

**MINUTES
REGULAR MEETING OF THE NEWTON CITY COUNCIL**

January 7, 2014 – 7:00 P.M.

The regular meeting of the Newton City Council was held on Tuesday, January 7, 2013 at 7:00 p.m. in the Council Chambers at City Hall.

PRESENT: Mayor Anne P. Stedman, Mayor Pro Tem Mary Bess Lawing, Tom Rowe, Wayne Dellinger, Robert C. Abernethy, Jr., and John Stiver

ABSENT: Council Member Wes Weaver

STAFF: City Manager Todd Clark, City Clerk Amy S. Falowski, Assistant City Manager Sean Hovis, City Attorney John Cilley, Public Information Officer Julie Chang, City Department Heads and members of the management team

ITEM 1: CALL TO ORDER – Mayor Anne P. Stedman

Mayor Anne P. Stedman welcomed every one and called the meeting to order.

ITEM 2: OPENING – Council Member Tom Rowe

Council Member Tom Rowe provided the invocation and led the Pledge of Allegiance.

ITEM 3: APPROVAL OF MINUTES FROM THE December 10, 2013 REGULAR CITY COUNCIL MEETING

Upon motion duly made by Mayor Pro Tem Mary Bess Lawing, seconded by Council Member Robert C. Abernethy, Jr., it was unanimously RESOLVED:

That the Regular Minutes of the December 10, 2013 City Council Meeting be –
APPROVED

ITEM 4: CONSIDERATION OF CONSENT AGENDA ITEMS

Mayor Stedman added Consent Agenda Item G: Recognition of Dusty Wentz and Brandon Elrod for Obtaining Their Masters of Public Administration from Appalachian State University on December 14, 2013.

Mayor Stedman stated that Dusty Wentz, Assistant Public Works and Utilities Director, graduated from Newton Conover High School and obtained his B.S. Degree in Civil Engineering from NC State University. She explained that Dusty worked nine years as an Engineer Designer/Construction Observer with W.K. Dickson, Inc. in Raleigh, and that his project knowledge has been an invaluable asset to the City of Newton.

Mayor Stedman stated that Brandon Elrod, Human Resources Specialist, also graduated from Newton Conover High School and obtained his B.S. Degree in Business Administration with a double major in marketing and management from the University of North Carolina at Charlotte. During Brandon's tenure here with the City of Newton, he has obtained his Senior Professional Human Resource Certification as well as been an active participant and board member of the local and state chapters of SHRM (Society of Human Resource Management) and IPMA (International Public Management Association). Mayor Stedman stated with the ever-changing laws of personnel, Brandon is a great asset to the City.

Mayor Stedman congratulated both of these two fine young men for their accomplishment.

- A. Sewer Adjustments
- B. Tax Releases
- C. Consideration of Re-Appointments to the Business Advisory Committee
- D. Consideration of Appointment to the Newton-Conover Auditorium Authority
- E. Consideration of Appointments to the Newton Depot Authority
- F. Consideration to Accept the ElectriCities Annual Awards

Public Works and Utilities Director Wilce Martin stated that The Municipal Electric Safety Award is being presented by David Young, of ElectriCities, in recognition of the City of Newton Electric Division for having no lost-time injuries while performing electrical system operations during the entire 2012 calendar year.

Mr. Martin stated that working around electricity, especially high voltage lines and equipment, can be dangerous and any accident involving electricity is potentially life-threatening. This award acknowledges that the City of Newton City Council and Staff are extremely safety conscious and both are committed to following safety policies and procedures.

Mr. Martin introduced David Young, Lead Safety & Training Specialist, of ElectriCities to present the Safety Award.

Mr. Young stated that he would like to recognize the accomplishments of Newton's electric employees for working safely and having "No Lost Work Day Cases" in 2012. Mr. Young stated that the City of Newton's last lost time accident was in 2008, and that he believes that accomplishment is through safety-awareness, training and team work. Mr. Young stated that Newton has had retirements and openings to fill, and finding qualified or experienced people to fill those jobs has been a task, but that the City has kept their employees focus on the work at hand, working safely and getting the job done.

Mr. Young stated that under the direction of Electric Distribution Manager Doug Wesson and Supervisor Mike Kiziah, electric employees maintain 125 miles of distribution lines, 11 peak-shaving generators, and read 4,900 electric meters and 6,000 water meters every month. Members of the electric crew have approximately 125 years of combined experience in electric distribution. Mr. Young stated that members of the department include: Doug Wesson, Mike Kiziah, Jeff Cochrane, Russell Smith, Tim Dumire, Steve Speagle, Brad Tompkins, Anthony Cline, Joshua Rhyne, Johnathan Cook, and Pamela McMoran.

Mr. Young also thanked the Mayor, City Council and Administration for their support of city employees.

Mayor Stedman thanked Mr. Young for coming to present this award and for the support of ElectriCities.

Upon motion duly made by Mayor Pro Tem Mary Bess Lawing, seconded by Council Member Tom Rowe, it was unanimously RESOLVED:

That Consent Agenda be – APPROVED.

ITEM 5: **COMMENTS FROM THE PUBLIC: (PERSONS WANTING TO MAKE A PUBLIC COMMENT ON NON-AGENDA ITEMS ARE REQUESTED TO SIGN IN WITH THE CITY CLERK PRIOR TO THE MEETING).**

Mayor Anne P. Stedman asked if anyone present would like to make any comments concerning non-agenda items. No one appeared.

ITEM 6: **Old Business**

A. Consideration of Ordinance to Amend Snow Creek SRF Capital Project Funds

Finance Director Serina Hinson stated on January 17, 2013 the City of Newton was approved for loan assistance on the Snow Creek Outfall Rehabilitation, Phase II, III and IV, from the North Carolina Department of Environment and Natural Resources (NCDENR), Division of Water Quality, Clean Water State Revolving Fund (CWSRF) in the amount of \$1,399,000. Ms. Hinson stated that City Council subsequently accepted the loan offer and established a capital project ordinance on February 5, 2013.

Ms. Hinson stated that on November 5, 2013, the City opened bids on the construction portion of the project. Hickory Sand Company was the lowest responsible bidder with a bid that came in \$138,965 under the original budget which resulted in a reduction in the contingency and other related costs.

Ms. Hinson explained the CWSRF will not fund the 2% closing fee as this is a disallowed expense. Therefore there is a transfer of \$23,300 from Retained Earnings of the Water/Wastewater Fund to the Capital Project Fund.

Ms. Hinson stated the Capital Project should be reduced to reflect the construction bid and related expenses and to recognize the transfer of funds from the Water/Wastewater Fund for the 2% closing fee and recommended that the City Council adopt the attached Capital Project Ordinance Amendment for Snow Creek Outfall Rehabilitation.

Upon motion duly made by Mayor Pro Tem Mary Bess Lawing, seconded by Council Member Tom Rowe, it was unanimously RESOLVED:

That Ordinance to Amend Snow Creek SRF Capital Project Funds be – ADOPTED.

(Ordinances, Resolutions and Proclamations are hereby referenced and on file in the office of the City Clerk)

ITEM 7: **New Business**

A. Consideration of Ordinance Amendment to the Code of Ordinances, Chapter 14 – Animals and Fowl: Article 1 – In General Cruelty to Animals

Police Chief Don Brown stated that as of current date the City of Newton does not have any ordinances that relate to the inhumane treatment of animals or actions that would be considered cruel. Chief Brown stated as a result, some situations concerning questionable treatment of animals and complaints from citizens could be resolved by Animal Control, given an enforceable ordinance that addresses animal cruelty. Chief Brown stated the draft ordinance presented has been gleaned from North Carolina statute and Catawba County code of ordinances.

Chief Brown stated that based upon a request from Council, staff has developed an ordinance that pertains to animal cruelty. This ordinance is based upon current North Carolina statute and also Catawba County code of ordinances and Chief Brown recommended approval of the ordinance to City Council.

Mayor Stedman asked if this would only apply to dogs and cats. Chief Brown stated that it would include domestic pets, not feral animals or livestock.

Mayor Pro Tem Mary Bess Lawing asked if other cities had similar ordinances, and Chief Brown stated that they did.

Upon motion duly made by Mayor Pro Tem Mary Bess Lawing, seconded by Council Member Tom Rowe, it was unanimously RESOLVED:

That Ordinance Amendment to the Code of Ordinances, Chapter 14 – Animals and Fowl:
Article 1 – In General Cruelty to Animals be – ADOPTED.

(Ordinances, Resolutions and Proclamations are hereby referenced and on file in the office of the City Clerk)

B. Consideration of Ordinance Declaring Tobacco Free Campus

City Manager Todd Clark stated over the course of the last six months, the Catawba County Public Health Department has led a series of discussions with the County Manager and area City Managers concerning the health effects of tobacco use and the use of such products in public spaces. Mr. Clark stated in order to promote more healthy lifestyles and improve the health of Catawba County residents, each unit of local government was asked to consider enacting a “tobacco free ordinance” or “tobacco free policy” prohibiting the use of such products upon public property. This includes all parks and outside spaces.

Mr. Clark stated that at present, the City of Newton prohibits smoking within municipal facilities in accordance with Chapter 66, Section 15, of the City’s Code of Ordinances. Accordingly, no one “may smoke in any enclosed building or portion of an enclosed building now or hereafter owned, leased, operated, occupied, managed or controlled by the city, with the exception of the police department interrogation room”. Mr. Clark stated that also, within the past year, a decision was made by the City Manager to implement a tobacco free policy that prohibits employees from the use of tobacco upon any municipal property. He explained the decision was made following several meetings in which department heads reviewed the effects of tobacco on employee health and the subsequent impact on the City’s health insurance plan.

Mr. Clark stated that this amendment to the City’s Code of Ordinances is being presented to City Council at this time, and if approved, the amendment will prohibit the use of all tobacco products by the general public and city employees on all city property with the exception of situations that arise when it may be necessary for the Police Chief to use a tobacco product as part of a criminal investigation.

Mr. Clark stated that also being presented is an up to date list of actions taken by other local governments in Catawba County to transform their public facilities into tobacco free spaces. Mr. Clark noted that Carleen Crawford from Catawba County Health Department was present if anyone has any questions for her.

Mr. Clark asked City Council to consider adopting the Ordinance.

Mayor Anne Stedman asked if the new electronic cigarettes were included in this ordinance. Ms. Crawford stated that the FDA has no regulatory power over those as of yet. Ms. Crawford stated that this

is the right thing to do, and that the majority of the public are non-smokers. Mayor Stedman stated that it is a good idea to be leaders in the community and Mayor Pro Tem Mary Bess Lawing agreed.

Council Member Tom Rowe asked if this would cover city vehicles. Mr. Clark stated that city vehicles were already covered.

Council Member Robert C. Abernethy, Jr. stated that he felt like the city is trying to regulate everyone else's health, and that maybe we should ban Sundrop, McDonald's, and salted, buttered popcorn. He stated that he felt like this ordinance is an infringement on people's rights. Mayor Stedman stated that the distinction would be that the second-hand smoke is unhealthy for people that choose not to smoke.

Council Member Robert C. Abernethy, Jr. stated that if someone takes their kids to the park for Movies in the Park, he feels like they should be able to leave kids and walk to the parking lot to smoke. Mr. Abernethy stated that the tax payers pay for the parking lot.

City Attorney John Cilley reminded Council that with the absence of Council Member Wes Weaver, a vote of 3 to 2 would not be enough to adopt an ordinance; it would take a vote of 4 to 1 (majority) for the ordinance to be adopted.

Upon motion duly made by Mayor Pro Tem Mary Bess Lawing, seconded by Tom Rowe, with Council Members John Stiver, Wayne Dellinger, Tom Rowe, and Mayor Pro Tem Mary Bess Lawing voting in favor of, and Council Member Robert C. Abernethy, Jr. voting in opposition, it was RESOLVED:

That Ordinance 2014-3 Amending Chapter 66 of the City Code of the City of Newton, North Carolina "Tobacco Free Facilities" be – ADOPTED

(Ordinances, Resolutions and Proclamations are hereby referenced and on file in the office of the City Clerk)

C. Consideration of Ordinance Amendment to the Code of Ordinances – Yard Sales

Assistant City Manager Sean Hovis stated on October 15, 2013, Collette Touchette, Chairperson for the City of Newton Appearance Commission, presented a proposed ordinance for yard sales. Mr. Hovis stated that during the presentation City Council had some concerns related to the proposed ordinance's permit requirements, fees, fines, and restrictions on goods being sold. City Council asked that city staff look at the proposed ordinance and try to address City Council's concerns. Mr. Hovis explained that the following is the proposed ordinance staff is presenting to Newton City Council for consideration:

Section 1:

Chapter 66, "OFFENSES AND MISCELLANEOUS PROVISIONS" of the City Code of the City of Newton shall be amended by deleting the existing section Sec. 66-14. entitled "Yard sales." and replacing it with a new Sec. 66-14. entitled "Yard sales" to read as follows:

Sec. 66-14. Yard sales.

- (a) For the purpose of this section yard sale means an occasional sale at which surplus and primarily used household goods and/or clothing are sold. Such sales can also be referred to as as garage sale, attic sale, porch sale, and other similar terms.
- (b) It shall be unlawful for any person to conduct or permit to be conducted on his or her land in the city more than three (3) yard sales during the period of one (1) calendar year. Each yard sale is

limited to one (1) twenty-four hour period. All apparatus, racks, shelves, tables, signs or other materials related to the sale shall be removed the same day as the sale.

Mr. Hovis stated The City of Newton Appearance Commission has reviewed what staff is recommending to the Newton City Council and wanted to present an alternate ordinance for consideration. Mr. Hovis stated that their proposal is also included in the Council agenda.

Mayor Stedman asked Ms. Collette Touchette, Chairperson of the Appearance Commission, if she would like to speak concerning the materials that she sent to City Council concerning the proposed Yard Sale Ordinance amendment.

Ms. Touchette stated that the Appearance Commission's version of the amendment removes the part about signs since that is covered under the sign ordinance. She also proposed that yard sales not be allowed on commercial property without permission of the property owners and that items are not for resale. Ms. Touchette stated that most ordinances are brought to light by neighbors calling about neighbors, and that police had to be called because of traffic on her street due to yard sales.

Mayor Stedman asked if auctions are included in the staff proposed ordinance. Mr. Hovis explained that the city cannot regulate auctions. Mayor Stedman also asked why it mattered if things were being sold on consignment, and that she felt like limiting yard sales to three per year should alleviate that concern. City Manager Todd Clark stated that this issue would not be enforceable on private property.

Council Member Wayne Dellinger stated that limiting the sales to a 24 hour time period would make it difficult for people to set up and take down the yard sale items. Council Member Robert Abernethy agreed. Council Member Dellinger suggested 36 hours.

Council Member John Stiver asked about multifamily yard sales. Mr. Clark stated the yard sale would be counted by location.

Council Member Abernethy asked how the ordinance would be enforceable. Mr. Hovis stated that it would be dependent on calls from neighbors or other citizens. He explained that once a call is made, it would be documented by law enforcement. Ms. Touchette stated that this is no different than other ordinance enforcement.

Council Member Tom Rowe asked about sign removal, and Mr. Hovis said that they would have to adhere to the city's sign ordinance. Mr. Clark reminded Council Member Rowe that the sign ordinance has been previously relaxed.

City Attorney John Cilley again reminded Council that with the absence of Council Member Wes Weaver, a vote of 3 to 2 would not be enough to adopt an ordinance; it would take a vote of 4 to 1 (majority) for the ordinance to be adopted.

Council Member Wayne Dellinger stated that he would like to change the ordinance to 36 hours per yard sale or else he will vote against the proposed ordinance.

Council Member Robert Abernethy stated that 3 yard sales per year may be too few for some people, and that maybe it should be changed to 5. Also, he would like staff to look in to yard sales not being held on commercial property. Mr. Hovis stated that could not be enforced without the property owner.

Council Members Abernethy and Dellinger stated that they would like to see the ordinance changed to 5 yard sales per year. Mayor Pro Tem Mary Bess Lawing stated she would like to see it changed to at least 4.

Council Member John Stiver stated that the ordinance needs to go back to staff to make the changes that have been discussed, including: 4-5 yard sales per year, extending the time of each yard sale to 36 hours, and no yard sales on Sunday.

Mayor Stedman instructed staff to take the ordinance back and make appropriate changes, then bring back to City Council at the next scheduled meeting.

ITEM 8: City Manager's Report

- Human Relations Committee Meeting January 9th, at 5:30 p.m.
- Essentials of Municipal Government – Chapel Hill, January 31st – Feb 1st
- Trip to Statesville w/ Streetscape Committee – Tuesday, January 14th, leave Newton City Hall at 12:30p.m., meet at Statesville City Hall at 1:30 p.m.
- WPCOG Annual Meeting, January 28, 2014
- NLC Meeting in DC Sunday, March 9th- Wednesday, March 12th
- Council/Staff Workshop, February 19th, 20th and 21st
- Calendar of upcoming retirement celebrations

January 31	11:30 a.m.	Gantt Room City Hall	Carolyn Deal
February 27	11:30 a.m.	Gantt Room City Hall	Marlene Carr
- Certificate of Appreciation to the Newton Parks and Rec Dept from Fred T. Foard High School JROTC Tiger Battalion

ITEM 9: Questions and Comments from Mayor and Council

Mayor Anne P. Stedman asked if any Council Members would like to make any comments.

Mayor Pro Tem Mary Bess Lawing stated that she received word from her neighbor, Sylvia Ray, that she Ms. Ray had some electrical trouble during the recent cold snap. Mayor Pro Tem Lawing stated that Ms. Ray told her that she had called the City's electric staff to report the problem, and that they had come to her house and determined that the problem was not in the City's electrical lines, but that they still helped Ms. Ray find the problem and resolve it. Mayor Pro Tem Lawing stated that Ms. Ray wanted to make sure that the electric staff was acknowledged for going above and beyond when they responded to her call for help.

ITEM 10: Closed Session to Consult with the City Attorney – G.S. 143-318-11(a)(3)

Upon motion duly made by Mayor Pro Tem Mary Bess Lawing, seconded by Council Member Tom Rowe, it was unanimously RESOLVED: that the City Council enters CLOSED SESSION per G.S. 143-318-11(a)(3).

Upon motion duly made by Council Member Robert C. Abernethy, Jr., seconded by Mayor Pro Tem Mary Bess Lawing, it was unanimously RESOLVED: that the City Council return to REGULAR SESSION.

ITEM 11: Adjournment

Upon motion duly made by Council Member Robert C. Abernethy, Jr., seconded by Mayor Pro Tem Mary Bess Lawing, it was unanimously RESOLVED:

That the Meeting be – ADJOURNED

Anne P. Stedman, Mayor

Amy S. Falowski, City Clerk

