

**RECESSED REGULAR MEETING OF THE CITY COUNCIL  
TUESDAY, AUGUST 30, 2011, AT 5:00 P. M.  
CITY HALL, PASCAGOULA, MISSISSIPPI**

The City Council of the City of Pascagoula, Mississippi, met at City Hall in a recessed regular meeting on Tuesday, August 30, 2011, at 5:00 p.m. Mayor Maxwell called the meeting to order with the following officials present:

Mayor Robert H. Maxwell  
Councilman Joe Abston  
Councilman Frank Corder  
Councilman Jim Milstead  
Councilman Robert Stallworth, Sr.  
Councilman George L. Wolverton, Sr.

Councilman Harold Tillman, Jr. was absent.

City Manager Joe Huffman  
City Attorney Eddie Williams  
Asst. City Clerk Brenda Reed  
Chief Deputy City Clerk Carol Groen  
City Clerk/Comptroller Robert J. Parker

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Mayor Maxwell welcomed everyone to the meeting.

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Bobby Parker, City Clerk/Comptroller, gave a Power Point presentation regarding the FY'2012 budget. The Council then reviewed a handout regarding the various agencies and their requests. Several representatives were in attendance at tonight's meeting with reports.

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Janice Mabry addressed the Council regarding the Jackson County Small Business Incubator and its funding request of \$10,000.00. She provided an update on tenants from Pascagoula. A discussion was held regarding funding for FY'2011 which was \$2,500.00. Mayor Maxwell commented that the Council will take this request under advisement.

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Todd Trenchard and Catherine Glaude, representatives from the Boys and Girls Club, gave a report on their programs. Mr. Trenchard stated he would like to rescind the request for an additional \$10,000.00 and remain with the \$30,000.00 annual funding request. Mayor Maxwell commented the Council will take this request under advisement.

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A discussion was held regarding purchasing an ad on the high school football scoreboard as requested by the Pascagoula School's Athletic Department and the Quarterback Club. The cost would be \$2,500.00 per year for a five-year period. The City Attorney advised that given the manner in which this request was initially made, the legality was questionable and recommended that the Council not participate.

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Sandra Morrison, representative of the Gulf Coast Women's Center for Non-violence, addressed the Council regarding a funding request of \$5,000.00. Ms. Morrison stated they have a satellite program planned to open in Pascagoula which will serve the women from Jackson and George counties.

Harry Schmidt, Community and Economic Development Director, advised that the Gulf Coast Women's Center for Non-violence and the New Beginnings Program will be funded by CDBG monies at \$5,000.00 each.

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The Council agreed not to include the \$10,000.00 funding request from the Mississippi Gulf Coast Sports Commission.

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A brief discussion regarding support of the CASA Program was held. The Council requested that the staff contact someone with the program to determine a funding amount since it was not specified in their letter.

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Councilman Milstead suggested that the Council needs to carefully look at funding new programs, activities, and requests in the future.

Councilman Corder recommended that the agencies we support need to provide at least a quarterly report regarding their programs.

The City Manager stated that staff would notify the various agencies and advise them about their funding requests.

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The next item for consideration was funding for a lobbyist to represent the City of Pascagoula at the national level. Mayor Maxwell stated he felt this could be handled in-house by Harry Schmidt and others. The Council concurred not to include funding for an outside lobbyist.

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The Council then discussed a proposed five percent (5%) utility rate increase. Bobby Parker, City Clerk/Comptroller, advised the increase would be a minimal amount each month.

The Council supported the increase and recommended that notices be mailed to the utility customers.

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The City Manager briefly discussed the potential budget revision list by department. The Council thanked Mr. Huffman for looking at ways to reduce the budget for next year.

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A discussion was held regarding the Code Enforcement staff and the need to retain the current employees we have if at all possible. They have done a great job with the property cleanup cases.

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Councilman Milstead led a discussion regarding the annexation project and stated that he does not support it. Several comments were made on this matter.

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The City Attorney then requested adoption of the following Resolution regarding Mallette Brothers Construction Company:

**RESOLUTION AUTHORIZING SETTLEMENT  
OF A DOUBTFUL AND DISPUTED CLAIM WITH  
MALLETTE BROTHERS CONSTRUCTION COMPANY**

**WHEREAS**, Mallette Brothers Construction Company, hereinafter “Mallette”, is one of the City of Pascagoula’s top five consumers of natural gas; and

**WHEREAS**, sometime during the year 2008, it was discovered that the City Utility Department had been mis-billing the Mallette gas account by using the wrong threshold level for the computation of the industrial gas rate as contemplated in Section 86-44 of the Code of Ordinances of the City of Pascagoula; and

**WHEREAS**, the mis-billing of the account occurred over an extended period of time dating back to the year 1999, which are the earliest records available to the City from the Utility Department; and

**WHEREAS**, it has now been determined that the City under-billed Mallette in the amount of \$1,243,609 during the period beginning with the year 1999 through 2008; and

**WHEREAS**, the City made demand upon Mallette to pay the aforesaid amount; and

**WHEREAS**, Mallette has now filed suit in the Chancery Court of Jackson County, Mississippi, in a cause styled “Mallette Brothers Construction Company vs. the City of

Pascagoula, Cause No. 2010-2879CB”, which suit has been consolidated with a similar action filed by another high-volume customer, namely, Pandle, Inc., and wherein Mallette seeks certain declaratory and equitable relief based upon its alleged reliance upon the City’s gas rates in the operation of its asphalt business; and

**WHEREAS**, the City of Pascagoula has now received an opinion from the Attorney General for the State of Mississippi opining that, notwithstanding the liquidated sum involved this litigation, the same constitutes a doubtful and disputed claim which is subject to negotiation and settlement at an amount less than that which our records indicate is owed to the City; and

**WHEREAS**, on the 7<sup>th</sup> day of June, 2011, the City Council authorized counsel for the City to enter into voluntary mediation with Mallette in an effort to resolve the City’s claim; and

**WHEREAS**, the mediation of the dispute took place on August 24, 2011, and, at the close thereof, a tentative settlement agreement had been reached whereby Mallette agrees to pay the City the sum of \$250,000 in a lump sum to be paid within 90 days from the date of the approval of the agreement by this City Council and in settlement of all claims for any past due amounts arising from the City’s billing errors on the Mallette account; and

**WHEREAS**, the City Council has given due consideration to this offer and, in light of the equitable defenses raised by Mallette in the aforesaid litigation and the fact that Mallette depended upon the City’s gas rate quotations in order to bid its contracts, some of which were with the City of Pascagoula itself, and now has no way to recover any excess costs associated with gas usage in the performance of those contracts and therefore suffered an economic detriment due to the City’s error; and

**WHEREAS**, the City Council finds that the offer as set forth hereinabove is reasonable and just under the circumstances and that the acceptance of same would be in the best interest of the citizens of this community inasmuch as continued litigation over this matter could result in a significantly lower amount of recovery being made by the City and which would be further depleted by the costs of that litigation:

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

**SECTION 1.** All of the statements set forth in the preambles to this resolution are hereby found as fact.

**SECTION 2.** The offer of Mallette Brothers Construction Company to settle this dispute concerning their gas account by the lump sum payment of \$250,000 on or before the expiration of 90 days from the date of the approval of this resolution is hereby accepted.

**SECTION 3.** The City Attorney and Counsel for the City are authorized and directed to execute and sign any and all documents required to effect this settlement and to dismiss the City's counter-claim against Mallette now pending in Cause No. 2010-2879CB of the Chancery Court of Jackson County, Mississippi, with prejudice and with the full understanding that the payment of the aforesaid sum shall fully acquit Mallette of any and all obligations to the City of Pascagoula for any past due amounts arising out of the billing error heretofore made by the City of Pascagoula.

**SECTION 4.** A certified copy of this resolution shall be provided to Mallette Brothers Construction Company and its attorneys and to the Utility Billing Department as well as any other parties deemed necessary by Counsel for the City.

The above Resolution was introduced by Councilman Corder, seconded for adoption by Councilman Wolverton, and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "ABSENT", and Wolverton "AYE". The Mayor then declared the Resolution adopted on the 30<sup>th</sup> day of August, 2011.

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There being no further business to come before the Council, Councilman Wolverton made a motion to adjourn. The motion was seconded by Councilman Corder and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "ABSENT", and Wolverton "AYE".

The meeting ended at 6:15 p.m.

**APPROVED:**

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Robert H. Maxwell, Mayor

**ATTEST:**

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Carol Groen, Chief Deputy City Clerk