

STATED MEETING - CITY COUNCIL – SEPTEMBER 12, 2006

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A meeting of the Lancaster City Council was held on Tuesday, September 12, 2006, in Council Chambers, Southern Market Center, 100 South Queen Street, Lancaster, PA, at 7:30 p.m., with President Dickson presiding.

The Council led the assembly in the Pledge of Allegiance.

Present – Mr. Graupera, Mr. Polite, Mr. Roschel, Ms. Saunders
Mr. Urdaneta, Ms. Williams, President Dickson - 7

City Council approved the minutes of August 22, 2006 by a unanimous roll call vote.

READING OF PETITIONS, COMMUNICATIONS & MEMORIALS - Chief of Fire, Timothy Gregg, introduced Captain Warchola who described a lifesaving incident where Lt. Terry Bracken rescued two unconscious children from a burning structure. He was given the Firemark Award from representatives of Liberty Mutual Insurance Company, Dawn Ohlinger and Bob Reese. He was congratulated by the Mayor and members of Council.

PUBLIC SAFETY COMMITTEE – Chairwoman Williams asked the City Clerk to read the Traffic Commission minutes. The City Clerk read the minutes of the last Traffic Commission for the record.

PUBLIC WORKS COMMITTEE - Chairman Graupera stated that his committee met on Tuesday, September 5 and received two reports. First, Mike Devaney, the City's new Manager of Solid Waste and Recycling, gave the Committee his analysis of the City's new trash and recycling program. Last year City Council commissioned a citizens group to study and make recommendations to improve walkability and vehicular access in the City of Lancaster. The group is M.A.P.'s (mobility, access & parking) and Mr. Jack Howell, Mr. Tom Mathews and Ms. Althea Ramsey presented their report to the Public Works Committee.

FINANCE COMMITTEE - Chairwoman Saunders stated that the Finance Committee met last Tuesday and discussed Resolution No. 48-2006.

COMMUNITY DEVELOPMENT & PLANNING COMMITTEE - Chairman Roschel stated that the Committee met on September 5th and there were two items on the agenda. The first was an application for a \$170,000 State grant through the DCED for a triangle park at the intersection of Shippen, Church and King Street. The City would apply for the grant and then would subgrant the money to the East King Street Improvement District. It is Resolution No. 49 on tonight's agenda. The second item was a request for an ordinance asking Council to vacate a portion of North Jefferson Street between East Chestnut and East Fulton Streets. The vacation would allow for more parking for more client parking for adjacent law firms. The first reading is tonight. Both were recommended to Council for consideration by the Committee.

The Committee met tonight to discuss one of the HARB recommendations on the agenda tonight. It is a denial, and we discussed this in committee. We will address it when it comes up

on the agenda this evening.

PERSONNEL COMMITTEE - Chairman Polite made the following motion of the Mayor's appointments to the Board of Plumbing Examiners: Steve Schwanger, Galen Groff, Chad Walton, Daniel Moser and Margaret Miller. Councilman Urdaneta seconded. City Council approved the appointments by a unanimous roll call vote.

Chairman Polite made the motion to approve the re-appointment of Dr. William Fife to the Board of Health. His term will be up March 31, 2011. Councilwoman Saunders seconded. City Council approved the re-appointment of Dr. Fife by a unanimous roll call vote.

City Council considered the following applications & HARB recommendations for improvements to properties within the Historic District:

1. Varo L. Duffins, proposes replacement of the front entry door at 204 North Concord Street.
2. Patricia Brogan, to replace cedar shake roof shingles with asphalt shingles at 139-141 Howard Avenue.
3. Housing Associates of Lancaster (HDC) to replace existing wood windows with aluminum-clad wood windows at 201 East King Street. (after-the-fact)

Councilman Roschel made the motion to approve and Councilman Polite seconded. City Council approved the recommendations by a unanimous roll call vote.

City Council considered the following application & HARB recommendation for denial of the application for improvements to a property within the Historic District:

4. Housing Associates of Lancaster (HDC), to replace existing arched wood windows with aluminum-clad wood windows at 201 East King Street.

Councilman Roschel made the motion to approve the recommendation and Councilman Urdaneta seconded.

Councilman Roschel stated that representatives of HDC were at the Community Development & Planning Committee meeting earlier this evening. The HDC group highlighted the concerns of lead as a hazard in the existing windows. In addition, the timeliness of this proposal as it relates to a HUD mark to market program that they are in the process of implementing. There are three options here for replacing these windows. One would be to keep the existing windows and refurbish them and remove the lead, second is to replace the windows with wood and a similar design, and a third option is to keep the design but with aluminum clad on wood. Option one was off the table because of the dangers of the lead in the air because there are children living in the apartments. Option 2, would cost more money, from HDC's standpoint. The HARB's point was, that this came to Council about 2 months ago. It is related to item 3. where we talked about after-the-fact. HDC didn't get the approval for those first 37 windows as our ordinance requires. They were

approved after-the-fact in an effort to find a middle ground. We are talking about the 20 existing windows that are left now. According to the HARB experts, these windows have more historic significance and it is more appropriate to keep them wood and to keep the design. The Committee voted 2-1 to approve HARB's recommendations of denial.

Councilman Polite stated that because the HARB vote came up tied in this replacement situation, he recommended trying to find middle ground. He stated that looking at the big picture, we need more affordable housing. Councilwoman Williams concurred saying that there was a tie vote on the HARB and we are interested in low-income housing in the City and even though HDC didn't do what they should have done in the beginning, they are under a timetable with HUD and this whole matter could cause some other problems. Councilman Urdaneta stated these apartments according to what the discussion has been, whether we approve or disapprove, the apartments would not cease to exist. What we have here is a situation in which procedures by individuals that have the experience and the background to know which are the procedures in our city to have things like this done within the boundaries of the Historic District, did not follow through. The HARB recommendations of the Secretary of the Interior do not cover bad negotiations; bad deals that any property owner could have made. In this case, HDC with Pella. He asked the Council to uphold the decision of the HARB.

Council upheld the decision of the HARB by a 5 - 2 vote. Aye - Graupera, Roschel, Saunders, Urdaneta, Dickson - 5. No - Polite, Williams - 2.

City Council considered the following applications & Historic Commission recommendations for construction & demolition within the Heritage Conservation District:

1. Bernarda Garcia, to construct a covered porch across the building façade at 718 South Plum Street.

2. EDC Finance Corporation to demolish three buildings fronting on West Liberty Street at 412 West Liberty Street.

Councilman Roschel made the motion to approve and Councilman Polite seconded. City Council approved the recommendations of the Historic Commission by a unanimous roll call vote.

Councilman Graupera made a motion to amend the agenda so that Administrative Bill No. 13-2006 is placed on the agenda for consideration. Councilman Polite seconded.

Administrative Bill No. 13-2006 (the title) was read by the City Clerk as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, LANCASTER COUNTY, PENNSYLVANIA REPEALING CERTAIN ARTICLES OF THE CODE OF THE CITY OF LANCASTER AND REPLACING THEM WITH NEW PROVISIONS TO REGULATE THE TRANSPORTATION, COLLECTION AND STORAGE OF MUNICIPAL WASTE AND REGULATED RECYCLABLE MATERIALS, TO REQUIRE REGISTRATION OF HAULERS, AND TO ALLOW THE CITY TO CONTRACT

WITH HAULERS; PROVIDING FOR THE REPEAL OF THE INCONSISTENT ORDINANCES; PROVIDING FOR THE SEVERABILITY OF THE ORDINANCE; AND PROVIDING THAT THE ORDINANCE SHALL TAKE EFFECT AS PROVIDED BY PENNSYLVANIA LAW.

Mayor Gray stated that "several lawsuits have been filed concerning the current ordinance that is in place and is being implemented effective October 2nd. The objections to the ordinance were reviewed by the Solicitor in great detail and there are certain aspects of those objections that go to procedural questions. There are none that we can see that go to any substantive basis, or that there is anything actually challenging with any merit. The manner in which the ordinance is to take place for the hauling of trash, there were several procedural issues that were raised in the litigation that are issues of "first impression", a lawyer would call them "issues of first impression." It means that nobody has ever raised those issues before. To be quite frank with the Council, they are very arcane and do not go to the merits of the system whatsoever. They go to whether something was signed properly when filed with the law library, and that type of thing. We discussed it and it was felt in view of the fact that the ordinance hasn't taken effect yet, rather than litigate these types of things in the manner in which has occurred with the Convention Center and have them still arguing about whether Commissioner Thibault had the authority to do something six years ago and not really going to the merit, we decided that there is time for us to just go through and address most of the procedural issues that have been raised about these things by the Administrative Bill No. 13-2006. What it does, basically, is re-adopt what is already in place. Now, maybe it would only make sense to a lawyer that we would do this. People ask me, "what would happen if you didn't do this?" Well, it would litigate these issues. In other words if Council elects not to do this, the ordinance that we have in place now would stay in place and we would go ahead and litigate these issues. What happens if we do do this? Well, most of the procedural objections that were made in the lawsuit are then taken care of. Does that mean the litigation is over? Probably not. It does mean that the nitpicking procedural kinds of things, that are sort of "gotcha law" are taken care of. In addition, it's a simple way to do it. Frankly, it's a cheaper way to do it than litigation. Even if we would lose, it probably wouldn't be the end of the world. Even if we would win, on one or two of these issues, again there is no court decision on it one way or the other, so we would have to do a fair amount of research and a fair amount of litigation to get to that point. Even if we would win, it would be tens of thousands of dollars to litigate, so why waste that? Why not just address it right now, get it up front and get that stuff out of the way? It will not in any way affect the date that this goes into effect, October 2nd. It will not affect the dates that the bills are sent out. It won't affect anything along those lines. This addresses some of the procedural matters that were raised in litigation and make those procedural matters moot."

Councilman Graupera asked the Mayor if this new ordinance is passed, are we admitting to any errors? Mayor Gray stated that no, that what we are doing in this ordinance is mooting issues. These are primarily technical procedural matters that in no way affect what this ordinance would do, in no way affect the program itself, or go to the heart of the program or have any changes in the program.

Councilman Graupera in a discussion with the Mayor made the point that if this goes to litigation the legal bill is paid by the City, so the taxpayers of the City of Lancaster pay the bill on litigation caused by the Trash haulers.

Councilwoman Saunders asked the Mayor again to state that if we didn't do anything tonight or vote against this bill that it would not affect the effectiveness of the other ordinance passed.

Councilman Urdaneta stated that he thinks it is important for the public to take note, that the lawsuits are based on procedures and not on what has been proposed as a solution to our trash problem in the City.

President Dickson stated that the copy of this bill that was received by Council tonight did not highlight the changes from the original bill. If we decide to add this to the agenda, this will be first reading. The Mayor said that the Solicitor will get copies to the Council with the changes highlighted. President Dickson stated that she would like to have the copy with the strikes and additions.

City Council approved adding Administrative Bill No. 13-2006 to the agenda by a unanimous roll call vote.

Councilman Graupera made the motion to authorize the Administration to advertise this bill for adoption and Councilwoman Saunders seconded.

Solicitor Pfannebecker stated that the position of the Solicitor's Office is to cross every t and dot every i. He stated that Council may find in the next several weeks that we have suggested doing things that probably have never been done by the City of Lancaster before, because we do have things coming up from opposition that we don't want to litigate. We are simply suggesting that there be a motion from Council to authorize the Administration to advertise.

City Council approved authorizing the Administration to advertise Bill No. 13-2006 by a unanimous roll call vote.

Administrative Bill No. 13-2006, (the title) was read by the City Clerk as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, LANCASTER COUNTY, PENNSYLVANIA REPEALING CERTAIN ARTICLES OF THE CODE OF THE CITY OF LANCASTER AND REPLACING THEM WITH NEW PROVISIONS TO REGULATE THE TRANSPORTATION, COLLECTION AND STORAGE OF MUNICIPAL WASTE AND REGULATED RECYCLABLE MATERIALS, TO REQUIRE REGISTRATION OF HAULERS, AND TO ALLOW THE CITY TO CONTRACT WITH HAULERS; PROVIDING FOR THE REPEAL OF THE INCONSISTENT ORDINANCES; PROVIDING FOR THE SEVERABILITY OF THE ORDINANCE; AND PROVIDING THAT THE ORDINANCE SHALL TAKE EFFECT AS PROVIDED BY PENNSYLVANIA LAW.

Council President Dickson stated that this serves as first reading of Bill No. 13-2006, so if there are any questions or comments from Council or the Public on Bill No. 13-2006, specific to the Bill, but not to the details of the program. Policies and procedures are not part of this bill.

They are under separate cover and posted on the website and being mailed to City residents.

Administration Bill No. 12-2006, (the title) was read by the City Clerk as follows:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF LANCASTER TO VACATE A PORTION OF NORTH JEFFERSON STREET BETWEEN EAST CHESTNUT STREET AND EAST FULTON STREET AND RESERVING A UTILITY EASEMENT THEREIN.

John Mateyak, Attorney, stated that pursuant to the terms of the Third Class City Code, Council has the power, in addition to opening streets, to close them and vacate them, as well. When the street is vacated it reverts to the property owners on either side of the street and they can use it as their own property. What Musser Park North has proposed for this vacation is the vacation of North Jefferson Street between four properties that are owned in total by Musser Park North.

Musser Park North owns the buildings at 221 East Chestnut, 227 East Chestnut, 215 North Jefferson Street and 224 East Fulton Street. Those properties are primarily being used by the firm of Hartman Underhill & Brubaker. The firm is proposing to vacate this street so it can incorporate the rear yards of 227-229 & 231 into a secure parking facility for the firm's employees. There have been several issues over the years with some thefts, there was a mugging and vandalism to vehicles and broken windows, etc. If Council would approve the vacation of this street, Musser Park North would pursue zoning, subdivision and land development approvals to incorporate that street along with the other rear yards of those three properties to combine them into a single lot and serve as parking for the building at 221 East Chestnut Street.

President Dickson stated that Musser Park North is a corporate legal entity which has nothing to do with Musser Park. Mr. Mateyak stated that it is a name of a partnership formed by several partners of Hartman Underhill & Brubaker.

Councilman Urdaneta stated that he favors the vacation of this block, but he does not favor the project, because it hampers access to Musser Park. The M.A.P.S report suggested that citizens should have ownership of back alleys in order to feel secure, to be able to walk and have this access. This project will not allow access to walkers to go through.

Mr. Mateyak explained that there were letters sent out to neighbors and members of the Musser Park Civic Association. A meeting was held with the public. He further stated that allowing a pedestrian walkway would defeat the purpose of the security of the property.

Dave Greiner, E. Chestnut Street, stated that he feels he and his neighbors have been lied to. Many people use that alley for walking and going from their homes.

Dave Maderi, Derck & Edson, stated that they did a brief study on a particular weekday of the alley to determine what the traffic is on Jefferson. For an entire day, we counted a total of 44 vehicles; many of those were employees heading to the HUB offices. In the a.m. peak hour there were eleven trips made in the alley, and in the p.m. peak hour there were 10 trips. The alley

is two-way and part of the plan is in eliminating this alley, the alley is really not safe for either pedestrians or vehicles in its current state. Visibility is poor at both ends and it's a dangerous situation to pull out onto Chestnut Street from the alley. Emergency services cannot use the alley and fire trucks cannot get through there. We counted pedestrians, both the public using as a walk through as well as Hartman Underhill employees. Excluding Hartman Underhill & Brubaker employees there were 5 other pedestrians throughout the day, on the day that this was measured.

President Dickson stated that this will come up for second reading in two weeks. She urged the neighbors to contact Council or come to the next council meeting if they have objections to this closing. She urged everyone to use good judgement when contacting Council and not call them at work, but to e-mail them or call them at home.

Administration Resolution No. 47-2006, (the title) was read by the City Clerk as follows:

A RESOLUTION OF THE COUNCIL OF THE CITY OF LANCASTER AUTHORIZING THE DISPOSAL OF CERTAIN OBSOLETE RECORDS (DAILY CASH REPORTS, BILLING CYCLES, PUBLIC WORKS REPORTS, CANCELLED CHECKS, EMPLOYEE ROSTERS, ETC.) IN CONFORMITY WITH THE RETENTION AND DISPOSITION SCHEDULE FOR RECORDS OF PENNSYLVANIA MUNICIPALITIES.

Councilman Polite made the motion to approve and Councilwoman Saunders seconded.

Councilman Polite stated that this is a housekeeping thing that we do every year to get rid of obsolete records. City Council approved Administration Resolution No. 47-2006 by a unanimous roll call vote.

Administration Resolution No. 48-2006, (the title) was read by the City Clerk as follows:

A RESOLUTION OF THE COUNCIL OF THE CITY OF LANCASTER AUTHORIZING THE MAYOR TO DISPOSE OF EXCESS VEHICLES IN POOR CONDITION AT THE LANCASTER COUNTY GOVERNMENT ANNUAL AUCTION ON SATURDAY, SEPTEMBER 16, 2006.

Councilwoman Saunders made the motion to approve and Councilman Polite seconded.

Councilwoman Saunders stated that this resolution allows the Administration to sell excess vehicles in poor condition. Some of these vehicles are abandoned on our city streets, have been lost or stolen and never claimed. Typically, the City holds its own auction to produce revenue; however, we have fewer vehicles this year and it is more financially viable to auction these vehicles at the Lancaster County Auction. City Council approved Administration Resolution No. 48-2006 by a unanimous roll call vote.

Administration Resolution No. 49-2006, (the title) was read by the City Clerk as follows:

A RESOLUTION OF THE COUNCIL OF THE CITY OF LANCASTER AUTHORIZING THE ADMINISTRATION TO SUBMIT A GRANT APPLICATION TO

THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT IN THE AMOUNT OF \$170,000 TO DEVELOP THE EASTERN MARKET PLAZA.

Councilman Roschel made the motion to approve and Councilman Polite seconded.

Councilman Roschel stated that Mr. Wenger from the East King Street Improvement District, explained this resolution to our committee. It is an application to create a triangular park at the corner of South Shippen and Church Street. It is a \$170,000 grant from the DCED. There is also matching money with that: \$100,000 from PennDOT from their Hometown Streets Program, \$28,000 from existing Elm Street Program, and \$42,000 from private money from Tabor Community Services.

There was a lot of community involvement in this decision and they reached three goals for that area. One is beautification of that triangle, another was pedestrian safety and third to provide a social gathering place for the neighborhood.

Councilman Urdaneta asked Mr. Wenger about the convenience store on the corner and wondered if they will still be able to get their deliveries, because he has observed that the trucks bringing deliveries use that small portion of street that is going to be closed. Mr. Wenger stated that a portion of the street near his store would be widened and he thinks that the delivery situation will be resolved.

City Council approved Administration Resolution No. 49-2006 by a unanimous roll call vote.

PUBLIC COMMENT - Mr. Brad Geiter, 325 W. Grant Street, stated that he is concerned about who he is to pay for his trash service, and Ms. Dickson stated that if he stays after the meeting all of his questions will be answered by either the Mayor or Ms. Brogan.

REPORT OF THE MAYOR - Mayor Gray presented his report to Council and it is available to read on the City's website. CityofLancasterpa.com

REPORT OF THE PRESIDENT OF COUNCIL - President Dickson reported that Council held an executive session last evening, Monday, at 8:15 for about two hours, to address issues of litigation.

President Dickson adjourned the meeting at 9:15 p.m.

Julianne Dickson, President

Attest:

City Clerk