

STATED MEETING - CITY COUNCIL – MAY 28, 2013

A meeting of the Lancaster City Council was held on Tuesday, May 28, 2013 in Council Chambers, Southern Market Center, 100 South Queen Street, Lancaster, PA, at 7:30 p.m., with President Williams presiding.

City Council led the assembly in the Pledge of Allegiance.

Present – Mr. Graupera, Mr. Reichenbach, Mr. Roschel,
Mr. Smith, Ms. Wilson, President Williams – 6

Excused – Mr. Urdaneta - 1

City Council approved the minutes of May 14, 2013 by a unanimous roll call vote.

Council Resolution No. 28-2013, was read by the City Clerk as follows:

**A RESOLUTION OF THE COUNCIL OF THE CITY OF LANCASTER
RECOGNIZING AND COMMENDING ALL THE CONTRIBUTIONS OF THE
LANCASTER EMERGENCY MEDICAL SERVICES ASSOCIATION (LEMSA)
DURING THE ANNUAL OBSERVANCE OF NATIONAL EMERGENCY MEDICAL
SERVICES WEEK.**

WHEREAS, the American College of Emergency Physicians (ACEP) was instrumental in establishing EMS Week after President Gerald Ford declared November 3-10, 1974, as the first “National Emergency Medical Services Week.” This annual observance continued for four more years and was then reinstated by ACEP in 1982 and is now observed during the month of May, this year from May 19 to 25, 2013; and

WHEREAS, LEMSA was first accredited by the Commission on Accreditation of Ambulance Services (CAAS) in 2005; whose standards exceed state licensing requirements; and

WHEREAS, LEMSA is the only CAAS-accredited ambulance service in Lancaster County, one of only 8 ambulance services in the State, and one of only 108 in the USA; and

WHEREAS, LEMSA currently has 145 employees and 20 active volunteers; and

WHEREAS, LEMSA received over 33,000 requests for service in 2012. Has exceeded the National EMS response time standard for the City of Lancaster, responding 90 +% of the time in less than 9 minutes – the best response times out of all municipalities in Lancaster County; and

WHEREAS, Lancaster EMS gives back to the Community in many ways, including sharing the Christmas season with Clare House, collecting toys in conjunction with Toys for Tots, and useful items donated by the employees of Lancaster EMS.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Lancaster is pleased to commend and recognize the Lancaster Emergency Medical Services Association for the valuable services they provide for the citizens of the City of Lancaster.

Councilman Smith made the motion to approve and Councilman Graupera seconded. City Council approved Council Resolution No. 28-2013 by a unanimous roll call vote.

Chief Tim Gregg, Bureau of Fire, stated that he wanted to thank LEMSA for all they do for us. They provide a very high level of advanced and basic life support for our citizens. Almost every fire call that we respond to, they are there. They provide rehabilitation services for our crew. They provide very quick care if someone is injured. They have been a great partner in public safety with us.

Mayor Gray stated that he presented a proclamation for LEMSA for National Medical Services Week and he thanked them for all they do.

Councilman Smith, Councilman Reichenbach, and Councilwoman Wilson all commended and thanked the members of LEMSA for all they do for the citizens of Lancaster.

At this time Mayor Gray and Councilman Graupera presented commendations for Academic Excellence to the following McCaskey Seniors:

McCaskey School of Health Careers	Faith N. Viray
International Baccalaureate Honors	Nicholas Dorozynsky
McCaskey Institute of Technology	Bryan P. Anderson
McCaskey School of Media Studies and Communication	Kelly Chery
Technical and Business Careers	Naomi Rivera
Arts and Humanities	Stephanie Sweigart
McCaskey School of Public Leadership and Service	Keylsa M. Rodriguez

Mr. Graupera acknowledged Mr. Dwight Nolt who has been the principal of McCaskey for the past 7 years and stated that he is going to be moving on at the end of this year. We will miss his leadership and his guidance.

PUBLIC COMMENT – Eileen Gregg, 716 Race Avenue, spoke about her concerns for the safety of the Doughboy which the City has planned to move to the Edward Hand Junior High School campus. She distributed information to all of the City Council members and asked them to read the enclosures.

ECONOMIC DEVELOPMENT & REVITALIZATION COMMITTEE – Mr. Graupera, for Mr. Urdaneta, stated that we will have the second reading of the Food Truck Ordinance this evening. The Committee discussed this bill with business owners and the general public, voted to send it to the full council.

FINANCE COMMITTEE – Mr. Smith stated that the Committee met earlier this evening and we have two items he made a motion to add to tonight’s agenda. Councilman Roschel seconded. City Council approved the motion by a unanimous roll call vote.

Mr. Smith stated that both resolutions make reference to changes in the General Obligation Bonds, shifting some funds from some different capital improvement project. We will talk about it when it comes up on the agenda.

COMMUNITY DEVELOPMENT & PLANNING COMMITTEE – Mr. Reichenbach stated that Administration Resolution No. 22, which approving Lancaster County and City’s analysis of impediments to fair housing choice.

Council considered the following application and (Historic Commission recommendation) for construction and demolition within the Heritage Conservation District:

1. T.J. & J.A. Schwartz, propose demolition of a steel canopy covering a surface parking lot at 123 North Franklin Street.

Councilman Smith made the motion to approve and Councilman Reichenbach seconded. City Council approved the decision of the Historic Commission by a unanimous roll call vote.

Administration Bill No. 2-2013, (the title) was read by the City Clerk as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, LANCASTER COUNTY, PENNSYLVANIA ADOPTING A NEW CHAPTER TO THE CODE OF THE CITY OF LANCASTER, CHAPTER 263-RIGHT OF WAY MANAGEMENT TO IMPLEMENT A COMPREHENSIVE PROGRAM FOR MANAGEMENT OF THE RIGHTS OF WAYS OF THE CITY, CONTAINING PROVISIONS INCLUDING, BUT NOT LIMITED TO: RIGHT OF WAY USE AUTHORIZATIONS, RIGHT OF WAY USE AGREEMENTS, THE ESTABLISHMENT OF A RIGHT OF WAY USE PERMIT PROCEDURE, PROVISIONS REGARDING TRANSITION FROM EXISTING CITY ORDINANCES TO THE

RIGHT OF MANAGEMENT ORDINANCE, PROVISIONS REGARDING EXISTING CABLE FRANCHISES OR OPEN VIDEO SYSTEM FRANCHISES, RENEWAL AND TRANSFER OF RIGHT OF WAY USE PERMITS, REGULATIONS FOR CONSTRUCTION IN THE RIGHTS OF WAY, THE ESTABLISHMENT OF A RIGHT OF WAY MAINTENANCE FEE, ESTABLISHMENT OF PENALTIES AND REMEDIES, AND PROVISIONS REGARDING PROPRIETARY INFORMATION, LEASED FACILITIES, DUTIES TO PROVIDE INFORMATION, THE CITY'S RIGHT TO INSPECT RECORDS, WAIVERS, THE ABILITY OF THE DIRECTOR OF PUBLIC WORKS TO ESTABLISH FURTHER REGULATIONS, POLICE POWERS OF THE CITY, SEVERABILITY OF THE ORDINANCE AND THE EFFECTIVE DATE OF THE CODE PROVISIONS. THE ORDINANCE FURTHER PROVIDES FOR THE REPEAL OF INCONSISTENT ORDINANCES, THE SEVERABILITY OF THE ORDINANCE AND THAT THE ORDINANCE SHALL TAKE EFFECT 30 DAYS AFTER ADOPTION.

Councilman Roschel made the motion to approve and Councilman Reichenbach seconded. Councilman Roschel stated that this bill and the next one are related to the rights-of-way of the City. The City of Lancaster is obligated to maintain its rights-of-way, primarily for public safety concerns, but secondarily to maintain an orderly flow of traffic, both vehicular and pedestrian, and also to provide efficient service to the public to enhance our economic opportunities. The City conducted a lengthy study to determine the real costs associated with managing these rights-of-way with respect to third-party facilities like PPL, UGI, Verizon, Comcast, and 16 other providers. The study concluded that third-party providers are not paying their fair share of the real costs of rights-of-way management and the City taxpayers are picking up the rest of the tab. Because of this discrepancy, the City Administration proposed these two related ordinances. The first ordinance creates a new chapter, Chapter 263 Right-of-way Management, to implement a comprehensive right-of-way program. Included in this chapter is the requirement that all third-party providers using the City's right-of-way, establish a Right-of-way Agreement or Franchise Agreement with the City. Also required; the providers will need to pay a fee to obtain a right-of way user permit. The Ordinance goes on to offer further right-of-way management guidelines. These guidelines are related to transitions from the current system, facility modifications, new construction, right-of-way maintenance fees and penalties for non-compliance.

Mayor Gray interjected that the bill itself doesn't set fees, the resolution will set the fees. The fees will be based on the actual amount of poles, or the amount of lines that are extended in the right-of-way, not on what our parties who did the study estimated. The information was requested by the carriers and not provided. There certainly will be a time when we will review and look at what they actually have, and the fees will be based on that, not on the estimates made by our consultant.

He stated that most of the protests that he has seen was based on the amount of fees that were going to be charged. We have employed Mr. Cohen and other knowledgeable attorneys in this area. This has been ongoing for three years but over a year ago we met with the utilities, our counsel and our Public Works Director, discussed it with them, discussed the implementation, share the proposals with them. To get an e-mail on Saturday over Memorial Day weekend asking us not to approve the bill tonight, after over a year has been going on. He thinks it is insulting. The issues that were raised in the e-mail have all been considered.

Councilman Smith thanked Councilman Roschel for the comprehensive report in clarifying everything. The reductions that reflect in the Right-of-way fee resolution, did that reflect the feedback from these providers. Mayor Gray stated that the reduction came from closer examination and our implementation of this ordinance.

Mr. David Cohen, Counsel, stated that the request for reduction in the aerial or overhead maintenance fees was due to closer examination and the recognition that the City should only be recovering its current costs. One of the recommendations of cost report from CBG Communications, was for the City to hire an aerial inspector/engineer, as we think the City should be more pro-active in inspecting aerial infrastructure. Most of the infrastructure in the City's Rights-of-way is aerial. Right now Charlotte Katzenmoyer, Rob Ruth, etc., really only have the resources to be reactive, not proactive. The City has not yet hired that person, so there are not costs to be recovered based on that person, so that is the reason for the reduction.

Councilman Graupera stated that as he was reading the executive summary of what Verizon had presented to us, maybe you could clear something up. One thing that stood up was point no. 3 of their argument, where it says the City of Lancaster's proposed aerial and pole inspection program exceeds the City's authority as an encroachment on PUC territory. It seems like that's just interpretation of what the State has mandated.

Mr. Cohen stated that this has been looked at by two law firms, in addition to your solicitor, and we are quite confident that the City has the legal authority to go ahead and recover its right-of-way management costs. It is not a revenue-raising ordinance, it is an ordinance to recover your costs and an ordinance to allow the City to have more control over the public rights-of-way and to enhance public safety within the rights-of-way. The Public Utilities Commission certainly has jurisdiction; so does the City of Lancaster. We feel that this ordinance has been closely tailored to be consistent with that legal authority.

Councilman Reichenbach asked Mr. Cohen about asking the providers what services they provide that they did not respond to. Mr. Cohen stated that over a year ago, the City reached out to all of the providers; public utilities and non-public utilities, in the public rights-of-way. We met with UGI, PPL Verizon & Comcast in one meeting and all the others in another meeting. So it was surprising to learn that Verizon had sent an e-mail on Saturday of Memorial Day weekend, knowing that we wouldn't have the opportunity to respond to those concerns before this Council meeting.

The ordinance you are being asked to consider does not include that metric of facilities

footage. There was also a meeting on May 14 of this year with all of the providers. People were asked to sign up for a meeting in August, we didn't want to do this prematurely until Council adopted this legislation. Should Council adopt this legislation we asked them to sign up for a meeting in August where we would have one-on-one meeting with each of the utilities, and go over just the information that you refer to.

With Verizon, there have been multiple communications with Verizon. We sent the cost report and draft legislation to Verizon on July 6, 2012. They have had it for a full 11 months. They did provide some written comments and asked for addition information, which the City did provide. So one of the things that he found interesting in that e-mail that was sent on Saturday, was that after a full 11 months of having the cost report which is 80 pages, it is well documented and completely supportive. The executive summary that accompanied the e-mail they did not identify a single cost that was incorrect or erroneous. Instead it was just a wide spread statement without any substance to it. Should Council adopt the ordinance the Public Works Department will meet with each and every one of the utilities and get that information that you refer to.

Todd Darlington, Director of External Affairs with Verizon, apologized for the tardiness of that e-mail, stating that they couldn't get it pulled together during the business hours of Friday. He stated that the meeting referred to was April 26, which was a Monday. (sic) We were not notified of that until written communication was sent via US mail and was received on Monday afternoon. We were asked to sign a non-disclosure agreement and the very first time all the utilities came together in this room as Mr. Cohen pointed out was just 2 weeks ago. During that meeting on May 14th, Ms. Katzenmoyer stated that the information that they were using to base these fees was inaccurate. He asked the Council to postpone this vote.

President Williams pointed out that the fees are not in this ordinance and Councilman Roschel stated that the fees are in the separate resolution which is on the agenda later.

Mayor Gray stated that Charlotte did say that the fees are inaccurate and the information on which they are based is inaccurate, and that is because Verizon hasn't provided us with the accurate information.

Mr. Cohen stated that there is nothing in that fee schedule that has Verizon or any other utilities facilities footage in there. The maintenance fee is a per linear foot fee. The pole fee is a per pole fee. So if Verizon has one pole or a thousand poles, it doesn't matter, because that fee schedule would apply either way. As far as the ordinance itself, the ordinance doesn't include what the utilities infrastructure is, the fee would apply accordingly.

City Council approved Administration Bill No. 2-2013 by a unanimous roll call vote and it shall hereinafter be known as Administration Ordinance No. 2-2013.

Administration Bill No. 3-2013, (the title) was read by the City Clerk as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, LANCASTER COUNTY, PENNSYLVANIA AMENDING CHAPTER 262 (STREETS

AND SIDEWALKS) OF THE CODE OF THE CITY OF LANCASTER, AND PARTICULARLY PROVIDING FOR THE REVISION OF ARTICLE VI (STREET EXCAVATIONS) TO PROVIDE CITY COUNCIL WITH THE AUTHORITY TO AMEND EXCAVATION FEES VIA RESOLUTION AND TO REVISE CERTAIN PROVISIONS RELATED TO THE ISSUANCE OF PERMITS RELATING TO CURBS AND SIDEWALKS; FURTHER AMENDING CHAPTER 279 (UTILITIES) OF THE CODE OF THE CITY OF LANCASTER, AND PARTICULARLY PROVIDING FOR THE ESTABLISHMENT OF CERTAIN FEES AND CHARGES FOR PERMITS FOR THE ERECTION OR CHANGE OF LOCATION OF POLES; FURTHER AMENDING CHAPTER 285 OF THE CODE OF THE CITY OF LANCASTER (VEHICLES AND TRAFFIC), AND PARTICULARLY PROVIDING FOR THE ESTABLISHMENT OF FEES RELATED TO THE OPENING OF PRIVATE DRIVEWAYS AND FOR THE PLACEMENT AND PERMITTING OF DUMPSTERS WITHIN THE PUBLIC RIGHTS-OF-WAY; REPEALING INCONSISTENT ORDINANCES OR PARTS OF ORDINANCES; PROVIDING FOR A SAVINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilman Roschel made the motion to approve and Councilman Reichenbach seconded. Councilman Roschel stated that this ordinance changes certain sections of the existing code, to set up guidelines for fees. The actual permit fee schedule will be later on the agenda. This bill seeks to alter sections of the current code to add permits and fees for curb and sidewalk construction, replacement and repairs, as well as private driveways and street opening degradation fees. The bill also adds fees for erection, replacement and maintenance of utility poles and a fee for the placement of dumpsters. It is important to note that these fees are only allowed to recover the costs of managing the City's right-of-way. It is not a tax, and cannot be legally used to add revenue to the general fund. According to 2011 budget figures the consulting team at CBG Communications, determined that annual City right-of-way matching costs were \$824,090. Some of these costs are picked up through Sewer and Water rates and through other current charges. The balance, an estimate of over \$414,000 is picked up by the taxpayers.

City Council approved Administration Bill No. 3-2013 by a unanimous roll call vote and it shall hereinafter be known as Administration Ordinance No. 3-2013.

Administration Bill No. 5-2013, (the title) was read by the City Clerk as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, LANCASTER COUNTY, PENNSYLVANIA AMENDING AND MODIFYING THE CODE OF THE CITY OF LANCASTER, CHAPTER 240 – RESTAURANTS ADDING ARTICLE III ESTABLISHING LICENSING AND OPERATIONAL REQUIREMENTS FOR MOBILE FOOD TRUCKS OPERATING WITHIN THE CITY OF LANCASTER; PROVIDING FOR THE REPEAL OF INCONSISTENT ORDINANCES; PROVIDING FOR THE SEVERABILITY OF THE ORDINANCE; AND PROVIDING THAT THE ORDINANCE SHALL TAKE EFFECT AS PROVIDED BY PENNSYLVANIA.

Councilman Graupera made the motion to approve and Councilman Roschel seconded. Mr. Graupera stated that this is a new business introduced to Lancaster and this bill addresses the complexities of that new business as it relates to the competition to the brick and mortar establishments already in existence.

City Council approved Administration Bill No. 5-2013 by a unanimous roll call vote and it shall hereinafter be known as Administration Ordinance No. 5-2013.

Administration Resolution No. 22-2013, (the title) was read by the City Clerk as follows:

A RESOLUTION OF THE COUNCIL OF THE CITY OF LANCASTER APPROVING LANCASTER COUNTY AND CITY'S ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE.

Councilman Roschel made the motion to approve and Councilman Reichenbach seconded. Councilman Reichenbach stated that the U.S. Department of Housing and Urban Development requires the municipalities that receive CDBG funding to update a document that is called the Analysis of Impediments to Fair Housing Choice. It is just a way of looking at Lancaster City and County and seeing where we are making progress and where we are falling short for people who need fair housing.

City Council approved Administration Resolution No. 22-2013 by a unanimous roll call vote.

Administration Resolution No. 24-2013, (the title) was read by the City Clerk as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, LANCASTER COUNTY, PENNSYLVANIA, ADOPTING AND APPROVING A CERTAIN DEPARTMENT OF PUBLIC WORKS RIGHT-OF-WAY FEE SCHEDULE; FURTHER AUTHORIZING THE IMPOSITION OF CERTAIN COSTS, FEES AND CHARGES RELATED TO ACTIVITIES AND USES IN THE PUBLIC RIGHTS-OF-WAY OF THE CITY; PROVIDING FOR THE COLLECTION OF SUCH COSTS, FEES AND CHARGES INCIDENT TO THE ISSUANCE OF PERMITS FOR ACTIVITIES AND USES IN THE PUBLIC RIGHTS-OF-WAY; REPEALING INCONSISTENT RESOLUTIONS OR PARTS OF RESOLUTIONS; PROVIDING FOR A SAVINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilman Roschel made the motion to approve and Councilman Reichenbach seconded. Barry Handwerger, Solicitor for the City, stated that he had sent a new fee schedule today, that replaced the one Council originally had. There are three fees that were changed in that. All three of those impacted Verizon. Those fees were lowered because we do not have a new inspector.

City Council approved Administration Resolution No. 24-2013 by a unanimous roll call vote.

Administration Resolution No. 29-2013, (the title) was read by the City Clerk as follows:

A RESOLUTION OF THE COUNCIL OF THE CITY OF LANCASTER APPROVING AN AMENDED CAPITAL PROJECT LIST TO BE FUNDED BY THE PROCEEDS OF THE CITY OF LANCASTER GENERAL OBLIGATION BONDS, SERIES OF 2007.

Councilman Smith made the motion to approve and Councilman Reichenbach seconded. Councilman Smith stated that in 2007, the City of Lancaster took out a General Obligation Bond for about \$125,000,000. At that time we developed a Capital Improvement Project List for which those funds will be allocated to fund some of those projects. We are required by resolution to move funds from one project to another. This Resolution No. 29-2013, is just allowing us to move funds from two separate projects to the City Parks Structural Repairs project. It is a total amount of \$181,000. \$100,000 came from Parking Garage Contributions and \$81,000 came from Lancaster Square demolition.

Council approved Administration Resolution No. 29-2013 by a unanimous roll call vote.

Administration Resolution No. 30-2013, (the title) was read by the City Clerk as follows:

A RESOLUTION OF THE COUNCIL OF THE CITY OF LANCASTER APPROVING AN AMENDED CAPITAL PROJECT LIST TO BE FUNDED BY THE PROCEEDS OF THE CITY OF LANCASTER GENERAL OBLIGATION BONDS, SERIES OF 2011.

Councilman Smith made the motion to approve and Councilman Reichenbach seconded. Councilman Smith stated that Resolution No. 30-2013 is similar to Resolution No. 29-2013. It allows the City to move funds from a Parks Improvement Project to the Heritage Center Upgrade Project. The total funds being reallocated are \$330,785. We are expecting to receive \$200,000 through the County Urban Enhancement Program, and this will allow us to match funds and finish the Heritage Center Upgrades Project. City Council approved Administration Resolution No. 30-2013 by a unanimous roll call vote.

PUBLIC COMMENT – Pam Carney, Sherman Street commended City Council for recognizing the students from McCaskey for their academic work.

President Williams adjourned the meeting at 9:00 p.m.

Louise B. Williams, President

Attest:

City Clerk