

The McAlester City Council met in Regular session on Tuesday, February 26, 2013, at 6:00 P.M. after proper notice and agenda was posted, February 8, 2013, at 4:26 P.M.

Call to Order

Mayor Harrison called the meeting to order.

Pastor Robert Tate, First Indian Baptist Church gave the invocation and led 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; Toni Ervin, Chief Financial Officer; John Modzelewski, City Engineer/Public Works Director; Mel Priddy, Community Services Director; Pamela Kirby, Human Resources Manager/Grant Writer; William J. Ervin, City Attorney and Cora Middleton, City Clerk

Citizen's Comments on Non-agenda Items

Ginny Webb, Executive Director of McAlester Main Street Association addressed the Council informing them that the Individual Membership drive had started and Pride In McAlester and Main Street would be hosting a joint work day on Saturday, March 9th. She stated that they would meet in front of the Okla Theatre at 9:00 A.M. that day.

Consent Agenda

- A. Approval of the Minutes from the February 5, 2013 Special Meeting of the McAlester City Council. *(Cora Middleton, City Clerk)*
- B. Approval of the Minutes from the February 12, 2013 Regular Meeting of the McAlester City Council. *(Cora Middleton, City Clerk)*
- C. Approval of Claims for February 6 – February 19, 2013. *(Toni Ervin, Chief Financial Officer)* In the following amounts: General Fund - \$103,203.19; Parking Authority - \$67.66; Nutrition - \$1,871.72; Landfill Res./Sub-Title D - \$6,595.21; Tourism Fund -

\$507.40; SE Expo Center - \$4,551.85; E-911 - \$6,683.30; Fleet Maintenance - \$12,562.87 and CIP Fund - \$48,000.00.

- D. Consider, and act upon, a request by the Italian Festival Foundation to partner with them for the rental fee for the use of the Southeast Expo Center for the 2013 Annual Italian in the amount of \$2,125.00. (*Mel Priddy, Director of Community Services*)
- E. Concur with Mayor's Re-Appointment of Cara Bland, 601 Nelson Lane to the McAlester Hospital Board for a term to expire February, 2019. (*Steve Harrison, Mayor*)

Councilman Smith moved to approve the Consent Agenda. The motion was seconded by Councilman Read. There was no discussion, and the vote was taken as follows:

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

Mayor Harrison declared the motion carried.

Councilman Smith moved to open a Public Hearing to address two (2) Ordinances. The motion was seconded by Councilman Read. There was no discussion, and the vote was taken as follows:

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

Mayor Harrison declared the motion carried and the Public Hearing was opened at 6:06 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.

AN ORDINANCE TO RESCIND ORDINANCE NO. 2447 THAT AMENDED SECTIONS 54-48. TO ARTICLE III, CHAPTER 54, OF THE CODE OF THE CITY OF McALESTER, OKLAHOMA BY PROHIBITING TOBACCO USE ON CITY-OWNED PREMISES AND PROPERTIES IN GENERAL AND DECLARING AN EMERGENCY.

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

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

Mayor Harrison declared the motion carried and the Public Hearing was closed at 6:07 P.M.

Scheduled Business

1. Presentation of the new City of McAlester Marketing Video. (*Shari Cooper, Executive Director MPower*)

Executive Summary

The new City of McAlester Marketing Video.

Shari Cooper, Executive Director MPower addressed the Council regarding the marketing video that she had supervised. She thanked various members of the business community for their participation during the video's creation. She then presented the video for the Council's consideration.

After the presentation, there was discussion among the Council regarding the quality of the video, the various means of distribution, and tracking internet search requests of the City of McAlester. There was no vote on this item.

2. Presentation and discussion of the possible purchase of the South Side Business Development Center by the Choctaw Nation. Presented by Assistant Chief Gary Batton and Councilman Bob Pate. (*Peter Stasiak, City Manager*)

Executive Summary

Motion to approve entering into a discussion and negotiating a sale price of the South Side Business Development Center to the Choctaw Nation.

Assistant Choctaw Chief Gary Batton and Councilman Bob Pate addressed the Council regarding the possible purchase and plans for the South Side Business Development Center by the Choctaw Nation. He highlighted the proposed construction of a Food Distribution Center, a Wellness Center, a Community Center, a Head start and Independent Elderly Housing. He informed the Council that the Choctaw Nation Council and Chief Pyle had already money for Food Distribution Center, the Wellness Center and the Head start. He added that those buildings would be constructed first if a deal could be agreed upon.

There was discussion among the Council, Assistant Chief Batton, and Councilman Pate regarding the relationship between the City of McAlester and the Choctaw Nation, the jobs that had been created in McAlester, the number of citizens that would be served by this development, if there would be secondary access to the development, if the City would receive sales tax revenue from the construction work, if the Nation would put this land into a trust, the number of acres in the South Side Business Development Center, if the walking trail would be accessible to the general public and if there would be security in the development.

Vicki Brown addressed the Council expressing her concerns about the possible purchase by the Choctaw Nation, how quickly this item had developed and how often this had been discussed by the Council.

There was further discussion among the Council and Manager Stasiak addressing Ms. Brown's concerns.

Shari Cooper, Executive Director MPower addressed the Council explaining that she had attempted to market the South Side Business Development Center several times but it lacked adequate access and highway frontage. She commented that the development made a lot of sense.

There was another brief discussion among the Council regarding options for use of the property, how nothing has actually been done to develop the property and that if the property were to be sold the proceeds would go into the Economic Development Fund.

Councilman Titsworth moved to approve the negotiation for the sale of the property. City Attorney Ervin commented that the Council had options to address this matter. He stated that they could designate a committee of the Council or authorize the City Manager to negotiate with the Choctaw Nation and then bring that proposal back to the Council.

Councilman Titsworth changed his motion to approve a committee of the Council or the City Manager to negotiate a price with the Choctaw Nation to sell the South Side Business Development Center. Vice-Mayor Mason amended the motion for the Mayor to appoint a committee to meet and negotiate with the Choctaw Nation. City Attorney Ervin asked if Councilman Titsworth agreed to the amendment. Mayor Harrison stated that Councilman Titsworth had accepted the amendment to the motion and asked if Vice-Mayor Mason would second the motion. There was no further discussion, and the vote was taken as follows:

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

NAY: None

Mayor Harrison declared the motion carried and asked that any Council member interested in participating on the committee to contact him.

Assistant Chief Baton asked who would contact who and Mayor Harrison stated that the Committee would contact the Nation once it had been appointed.

3. Discussion and possible action regarding a proposition sales tax election. (*Jon Wolff, Municipal Finance Services, Inc. and Allan Brooks, OK Public Finance Law Group PLLC*)

Executive Summary

Discussion and possible action regarding a proposition sales tax election.

A motion was made by Councilman Read and seconded by Councilman Smith to open discussion of a proposed sales tax special election.

Before the vote, Allan Brooks addressed the Council reviewing what had occurred with the previous special election and what had transpired since that election. He also reviewed the language in the draft ordinance and resolution calling for and setting the proposition for another sales tax special election.

There was discussion among the Council and Mr. Brooks concerning the language in the proposition, the time frame that the Council had to work with to call a special election and if the list of projects would change. Mr. Brooks informed the Council that he would complete the ordinance and resolution and present them to the Council at the next meeting.

There was no vote on this item.

4. 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. 2452

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 Read and seconded by Councilman Smith to approve **ORDINANCE NO. 2452**, amending the 2012/2013 Fiscal Year Budget.

Before the vote, Toni Ervin reviewed the exhibits to the amendment with the Council.

Mayor Harrison asked the City Attorney about the match for the ODEQ Grant. Mr. Ervin commented that the City Attorney would be recommending the funds for the ODEQ Grant match not be given by the City for Constitution reasons, but that could be addressed in the next agenda item.

Councilman Titsworth asked about the Environmental study. Manager Stasiak explained that was a request to do a Phase 1 Environmental study at the Steven Taylor Industrial Park on sites C-1 and C-3.

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

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

NAY: None

Mayor Harrison declared the motion carried.

A motion was made by Councilman Karr and seconded by Councilman Garvin to approve the Emergency Clause. There was no discussion, and the vote was taken as follows:

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

NAY: None

Mayor Harrison declared the motion carried.

5. Consider and act upon contributing \$25,000 as match for an ODEQ grant for the renovation of the OKLA Theatre. (*Peter Stasiak, City Manager*)

Executive Summary

Motion to approve and act upon contributing \$25,000 as match for an ODEQ grant for the renovation of the OKLA Theater.

City Attorney Ervin informed the Council that while reviewing this item he had received additional information from the City Manager. He then reviewed his opinion with the Council, stating that expenditures of public funds were restricted by the Oklahoma Constitution under Article 10 § 14, to a “Public Purpose” that fulfilled a function of the City. He stated that in this instance the primary purpose appeared to be to help a private entity qualify for a federal grant to improve private property. He added that this was not a public purpose or in furtherance of a recognized municipal function.

There was a brief discussion among the Council, City Attorney Ervin and Stephanie Giacomo concerning the request for funding, private donations, how restoring an historic downtown building would not benefit the public, and how this compared to the Partnering agreements at the Expo.

Ms. Giacomo addressed the Council stating that had she known that this was not an allowable request, she would never have brought it this far.

There was no action on this item.

6. Tabled - Update, discussion and possible action to resolve status of contract FAA AIP 3-40-0057-011-012-2011 and OAC Project #MLCC-12-75 at McAlester Regional Airport awarded June 26, 2012 by City of McAlester Airport Authority to Total Investment Company, Guthrie, Oklahoma. Seven months, as of January 26, 2013 have elapsed since said award. Bids on this project were received on September 2, 2011. (*Cora Middleton, City Clerk/Vice Mayor Sam Mason*)

Executive Summary

Update, discussion and possible action to resolve status of contract FAA AIP 3-40-0057-011-012-2011 and OAC Project #MLCC-12-75.

Vice-Mayor Mason commented that this project was eighteen (18) months from the bid opening, and eight (8) months from the award of the contract. He stated that the contractor was in default on this project and the only option was to declare the contractor in default.

There was discussion among the Council, the City Attorney and Kevin Reeder of LBR regarding the amount of time that had passed since the bids had been opened in September, 2011, the difference in the bids, the delay in awarding the bid caused by the environmental issue, the contractor’s inability or refusal to get a performance bond and what action the City needed to take to clear this problem up.

Vice-Mason moved to declare Total Investment Company, the contractor, in default and authorize the City Attorney to make a claim against the contractor's bid bond and authorize the City to re-bid the project. The motion was seconded by Councilman Read.

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

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

NAY: None

Mayor Harrison declared the motion carried.

Vice-Mayor Mason thanked Mr. Reeder for being present at the meeting.

7. Consider, and act upon, accepting Kristen Lloyd Photography, Inc and Whistle Stop Bistro as participants in the Retail Sales Tax Incentive Program for the McAlester Main Street District Businesses and Choctaw Corridor and authorizing the Mayor to sign the Certification of all Applicable Requirements. *(Toni Ervin, Chief Financial Officer)*

Executive Summary

Motion to approve certification in writing to accept the attached businesses as a participant.

A motion was made by Councilman Titsworth and seconded by Councilman Karr to accept Kristen Lloyd Photography, Inc and Whistle Stop Bistro as participants in the Retail Sales Tax Incentive Program for the McAlester Main Street District Businesses and Choctaw Corridor and authorize the Mayor to sign the Certification of all Applicable Requirements.

Before the vote, Toni Ervin addressed the Council explaining that the two (2) businesses could be certified in writing as applicants and had met all of the requirements.

Ginny Webb, Executive Director McAlester Main Street Association thanked the Council for their support of this program. She then informed the Council that the two (2) businesses had applied and the Council would be seeing their rebate requests in the future. She also commented that she would be revamping the application and bringing it back to the Council to see if the program could be moved forward for another round of applicants.

There was a brief discussion among the Council and Ms. Ervin concerning application process, if Old Town was included in the program, what the criteria was to meet the requirements, how would the application be verified, who would track the program and how the rebates would be approved.

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

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

NAY: None

Mayor Harrison declared the motion carried.

8. Discussion and possible action, to rescind Ordinance 2447 (prohibiting tobacco use on City owned or controlled Property) based on Oklahoma Attorney General's Opinion 2013-2. (*William J. Ervin, City Attorney*)

Executive Summary

Discussion and possible action, to rescind Ordinance 2447 based on Oklahoma Attorney General's Opinion 2013-2.

A motion to rescind **ORDINANCE NO. 2447** was made by Councilman Read and seconded by Councilman Smith.

Before the vote, City Attorney Ervin addressed the Council informed the Council that this was brought before them under the direction that he received at the previous meeting. He stated that this was in response to the Attorney General's opinion that had been issued on February 5, 2013. He commented that he had included a copy of the Attorney General's opinion that basically set forth that municipalities did not have the authority to prohibit tobacco use in municipal parks. He advised the Council that while the Attorney General's opinion was binding on state agencies were advisory only on municipalities.

There was discussion among the Council, Attorney Ervin and Ms. Karlita Lott regarding the Attorney General's opinion, what other communities were doing in respect to the AG's opinion, what options the City had, what rescinding the ordinance would do to the City, that neither the ordinances nor the AG's opinion had been tested in a court of law, and if the City needed this ordinance.

Mayor Harrison clarified the motion as a yes vote would be to "rescind **ORDINANCE NO. 2447**". There was no further discussion, and the vote was taken as follows:

AYE: Councilman Read, Garvin & Mason

NAY: Councilman Smith, Karr, Titsworth & Mayor Harrison

Mayor Harrison declared the motion failed.

New Business

There was no new business.

City Manager's Report

Manager Stasiak reported that in his Manager's report this week he spoke of a \$1.7 million shortfall in revenues. He commented that this would probably get worse. He stated that management had stabilized the City at this point and would continue to keep the Council advised as how this progressed.

Remarks and Inquiries by City Council

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

Vice-Mayor Mason asked that the City Manager move to ensure the MPower presentation be put on the City's Cable channel in the near future.

Mayor's Comments and Committee Appointments

Mayor Harrison had no comments for the evening.

Recess Council Meeting

Mayor Harrison asked for a motion to recess the Regular Meeting to convene the Authorities. Councilman Smith moved to recess the Regular Meeting and convene the Authorities. The motion was seconded by Councilman Titsworth.

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

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

Mayor Harrison declared the motion carried and the meeting was recessed at 8:37 P.M.

Reconvene Council Meeting

The Regular Meeting was reconvened at 8:39 P.M.

Adjournment

There being no further business to come before the Council, Councilman Smith moved for the meeting to be adjourned, seconded by Councilman Titsworth. There was no discussion, and the vote was taken as follows:

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

Mayor Harrison declared the motion carried, and the meeting was adjourned at 8:39 P.M.

ATTEST:

Steve Harrison, Mayor

Cora Middleton, City Clerk