

The McAlester City Council met in Regular session on Tuesday, September 9, 2014, at 6:00 P.M. after proper notice and agenda was posted, September 8, 2014 at 3:27 P.M.

Call to Order

Mayor Harrison called the meeting to order.

City Attorney, William J. Ervin, Jr., gave the invocation and led the Pledge of Allegiance.

Roll Call

Council Roll Call was as follows:

Present: Weldon Smith, John Titsworth, Robert Karr, Buddy Garvin, Jason Barnett & Steve Harrison
Absent: Travis Read
Presiding: Steve Harrison, Mayor

Staff Present: Peter J. Stasiak, City Manager; John Modzelewski, City Engineer/Public Works Director; Leroy Alsup, Community & Economic Development Director; Toni Ervin, Chief Financial Officer; Brett Brewer, Fire Chief; William J. Ervin, Jr., City Attorney and Cora Middleton, City Clerk

Citizen's Comments on Non-agenda Items

Regina Peoples, Executive Director of Pride In McAlester addressed the Council updating them on the activities that had happened in August and informed them that Pride had received approval to become a "Keep America Beautiful" affiliate. She added that the remediation project on the Okla Theatre was on schedule to be completed before the end of September and the Fall Clean Up dates had been scheduled for October 4th, 5th, 11th and 12th.

Lacey Sudderth, Executive Director of McAlester Main Street Association addressed the Council informing them that the Annual Cruise Night had been scheduled for September 27th downtown on Choctaw Avenue.

Consent Agenda

- A. Approval of the Minutes from the August 12, 2014 Regular Meeting of the McAlester City Council. (*Cora Middleton, City Clerk*)

- B. Approval of Claims for August 20, 2014 through September 2, 2014. *(Toni Ervin, Chief Financial Officer)* In the following amounts: General Fund - \$85,463.67; Nutrition - \$1,163.37; Landfill Res./Sub-Title D - \$2,556.60; Tourism Fund - \$21,150.74; SE Expo Center - \$5,617.46; E-911 - \$4,135.00; Economic Development - \$9,496.32; Grants & Contributions - \$949.00; Fleet Maintenance - \$43,718.69 and CIP Fund - \$297,146.00.
- C. Consider and act upon, a request by Eastern Oklahoma State College – GEAR UP Program to partner with them for the rental fee in the amount of \$875.00 for the use of the Expo Center on October 3, 2014. *(Jerry Lynn Wilson, Expo Center Manager)*
- D. Consider and act upon, the approval of the McAlester Main Street Annual Action Plan. *(Lacey Sudderth, McAlester Main Street)*
- E. Consider and act upon, the approval of an Agreement for the 2015 Junior Sunbelt Classic between McAlester Public Schools and the City of McAlester. *(Cora Middleton, City Clerk)*
- F. Consider and act upon, the approval of the Oklahomans for Independent Living 4th Quarter Service Report. *(Peter J. Stasiak, City Manager)*
- G. Consider and act upon, authorization of payment to Mehlburger Brawley, Invoice # MC-14-01-05, in the amount of \$17,997.80, for engineering services related to CIP#3 and funded through the McAlester Public Works Authority Construction Fund Series 2013 Project Account. *(John C. Modzelewski, P.E., City Engineer and Public Works Director)*
- H. Consider and act upon, authorization of payment to Poe & Associates, Inc., Invoice # 203031-8648, in the amount of \$34,205.88, for engineering services related to CIP#2 and funded through the McAlester Public Works Authority Construction Fund Series 2013 Project Account. *(John C. Modzelewski, P.E., City Engineer and Public Works Director)*

Manager Stasiak requested that item “B” be removed for individual consideration.

A motion was made by Councilman Smith and seconded by Councilman Titsworth to approve Consent Agenda items “A, C, D, E, F, G and H”.

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

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

NAY: None

Mayor Harrison declared the motion carried.

Items Removed from Consent Agenda

- B. Approval of Claims for August 20, 2014 through September 2, 2014. *(Toni Ervin, Chief Financial Officer)* In the following amounts: General Fund - \$85,463.67; Nutrition -

\$1,163.37; Landfill Res./Sub-Title D - \$2,556.60; Tourism Fund - \$21,150.74; SE Expo Center - \$5,617.46; E-911 - \$4,135.00; Economic Development - \$9,496.32; Grants & Contributions - \$949.00; Fleet Maintenance - \$43,718.69 and CIP Fund - \$409,124.00.

A motion was made by Councilman Smith and seconded by Councilman Karr to approve Claims for August 20, 2014 through September 2, 2014.

Before the vote, Manager Stasiak informed the Council that he was distributing an additional claim to Bob Hurley Ford in the amount of \$111,978.00 for the three (3) new Police units that had been delivered today. He stated that normally those vehicles had to be picked up and he was asking to add this amount to the claims list.

After a brief discussion concerning what type of vehicles had been purchased the vote was taken as follows:

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

NAY: None

Mayor Harrison declared the motion carried.

A motion was made by Councilman Karr and seconded by Councilman Smith to open a Public Hearing to address three (3) ordinances. There was no discussion, and the vote was taken as follows:

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

NAY: None

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

Public Hearing

- AN ORDINANCE AMENDING ORDINANCE 2467 WHICH ESTABLISHED THE BUDGET FOR FISCAL YEAR 2013-14; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.
- AN ORDINANCE AMENDING ORDINANCE 2501 WHICH ESTABLISHED THE BUDGET FOR FISCAL YEAR 2014-15; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.
- A NEW ORDINANCE OF THE CITY OF MCALESTER, OKLAHOMA, TO CLOSE THE ALLEY THAT LIES IN BLOCK 642; THE ALLEY THAT LIES IN BLOCK 654; THE ALLEY THAT LIES IN BLOCK 660; THAT PART OF MODOC AVENUE LYING BETWEEN BLOCK 642 AND BLOCK 654, BEING EAST OF "A" STREET AND WEST OF OAK STREET; THAT PART OF SHAWNEE AVENUE LYING BETWEEN

BLOCK 654 AND BLOCK 660, BEING EAST OF “A” STREET AND WEST OF OAK STREET; ALL IN THE CITY OF MCALESTER, FORMERLY SOUTH MCALESTER, PITTSBURG COUNTY, STATE OF OKLAHOMA AND TO RETAIN THE UTILITY EASEMENT IN THE ALLEY THAT LIES IN BLOCK 642, BETWEEN A STREET AND OAK STREET FOR THE CITY’S EXISTING SEWER MAIN.

There were no comments from the citizens or the Council and the vote was taken as follows:

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

NAY: None

Mayor Harrison declared the motion carried and the Public Hearing was closed at 6:08 P.M.

Scheduled Business

1. Presentation “Operation Playing with Fire” by McAlester Fire Department. (*Brett Brewer, Fire Chief*)

Executive Summary

Presentation by Fire Chief, Brett Brewer.

Fire Chief Brett Brewer, Firefighter Jered Weeks, Pittsburg County Emergency Management Director Kevin Enloe and City of McAlester E-911 Manager Shawn Smith addressed the Council reviewing the Full Scale exercise that had transpired on Saturday, August 2, 2014. During their review they discussed the strengths and weaknesses of the various entities and individuals that participated in the exercise.

After the review, there was a brief discussion concerning the event, if there had been surprises thrown into the scenario, and if the County would be helping fund any of the needed improvements.

2. Consider and act upon, authorizing the City Manager to sign the Proposed Award from the Oklahoma Office of Homeland Security - 2012 Homeland Security Grant Program; Regional Response Sustainment Detection Equipment Project; #460.155, in the amount of \$2,157.54. (*Brett Brewer, Fire Chief*)

Executive Summary

Motion to approve 2012 Homeland Security Grant Program; Regional Response Sustainment Detection Equipment Project; #460.155, in the amount of \$2,157.54.

A motion was made by Councilman Smith and seconded by Councilman Garvin to authorize the City Manager to sign the Proposed Award from the Oklahoma Office of Homeland Security - 2012 Homeland Security Grant Program; Regional Response Sustainment Detection Equipment Project; #460.155, in the amount of \$2,157.54.

Before the vote, Chief Brewer explained that this grant would be used to purchase four (4) Gas Monitors for the Fire Departments Haz-Mat Unit.

After a brief discussion concerning the purchase, if the agenda was clear enough to authorize the purchase and what the monitors were for, the vote was taken as follows:

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

NAY: None

Mayor Harrison declared the motion carried.

3. Consider and act upon, authorizing the City Manager to sign the Proposed Award from the Oklahoma Office of Homeland Security - 2012 Homeland Security Grant Program; Regional Response Sustainment Detection Equipment Project; #460.107, in the amount of \$4,341.31. (*Brett Brewer, Fire Chief*)

Executive Summary

Motion to approve 2012 Homeland Security Grant Program; Regional Response Sustainment Detection Equipment Project; #460.107, in the amount of \$4,341.31.

A motion was made by Councilman Smith and seconded by Councilman Garvin to authorize the City Manager to sign the Proposed Award from the Oklahoma Office of Homeland Security - 2012 Homeland Security Grant Program; Regional Response Sustainment Detection Equipment Project; #460.107, in the amount of \$4,341.31.

Before the vote, Chief Brewer explained that this grant was for Radiation Detection Equipment. There was no discussion, and the vote was taken as follows:

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

NAY: None

Mayor Harrison declared the motion carried.

4. Consider and act upon, an Ordinance amending Ordinance No. 2467 which established the budget for fiscal year 2013-2014; repealing all conflicting ordinances; providing for a severability clause; and declaring an emergency. (*Toni Ervin, CFO*)

Executive Summary

Motion to approve the budget amendment ordinance.

ORDINANCE NO. 2513

AN ORDINANCE OF THE CITY OF McALESTER, OKLAHOMA, AMENDING ORDINANCE NO. 2467 WHICH ESTABLISHED THE BUDGET FOR FISCAL YEAR 2013-14; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.

A motion was made by Councilman Smith and seconded by Councilman Garvin to approve **ORDINANCE NO. 2513**, amending Fiscal Year 2013-2014 Budget.

Before the vote, CFO Ervin addressed the Council reviewing the exhibits to the amendment. She explained that this was to appropriate funds for additional donations, additional electric utility, 2013-14 Bond Trustee Fund activity and the June 2014 bond payment.

After a brief discussion concerning the date on the exhibit addressing the June 2014 bond payment, the vote was taken as follows:

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

Mayor Harrison declared the motion carried.

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

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

Mayor Harrison declared the motion carried.

5. Consider and act upon, an Ordinance amending Ordinance No. 2501 which established the budget for fiscal year 2014-2015; repealing all conflicting ordinances; providing for a severability clause; and declaring an emergency. (*Toni Ervin, CFO*)

Executive Summary

Motion to approve the budget amendment ordinance.

ORDINANCE NO. 2514

AN ORDINANCE OF THE CITY OF McALESTER, OKLAHOMA, AMENDING ORDINANCE NO. 2501 WHICH ESTABLISHED THE BUDGET FOR FISCAL YEAR 2014-15; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.

A motion was made by Councilman Karr and seconded by Councilman Smith to approve **ORDINANCE NO. 2514**, amending Fiscal Year 2014-15 Budget.

Before the vote, CFO Ervin addressed the Council reviewing the exhibits to the amendment. She explained that this was to lapse and re-appropriate expenditures for outstanding Capital projects Purchase Orders for Fiscal Year 2013-2014.

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

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

Mayor Harrison declared the motion carried.

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

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

Mayor Harrison declared the motion carried.

6. Consider and act upon, an Ordinance to Close the Alley that lies in Block 642; the Alley that lies in Block 654; the Alley that lies in Block 660; that part of Modoc Avenue lying between Block 642 and Block 654, being East of "A" Street and West of Oak Street; that part of Shawnee Avenue lying between Block 654 and Block 660, being East of "A" Street and West of Oak Street; all in the City of McAlester, formerly South McAlester, Pittsburg County, State of Oklahoma and to retain the utility easement in the alley that lies in Block 642, between A Street and Oak Street for the City's existing sewer main. (*Ginny Webb, Planning Tech, Leroy Alsup Community & Economic Development Director*)

Executive Summary

Motion to approve and act upon the Ordinance to close the streets and alleys as more particularly described in the ordinance, to retain the utility easement in the alley that lies in Block 642, between A Street and Oak Street for the City's existing sewer main and to authorize the Mayor to sign the Ordinance.

ORDINANCE NO. 2515

AN ORDINANCE TO CLOSE THE ALLEY THAT LIES IN BLOCK 642; THE ALLEY THAT LIES IN BLOCK 654; THE ALLEY THAT LIES IN BLOCK 660; THAT PART OF MODOC AVENUE LYING BETWEEN BLOCK 642 AND BLOCK 654, BEING EAST OF "A" STREET AND WEST OF OAK STREET; THAT PART OF SHAWNEE AVENUE LYING BETWEEN BLOCK 654 AND BLOCK 660, BEING EAST OF "A" STREET AND WEST OF OAK STREET; ALL IN THE CITY OF MCALESTER, FORMERLY SOUTH MCALESTER, PITTSBURG COUNTY, STATE OF OKLAHOMA AND TO RETAIN THE UTILITY EASEMENT IN THE ALLEY THAT LIES IN BLOCK 642, BETWEEN A STREET AND OAK STREET FOR THE CITY'S EXISTING SEWER MAIN

A motion was made by Councilman Smith and seconded by Councilman Garvin to approve **ORDINANCE NO. 2515**, closing certain streets and alleys in Blocks 642, 654 and 660 in formerly South McAlester and retain utility easement in the alleyway in Block 642, between A and Oak Street.

Before the vote, Ginny Webb addressed the Council explaining that the Planning Commission had approved the recommendation of these closings and the retention of the utility easement for the City's existing sewer main.

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

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

Mayor Harrison declared the motion carried.

7. Consider and act upon, authorizing the Mayor to sign a contract between the City of McAlester and contractor to be named for the construction of road and infrastructure improvements related to CIP#2 which includes a segment of A Street between Miami Avenue and Comanche Avenue, and a portion of Sixth Street between Jefferson Avenue and Monroe Avenue. (*John C. Modzelewski, P.E., City Engineer and Public Works Director*)

Executive Summary

The recommendation is to enter into an agreement with contractor to be named for the construction of road and infrastructure improvements related to CIP#2 which includes a segment of A Street between Miami Avenue and Comanche Avenue, and a portion of Sixth Street between Jefferson Avenue and Monroe Avenue.

A motion was made by Councilman Garvin and seconded by Councilman Smith to authorize the Mayor to sign a contract between the City of McAlester and contractor to be named for the construction of road and infrastructure improvements related to CIP#2 which includes a segment of A Street between Miami Avenue and Comanche Avenue, and a portion of Sixth Street between Jefferson Avenue and Monroe Avenue.

Before the vote, City Engineer & Public Works Director Modzelewski addressed the Council informing them that the City had allowed the Consultant an extra week to check references and insure that their recommendation was for a competent contractor. He explained that five (5) companies had attended the mandatory pre-bid meeting and three (3) had submitted bids for the project. He added that after their review and check of references, Poe & Associates had recommended that Carstensen Contracting, Inc. be awarded the contract in the amount of \$2,882,649.25.

There was discussion concerning the location of the contractor, if a bonus for early completion had been considered, if the consultants on site inspector could furnish weekly work reports on the project to the Council, the equipment that the contractor had available to use during the project and including the name of the recommended contractor in the motion.

Mayor Harrison asked Councilmen Garvin and Smith if they agreed to have the original motion changed to include the contractor's name. Both agreed. Mayor Harrison restated the motion to say "authorize the Mayor to sign a contract between the City of McAlester and Carstensen Contracting, Inc. for the construction of road and infrastructure improvements related to CIP#2 which includes a segment of A Street between Miami Avenue and Comanche Avenue, and a portion of Sixth Street between Jefferson Avenue and Monroe Avenue.

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

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

NAY: None

Mayor Harrison declared the motion carried.

8. Discussion and possible action to authorize purchase of land at Main Street & Cherokee for \$10,186.

A motion was made by Councilman Smith and seconded by Councilman Titsworth to authorize the purchase of land at Main Street and Cherokee for \$10,186.

Before the vote, Manager Stasiak addressed the Council explaining that Councilman Barnett had requested that this item be brought back before the Council for further consideration. He then reminded the Council that the property had been declared surplus during the Regular Meeting on November 12, 2013 and had been properly posted and advertised on January 12th, 19th, July 6th and 13th. He added that the property had sold in the second sealed bid on July 22, 2014. He added that at the last meeting the Parents Club had asked the Council to buy the property back. Manager Stasiak commented that it appears that would be using public funds for a private entity. He then asked that the City Attorney to give his legal opinion.

Attorney Ervin informed the audience in attendance that the “use of public funds are restricted to a public purpose that fulfills the function of the City”, per Oklahoma Constitution Article 10 §14. He read that section of the Constitution and added that the City had a unique situation. He stated that the property had been declared surplus and of no use to the City on November 12th of last year and was sold in auction. He added that in the past the City had authorized the businesses in the area to use the property as a parking lot. Attorney Ervin stated that the primary purpose of the purchase appeared to be for the use of a private organization that was not under contract with the City for a public purpose. He added that it was the opinion of the City Attorney that the expenditure did not satisfy Article 10 §14 of the Oklahoma Constitution.

After a lengthy discussion among the Council including comments from Janet Daniel regarding the property, what former Councils had authorized, the action taken less than a year ago to declare the property surplus, what had been paid to purchase the property, and if the City had purchased the property from the Urban Renewal Authority.

Mayor Harrison commented that the property appeared to be paved. He asked if a private individual were to purchase the property and donate it back to the City would that be an allowable transaction. He added that he always followed the opinion of the City Attorney and the Oklahoma Constitution.

Attorney Ervin stated that it was the expenditure of the public funds that was the issue. If the property were to be donated to the City it would be allowed.

Mayor Harrison asked if the Council wanted to vote on the motion or withdraw the motion. Councilman Smith stated that he withdrew the motion and Councilman Titsworth withdrew his second.

There was no action taken on this item.

9. Consider and act upon, approval of Change Order No. 1, for an extension of sixteen days to the existing contract with W. Brown Enterprises, Inc. for the construction of

approximately 2,900 linear feet of new 12-inch PVC C900 water main and necessary appurtenances along the east side of South Main Street from T.H. Rogers to Oklahoma Avenue.

Executive Summary

Motion to approve Change Order No. 1 for the extension of time to the construction contract with W. Brown Enterprises, Inc. for the construction of approximately 2,900 linear feet of new 12-inch PVC C900 water main and necessary appurtenances along the east side of South Main Street from T.H. Rogers to Oklahoma Avenue.

A motion was made by Councilman Smith and seconded by Councilman Garvin to approve Change Order No. 1, for an extension of sixteen days to the existing contract with W. Brown Enterprises, Inc. for the construction of approximately 2,900 linear feet of new 12-inch PVC C900 water main and necessary appurtenances along the east side of South Main Street from T.H. Rogers to Oklahoma Avenue.

Before the vote, City Engineer & Public Works Director Modzelewski addressed the Council explaining that this request included two (2) adverse weather days and fourteen (14) days for manufacturer delays in obtaining pipe and fittings unique to the project. He added that the progress the contractor was making indicated they would have substantial completion by the September 27, 2014.

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

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

NAY: None

Mayor Harrison declared the motion carried.

New Business

There was no new business.

City Manager's Report

- Report on activities for the past two weeks.

Manager Stasiak reported that New Baker Road should be open in about two (2) weeks, asphalt had been laid on Briar Cliff and the City had received word that the CDBG 2014 Grant had been funded. He informed the Council that during the review of the Utility Ordinances that it had been discovered that the City was not following Section 106.74 and to his knowledge that section had never been followed. He explained that he would be sending an email to the Council with information on how this would be corrected and this correction would be effective October 1st.

Remarks and Inquiries by City Council

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

Councilmen Smith asked for an update on the work on Seventeenth Street.

Director Modzelewski informed the Council that some work was going on and construction zone safety was very important. He stated that EST had hired a new director for their construction management services who had drafted a letter to Austin Paving to find out what their direction was to finish the project. He added that they estimated that the project was about seventy-five (75) percent complete.

There was a brief discussion concerning the project, what the delay currently was and what the City could do to move this project to completion.

Mayor's Comments and Committee Appointments

Mayor Harrison thanked the public for the votes two (2) weeks ago at the last election.

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, Barnett & Mayor Harrison

NAY: None

Mayor Harrison declared the motion carried and the meeting was recessed at 8:05 P.M.

Reconvene Council Meeting

The Regular Meeting was reconvened at 8:07 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, Barnett & Mayor Harrison

NAY: None

Mayor Harrison declared the motion carried, and the meeting was adjourned at 8:09 P.M.

ATTEST:

Steve Harrison, Mayor

Cora Middleton, City Clerk