



FAIRBANKS CITY COUNCIL
REGULAR MEETING MINUTES, JANUARY 21, 2013
FAIRBANKS CITY COUNCIL CHAMBERS
800 CUSHMAN STREET, FAIRBANKS, ALASKA

The City Council convened at 7:00 p.m. on the above date, following a Work Session by Donna Gardino on the Introduction to the Fairbanks Metropolitan Area Transportation System (FMATS), to conduct a Regular Meeting of the Fairbanks City Council at the City Council Chambers, 800 Cushman Street, Fairbanks, Alaska, with Mayor Jerry Cleworth presiding and with the following Council Members in attendance:

Council Members Present: Renee Staley, Seat A
 Perry Walley, Seat B
 Bernard Gatewood, Seat C
 Jim Matherly, Seat D
 Lloyd Hilling, Seat E
 John Eberhart, Seat F

Absent: None

Also Present: Warren Cummings, Fire Chief
 Paul Ewers, City Attorney
 Janey Hovenden, City Clerk
 Tony C. Shumate, Director Personnel/Purchasing/RM

INVOCATION

The Invocation was given by City Clerk Janey Hovenden.

FLAG SALUTATION

Mayor Cleworth led the Flag Salutation.

CITIZEN'S COMMENTS

Charity Gadapee, Fairbanks Convention & Visitor's Bureau (FCVB) - Ms. Gadapee stated that she is the Director for Member Services and Membership at the FCVB. She stated FCVB greeted 113,548 visitors at the visitor's center in 2012, an increase of 16.9% from 2011. She announced that on February 5 & 6, 2013, the FCVB will be holding its 6th Annual Interior Tourism Conference at the Westmark Hotel. She stated that guest speaker Susan Sweeney will speak about online marketing trends and social media strategies. She stated that the conference is open to the public and that registration is available at www.explorefairbanks.com/itc.

David Lerman, 126 2nd Avenue, #15, Fairbanks – Mr. Lerman stated that he will be running for a seat on the City Council in the 2013 Municipal Election. He stated that he just returned from Anchorage and commented on the poor sidewalk conditions there. He thanked the City of Fairbanks for doing a good job at maintaining its sidewalks. Mr. Lerman spoke against the

Chauffeur Appeals process, stating that the appeals always create a “bad scene.” He explained his position that if someone puts forth the effort to appeal to the Council, the expectation is that the appeal would be granted. Mr. Lerman stated that of all the Chauffeur Appeals he has witnessed, the City Council has granted only one. He suggested that the reason the Council granted that appeal was because the individual had children. Mr. Lerman spoke to how renovation could benefit the community, petitioning the City to create a Renovation Task Force. He stated that the City would also benefit from creating a DUI Task Force.

Mr. Matherly asked Mr. Lerman if he attends any other City-sponsored Committee meetings outside of City Council Meetings. He commented that many of Mr. Lerman’s requests may be addressed by those committees.

Mr. Lerman replied that he generally does not attend City-sponsored committee meetings because many of them conflict with his work schedule.

Mr. Eberhart asked Mr. Lerman if he has attended Public Safety Commission meetings to introduce his DUI Task Force idea.

Mr. Lerman replied that he has not, but that he has introduced the concept to the Chief of Police.

Mr. Eberhart asked Mr. Lerman for his recommendation on handling Chauffeur Appeals.

Mr. Lerman stated that it seems an appellant has momentum going into an appeal, only to be “squashed” by the City Council in nearly every case. He again suggested that the Council once showed preference to an appellant because he/she had children. He recommended doing away with the entire appeal process.

Mr. Matherly spoke to the importance of public safety and stated that he is satisfied that the Council hears Chauffeur Appeals. He asked Mr. Lerman if he believes in the importance of public safety.

Mr. Lerman replied that he does believe in the importance of public safety. He spoke to the intelligence of local cab drivers and to their knowledge of what is happening throughout the City of Fairbanks. He stated that he agrees that Chauffeurs should still have to meet Code requirements in order to be licensed, but recommended that the Chauffeur Appeals process be eliminated.

Mr. Matherly asked Mr. Lerman if he believes that eliminating the option to appeal would make applicants angry.

Mr. Lerman replied that he does not believe it would make applicants angry.

Mystiek Lockery, 3095 Amanda Loop, #A, North Pole – Ms. Lockery addressed the Council in regard to her desire to open a medical marijuana clinic in the City of Fairbanks. She spoke to how other municipalities have handled the issue and to the general lack of public knowledge about the medical marijuana issue. She spoke to the need for education, stating that she is willing to answer any questions the Council may have on the issue. She stated that she will

provide truthful information to the community so that they will never have to question the making of an ordinance to legalize a marijuana clinic if such an ordinance came to pass. She spoke to federal marijuana laws, stating that they were without legal standing on two specific grounds: the federal government does not have the authority to prohibit marijuana because of the inalienable rights of U.S. citizens written in the Constitution; and, the federal laws prohibiting the use of marijuana came about based on untrue information. She spoke to the complications of the law in regards to transportation and delivery of medical marijuana.

Mr. Hilling stated that City Attorney Paul Ewers researched the legality of a medical marijuana dispensary in Fairbanks and concluded that a dispensary would not be allowed under state law. He asked Ms. Lockery if she believes that the law does not apply to medical marijuana because the statute uses the language “controlled substance.”

Ms. Lockery replied affirmatively. She explained that marijuana may be legal or illegal, but that *medical* marijuana has been made legal in the State of Alaska.

Mr. Hilling stated his intent to have the City Attorney look further into the issue.

Hearing no more requests for public comment, **Mayor Cleworth** declared Public Testimony closed.

APPROVAL OF AGENDA AND CONSENT AGENDA

Mr. Matherly, seconded by **Mr. Hilling**, moved to APPROVE the Agenda and Consent Agenda.

Mayor Cleworth called for objection and, hearing none, so ORDERED.

City Clerk Hovenden read the Consent Agenda into the record.

SPECIAL ORDERS

- a) The Fairbanks City Council, Sitting as a Committee of the Whole, heard interested citizens concerned with the below-referenced Liquor License Applications for renewal.

Lic #	Establishment Name	License Type	Premise Location	Owner Name
725	Midnite Mine	Beverage Dispensary	308 Wendell Ave	Borealis Investments, Inc.
3020	American Legion Post #57	Club	1634 Cushman St	American Legion Post #57
4507	Miguel' s Restaurant	Beverage Dispensary	1235 Airport Way Ste #1	Miguel's LLC

Mr. Gatewood, seconded by **Mr. Matherly**, moved to WAIVE PROTEST on the Liquor License Applications for renewal.

Mayor Cleworth called for Public Testimony and, hearing none, declared Public Testimony closed.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO WAIVE PROTEST ON THE LIQUOR LICENSE APPLICATIONS FOR RENEWAL AS FOLLOWS:

YEAS: Gatewood, Walley, Eberhart, Matherly, Staley, Hilling

NAYS: None

Mayor Cleworth declared the MOTION CARRIED.

MAYOR'S COMMENTS AND REPORT

Mayor Cleworth stated that the backup generator for City Hall has been installed and is fully operational. He spoke to Ordinance No. 5914, stating that an amended version with revised minimum coverage requirements has been included in the Council's agenda packets. He expressed his condolences in the passing of long-time Fairbanks resident Jack Shuttleworth.

UNFINISHED BUSINESS

- a) Ordinance No. 5912 – An Ordinance to Amend the Date of the 2013 City of Fairbanks General Election. Introduced by Mayor Cleworth. SECOND READING AND PUBLIC HEARING.

Mr. Gatewood, seconded by **Mr. Walley**, moved to ADOPT Ordinance No. 5912.

Mayor Cleworth called for Public Testimony and, hearing none, declared Public Testimony closed.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO ADOPT ORDINANCE NO. 5912 AS FOLLOWS:

YEAS: Matherly, Hilling, Walley, Staley, Gatewood, Eberhart

NAYS: None

Mayor Cleworth declared the MOTION CARRIED and Ordinance No. 5912 ADOPTED.

- b) Ordinance No. 5913 – An Ordinance to Amend Fairbanks General Code Section 74-117 Regarding Definitions in Hotel/Motel Sales Tax Ordinance. Introduced by Mayor Cleworth. SECOND READING AND PUBLIC HEARING.

Mr. Matherly, seconded by **Ms. Staley**, moved to ADOPT Ordinance No. 5913.

Mayor Cleworth called for Public Testimony and, hearing none, declared Public Testimony closed.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO ADOPT ORDINANCE NO. 5913 AS FOLLOWS:

YEAS: Walley, Matherly, Gatewood, Hilling, Eberhart, Staley

NAYS: None

Mayor Cleworth declared the MOTION CARRIED and Ordinance No. 5913 ADOPTED.

- c) Ordinance No. 5914 – An Ordinance to Amend Fairbanks General Code Section 86-52 Proof of Insurance to Increase Mandatory Minimum Insurance Coverage for Commercial Passenger Transport Vehicles. Introduced by Mayor Cleworth. SECOND READING AND PUBLIC HEARING.

Mr. Matherly, seconded by **Mr. Walley**, moved to ADOPT Ordinance No. 5914.

Mr. Matherly, seconded by **Ms. Staley**, moved to SUBSTITUTE Ordinance No. 5914, as Amended, for Ordinance No. 5914.

Mayor Cleworth called for Public Testimony and, hearing none, declared Public Testimony closed.

Mr. Hilling stated that he believes the minimum coverage requirements should only be raised by half the current required amount. He stated that he will not vote for the ordinance.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO SUBSTITUTE ORDINANCE NO. 5914, AS AMENDED, FOR ORDINANCE NO. 5914 AS FOLLOWS:

YEAS: Eberhart, Walley, Staley, Matherly

NAYS: Hilling, Gatewood

Mayor Cleworth declared the MOTION CARRIED.

Mayor Cleworth stated that he has spoken with several insurance brokers and has confirmed that the minimum coverage requirements proposed in Ordinance No. 5914, as Amended, are the same as the current cab insurance requirements of the Municipality of Anchorage. He stated that most local cab companies already meet or exceed the proposed requirements. **Mayor Cleworth** stated that some insurance brokers recommended that the City look at requiring a \$300,000 blanket policy, but commented that the cost increase to cab companies would be about 10%.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO ADOPT ORDINANCE NO. 5914, AS AMENDED, AS FOLLOWS:

YEAS: Staley, Matherly, Gatewood, Eberhart, Walley

NAYS: Hilling

Mayor Cleworth declared the MOTION CARRIED and Ordinance No. 5914, as Amended, ADOPTED.

NEW BUSINESS

- a) Resolution No. 4558 – A Resolution Regarding Citizen Review Committees and the Timeline for Engaging Such Committees. Introduced by Mayor Cleworth.

PASSED and APPROVED on the CONSENT AGENDA.

- b) Ordinance No. 5915 – An Ordinance Approving the Payment in Lieu of Taxes Agreement Between the City of Fairbanks and Rest Easy LLC and Granting a Property Tax Exemption for Certain Property Interests. Introduced by Mayor Cleworth.

ADVANCED on the CONSENT AGENDA.

DISCUSSION ITEMS

Committee Reports

Fairbanks Parking Authority – **Ms. Staley** gave a brief summary of the meeting, speaking primarily to the 2013 Parking Authority and Downtown Transportation Center's budgets and to the agency's struggle to close open receivables. She stated that Downtown Transportation Center's budget will continue to be discussed at the next meeting. **Ms. Staley** spoke to her recent attendance at a Fairbanks Parking Authority public hearing for appeals.

Mayor Cleworth spoke to the Board's attention to mitigating utility costs for the Downtown Transportation Center.

Public Safety Commission – **Mr. Eberhart** gave a summary of the January 8 PSC meeting. He stated that Fire Chief Cummings gave a department report and provided fire department statistics from 2012, noting that the City of Fairbanks provided more mutual aid in the month of December than any other fire department has done in the Chief's recollection. He also noted that the total fire loss in the City of Fairbanks for 2012 was approximately \$620,000, the lowest it's been in 11 years. He commended the Department for keeping the fire loss numbers down. **Mr. Eberhart** spoke to Officer Hall's PowerPoint presentation on the operations of the Fairbanks Police Department, stating that the information was very informative. **Mr. Eberhart** spoke to his interest in the diversity of police department employees and stated that the department is taking steps to diversify its staff. He stated that Dispatch Manager Stephanie Johnson provided a report on the changes and happenings in her department.

Mayor Cleworth stated that he and Police Chief Zager spoke with a representative from the Department of Justice concerning the diversity issue in the Fairbanks Police Department. He commented that Chief Zager has corresponded with the representative to explore ways to diversify his department.

FMATS Policy Committee – **Mr. Walley** stated that the Committee approved \$73,000 for the College Road Corridor Study and spoke briefly to the options that the study explore. He spoke to the efforts to get two of the five intersections on Illinois Street switched over to permanent power and announced that work on Illinois Street is scheduled to continue on May 1, 2013. **Mr. Walley** stated that the Committee also approved a scope change for the Park-and-ride Project for which the Borough had set aside about \$750,000. He stated that the intent of the project was to study the feasibility of having designated parking lots for people to leave their vehicles and commute via public transportation. He stated that the Committee reallocated the money to be used towards the Bus Shelter Project. **Mr. Walley** spoke to the preventative maintenance funds that will be lost if they are not used by August, 2013. He stated that as a

result, some projects slated for 2014 will likely be moved to 2013 so the federal money can be used.

Mayor Cleworth elaborated on road projects that are scheduled for construction within the City.

COMMUNICATIONS TO COUNCIL

- a) Public Safety Commission Meeting Minutes of October 9, 2012.

ACCEPTED on the CONSENT AGENDA.

- b) Public Safety Commission Meeting Minutes of November 13, 2012.

ACCEPTED on the CONSENT AGENDA.

- c) Public Safety Commission Meeting Minutes of December 11, 2012.

ACCEPTED on the CONSENT AGENDA.

COUNCIL MEMBERS' COMMENTS

Mr. Gatewood requested to be excused from the Regular City Council Meeting of April 8, 2013, due to travel.

Mayor Cleworth called for objection to Mr. Gatewood's request to be excused on April 8, 2013 and, hearing none, so ORDERED.

Mr. Gatewood spoke to the issue of opening a medical marijuana dispensary in Fairbanks. He stated that he is unclear on the City Council's role in "approving" such a facility to open and that he is not convinced that the City has that authority. **Mr. Gatewood** referenced Mr. Lerman's testimony on eliminating chauffeur appeals stating that it may be something the Council should consider. He expressed his confusion with Mr. Lerman's statement that an applicant has a certain amount of "momentum" upon filing for an appeal. He stated that, in his understanding, filing for an appeal means an applicant has already lost and that at the very least, an applicant may have hope, but not momentum. **Mr. Gatewood** commented that the City Clerk's Office may advise applicants that the appeal may or may not be granted by the City Council. He spoke to the history of Chauffeur appeals in his time of service on the Council, stating that early on, the Council was a bit "wishy-washy." He pointed out that since the Council came together to revise the Code pertaining to Chauffeurs, they have been relatively consistent in upholding the original ruling from the City Clerk's Office. He stated that he would not be opposed to reviewing the chauffeur appeals process.

Mr. Walley apologized for his absence at the last Council Meeting due to unforeseeable travel delays.

Ms. Staley stated that she will be attending the National Homebuilders Association Convention in Las Vegas later in the week. She spoke to the Taku Gardens Environmental Cleanup on Fort

Wainwright and stated that information about the cleanup can be found at the Fairbanks Public Library. She stated that she attended an Alaska Gasline Development Corporation (AGDC) meeting for Alaska's in-state gas pipeline. She stated that she brought some of the proposed plans and mapping along if fellow Council Members were interested in looking at them. She listed the AGDC's website for those listening: www.agdc.us. **Ms. Staley** read aloud the Environmental Impact Statement (EIS) issued by the U.S. Air Force regarding the relocation of the F-16's from Eielson AFB to Fort Richardson. She announced the dates of three public meetings pertaining to the relocation of the F-16's and encouraged everyone to attend. **Ms. Staley** expressed her belief that the medical marijuana issue is a matter of the federal government. She stated her opinion that if a drug is prescribed by a doctor, a patient should be able to purchase it from a pharmacy.

Mayor Cleworth stated that he attended the Alaska Stand Alone Pipeline (ASAP) Community Advisory Committee Meeting. He commented that some cities are adopting resolutions in support of House Bill 4, which provides for the funding of the ASAP line in Alaska. He spoke to the confusion surrounding the numerous gas lines in Alaska. He informed the Council that he would be introducing a resolution in support of the ASAP line and offered to share information about the issue with the Council. **Mayor Cleworth** spoke to the Air Force's EIS, expressing his hope that local officials will be as comprehensive as possible when presenting issues that need to be looked at by the Air Force, not only in regard to the impact the move would have on Fairbanks and Anchorage, but also on the destruction of multi-million dollar facilities.

Mr. Matherly stated that he takes pride in never having missed a Council Meeting, but informed the Mayor and Council that he will be out of town for the next three meetings. He expressed his intent to attend those meetings telephonically, if possible. **Mr. Matherly** spoke to the chauffeur appeals process, stating that he believes it is a good system. He acknowledged the seriousness of appeals, recognizing that the Council's decisions affect an individual's livelihood. He stressed the importance of allowing an applicant's voice to be heard. He spoke to the public nature of the appeals heard at Council Meetings and suggested that perhaps they could be heard in a smaller setting. **Mr. Matherly** stated that he does not understand the City Council's role in allowing a medical marijuana dispensary to open in Fairbanks. He echoed Mr. Gatewood's comments on the issue. He expressed his appreciation for Ms. Lockery's determination and tenacity. **Mr. Matherly** commented that his home had been "egged" and advised those responsible to put an end to the vandalism.

Mr. Hilling recalled former Council Member Roberts' speech about 4½ years ago in regard to Chauffeur Appeals. He echoed Mr. Roberts' opinion that it has to be an exception for the City Council to grant an appeal. He stated that since that time, the rules pertaining to Chauffeurs have been changed and the Council has been much more united on appeal hearings. He stated that he would be willing to consider granting an appeal for an individual who is very close to having a clean record for the City's required look-back period, but that he has not seen any such cases in the past year. **Mr. Hilling**, in reference to Mr. Lerman's comment that the Council granted an appeal based on the fact that the appellant had children, stated that he is confident that the Council would not base an appeal decision on whether or not an applicant had children. **Mr. Hilling** stated that since the state does not allow possession of more than one ounce of medical marijuana, it would be against state law to have a medical marijuana dispensary. He stated that it seems the City would have to disallow the opening of a dispensary unless state laws changed.

He indicated that he would not introduce an ordinance on the issue until he felt confident that it would not be contrary to state law. **Mr. Hilling** commended Ms. Lockery for her eloquence in presenting her case to the Council. He compared federal laws against drugs to the U.S. Prohibition in the 1920's and 1930's, stating that the federal government does not have the authority to deny a citizen's personal rights. He stated his intent to look further into the medical marijuana issue and commented that he respects Ms. Lockery's efforts to research the issue.

Mayor Cleworth stated that despite the common opinion that the Prohibition was a failure, the results of it were much more gray than black and white. He commented that it is a fascinating piece of U.S. history.

Mr. Eberhart stated that it is Martin Luther King, Jr. day and expressed his respect for the man's work and legacy. In reference to public comment that the governance of Chauffeurs should be left to the state, **Mr. Eberhart** stated that state laws do not address the concerns of the City Council in regard to public safety. He commented that he bases his judgments on a "grandmother test," which helps him measure whether or not he would trust his grandmother's safety in the care of a Chauffeur. He expressed his confidence in the City Clerk's decision to grant or deny a Chauffeur License based on the City Code and stated that upon denial from the Clerk's Office, an appellant has a burden to prove the Clerk was mistaken. He spoke to the evolution of City Code governing Chauffeurs, stating that the Council has lowered the bar on the look-back periods for criminal records. **Mr. Eberhart** spoke to the Council's efforts to follow the Code when deliberating on an appeal and stated his intent to continue to do so. He announced that the next PSC meeting would take place on February 12 at 11:30 A.M. at the Fairbanks Fire Department. He stated that one or more of the department's employees would speak to operations and issues relevant to fire department procedures.

Mayor Cleworth clarified that in the latest revision of the Code pertaining to Chauffeur Appeals, the Council eliminated the right of an applicant to appeal a denial based on certain offenses.

CITY ATTORNEY'S REPORT

City Attorney Ewers stated that aside from federal law, there is nothing the Council can do to change the existing state laws on medical marijuana. He stated that his reading of the state law, as confirmed by the District Attorney's Office, indicates that a person operating a medical marijuana dispensary would be committing a state crime. He spoke briefly to the laws pertaining to medical usage and caregivers, stating that an individual can only be a caregiver to one patient.

Mr. Matherly asked Mr. Ewers what he believes Ms. Lockery is intending to gain from the Council.

City Attorney Ewers replied that he believes she may be wishing to mirror what has been done in other states where laws allow for medical marijuana dispensaries. He spoke to the controversy of the issue in Los Angeles, CA where a number of dispensaries were opened, then closed, then reopened. He stated that the changes Ms. Lockery seeks are at the state level first, then the federal level.

Ms. Staley suggested that Ms. Lockery may be looking for direction, having already brought her request before the Borough Assembly. She suggested that the Council may wish to refer Ms. Lockery to the State of Alaska.

ADJOURNMENT

Mr. Matherly, seconded by Mr. Hilling, moved to ADJOURN the meeting.

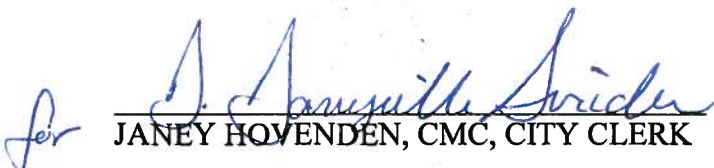
Mayor Cleworth called for objection and, hearing none, so ORDERED.

Mayor Cleworth declared the Meeting adjourned at 9:17 P.M.



JERRY CLEWORTH, MAYOR

ATTEST:



JANEY HOVENDEN, CMC, CITY CLERK

Transcribed by: DS