

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

September 3, 2013 – 7:00 P.M.

The regular meeting of the Newton City Council was held on Tuesday, September 3, 2013 at 7:00 p.m. in the Council Chambers at City Hall.

PRESENT: Mayor Anne P. Stedman, Mayor Pro Tem Bill Lutz, Council Members Robert C. Abernethy, Jr., Mary Bess Lawing, Tom Rowe, Wayne Dellinger and 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 August 6, 2013 REGULAR CITY COUNCIL MEETING

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

That the Regular Minutes of the August 6, 2013 City Council Meeting be –
APPROVED

ITEM 4: CONSIDERATION OF CONSENT AGENDA ITEMS

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

That Consent Agenda be – APPROVED.

- A. Consideration of Commission/Committee Membership Appointment Auditorium Authority Board – Kenneth Elliot
- B. Consideration of Budget Ordinance to Establish Capital Project Funds and to Amend Revenues and Expenditures for FY 2013-14
- C. Consideration of Budget Ordinance Amendment – Target Grant
- D. Consideration of Budget Ordinance Amendment – Newton Merchants
- E. Consideration of Budget Ordinance Amendment – Federal Asset Seizure Fund
- F. Report of Fire Conditions – Certificate of Eligibility

G. Consideration of Resolution Supporting the Completion of Highway 16 in Catawba County

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

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.

Jessica Setzer stated that she would like to see more money spent in to the downtown area. She stated that she would be pushing for more time and effort to be put in to cleaning up the down town area. Ms. Setzer stated that she would also be pushing to get the MSD tax back in place.

ITEM 6: **Public Hearing**

A. Zoning Text Amendment

City Attorney John Cilley recused himself from Item 6A due to the fact that his law partner owns lots, and his father was a developer in the development being discussed which would make his participation a conflict of interest. Attorney Bob Grant, current City of Claremont Attorney, took Mr. Cilley's place in the discussion of Item 6A.

Mayor Stedman opened the Public Hearing, and stated that each side of the argument would be allowed approximately 10 minutes each in which to speak while being courteous and respectful. At the end of this process, each side will then be given an additional five minutes each to wrap up arguments. Assistant City Manager Sean Hovis will be time keeper for this Public Hearing.

Assistant Planning Director Alex Fulbright stated that the City Council recently considered a text amendment filed by Mr. William Hodge concerning Professional Residential Facilities. At the August 6, 2013 City Council meeting a public hearing was conducted to receive public comment. Mr. Fulbright stated that after considerable discussion following the public comment period, the City Council requested that staff review the matter and make a recommendation to allow maternity homes within one or more of the city's residential zoning districts and also within the districts originally recommended by Mr. Hodge. Mr. Fulbright explained that the Council also stated they were not in favor of allowing maternity homes within the R-20 or R-20A zoning districts.

Mr. Fulbright stated that staff's proposal would clearly define "Residential Maternity Homes"; and only allow Residential Maternity Homes and Professional Residential Facilities in the R-7, R-7A, R-9, P-1, B-1, B-2, B-3, B-4, and M-1 zoning districts.

Mr. Fulbright explained that the proposal would require the following modifications to the existing code, which is included below. New or modified language of the Code is denoted by underlining.

1. Add the following as a new definition in Code Section 102-201 to the "Definitions" of words and phrases contained in Chapter 102 "Zoning":

"Residential maternity home" means an institution or facility licensed by the North Carolina Department of Health and Human Services, Division of Social Services, as a residential maternity home under the definitions, rules and regulations and other pertinent provisions of the State of

North Carolina as set forth in G.S. 131D-10.10 and Subchapter 70k of Title 10 of the North Carolina Administrative Code as amended.

2. Amend the definition in Code Section 102-201 of “Professional Residential Facility” to read as follows:

“Professional Residential Facility” means any residential establishment, other than a hospital, nursing home or residential maternity home, providing to persons in need of a structured environment, board, lodging, supervision, medication, counseling, or other diagnostic or therapeutic services and licensed by the North Carolina Department of Health and Human Services.

3. Amend Table 4-1 (Article IV. Section 102-201) of the Schedule of Permitted Uses to add “Residential Maternity Homes” as a category and Place an X in the zoning districts where Residential Maternity Homes are permitted uses, which are the R-7, R-7A, R-9, P-1, B-1, B-2, B-3, B-4, and M-1 zoning districts.
4. Amend Table 4-1 (Article IV. Section 102-201) of the Schedule of Permitted Uses to restrict to certain zones the zoning districts in which Professional Residential Facilities are to be permitted uses and place an X in the zoning districts where use is permitted accordingly, which are the R-7, R-7A, R-9, P-1, B-1, B-2, B-3, B-4, and M-1 zoning districts.

Mr. Fulbright stated that staff recommends the changes as listed to City Council.

Mayor Stedman asked if there was anyone present that would like to speak concerning the proposed Zoning Text Amendment. Mayor Stedman stated that speakers should remember to stay on topic and to be respectful.

Mr. Bill Hodge of 1772 Whitehall Court stated that he felt like staff is right on point with the proposed Zoning Text Amendment. He said that he felt it was fair and legal, and that the locale was appropriate for maternity homes.

Mayor Stedman asked if there was anyone else present that would like to comment. No one appeared.

Upon motion duly made by Council Member Wayne Dellinger, seconded by Council Member Robert C. Abernethy, Jr., it was unanimously RESOLVED:

That Public Hearing - Zoning Text Amendment be – CLOSED.

Upon motion duly made by Council Member Wayne Dellinger, seconded by Council Member Tom Rowe, it was unanimously RESOLVED:

That Zoning Text Amendment to Allow Residential Maternity Homes and Professional Residential Facilities in the R-7, R-7A, R-9, P-1, B-1, B-2, B-3, B-4, and M-1 Zoning Districts be - APPROVED

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

ITEM 7: **Old Business**

A. Report on Peddler’s Permits

Police Chief Don Brown stated that at the request of the City Manager, staff has been looking at the Peddler's Permit currently on record within the city ordinance. Chief Brown stated that currently a license may be obtained after paying a tax per annum based upon the method of sale i.e. foot, horse, other animal, or vehicle propelled by motor or mechanical power.

Chief Brown stated that staff is seeking guidance from Council regarding recommendations or adjustments to the Peddler's Permit ordinance.

Council Member Wayne Dellinger asked if there had been a problem in the city concerning peddlers. Chief Brown stated that there had been some concerns expressed. City Manager Todd Clark stated that some of the concerns had been that peddlers prey on the elderly. Council Member Tom Rowe stated that he had brought it up at an earlier meeting, and he felt like the code is outdated.

Council Member Dellinger suggested the city make the fee for peddlers a flat fee of \$200. Council Member Wes Weaver stated that he feels like that is excessive. Council Member Bill Lutz asked how officers would be able to differentiate between legitimate and non-legitimate peddlers. Council Member Rowe stated that he did not feel like \$200 is excessive. Council Member Robert C. Abernethy, Jr. stated that \$200 seems excessive to him in comparison to other cities. He asked if the police department would be able to run background checks on applicants. Chief Brown stated that he would need an Ordinance adopted by City Council in order to run background checks.

Council Member Bill Lutz asked if the city has currently sold many permits. Chief Brown stated that the city issues about 5-7 permits per year. Council Member Wayne Dellinger asked if the city has had problems with unlicensed peddlers. Chief Brown stated that he could not recall any.

Council Member Wes Weaver asked if the police department checks peddlers for permits at this time. Chief Brown stated that they do.

Council Member Mary Bess Lawing suggested that the City advertise the new ordinance once it becomes effective. She stated that maybe it could go in to the newsletter and on the website.

Council Member Wayne Dellinger suggested setting the fee at \$50. Council Member Tom Rowe stated that he would rather see it at \$200. Council Member Wes Weaver agreed with the \$50 fee.

Jessica Setzer asked if there could be a hefty fine charged to those in violation of the new ordinance. Chief Brown stated that he would look in to it.

Mayor Stedman stated that she agreed that a change needs to be made to the Ordinance.

City Manager Todd Clark verified that the changes to the Ordinance were to include: 1) Background Checks, 2) Public Notice, 3) Eliminate horses from current Ordinance, 4) Set fee at \$50 for Peddler's Permit, and 5) Require Peddler's to display permit.

Upon motion duly made by Council Member Wes Weaver, seconded by Council Member Mary Bess Lawing, with Council Members Wes Weaver, Mary Bess Lawing, Wayne Dellinger, Bill Lutz and Robert C. Abernethy, Jr. voting in favor of, and with Council Member Tom Rowe voting in opposition, it was RESOLVED:

That the Ordinance Changes to the Peddler's Permit to Include - 1) Background Checks
2) Public Notice 3) Eliminate horses from current Ordinance 4) Set fee at \$50 for
Peddler's Permit, and 5) Require Peddler's to display permit be – ADOPTED.

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

ITEM 8: **New Business**

A. Report on Swimming Pool, Greenway, and City Parks

Parks and Recreation Director Sandra Waters gave a report on the City Swimming Pool and on the City Parks and Greenway.

Ms. Waters stated that the pool was opened for 68 days with only 8 days of sunshine. She stated that the pool opened earlier and closed a week later than usual. Ms. Waters stated that considering the weather she felt like it was a successful season.

Ms. Waters stated that all the parks except the playground at Southside Park were open. She stated that the section of the greenway at W 7th St and W 1st St was washed out and that the city is getting bids from contractors for the repair work.

Council Member Mary Bess Lawing stated that the Parks and Recreation Department was doing a good job.

B. Report – Festival and Events

Jessica Setzer gave a quarterly report on the Festival and Events Committee.

C. Consideration for Application for ElectriCities Grant to Provide Financial Support for Newton Depot Project

City Manager Todd Clark stated that the Newton Depot Authority is currently working to raise funds to support the Southeastern Narrow Gauge & Shortline Museum project. In so doing, the Depot Authority has asked the City to apply for a \$4,000 Smart Communities grant available through ElectriCities of North Carolina.

Mr. Clark stated the grants made available each calendar year through this program are generally limited to only 10 North Carolina Municipal Power Agency (NCMPA1) cities, and that if funding remains available for this calendar year and the City is successful in obtaining a grant, the City will be required to make a 50% (or \$4,000) match in funding. Mr. Clark stated that while the City Council did not appropriate funding in the 2014 fiscal year budget, an amendment can be made to move funds from retained earnings (fund balance) to meet this requirement. Also, because the Smart Communities grant is generally made available for economic development projects the \$4,000 match would need to be paid from the General Fund (“Special Appropriations – Economic Development Incentive”).

Mr. Clark stated the requested action is for City Council to direct staff to file an application for grant funding through the ElectriCities Smart Communities grant program, and that a budget amendment would be necessary at the time of a grant award.

Council Member Robert C. Abernethy, Jr. asked how much the city appropriated to the Depot this fiscal year. Mr. Clark stated \$3,000. Mr. Abernethy asked if that could be considered part of the match and Mr. Clark said that he would check in to that. Mr. Abernethy stated that if so, it sounds like a good project and he would support it.

Council Member Bill Lutz stated that the Depot is an attraction bringing in people to our region, and that he is in favor of supporting it any way we can.

Upon motion duly made by Council Member Wes Weaver, seconded by Council Member Bill Lutz, it was unanimously RESOLVED:

That Application for ElectriCities Grant to Provide Financial Support for Newton Depot Project be – APPROVED.

D. Consideration for Application for ElectriCities Grant to Fund Electric Vehicle Charging Stations

City Manager Todd Clark state that the North Carolina Solar Center has announced a call for proposals to award grants to governments, business, and nonprofits for transportation technology related emission reduction projects. Mr. Clark explained that The Clean Fuel Advanced Technology (CFAT) project is a \$6.2 million initiative of the NC Solar Center funded in part by federal funds from the NC Department of Transportation.

Mr. Clark stated that ElectriCities has contacted municipal power providers within twenty-four counties in North Carolina that presently do not meet National Ambient Air Quality Standards (e.g. “non-attainment areas”) to inquire of our interest in making a joint application for funding. The power agency is specifically interested in securing funds to purchase and install electric recharging stations for electric vehicles. Mr. Clark stated that as administrator of the grant, ElectriCities would provide funding assistance in the form of a reimbursement which can cover up to 80% of the project cost in accordance with the grant requirements.

Mr. Clark stated the City staff responded to ElectriCities and expressed an interest in the project and that staff has also identified several areas in which one or more stations might be located and developed a rough cost estimate. Mr. Clark stated the deadline for proposals is September 10, 2013, and requested City Council to direct staff to file an application for grant funding through ElectriCities. Mr. Clark explained that a budget amendment would be necessary at the time of a grant award.

Council Member Wayne Dellinger asked if the city is going to charge people to plug in. Mr. Clark stated that that was an option. Mr. Dellinger stated that he would be opposed unless the city charged from the start.

Council Member stated that he didn’t know how beneficial it would be, and that he didn’t know anyone with an electric car. Council Member Robert C. Abernethy stated that he thought people would mainly charge at night at home. He stated that he feels like this is the type of thing that is not provided by government and will be provided by private industry in the future.

Mayor Stedman stated that she thinks that it is something the city should look at if it gets the grant. Council Member Mary Bess Lawing stated that it could get this region closer to attainment. Council Member Dellinger disagreed.

Council Member Robert C. Abernethy, Jr. made the motion to deny the application for ElectriCities grant to fund electric vehicle charging stations. Council Member Wayne Dellinger seconded the motion.

Council Member Wes Weaver stated that he felt like it would open minds, and was worth taking a shot.

Council Members Robert C. Abernethy, Jr., Bill Lutz and Wayne Dellinger voted in favor of denying the application, and Council Members Tom Rowe, Mary Bess Lawing and Wes Weaver voted against denying the application. Mayor Stedman broke the tie vote and voted against denying the application for ElectriCities grant to fund electric vehicle charging stations. Motion Failed.

Council Member Wes Weaver made the motion to apply for the ElectriCities grant with an understanding that the city would be charging for use of the stations. Council Member Mary Bess Lawing seconded the motion.

Council Members Bill Lutz, Tom Rowe, Mary Bess Lawing and Wes Weaver voted in favor of applying for ElectriCities grant to fund electric vehicle charging stations with the understanding that the city would be charging for the use of the stations. Council Members Wayne Dellinger and Council Member Robert C. Abernethy voted against applying for the ElectriCities grant. Motion Carried.

E. Emergency Repairs due to the July 27, 2013 Flood

- 1) Consideration of Bid Award for the Emergency Repair of West Lake Drive Storm Drain

City Manager Todd Clark stated that this was an emergency repair that was already completed and that it falls outside of the formal bid range. Council Member Robert C. Abernethy, Jr. asked if the bids came in in line. Public Works and Utilities Director Wilce Martin stated that they did.

Upon motion duly made by Council Member Robert C. Abernethy, Jr., seconded by Council Member Wes Weaver, it was unanimously RESOLVED:

That Consideration of Bid Award for the Emergency Repair of West Lake Drive Storm Drain be – APPROVED.

- 2) Consideration of Bid Award for the Emergency Repair of 5th Street Culvert

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

That Consideration of Bid Award for the Emergency Repair of 5th Street Culvert be – APPROVED.

- 3) Consideration of Budget Ordinance Amendment for Emergency Repairs

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

That Consideration of Budget Ordinance Amendment for Emergency Repairs be – APPROVED.

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

ITEM 9: City Manager's Report

- Newton 101 begins Thursday, September 12, 2013 and will run through Thursday, October 24, 2013
- September 21st – Artfest
- October 13th from 1-3 p.m. The City will host “Culture and Arts in Newton” an event highlighting the Catawba County Museum of History and the OPOP
- NCLM Conference, Oct 13-15 – Hickory

- The City is advertising “Shop Local” on WNNC 1230AM and 63 Big Ways 630AM
- The 30-second ad runs five times each week during the Friday night high school football games broadcast and during Carolina Panthers games. The current ad is focused on shopping, dining and entertainment in downtown Newton.
- Fire Station 1 – postings have been at City Hall and on the City’s website

Projects Update

1. Water Treatment Plant Pump Upgrade – the new vault and valves have been installed and tied into the existing water system. The contractor is still waiting for delivery of the pump from the manufacturer which has an October or November delivery date.
2. Shannonbrook Phase II – All water mains have been installed and testing is underway. Service tie overs should be completed in the next two weeks, and final restoration completed in the next three.
3. High School Sewer – Installation of the sewer main is complete, including behind the high school baseball field. Service tie overs are expected to be completed in the next week, and final restoration in the next two weeks.
4. AC Little – Complete, under warranty.
5. E. 18th Waterline – Complete, under warranty.
6. McDaniel’s Court Waterline – Complete, under warranty.
7. S. Caldwell Street Culvert – Engineering has begun. Survey is underway.
8. Snow Creek – Asset management plan is under review, permitting and bid dates are still on schedule.

Flooding Emergency Projects

1. W. 7th Street Sewer Main replacement – The aerial crossing has been restored by PWU.
2. Radio Station Rd. Water main replacement – Neill Grading is the low bid, and the replacement is underway now. Expected completion by 9/23/2013.
3. East 5th St. Culvert – Dellinger Contracting Inc is the low bid, waiting on council approval.
4. Woodson Dr. Culvert – Dellinger Contracting Inc is the low bid, waiting on council approval.
5. Settlemeyer Bridge Road Sewer Line Replacement – Wooten has been contacted to assess the damage, discuss possible remediation with DWQ and NCDOT, and determine what permits need to be applied for and what the scope of work will be.

ITEM 10: Questions and Comments from Mayor and Council

Mayor Anne P. Stedman asked if any Council Members would like to make any comments. There were none.

ITEM 11: Closed Session to Consult with the City Attorney – G.S. 143-318-11(a)(3) and G.S. 143-318-11(a)(5)

Upon motion duly made by Council Member Wes Weaver, seconded by Council Member Robert C. Abernethy, Jr., it was unanimously RESOLVED: to go to CLOSED SESSION.

The Council, Mayor, City Attorney, City Clerk and City Manager met in the Council Chambers for the purpose of discussion of several legal matters.

Upon motion duly made by Council Member Wes Weaver, seconded by Council Member Robert C. Abernethy, Jr., it was unanimously RESOLVED: to leave CLOSED SESSION and return to OPEN SESSION.

ITEM 12: Adjournment

Upon motion duly made by Council Member Wes Weaver, seconded by Council Member Robert C. Abernethy, Jr., it was unanimously RESOLVED:

That the Meeting be – ADJOURNED

Anne P. Stedman, Mayor

Amy S. Falowski, City Clerk

