

The McAlester City Council met in Regular session on Tuesday, November 13, 2012, at 6:00 P.M. after proper notice and agenda was posted, November 8, 2012, at 2:48 P.M.

**Call to Order**

Mayor Harrison called the meeting to order.

Mother Stephanie Swinnea, All-Saints Episcopal Church gave the invocation and lead the Pledge of Allegiance.

**Roll Call**

Council Roll Call was as follows:

Present: Weldon Smith, John Titsworth, Travis Read, Robert Karr, Buddy Garvin, Sam Mason & Steve Harrison

Absent: None

Presiding: Steve Harrison, Mayor

Staff Present: Peter J. Stasiak, City Manager; John Modzelewski, City Engineer/Public Works Director; Toni Ervin, Chief Financial Officer; Ralph Jernigen, Assistant Fire Chief; William J. Ervin, City Attorney and Cora Middleton, City Clerk

**Awards Ceremony**

Representative Donnie Condit and Senator Richard Lerblance presented the City of McAlester with an award as a finalist in the 22nd Annual Environmental Excellence Competition.

**Citizen's Comments on Non-agenda Items**

Stephanie Giacomo addressed the Council thanking the City for its help during the Fall Clean up. She then updated them on the totals of the various items that had been collected during the Clean up.

Ginny Webb addressed the Council introducing herself as the new Director for the McAlester Main Street Program. She informed the Council of her activities since she had been appointed and stated that a meeting had been scheduled for Thursday at 2:00 P.M. with Mayor Harrison, Councilman Garvin and Manager Stasiak to discuss goals and objectives. Ms. Webb thanked the Council for their support of Main Street and she looked forward to meeting with each of them to discuss their ideas of what they wanted Main Street to be.

**Consent Agenda**

- A. Approval of the Minutes from the October 23, 2012 Regular Meeting of the McAlester City Council. *(Cora Middleton, City Clerk)*
- B. Approval of Claims for October 17, 2012 – November 6, 2012. *(Toni Ervin, Chief Financial Officer)* In the following amounts: General Fund - \$182,192.32; Nutrition - \$1,106.56; Landfill Res./Sub-Title D - \$590.00; Airport Grant - \$16,530.00; Tourism Fund - \$3,987.68; SE Expo Center - \$13,398.37; E-911 - \$208.62; Economic Development - \$39,492.91; Fleet Maintenance - \$10,399.98 and CIP Fund - \$130,187.43.
- C. Accept and Place on File the Pride In McAlester First Quarter (July, August, and September) Report for FY 2012-2013. *(Stephanie Giacomo, Executive Director Pride in McAlester)*
- D. Consider, and Act Upon, an expenditure of \$85.00 registration fee and applicable related charges for John Titsworth to attend the New Municipal Officials Institute on February 9, 2013 in Stillwater, Oklahoma. *(Cora Middleton, City Clerk)*

Mayor Harrison commented that he was going to remove item “B” to be addressed after agenda item “5”.

Councilman Titsworth requested that item “D” be removed for individual consideration.

Councilman Read moved to approve Consent Agenda items “A and C”, seconded by Vice-Mayor Mason. There was no discussion, and the vote was taken as follows:

AYE: Councilman Smith, Titsworth, Read, Karr, Garvin, Mason & Mayor Harrison

NAY: None

Mayor Harrison declared the motion carried.

### **Items Removed from Consent Agenda**

D. Consider, and Act Upon, an expenditure of \$85.00 registration fee and applicable related charges for John Titsworth to attend the New Municipal Officials Institute on February 9, 2013 in Stillwater, Oklahoma. *(Cora Middleton, City Clerk)*

A motion was made by Councilman Read and seconded by Councilman Smith to approve an expenditure of \$85.00 registration fee and applicable related charges for John Titsworth to attend the New Municipal Officials Institute on February 9, 2013 in Stillwater, Oklahoma. There was no discussion, and the vote was taken as follows:

AYE: Councilman Read, Karr, Garvin, Mason, Smith & Mayor Harrison

NAY: None

ABSTAIN: Councilman Titsworth

Mayor Harrison declared the motion carried.

A motion was made by Vice-Mayor Mason and seconded by Councilman Garvin to open a Public Hearing to address an Ordinance amending the FY 2012-2013 Budget.

There was no discussion, and the vote was taken.

AYE: Councilman Read, Karr, Garvin, Mason, Smith, Titsworth & Mayor Harrison

NAY: None

Mayor Harrison declared the motion carried, and the Public Hearing was opened at 6:11 P.M.

### **Public Hearing**

- AN ORDINANCE OF THE CITY OF MCALESTER, OKLAHOMA, AMENDING ORDINANCE NO. 2425 WHICH ESTABLISHED THE BUDGET FOR FISCAL YEAR 2012-2013; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.

There were no comments from the Public or the Council and Councilman Read moved to close the Public Hearing. The motion was seconded by Councilman Smith and the vote was taken as follows:

AYE: Councilman Karr, Garvin, Mason, Smith, Titsworth, Read & Mayor Harrison

NAY: None

Mayor Harrison declared the motion carried and the Public Hearing was closed at 6:12 P.M.

### **Scheduled Business**

1. Discussion and possible action, on a Resolution put forward by the Gaines Creek Association of Free Will Baptist opposing the removal of figurines depicting U.S. Military Kneeling in Silent Prayer from the 3<sup>rd</sup> Street intersection and asking the City of McAlester to reverse the decision and reinstall the silhouette. *(Joe Ervin, City Attorney)*

Executive Summary

Discussion and possible action, regarding silhouettes on City street signs.

Mayor Harrison explained that this item had previously been before the Council and during the interim there had been extensive research mostly by Councilman Smith in conjunction with the City Attorney. He then asked Councilman Smith to update everyone on what had been occurring.

Councilman Smith informed the audience that the Council had not been dragging its feet. Four separate organizations had been contacted regarding this matter and the last piece of information had been received last week. He commented that for the last couple of months they had been working on gathering information from the following four (4) organizations; The Alliance Defending Freedom (ADF), the American Center for Law and Justice (ACLJ), the Liberty Council, and the Liberty Institute. Councilman Smith commented that the four organizations had not been identified by name in the agenda because they had requested that their opinion not be made public unless it went to court. He then summarized the four (4) organizations responses. He further stated that all of these organizations typically provided pro bono legal work to help in a court case, if they agreed you had a defensible case. If you lost the case you would end up paying the opposing sides' attorneys' fees.

City Attorney Ervin commented, that had been a fair description of the information and the City Attorney's opinion had not changed.

Councilman Smith then moved that the City Manager be directed to refrain from removing the sign silhouette at the intersection of 3<sup>rd</sup> and Choctaw, presumably referred to in the resolution by the Gaines Creek Association of Free Will Baptist, which appears to show a military man kneeling or any other such silhouette now displayed which depicts a military member and the previous action by the City Manager with regard to removal of nine (9) other sign silhouettes is upheld. The motion was seconded by Councilman Titsworth

Mayor Harrison explained to the audience that since a motion had been made and seconded the Council would now have their discussion and when they were finished the citizens would be allowed to comment.

There was discussion among the Council regarding the opinions concerning the silhouettes and their feelings about the subject.

James Prince, Lonnie Lu Anderson, William Murdock, Carolyn McNatt, Larry Browning, Lonnie Palmer, Steve Belcher and Joe Watkins each addressed the Council voicing their concerns about the silhouettes.

Councilman Karr requested clarification of the motion. Mayor Harrison explained that a yes vote would leave the remaining silhouettes where they were and not reinstall the other silhouettes. There was no further discussion, and the vote was taken as follows:

AYE: Councilman Mason, Smith, Titsworth, Read & Mayor Harrison

NAY: Councilman Garvin & Karr

Mayor Harrison declared the motion carried.

2. Discussion, and possible action, on approval of Water Leak adjustment and late fees waiver for Rural Water District #5. (*Toni Ervin, Chief Financial Officer*)

Executive Summary

Staff recommends Waiver of late fees that were paid in full for the month and on time.

Mayor Harrison requested that Toni Ervin, City of McAlester CFO if she would explain this item and why it had been brought before the Council.

Ms. Ervin explained that Rural Water District #5 had a leak which had been repaired. She explained the steps that had been taken by the City to address the problem

Jim Henley addressed the Council regarding the water leak, what he had been told by a previous administration and what steps that Rural Water District #5 had taken to address the leak.

There was discussion between the Council, Mr. Henley, Ms. Ervin and the City Attorney regarding the leak, who had the authority to adjust the water bill, the lack of a current water contract, the current cost to produce water and previous adjustments to the District's rate related to improvements to the Water Treatment Plant.

Mayor Harrison then moved to accept the Staff's recommendation for a waiver of late fees in the amount of \$9,983.61 provided that the Water District promptly pays the remaining balance.

Before the second there was further discussion among the Council regarding estimating the bill, the cost of the new meter, how often late fees were waived and setting a precedent with this matter

Councilman Smith seconded the motion to accept the Staff's recommendation for a waiver of late fees in the amount of \$9,983.61 provided that the Water District promptly pays the remaining balance.

There was no further discussion, and the vote was taken as follows:

AYE: Councilman Mason, Smith, Titsworth, Karr, Garvin & Mayor Harrison

NAY: Councilman Read

Mayor Harrison declared the motion carried.

3. Consider, and act upon, an Ordinance amending Ordinance No. 2425 which established the budget for fiscal year 2012-2013; repealing all conflicting ordinances; providing for a severability clause; and declaring an emergency. *(Toni Ervin, Chief Financial Officer)*

Executive Summary

Motion to approve the budget amendment ordinance.

#### **ORDINANCE NO. 2442**

**AN ORDINANCE OF THE CITY OF McALESTER, OKLAHOMA, AMENDING ORDINANCE NO. 2425 WHICH ESTABLISHED THE BUDGET FOR FISCAL YEAR 2012-2013; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.**

A motion was made by Councilman Karr and seconded by Vice-Mayor Mason to approve **ORDINANCE NO. 2442**, amending the Fiscal Year 2012-2013 Budget.

Before the vote, Ms. Ervin addressed the Council explaining the exhibits to the budget amendment were to lapse and re-appropriate expenditures for an Airport Grant and to appropriate funds for a new SUV for the Police Department.

There was a brief discussion among the Council, Manager Stasiak and Ms. Ervin concerning the fund that the SUV should be purchased from and the type of SUV was to be purchased.

Mayor Harrison stated that the fund would be changed from the Capital Improvement fund to the Forfeiture Fund. There was no further discussion, and the vote was taken as follows:

AYE: Councilman Smith, Titsworth, Read, Karr, Garvin, Mason & Mayor Harrison

NAY: None

Mayor Harrison declared the motion carried.

Councilman Read moved to approve the EMERGENCY CLAUSE, seconded by Councilman Karr. There was no discussion, and the vote was taken as follows:

AYE: Councilman Karr, Garvin, Mason, Smith, Titsworth, Read & Mayor Harrison

NAY: None

Mayor Harrison declared the motion carried.

4. Discussion, and possible action, on approval of a bid award for SCBA's (self contained breathing apparatus) to Chief Fire & Safety. *(Brett Brewer, Fire Chief)*

Executive Summary

Motion to approve a bid award to purchase 10 new and unused SCBA'S (self contained breathing apparatus) with 10 replacement cylinders in the amount of \$48,650.00

A motion was made by Councilman Karr and seconded by Councilman Read to approve bid award to purchase ten (10) new and unused SCBA's (self contained breathe apparatus) with ten (10) replacement cylinders in the amount of \$48,650.00 to Chief Fire & Safety.

Before the vote, Manager Stasiak explained that this was funded with re-appropriated money from the previous budget and there was approximately \$50,000.00 in the account. He stated that this was a lighter piece of equipment and fell within the City's bidding process.

There was discussion among the Council regarding the number of units asked for on the original bid document, the bid per unit and the document not being specific.

There was no further discussion, and the vote was taken as follows:

AYE: Councilman Smith, Titsworth, Read, Karr, Garvin, Mason & Mayor Harrison

NAY: None

Mayor Harrison declared the motion carried.

5. Consider, and act upon, approval of Change Order No. 1 to the existing contract with Traffic Signals, Inc. for installation of the Traffic Signal Improvements at the intersection of Wyandotte Avenue and Strong Boulevard. *(John C. Modzelewski, P.E., City Engineer and Public Works Director)*

Executive Summary

Motion to approve Change Order No. 1 in the amount of \$2,550.00 to the contract with Traffic Signals, Inc. for installation of the Traffic Signal Improvements at the intersection of Wyandotte Avenue and Strong Boulevard.

A motion was made by Councilman Read and seconded by Councilman Titsworth to approve Change Order No. 1, in the amount of \$2,550.00 to the existing contract with Traffic Signals, Inc. for installation of the Traffic Signal Improvements at the intersection of Wyandotte Avenue and Strong Boulevard.

Before the vote, John Modzelewski addressed the Council explaining during the pre-construction meeting for the project at the intersection of Wyandotte Avenue and Strong Boulevard it was determined that the proposed traffic signal heads did not provide for a protected left-hand turn movements. Also, a stand alone pedestrian signal pole needed to be added to accommodate ADA access to the push button.

There was a brief discussion, among the Council, Manager Stasiak and Mr. Modzelewski concerning the omission of these items in the original bid and why this had not been brought before the Council sooner.

There was no further discussion, and the vote was taken as follows:

AYE: Councilman Titsworth, Read, Karr, Smith & Mayor Harrison

NAY: Councilman Garvin & Mason

Mayor Harrison declared the motion carried.

- B. Approval of Claims for October 17, 2012 – November 6, 2012. *(Toni Ervin, Chief Financial Officer)* In the following amounts: General Fund - \$182,192.32; Nutrition - \$1,106.56; Landfill Res./Sub-Title D - \$590.00; Airport Grant - \$16,530.00; Tourism Fund - \$3,987.68; SE Expo Center - \$13,398.37; E-911 - \$208.62; Economic Development - \$39,492.91; Fleet Maintenance - \$10,399.98 and CIP Fund - \$130,187.43.

A motion was made by Councilman Read and seconded by Councilman Titsworth to approve the claims for October 17, 2012 through November 6, 2012.

There was no discussion, and the vote was taken as follows:

AYE: Councilman Read, Karr, Mason, Smith, Titsworth & Mayor Harrison

NAY: Councilman Garvin

Mayor Harrison declared the motion carried

6. Discussion, and possible action, authorizing the mayor to sign a lease agreement between McAlester Regional Airport Authority and City of McAlester, McAlester, Oklahoma, and EagleMed, LLC for Corporate Hanger No. 30 located at the McAlester Regional Airport for a term of five (5) years beginning October 1, 2012 and ending on October 1, 2017. (*Joe Ervin, City Attorney*)

Executive Summary

Motion to approve the lease agreement between McAlester Regional Airport Authority and City of McAlester, McAlester, Oklahoma, and EagleMed, LLC and authorize the Mayor to sign the said documents.

A motion was made by Councilman Smith and seconded by Councilman Read to authorize the Mayor to sign a lease agreement between McAlester Regional Airport Authority and City of McAlester, McAlester, Oklahoma, and EagleMed, LLC for Corporate Hanger No. 30 located at the McAlester Regional Airport for a term of five (5) years beginning October 1, 2012 and ending on October 1, 2017.

Before the vote, City Attorney Ervin addressed the Council explaining the process that had been followed and then he reviewed his recommended changes to the contract for the Council. He commented that he had wanted the Council to be aware of the language in the contract and to get guidance to what the Council wanted in the contract.

There was discussion, among the Council including Manager Stasiak and City Attorney Ervin regarding the terms of the contract, the ability to negotiate the rent annually, the company's investment in the community, annually renewing the contract, the ability to inspect the hangar, what type of insurance the Lessee needed to maintain, the value of the hangar and the lease that had been proposed by the Lessee.

Attorney Ervin commented that he would get the revised agreement to EagleMed in next day or two (2).

There was no vote on this item.

### **New Business**

There was no new business.

### **City Manager's Report**

Manager Stasiak informed the Council that he would be out of state from Saturday, November 17<sup>th</sup> through Sunday, November 25<sup>th</sup>. He stated that he would inform the Council toward the end of the week who would be Acting City Manager during his absence.

### **Remarks and Inquiries by City Council**

Councilmen Smith, Titsworth, Read and Garvin did not have any comments for the evening.

Councilman Karr commented that Fifth Street and Taylor would be paved tomorrow. He then wished everyone a Happy Thanksgiving.

Vice-Mayor Mason requested an update on the McAlester Parking Authority and the Allegiance Franchise at the next meeting.

## **Mayor's Comments and Committee Appointments**

Mayor Harrison did not have any comments for the evening.

### **Recess Council Meeting**

Mayor Harrison asked for a motion to recess the Regular Meeting to convene the Authorities. Vice-Mayor Mason moved to recess the Regular Meeting and convene the Authorities. The motion was seconded by Councilman Karr.

There was no discussion, and the vote was taken as follows:

AYE: Councilman Karr, Garvin, Mason, Smith, Titsworth, Read & Mayor Harrison  
NAY: None

Mayor Harrison declared the motion carried and the meeting was recessed at 8:55 P.M.

### **Reconvene Council Meeting**

The Regular Meeting was reconvened at 8:56 P.M.

A motion was made by Councilman Titsworth and seconded by Councilman Smith to recess the Regular Meeting for an Executive Session in accordance with Title 25, Sec. 307.B.4., for confidential communications between a public body and its attorney concerning pending investigations, claims, or actions, more particularly: City of McAlester v. Randy Green, Case No. C-06-844.

There was no discussion and the vote was taken as follows:

AYE: Councilman Garvin, Mason, Smith, Titsworth, Read, Karr & Mayor Harrison  
NAY: None

Mayor Harrison declared the motion carried and the meeting was recessed at 8:57 P.M.

### **Executive Session**

*Recess into Executive Session in compliance with Section Title 25 Section 307 (B) (4) et.seq. Oklahoma Statutes, to wit:*

- 1) Proposed executive session pursuant to Title 25, Sec. 307 (B) (4) for Confidential communications between a public body and its attorney concerning a pending investigations, claims, or actions, more particularly: City of McAlester v. Randy Green, Case No. C-06-844.

### **Reconvene into Open Session**

*Take any action as a result from Executive Session.*

The Regular Meeting was reconvened at 9:30 P.M. Mayor Harrison reported that the Council had recessed the Regular Meeting for an Executive Session for confidential communications between a public body and its attorney concerning pending investigations, claims, or actions, more particularly: City of McAlester v. Randy Green, Case No. C-06-844, in accordance with Title 25, Sec. 307.B.4. Only that matter was discussed, no action was taken and the Council returned to open session at 9:30 P.M., and this constituted the Minutes of the Executive Session.

### **Adjournment**

There being no further business to come before the Council, Councilman Titsworth moved for the meeting to be adjourned, seconded by Councilman Smith.

There was no discussion, and the vote was taken as follows:

AYE: Councilman Mason, Smith, Titsworth, Read, Karr, Garvin & Mayor Harrison  
NAY: None

Mayor Harrison declared the motion carried, and the meeting was adjourned at 9:31 P.M.

ATTEST:

\_\_\_\_\_  
Steve Harrison, Mayor

\_\_\_\_\_  
Cora Middleton, City Clerk