING AN EMERGENCY.

The ordinance was read the first time and Councilman Nichols moved that the rule be suspended and the ordinance be passed to its second reading. The motion, seconded by Councilman Janes, carried by the following vote:

Ayes: Councilmen Janes, LaRue, Long, Nichols, Mayor Akin  
Noes: None

The ordinance was read the second time and Councilman Nichols moved that the rule be suspended and the ordinance be passed to its third reading. The motion, seconded by Councilman Janes, carried by the following vote:

Ayes: Councilmen Janes, LaRue, Long, Nichols, Mayor Akin  
Noes: None

The ordinance was read the third time and Councilman Nichols moved that the ordinance be finally passed. The motion, seconded by Councilman Janes, carried by the following vote:

Ayes: Councilmen Janes, LaRue, Long, Nichols, Mayor Akin  
Noes: None

The Mayor announced that the ordinance had been finally passed.

Mayor Akin introduced the following ordinance:

AN ORDINANCE PROVIDING FOR THE EXTENSION OF CERTAIN BOUNDARY LIMITS OF THE CITY OF AUSTIN AND THE ANNEXATION OF CERTAIN ADDITIONAL TERRITORY CONSISTING OF 22.07 ACRES OF LAND OUT OF THE SANTIAGO DEL VALLE GRANT

27.79 ACRES OF LAND OUT OF THE J.A.G. BROOKS, H.T. DAVIS AND PATRICK LUSK SURVEYS; AND 17.28 ACRES OF LAND OUT OF THE JAMES P. WALLACE SURVEY NO. 57 AND THE WILLIS AVERY SURVEY; ALL BEING LOCATED IN TRAVIS COUNTY, TEXAS; WHICH SAID ADDITIONAL TERRITORY LIES ADJACENT TO AND ADJOINS THE PRESENT BOUNDARY LIMITS OF THE CITY OF AUSTIN, IN PARTICULARS STATED IN THE ORDINANCE.

Councilman Long moved that the ordinance be published in accordance with Article 1, Section 6, of the Charter of the City of Austin and set for public hearing at 10:30 A. M., July 18, 1968. The motion, seconded by Councilman Nichols, carried by the following vote:

Ayes: Councilmen LaRue, Long, Nichols, Mayor Akin, Councilman Janes  
Noes: None

#### BANNERS

Mr. Tinstman stated the request for a banner for the Aqua Festival had been brought before the Council because it was for a longer period of time than normal. Councilman Long inquired if banners hanging for that period of time would continue to be fresh as they did not want ragged banners hanging. Councilman LaRue moved to grant the permit for a street banner for Aqua Festival at 1st and Congress and 19th and Guadalupe from July 22nd to August 11th with the request that they keep the banners in good condition. The motion, seconded by Councilman Nichols, carried by the following vote:

Ayes: Councilmen Long, Nichols, Mayor Akin, Councilmen Janes, LaRue  
Noes: None

#### PARADE

Councilman Nichols moved that the Council grant the application of Dan Killen for a permit for Neighborhood Parade in Delwood II on July 4th from 9:30 A.M. to 11:00 A.M. The motion, seconded by Councilman LaRue, carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilmen Janes, LaRue, Long  
Noes: None

#### PUBLIC IMPROVEMENT

The City Manager submitted the following:

"Date June 28, 1968 Requested By A. M. Eldridge Department  
Construction Engineering

"The following listed bids were opened for INSTALLATION OF ADJUSTABLE FLOOR SYSTEM FOR ROOM 213, MUNICIPAL BUILDING on June 27, 1968 at 2 p.m. at the Construction Engineering Office.

"Bidder	"Base Bid
Rufus A. Walker & Company	\$6,285.00
Schwarz-Jordon, Inc.	\$6,522.00
Sam B. Willis Company	\$7,140.00

July 3, 1968

"Our estimate was \$9,000. The completion date is set by the proposal as July 31, 1968.

"This floor system is for accommodation of computer equipment in the area just vacated by Personnel Department.

"We join with Mr. Barker and Mr. McCaslin in recommending the award of the contract to the Lowest bidder, RUFUS A. WALKER & COMPANY at their low bid of \$6,285.00."

Councilman Long offered the following resolution and moved its adoption:

(RESOLUTION)

WHEREAS, bids were received by the City of Austin on June 27, 1968, for the installation of adjustable floor system for Room 213, Municipal Building; and,

WHEREAS, the bid of Rufus A. Walker & Company, in the sum of \$6,285.00, was the lowest and best bid therefor and the acceptance of such bid has been recommended by the Construction Engineer of the City of Austin and by the City Manager; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the bid of Rufus A. Walker & Company, in the sum of \$6,285.00 be and the same is hereby accepted, and that R. M. Tinstman, City Manager of the City of Austin, be and he is hereby authorized to execute a contract on behalf of the City, with Rufus A. Walker & Company.

The motion, seconded by Councilman Nichols, carried by the following vote:

Ayes: Mayor Akin, Councilmen Janes, LaRue, Long, Nichols

Noes: None

#### SIGNATURE AUTHORIZATION

Councilman Nichols offered the following resolution and moved its adoption:

(RESOLUTION)

WHEREAS, liens for street improvements against abutting property and the owners thereof are frequently paid by abutting property owners who are then entitled to have the City release said liens; and,

WHEREAS, it would be in the best interest of the City and such abutting property owners for acceptance of all amounts due to be promptly followed by the release of liens securing such obligations; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That R. M. Tinstman, City Manager, or another person duly authorized in writing by him to do so, shall be, and they are each hereby authorized and empowered to make, execute and deliver releases, for and in the name of the City of Austin, of any and all liens for assessments for street improvements in favor of the City of Austin, whenever the entire amount due the City therefor is paid in full.

The motion, seconded by Councilman Janes, carried by the following vote:  
 Ayes: Councilmen Janes, LaRue, Long, Nichols, Mayor Akin  
 Noes: None

Councilman Long stated she would like to make a reservation that they add to that resolution that the Council be notified as these liens were paid off, perhaps on a quarterly basis. The City Manager said he would have the Public Works Department prepare a list indicating the number as well as the amount of dollars and they would work something out.

#### SALE OF HOUSES

The City Manager submitted the following:

"BID OPENING, WEDNESDAY, JUNE 26, 1968				
	ODAS	ABRAHAM	AUGUST	WELDON
	JUNG	WINN	HEYER	JOHNSTON
"1196 CEDAR	\$ -0-	\$200.00	\$ 35.00	\$ 60.00
2603 VAIDEN	-0-	-0-	15.00	20.00
2375 WASHINGTON	-0-	-0-	25.60	22.00
2356 ROSEWOOD	151.00	-0-	-0-	1.00
2209 MARTHA	-0-	-0-	10.00	12.50
1004 WAYNE	-0-	-0-	20.50	18.00
1605 NEW YORK	-0-	-0-	31.60	37.00"

Councilman Long offered the following resolution and moved its adoption:

#### (RESOLUTION)

WHEREAS, bids were received by the City of Austin on June 26, 1968, for the sale of seven (7) houses that Urban Renewal had turned over to the City for disposal; and,

WHEREAS, the bid of Odas Jung in the sum of \$151.00 for house located at 2356 Rosewood to be demolished; the bid of Abraham Winn in the sum of \$200.00 for the house located at 1196 Cedar to be moved; the bids of August Heyer in the sum of \$25.60 for the house located at 2375 Washington to be demolished; and the bids of Weldon Johnston in the sum of \$20.00 for the house located at 2603 Vaiden to be demolished, and in the sum of \$37.00 for the house located at 1605 New York to be demolished, were the highest and best bids therefor, and the acceptance of such bids has been recommended by the Building Official of the City of Austin, and by the City Manager; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the above enumerated bids of Odas Jung, Abraham Winn, August Heyer and Weldon Johnston, be and the same are hereby accepted, and that R. M. Tinstman, City Manager of the City of Austin, be and he is hereby authorized to execute contracts, on behalf of the City, with said named parties.

The motion, seconded by Councilman Nichols, carried by the following vote:  
 Ayes: Councilmen LaRue, Long, Nichols, Mayor Akin, Councilman Janes  
 Noes: None

## REFUND CONTRACTS

Mayor Akin introduced the following ordinance:

AN ORDINANCE AUTHORIZING THE ASSISTANT TO THE CITY MANAGER TO ENTER INTO A CERTAIN CONTRACT WITH CECIL D. PERKINS, FOR THE APPROPRIATION OF MONEY PAID TO THE CITY OF AUSTIN UNDER SUCH CONTRACT; AND DECLARING AN EMERGENCY.

The ordinance was read the first time and Councilman LaRue moved that the rule be suspended and the ordinance be passed to its second reading. The motion, seconded by Councilman Nichols, carried by the following vote:

Ayes: Councilmen Long, Nichols, Mayor Akin, Councilmen Janes, LaRue  
Noes: None

The ordinance was read the second time and Councilman LaRue moved that the rule be suspended and the ordinance be passed to its third reading. The motion, seconded by Councilman Nichols, carried by the following vote:

Ayes: Councilmen Long, Nichols, Mayor Akin, Councilmen Janes, LaRue  
Noes: None

The ordinance was read the third time and Councilman LaRue moved that the ordinance be finally passed. The motion, seconded by Councilman Nichols, carried by the following vote:

Ayes: Councilmen Long, Nichols, Mayor Akin, Councilmen Janes, LaRue  
Noes: None

The Mayor announced that the ordinance had been finally passed.

Mayor Akin introduced the following ordinance:

AN ORDINANCE AUTHORIZING THE ASSISTANT TO THE CITY MANAGER TO ENTER INTO A CERTAIN CONTRACT WITH EUBANK LAND DEVELOPMENT COMPANY, FOR THE APPROPRIATION OF MONEY PAID TO THE CITY OF AUSTIN UNDER SUCH CONTRACT; AND DECLARING AN EMERGENCY.

The ordinance was read the first time and Councilman LaRue moved that the rule be suspended and the ordinance passed to its second reading. The motion, seconded by Councilman Nichols, carried by the following vote:

Ayes: Councilmen Long, Nichols, Mayor Akin, Councilmen Janes, LaRue  
Noes: None

The ordinance was read the second time and Councilman LaRue moved that the rule be suspended and the ordinance be passed to its third reading. The motion, seconded by Councilman Nichols, carried by the following vote:

Ayes: Councilmen Long, Nichols, Mayor Akin, Councilmen Janes, LaRue  
Noes: None

The ordinance was read the third time and Councilman LaRue moved that the ordinance be finally passed. The motion, seconded by Councilman Nichols, carried by the following vote:

July 3, 1968

Ayes: Councilmen Long, Nichols, Mayor Akin, Councilmen Janes, LaRue  
Noes: None

The Mayor announced that the ordinance had been finally passed.

MASTER PLAN CHANGE

Pursuant to published notice, at 10:30 A.M. the Mayor opened the hearing on amendment to Master Plan for area between I. H. 35, Cameron Road and Loop 111 and Rutherford Lane. The Council had before it the following:

"PLANNING COMMISSION/CITY OF AUSTIN

July 1, 1968

"To: City Council of the City of Austin  
From: Planning Commission

"SUBJECT: PROPOSED AMENDMENT TO MASTER PLAN FOR AREA BETWEEN I. H. 35 AND CAMERON ROAD AND FROM LOOP 111 TO RUTHERFORD LANE

"Mr. Edward Joseph made the initial request for redesignation of 71 acres of land from Low Density Residential to Commercial and Semi-Industrial designation (for storage, warehousing, contracting and other "heavy" commercial operations.) The additional area to the west (140 acres including the Texas Highway District 14 offices, shops and storage area) was included for purposes of consideration in relationship to the request.

"The requested change and the additional area were recommended by the staff of the Planning Department subject to provision of widening for Rutherford and Cameron, development of two north-south commercial collector streets and annexation of the area.

"Representatives of the E. C. McClure/Scarborough Estate property appeared in opposition to the request indicating that at least a portion of the property was subject to apartment development in the future. Mr. Karl Wagner appeared in opposition to the entire area being redesignated without protection for property to the north and widening and improvement of Rutherford Lane. Mr. Joseph objected to the staff recommendation for annexation.

"The Commission considered the matter and recommended denial of the proposed change by a vote of five to two.

"PLANNING COMMISSION  
City of Austin"

.....  
"EDWARD JOSEPH INVESTMENTS

"July 1, 1968

"Mayor and Members of the  
City Council  
City of Austin  
Austin, Texas

"Dear Mayor and Members of Council:

"With regard to my request for a change in the Master Plan from Low Density Residential to Commercial and Semi-Industrial for 71 acres located between Loop 111 and Rutherford Lane and to the west of Cameron Road, I wish to ask permission to withdraw the request.

"At present, I will be able to develop a portion of the property in accordance with the present provisions of the Master Plan. In the event that it is necessary, I will request reconsideration of the matter by the Planning Commission and the Council in the future.

"Thanking you in advance, I am

"Yours sincerely,

/s/ Edward Joseph"

Councilman Long stated that Mr. Joseph had asked that this be withdrawn. Mr. Karl Wagner, 1000 Rutherford Lane, pointed out there were some 800 odd acres in this general vicinity bounded by U. S. 183 on the south, Rundberg Lane on the north, I. H. 35 on the west and Cameron Road on the east and he urged the Council to consider seriously some sort of long range planning for this area as he thought this area demands and deserves good planning comparable to what had been done in the planned industrial development area surrounding it. He stated he would like to be on record as saying that he thought this area demanded overall planning. Councilman Long suggested that the land owners out there get together and try to work out an overall plan as the City cannot go in and work out a plan for these people, they would have to have a plan of their own. Councilman LaRue agreed with Mr. Wagner and he pointed out the building of some 3500 apartments in another area that would create a problem for all utility heads at least water, sewer, electricity and transportation and he felt they did need an opportunity to study this prior to the commitment.

It was brought out a large part of the area under discussion was outside the City limits. Councilman Nichols suggested the City Manager contact the Planning Department and Planning Commission and tell them of the request and the suggestions made and see what they might be able to do and he stated he felt sure they would contact Mr. Wagner.

Mayor Akin inquired what was the policy providing for the Planning Department to do the advanced planning as had been suggested under the extra territorial jurisdiction. The City Manager stated City government had the authorization, and to a considerable extent the responsibility for doing some general or overall planning of future development in the territorial area but it was a matter of budgetary consideration of how much commitment the municipal government or the citizens of the community are willing to make not only for advanced planning and anticipating future development within the corporate limits but also in the extra territorial area. Mr. Hoyle Osborne, Planning Director, stated they could plan for basic roadway systems, like major and collector streets, and in a general sense they could plan land uses, but basically it boiled down to the private developers or private owners in effect coming up with proposals and their review. He said in terms of their effectiveness the problem at the present time was over the past five years there had been major changes in the attitudes and the

economics in planned development with respect to character of development occurring. He cited the very large scale introduction of apartments and industry into the outlying areas and the effects this had. He stated at the present time Rutherford Lane was proposed to be 70' wide and the County was willing to improve this street in terms of County standards but one or two of the land owners were not in agreement with this and as a result Rutherford Lane remained about 20 feet wide in terms of pavement. Councilman Nichols stated he thought this should be under Regional Planning. Further discussion of City authority, the keeping of the master plan up to date, and short discussion of the annexation policy was held. Mr. Joseph was present but did not make a statement.

Councilman Long moved that the Council authorize Mr. Joseph to withdraw his plan. The motion, seconded by Councilman LaRue, carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilmen Janes, LaRue, Long  
Noes: None

#### BUS FRANCHISE ORDINANCE HEARING

At 10:30 A.M. Mayor Akin opened the hearing on the Bus Franchise Ordinance. Councilman Long inquired what the City has now in the way of an ordinance or franchise for buses operating in the City and why this ordinance was being brought up at this time. The City Attorney explained the City now has in existence two bus franchises which have been granted without there being any general regulation on the subject. One was first granted to the Austin Street Railway Company and finally was transferred to the Austin Transit Company which is now in operation and their franchise extends to 1969. The Council granted another franchise for limited bus service from the Montopolis community to a connection with the existing Austin Transit Company's service on 5th Street. Councilman Long stated there was now operating in the City a private bus taking students to and from different dormitories that did not have any kind of franchise and she inquired why they did not have to have one when the Montopolis Bus Company was required to have one. Mr. Eskew stated there was no general ordinance of the City and no Charter provision prohibiting the operation of a bus service without a franchise and that is what brought this ordinance about. He said it was called to the Council's attention last fall that the City did not have a general regulation requiring a bus company to have a franchise before operating a bus service and this was discrimination against the existing companies that did have franchises, were paying gross receipts tax, were required to carry insurance, were required to operate within the provisions of the franchise ordinance to which they had voluntarily subscribed by applying for a franchise and there needed to be a regulation.

The City Manager commented there was no general ordinance which described the observance of any prospective bus operator, those conditions which should be observed protecting the public's interest as to public liability, levels of service, adequacy of equipment, safety equipment, etcl, should any one desire to provide public bus service within the community. Councilman Long said it had been her experience when these ordinances and franchises are written it is to create a monopoly. Short discussion of bus service in the University Area was held covering when the service would be private or public; how fares were collected, regular schedules, liability and insurance, and who would be covered under the proposed ordinance.

MR. JAMES M. DOHERTY, Attorney, represented Transportation Enterprises, Inc. He said Transportation Enterprises, Incorporated was a locally owned company

operating at the present time generally in the transportation of students at the University of Texas from their various sorority houses, dormitories and student apartments to the main campus of the University and return direction. He said they also presently operate under contract with the University of Texas to transport students from the Women's Gym to the University Intermural Field at about 51st on North Lamar; and provide daily round trip service between the City and St. Stephens Episcopal School on Bee Cave Road, west of the City. On inquiry from Councilman Long Mr. Doherty stated they carried insurance and they did not object to being subjected to a gross receipts tax if that is the desire of the Council however he thought the Council should realize there is a difference in the passage of an ordinance which requires the persons wishing to enter the business of transporting passengers for hire by bus in the City limits to come before the City and register their operation, secure some sort of franchise on condition they will supply to the City proof of financial responsibility, file annual reports for purposes of gross receipts tax and the type of City ordinance they had here which not only would envisage that operation but would also require anyone wishing to enter that type of operation to come before this Council and present witnesses to testify concerning the need for additional bus service and inadequacy of the existing bus service. He stated they did not take any strong position on the need for this type of ordinance but did disagree in part with some prior observations of Mr. Tinstman's in connection with scope of the draft of the ordinance before the Council. He said it was his legal opinion that this ordinance would require Transportation Enterprises, Inc. to secure a franchise from the City to transport students. He reviewed the qualification that if a sorority, dormitory or apartment wanted to provide its own bus service it could do so but only on condition that it provide this bus service as a general convenience for all the inhabitants of that particular institution or resident and it will charge the same fee to everybody that lives there regardless of whether they use the bus service or not, and this would not exempt a carrier such as his client.

MR. DOHERTY stated if the Council is prepared to pass a bus ordinance and if it is prepared to hold public hearings on the issue of convenience and necessity through hearing evidence and public witnesses concerning the need for additional services and inadequacy of existing services then he would propose that Section 31.80 be amended in such a way as to allow bus operators who are presently operating within the confines of the City to continue the type of operation in which they are now engaged. He said under the existing set of conditions certain people have gone into this business and have invested many thousands of dollars, bought the necessary equipment and other facilities to render the service, have gotten the business, have provided service that the Austin Transit Company is not providing and does not desire to provide and now if the City comes in and makes an absolute requirement of a franchise they put this investment at risk of loss and they would have to prove convenience and necessity in order to continue with what they had done.

COUNCILMAN LONG asked why he didn't keep with his first argument that he would rather see an ordinance without convenience and necessity and stated this she could go along with but when they wanted to be put under the grandfather clause so they could be protected by the convenience and necessity clause and once they were secure no one else could start a business, she did not particularly hold with that. Mr. Doherty brought out again it was fine with them if the Council wanted to continue to operate with no franchise ordinance but if it does pass one they want a grandfather clause in it to protect the existing operation they have. He reviewed the grandfather clause in the State Statute and the Interstate Commerce Act which regulates transportation of passengers by buses bringing out that people that made investment on then existing conditions are entitled to continue to operate and not risk loss of their investment once a franchise ordin-

ance is passed, and that the need for their service is demonstrated by the actual use thereof by passengers who find need to use it prior to the passage of the ordinance. He supplied copies of an amendment to Section 31.80 to include a grandfather clause which he had drafted.

In answer to Councilman Janes' inquiry Mr. Doherty stated the matter of collection of fares was handled by a lump sum payment per semester by students desiring to use this service between the various dormitories, apartment houses and sororities and the main campus and it was correct that they used some kind of identification card and the passengers pay "X" number of dollars whether they use the service one time or a hundred times. The City Manager assured the Council that in drafting this ordinance it was not their intention to unduly restrict or impose requirements which would prevent competition in the public bus service and he hoped it could be considered in that light but they did feel it proper to put in the provision of public convenience and necessity because the trend has been in the direction of increasing private vehicle transportation and decreasing public patrons and yet he thought all would recognize that some public bus service is desirable and even necessary for people that neither have financial ability or the physical ability through age or physical handicap to operate a vehicle of their own and this was where public convenience and necessity came in. Councilman Long said she was aware of this but she still thought when the company that was now operating was protected simply because they were scared that some other company might not take over if this one fold was defeating the purpose. She stated the Mini-bus service now in operation would not have even been allowed to start under the ordinance they had before them and it would prohibit someone from starting in the future, as they had seen it time and time again where once a monopoly was created, once the old status quo got a hold, it was very difficult for anybody to come in and show convenience and necessity, it was almost impossible to prove this type of thing.

The City Manager stated anybody providing this type of public service should all play by the same rules and have the same minimum requirements and Councilman Long agreed, stating she thought they should have a franchise tax and make them show financial responsibility but not prove convenience and necessity. Councilman Janes stated they were talking about service to different classes of customers, one the general public and the other special customers; there was a tentative definition of motor bus in the ordinance but general public is not defined, he asked when does a person become a member of the general public and when does he quit. Councilman Long stated this had been established under the existing law and that was the reason that this was a dangerous thing to cut off anybody else from operating. Mr. Tinstman commented although there was no direct reference in the ordinance to gross receipt tax or anything of the sort he thought it could be demonstrated that bus service making use of the public street do obtain a particular benefit-buses are heavier equipment, frequent bus repairs at the location of bus stops, pavement repairs are abnormally high in making those streets usable to the general public and any private company making use of the public way for their particular service in making profits should be subject to both regulations and special public tax. Councilman Long reported there were quite a bit of fumes coming from the buses of the present bus company and she suggested there be an area where the buses would converge and then have Mini-buses run up and down the main thoroughfare and if they could figure out something like that it would save them a lot of money rather than stopping and starting the buses up and down the main street. Councilman Janes stated it appeared to him to have merit and he asked what the recommendation was regarding stops and not letting them stop on Congress Avenue. The City Manager said the Traffic Department had been asked to work with the present bus company and he anticipated a recommendation

in the next two weeks. Councilman LaRue asked the City Attorney under what circumstances would a franchise be withdrawn from an individual and he stated failure to comply with the conditions of the franchise. Councilman LaRue asked if they ceased operation would they fall under this classification and the City Attorney stated they would.

COUNCILMAN NICHOLS asked if in this ordinance in areas not now being served where the Council decided an area needs service that the bus company under this franchise must be required to furnish the service. The City Attorney stated once the franchise had been granted they could not be required to extend service further than the provisions contained in its grant but as he understood Councilman Nichols' question had to do with the situation where an applicant came up for a franchise for serving area A and the question arose as to whether he ought to include also area A sub one and A sub two, that then the franchise could be given or withheld pending upon whether the applicant agreed to the services to the additional area. Councilman Nichols stated that was the important part of the question. Short discussion of Councilman Nichols question was held. In answer to Councilman LaRue's question, Mr. Malone of the Austin Transit Company, stated the Montopolis Bus Company was not in operation as they did not get their grant from the Government. Councilman LaRue stated this motivates the question of whether or not the cessation of operation will bring about the cancellation of a franchise and he thought it was something that should be taken note of.

MR. BARR McCLELLAN appeared for the Austin Transit Company. He stated their position as far as this ordinance goes was that it was a matter that deserves the attention of the Council but whatever action they took would be their own wisdom and decision, and the Bus Company was neither for or against the ordinance. He commented in view of what Mr. Doherty had said that Transportation Enterprises seem to think they come within the grandfather clause, and usually in a utility regulation when you have a grandfather clause it does cover companies in the business but when they come into the business under the regulation that is imposed they meet the standards that are required by the regulation. He said Austin Transit operates under an ordinance at this time and has met all of the standards and Transportation Enterprises to his knowledge does not have any such ordinance and when it would try to come under the grandfather clause it really would not be showing that it meets the standards that are being imposed by the ordinance and he thought this was an important consideration particularly in view of what Mr. Tinstman had been pointing out about the necessity of regulation. He said the public convenience and necessity question was a fairly standard consideration. He said it was his understanding that these so called Mini-buses were bigger than the buses being operated by Austin Transit. Mr. McClellan reviewed the bus situation in the District of Columbia and stated the D. C. Transit Company was now trying to sell all its assets to the District of Columbia and let them run the buses. He raised the question that he thought the Council should be aware of and that was the relationship between Transportation Enterprises and Austin Transportation Services Incorporated, which was the company operating the ambulance service and the relationship between the monthly payments paid by the City to these two corporations that are directly related to each other. Councilman Long stated Transportation Enterprises, Inc. was not part of the ambulance service was it. Mr. Doherty stated there was a relationship but the two companies were separate entities entirely, however the stock ownership, with one exception, was the same in the two companies. Mr. McClellan said to carry the relation further they operate out of the same place of business and he did not think they could help relate the payment from the City on the benefit of the Ambulance Company to the overall operation of the two companies. Councilman LaRue said this payment was for the movement of the indigent people and when they reach the point they are making a profit then they will transport these indigents free of charge.

Short discussion of the termination of the present franchise and its renewal was held; also Section 31.80 discharging of passengers by buses operating on the highway, Section 31.80-A, certificates approving the routes prescribed for the operation of buses.

MR. FRANK DENIUS also represented Austin Transit Company. He stated in addition to their normal routes and scheduled service, Austin Transit provided a charter service and they also have a contract with the Labor Union. He listed the price of their buses, most of which were air-conditioned and stated that their competitor provided a school bus type of equipment that costs substantially less. He said Austin Transit could not compete with this company and provide the standards and the type of insurance requirements that are imposed by the City and also pay union wage scale. He stated any time that they tried to add service they must come to the Council and show the route that this service is going to follow, to see that there is no more congestion, but these people can go out around the University area and any area in Austin and go down any street they please. Austin Transit could not do this and they believed the City should have minimum standards for any bus company. He said any time a person provides a utility service they do so subject to the police power of the City and any one that gets into any business that the City has police power over puts that service in knowing full well that they are subject to the police powers of the City. He reaffirmed that if the Council wants an ordinance that this was an ordinance that was satisfactory to Austin Transit. He reviewed again their contract that expires on November 1, 1969, and assured the Council that regardless of whether or not they had to perform it was the intention of Austin Transit to perform through the balance of the term of this contract but when the time comes for a new franchise this Council, or its successor, would have to determine what type of service was required, what the minimum standards would be and they felt in view of the termination of the franchise next year that this was the proper time for the Council to consider some minimum standards just like it had in all other various utility operations in the City.

The Council discussed type of equipment, safety requirements, drivers qualifications, insurance. The City Manager stated they felt it would be preferable that the Council consider an ordinance of this type in this type of situation rather than at the time the question may come up for extension or renewal of a particular franchise so that this ordinance could be considered on its own merit and not under the pressure of whether or not the public is going to be provided service. He said he was not anxious for the City government to assume unnecessarily additional regulation responsibility, or going a step further the responsibility of directly providing public bus service within the community and this was something of concern to him in looking at it with somewhat long range perspective. He added that there was some public concern both as to the routes, the adequacy of the equipment, the liability protection and he thought the City government does have some legitimate concern, interest and responsibility in areas such as these. Councilman Long agreed but stated again she did not approve of convenience and necessity in the ordinance. The City Manager asked the Council if they wished him to draft an alternate ordinance which would omit the reference to the public convenience and necessity and it was indicated they did not.

MAYOR AKIN stated he was not adverse to further time for further study and his point of view was any company serving the public regardless of what segment should operate by common standards and uniform treatment of all parties.

In answer to Councilman Janes question Mr. Doherty said their operation was not an operation over specifically prescribed routes at the present, it was more comparable to the charter type bus service. Short discussion of Transport-

ation Enterprises' out of the City operation was held. Councilman Janes inquired at what point does a charter become an ordinary, regular prescribed rate and would this come under this ordinance. The City Attorney explained under this ordinance they would be required to file a schedule of rates and charges and the Council could approve or disapprove the rates and charges and the reason they might regulate it was that they would not want to require one segment of the public to subsidize the use of the service by another segment of the public and to the extent that such a distinguishment might be made or discrimination in rate might be made was something that they would be entitled to regulate. In reply to Councilman Janes inquiry Mr. Doherty stated he did not believe the character of traffic which his client was in, the business of transportation, would particularly lend itself to a scheduled operation. Mr. Denius stated in order to eliminate thought that Austin Transit was unwilling to supply some of this service he would like to give the Council the Intermural situation. He said when the University moved the intermural field from Speedway and the campus out to 51st Street it asked Austin Transit if it would be interested; they discussed it with them, made the plans for it, the University took bids and they offered to serve them at their out of pocket cost, labor, gas and materials; their competitor substantially underbid them because they can do it; he did not want the Council to think they were not trying to do some of these things, and it goes back to the effect on convenience and necessity, if they permit another company that operates under different standards then they are actually hurting the general public in Austin in getting good convenient bus service. He reviewed the type of buses used and the bus drivers stating when they were dealing with an operation like this there were many facets that must be considered by the Council and the rights of organized labor is one of them.

The City Manager asked Mr. Doherty in looking at this ordinance and say setting aside the public convenience and necessity was there any part of this ordinance that his company could probably not comply with. Mr. Doherty stated the effect would be that of leaving Austin Transit Company in business and putting them out of business. He said apparently the Austin Transit Company takes the position that they would not have to seek a franchise or at least they would not have to seek one until 1969 under this ordinance because of the fact that they presently have outstanding an ordinance which authorizes their service, consequently when this ordinance is first put into effect, the effect would be that the Austin Transit Company will be in operation under their outstanding municipal ordinance the Transportation Enterprises will be out of business by virtue of the fact they have no outstanding municipal ordinance granting them a franchise. Commenting on why they did not have a franchise he stated they had made inquiry and were advised at the time they went into business there was no municipal ordinance generally covering the granting of franchises. Other than this he said there were not any parts of this ordinance his company would find impossible or unreasonable to comply with. Councilman Nichols moved to set the next public hearing on the bus franchise ordinance on August 1, 1968, at 10:30 A.M. The motion, seconded by Councilman LaRue, carried by the following vote:

Ayes: Mayor Akin, Councilmen Janes, LaRue, Long, Nichols  
Noes: None

#### ANNEXATION

Pursuant to published notice public hearing on ordinance annexing proposed Allandale Estates, Section 3 and 4; proposed Northwest Hills Mesa Oaks, Phase 4-B; proposed Johnson Terrace, Section 2; and all of Tract 2 in Penick Subdivision was opened. No one appeared to be heard.

Councilman Long moved the hearing closed. The motion, seconded by Councilman Nichols, carried by the following vote:

Ayes: Councilmen Janes, LaRue, Long, Nichols, Mayor Akin  
Noes: None

Mayor Akin brought up the following ordinance for its first reading:

AN ORDINANCE PROVIDING FOR THE EXTENSION OF CERTAIN BOUNDARY LIMITS OF THE CITY OF AUSTIN AND THE ANNEXATION OF CERTAIN ADDITIONAL TERRITORY CONSISTING OF 75.15 ACRES OF LAND, SAME BEING OUT OF AND A PART OF THE JAMES P. WALLACE SURVEY NUMBER 18; 6.43 ACRES OF LAND, SAME BEING OUT OF AND A PART OF THE GEORGE W. DAVIS SURVEY: 18.97 ACRES OF LAND, SAME BEING OUT OF AND A PART OF THE J. C. TANNEHILL LEAGUE: 41.41 ACRES OF LAND, SAME BEING OUT OF AND A PART OF TRACT 2, PENICK SUBDIVISION, A SUBDIVISION OF A PORTION OF THE ISAAC DECKER LEAGUE: ALL LOCATED IN TRAVIS COUNTY, TEXAS; WHICH SAID ADDITIONAL TERRITORY LIES ADJACENT TO AND ADJOINS THE PRESENT BOUNDARY LIMITS OF THE CITY OF AUSTIN, IN PARTICULARS STATED IN THE ORDINANCE. (Allandale Estates, Section 3 and 4; Northwest Hills Mesa Oaks, Phase 4-B; Johnson Terrace, Section 2; Trace 2 in Penick Subdivision) (Requested by owner or representative)

The ordinance was read the first time and Councilman Long moved that the rule be suspended and the ordinance be passed to its second reading. The motion, seconded by Councilman Nichols, carried by the following vote:

Ayes: Councilmen Janes, LaRue, Long, Nichols, Mayor Akin  
Noes: None

The ordinance was read the second time and Councilman Long moved that the ordinance be passed to its third reading. The motion, seconded by Councilman Nichols, carried by the following vote:

Ayes: Councilmen Janes, LaRue, Long, Nichols, Mayor Akin  
Noes: None

#### SISTER CITY PROGRAM

MAYOR AKIN informed the Council of the discussion back and forth relative to a Sister City Program between Saltillo, Mexico and Austin, Texas. He recommended the program as having possibilities for developing good will and it had been suggested that Austin initiate a first visit on July 27, 28 and 29. He stated he would like for all the Council, and the City Manager to consider taking the trip and an invitation should be extended to other members of groups of the community. After discussion, Councilman LaRue moved that the Mayor and Members of the Council represent the City of Austin in this culmination of the agreement between the City of Saltillo and the City of Austin. The motion, seconded by Councilman Nichols, carried by the following vote:

Ayes: Mayor Akin, Councilmen Janes, LaRue, Long, Nichols  
Noes: None

CONDEMNATION

After discussion, Councilman Long offered the following resolution and moved its adoption:

(Brient-McCandless, Estrada)

(RESOLUTION)

WHEREAS, the City Council of the City of Austin has found that public necessity requires additional playground, recreational, and open-space areas for the use and welfare of the people of Austin; and,

WHEREAS, the City Council has found and determined that public necessity requires the acquisition of the hereinafter described tract of land for playground, recreational and open-space use for the people of Austin; and,

WHEREAS, the City of Austin has negotiated with the owners of said land and has been unable to agree with such owners as to the fair cash market value thereof; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City Manager be and he is hereby authorized and directed to file or cause to be filed against the owners and lienholders, a suit in eminent domain to acquire fee simple title for said purposes to the following described tract of land:

Lot No. Twenty-nine (29), Towne Lake Addition, an addition in the City of Austin, Travis County, Texas, according to the map or plat thereof, recorded in Plat Book 12, Page 31, Plat Records of Travis County, Texas.

The motion, seconded by Councilman Nichols, carried by the following vote:

Ayes: Councilmen LaRue, Nichols, Mayor Akin, Councilmen Janes, Long

Noes: None

The City Manager stated he would like to discuss with the Council in Executive Session one personnel matter.

The Mayor announced the appointment of MR. G. A. (Pete) McNEIL to the Planning Commission to fill the unexpired term of Mrs. Lynita Naughton who had resigned. (appointment made in Executive Session)

Councilman LaRue moved that the Council adjourn to go into Executive Session. The motion, seconded by Councilman Long, carried by the following vote:

Ayes: Councilman Nichols, Mayor Akin, Councilmen Janes, LaRue, Long

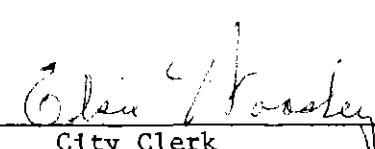
Noes: None

The Council adjourned at 12:35 P. M.

APPROVED

  
Mayor

ATTEST:

  
City Clerk