



REGULAR CITY COUNCIL MEETING AGENDA

FEBRUARY 21, 2023

LOCATION: 1400 Main Street, Southlake, Texas 76092
Council Chambers in Town Hall

WORK SESSION: 5:30 P.M.

1. Call to order
2. Invocation: Clayton Reed
3. Southlake Sister Cities Membership Mug Artwork Contest Winners
4. Southlake Chamber of Commerce Update
5. Employee Appreciation Week and Employee Performance Awards
6. Discuss all items on tonight's agenda. No action will be taken and each item will be considered during the Regular Session.

REGULAR SESSION: Immediately following the work session

1. Call to order.
2. A. **Executive Session:** Pursuant to the Open Meetings Act, Chapter 551, Texas Government Code, Sections 551.071, 551.072, 551.073, 551.074, 551.076, 551.087, 418.183(f), and 418.106(d) & (e). Refer to posted list attached hereto and incorporated herein. **Executive Session may be held, under these exceptions, at the end of the Regular Session or at any time during the meeting that a need arises for the City Council to seek advice from the city attorney as to the posted subject matter of this City Council meeting.**
 1. Section 551.071: Consultation with city attorney.
 - a. Seek advice of the city attorney regarding legal issues related to legislative items.
 - b. Seek advice of the city attorney regarding driveway access to FM 1938 and other construction related matters for a future subdivision located on property addressed as 208 Randol Mill Avenue and located at the northern terminus of Maranatha Way.
 - c. Seek advice of the city attorney regarding legal issues relating to construction project defects and contract liability issues.

- d. Seek advice of the city attorney regarding possible litigation relating to construction defects at The Marq Southlake.
 - 2. Section 551.072: Deliberation regarding real property
 - a. Discuss the acquisition of real property for public purposes.
 - 3. Section 551.074: Deliberation regarding personnel matters
 - a. Deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public employee or officer: special counsel for grant and other federal funding opportunities.
 - 4. Section 551.087: Deliberation regarding economic development negotiations.
 - a. Deliberate the terms and conditions of an economic development incentive program – Project No. 2017-03.
- B. **Reconvene:** Action necessary on items discussed in Executive Session.
3. **REPORTS:**
- A. Mayor’s Report
 - B. City Manager’s Report
 - 1. Community Services Membership and Events Campaign Updates
 - 2. Financial Report (written)

CONSENT AGENDA: All items listed below are considered to be routine by the City Council and will be enacted with one motion. There will be no separate discussion of items unless a Councilmember or citizen so requests, in which event the item will be removed from the general order of business and considered in its normal sequence.

4. Consent:
- A. Approve minutes from the February 7, 2023, regular City Council meeting.
 - B. Excuse the absence of Councilmember Ronell Smith from the February 21, 2023, regular City Council meeting.
 - C. Resolution No. 23-003, appointing a member to fill a vacancy on the Library Board.

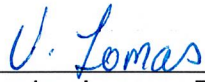
- D. Resolution No. 23-004, appoint a Chair of the Board of Directors of Tax Increment Reinvestment Zoning #1 for the 2023 calendar year.
- E. Approve an Encroachment and Joint Use Agreement for a masonry structure within the utility easement located at 100 River Oaks Drive.
- F. Authorize the City Manager to enter into an agreement with a legal firm to represent the City of Southlake to address construction defects at The Marq Southlake.

REGULAR AGENDA:


- 5. Public Forum. *(The Public Forum will not begin prior to 7:00 p.m. This is the public's opportunity to address the City Council about non-agenda items. During this proceeding, the City Council will not discuss, consider, or take action on any item presented. We respectfully ask that anyone stepping forward to speak during Public Forum to please limit remarks to three minutes or less.)*
- 6. Ordinances, second readings, public hearings, and related items: *(There are no items on this agenda.)*
- 7. Ordinances, first readings, and related items: *(There are no items on this agenda.)*
- 8. Resolutions: *(There are no items on this agenda.)*
- 9. Other items for consideration:
 - A. Approve expenditure to Life Extension Clinics, Inc., dba Life Scan Wellness Centers for annual physical exams for police and fire personnel in an amount not to exceed \$128,000.
 - B. SV23-0002, Sign Variance for Shake Shack located at 125 Central Ave., Southlake, Texas.
 - C. SV23-0001, Sign Variance for Boba Chicken located at 2801 E. Southlake Blvd., Suite 100, Southlake, Texas.
- 10. Other items for discussion:
 - A. Performance Management discussion relative to Event Management Process Improvements.
- 11. Adjournment

CERTIFICATE

I hereby certify that the above agenda was posted on the official bulletin boards at Town Hall, 1400 Main Street, Southlake, Texas, on Friday, February 17, 2023, by 5:00 p.m., pursuant to the Texas Government Code, Chapter 551.



Veronica Lomas, TRMC
Deputy City Secretary



If you plan to attend this public meeting and have a disability that requires special needs, please advise the City Secretary's Office 48 hours in advance at 817-748-8016 and reasonable accommodations will be made to assist you.

EXECUTIVE SESSION

Section 551.071: Consultation with attorney. The City Council may conduct a private consultation with its attorney when the City Council seeks the advice of its attorney concerning any item on this agenda, about pending and contemplated litigation, or a settlement offer, or on a matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Board of Texas clearly conflicts with Chapter 551. This includes the following pending and/or contemplated litigation subjects:

1. City of Southlake v. Town of Westlake, Texas; Supreme Court Case No. 22-0188; Court of Appeals No. 02-21-00241-CV; and Trial Court No. 2020-007041-1.
2. Constance Westfall v. Jose Luna, et al; Cause No. 4:15-cv-00874-0.
3. Myra Nunez v. City of Southlake; Cause No. 048-330936-21.

Section 551.072: Deliberation regarding real property. The City Council may conduct a closed meeting to deliberate the purchase, exchange, lease or value of real property.

Section 551.073: Deliberation regarding prospective gift or donation. The City Council may conduct a closed meeting to deliberate a negotiated contract for a prospective gift or donation to the City.

Section 551.074: Deliberation regarding personnel matters. The City Council may deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of public officers, including the City Manager, City Secretary, City Attorney, Municipal Judge and city boards and commission members. A complete list of the city boards and commissions is on file in the City Secretary's Office.

Section 551.076: Deliberation regarding security devices. The City Council may deliberate the deployment, or specific occasions for implementation of security personnel or devices.

Section 551.087: Deliberation regarding economic development negotiations. The City Council may discuss or deliberate regarding commercial or financial information received from a business prospect that the city seeks to have locate, stay, or expand in or near the city and which the City is conducting economic development negotiations; or to deliberate the offer of a financial or other incentive to a business prospect as described above.

Section 551.089: Deliberation regarding security devices or security audits. The City Council may discuss or deliberate regarding security assessments or deployments relating to information resources technology; network security information as described by Section 2059.055(b); the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices; or results of security audits.

Section 418.183(f): Texas Disaster Act. The City Council may deliberate information: 1) for purposes of preventing, investigating, or responding to an act of terrorism or related criminal activity and involving emergency response providers, their staffing, contact information and tactical plans; 2) that relates to the risk or vulnerability of persons or property, including infrastructure, to an act of terrorism; 3) that relates to the assembly of an explosive weapon, the location of a material that may be used in a chemical, biological or radioactive weapon, or unpublished information pertaining to vaccines or devices to detect biological agents or toxins; 4) that relates to details of the encryption codes or security keys for a public communication system; 5) that relates to a terrorism-related report to an agency of the United States; 6) that relates to technical details of particular vulnerabilities of critical infrastructure to an act of terrorism; 7) that relates to information regarding security measures or security systems intended to protect public and private property from an act of terrorism. The Texas Disaster Act specifically requires that a tape recording of the closed meeting be made.

Section 418.106(d) & (e): Local meetings to discuss emergency management plans regarding pipeline safety. The City Council may discuss emergency management plans involving pipeline safety and/or security of pipeline infrastructures or facilities when those plans or discussions contain such sensitive information.

PUBLIC NOTICE
CITY OF SOUTHLAKE, TEXAS
COUNSEL RETENTION FOR CITY OF SOUTHLAKE, TEXAS

The City of Southlake, Texas has determined that it has a substantial need to employ a special counsel to assist it in the prosecution of a claim arising under the laws of the State of Texas against one or more of the following: the general contractor and design professionals and related entities responsible for the design and construction of the Marq Complex. The claim concerns complaints of breach of contract and related warranties due to defects in the design and construction of the City's recently constructed Marq Complex. The costs to pursue the person or persons responsible for the design and construction exceed the City of Southlake's resources. The City of Southlake is choosing to act by retaining attorneys and pursuing its claims, with the expected outcome being recovery of both past damages and future abatement costs. Pursuing the claims of the City of Southlake will be in the best interest of the taxpayers.

The City of Southlake intends to retain Gravely P.C. to file the lawsuit and represent the City of Southlake's interests in this litigation. The City of Southlake chose this firm due to its record of accomplishments in this area of the law, its reputation, acumen, and extensive experience in previous complex construction cases. The attorneys of Gravely P.C. have many years of experience in representing Texas property owners, including dozens of state governmental entities, in the type of complex construction case that the City of Southlake would like to pursue for the benefit of the community. It is the experience that the attorneys of Gravely P.C. have demonstrated in obtaining recovery of costs of repair for similarly situated state governmental entities that has led the City of Southlake to choose this firm to represent the interests of the City in its construction and/or design defect claims. Attached to this Notice, and incorporated by reference herein, are the qualifications of the attorneys of Gravely P.C. that will be handling this matter. No prior relationship existed between Gravely P.C. and the City of Southlake.

The City of Southlake determined that the City's contemplated litigation is specialized and requires specialized counsel to undertake this type of litigation. The City of Southlake does not keep attorneys on staff who handle specialized construction and design defect cases on behalf of the City of Southlake; therefore, hiring outside counsel is necessary for the City of Southlake.

The City of Southlake does not have the financial resources to retain lawyers at an hourly rate without regard to outcome due to the anticipated amount of legal work required for this specialized litigation, which is document and expert intensive. The only practical way the construction/design defect litigation is possible for the City of Southlake is with a contingency fee arrangement, which results in no costs to the City of Southlake unless the City of Southlake is able to recover through a lawsuit.

The City of Southlake chose to hire Gravely P.C. in the best interests of the taxpayers. This is specialized litigation that costs the City of Southlake no out-of-pocket expenses to pursue. The City of Southlake has the potential to recover damages through this lawsuit and protect the best interests of its taxpayer citizens.

CITY OF SOUTHLAKE, TEXAS
REPRESENTATIVE

Marc E. Gravely

Education:

Bellarmino University B.A.
University of Texas at San Antonio M.S.
St. Mary's University School of Law J.D.
University of Connecticut School of Law L.L.M.

Practice and Expertise:

Marc Gravely is the founder of Gravely, PC. With over twenty years experience in commercial and business disputes, he has a hard-earned reputation for success. He has been recognized by his peers many times over the years and is a frequent speaker at legal conferences and continuing education events for lawyers and property owners. His clients have included a number of Texas district court and county judges. And in what is perhaps the most telling compliment, Mr. Gravely is often referred clients by opposing counsel who have seen the kind of results he can get. He and his firm have recovered millions in verdicts and settlements over the years for their clients.

Mr. Gravely's practice includes civil and business litigation across the nation. He has extensive commercial litigation experience including disputes involving construction defects, insurance coverage, business and commercial litigation and technology-related matters.

His construction litigation experience includes representing owners against general contractors, subcontractors, architects, engineers and developers. He has represented hospital systems, surgery centers, physician groups, governmental subdivisions like school districts, hospital districts, cities and counties, and commercial building owners in actions to recover damages due to defects in construction.

Mr. Gravely's insurance law practice has been on behalf of policyholders against insurance companies, brokers and agents. He has represented businesses and private individuals in a variety of matters including claims denial, claims underpayment and insurance bad faith. He has handled hundreds of cases involving coverage issues relating to benefits due under insurance policies in a wide array of contexts.

His business and technology litigation experience includes handling commercial disputes between companies involving breach contract, misrepresentation, fraud and deceptive marketing. Mr. Gravely handled a representative class action matter involving small and large businesses against Verisign, Inc. for deceptive marketing of digital encryption certificates. The matter was certified as a national class action and was settled in what at the time was the largest information technology security settlement in the United States.

He has served as Special Counsel to the Texas State Commission on Judicial Conduct, and for the Center for Infrastructure Assurance and Security at the University of Texas at San Antonio.

Mr. Gravely is licensed to practice in the State of Texas and all federal districts in Texas, the Northern; Southern; Eastern & Western District of Texas.

Professional Affiliations

American Bar Association
Insurance Law Section

State Bar of Texas
Litigation Law Section
Insurance Law Section
Construction Law Section

Texas Bar Foundation
Life Fellow

American Board of Trial Advocates

Honors

Best lawyers in America – Insurance Law (Woodward/White)
Benchmark Litigation – Insurance Litigation Star
Texas Super Lawyer – Business and Insurance Litigation
Legal Media Group Guide to Leading Insurance Lawyers
Contributing Author – Texas Insurance Law Digest
Contributing Editor – Texas Annotated Insurance Code

Michael M. Gavito

Education:

St. Mary's University School of Law, J.D. 2004

University of Texas at San Antonio, B.A. Criminal Justice-Legal Studies 2000

Practice and Expertise:

My practice includes civil and business litigation throughout Texas. I have extensive litigation experience in cases involving construction defects.

I was licensed to practice in Texas in November 2004. I spent a number of years working for prominent civil litigation defense firms in Central and South Texas, focusing primarily on construction defect litigation. I now apply my knowledge and expertise in defense litigation to better serve business and residential property owners in prosecuting construction defect claims against contractors, architects, and engineers. My predominant ability is being able to anticipate defense strategies and take appropriate steps to minimize or defeat defense attempts to limit or reduce a property owner's recovery. I have extensive experience analyzing AIA form agreements between owners and contractors and architects. I have extensive experience litigating multi-party construction defect cases. I represent school districts, hospitals, and other property owners throughout Texas assisting them in recovering damages resulting from substandard design and construction of various building systems including, but not limited to, roofing, exterior wall envelope, masonry, plumbing, HVAC, windows, foundation, and electrical systems.

I am licensed to practice in Texas, Oklahoma, and in the Southern and Western Districts of Texas – U.S. District Courts.

Publications and Seminars

Contributing Author, "Chapter 150 of the Civil Practice & Remedies Code: The Protections and Pitfalls," San Antonio Bar Association – Construction Law Section CLE Luncheon, January 9, 2008.

Speaker, "Employment Law 101: The Do's and Don't's in the Workplace," Radiology Tech. Seminar, Brownsville, Texas, June 2010.

Co-instructor, "The Top Eight Pitfalls of Hospital Construction," State Bar Minimum CLE Course, March 10, 2014.

Speaker, "Claims Against Architects/Engineers: Practical Considerations for Plaintiff's Counsel," 28th Annual Construction Law Conference, March 5, 2015.

Panelist, "What I had to Learn (and What I Wish I'd Been Taught)," 21st Annual Insurance Law Institute, November 10, 2016.

Co-instructor, "Recent Legislation Affecting the Government's Rights: New Procedures and Laws Affecting Construction Defect Claims," State Bar Minimum CLE Course, June 26, 2019.

Panelist, “Understanding the Implications of Remediation Costs,” Consulting Estimators Round Table, 2021 CERT National Conference, August 24, 2021.

Daniel R. Barrett

Education:

University of Texas at Austin – B.A. 1975

Texas Tech University School of Law – J.D. 1979

Practice and Expertise:

Dan Barrett has been trying civil lawsuits in Texas for over forty years. He is a past President of the Fort Worth Chapter of the American Board of Trial Advocates and a former member of ABOTA's National Board. He was a Director of both the Texas Trial Lawyers Association and the Texas Association of Defense Counsel, as well as President of the Tarrant County plaintiffs' and defense bars. He has held certificates of specialty from the Texas Board of Legal Specialization and the National Board of Trial Advocacy.

A frequent speaker and author at continuing legal education programs, his civil litigation practice has encompassed a variety of practice areas. Earlier in his career, he was selected as a Texas Monthly Super Lawyer for numerous years in the area of medical negligence litigation. More recently, he has received the Super Lawyer honor for several years in business litigation.

Mr. Barrett has represented clients in Texas courts ranging from individuals to multi-national corporations and insurance companies to municipalities and other governmental entities. His business litigation experience has encompassed insurance coverage and bad faith disputes as well as construction defect suits and has involved cities, school districts, general contractors and specialty subs, engineers, architects, and planners.

Mr. Barrett is licensed to practice before all Texas state courts, the Northern, Southern, Eastern, and Western federal districts of Texas, the United States Court of Appeals for the Fifth Circuit, and the United States Supreme Court. Mr. Barrett was also a Member of the Texas House of Representatives, having been elected to represent the 97th District of Texas. He served on the Land and Resource Management and Pensions and Investments committees.

Selected Legal Publications & Presentations:

- “Deposition Tips for the Testifying Treater *or* Yes, They Can Make You Testify (Now, let's make it as painless as possible)” - *Tarrant County Physician*, January 1988.
- “Direct Examination of Witnesses” seminar presentation & paper - *Trial Advocacy in Texas* May 1990.
- “Loss of a Chance” Tarrant County Civil Trial Lawyers seminar & paper, April 1991.
- “Some Thoughts About Opening Statements” Texas Association of Defense Counsel - Young Lawyers Seminar, presentation & paper, December 1991.

- “Open Letter to Members of the Tarrant County Medical Society” - *Tarrant County Physician* - June 1992.
- “Emerging Theories of Liability in Professional Malpractice Cases” - Tarrant County Young Lawyers Association, presentation, September 1992.
- “Climbing the HMO Bad Faith Tree” - *Texas Bad Faith Bulletin* - October 1992.
- “Random Thoughts on Trial Preparation and Voir Dire” - Texas Association of Defense Counsel - Young Lawyers Seminar, presentation & paper, December 1992.
- “When the Bell Tolls for the Whole World: The Expanding Jungle of Psychiatric Health Care Liability” *Texas Health Law Reporter* - July 1993.
- Faculty Member - Texas Association of Defense Counsel Trial Academy - Fort Worth, Texas, February 1994.
- “Opening Statements” & “Direct Examination of Witnesses” papers & seminar presentation - *Trial Advocacy in Texas* - NBI, Inc., October 1995.
- *Direct Examination of Defendant’s Neurologist* - “Masters of Trial” program - American Board of Trial Advocates, Dallas, Texas, October 1996.
- “Taking & Defending Effective Depositions in Texas” – Lohrman Educational Systems, September 1999
- “Expert Witness Qualification: When and How to Challenge and How to Respond” – Panel Discussion – Tarrant County Bar Association Brown Bag Seminar – *The Stuff Before and After Trial*, January 2002
- “Accountability for Health Care is Sorely Lacking” – Guest Column – Fort Worth Business Press – March 8, 2002
- “‘Malpractice Reform’ shoves aside patients” – Op Ed – Fort Worth Star Telegram; Dallas Morning News – April & May 2002
- “Justice isn’t an item on a medical balance sheet” – Op Ed – Dallas Morning News – September 9, 2002
- “Bleeding away our rights” – Op Ed – Fort Worth Star Telegram – October 13, 2002
- “Defending trial lawyers: We’re not buying candidates” – Guest Column – Fort Worth Business Press – November 8, 2002
- “Doctors and lawyers” – Op Ed – Fort Worth Star Telegram – January 13, 2003
- “Malpractice fight has eerily similar insanity to it” – Guest Column – Fort Worth Business Press – March 7-13, 2003
- “Malpractice by the Legislature” – Op Ed – Fort Worth Star Telegram – June 9, 2003
- “Fort Worth Court furthers fetus/baby arguments” – Guest Column – Fort Worth Business Press – November 7- 13, 2003
- “Rule 202 Depositions of the Government – Cracks in the Shield or Spitting into the Wind?” State Bar of Texas – Suing and Defending Governmental Entities – July 2010
- “Non-conforming Remainders – The City’s Perspective” Presentation – International Right of Way Association – North Texas Chapter 36, Spring Seminar – April 2013
- “Eminent Domain for the General Practitioner” – Presentation – State Bar of Texas, Paralegal Division – District 3 meeting – June 2013

Matthew Soliday

Education:

Rutgers University School of Law, J.D. 2008
Wittenberg University, B.A.-History, 2002

Practice and Expertise:

Mr. Soliday's practice includes complex civil litigation throughout Texas. His areas of concentration include litigation related to complex contract disputes, insurance coverage disputes and construction defects.

Mr. Soliday, after working for the House of Representatives in the Ohio State Legislature, pursued his law degree at Rutgers University. Mr. Soliday then clerked for a judge in New Jersey before moving to Texas in 2011 to start a family with his wife. For the past eight years, he has represented insurance companies in first party coverage disputes and their insureds in complex civil litigation including cases involving wrongful death, commercial contract disputes, and construction defects.

Mr. Soliday's extensive experience representing insurance companies gives him a unique perspective representing owners challenging their insurance carrier's wrongful denial of their claims as well as insight into how insurers will try to shield themselves from liability for the poor workmanship of contractors and design professionals.

Mr. Soliday is licensed to practice in the State of Texas and the United States District Courts for the Western District of Texas.

Jonathan C. Lisenby

Education:

St. Mary's University School of Law, J.D. 2011
Sam Houston State University, B.S., Criminal Justice 2003

Practice and Expertise:

Mr. Lisenby's practice includes insurance coverage analysis, complex case strategy and civil litigation throughout Texas and Arkansas. His areas of concentration include litigation related to complex insurance coverage disputes and construction defects.

Mr. Lisenby's insurance practice has been on behalf of policyholders against insurance companies, brokers and agents. He has represented school districts, businesses, and private individuals in a variety of matters including claims denial, claims underpayment and insurance bad faith. He has handled hundreds of cases involving coverage issues relating to benefits due under insurance policies in a wide array of contexts.

Mr. Lisenby enlisted in the United States Army in 2004 where he joined the ranks of the elite military diving community as a Deep Sea Diver on the 86th Engineer Dive Team Fort Eustis, Virginia. Mr. Lisenby's experience as a Salvage Diver afforded him the opportunity to conduct missions around the world on behalf of the United States as well as conduct joint operations with the United States Navy, the United States Coast Guard and the Joint P.O.W./M.I.A. Accounting Command. His military experience led Mr. Lisenby to the belief that the ability to anticipate, adapt and overcome is indispensable to victory.

Mr. Lisenby is licensed to practice in the State of Texas and United States Court of Appeals for the Fifth Circuit, all United States District Courts in Texas, and the United States District Courts for the Western and Eastern Districts of Arkansas.

Publications and Seminars

Contributing Author, "If a Claim has Been Denied, Should A Public Adjuster Reopen or Obtain an Attorney," National Association of Public Insurance Adjusters, January 20, 2013.

Speaker, "Construction Defects & Insurance recovery – How to Identify whether Damage Stems from a Construction Defect vs. a Covered Peril," Texas Rural Education Association Annual Convention, June 2018.

Author and Speaker, "Construction Defects and Insurance Recovery – Finding Value for Your Clients in the Cracks," Continuing Legal Education Presentation, presented November 2019 and January 2020.

Tristan J. Robinson

Education:

St. Mary's University School of Law, J.D., 2021

Sewanee University, B.A.-Politics, 2018

Practice and Expertise:

Mr. Robinson's practice includes complex civil litigation throughout the state of Texas. His areas of focus include litigation involving contractual disputes, insurance coverage and construction defects.

Mr. Robinson was licensed to practice law in Texas in October 2021. He has gained experience representing public entities, businesses, and private individuals in complex litigation.

Immediately after graduating from Sewanee University, Mr. Robinson pursued his law degree at St. Mary's University School of Law in San Antonio, Texas. During his third year of law school, he clerked for Gravely, P.C., where he gained experience assisting the firm in representing property owners in first party coverage disputes. Following the bar exam, Gravely, P.C. offered Mr. Robinson a full-time job as an attorney.

Mr. Robinson is licensed to practice in the State of Texas and the United States District Court for the Western District of Texas.