

OWENSBORO BOARD OF COMMISSIONERS

Regular Meeting
May 01, 2018 5:00 PM
Owensboro City Hall
101 E. 4th Street
Owensboro, Kentucky

1. CALL TO ORDER - Mayor Tom Watson

2. ROLL CALL - City Clerk Beth Cecil

Present:

Mayor Tom Watson
Mayor Pro Tem Bob Glenn
Commissioner Pam Smith-Wright
Commissioner Larry Conder
Commissioner Jay Velotta

Mayor Watson recognized Hugh Sullivan, World War II Veteran in the audience.

3. INVOCATION & PLEDGE - Commissioner Pam Smith-Wright

4. PRESENTATIONS

4.A. Older Americans Month Proclamation was presented to Dana Peveler, Daviess County Senior Services Director on behalf of the seniors in the community.

4.B. Municipal Clerks Week Proclamation was accepted by Beth Cecil, City Clerk.

4.C. Public Events Update - Tim Ross (presentation attached). Kirk Kirkpatrick gave an update on the upcoming Friday After 5 season.

5. BUSINESS

5.A. Minutes dated April 17, 2018 were approved 5-0 upon motion of Commissioner Velotta and a second by Mayor Pro Tem Glenn.

5.B. The following board appointments were unanimously approved upon motion of Mayor Pro Tem Glenn and a second by Commissioner Smith-Wright.

- **HISTORIC PRESERVATION BOARD:** Reappoint Gary Adams to a three-year term expiring May 16, 2021.
- **OWENSBORO SISTER CITIES AND REGIONS BOARD:** Reappoint Karen Campbell, Michael Vanover and Kelia West to a three-year term expiring June 4, 2021.

6. ORDINANCES - 2nd READING

6.A. Ordinance 6-2018 entitled AN ORDINANCE APPROVING A PRE-HOSPITAL EMERGENCY MEDICAL AMBULANCE SERVICE AGREEMENT BY AND BETWEEN THE CITY OF OWENSBORO, DAVIESS COUNTY FISCAL COURT, AND PROCARENT D/B/A YELLOW AMBULANCE SERVICE FOR AN INITIAL TERM OF ONE (1) YEAR WITH AUTOMATIC RENEWALS FOR UP TO TEN (10) ONE YEAR TERMS, WHEREBY PROCARENT SHALL OPERATE AND BECOME THE EXCLUSIVE COUNTY-WIDE PROVIDER OF EMERGENCY AMBULANCE SERVICES FOR THE OWENSBORO-DAVIESS COUNTY CENTRAL DISPATCH SYSTEMS; AND FURTHER APPROVING AN AMENDED INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY OF OWENSBORO AND DAVIESS COUNTY FISCAL COURT FOR EMERGENCY MEDICAL AMBULANCE SERVICES was unanimously approved upon motion of Mayor Watson with a second by Mayor Pro Tem Glenn.

The Emergency Medical Service and Ambulance Agreement by and between the City, Daviess County, and Yellow Enterprise System, Inc. (now Procarent d/b/a Yellow Ambulance Service) expires on June 30, 2018. Competitive proposals were received for emergency ambulance services and Procarent d/b/a Yellow Ambulance Service was awarded the exclusive right to operate pre-hospital emergency medical ambulance services under the City and County's license and Owensboro-Daviess County Central Dispatch System for an initial term of one (1) year with automatic renewals for up to ten (10) years. The Interlocal Agreement between the City and County will also require amendment to reflect the changes.

7. ORDINANCES - 1st READING

7.A. Ordinance 7-2018 entitled AN ORDINANCE AMENDING CHAPTER 16, ARTICLE I, SECTION 16-4, SUBSECTION V., PARAGRAPH (N) TO DELETE THE PROHIBITION OF A MOBILE FOOD UNIT VENDOR FROM LOCATING OR OPERATING WITHIN ONE HUNDRED (100) FEET OF THE PROPERTY LINE OF THE REAL PROPERTY OF BUSINESSES SELLING FOOD TO THE GENERAL PUBLIC; AND FURTHER DELETING THE PROHIBITION OF LOCATING OR OPERATING ON AVENUES, STREETS, ROADS, DRIVES, OR SIDEWALKS ADJACENT TO THE BOUNDARIES OF A PUBLIC PARK; AND FURTHER PROVIDING THAT MOBILE FOOD VENDORS SHALL BE SUBJECT TO THE SAME PARKING RESTRICTIONS AS ALL OTHER LICENSED VEHICLES was introduced and publicly read on first reading.

Due to legal challenges across the United States which have resulted in court decisions that minimum distance prohibitions bear no rational relation to a legitimate state or city interest and are unconstitutional, the City now desires to amend the mobile food unit ordinance and delete the prohibition of a mobile food unit vendor from locating or operating within one hundred (100) feet of the property line of the real property of businesses selling food to the general public and further deleting the prohibition of locating or operating on avenues, streets, roads or drives adjacent to the boundaries of

a public park. Mobile food vendors will also be subject to the same parking restrictions as other licensed vehicles. City Manager Parrish gave a brief history of the City's prior authorization for food truck vendors within the City. Earlier this year, it was reported that a lawsuit was settled with the City of Louisville and food truck vendors. The case was brought by the Institute for Justice, a non-profit, libertarian, public interest law firm who argued the proximity restriction was unconstitutional. Similar cases are ongoing in Baltimore and Chicago and have been successful in El Paso and San Antonio. The City legal staff has opined that our ordinance is unconstitutional for the same reason. City Manager Parrish recommends three (3) changes to the City of Owensboro's ordinance: 1) Delete the proximity rule that prohibits food trucks from operating within one hundred (100) feet of businesses selling food; 2) Delete a similar protection for city owned concession stands by allowing food trucks next to city parks; and 3) Require that food trucks abide by the same parking restrictions that all motorists adhere too. Commissioner Smith-Wright suggested locating all food trucks within a specific area within the City or request the food truck vendors and brick/mortar owners get together and come to an agreement amongst themselves and bring back their recommendation to the Commission. Mayor Pro Tem Glenn stated that two (2) of the food truck vendors are also brick/mortar owners and most food truck vendors already respect the downtown restaurateurs. The vendors that come in from out of town may not be willing to engage in the dialogue. After speaking to several downtown restaurant owners, they said they have never had a food truck park in front of their business. The food trucks cater to a different type of patron than the brick/mortars. Commissioner Velotta suggested the ordinance been amended to prohibit food truck vendors from selling in the Article 21 overlay district except on private property, in a designated food truck area (McConnell Plaza), during special events and potentially raise the permit fees. He doesn't want to put anyone out of business but recognizes the brick/mortar businesses have put in a large investment. Mayor Watson said the larger cities have several entrepreneurs that can invest several million dollars in brick/mortar, but Owensboro is very lucky to have two (2) to three (3) investors and that differentiates us. He does not generally go against staff but Owensboro is a different animal with a few investors spending enormous amounts of money and there should be special consideration for that group. Commissioner Smith-Wright pointed out that no food truck vendors have attended a Commission meeting yet; she would like to hear from them prior to the second reading. Steve Lynn added that the primary issue raised in the Louisville Metro case was economic protectionism, declared unconstitutional under a decision rendered by the 6th Circuit Court of Appeals in a case that did not relate to food trucks. Kentucky is a part of the 6th Circuit and a case filed against the City would be filed in the U.S. District Court in Owensboro. Undoubtedly this 6th Circuit case would be cited by the food trucks in support of their case. He also opined that if the license fees for food trucks were raised or moved out of the downtown area it could also be questioned as economic protectionism of the brick and mortar restaurants. Additionally, he said that under Kentucky law a license fee must have a rational relationship to the cost of overseeing the particular business. Any fee above that could be seen as an illegal tax or a penalty on the business. Commissioner Velotta said he solicits businesses to come to the downtown corridor and there is a flip of the economic protectionism for restaurateurs in the downtown area related to having a potential food truck park in front of their

business. Commissioner Conder spoke to leveling the playing field for the food truck ordinance in 2014; although the law is there. He also suggested relaxing the Article 21 regulations to allow developers a choice of retail, restaurant, residential, etc. for their first floor developments.

Mike Baker, Fetta Specialty Pizza co-owner, spoke against the ordinance on behalf of several downtown business owners. He mentioned collective resources that are available to challenge a legal fight. Crystal Patterson, general counsel for Gulfstream Commercial Services (and representing several downtown businesses) suggested the following changes to the ordinance:

1. Allow food trucks the option to operate in two spheres:
 - a. Article 21 overlay district in the following ways:
 - i. On private property, leased from a landowner, much like a brick and mortar restaurateur would lease building space from a landowner;
 - ii. In McConnell Plaza – this would get food trucks off the city streets and into a pedestrian-friendly zone. This also preserves precious downtown parking and ensures the free passage of vehicular traffic on streets and pedestrian traffic on sidewalks; or
 - iii. In special event permitted areas.
 - b. Anywhere in the balance of the City with virtually no restrictions because parking, traffic flow and pedestrian access have different implications.
2. Impose a fee that bears a reasonable relationship to the city resources used and benefits received when food trucks operate in the City. This requires a fee that roughly puts the food trucks on equal footing with the brick and mortar restaurants. Presumably, the brick and mortars pay several thousands of dollars to the City each year in occupational tax, net profits tax, real estate tax (not to mention City school taxes, sanitation fees, RWRA fees, OMU utility payments, building permit fees). The food trucks have to be inspected by the health department, will call the fire department in the event of a fire, will use the police if they are robbed, and they operate on City streets that have to be built and maintained regularly. Accordingly, the fee charged to the food trucks must be more than *de minimis* because if it's not sufficiently high, then there is no incentive for businesses to establish permanent locations in the City. The streets will be filled with itinerant merchants peddling food from trucks, watches from trunks of their cars, and clothes out of RVs.

8. MUNICIPAL ORDERS

8.A. Municipal Order 11-2018 entitled A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN APPLICATION FOR A BULLETPROOF VEST PARTNERSHIP (BVP) INITIATIVE GRANT ADMINISTERED BY THE BUREAU

OF JUSTICE ASSISTANCE DESIGNED TO PROVIDE CRITICAL RESOURCES TO LAW ENFORCEMENT JURISDICTIONS FOR THE PURPOSES OF REIMBURSING THE OWENSBORO POLICE DEPARTMENT FOR FIFTY PERCENT (50%) OF THE TOTAL COST OF \$10,672.00, EXPENDED TO PURCHASE SIXTEEN (16) NEW BULLETPROOF VESTS AND IMPAC PLATES, THAT AMOUNT BEING \$5,336.00, was approved 5-0 upon motion of Mayor Watson with a second by Commissioner Smith-Wright.

The Owensboro Police Department has 16 bulletproof vests which will expire and require repair during the next fiscal year. The City seeks to execute an application for a Bulletproof Vest Partnership Initiative Grant administered by the Bureau of Justice Assistance to purchase 16 vests with a 50% grant reimbursement of \$5,336.

8.B. Municipal Order 12-2018 entitled A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN APPLICATION FOR A FY2018 COMPETITIVE GRANT THROUGH THE KENTUCKY 911 SERVICE BOARDS IN THE APPROXIMATE AMOUNT OF \$15,876.50, THE PROCEEDS OF WHICH WILL BE UTILIZED BY THE CITY OF OWENSBORO TO PURCHASE 911 CONSOLE FURNITURE FOR THE OWENSBORO-DAVISS COUNTY CENTRALIZED 911 COMMUNICATIONS CENTER; A FIVE PERCENT (5%) MATCH BEING REQUIRED BY THE CITY, was unanimously approved upon motion of Mayor Watson with a second by Mayor Pro Tem Glenn.

The Owensboro-Daviess County Centralized 911 Communications seeks to file an application for a FY2018 Competitive Grant through the Kentucky 911 Service Boards in the approximate amount of \$15,876.50, the proceeds of which the City of Owensboro will purchase 911 console furniture to retrofit an existing space to be conducive to function as a 911 call-taking/dispatching position. There is a 5% match required.

8.C. Municipal Order 13-2018 entitled A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN APPLICATION FOR A FY2018 COMPETITIVE GRANT THROUGH THE KENTUCKY 911 SERVICE BOARDS IN THE APPROXIMATE AMOUNT OF \$29,337.00, THE PROCEEDS OF WHICH WILL BE UTILIZED BY THE CITY OF OWENSBORO TO PURCHASE A MOTOROLA RADIO CALL DISPATCH SOFTWARE LICENSE FOR THE OWENSBORO-DAVISS COUNTY CENTRALIZED 911 COMMUNICATIONS CENTER; A FIVE PERCENT (5%) MATCH BEING REQUIRED BY THE CITY, was approved 5-0 upon motion of Mayor Watson with a second by Commissioner Velotta.

The Owensboro-Daviess County Centralized 911 Communications seeks to file an application for a FY2018 Competitive Grant through the Kentucky 911 Service Boards in the approximate amount of \$29,337.00, the proceeds of which the City of Owensboro will purchase a Motorola radio call dispatch software license to connect the current dispatch infrastructure. There is a 5% match required.

9. CITY MANAGER ITEMS

9.A. Personnel Appointments were approved 5-0 upon motion of Mayor Watson and a second by Commissioner Velotta. Human Resources Manager Josh Bachmeier explained it costs approximately \$105,000 to onboard a police officer/firefighter.

- **Michael Custer** – Regular, full-time, non-civil service appointment to Bus Driver with the Public Works Department, effective May 1, 2018
- **Timothy Goff** – Regular, full-time, non-civil service appointment to Assistant Finance Manager with the Finance Department, effective May 21, 2018
- **Christopher Webster** – Regular, full-time, non-civil service appointment to Systems Analyst/Programmer with the Information Technology Department, effective May 22, 2018
- **Michael Johnson** - Probationary, full-time, non-civil service appointment to Police Officer with the Police Department, effective May 14, 2018
- **Kyle Mullins** – Probationary, full-time, non-civil service appointment to Police Officer with the Police Department, effective May 14, 2018

9.B. City Manager Comments – None

10. COMMUNICATIONS FROM ELECTED OFFICIALS

Communications were heard from the elected officials.

Mayor Watson and Mayor Pro Tem Glenn both complimented the “Be Like Rick Foundation” event that was recently held and the legacy Mr. Kamuf leaves behind. Mayor Watson invited Rod Kuegel (1939 Hwy 1554) to speak on the event and the selfless acts of Rick Kamuf before his passing. The event raised \$60,000+ and will be donated to those in need as Rick would want.

Mayor Pro Tem Glenn recognized Trevor Payne, Apollo High School student that received a perfect ACT score.

Commissioner Smith-Wright invited the public to participate on August 7th for the National Night Out.

Mayor Watson recognized Jacob Nanney and Cody Drake, both 2018 graduates of Kentucky Wesleyan College.

11. OPEN PUBLIC FORUM

Members of the audience are invited to address the City Commission on any matter of public concern that was not on tonight's agenda. Comments are limited to issues within the scope and responsibility of this Commission.

City Commission meetings are held to conduct city business for the benefit of Owensboro citizens and taxpayers. The meetings are not intended to serve as public forums for candidates who are campaigning for political office. Political candidates, like any citizen, may address any item on the City Commission's agenda. During the open public forum, any citizen of Owensboro may address a specific city-related issue not on the agenda, but candidates for any political office will not be allowed to use the Commission meeting to promote his/her candidacy for public office.

At this time, anyone who wishes to address the City Commission please make their way to the podium to be recognized. **Speakers must state their name and address for the Clerk's record**, and limit their remarks to three (3) minutes or less. Since the item is not on the agenda, no response is required from City staff or the Commission. The Mayor reserves the right to extend time to the speaker.

Hugh Sullivan (2112 York Drive) thanked the Commission and staff for making Owensboro great.

12. CLOSED SESSION

12.A. Motion was made by Mayor Watson and seconded by Mayor Pro Tem Glenn to enter into a Closed Session under KRS 61.810 (1)(f) to discuss a personnel matter; motion carried unanimously.

13. ADJOURNMENT

The closed session adjourned upon motion of Commissioner Conder and a second by Mayor Watson; motion passed unanimously.

There being no further business to discuss, the meeting adjourned at 6:39 p.m. upon motion of Mayor Watson with a second by Commissioner Smith-Wright and carried unanimously.

Thomas H. Watson, Mayor

ATTEST:

Beth Cecil, City Clerk