

CITY OF OWOSSO
REGULAR MEETING OF THE CITY COUNCIL
TUESDAY, SEPTEMBER 03, 2013
7:30 P.M.

Meeting to be held at City Hall
301 West Main Street

AGENDA

OPENING PRAYER:

PLEDGE OF ALLEGIANCE:

ROLL CALL:

APPROVAL OF THE AGENDA:

APPROVAL OF THE MINUTES OF REGULAR MEETING OF AUGUST 19, 2013:

ADDRESSING THE CITY COUNCIL

1. Your comments shall be made during times set aside for that purpose.
2. Stand or raise a hand to indicate that you wish to speak.
3. When recognized, give your name and address and direct your comments and/or questions to any City official in attendance.
4. Each person wishing to address the City Council and/or attending officials shall be afforded one opportunity of up to four (4) minutes duration during the first occasion for citizen comments and questions. Each person shall also be afforded one opportunity of up to three (3) minutes duration during the last occasion provided for citizen comments and questions and one opportunity of up to three (3) minutes duration during each public hearing. Comments made during public hearings shall be relevant to the subject for which the public hearings are held.
5. In addition to the opportunities described above, a citizen may respond to questions posed to him or her by the Mayor or members of the Council, provided members have been granted the floor to pose such questions.

PROCLAMATIONS / SPECIAL PRESENTATIONS

None.

PUBLIC HEARINGS

1. Ordinance Amending Traffic and Motor Vehicle Code. Conduct a public hearing to receive citizen comment regarding the proposal to amend Chapter 33, Traffic and Motor Vehicles, of the Code of Ordinances of the City of Owosso to regulate motor vehicle size, weight and loads and motor carrier safety.

CITIZEN COMMENTS AND QUESTIONS

CITY MANAGER REPORT

Project Status Report

CONSENT AGENDA

1. Boards and Commissions Appointment. Approve the Mayoral appointment of John Horvath to the Brownfield Redevelopment Authority to fill the unexpired term of Dan Stewart ending June 30, 2016.
2. Delegation of Public Hearing Authority to Brownfield Authority. Approve resolution authorizing the Brownfield Redevelopment Authority to conduct public hearings related to the affairs of the Brownfield Redevelopment Authority on behalf of the City Council.

3. Refuse Bid – Correction. Accept correction to Resolution No. 29-2013 authorizing a refuse service contract with Waste Management of Michigan, Inc. to correct a math error, reducing the amount of the contract to \$10,277.62.
4. Professional Service Agreements – School Liaison Officers. Authorize professional service agreements with Michael Ash and Michael Wheeler for the provision of services related to the school liaison officer position for the Owosso Public Schools.
5. Progress Payment – 2012 Stump Removal Project. Authorize Progress Payment #3-Final-Retainage in the amount of \$1,000.00 to Wonsey Tree Service closing out the 2012 Stump Removal Project.
6. Warrant No. 469. Authorize Warrant No. 469 as follows:

Vendor	Description	Fund	Amount
Michigan Municipal Risk Management Authority	Building and property insurance- 1 st installment – July 1, 2013 – June 30, 2014	General	\$105,719.50
Michigan Municipal League	Annual membership- October 1, 2013 – September 30, 2014	General	\$ 5,653.00

ITEMS OF BUSINESS

1. MML Delegate. Designate City Representative and Alternate to cast vote of municipality at the Michigan Municipal League annual business meeting on September 18, 2013.
2. Ambulance Replacement Fund. Discuss the establishment of an ambulance replacement fund similar to the account for heavy equipment.
3. Cable Franchise Agreement – PEG Fee. Consider renegotiating the cable franchise agreement to include a 2% PEG fee.

COMMUNICATIONS

1. Historical Commission. Minutes of August 12, 2013.
2. Zoning Board of Appeals. Minutes of August 20, 2013.

CITIZEN COMMENTS AND QUESTIONS

NEXT MEETING

Monday, September 16, 2013

BOARDS AND COMMISSIONS OPENINGS

Historical Commission – term expires 12-31-14

ADJOURNMENT

The City of Owosso will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting/hearing upon seventy-two (72) hours notice to the City of Owosso. Individuals with disabilities requiring auxiliary aids or services should contact the City of Owosso by writing or calling the following: Amy K. Kirkland, City Clerk, 301 West Main Street, Owosso, MI 48867 or at (989) 725-0500. The City of Owosso Website address is www.ci.owosso.mi.us.

CITY OF OWOSSO

AUGUST 19, 2013

7:30 P.M.

PRESIDING OFFICER: MAYOR BENJAMIN R. FREDERICK

OPENING PRAYER: REVEREND PEG FAULMANN
ST. JOHNS UNITED CHURCH OF CHRIST

PLEDGE OF ALLEGIANCE: RANDY WOODWORTH

PRESENT: Mayor Benjamin R. Frederick, Mayor Pro-Tem Cindy S. Popovitch,
Councilpersons Loreen F. Bailey, Thomas B. Cook, Michael J. Erfourth,
Christopher T. Eveleth and Burton D. Fox.

ABSENT: None.

APPROVE AGENDA

Motion by Mayor Pro-Tem Popovitch to approve the agenda with the following changes:

Move Consent item 1. Lease Agreement – WWTP Screening Equipment to Item of Business 3.
Move Consent item 3. Bid Award – 2013 Slurry Seal & Double Chip Seal Program to Item of
Business 4.

Motion supported by Councilperson Fox and concurred in by unanimous vote.

APPROVAL OF THE MINUTES OF SPECIAL MEETING OF JULY 30, 2013

Motion by Councilperson Fox to approve the Minutes of the Special Meeting of July 30, 2013 with changes to his comments regarding the provision of water service in the dog park to indicate he had mentioned the issue at a prior Council meeting.

Motion supported by Councilperson Erfourth and concurred in by unanimous vote.

APPROVAL OF THE MINUTES OF REGULAR MEETING OF AUGUST 5, 2013

Motion by Councilperson Bailey to approve the Minutes of the Regular Meeting of August 5, 2013 as presented.

Motion supported by Councilperson Erfourth and concurred in by unanimous vote.

PROCLAMATIONS / SPECIAL PRESENTATIONS

SWEARING IN NEW FIREFIGHTERS – J. EHLEN AND T. VANDEMARK

Mayor Frederick conducted a pinning ceremony swearing in the City's newest firefighters: Joseph Ehlen and Tyler Vandemark. Friends and family of both employees were on hand to witness the event.

PUBLIC HEARINGS

SPECIAL ASSESSMENT DISTRICT NO. 2013-04 – KRUST DRIVE FROM DEWEY TO NORTH

A public hearing was conducted to receive citizen comment regarding authorization of Resolution No. 5 for Special Assessment District No. 2013-04 for Krust Drive from Dewey Street to North Street for street reconstruction.

The following people commented regarding the proposed special assessment district:

June Keeler, 618 Krust Drive, said that from her driveway to North Street the condition of the road isn't that bad and she felt it could be easily patched instead of being reconstructed. She said she felt the amount of her assessment was unfair as she didn't know how it was determined.

Charles Kincaid, 811 Krust Drive, inquired whether the manholes along the street would be inspected and repaired prior to reconstruction of the street so the new street wouldn't need to be torn up again. He went on to note that the street is utilized by many garbage trucks and he wondered whether it would be feasible to increase the depth of the asphalt near the corners to accommodate the extra weight and prevent early deterioration of the street surface.

Public Works Director Mark Sedlak indicated all manholes would be repaired prior to street reconstruction. He also said the street should be able to handle the weight of garbage trucks and school buses as it was currently designed and it would be easier to reconstruct the entire street at one time rather than doing the project one block at a time.

Public Safety Director Kevin Lenkart noted the City has two officers in training that will be able to weigh trucks to ensure they are not too heavy.

There was discussion regarding beefing up the base of the street in high stress areas, following the recommendations of the street study, and reconstructing the street in sections vs. reconstructing the entire street. City Manager Donald D. Crawford noted that the purpose of tonight's hearing was to determine whether the amounts assessed to individual residents were fair and equitable, not whether the project was needed or not.

In light of the discussion the Mayor suggested tabling the item to allow staff to speak with Ms. Keeler regarding her concerns.

Motion by Councilperson Eveleth to table the motion.

Motion supported by Mayor Pro-Tem Popovitch and concurred in by unanimous vote.

As a result of the motion Council moved on to the next item on the agenda.

(This item was picked back up after the nine o'clock recess.)

ORDINANCE AMENDMENT – TEMPORARY STRUCTURES

Assistant City Manager/Community Development Director Adam Zettel communicated the intent of the ordinance amendment saying it would allow administrative approval of certain business activities taking place on public property as well as allowing transient businesses to conduct business on private property within certain guidelines.

A Public Hearing was conducted to hear citizen comment regarding the proposed amendment to Chapter 38, Zoning, to clarify temporary uses, temporary structures, and outdoor displays.

There were no citizen comments.

Councilperson Fox indicated he had concerns with the proposed ordinance because he felt that business owners would not leave enough room for handicapped individuals to navigate the sidewalk and enforcement. He also asked how transient merchants such as hot dog vendors would be permitted in light of the proposed ordinance. Assistant City Manager Zettel noted that permit holders (businesses) will be held responsible for maintaining proper clearances. He also said that hotdog vendors would not fall

under the proposed ordinance as they had no permanent place of business in town, but would seek a traffic control order for permission to occupy private property and conduct business.

Motion by Councilperson Cook to approve the ordinance amendment as proposed.

Motion supported by Mayor Pro-Tem Popovitch.

Further discussion ensued. City Attorney William C. Brown indicated he had concerns with the proposed prohibition of carnivals on private property. There was also discussion regarding how many businesses may be precluded from conducting business on the sidewalk in front of their location because the permanent brick planters may not allow enough room for merchandise and a proper walkway, whether it was fair if one business had the opportunity to do business outside and another didn't, if there was an alternate location where "blocked" businesses could conduct outdoor sales, and sending the ordinance back to the Planning Commission for further refinement. Councilperson Cook indicated that he appreciated the concerns expressed but felt that not adopting the ordinance would be perceived as discouraging business. He felt that Main Street would be able to communicate the rules established by the ordinance and enforcement of the ordinance would resolve concerns about maintaining pedestrian passage. Councilperson Erfourth inquired whether the ordinance could be further refined to eliminate some of the paperwork and lower the cost. Assistant City Manager Zettel indicated that the City had an obligation to protect the public when using the public right of way. Maintaining the process as proposed would allow staff to affirm the business applicant held proper insurance coverage and the owners/operators were aware of the rules.

Councilperson Cook made a friendly amendment to his original motion to strike Sec. 38-399(e)(1)a prohibiting carnivals on private property and amending Sec. 38-399(e)(2)c to read: Sidewalk coverage: An area no less than **five** feet wide shall be maintained for passage of pedestrians at all times.

The friendly amendment was supported by Mayor Pro-Tem Popovitch as follows:

Whereas, the Council, after due and legal notice, has met and there being no one to be heard, the Council authorizes the following ordinance be adopted:

ORDINANCE NO. 744

**CITY OF OWOSSO
AMENDMENT TO CHAPTER 38, ZONING
OF THE CODE OF ORDINANCES**

TO CLARIFY TEMPORARY USES, TEMPORARY STRUCTURES, AND OUTDOOR DISPLAYS

WHEREAS, the City of Owosso completed a master plan in 2012; and

WHEREAS, the master plan indicates that zoning changes should be pursued to modernize the city code; and

WHEREAS, the planning commission has held a public hearing on this proposed amendment and finds the changes to meet the guidelines of the master plan.

NOW THEREFORE, BE IT RESOLVED, THE CITY OF OWOSSO ORDAINS that Chapter 38, Zoning, of the City of Owosso city code be amended as follows:

SECTION 1. REPEAL. That a specific definition within Section 38-5, Definitions, of the *Code of Ordinances*, which read as follows, shall be repealed:

~~*Temporary use or building.* A use or building permitted by the board of appeals to exist during periods of construction of the main building or use, or for special events.~~

SECTION 2. REPEAL. That the Code of Ordinances of the City of Owosso, Michigan, is hereby amended by deleting a section, numbered 38-504(4)a, Temporary permits, of the *Code of Ordinances*, which read as follows, shall be repealed:

~~*Temporary permits.* For temporary structures for dwelling purposes, including trailer coaches, subject to the following procedures and limitations:~~

- ~~1. An application for a permit for the erection or movement of a temporary structure for dwelling purposes, including trailer coaches, shall be made to the board on a special form used exclusively for that purpose.~~
- ~~2. The board shall give due notice to the applicant and to all property owners within three hundred (300) feet of the property affected at least five (5) days before the hearing will be held on such application.~~
- ~~3. A temporary permit shall not be granted unless the board finds adequate evidence that the proposed location or use will not be detrimental to property in the immediate vicinity; and that the proposed water supply and sanitary facilities have been approved by the county health department or the city director of public services.~~
- ~~4. The board may impose any reasonable conditions, including setbacks, land coverage, off-street parking, landscaping, and other requirements deemed necessary to protect adjoining properties and the public welfare. The violation of any such condition shall automatically invalidate the permit.~~
- ~~5. The permit issued shall clearly set forth the conditions under which the permit is granted and shall state that the proposed temporary dwelling structure is to be vacated upon expiration of a specific time limit not to exceed six (6) months. No permit shall be transferable to any other owner or occupant.~~

SECTION 3. NAME. The amended Ordinance shall be known and cited as the "City of Owosso Temporary Structures and Uses."

SECTION 4. ADDITION. That new definitions within Section 38-5, Definitions, shall be added to read as follows:

Temporary Structure. Any structure erected for the purpose of temporarily housing displaced persons or permitting occupancy for construction related functions related to an ongoing construction or building project.

Temporary Use. Any use, event, or display of a temporary, seasonal, or portable nature that is customary and incidental to the primary permitted use, providing that such use is not otherwise regulated or permitted by this ordinance or a valid site plan.

SECTION 5. ADDITION. That the Code of Ordinances of the City of Owosso, Michigan, is hereby amended by adding a section, to be numbered 38-399, Temporary structures and uses, which shall read as follows:

Section 38-399. Temporary structures and uses.

- (a) *Conditions applicable to all temporary structures, uses, and displays:* Unless otherwise noted, the following conditions shall apply to all temporary structures, uses, and displays.

- (1) All such uses and structures must first be reviewed and approved by the building official.

- (2) The use of any space or structure must be one permitted as-of-right within the applicable zoning district.
 - (3) Adequate off-street parking, site ingress/egress, and adequate clear vision areas shall be provided.
 - (4) The applicant shall specify the exact duration of the temporary use, and no permit for any temporary use, structure, or display shall be valid for more than one calendar year.
 - (5) Approval of other applicable government agencies is required to ensure compliance with applicable health and safety regulations and standards.
 - (6) The use must be carried out so as to meet all zoning and general ordinance provisions and shall not create or result in any Nuisance Factors.
 - (7) Temporary structures shall comply with the setback standards for the district in which they are located.
 - (8) The building official or his/her designee shall approve any and all plumbing, electrical, and mechanical connections to any temporary structure.
 - (9) The building official or zoning administrator may require the applicant to furnish the city with a performance bond in accordance with Section 29-48 of the city ordinance to ensure removal of the temporary structure, use or display.
- (b) *Temporary structures used for residential purposes:* A building or structure may be approved for temporary residential use only while damage to the principal dwelling due to fire, flood, ice, wind, or other natural disaster is being repaired. Any such temporary building shall not be used as a residence without prior review and approval by the building official.

Also, a manufactured dwelling unit or other approved living quarters may be occupied as a residence on a temporary basis on sites for which a building permit has been issued for construction, major repair, or remodeling of a new dwelling unit, subject to the following:

- (1) An occupancy permit is issued by the building official for the temporary residence.
 - (2) Such permits may be issued by the building official for up to six months in duration and may be renewed for periods of up to six months, provided that work is proceeding in an expeditious manner.
 - (3) An approved temporary structure may be moved onto a site 14 days prior to commencement of construction and shall be removed within 14 days following issuance of a certificate of occupancy for the permanent dwelling.
- (c) *Temporary structures used for nonresidential purposes:* Temporary buildings for nonresidential use, including semi- trucks/trailers and concrete batch plants, shall be permitted only when the intended use is by a contractor or builder in conjunction with a construction project.
- (1) Such temporary structures shall be removed immediately upon completion of the construction project and prior to a request for a certificate of occupancy for the project.
 - (2) Permits for the utilization of temporary structures shall be issued by the building official. The permit shall specify a date for the removal of the temporary structure. A certificate of occupancy shall be required for such structures.

- (d) *Temporary uses in accessory structures:* A temporary building or structure may be used as an accessory building or structure if it meets all accessory structure requirements of this code.
- (e) *Special purpose temporary uses:* The following conditions apply to specific temporary uses:
- (1) *Carnival, circus, festival, seasonal markets (public and/or private lands):*
 - a. City council approval required.
 - (2) *Sidewalk uses including display, sales, and other features:*
 - a. *Time:* Operating hours only. The business must be open and staffed.
 - b. *Location:* In the B-3 zoning district only.
 - c. *Sidewalk coverage:* An area no less than five feet wide shall be maintained for passage of pedestrians at all times.
 - d. *Uses:* For portable signs, display, sale, and/or service of onsite products and activities only, including retail goods and food service. No off-premise advertising, sales, or services are permitted (i.e. vendors are not permitted).
 - e. *Exceptions:* Planters, bike racks, and decorative features may remain outside provided they adhere to all performance standards of the ordinance.
 - f. *Additional requirements:* The approval of the building official and street administrator is required; owner must provide liability insurance for activities in the right-of-way.
 - (3) *Christmas tree sales:*
 - a. *Maximum duration:* 45 days.
 - b. *Clean-up:* Stumps, branches, and other debris shall be completely removed from site.
 - c. Building official approval required.
 - (4) *Roadside produce or farm stands:* Because roadside stands are seasonal in character and utilized on a temporary basis, roadside stands shall be allowed in Business Districts by the city for periods not to exceed six months provided a temporary permit is obtained from the city and provided the following provisions are met:
 - a. The sale of farm products in a roadside stand shall not take place within the dedicated right-of-way of any thoroughfare within the city, and assurances shall be made to the city that ample off-street parking has been provided, and adequate ingress and egress provided to the stand.
 - b. No permanent structure of any type shall be erected, and upon discontinuance of the temporary use, the temporary structures shall be removed from the roadside.
- (f) *Outdoor sales and display in conjunction with an existing business (private lands only):*
- (1) *Location:* In the B-1, B-2, & B-4 zoning districts only; front or side yards only; use cannot occur in areas dedicated to parking, storm water detention/collection, or areas required for emergency use or clear vision.
 - (2) *Lot coverage:* An area no more than three hundred (300) square feet shall be used as outdoor sales and display area.
 - (3) *Setbacks:* Setbacks from the right of way and all lot lines must be a minimum of 10 feet or that setback require by Article XVI, whichever is less.
 - (4) *Uses:* For display, sale, and/or service of onsite products and activities only. No off-premise advertising, sales, or services are permitted (i.e. vendors and/or leased space are not permitted).
 - (5) *Additional requirements:* Any loose debris, damaged products, unsecured materials, or products determined to be junk, waste, or scrap in nature shall be deemed a nuisance per se.

SECTION 6. SEVERABILITY. The various sections and provisions of this Ordinance shall be deemed to be severable, and should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of this Ordinance as a whole or any section or provision of this Ordinance other than the section or provision so declared to be unconstitutional or invalid.

SECTION 7. INCONSISTENT ORDINANCES. All ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are repealed.

SECTION 8. EFFECTIVE DATE. This amendment shall become effective September 8, 2013.

SECTION 9. AVAILABILITY. This ordinance may be purchased or inspected in the city clerks' office, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

Roll Call Vote.

AYES: Mayor Pro-Tem Popovitch, Councilpersons Cook, Eveleth, Bailey, and Mayor Frederick.

NAYS: Councilpersons Erfourth and Fox.

ORDINANCE AMENDMENT – DESIGN STANDARDS

Assistant City Manager Zettel gave a brief description of each part of the proposed ordinance as follows:

Fences & hedges – This portion of the ordinance simply passes forward much of what is already on the books, the big change involves limits on the types of materials that can be used to construct a fence. The provision prohibiting chain link fence in front yards was removed by the Planning Commission after it was remanded by Council for further revision.

Commercial mechanical equipment – This portion applies to new installations on commercial structures or new commercial construction and provides rules for the location of certain equipment as well as screening requirements.

Commercial design – This section applies to new builds only and would require durable materials and architectural variety in new commercial structures. The intent being to create long lasting attractive structures and avoid the cheap steel buildings that deteriorate quickly with time. It was also noted that the Planning Commission would serve as a relief valve for this provision allowing the consideration of extenuating circumstances and potentially waiving or modifying the requirements based on individual situations.

Residential design – The intent of this section is to ensure that new construction, including in-fill housing, emulates the character of the neighborhood. It also establishes requirements for outdoor storage in an effort to prevent blight.

Assistant City Manager Zettel went on to say that all of the proposed changes are designed to allow for administrative approval of a majority of projects, simplifying the process. Those projects that do not meet the established requirements can be evaluated by the Planning Commission and the Commission has the authority to waive or alter the requirements on an individual basis. He further noted the Planning Commission has worked diligently to revamp the proposed ordinance and supports their approval.

A Public Hearing was conducted to hear citizen comment regarding the proposed amendment to Chapter 38, Zoning, to promote higher quality structures and higher standards for aesthetics in relation to fences, commercial development, and new residential development.

The following people commented regarding the proposed ordinance amendment:

Tom Manke, business owner at 118 South Washington Street, said that he has heard from numerous residents that are against the proposed regulations. He said he was under the impression that Council didn't want to regulate what people have in their yards and he felt the Planning Commission was trying to push its ideals on the residents of the City. He said he felt people were going to move to the townships because they didn't want to deal with the regulations in the City.

Mike Cline, 621 Wright Avenue, said that when people purchase a home they have visions of what they want in their yard and the new regulations would infringe on that. He asked how the new regulations would be enforced. He said the City should stop nickel and diming people on water and telling them how their yard should look.

Lynn Lewis, 202 North Dewey Street, said she is comfortable with the Council passing safety provisions but the height of the hedges in her back yard are not a safety concern and shouldn't be regulated by Council. She asked that Council use common sense and not put in place regulations that cannot be upheld. She said she loves the privacy the hedges in her back yard provide.

Dan Harrow, 432 East Mason Street, said that he had gone through the ordinance at the Planning Commission level and he continued to be concerned about the provision requiring a garage be attached to new houses. He said he didn't have a problem with the rest of the ordinance as long as current features would be grandfathered in. He encouraged Council not to overstep their bounds and regulate things they don't need to.

Mike Espich, 1124 Ada Street, said he has a very old home with pine trees in his front yard and a barberry hedge along both sides. He said the trees and hedges were there when he purchased his house in 1986 and he wanted clarification that he would not be required to take them down.

Dave Chrenka, 1997 North Ruess Road, owner of rental property in the city, wanted clarification on the requirements for roof air conditioning units. He also asked if he would be required to cut down the hedges in the front yard of his property here in town because they were not at least 19 feet from the right of way. Mr. Zettel indicated that the replacement of existing commercial air conditioning units would not trigger the screening requirement, it would only affect new commercial installations.

Prior to the meeting an anonymous phone message was received from a resident on Water Street saying he objected to the proposed regulations establishing the height of fences. He said he put up a privacy fence to resolve an issue with a neighbor, he wants his privacy and does not want people to be able to see into his yard. He also pointed out the privacy of those with hot tubs may be compromised by requiring lower fences and hedges.

Mr. Zettel sought to clarify the intent of the proposed ordinance saying there were no requirements that people change what they already have other than to maintain clear vision areas. Enforcement would be based on a complaint basis and the proposed ordinance would become the measure for resolving those complaints.

Mayor Frederick pointed out that much of what the proposed ordinance entails mirrors what is already on the books. He said that as he saw things it all came back to safety and providing regulations that could be enforced if necessary. He did express his concern with the provision regarding in-fill housing saying he didn't like the square footage requirements. He also wasn't a fan of the language on home expansions that would require any expansion to fit the character of the neighborhood. He said he saw a need for some of the measures but not all of them.

Mr. Zettel again pointed out that the proposed ordinance seeks to create a two-tiered system. The first tier would allow administrators to approve site plans. If a site plan does not conform to the written requirements then it would proceed to the second tier, and the Planning Commission would make a determination based on the individual circumstances.

Councilperson Cook inquired whether manufactured housing would be prohibited under the proposed ordinance. Staff indicated it would not. He asked if it would limit the height of fences and hedges in rear yards. Staff indicated that no limit would apply unless the hedges presented a safety concern.

Councilperson Cook went on to say that prior to moving back to Owosso he had the opportunity to serve on a national commission examining housing development regulations around the country and based on that experience as well as his experience on the Planning Commission and City Council he said he felt the City of Owosso had much less regulation than most and he was confident that the City would be able to balance the public and private issues at hand.

Motion by Councilperson Cook to approve the ordinance amendment as proposed.

Motion supported by Councilperson Bailey.

Councilperson Fox sought clarification on a couple of issues. He was concerned that some small lots would not have enough room for a garage.

Councilperson Bailey called the question.

Motion by Councilperson Bailey fails for lack of support.

Councilperson Erfourth spoke of the things he would like to see changed in the ordinance including increasing the height of hedges in rear and side yards to 8 feet, allowing fences to cross property lines if the adjoining property owners agree to allow it, removing many of the specific terms from the list of acceptable commercial building materials to make it more permissive, striking the requirement that in-fill housing be similar in nature to those around it to allow for the possibility of completely unique structures, and he felt the language on building materials should be changed to require that materials "meet or exceed" the quality of that listed.

Councilperson Cook said that while he appreciated their concerns that he felt there was a lot of "what if" thinking going into their objections. He said that he hasn't seen a lot of people stymied when making improvements, especially if the City errs on the side of being more permissive.

Mayor Pro-Tem Popovitch noted the Planning Commission had worked very hard on the proposed ordinances and that the basis for the amendments were the results of the city-wide survey that was conducted a few years ago. She said that time and time again the survey indicated that people wanted to see an improvement in the housing stock in town. She went on to say that many, many residents had their hand in this ordinance in the idea that the city-wide survey inspired the Master Plan, which in itself was a collaborative effort, and the Master Plan in turn inspired the ordinance amendment before Council now. She said the intent was simply to set some minimum standards.

Councilperson Fox indicated he had served on the Planning Commission as well and that it was not easy to develop the perfect ordinance. He said he would feel better if some of Councilperson Erfourth's changes were incorporated into the language or the amendment was sent back to the Planning Commission. Mayor Frederick indicated he wanted to act on the ordinance tonight, even if it meant pulling some sections for further work. Councilperson Cook said things could always be improved, but suggested they put it into practice and have the Planning Commission revisit it in a year to determine if anything needed to be changed. He urged the group to move forward and not keep the amendment in limbo forever.

Whereas, the Council, after due and legal notice, has met and having heard all interested parties, motion by Councilperson Cook that the following ordinance be adopted:

ORDINANCE NO. 745

CITY OF OWOSSO

**AMENDMENT TO CHAPTER 38, ZONING
OF THE CODE OF ORDINANCES
TO PROMOTE HIGHER QUALITY STRUCTURES AND HIGHER STANDARDS FOR AESTHETICS IN
RELATION TO FENCES, COMMERCIAL DEVELOPMENT, AND NEW RESIDENTIAL DEVELOPMENT**

WHEREAS, the City of Owosso completed a master plan in 2012; and

WHEREAS, the master plan indicates that zoning changes should be pursued to modernize the city code, specifically included new design standards; and

WHEREAS, the planning commission has held a public hearing on this proposed amendment and finds the changes to meet the guidelines of the master plan.

NOW THEREFORE, BE IT RESOLVED, THE CITY OF OWOSSO ORDAINS that Chapter 38, Zoning, of the City of Owosso city code be amended as follows:

SECTION 1. REPEAL. That the Code of Ordinances of the City of Owosso, Michigan, is hereby amended by deleting a section, numbered 38-393, Fences, walls, or screens:

~~Sec. 38-393. – Fences, walls, or screens.~~

~~(a) *Definition.* "Required yard" means that portion of any lot on which the erection of a main building is prohibited.~~

~~(b) Where permitted; height.~~

~~(1) In the residential districts; also the OS-1, B-1, B-2, B-3, B-4, C-OS, and P-1 districts: Fences, walls or screens are permitted on all lots of record within required side or rear yards, provided they do not exceed six (6) feet in height, measured from the surface of the ground, and are permitted in front required yards provided they do not exceed three (3) feet if of such a nature to obstruct vision; where fencing is open weave or chain link and does not obstruct vision, the permitted height shall be four (4) feet, measured from the ground surface except as otherwise provided in this chapter.~~

~~(2) In the I-1 and I-2 districts:~~

~~a. Fences, walls and screens are permitted in the required front, side and rear lots provided they do not exceed six (6) feet in the front yard and eight (8) feet in the side and rear lots. To preserve open space character in the front yard, fences higher than four (4) feet must be setback two (2) feet for each additional foot above four (4) feet.~~

~~b. Except as provided below, barbed wire strands are permitted on fences six (6) feet or higher on industrial parcels with the barbed wire tilted in toward the fenced parcel. Barbed wire is not permitted in the front yard on major streets.~~

~~(c) *Visibility at street intersections.* On any corner lot, no fence, wall or screen, whether structural or botanical, shall be more than thirty (30) inches above the curb or the centerline of the street pavement, or within twenty-five (25) feet of the intersection of the two (2) right-of-way lines, so as to interfere with motorists' vision across the corner.~~

~~(d) *Visibility at intersections of driveways or alleys with streets.* No fence, wall or screen, whether structural or botanical, may obstruct vision within twenty (20) feet in any direction of the intersection of the edge of a driveway with the right-of-way line. The area of non-obstructed vision shall be between the heights of three (3) feet and ten (10) feet measured from the centerline of the street pavement.~~

~~(e) *Prohibited fences.* Except for the provisions of (b)(2)b. above and (f) below, fences, walls or structural~~

~~screens may not contain barbed wire, electric current, charges of electricity or any wire fence other than a chain-link fence.~~

~~(f) *Essential services and school off-campus facilities and bus garages.* For essential services and off-campus school facilities and bus garages, the use of barbed wire atop fences six (6) feet in height is permitted in all zoning districts with the barbed wire tilted in toward the fenced parcel.~~

~~(g) *Installation.* Any fence with an unfinished side, e.g. stockade fence, shall be installed along or about a lot line so that the finished side of the fence faces the exterior of the lot.~~

~~(h) *Permit fee.* A permit shall be required with a fee to be prescribed by resolution of the council and paid to the city treasurer.~~

SECTION 2. NAME. The amended Ordinance shall be known and cited under the existing section of "General Provisions."

SECTION 3. REPLACE. That the new Section 38-393, which reads as follows, shall replace the previously repealed section:

Section 38-393. - Fences and hedges.

- (a) A fence is defined as any partition, structure or gate that is erected as a dividing marker, barrier or enclosure (excluding hedges as defined below).
- (b) A hedge is defined as any bush, shrub or any living green screen of any nature that serves as a dividing marker, barrier or enclosure.
- (c) Regulations applicable to R-1, R-2, RM-1, RM-2, OS-1, B-1, B-2, B-3, B-4, C-OS, and P-1.
 - (1) A fence shall not exceed six (6) feet in height in the rear or side lot of any parcel;
 - (2) Front yard fences or hedges must be less than fifty percent (50%) solid, impervious, or of an obscuring nature above a height of 30" above the curb or centerline of the street, and not exceed four (4) feet in total height;
 - (3) Fences and hedges in front yards that function as exterior side yards must follow front yard restrictions unless the fence or hedge is installed or planted at least 19 feet back from the right-of-way line or follows the building line of the nearest legal structure. All such fences and hedges must meet clear vision requirements for streets, driveways, and sidewalks.
 - (4) No fence or hedge shall extend across property lines;
 - (5) The finished side of any fence shall face away from the property on which the fence is located;
 - (6) No portion of any fence shall be constructed with or contain barbed wire, electric current or charge of electricity, glass, spikes or other sharp protruding objects;
 - (7) Fences must be maintained so as not to endanger life or property. Any fence which, through lack of maintenance or type of construction which will obstruct vision so to create a hazard to vehicular traffic or pedestrians upon the public streets and/or sidewalks shall be deemed a nuisance.
 - (8) Fences shall not be constructed, in whole or in part, with any of the following materials:
 - a. junk or other debris
 - b. scrap building materials or metals
 - c. organic materials known to be poisonous or hazardous to human or animal life
 - d. other materials which may be deemed unsafe to person or property by the Zoning

Administrator or Building Official.

(9) No hedge shall be constructed with noxious weeds or grasses, as defined by PA 359 of 1941, being MCL 247.62.

(10) Screening walls are required as prescribed in section 38-389.

(d) Regulations applicable to industrial districts.

(1) Fences, walls and screens are permitted in the required front, side and rear lots provided they do not exceed six (6) feet in the front yard and eight (8) feet in the side and rear lots. To preserve open space and aesthetic character in the front yard, fences higher than four (4) feet must be setback two (2) feet for each additional foot above four (4) feet and all front yard fences must be black vinyl chain link or decorative in nature.

(2) Except as provided below, barbed wire strands and non-coated or decorative chain link are permitted on fences six (6) feet or higher on industrial parcels with the barbed wire tilted in toward the fenced parcel. Barbed wire is not permitted in the front yard except for those located on McMillan Ave, Industrial Drive, South Street, and Aiken Road.

(3) On any corner lot, no fence, wall or screen, whether structural or botanical, shall be more than thirty (30) inches above the curb or the centerline of the street pavement, or within twenty-five (25) feet of the intersection of the two (2) right-of-way lines, so as to interfere with motorists' vision across the corner.

(4) Screening walls are required as prescribed in section 38-389.

(e) The Zoning Administrator or Building Official may require removal, reconstruction, or repair of any fence or wall which, in their judgment is dilapidated, unsafe, or a threat to the health, safety and welfare of the residents of the City of Owosso.

(f) A permit shall be required for new fence construction, with a fee to be prescribed by resolution of the council.

SECTION 4. ADDITIONS. That Sections 38-396 through 38-398 which read as follows, shall be added:

Sec. 38-396. - Mechanical equipment and utilities.

The following requirements shall apply to all site plans and new installations, not including replacement equipment and wind energy systems, for uses in the RM-1, RM-2, OS-1, B-1, B-2, B-3, B-4, and PUD zoning districts.

(a) Ground mounted mechanical equipment, such as blowers, ventilating fans, and air conditioning units, are permitted only in non-required side yards and in any rear yard, as determined by the Building Official/Zoning Administrator.

(b) Mechanical equipment shall be placed no closer than three (3) feet to any lot line in the B-3 zoning district.

(c) Any ground, building, or roof mounted mechanical equipment or utilities, including water and gas meters or related devices, utility boxes, transformers, elevator housings, stairways, tanks, heating, ventilation and air condition equipment (HVAC), and other similar equipment, shall comply with the following standards.

(1) All such equipment shall be screened by a solid wall, fence, landscaping, and/or architectural

features that are compatible in appearances with the principal building.

- (2) Roof mounted equipment shall not exceed a height of ten (10) feet above the surrounding roof surface, and shall occupy no more than fifteen percent (15%) of the total roof area. All roof mounted mechanical units must be screened at a height equal to or greater than equipment being screened or otherwise be demonstrated to not be visible from all properties located within a distance of 300 feet.

Section 38-397. - Commercial design requirements.

The following design requirements for commercial buildings shall be applied during site plan review to development within the RM-1, RM-2, OS-1, B-1, B-2, B-3, B-4, and PUD zoning districts. These standards shall also apply to those elevations and parking areas that face a state highway and are within 200 feet of the right-of-way.

(a) Exterior building design.

- (1) Buildings shall possess architectural variety, but enhance the overall cohesive community character. All buildings shall provide architectural features, details, and ornaments such as archways, colonnades, cornices, recesses, projections, wall insets, arcades, window display areas, peaked roof lines, or towers.
- (2) Building walls and roofs over 50 feet in length shall be broken up with varying building lines, windows, gables, and/or architectural accents such as pilasters, columns, dormers, or awnings.
- (3) Window area or spandrel glass shall make up at least 20 percent or more of the exterior wall area facing the principal street(s).
- (4) In addition, a portion of the on-site landscaping shall abut the walls so that the vegetation combined with the architectural features significantly reduce the visual impact of the building mass as viewed from the street. Additional landscaping requirements of this ordinance must also be satisfied.
- (5) Overhead doors shall not face a public street or residential district. The Planning Commission can modify this requirement upon a determination that there is good or necessary cause and the visual impact will be moderated through use of building materials, architectural features and landscaping beyond that required by the ordinance.
- (6) Additions to existing buildings must complement the current building design with regard to height, proportions, scale, materials, and spacing of openings.

(b) Building materials.

- (1) Durable building materials which provide an attractive, quality appearance must be utilized.
- (2) The predominant building materials (50% or more of the face) should be quality materials such as earth-toned brick, native stone, and tinted/textured concrete masonry units and/or glass products.
- (3) Other materials such as smooth-faced concrete block, EIFS panels, or pre-fabricated corrugated steel panels should only be used as accents and not dominate the building exterior of the structure.

(c) Building colors.

- (1) High intensity colors such as neon, metallic, or fluorescent for the facade and/or roof of the building are prohibited except as approved by the Planning Commission.

- (2) Mechanical and service features such as gutters, ductwork, service doors, etc. that cannot be screened must be of a color that blends in or compliments the color of the building.

(d) *Roof design.*

- (1) Roofs should be designed to reduce the apparent exterior mass of a building, add visual interest, and be appropriate to the architectural style of the building.
- (2) Roofs shall have no less than two (2) of the following features:
 - a. Parapets concealing flat roofs and rooftop equipment, such as HVAC units from public view. The average height of such parapets shall not exceed fifteen (15) percent of the height of the supporting wall and such parapets shall not at any point exceed one-third (1/3) of the height of the supporting wall. Such parapets shall feature three-dimensional cornice treatment;
 - b. Overhanging eaves, extending no less than one (1) foot past the support walls;
 - c. Sloping roofs that do not exceed the average height of the supporting walls, with an average slope greater than or equal to one (1) foot of vertical rise for every three (3) feet of horizontal run and less than or equal to one (1) foot of vertical rise for every one (1) foot of horizontal run;
 - d. Three (3) or more roof slope planes.
 - e. A specific architectural element proposed by the applicant's architect that is acceptable to the building official or Planning Commission, depending upon the reviewing entity.

(e) *Customer entrances.*

- (1) Each large retail establishment (12,500 square feet or more) on a site shall have clearly defined, highly visible customer entrances featuring no less than five (5) of the following:
 - a. canopies or porticos;
 - b. overhangs;
 - c. recesses/projections;
 - d. arcades;
 - e. raised corniced parapets over the door;
 - f. peaked roof forms;
 - g. arches;
 - h. outdoor patios;
 - i. display windows;
 - j. architectural details such as tile work and moldings which are integrated into the building structure and design;
 - k. integral planters or wing walls that incorporate landscaped areas and/or places for sitting.

- I. a specific architectural element proposed by the applicant's architect that is acceptable to the building official or Planning Commission, depending upon the reviewing entity..
- (2) Where additional units will be located in the large retail establishment, each such store may have at least one (1) exterior customer entrance, which shall conform to the above requirements.
- (3) A bike rack or other acceptable form of bike parking or storage shall be provided near the primary entrance of all commercial structures. This shall not apply to structures in the B-3 zoning district.
- (f) *Community amenities.* Community amenities such as patio/seating areas, water features, art work or sculpture, clock towers, pedestrian plazas with park benches, or other features located adjacent to the primary entrance to the building(s) are highly encouraged and may be calculated as part of the landscaping requirement.
- (g) *Signs.* Signs shall be in accordance with the city's sign ordinance. All sign bases shall be constructed of materials compatible with the architecture of the building(s) located on the premises.
- (h) *Natural features.* When feasible and not in direct conflict with site needs, buildings shall be sited to protect existing natural areas such as steep natural grades, trees, significant groupings of healthy vegetation (shrubs and trees), and rock outcroppings. To the extent practical, these areas shall be incorporated into the overall site plan.
- (i) *Building location and orientation.* New buildings shall have at least one principal building entrance oriented toward the front lot line.
- (j) *Sidewalks.* All development shall include a provision for sidewalks within the site and within the right-of-way to provide connectivity between adjacent sites, the public realm, parking areas, primary structures, and any other on-site amenities.

Section 38-398. – Residential dwelling design standards.

- (a) *Intent.* This Section is intended to establish regulations for the construction of new residential dwellings zoned R-1 and R-2, including reconstructed and in-fill housing. The standards herein are intended to:
 - (1) Prevent grossly dissimilar dwellings which would adversely affect the value and character of dwellings in the surrounding area.
 - (2) Prevent adverse effects on the desirability of an area to existing or prospective homeowners.
 - (3) Ensure the stability of the environment.
 - (4) Promote the most appropriate use of real estate.
 - (5) Increase the opportunity to realize the development pattern envisioned in the Owosso Master Plan.

These regulations are based on the finding that the cohesiveness and character of the city's neighborhoods are significant factors in the city's quality of life, contribute to the distinct character in the various neighborhoods and help retain property values. These regulations further ensure new housing units are harmonious with the general character of the adjacent houses and the city overall and ensure a stable housing stock. While some level of diversity is desirable, these regulations are intended to ensure the design variation of new homes is similar to the level of variation in existing homes in the immediate area, or surrounding neighborhoods with similar densities for new residential projects. The standards shall not be construed to prohibit innovative design concepts involving such matters as solar home.

- (b) *Applicability.* The regulations of this Section shall apply to all new single family home construction zoned R-1 and R-2. Major home expansions where the homeowner is expanding the footprint of the home by greater than either twenty-five percent (25%) or 500 square feet, whichever is greater, shall comply with subsections 38.398.D.8, 38.398.D.9, and 38.398.D.10, in addition to required building codes, to ensure the resulting home continues to maintain the character of the neighborhood. The standards shall not apply to minor home expansions, interior remodeling, or to residences outside of the one and two family zoning districts.
- (c) *Approval.* Compliance with these regulations shall be determined by the Building and Zoning Administrator at the time the building permit is reviewed and shall be based on the standards of subsection D below.
- (d) *Standards.*
- (1) Each such dwelling unit shall comply with all pertinent building and fire codes. Additionally, all dwellings shall meet or exceed all applicable roof snow load and strength requirements. Where there are conflicting applicable regulations, the more stringent shall apply.
 - (2) All construction required herein shall be commenced only after a building permit has been obtained in accordance with applicable building codes.
 - (3) Each such dwelling unit shall comply with the minimum standards listed throughout the zoning code for the Zoning District in which it is located, including minimum lot area, minimum lot width, minimum floor area, required setbacks and maximum building height.
 - (4) Each dwelling unit shall be firmly attached to a permanent basement or crawl space foundation constructed on the site in accordance with the city's adopted building code.

OR

The dwelling shall have an attached or detached structure of equal workmanship as the dwelling unit, designed for the parking and storage of vehicles. Said structure shall be functionally and aesthetically compatible in design and appearance with other residences in the surrounding area as defined in subsection 12 below. When attached to a mobile home, modular home, pre-fabricated home or pre-constructed home, said structure shall comply with all requirements of the city's building code relative to grade separation and fire restrictive requirements.

- (5) Each such dwelling unit shall contain a storage area equal to or greater than ten percent (10%) of the square footage of the dwelling or one hundred (100) square feet, whichever shall be less. This storage area shall consist of a basement, attic or in a separate detached accessory structure that complies with the standards of this Section regarding accessory buildings and structures. The intent of these standards is to limit the extent of outdoor storage.
- (6) A roof overhang of not less than six (6) inches on all sides shall be provided, or alternatively with window sills or roof drainage systems concentrating roof drainage at collection points along the sides of the dwelling.
- (7) A minimum of two (2) exterior doors shall be provided with the second one being in either the rear or side of the dwelling. All dwelling units shall be oriented toward the public right-of-way such that the façade that faces the street contains a door, windows, and other architectural features customary to the front facade of a residence.
- (8) In-fill housing or development on vacant lots in an existing platted subdivision shall consider the gross floor area and lot coverage of surrounding homes to ensure compatibility. The gross floor area and lot coverage of the proposed dwelling shall be at least seventy-five percent (75%) and

no more than one-hundred and thirty-five percent (135%) of the average square footage of constructed single family dwellings within five hundred (500) feet, up to the boundary of the existing neighborhood, of the subject dwelling unit, with measurements made from the edge of the street. The planning commission may approve any proposals that are not able to meet this standard if the commission makes findings that the apparent deviations are not contrary to 38-398.A.1-5.

- (9) In-fill housing or development on vacant lots in an existing platted subdivision shall maintain a consistent front building line along the street. The front yard setback of the proposed dwelling shall be no less than seventy-five percent (75%) and no more than one-hundred and thirty-five percent (135%) of the average established front yard setback of other single family dwelling unit within five hundred (500) feet, up to the boundary of the existing neighborhood, of the subject dwelling unit, with measurements made from the edge of the street. The planning commission may approve any proposals that are not able to meet this standard if the commission makes findings that the apparent deviations are not contrary to 38-398.A.1-5.
- (10) Building appearance for all new single family dwelling unit construction shall be aesthetically compatible in design and appearance with other residences in the surrounding area.

Definitions for what constitutes the surrounding area are as follows:

- i. For new single family neighborhood development (in the form of a new subdivision plat or new site condominium project), the surrounding area is defined as the nearest existing neighborhoods with similar densities.
- ii. For in-fill housing development where there are one (1) or a few isolated sites being developed within the existing neighborhood (in the form of an existing lot of record or recent land division), surrounding area shall be defined as within five hundred (500) feet, up to the boundary of the existing neighborhood, of the subject dwelling unit; with measurements made from the edge of the lot in each direction, including the opposite side of the street.

The determination shall be made by the Building Official. In considering similarity and compatibility with the surrounding area the following features must be considered in order to meet this requirement:

- a. Exterior building material used on the proposed dwelling should match or be similar to that used on a preponderance of homes in the surrounding area.
- b. Roof style
- c. The design and position of windows (total area, size, number etc.)
- d. Front entry design (presence of porches, front door location, etc.)
- e. Garage style and design

If the Building Official cannot reach a determination on architectural compatibility or the petitioner disputes the findings, the application shall be forwarded to the Planning Commission for review and final action.

- (e) *Exceptions.* The foregoing standards shall not apply to a mobile home located in a licensed mobile home park except to the extent required by state or federal law or otherwise specifically required in this ordinance and pertaining to such parks.

SECTION 5. SEVERABILITY. The various sections and provisions of this Ordinance shall be deemed to be severable, and should any section or provision of this Ordinance be declared by any court of

competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of this Ordinance as a whole or any section or provision of this Ordinance other than the section or provision so declared to be unconstitutional or invalid.

SECTION 6. INCONSISTENT ORDINANCES. All ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are repealed.

SECTION 7. EFFECTIVE DATE. This amendment shall become effective September 8, 2013.

SECTION 8. AVAILABILITY. This ordinance may be purchased or inspected in the city clerks' office, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

Motion supported by Councilperson Bailey.

Roll Call Vote.

AYES: Councilpersons Eveleth, Cook, Bailey, and Mayor Pro-Tem Popovitch.

NAYS: Councilpersons Fox, Erfourth, and Mayor Frederick.

The Council briefly recessed from 9:17 p.m. until 9:27 p.m.

Upon their return the Council picked up the earlier tabled item regarding Special Assessment District No. 2013-04 for Krust Drive from Dewey Street to North Street.

SPECIAL ASSESSMENT DISTRICT NO. 2013-04 – KRUST DRIVE FROM DEWEY TO NORTH
continued...

Public Works Director Mark Sedlak indicated he had spoken at length with the Keelers and when they left the meeting they agreed the assessment had been calculated properly and no longer maintained their objection to the amount.

The following preamble and resolution were offered by Councilperson Eveleth and supported by Mayor Pro-Tem Popovitch:

RESOLUTION NO. 91-2013

DISTRICT NO. 2013-04
KRUST DRIVE FROM DEWEY STREET TO NORTH STREET
SPECIAL ASSESSMENT RESOLUTION NO. 5

WHEREAS, the City Council has met, after due and legal notice, and reviewed the special assessment roll prepared for the purpose of defraying the special assessment district's share of the following described public improvement: Krust Drive from Dewey Street to North Street for street reconstruction, and

WHEREAS, all interested parties were heard and after carefully reviewing said special assessment roll the Council deems said special assessment roll to be fair, just and equitable and that each of the assessments contained thereon results in the special assessment being in accordance with the benefits to be derived by the parcel of land assessed.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Said special assessment roll as prepared by the City Assessor in the amount of \$98,621.37 is hereby confirmed and shall be known as Special Assessment Roll No. 2013-04.

2. Said special assessment roll shall be divided into twelve (12) equal annual installments, the first of which shall be due and payable on September 1, 2013, and the subsequent installments shall be due on September 1st of each and every year thereafter. Payment of the amount of the special assessment may be made in full without interest or penalty by December 1, 2013.
3. The installments of the special assessment rolls shall bear interest at the rate of 6% per annum; provided, however, if the bonds are issued in anticipation of said special assessments, then such unpaid special assessment shall bear interest at a rate of interest equal to 1% above the average rate of interest borne by said bonds. Such interest shall commence on September 1, 2013 and shall be paid annually on each installment due date.
4. Said special assessment roll shall be placed on file in the office of the City Clerk who shall attach his warrant to a certified copy thereof within ten (10) days commanding the Assessor to spread the various sums shown thereon as directed by the City Council.

Roll call vote.

AYES: Councilpersons Eveleth, Cook, Mayor Pro-Tem Popovitch, Councilpersons Bailey, Efourth, Fox, and Mayor Frederick.

NAYS: None.

CITIZEN COMMENTS AND QUESTIONS

Dave Acton, Main Street Chairman, gave an update on the construction of the splash pad saying it was 90% complete and volunteers continue to work on the project. He reminded folks that all of the work and much of the material was being provided at no charge by local volunteers and companies, as a result the project had taken much longer than originally anticipated but at great savings to the community. He encouraged further patience while the project was being finished. He also provided an update on the wayfinding signs saying a fabricating process had been developed for the custom signs and there were approximately 12 signs that would be installed in the downtown area in the coming weeks. He also noted that since the fabrication process had been developed it would be easy for additional signs to be made for other locations in town. Councilperson Cook said he was excited that the new signs could be utilized along the newly developed bike route to point out local attractions to cyclists.

Bill Pearsall, 2500 Lyons Road, said he was back again to complain about bikes on the sidewalks in the downtown. He had reported the problem to Council last year and said the problem continues to exist. He noted several instances in which he was a party to or a witness to collisions or near collisions with bicycles on the sidewalk. He said he was extremely frustrated with the lack of enforcement and would be picketing downtown to draw attention to the problem. There was staff and council discussion regarding additional efforts to combat bikes on downtown sidewalks, including stencils on the sidewalks and stepped up foot patrols.

Randy Woodworth, owner of several commercial buildings in town, relayed a letter he had received from a former building tenant saying their business was moving out of the downtown because of a lack of longer term parking. He said that as a business owner he felt a pay to park scheme could work well and asked Council to look at making parking changes that would positively serve businesses.

Eddie Urban, 601 Glenwood Avenue, said he shared Mr. Pearsall's concern with bikes on the sidewalk though he felt that Mr. Pearsall may be singling himself out for harassment if he picketed downtown. He also asked for information on the City's listening assist system so he could give it to the County so they could buy something similar.

Michael Tillotson, 1299 South Shiawassee Street, said there are many signs in the downtown that note the prohibition on bikes on the sidewalk. He said he felt someone will get hurt if enforcement isn't stepped up.

Henry Tempel thanked the Council for all of the work they do. He said he recognized that all of them had the best interest of the City at heart despite the fact they may have different approaches. He went on to say that he too was concerned about bikes on the sidewalks downtown.

Michael Espich, 1124 Ada Street, applauded Council for all they do. He went on to announce a community build project for the disc golf course this Sunday, August 25th beginning at 8:00 a.m. He said the project had been years in the making and was on the cusp of coming to fruition if folks would come out to help.

David Chrenka, 1997 North Ruess Road, said he is a local township trustee and could appreciate the stresses of Council's job. He went on to say that he had a problem with the rental inspection program. While he agreed there was a need to inspect rental units and to charge a fee to help cover the inspection he objected to the idea of paying an annual fee in years his units were not inspected. Councilperson Cook noted that it makes sense to periodically review such programs and now may be the time to look at that as well as revisiting fees and the training of inspectors to make sure and efficient and effective program is being conducted.

Mayor Frederick indicated he would like to see another staff report on the inspection program.

Councilperson Fox wanted to know what percentage of rental units had been inspected to date.

Councilperson Erfourth said he recalled there used to be stencils on the sidewalks in the downtown noting the prohibition of biking on the sidewalk. He also said he recalled that your bike could be confiscated if you were found riding on the sidewalk when he was a child.

Dave Acton, Main Street Chairman, spoke of the group's efforts to maintain adequate parking saying they had gone to many conferences in which parking was a high priority topic. Many cities are going with a pay to park scheme and Main Street will be looking into the issue shortly.

Mayor Pro-Tem Popovitch encouraged an educational campaign for bikers and motorists alike saying she knows how to conduct herself when riding a bike on the street but isn't sure motorists know how to share the road with cyclists. She also inquired about the status of the fire behind Woodard Station and noted that she thought the rental inspection program was originally intended to provide renters with a list of reputable landlords.

Councilperson Fox said he would like an update on the cross training of employees and what is being done from a legacy planning standpoint in regard to key employee positions.

Councilperson Bailey said she had had the opportunity to participate in police officer interviews and found the experience eye opening. She said she was also participating in the Main Street transition meetings to coordinate the transition between Heather Rivard and the new Main Street Director, Josh Adams. She also thanked the DPW crew for their quick work fixing the water main break last week.

CITY MANAGER REPORT

City Manager Crawford said it was extremely difficult to cross train employees when you lack the funds to hire people before their predecessor retires. He also noted the difficulty the City has been experiencing in attracting qualified individuals for the utilities operations, also due in part to a lack of resources.

He went on to say that he will come back with a review of the rental inspection program and would like to move toward an annual inspection program.

Mayor Frederick indicated he was open to the idea of using reserve funds to bring on personnel if the intention was to train them for a legacy position. He said he felt that allowing for a mentorship period was just a different form of insurance for the City to protect its operations and investments.

There was general discussion regarding the fire behind the Woodard Station over the weekend including how it originated and why response times appeared to be delayed.

CONSENT AGENDA

Motion by Councilperson Fox to approve the Consent Agenda as follows:

Bid Award – 2013 Street Paving Program. Approve bid award to Michigan Paving and Materials, Inc. for the 2013 Street Paving Program in the amount of \$224,094.60 and further approve payment up to the bid amount as follows:

RESOLUTION NO. 92-2013

**AUTHORIZING THE EXECUTION OF A CONTRACT FOR
THE 2013 STREET PAVING PROGRAM
WITH MICHIGAN PAVING AND MATERIALS COMPANY**

WHEREAS, the city of Owosso, Shiawassee County, Michigan, has determined that the surface of Krust Drive from Dewey Street to North Street has deteriorated and that replacement is advisable, necessary and in the public interest; and

WHEREAS, the City of Owosso sought bids for milling and asphalt resurfacing of the above mentioned location as part of the 2013 Street Paving Program; a bid was received from Michigan Paving and Materials Company, and it is hereby determined that Michigan Paving and Materials Company is qualified to provide such services and that it has submitted the lowest responsible and responsive bid; and

WHEREAS, a public hearing will be held on August 19, 2013 regarding the street that is part of the said bid; and

WHEREAS, it is acknowledged that adjustments may be made to the contract as a result of those hearings.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

- FIRST: The City of Owosso has heretofore determined that it is advisable, necessary and in the public interest to employ Michigan Paving and Materials Company for milling and asphalt resurfacing services for Krust Drive within the City as part of the 2013 Street Paving Program.
- SECOND: The mayor and city clerk are instructed and authorized to sign the document substantially in the form attached as Exhibit A, Contract for Services Between the City of Owosso, Michigan and Michigan Paving and Materials Company in the amount of \$224,094.60, contingent upon approval of Krust Drive to be specially assessed.
- THIRD: The above expenses shall be paid from the proceeds of the 2010 General Obligation Unlimited Tax Bonds.

Purchase Authorization – Street Sweeper. Waive competitive bidding requirements, authorize the purchase of one Elgin Pelican Street Sweeper from Bell Equipment Company, holder of the State of Michigan contract for street sweepers, in the amount of \$170,525.80, and authorize payment up to that amount as follows:

RESOLUTION NO. 93-2013

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR

**PURCHASE OF ELGIN PELICAN STREET SWEEPER
FROM BELL EQUIPMENT COMPANY**

WHEREAS, the City of Owosso, Shiawassee County, Michigan, has a Department of Public Services requiring the use of street sweepers; and

WHEREAS, the State of Michigan has contracted with Bell Equipment Company for the provision of Elgin Street Sweepers; and City Ordinance allows for exceptions to competitive bidding requirements when the public interest is best served by joint purchase with, or purchase from, another unit of government; and

WHEREAS, it is hereby determined that the public interest is best served by executing a joint purchase through the State of Michigan contract with Bell Equipment Company.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

- FIRST: The City of Owosso has theretofore determined that it is advisable, necessary and in the public interest to purchase a 2013 Elgin Pelican Street Sweeper from Bell Equipment Company in the amount of \$170,525.80.
- SECOND: The mayor and city clerk are instructed and authorized to sign the document substantially in the form attached, Contract for Services between the City of Owosso, Michigan and Bell Equipment Company, Inc. up to the amount of \$170,525.80.
- THIRD: The above expenses shall be paid from the Revolving Equipment Fund.

Warrant No. 468. Authorize Warrant No. 468 as follows:

Vendor	Description	Fund	Amount
Brown & Stewart, PC	Professional services July 9, 2013 – August 12, 2013	General	\$ 8,734.44
Michigan Municipal League Workers' Compensation Fund	Workers' compensation insurance- 2 nd installment FY 2013-2014	General/Sewer/ Streets/WTP/ WWTP/Fleet/ Housing	\$26,698.00

*Check Register – July 2013. Affirm check disbursements totaling \$765,773.89 for the month of July 2013.

Motion supported by Councilperson Erfourth.

Roll Call Vote.

AYES: Councilpersons Cook, Erfourth, Mayor Pro-Tem Popovitch, Councilpersons Fox, Bailey, Eveleth, and Mayor Frederick.

NAYS: None.

*Due to its length, full text of the Check Register is not printed in the minutes. A copy of the register in its entirety is on file in the Clerk's Office.

ITEMS OF BUSINESS

CDBG LOAN – PUBLIC HOUSE, 112 NORTH WASHINGTON STREET

The original item was to consider authorization of loan agreement with Jeff Saunders, owner of 112 North Washington Street, for the purpose of lending \$15,000 from the CDBG Revolving Loan Fund for a business development loan to assist with the cost of installing a fire suppression system. Assistant City Manager/Community Development Director Adam Zettel noted that the Downtown Loan Committee had closely examined the application and felt that a grant would be more appropriate in that a fire suppression system would be a necessity for any business utilizing the building, it would be a permanent improvement to a building used by the general public, and the cost of the required system represented a sizable obstacle in redevelopment of the building.

Councilperson Bailey indicated she is a part of the Downtown Loan Committee and that the Committee had discussed various ways to support this effort finally settling on a grant. She went on to say that the guidelines for the Committee are terribly outdated and in need of revision. She said the Committee has suggested a moratorium until such time as the guidelines could be updated.

Motion by Councilperson Fox to authorize a \$15,000 grant to Jeff Saunders for the installation of a fire suppression system at 112 North Washington Street and to further authorize the revision of the loan guidelines to reflect current market conditions and building owner needs as follows:

RESOLUTION NO. 94-2013

AUTHORIZING PAYMENT FROM THE CDBG REVOLVING LOAN FUND TO JEFF SAUNDERS FOR IMPROVEMENTS TO REAL PROPERTY LOCATED AT 112 N. WASHINGTON STREET

WHEREAS, the city of Owosso, Shiawassee County, Michigan, has determined that the addition of a fire suppression system to the oldest brick building in the downtown serves an economic and public benefit to the community by virtue of addressing a code-mandated investment and improving safety; and

WHEREAS, the city of Owosso operates a Community Development Block Grant loan program that was established to fund such activities; and

WHEREAS, the loan review committee, under the general intent of the program, has recommended approval of a grant to ameliorate the obsolescence of a business and building development caused by the requirement of a fire suppression system; and

WHEREAS, the loan review committee finds the loan guidelines to be in need of updating to reflect current market conditions and building owner needs.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

FIRST: The City of Owosso has heretofore determined that it is advisable, necessary and in the public interest to support building improvements that add use value and exchange value to real properties in the downtown.

SECOND: The accounts payable department, under the direction of the finance director, is authorized to release funds in the amount of \$15,000 immediately following the installation and proof of payment of the completed fire suppression system at 112 N. Washington.

THIRD: The above expenses shall be paid from the Community Development Block Grant Fund.

FOURTH: There shall be a moratorium placed on further allocations from the CDBG revolving loan fund in order to revise the program guidelines, said moratorium will expire after 180 days or upon city council approval of such guidelines, whichever occurs first.

Motion supported by Councilperson Erfourth.

Roll Call Vote.

AYES: Councilpersons Bailey, Erfourth, Eveleth, Fox, Cook, Mayor Pro-Tem Popovitch, and Mayor Frederick.

NAYS: None.

STREET BOND PROPOSAL

City Manager Crawford distributed a copy of the presentation he had prepared for the evening but elected to provide a simple summary in light of the late hour. He said time had slipped away and the Council must make a decision as to whether to put a bond issue on the November ballot. He noted the proposed bond would also fund sidewalk improvements and trail construction as well as street repair.

Mayor Frederick pointed out the Council had discussed the condition of the City's street system before and inquired whether anyone had any questions.

Councilperson Eveleth said he had no problem with putting the issue in front of voters. Further noting there was plenty of time to undertake an educational effort.

City Manager Crawford and Councilperson Cook noted minor corrections and revisions they wanted to see in the question and the corresponding resolution.

Motion by Councilperson Eveleth to authorize the following resolution placing a street bond proposal on the November 5, 2013 ballot:

RESOLUTION NO. 95-2013

**CITY OF OWOSSO
COUNTY OF SHIAWASSEE, STATE OF MICHIGAN**

**RESOLUTION SUBMITTING BOND PROPOSAL
TO THE VOTERS OF THE CITY OF OWOSSO**

WHEREAS, the City Council of the City of Owosso, County of Shiawassee, State of Michigan (the "City") has determined that it is in the best interest of the residents and property owners of the City that the City acquire and construct local and major street improvements in the City consisting of paving, repaving, reconstructing and improving streets, sidewalks, parking areas, and trails for non-motorized transportation, including necessary rights-of-way, proper drainage facilities, including natural non-structural facilities, and all necessary appurtenances and attachments thereto (the "Project"); and

WHEREAS, the maximum estimated cost of the Project is \$10,000,000; and

WHEREAS, the City Council has determined that the City should borrow money in an amount not-to-exceed Ten Million Dollars (\$10,000,000) and issue general obligation bonds of the City in one or more series for the purpose of paying the cost of the Project; and

WHEREAS, the City Council wishes to place a proposal to issue bonds for the Project before the qualified electors of the City at the general election to be held in the City on Tuesday, November 5, 2013 (the "Election Date"); and

WHEREAS, in order for the bond proposal to be submitted to the City's electors on the Election Date, it is necessary for the City Council to certify the ballot wording of the proposal to the City Clerk and the

County Clerk of the County of Shiawassee, Michigan, as required by Act 116, Public Acts of Michigan, 1954, as amended (the "Michigan Election Law").

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The bond proposal attached hereto as Exhibit A is hereby certified to the City Clerk and the County Clerk for submission to the City's electors on the Election Date. The City Clerk is hereby authorized and directed to file this Resolution and/or complete any such forms, certificates or documents as may be required by the County Clerk to evidence the foregoing certification and/or submission by no later than Tuesday, August 27, 2013.
2. The City Clerk and the County Clerk are hereby directed to (a) post and publish notice of last day of registration and notice of election for the Election Date in the manner required by the Michigan Election Law; and (b) have prepared and printed, as provided by the Michigan Election Law, ballots for submitting the bond proposal on the Election Date, which ballots shall include the bond proposal shown in Exhibit A, or the bond proposal shall be stated as a proposal on the voting machines, which ballots may include other matters presented to the electorate on the same date.
3. The estimated first year millage and simple average annual millage rate set forth in the Bond Proposal are hereby found to be reasonable estimates of such millage rates.
4. The City makes the following declarations for the purpose of complying with the reimbursement rules of Treas. Reg. § 1.150-2 for tax-exempt bonds pursuant to the Internal Revenue Code of 1986, as amended:
 - (a) The City reasonably expects to reimburse itself with proceeds of the bonds for certain costs of the Project described in the bond proposal which will be paid from the general funds of the City.
 - (b) The maximum principal amount of debt expected to be issued for the Project, including issuance costs, is \$10,000,000.
 - (c) A reimbursement allocation of the capital expenditures on the Project with the proceeds of the bonds will occur not later than 18 months after the later of (i) the date on which the expenditure is paid, or (ii) the date the Project is placed in service or abandoned, but in no event more than three (3) years after the original expenditure is paid. A reimbursement allocation is an allocation in writing that evidences the City's use of the proceeds of the bonds to reimburse the City for a capital expenditure made pursuant to this resolution.
5. If the qualified electors of the City approve the bond proposal, then the City hereby appoints Miller, Canfield, Paddock and Stone, P.L.C. as bond counsel for the Bonds.
6. All resolutions and parts of resolutions, insofar as they conflict with the provisions of this resolution, are hereby repealed.

EXHIBIT A

CITY OF OWOSSO BOND PROPOSAL FOR STREET SIDEWALK AND TRAIL IMPROVEMENTS

Shall the City of Owosso, Shiawassee County, Michigan, borrow the principal sum of not to exceed Ten Million Dollars (\$10,000,000) and issue its general obligation unlimited tax bonds therefor in one or more series, payable in not to exceed twenty-five (25) years from the date of issue of each series, for the purpose of paying the city's costs of acquiring and constructing local and major street improvements in the city consisting of paving, repaving, reconstructing and improving streets,

sidewalks, parking areas, and trails, and all necessary appurtenances and attachments thereto? The estimated millage to be levied in 2015 is 2.1959 mills (per \$1,000 of taxable value) and the estimated simple average annual millage rate required to retire the bonds is 2.4451 mills (per \$1,000 of taxable value).

YES

NO

Motion supported by Councilperson Erfourth.

Roll Call Vote.

AYES: Councilpersons Erfourth, x, Mayor Pro-Tem Popovitch, Councilpersons Bailey, Eveleth, Cook, and Mayor Frederick.

NAYS: None.

LEASE AGREEMENT – WWTP SCREENING EQUIPMENT

Councilperson Fox indicated he pulled this item because he wanted to know who pays for the installation and removal of the equipment. It was noted the City would provide equipment and personnel for the installation as well as covering the fee for connecting the equipment to the electrical system. He also noted that leasing the equipment would give the City the opportunity to try out the equipment and ensure it worked with the current treatment process prior to considering a purchase.

City Attorney Brown indicated he felt the proposed contract was unfair, favoring the manufacturer.

Motion by Councilperson Fox to approve a 12-month lease with Duperon Corporation for wastewater screening equipment in the amount of \$2,605.00 per month, approve payment up to \$31,260.00, and authorize the City Attorney to negotiate changes to the contract as he feels appropriate as follows:

RESOLUTION NO. 96-2013

AUTHORIZING 12 MONTH LEASE AGREEMENT WITH DUPERON CORPORATION FOR SCREENING EQUIPMENT FOR THE WASTEWATER PLANT AT \$2,605 PER MONTH

WHEREAS, Duperon Corporation has a full scale demonstration wastewater screening unit that fits our existing channel configuration and operating requirements, and

WHEREAS, Duperon will lease said equipment to the City for a 12 month trial period at a lease rate of \$2,605.00 per month, and

WHEREAS, actual full scale operation of this equipment will allow the City to develop bid specifications for new equipment while avoiding major overhaul expense on existing equipment to be replaced,

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

FIRST: The city of Owosso has heretofore determined that it is advisable, necessary and in the public interest to lease wastewater screening equipment from Duperon Corporation at \$2,605.00 per month for a 12 month lease term.

SECOND: The contract shall be a Lease Agreement and the accounts payable department is authorized to submit the initial and subsequent monthly payments to Duperon Corporation pursuant to that agreement up to \$31,260.00.

THIRD: The above expenses shall be paid from the Wastewater Plant Replacement Fund.

FOURTH: The contract shall be amended and negotiated to the satisfaction of the City Attorney.

Motion supported by Councilperson Bailey.

Roll Call Vote.

AYES: Councilpersons Fox, Erfourth, Bailey, Cook, Eveleth, Mayor Pro-Tem Popovitch, and Mayor Frederick.

NAYS: None.

BID AWARD – 2013 SLURRY SEAL & DOUBLE CHIP SEAL PROGRAM

Councilperson Fox indicated he pulled this item as he had questions as to which streets were covered by the contract. Staff clarified the situation saying they were the streets suggested by the pavement study as well as the streets that residents had asked to be returned to gravel earlier in the year.

Motion by Councilperson Fox to approve a bid award to Highway Maintenance & Construction Company for the 2013 Slurry Seal & Double Chip Seal Program in the amount of \$180,160.14 and further approve payment up to the bid amount as follows:

RESOLUTION NO. 97-2013

AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE 2013 SLURRY SEAL & DOUBLE CHIP SEAL PROGRAM WITH HIGHWAY MAINTENANCE & CONSTRUCTION COMPANY

WHEREAS, the city of Owosso, Shiawassee County, Michigan, has determined that improvement to the surface quality of various streets is advisable, necessary and in the public interest; and

WHEREAS, the city of Owosso sought bids to improve the surface of various streets as part of the 2013 Slurry Seal & Double Chip Seal Program; a bid was received from Highway Maintenance & Construction Company; and it is hereby determined that Highway Maintenance & Construction Company is qualified to provide such services and that it has submitted the lowest responsible and responsive bid;

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

FIRST: The City of Owosso has heretofore determined that it is advisable, necessary and in the public interest to employ Highway Maintenance & Construction Company for the surface improvement of various streets as part of the 2013 Slurry Seal & Double Chip Seal Program.

SECOND: The mayor and city clerk are instructed and authorized to sign the document substantially in the form attached as Exhibit A, Contract for Services Between the city of Owosso, Michigan and Highway Maintenance & Construction Company with a \$180,160.14 bid.

THIRD: The above expenses shall be paid from the Major and Local Street Maintenance Fund.

Motion supported by Councilperson Eveleth.

Roll Call Vote.

AYES: Councilpersons Erfourth, Bailey, Cook, Eveleth, Mayor Pro-Tem Popovitch, Councilperson Fox, and Mayor Frederick.

NAYS: None.

COMMUNICATIONS

Amy K. Kirkland, City Clerk. Notification of application for new liquor license.
Richard C. Williams, Finance Director. Cash and Investments Report – 2Q 2013
Charles P. Rau, Building Official. July 2013 Building Department Report.
Charles P. Rau, Building Official. July 2013 Code Violations Report.
Kevin D. Lenkart, Public Safety Director. July 2013 Police Report.
Kevin D. Lenkart, Public Safety Director. July 2013 Fire Report.
Downtown Development Authority/Main Street. Minutes of August 7, 2013.

CITIZEN COMMENTS AND QUESTIONS

Mike Tillotson, 1299 South Shiawassee Street, said he had recently toured the Fire Station with a youth group from his church. He said it was a great experience and the kids were thrilled.

Eddie Urban, 601 Glenwood Avenue, spoke of several issues including a splash pad gone wrong, fixing the podium, rusty water, and police activity in town.

Mayor Pro-Tem Popovitch noted that school would be starting soon and asked people to be mindful of the increased traffic around the schools.

Councilperson Fox asked that the cable franchise fee and ambulance fees be placed on the September 3rd agenda for discussion and possible action.

NEXT MEETING

Tuesday, September 03, 2013

BOARDS AND COMMISSIONS OPENINGS

Historical Commission – term expires 12-31-14

ADJOURNMENT

Motion by Councilperson Eveleth for adjournment at 11:08 p.m.

Motion supported by Councilperson Erfourth and concurred in by unanimous vote.

Benjamin R. Frederick, Mayor

Amy K. Kirkland, City Clerk



301 W. MAIN • OWOSSO, MICHIGAN 48867-2958 • (989) 725-0599

MEMORANDUM

DATE: August 1, 2013
TO: City council
FROM: City manager
RE: Motor carrier enforcement cost recovery

The city of Owosso has a problem with roadways being destroyed prematurely by overweight vehicles as well as unsafe commercial vehicles being driven over streets and highways.

The city has had no way to check vehicles as overweight until the city received two scales from the state of Michigan and having two officers trained in enforcement. The Michigan State Police are willing to work with the city in an enforcement program.

Currently, Owosso receives no money from the fines levied against the drivers and trucking companies found in violation when a ticket or tickets are issued. Approximately 70% of a fine goes to the state of Michigan, 30% to the library, a penal fine, and a small amount to the courts for administrative costs.

A city ordinance would permit tickets to be issued under the city ordinance which would allow 100% of any fines would come to the city. The proposed ordinance would allow the city to collect 70% with 30% still going to the library.

**CITY OF OWOSSO
NOTICE OF PROPOSED AMENDMENT TO
CHAPTER 33, TRAFFIC AND MOTOR VEHICLES,
OF THE CODE OF THE CITY OF OWOSSO
TO REGULATE MOTOR VEHICLE SIZE, WEIGHT, AND LOADS AND
REGULATE MOTOR CARRIER SAFETY**

WHEREAS, the City of Owosso struggles with the premature destruction of roadways due to overweight vehicle traffic; and

WHEREAS, the City also sees unsafe commercial vehicles driven over its streets and highways; and

WHEREAS, the State is currently responsible for enforcement of the laws governing commercial vehicles because the City does not have a commercial vehicle ordinance on its books; and

WHEREAS, the City currently receives no revenues from any enforcement of commercial vehicle laws; and

WHEREAS, the City sees a benefit in establishing its own commercial vehicle enforcement program in order to increase safety and maintain the condition of our roadways; and

WHEREAS, the City has obtained the necessary equipment and officer training to begin a commercial vehicle enforcement program; and

WHEREAS, it is required the City have an ordinance on its books governing commercial traffic to receive any fees and penalties generated by such an enforcement program.

NOW, THEREFORE BE IT RESOLVED, THE CITY OF OWOSSO ORDAINS that Chapter 33, Traffic and Motor Vehicles, of the Code of the City of Owosso be amended as follows:

SECTION 1. REPEAL. That Chapter 33, Traffic and Motor Vehicle, Article VII, Motor Carrier Safety, of the *City of Owosso Code of Ordinances*, which reads as follows, shall be repealed:

~~Sec. 33-150. – Short title.~~

~~This article shall be known and may be cited as the "Motor Carrier Safety Act."~~

~~Sec. 33-151. – Adoption of state law.~~

~~MCL sections 480.11 et seq., (Motor Carrier Safety Act of 1963, as amended) and any rules promulgated pursuant thereto, are hereby adopted and incorporated herein by reference.~~

~~Sec. 33-152. – Severability.~~

~~The provisions of this article are hereby declared to be severable. If any clause, sentence, paragraph, section, or subsection is declared void or inoperable for any reason by any court of competent jurisdiction, it shall not affect any other part or portion thereof other than the part declared void or inoperable.~~

~~Sec. 33-153. – Conflicting ordinances repealed.~~

~~Any ordinance or part of an ordinance in conflict herewith is hereby repealed.~~

SECTION 2. REPLACE. That a new Article VII, which reads as follows, shall be adopted:

Sec. 33-150. - Short title.

This article shall be known and may be cited as the "Motor Vehicle Size, Weight and Load Restrictions Ordinance."

Sec. 33-150.1. - Size, weight and load restrictions.

(a) Unless specifically declared to be a civil infraction, it is a misdemeanor for a person to drive or move or for the owner to cause or permit to be driven or moved on a highway a vehicle of a size and weight exceeding the limitations stated in this ordinance or otherwise in violation of this ordinance.

(b) The provisions of this ordinance governing size, weight, and load do not apply to a fire apparatus; to an implement of husbandry; to a boat lift or oversized hydraulic boat trailer owned and operated by a marina or watercraft dealer and used exclusively in a commercial boat storage operation which is incidentally moved upon a highway; or to a vehicle operated under the terms of a special permit issued as provided in this ordinance.

(c) The Michigan Department of Transportation, under the Administrative Procedures Act of 1969, 1969 PA 306 (MCL 24.201 to MCL 24.328), may promulgate rules permitting and regulating the operation of a vehicle or vehicles of a size or weight that exceeds the size or weight limitations of this ordinance. The City may enforce those rules under this ordinance, but can take no actions in conflict with Federal, State, or local law.

(d) A wrecker and a disabled vehicle, or a wrecker and a combination of a disabled vehicle and one trailer that exceeds the size and weight limitations in this ordinance may be operated upon the highways of the City under the following conditions:

(1) The wrecker is specifically designed for such towing operations; is equipped with flashing, oscillating, or rotating amber or red lights as permitted under MCL 257.698; and is capable of utilizing the lighting and braking systems of the disabled vehicle or combination of disabled vehicles if those systems are operational.

(2) For a combination of disabled vehicles, the wrecker is issued a special permit under section under MCL 257.725 by the Michigan Department of Transportation or the Road Commission for Shiawassee County if each trip beginning from the place of original disablement is 25 miles or less. The special permit is valid for the entire 25 mile towing distance, and the operator of that wrecker may remove the disabled vehicles from the roadway at any lawful point of his or her choosing within that distance.

(3) For a single disabled vehicle, the wrecker is issued a special permit under MCL 257.725 by the Michigan Department of Transportation or the Road Commission for Shiawassee County for the transport of the disabled vehicle. A wrecker operator is not subject to mileage limitations under such a special permit.

(4) The wrecker does not operate on any highway, road, street or structure that is included on a list provided by the State Transportation Department that prohibits wreckers unless the disabled vehicle or combination of vehicles is actually located on one of those roads or structures.

(e) The owner or operator of a wrecker that does not comply with Section 33-150.1 (d) is responsible for a civil infraction and shall pay a civil fine of not less than \$250.00 or more than \$500.00. The civil fine imposed under this subsection is in addition to any fine that may be imposed under Section 33-150.3 or 33-150.15.

Sec. 33-150.2. - Maximum outside width of vehicles or loads; operation or movement of boat lifts and trailers.

(a) The total outside width of a vehicle or the load on a vehicle that is operated on the highways, streets, and roadways in the City shall not exceed 96 inches, except as otherwise provided in this section.

(b) A person may operate or move an implement of husbandry of any width on a highway as required, designed, and intended for farming operations, including the movement of implements of husbandry being driven or towed and not hauled on a trailer, without obtaining a special permit by the Michigan Department of Transportation or the Road Commission for Shiawassee County for an excessively wide vehicle or load under MCL 257.725. The operation or movement of the implement of husbandry shall be in a manner so as to minimize the interruption of traffic flow. A person shall not operate or move an implement of husbandry to the left of center of the roadway from a half hour after sunset or a half hour before sunrise or at any other time where visibility is substantially diminished due to weather conditions. A person operating or moving an implement of husbandry shall follow all traffic regulations.

(c) The total outside width of the load of a vehicle hauling concrete pipe; agricultural products; or unprocessed logs, pulpwood, or wood bolts shall not exceed 108 inches.

(d) Except as provided in subsections (b) and (e), if a vehicle that is equipped with pneumatic tires is operated on a highway, the maximum width from the outside of one wheel and tire to the outside of the opposite wheel and tire shall not exceed 102 inches, and the outside width of the body of the vehicle or the load on the vehicle shall not exceed 96 inches. However, a truck or trailer or a tractor and semitrailer combination hauling pulpwood or unprocessed logs may operate with a maximum width of up to 108 inches, in accordance with a special permit issued under MCL 257.725.

(e) The total outside body width of a bus, a trailer coach, a trailer, a semitrailer, a truck camper, or a motor home shall not exceed 102 inches. However, an appurtenance of a trailer coach, a truck camper, or a motor home that extends not more than six inches beyond the total outside body width is not a violation of this Section.

(f) A vehicle shall not extend beyond the center line of a state trunk highway except when authorized by law. Except as provided in subsection (b) above, if the width of the vehicle makes it impossible to stay away from the center line, a permit shall be obtained under MCL 257.725.

(g) The City may designate a highway under its jurisdiction as a highway on which a person may operate a vehicle or vehicle combination that is not more than 102 inches in width, including load, the operation of which would otherwise be prohibited by this Section. The City may require that the owner or lessee of the vehicle or of each vehicle in the vehicle combination secure a permit before operating the vehicle or vehicle combination. This Section does not permit the operation of a vehicle or vehicle combination described in Section 33-150.11 if the operation would otherwise result in a violation of that Section.

(h) The Michigan Department of Transportation or the Road Commission of Shiawassee County may issue a special permit under MCL 257.725 to a person operating a vehicle or vehicle combination if all of the following are met:

(1) The vehicle or vehicle combination, including load, is not more than 106 inches in width.

(2) The vehicle or vehicle combination is used solely to move new motor vehicles or parts or components of new motor vehicles between facilities that meet all of the following:

a. New motor vehicles or parts or components of new motor vehicles are manufactured or assembled in the facilities.

b. The facilities are located within 10 miles of each other.

c. The facilities are located within the Owosso city limits.

d. The special permit and any renewals are each issued for a term of one year or less.

- (i) A person who violates this Section is responsible for a civil infraction. The operator or the owner of the vehicle may be charged with a violation of this Section.

Sec. 33-150.3 - Passenger-type vehicles; projected load.

(a) A passenger type vehicle shall not be operated on a highway with a load carried on the vehicle extending beyond the line of the fenders on the left side of the vehicle nor extending more than six inches beyond the line of the fenders on the right side of the vehicle.

(b) A person who violates this section is responsible for a civil infraction.

Sec. 33-150.4. - Height, length; combinations; connecting assemblies, lighting devices; weight; violations.

(a) A vehicle either unloaded or with load, shall not exceed a height of 13 feet six inches. The owner of a vehicle that collides with a lawfully established bridge or viaduct is liable for all damage and injury resulting from a collision caused by the height of the vehicle, whether the clearance of the bridge or viaduct is posted or not.

(b) Lengths described in this Section shall be known as the normal length maximum. Except as provided in Section (c) below, the following vehicles and combinations of vehicles shall not be operated on a highway in this City in excess of these lengths:

(1) Subject to Section (h) below, any single vehicle – 40 feet; a crib vehicle on which logs are loaded lengthwise of the vehicle – 42.5 feet; any single bus or motor home – 45 feet.

(2) Articulated buses – 65 feet.

(3) Notwithstanding any other provision of this Section, a combination of a truck and semitrailer or trailer, or a truck tractor, semitrailer, and trailer, or truck tractor and semitrailer or trailer, designated and used exclusively to transport assembled motor vehicles or bodies, recreational vehicles, or boats – 65 feet. Stinger-steered combinations – 75 feet. The load on the combinations of vehicles described in this Section may extend an additional three feet beyond the front and four feet beyond the rear of the combinations of vehicles. Retractable extensions used to support and secure the load that do not extend beyond the allowable overhang for the front and rear shall not be included in determining length of a loaded vehicle or vehicle combination.

(4) Truck tractor and semitrailer combinations – no overall length, but the semitrailer shall not exceed 50 feet.

(5) Truck and semitrailer or trailer – 59 feet.

(6) Except as provided in Section (7) below, a combination of a truck tractor, semitrailer, and trailer, or truck tractor and two semitrailers – 59 feet.

(7) A truck tractor, semitrailer, and trailer, or a truck tractor and 2 semitrailers, in which no semitrailer or trailer is more than 28 ½ feet long – 65 feet. This Section only applies while the vehicle is being used for a business purpose that is reasonably related to picking up or delivering a load and only if each semitrailer or trailer is equipped with a device or system capable of mechanically dumping construction materials or dumping construction materials by force of gravity.

(8) More than one motor vehicle, wholly or partially assembled, in combination, utilizing one tow bar or three saddle mounts with full mount mechanisms and utilizing the motive power of one of the vehicles in combination – 55 feet.

(c) The normal length maximums, as set forth in Section (b) above, may be exceeded for the following

vehicles and combinations of vehicles, but they shall comply with the following:

(1) Truck tractor and semitrailer combinations – no overall length limit, but the semitrailer shall not exceed 53 feet. All semitrailers longer than 50 feet shall have a wheelbase of 37.5 to 40.5 feet, plus or minus 0.5 feet, measured from the kingpin coupling to the center of the rear axle or the center of the rear axle assembly. A semitrailer with a length longer than 50 feet shall not operate with more than three axles on the semitrailer. Vehicles with a semitrailer longer than 50 feet may be prohibited from stopping in the City unless the stop occurs along appropriately designated routes, or is necessary for emergency purposes or to reach shippers, receivers, warehouses, and terminals along designated routes.

(2) Truck and semitrailer or trailer combinations – 65 feet, except that a person may operate a truck and semitrailer or trailer designed and used to transport saw logs, pulpwood, and tree length poles that does not exceed an overall length of 70 feet or a crib vehicle and semitrailer or trailer designated and used to transport saw logs that does not exceed an overall length of 75 feet. A crib vehicle and semitrailer or trailer designed for and used to transport saw logs shall not exceed a gross vehicle weight of 164,000 pounds. A person may operate a truck tractor and semitrailer designed for and used to transport saw logs, pulpwood, and tree length wooden poles with a load overhang to the rear of the semitrailer which does not exceed six feet if the semitrailer does not exceed 50 feet in length.

(3) Notwithstanding Section 33-150.4 (d) (4), a truck tractor with a log slasher unit and a log saw unit- no maximum length limit if the length of each unit does not exceed 28 ½ feet, or the overall length of the log slasher unit and the log saw unit, as measured from the front of the first towed unit to the rear of the second towed unit while the units are coupled together, does not exceed 58 feet. The coupling devices of the truck tractor and units set forth in this Section shall meet the requirements established under the Motor Carrier Safety Act of 1963, 1963 PA 181, MCL 480.11 to MCL 480.25.

(4) Truck tractor and two semitrailers, or truck tractor, semitrailer, and trailer combinations- no overall length limit, as long as the length of each semitrailer or trailer does not exceed 28 ½ feet each, or the overall length of the semitrailer and trailer, or two semitrailers, as measured from the front of the first towed unit to the rear of the second towed unit while the units are coupled together, does not exceed 58 feet.

(5) More than one motor vehicle, wholly or partially assembled, in combination, utilizing one tow bar or three saddle mounts with full mount mechanisms and utilizing the motive power of one of the vehicles in combination- maximum 75 feet.

(d) The following combinations and movements are prohibited:

(1) A truck shall not haul more than one trailer or semitrailer, and a truck tractor shall not haul more than two semitrailers or one semitrailer and one trailer in combination at any one time, except that a farm tractor may haul two wagons or trailers, or garbage and refuse haulers may, during daylight hours, haul up to four trailers for garbage and refuse collection purposes, as long as the total length of any combination does not exceed 55 feet and the vehicles are operated at a speed limit of 15 miles per hour or less.

(2) A combination of vehicles or a vehicle shall not have more than 11 axles, except when operating under a valid permit issued by the Michigan Department of Transportation or the Road Commission of Shiawassee County under MCL 257.725 on highways under its jurisdiction.

(3) Any combination of vehicles not specifically authorized under this Section is prohibited.

(4) Except as provided in Section 33-150.4 (c)(3) a combination of two semitrailers pulled by a truck tractor, unless each semitrailer uses a fifth wheel connection assembly that conforms to the requirements of the Motor Carrier Safety Act of 1963, 1963 PA 181, MCL 480.11 to MCL 480.25.

(5) A vehicle or combination of vehicles shall not carry a load extending more than three feet beyond

the front of the lead vehicle.

(6) A vehicle described in Section 33-150.4 (b) (5) and (c) (5) employing triple saddle mounts, unless all wheels that are in contact with the roadway have operating brakes.

(e) All combinations of vehicles under this Section shall employ connecting assemblies and lighting devices that are in compliance with the Motor Carrier Safety Act of 1963, 1963 PA 181, MCL 480.11 to MCL 480.25.

(f) The total gross weight of a truck tractor, semitrailer, and trailer combination or a truck tractor and two semitrailers combination that exceeds 59 feet in length shall not exceed a ratio of 400 pounds per engine net horsepower delivered to clutch or its equivalent, as specified in the handbook published by the Society of Automotive Engineers, Inc. (SAE), 1977 edition.

(g) A person who violates this section is responsible for a civil infraction. The owner of the vehicle may be charged with a violation of this section.

(h) The provisions in Sections 33.150.4 (b) (1) and (c) (2) prescribing the length of a crib vehicle on which logs are loaded lengthwise do not apply unless section 127(d) of Title 23 of the United States Code, 23 USC 127, is amended to allow crib vehicles carrying logs to be loaded as described in this section.

(i) As used in this Section:

(1) "Designated highway" means a highway under the jurisdiction of the City of Owosso and approved by the State of Michigan as a highway.

(2) "Length" means the total length of a vehicle, or combination of vehicles, including any load the vehicle is carrying. Length does not include devices described in 23 CFR 658.16 and 23 CFR part 658, appendix D, 23 CFR 658.16 and 23 CFR part 658, appendix D, as on file with the Michigan Secretary of State and as adopted by reference. A safety or energy conservation device shall be excluded from a determination of length only if it is not designed or used for the carrying of cargo, freight, or equipment. Semitrailers and trailers shall be measured from the front vertical plane of the foremost transverse load supporting the structure to the rear-most transverse load supporting the structure. Vehicle components not excluded by law shall be included in the measurement of the length, height, and width of the vehicle.

(3) "Stinger-steered combinations" means a truck tractor and semitrailer combination in which the fifth wheel is located on a drop frame located behind and below the rear-most axle of the power unit.

Sec 33-150.5. - Towing vehicle with mobile home attached; operating restrictions; permits; transport requirements; violations; definitions.

(a) Notwithstanding any other provisions of this ordinance, a person shall not operate on a highway of this City a towing vehicle to which a mobile home is attached, if that mobile home is more than 45 feet in length or more than 60 feet in length when combined with the towing vehicle; or is more than 12 ½ feet in height; or has an actual body width of more than 102 inches at base rail, unless that person possesses either of the following:

(1) A permit issued by the Michigan Department of Transportation or the Road Commission of Shiawassee County pursuant to MCL 257.725.

(2) A special permit issued by the Michigan Department of Transportation or the Road Commission of Shiawassee County pursuant to MCL 257.725.

(b) Pursuant to MCL 257.725, the Michigan Department of Transportation or the Road Commission of Shiawassee County may issue an annual permit to a mobile home transport company; a mobile home

manufacturer; or a mobile home dealer to move a mobile home over a highway under the jurisdiction of the City, in the ordinary course of that company's, manufacturer's, or dealer's business, as long as the mobile home conforms to each of the following:

(1) The mobile home is not more than 12 feet wide.

(2) The actual body length of the mobile home is not more than 80 feet and the combined length of the mobile home and towing vehicle is not more than 105 feet; or the total length of a combination of mobile homes is not more than 80 feet and the total length of a combination of mobile homes and towing is not more than 105 feet.

(c) Pursuant to M.C.L. 257.725, the Michigan Department of Transportation or the Road Commission of Shiawassee County may issue a special permit for the movement of a mobile home over a highway within its jurisdiction if the width of that mobile home conforms to both of the following:

(1) The mobile home is not more than 16 feet wide plus normal appurtenances or eaves that extend not more than six inches from any side of the mobile home.

(2) The length of the mobile home complies with Section 33-150.5 (b) (2).

(d) A person operating a towing vehicle under Section 33-150.5 (c) shall transport a mobile home only on the lane farthest to the right of that person. When the wind velocity exceeds 25 miles per hour, a person shall not move a mobile home that is 14 or more feet in width.

(e) Pursuant to M.C.L. 257.725, the Michigan Department of Transportation or the Road Commission of Shiawassee County shall not issue a permit for the transportation of a mobile home on a Saturday, Sunday, legal holiday (from noon the day before until the noon the day after a holiday), or during the hours between sunset and sunrise.

(f) Persons operating a vehicle towing a mobile home shall comply with all of the conditions of a permit issued by Michigan Department of Transportation or the Road Commission of Shiawassee County pursuant to M.C.L. 257.725. A permit issued under M.C.L. 257.725 includes all of the following:

(1) The date, day, and time period during which a mobile home may be moved on a highway, subject to the permit.

(2) Notice that the permit is conditioned upon its holders compliance with all of the permit's terms and with the law.

(3) Notice that the operator of a towing vehicle transporting the mobile home shall operate the towing vehicle on a highway as follows:

a. At a safe speed and in a safe manner that will not impede motor traffic.

b. Only when the surface condition of the highway is not slippery.

c. In accordance with seasonal load restrictions.

(4) For a mobile home or park model trailer and towing vehicle, when combined, are more than 80 feet in length or more than 12 feet wide, all of the following:

a. Notice that the mobile home or park model trailer shall be equipped with two flashing amber lights on the rear of the mobile home or park model trailer and one flashing amber light on the top of the towing vehicle.

b. Notice that the mobile home or park model trailer shall be equipped with stop lights and directional lights on the rear of the mobile home or park model trailer.

c. Notice that the signs with the words "oversize load" shall be displayed on the front bumper of the towing vehicle and the back of the mobile home or park model trailer, or in the case of mobile homes or park model trailers that are 16 feet wide, notice that signs with the words "16-ft wide load" shall be displayed on the front bumper of the towing vehicle and the back of the mobile home or park model trailer.

d. Notice that the signs identified in paragraph (c) above shall be of durable material, in good condition, with black lettering on interstate yellow background, and that each letter shall be of block lettering that is not less than 12 inches high at the front and not less than 16 inches high at the rear of the unit.

e. Notice that a vehicle escort is required on those roads where the Michigan State Police and the Owosso Police Department considers escort vehicles necessary for highway safety.

(g) Signs and other special identification for escort vehicles shall conform to Michigan Transportation Department's requirements for all escort vehicles for oversized loads.

(h) For a mobile home or park model trailer being moved pursuant to this Section or MCL 257.725, the distance between mobile home or park model trailer axle centers shall not be less than 34 inches. The axle and tires shall meet standards established by the Michigan Transportation Department.

(i) This section does not grant or give authority to the Michigan Department of Transportation, the Road Commission of Shiawassee County or the Owosso Police Department that did not exist on May 1, 1982 in accordance with 23 USC 127.

(j) A person who violates this section is responsible for a civil infraction and may be assessed a civil fine of not more than \$500.00. The operator or the owner of the towing vehicle may be charged with a violation of this section.

(k) As used in this section:

(1) "Jurisdictional authority" means the Michigan Transportation Department, the Road Commission of Shiawassee County or the City of Owosso.

(2) "Mobile home" means any of the following:

a. A pre-built housing module.

b. That term, as defined in section 2 of the Mobile Home Commission Act, Act No. 96 of the Public Acts of 1987, being section 125.2302 of the Michigan Compiled Laws.

c. Section of a mobile home as that term is defined under this Ordinance.

Sec. 33-150.6. - Mobile homes; additional requirements for transporting.

All mobile homes transported on the highways of the City that are more than 14 1/3 feet wide (plus normal appurtenances that expand no more than six inches, and an eave that extends no more than two feet from the width of the mobile home), are subject to the following requirements in addition to the requirements of Section 33-150.4:

(a) Two escort vehicles shall escort the towing vehicle and mobile home on all two lane roads and on those roads where the Owosso Police Department considers two escort vehicles necessary for highway safety.

(b) Each towing vehicle shall be equipped with a radio or other device that allows for continuous communication between the towing vehicle and each escort vehicle.

(c) The person transporting the mobile home shall have in effect a liability insurance policy covering personal injury and property damage and having a policy limit of not less than \$1,000,000.00.

(d) The towing vehicle and mobile home shall not exceed a speed of 45 miles per hour or 10 miles per hour below the posted speed limit, whichever is lower.

Sec. 33-150.7. - Trucks hauling semitrailers, transportation of passengers for sightseeing purposes; approval of city; speed limitation; safety equipment; inspection.

(a) Notwithstanding Section 33-150.4, the Owosso Police Department may give approval for a truck to be used to haul up to four semitrailers for the purpose of transporting passengers for sightseeing purposes, as long as the truck does not travel more than three miles beyond the City boundaries and does not exceed a speed limit of 25 miles per hours.

(b) A truck and a semitrailer, as described in this Section, shall meet the following requirements:

(1) Be equipped with hazard warning lights, and slow-moving vehicle emblems, as described in MCL 257.688.

(2) Be equipped with safety belts, as described in MCL 257.710e, for each individual seat.

(3) Be compliant with any applicable federal safety standards.

(c) Before operating a truck regulated by this Section, the operator of the truck shall secure the proper group vehicle designation and any required endorsement required on his or her operator's or chauffeur's license.

(d) A truck and semitrailer used as described in this Section shall be inspected annually by the Michigan Department of State Police.

Sec. 33-150.8. - Construction or loading of vehicle to prevent spillage on highway or roadway; loading of vehicle which is not completely enclosed; operation of vehicle equipped with front end loading device with protruding tine: offenses and penalties.

(a) A person shall not drive or move a vehicle on a highway unless the vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, blowing off, or otherwise escaping from the vehicle. This requirement does not apply to a vehicle transporting agricultural or horticultural products, such as hay, straw, silage, or residue from a product (but not including the product itself), or when materials such as water that is used to preserve and handle agricultural or horticultural products while in transportation, escape from the vehicle in an amount that does not interfere with other traffic on the highway. The tailgate, faucets, and taps on a vehicle shall be securely closed to prevent spillage during transportation, whether the vehicle is loaded or empty, and the vehicle shall not have any holes or cracks through which material can escape. Any highway maintenance vehicle engaged in either ice or snow removal shall be exempt from this Section.

(b) Actual spillage of material on the highway or proof of that spillage is not necessary to prove a violation of this Section.

(c) Except as provided in this Section, a vehicle carrying a load, (other than logs or tubular products), which is not completely enclosed shall meet either of the following requirements:

(1) The load shall be covered with firmly secured canvas or a similar type of covering. A device used to comply with the requirement of this Section shall not exceed a width of 108 inches nor by design or use have the capability to carry cargo by itself.

(2) The load shall be securely fastened to the body or the frame of the vehicle with binders of an

adequate number and of adequate breaking strength to prevent the dropping off or shifting of the load.

(d) A company or individual who loads or unloads a vehicle or causes it to be loaded or unloaded, with the knowledge that it is to be driven on a public highway, and the loading or unloading is done in a manner so as to cause a violation of Section 33-150.8 (a) shall be prima facie liable for a violation of this Section.

(e) Section 33-150.8 (c) does not apply to a person operating a vehicle to transport agricultural commodities or to a person operating a farm truck or implement of husbandry that is transporting sand, gravel, and dirt which is necessary in the normal operation of a farm. However, if such person violates subsections 33.150.8 (a) or (d), the person is guilty of a misdemeanor and is subject to the penalties prescribed in section 33-150.8 (i).

(f) Section 33-150.8 (c) (1) does not apply to a motor vehicle transporting items in a load that, because of their weight, will not fall off the moving vehicle and that have their center of gravity located at least 6 inches below the top of the enclosure. Similarly, Section 33-150.8 (c) does not apply to a motor vehicle carrying metal that, because of its weight and density, is so loaded as to prevent it from dropping or falling off the moving vehicle.

(g) Section 33-150.8 (c) (1) does not apply to motor vehicles and other equipment that is engaged in work upon the surface of a highway or street in a designated work area.

(h) A person shall not drive or move on a highway a vehicle equipped with a front end loading device with a tine protruding parallel to the highway beyond the front bumper of the vehicle unless the tine is carrying a load designed to be carried by the front end loading device. This Section does not apply to a vehicle designed to be used or being used to transport agricultural commodities; to a vehicle en route to a repair facility; or to a vehicle engaged in construction activity. As used in this Section, "agricultural commodities" means that term as defined in section 33-150.10.

(i) A person who violates this section is guilty of a misdemeanor, punishable by a fine of not more than \$500.00 or imprisonment for not more than 90 days, or both.

(j) As used in this section, "logs" means saw-logs, pulpwood, or tree length poles.

Sec. 33-150.9. - Trailers towed by passenger vehicle, attachment.

(a) Except as otherwise provided in Section 33-150.9 (e), a passenger vehicle or a pickup truck shall not be driven upon a highway drawing or having attached to the passenger vehicle or pickup truck more than one vehicle or trailer.

(b) The drawbar or other connection between two vehicles, one of which is towing or drawing the other on a highway, shall not exceed 15 feet in length from one vehicle to the other. If the connection consists of a chain, rope, or cable, there shall be a red flag or other signal or cloth on the connection that is at least 12 inches both in length and width.

(c) A vehicle or trailer towed or drawn by a vehicle shall be attached to the vehicle with coupling devices in a manner so that when the combination is operated in a linear alignment on a level, smooth, paved surface, the movement of the towed or drawn vehicle or trailer does not deviate more than three inches to either side of the path of the towing vehicle that tows or draws it. The vehicle or trailer shall also be connected to the towing vehicle by suitable safety chains or devices, one on each side of the coupling and at the extreme outer edge of the vehicle or trailer. Each chain or device and connection used shall be of sufficient strength to haul the vehicle or trailer when loaded. In the case of an implement of husbandry with a gross vehicle weight rating or gross combination weight rating of 10,000 pounds or less, the safety chains or devices required under this subsection shall conform to the federal motor carrier safety regulations requirements, which are currently provided in 49 C.F.R. 393.70(d)(5).

(d) A pickup truck with a fifth wheel assembly shall not tow a semitrailer unless the fifth wheel assembly

conforms to the standards prescribed in the Motor Carrier Safety Act of 1963, 1963 PA 181, MCL 480.11 to MCL 480.22 and Section 33-151.1 to Section 33-151.19 of this ordinance.

(e) Notwithstanding Section 33-150.9 (a), a pickup truck with a towing rating equal to or greater than the weight being towed, that is equipped with a fifth wheel assembly that conforms with the standards prescribed in the Motor Carrier Safety Act of 1963, 1963 PA 181, MCL 480.11 to MCL 480.22, which is towing a semitrailer that is designated for recreational living purposes, may tow an additional trailer or semitrailer under the following conditions:

(1) The additional trailer or semitrailer shall be attached as set forth in Section 33-150.9 (c). The safety chains described in Section 33-150.9 (c) shall be securely attached at the extreme outer edge of the attached trailer or semitrailer with a locking mechanism. The towing vehicle hitch shall be of substantial material and shall be attached in a proper and skillful manner to the frame of the towing vehicle.

(2) The total length of the pickup truck, plus the semitrailer that is designed for recreational living purposes, and the additional trailer or semitrailer, and the load of the vehicle, shall not exceed 65 feet while on any highway in the City.

(3) The gross weight of the additional trailer or semitrailer towed or drawn shall not exceed the empty weight of the pickup truck or the empty weight of the semitrailer.

(f) For the purpose of this Section, a pickup truck towing a semitrailer and an additional trailer shall be considered a passenger vehicle and shall comply with the speed limit requirements of MCL 257.627 (5).

(g) A person who violates this section is responsible for a civil infraction.

Sec. 33-150.10. - Wheel and axle loads; seasonal weight restrictions, exceptions.

(a) The maximum axle load shall not exceed the number of pounds, as designated in the following provisions which prescribe the distance between axles:

(1) If the axle spacing is nine feet or more between axles, the maximum axle load shall not exceed 18,000 pounds for vehicles equipped with high pressure pneumatic or balloon tires.

(2) If the axle spacing between two axles is less than nine feet but more than three and one half feet, the maximum axle load shall not exceed 13,000 pounds for vehicles equipped with high pressure pneumatic or balloon tires.

(3) If the axles are spaced less than three and one half feet apart, the maximum axle load shall not exceed 9,000 pounds per axle.

(4) Sections 33.150.10 (1), (2) and (3) shall be known as the normal loading maximum.

(b) When normal loading is in effect, the Owosso Police Department may designate certain highways, or sections of those highways under its jurisdiction, where bridges and road surfaces are adequate for heavier loading, and may also revise a designation to allow the maximum tandem axle assembly loading of up to 16,000 pounds for any axle of the assembly, as long as there is no other axle within nine feet of any axle of the assembly.

(c) On a legal combination of vehicles, only one tandem axle assembly shall be permitted on the designated highways at the gross permissible weight of 16,000 pounds per axle, but only if there is no other axle within nine feet of any axle of the assembly, and if no other tandem axle assembly in the combination of vehicles exceeds a gross weight of 13,000 pounds per axle. On a combination of truck tractor and semitrailer having up to five axles, two consecutive tandem axle assemblies shall be permitted on the designated highways at a gross permissible weight of 16,000 pounds per axle, if there is no other axle within nine feet of any axle of the assembly.

(d) Notwithstanding Section 33-150.10 (c), on a combination of truck tractor and semitrailer having up to 5 axles, two consecutive sets of tandem axles may carry a gross permissible weight of up to 17,000 pounds on any of the tandem axles if there is no other axle within nine feet of any axle of the tandem axle and if the first and last axle of the consecutive sets of tandem axles are at least 36 feet apart and the gross vehicle weight does not exceed 80,000 pounds, to pick up and deliver agricultural commodities between the national truck network or special designated highways and any other highway. This Section is not subject to the maximum axle loads of Sections 33-150.10 (a), (b) and (c). For purposes of this Section, a "tandem axle" means two axles spaced more than 40 inches but not more than 96 inches apart or two axles spaced more than three and one half feet but less than nine feet apart. This Section does not apply during that period when reduced maximum loads are in effect, pursuant to Section 33-150.10 (h).

(e) In order to be exempt from the loading maximums and gross vehicle weight requirements, the person hauling agricultural commodities, who picks up or delivers either from a farm or to a farm, shall notify the Road Commission for Shiawassee County at least 48 hours before the pickup or delivery, indicating the time and location of the pickup or delivery. Pursuant to MCL 257.722 (5) the Shiawassee County Road Commission shall issue a permit to such a person and charge a fee that does not exceed the administrative costs incurred. The permit shall contain the all of the following:

- (1) The designated route or routes of travel for the load.
- (2) The date and time period requested by the person who picks up or delivers the agricultural commodities during which the load may be delivered or picked up.
- (3) A maximum speed limit of travel, if necessary.
- (4) Any other specific conditions agreed to between the parties.

(f) In order to be exempt from the loading maximums and gross vehicle weight requirements, public utility vehicles that are owned or operated by public utilities under the jurisdiction of the Michigan Public Service Commission, or are subcontracted by public utilities under the jurisdiction of the Michigan Public Service Commission, when performing electrical emergency public utility work, must meet the following circumstances:

- (1) For emergency public utility work on restricted roads, as follows:
 - a. If required by the Road Commission for Shiawassee County, the public utility shall notify the Road Commission for Shiawassee County, as soon as practical, of the location of the emergency public utility work and provide a statement that the vehicles that were used to perform the emergency utility work may have exceeded the loading maximums and gross vehicle weight requirements of this Ordinance. The notification may be made via facsimile or electronically.
 - b. The public utility vehicle travels to and from the site of the emergency public utility work while on a restricted road at a speed not greater than 35 miles per hour.
- (2) For non emergency public utility work on restricted roads, as follows:
 - a. If the Road Commission for Shiawassee County requires, the public utility shall apply to the Road Commission for Shiawassee County annually for a seasonal truck permit for roads under its authority before seasonal weight restrictions are effective. Pursuant to MCL 257.722(6), the Road Commission for Shiawassee County shall issue a seasonal truck permit for each vehicle or vehicle configuration the public utility anticipates will be utilized for non emergency public utility work. Pursuant to MCL 257.722 (6), the Road Commission for Shiawassee County may charge a fee for a permit that does not exceed the administrative costs incurred for the permit. The seasonal truck permit shall contain all of the following:

1. The seasonal period requested by the public utility, during which the permit is valid.
2. A unique identification number for the vehicle and any vehicle configuration to be covered on the seasonal truck permit that is requested by the public utility.
3. A requirement that travel on restricted roads during weight restriction periods will be minimized and only utilized when necessary to perform work using the public utility vehicle or vehicle configuration and that non-restricted roads shall be used for travel when available and for routine travel.

b. Pursuant to MCL 257.722 (6), if the Road Commission for Shiawassee County requires notification, the Road Commission of Shiawassee County shall provide a notification application for the public utility to use when requesting access to operate on restricted roads and the public utility shall provide notification to the Road Commission of Shiawassee County, via facsimile or electronically, not later than 24 hours before the time of the intended travel. Notwithstanding this Section or an agreement under this Section, if the Road Commission for Shiawassee County determines that the condition of a particular road under its jurisdiction makes it unusable, the Road Commission for Shiawassee County may deny access to all or any part of that road. The denial shall be made and communicated via facsimile or electronically to the public utility within 24 hours after receiving notification that the public utility intends to perform non-emergency work that requires use of that road. Any notification that is not disapproved within 24 hours after the notice is received by the Road Commission of Shiawassee County is considered approved. The notification application, as required under MCL 257.722 (6), may include all of the following information:

1. The address or location of the non emergency work.
2. The date or dates of the non emergency work.
3. The route to be taken to the non emergency work.
4. The restricted road or roads intended to be traveled upon to the non-emergency work site or sites.

(g) The normal size of tires shall be the rated size, as published by the manufacturers, and the maximum wheel load permissible for any wheel shall not exceed 700 pounds per inch of width of tire.

(h) Except as provided in this Section and Section 33-150.10 (i), during the months of March, April, and May in each year, the maximum axle load allowable on concrete pavements or pavements with a concrete base is reduced by 25% from the maximum axle load as specified in this ordinance, and the maximum axle loads allowable on all other types of roads during these months are reduced by 35% from the maximum axle loads as specified. The maximum wheel load shall not exceed 525 pounds per inch of tire width on concrete and concrete base or 450 pounds per inch of tire width on all other roads during the time that the seasonal road restrictions are in effect. This Section does not apply to vehicles transporting agricultural commodities or public utility vehicles on a highway, road, or street under the jurisdiction of Owosso. For the highways, roads, or streets under Owosso's jurisdiction to which the seasonal restrictions prescribed under this Section apply, Owosso shall post all of the following information on the homepage of its website:

- (1) The dates when the seasonal restrictions are in effect.
- (2) The names of the highways and streets and portions of highways and streets to which seasonal restrictions apply.

(i) Pursuant to MCL 257.722 (9), the Michigan Department of Transportation (for roads under its jurisdiction) and the Road Commission for Shiawassee County (for roads under its jurisdiction) may grant exemptions from seasonal weight restrictions for the transport of milk on specific routes, when requested

in writing. Approval or denial of a request for an exemption shall be given by written notification to the applicant within 30 days of submission of the application. If a request is denied, the written notice shall state the reason for the denial and alternate routes for which the permit may be issued. The applicant may appeal to the Michigan Department of Transportation or the Road Commission for Shiawassee County. These exemptions do not apply on county roads in counties that have negotiated agreements with milk haulers or haulers of other commodities during periods of seasonal load limits before April 13, 1993. This subsection does not limit the ability of these counties to negotiate such agreements.

(j) The Owosso Police Department, with respect to highways under its jurisdiction, may suspend the restrictions imposed by this Section when and where conditions of the highways or the public health, safety, and welfare warrant suspension, and impose the restricted loading requirements of this Section on designated highways at any other time that the conditions of the highway require.

(k) For the purpose of enforcing this ordinance, the gross vehicle weight of a single vehicle and load or a combination of vehicles and loads shall be determined by weighing individual axles or groups of axles, and the total weight on all the axles shall be the gross vehicle weight. In addition, the gross axle weight shall be determined by weighing individual axles or by weighing a group of axles and dividing the gross weight of the group of axles by the number of axles in the group. The overall gross weight on a group of two or more axles shall be determined by weighing individual axles or several axles, and the total weight of all the axles in the group shall be the overall gross weight of the group.

(l) The loading maximum in this subsection applies to the highways under Owosso's jurisdiction. The Owosso Police Department may designate a highway, or a section of a highway for the operation of vehicles having a gross vehicle weight of up to 80,000 pounds, subject to the following load maximums:

- (1) Twenty thousand pounds on any one axle, including all enforcement tolerances.
- (2) A tandem axle weight of 34,000 pounds, including all enforcement tolerances.
- (3) An overall gross weight of a group of two or more consecutive axles equaling:

$W = 500 / LN + 12N + 36 \sqrt{L - 1}$ where W = overall gross weight on a group of two or more consecutive axles to the nearest 500 pounds, L = distance in feet between the extreme of a group of two or more consecutive axles, and N = number of axles in the group under consideration; except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the first and last axles of the consecutive sets of tandem axles are not less than 36 feet apart. The gross vehicle weight shall not exceed 80,000 pounds, including all enforcement tolerances. Except for a five axle truck tractor; semitrailer combinations having two consecutive sets of tandem axles, vehicles having a gross weight in excess of 80,000 pounds or in excess of the vehicle gross weight determined by application of the formula in this subsection are subject to the maximum axle loads of Section 33-150.10 (a), (b), and (c). As used in this Section, "tandem axle weight" means the total weight transmitted to the road by two or more consecutive axles, the centers of which may be included between parallel transverse vertical planes spaced more than 40 inches but not more than 96 inches apart, extending across the full width of the vehicle. Except as otherwise provided in this section, vehicles transporting agricultural commodities shall have weight load maximums as set forth in this Section.

(m) As used in this section:

- (1) "Agricultural commodities" means those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish, and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, mushrooms, fertilizer, livestock bedding, farming equipment, and fuel for agricultural use. The term does not include trees or lumber.
- (2) "Emergency public utility work" means work performed to restore public utility service or to

eliminate a danger to the public due to a natural disaster, an act of God, or an emergency situation, whether or not a public official has declared an emergency.

Sec. 33-150.11. - Restrictions on transportation of flammable liquids and gases; violations, penalties; enforcement.

- (a) A truck pulling a trailer, a truck tractor pulling a semitrailer and trailer combination, or a truck tractor pulling two semitrailers shall not transport within the City a flammable liquid, in bulk, with a flash point at or below 70 degrees Fahrenheit.
- (b) A truck pulling a trailer, a truck tractor pulling a semitrailer and trailer combination, or a truck tractor pulling two semitrailers shall not transport within the City a flammable gas or a compressed flammable gas, in bulk, as defined by 49 C.F.R. parts 100 to 180.
- (c) A truck or a truck tractor pulling a semitrailer shall not transport within the City a flammable liquid, in bulk, which has a flash point at or below 70 degrees Fahrenheit, unless the truck or the semitrailer has a water capacity of less than 13,800 gallons. This Section does not apply to those vehicles registered with the Motor Carrier Division of the Michigan Department of State Police on or before January 1, 1986.
- (d) A truck or truck tractor pulling a semitrailer shall not transport within the City a flammable liquid, in bulk, which has a flash point at or below 70 degrees Fahrenheit in a quantity of more than 13, 400 gallons.
- (e) The owner or driver of a vehicle that transports, or a shipper who loads a vehicle with a flammable liquid, flammable gas, or compressed flammable gas in violation of this Section is guilty of a misdemeanor, punishable by a fine of not more than \$500.00, or imprisonment for not more than 90 days, or both.
- (f) This section shall be enforced only by a police officer.
- (g) For the purposes of this section, "in bulk" means an amount of product or material of 3,500 water gallons or more in a single containment system. Commercial motor vehicles transporting hazardous materials shall comply with the Motor Carrier Safety Act, Act No. 181 of the Public Acts of 1963, being sections MCL 480.11 to MCL 480.21 and section 12 of this ordinance.

Sec. 33-150.12. - Information to be painted or permanently attached on certain commercial vehicles and towing or platform bed wrecker service vehicles; use of removable devices; effects of compliance with federal identification requirements; exemptions; penalties.

- (a) All commercial vehicles with a single or combination gross weight rating or total gross weight of more than 5,000 pounds and all towing or platform bed wrecker road service vehicles in operation upon the public highways of the City shall have the name, city, and state or the registered logo or emblem of the registered owner of the vehicle, (and lessee of the vehicle if the vehicle is being operated under lease), painted or permanently attached on each side of the vehicle in letters of not less than three inches in height, not lower than the bottom edge of the door. This information shall be in sharp color contrast to the background.
- (b) Except for towing or platform bed wrecker road service vehicles, the identification requirement of Section 33-150.12 (a) may be met through the use of removable devices which meet the requirements. These devices shall be of durable construction and securely attached to each side of the motor truck or truck tractor. The removable devices shall be attached so that the identification is in a horizontal position.
- (c) A vehicle in compliance with the identification requirements of the Federal Motor Carrier Safety Regulations, 49 C.F.R. 390-399, is considered to be in compliance with this Section.
- (d) This Section does not apply to a truck eligible for and registered under a farm or manufacturer license plate, that has a gross vehicle weight of less than 10,000 pounds.

(e) A person who violates this section is responsible for a civil infraction.

Sec. 33-150.13. - Stopping vehicles for weighing; offense and penalties.

(a) A police officer, having reason to believe that the weight of a vehicle and load is unlawful, may require the driver to stop and submit to a weighing of the vehicle by either portable or stationary scales approved and sealed by the Department of Agriculture as a legal weighing device; and may require that the vehicle be driven to the nearest weigh station of the Michigan Department of Transportation for the purpose of allowing a police officer to determine whether the vehicle is loaded in conformity with this ordinance.

(b) When a police officer, upon weighing a vehicle and load, determines that the weight is unlawful, the officer may require the driver to stop the vehicle in a suitable place and remain standing until that portion of the load is shifted or removed as necessary to reduce the gross axle load weight of the vehicle to the limit permitted under this ordinance. All material unloaded as provided under this subsection shall be cared for by the owner or operator of the vehicle at the risk of the owner or operator. A judge or magistrate imposing a civil fine and costs under this Section that are not paid in full immediately or for which a bond is not immediately posted (in double the amount of the civil fine and costs) shall order the driver or owner to move the vehicle at the driver's own risk to a place of safekeeping, and keep the vehicle until the fine and costs are paid or sufficient bond is furnished or until the judge or magistrate is satisfied that the fine and costs will be paid. The officer, who determined, after weighing a vehicle and load, that the weight is unlawful, may require the driver to proceed to a judge or magistrate within the City. If the judge or magistrate is satisfied that the probable civil fine and costs will be paid by the owner or lessee, the judge or magistrate may allow the driver to proceed, after the load is made legal. If the judge or magistrate is not satisfied that the owner or lessee, after a notice and a right to be heard on the merits is given, will pay the amount of the probable civil fine and costs, the judge or magistrate may order the vehicle to be impounded until trial on the merits is completed under conditions set forth in this Section for the impounding of vehicles after the civil fine and costs have been imposed. Removal of the vehicle, and forwarding, care or preservation of the load shall be under the control of and at the risk of the owner or driver. Vehicles impounded shall be subject to a lien, subject to a prior valid bona fide lien of prior record, in the amount of the civil fine and costs and if the civil fine and costs are not paid within 90 days after the seizure, the Court shall certify the unpaid judgment to the Owosso City Attorney, who may proceed to enforce the lien by foreclosure sale in accordance with procedure authorized in the case of chattel mortgage foreclosures.

(c) Subject to Section 33-150.13 (d), an owner of a vehicle, or a lessee of the vehicle, or other person, who causes or allows a vehicle to be loaded and driven or moved on a highway, when the weight of that vehicle violates Section 33-150.10, is responsible for a civil infraction and shall pay a civil fine in an amount equal to three cents per pound for each pound of excess load over 1,000 pounds when the excess is 2,000 pounds or less; six cents per pound of excess load when the excess is over 2,000 pounds but not over 3,000 pound; nine cents per pound for each pound in excess load when the excess is over 3,000 pounds but not over 4,000 pounds; 12 cents per pound for each pound of excess load when the excess is over 4,000 but not over 5,000 pounds; 15 cents per pound for each pound of excess load when the excess is over 5,000 pounds but not over 10,000 pounds; and 20 cents per pound for each pound of excess load when the excess is over 10,000 pounds.

(d) If the Court determines that the motor vehicle or the combination of vehicles was operated in violation of this Section, the court shall impose a fine as follows:

(1) If the Court determines that the motor vehicle or the combination of vehicles was operated in such a manner that the gross weight of the vehicle or the combination of vehicles would not be lawful by a proper distribution of the load upon all the axles of the vehicle or the combination of vehicles, the Court shall impose a fine for the violation according to the schedule provided for in Section 33-150.13 (c).

(2) If the Court determines that the motor vehicle or the combination of vehicles would be lawful by a

proper distribution of the load upon all of the axles of the vehicle or the combination of the vehicles, but that one or more axles of the vehicle exceeded the maximum allowable axle weight by 4,000 pounds or less, the court shall impose a misload fine of \$200.00 per axle. Not more than three axles shall be used in calculating the fine to be imposed under this Section. This Section does not apply to vehicles subject to the maximum loading provisions of Section 33-1501.10 (k) or to a vehicle found to be in violation of a special permit issued under Section 33-150.15.

(3) If the Court determines that the motor vehicle or the combination of vehicles would be lawful by a proper distribution of the load upon all of the axles of the vehicle or the combination of vehicles, but that one or more axles of the vehicle exceeded the maximum allowable axle weight by more than 4,000 pounds, the court shall impose a fine for the violation according to the schedule provided in Section 33-150.12 (c).

(e) A driver or owner of a commercial vehicle with other vehicles or trailers in combination, a truck or truck tractor, a truck or truck tractor with other vehicles in combination, or any special mobile equipment, who fails to stop at or bypasses any scales or weighing station, is guilty of a misdemeanor.

(f) Reserved.

(g) A driver or owner of a vehicle who knowingly fails to stop when requested or ordered to do so, or who fails to submit to a weighing by a police officer authorized to require the driver to stop and submit to a weighing of the vehicle and load, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both. A driver or person who dumps his or her load when ordered to submit to a weigh, or who otherwise attempts to commit or commits an act to avoid a vehicle weigh is in violation of this Section.

Sec. 33-150.14. - Axle weight requirements; vehicles equipped with lift axles.

(a) The axle weight requirements of this ordinance do not apply to a vehicle equipped with lift axles during the period in which axles are raised to negotiate an intersection, driveway, or other turn and until the lift axles are fully engaged after the period of time or the distance necessary to negotiate that intersection, driveway or other turn.

(b) This section does not exempt axle weight requirements due to a lift axle system that is not working properly or due to driver error or non-compliance.

(c) If a vehicle is to be weighed to determine whether the vehicle is being operated in violation of this ordinance or a rule promulgated under the Motor Carrier Safety Act, and the vehicle is equipped with lift axles that have been raised to allow the vehicle to negotiate an intersection, driveway, or other turn, the vehicle shall be weighed only after the lift axles have been fully lowered and are under operational pressure as provided in Section 33-150.14 (a). This section does not exempt axle weight requirements due to a lift axle system that is not working properly or due to driver error or non-compliance.

(d) As used in this section, "lift axle" means an axle on a vehicle that can be raised or lowered by mechanical means.

Sec. 33-150.15. - Special permits for non-conforming vehicles; applications; farm machinery, telephone, telegraph, or electric poles, concrete pipes, mobile homes.

(a) Pursuant to MCL 257.725, the Michigan Transportation Department or the Road Commission of Shiawassee County, upon receipt of a written application and upon good cause being shown, may issue a written special permit, authorizing an applicant to operate upon or remove from a highway maintained by the City, a vehicle or combination of vehicles that are any of the following:

(1) Of a size, weight, or load exceeding the maximum specified in this ordinance.

(2) Otherwise not in conformity with this ordinance.

(b) The special permit application shall be on a form prescribed by the Michigan Department of Transportation or the Road Commission of Shiawassee County and shall specifically describe the vehicle or vehicles and load to be operated or moved and the particular highways upon which the special permit to operate is requested.

(c) The Michigan Department of Transportation or the Road Commission of Shiawassee County may issue a special permit and charge a fee, which shall not exceed the administrative costs incurred. The special permit can authorize the operation of the following upon a highway:

(1) Traction engines or tractors having movable tracks with transverse corrugations upon the periphery of those movable tracks on farm tractors.

(2) Other farm machinery otherwise prohibited under this ordinance.

(d) A special permit shall specify the trip or trips and date or dates for which it is valid, and the Michigan Department of Transportation or the Road Commission of Shiawassee County may restrict or prescribe conditions of operation of a vehicle or vehicles, if necessary, to protect the safety of the public or to insure against undue damage to the road foundations, surfaces, structures, or installations, and may require a reasonable inspection fee and other security as set out in MCL 257.725 to compensate for damages caused by the movement. A special permit may be issued on an annual basis.

(e) A special permit issued under this section shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by a police officer. A person shall not violate any of the terms or conditions of the special permit.

(f) A person who violates this Section is responsible for a civil infraction.

(g) A person who is issued a special permit to move a mobile home under this section is subject to Section 33-150.5.

Sec. 33-150.16. - Regulation of highways by City; penalty for violations.

(a) For highways under the City's jurisdiction, except state trunk line highways, the City may do any of the following:

(1) Prohibit the operation of trucks or other commercial vehicles on designated highways or streets.

(2) Impose limitations as to the weight of trucks or other commercial vehicles on designated highways or streets.

(3) Provide that only certain highways or streets may be used by trucks or other commercial vehicles.

(b) Any prohibitions, limitations, or truck route designations established under Section 33-150.16 (a) shall be designated by appropriate signs placed on the highways or streets. The design and placement of the signs shall be consistent with the requirements of MCL 257.608.

(c) A person who violates a prohibition, limitation, or truck route designation established pursuant to Section 33-150.16 (a) is responsible for a civil infraction.

Sec. 33-150.17. - Police officer's authority to enforce ordinance on boundary streets and highways.

Pursuant to MCL 257.726a, a police officer of the City may exercise authority and powers outside his or her own City or County when enforcing this ordinance on a street or highway which is on the boundary of the City or County, the same as if the police officer were in his or her own City and County.

Sec. 33-150.18. - Stopping motor vehicles for possible load, weight, or height violations; temporary detention; arrests.

Any police officer having reason to believe that the load, weight, or height of a vehicle or load is in violation of Sections 33-150.4, 33-150.8, 33-150.11 or 33-150.13, and that violation is a misdemeanor, may require the driver of the vehicle to stop, and the officer may investigate, weigh, or measure the vehicle or load. If after personally investigating, weighing, or measuring the vehicle or load, the officer determines that the load, weight, or height of a vehicle or load are in violation of the requirements of Sections 33-150.4, 33-150.8, 33-150.11, or 33-150.13, the officer may temporarily detain the driver of the vehicle for purposes of making a record or vehicle check, and may make an arrest for the violation, and may proceed as otherwise provided in this Ordinance.

SECTION 3. ADDITION. That Article VIII, Motor carrier safety, shall be added as follows:

Sec. 33-151.0. – Short title. This article shall be known and may be cited as the “Motor Carrier Safety Ordinance.”

Sec. 33-151.1. - Adoption of federal regulations; modifications of federal definitions; application of ordinance; definitions.

(a) The City of Owosso adopts the following provisions of Title 49 of the Code of Federal Regulations, on file with the office of the Michigan Secretary of State and the Owosso City Clerk, except where modified by this ordinance:

(1) Hazardous materials regulations, being 49 CFR parts 100 through 180, except for the transportation of agricultural products (for which an exception from the application of 49 CFR subchapter C and 49 CFR subchapters G and H, part 172, is provided under 49 CFR 173.5), is specifically authorized if the transportation is in compliance with this ordinance and state law.

(2) Motor carrier safety regulations, being 49 CFR parts 40, 356, 365, 368, 371 through 373, 375, 376, 379, 382, 385, 387, 390 through 393, 395 through 399 including the appendices of each part except for the following:

a. Except as provided in this subparagraph, where the term “United States Department of Transportation”, “Federal Motor Carrier Safety Administration”, “Federal Motor Carrier Safety Administrator”, “Director”, “Bureau of Motor Carrier Safety”, Pipeline and Hazardous Materials Administration”, or “Associate Administrator for Hazardous Materials Safety” appears, it refers to the Michigan Department of State Police or the City of Owosso. If the term is being used for purposes of 49 CFR 397 as it relates to routing and movement of hazardous materials, it refers to the Michigan Department of Transportation or the City of Owosso.

b. Where “inter-state” appears, it shall mean intra-state or inter-state, or both, as applicable, except as specifically provided in this ordinance.

c. Where “Special Agent of the Federal Motor Carrier Safety Administration”, “Administration Personnel”, or “Hazardous Materials Enforcement Specialist” appears, it either means a police officer or an enforcement member of the Motor Carrier Division of the City.

d. Where MCS 63 appears, it means MC 9 and MC 9b.

e. Where MCS 64 appears, it means UD-70.

f. Exempt intra-City zones and the regulations applicable to exempt intra-City zones do not apply to this ordinance.

(b) This ordinance does not apply to a bus operated by a public transit agency operating under any of the following:

(1) A county, city, township, or village as provided by law or other authority incorporated under 1963 PA 55, MCL 124.351 to MCL 124.359. Each authority and governmental agency incorporated under 1963 PA 55, MCL 124.351 to MCL 124.359, has the exclusive jurisdiction to determine its own contemplated routes, hours of service, estimated transit vehicle miles, costs of public transportation services, and projected capital improvements or projects within its service area.

(2) An authority incorporated under the Metropolitan Transportation Authorities Act of 1967, 1967 PA 204, MCL 124.401 to MCL 124.426, or an authority that operates a transportation service pursuant to an inter-local agreement under the Urban Cooperation Act of 1967, (Ex Sess.) PA 7, MCL 124.501 to MCL 124.512.

(3) A contract entered into pursuant to 1967 (Ex Sess.) PA 8, MCL 124.531 to MCL 124.536 or 1951 PA 35, MCL 124.1 to MCL 124.13.

(4) An authority incorporated under the Public Transportation Authority Act, 1986 PA 196, MCL 124.451 to MCL 124.479, or a nonprofit corporation organized under the Nonprofit Corporation Act, 1982 PA 162, MCL 450.2101 to MCL 450.3192, that provides transportation services.

(5) An authority financing public improvements to transportation systems under the Revenue Bond Act of 1933, 1933 PA 94, MCL 141.101 to MCL 141.140.

(c) As used in this ordinance:

“Hazardous material vehicle inspection or repair facility” means a commercial enterprise that performs inspections, certification, testing, or repairs to commercial motor vehicles transporting hazardous materials as required by 49 CFR parts 100 to 180 and includes motor carriers that perform the inspections, certification, testing, or repairs to vehicles owned or leased by the motor carrier.

Sec. 33-151.2. - Operation of commercial motor vehicle; requirements; qualifications for operation in intra-state transportation.

(a) A person shall not drive a commercial motor vehicle unless he or she is qualified to drive that vehicle. A motor carrier shall not require or permit a person to drive a commercial motor vehicle unless that person is qualified to drive that vehicle.

(b) In the case of intra-state or intra-city transportation, a person is qualified to drive a commercial motor vehicle if he or she meets all the requirements of 49 CFR part 391, except the following provisions:

(1) Except as otherwise provided in section (2), the person is at least 18 years old when transporting intra-state or intra-city property or passengers.

(2) The person is at least 21 years old when transporting hazardous materials in a quantity that requires the vehicle to be marked or placarded under 49 CFR parts 100 to 180.

(3) The person is eligible for and displays a grandfather rights card issued in accordance with the Motor Carrier Safety Act, MCL 480.11, et. seq.

Sec. 33-151.3. - Trailers; equipment with surge brakes.

Trailers with a gross vehicle weight or gross vehicle weight rating of 15,000 pounds or less or trailer-vehicle combinations with an actual gross vehicle weight or a gross vehicle weight rating of 26,000 pounds or less may be equipped with surge brakes for intra-state and intra-city operations as allowed by section 705(1)(c) of the Michigan Vehicle Code, 1949 PA 300, MCL 257.705.

Sec. 33-151.4. - Application of ordinance to drivers for intra-state or intra-city motor carriers regularly employed for period beginning on or before June 10, 1984; application of certain

requirements of ordinance to all drivers granted grandfather rights; duration of grandfather rights; application of exemption.

The provisions of this ordinance and 40 CFR 391.21, adopted by reference, relating to the applications for employment, 49 CFR 391.23, adopted by reference, relating to investigations and inquiries, and 49 CFR 391.31 and CFR 391.33 adopted by reference, relating to road tests, do not apply to a driver who has been a regularly employed driver of an intra-state or intra-city motor carrier of property for a continuous period which began on or before June 10, 1984, as long as he or she continues to be a regularly employed driver of that motor carrier or a driver who has been a regularly employed driver of an intra-state or intra-city motor carrier of passengers for a continuous period which began on or before March 3, 1991, as long as he or she continued to be a regularly employed driver of that motor carrier. Such a driver is qualified to drive a commercial motor vehicle if he or she fulfills the requirements of section 151.2 (4) (b).

Sec. 33-151.5. - Application of ordinance to operation of farm vehicles, implements of husbandry, public utility vehicles, government vehicles, combinations of vehicles, school buses, motor buses, and commercial vehicles engaged in seasonal construction related activities; definitions.

(a) In the case of intra-state or intra-city transportation, the provisions of 49 CFR 391.21, adopted by reference, relating to application for employment, 49 CFR 391.23, adopted by reference, relating to investigations and inquires, 49 CFR 391.31, adopted by reference, relating to road tests, 49 CFR part 395, adopted by reference, relating to hours of service, 49 CFR 391.41 to 391.45, adopted by reference, to the extent that they require a driver to be medically qualified or examined and to have a medical examiner's certificate on his or her person and the provisions of this ordinance relating to files and records do not apply to a farm vehicle driver as defined in 49 CFR 390.5, adopted by reference.

(b) For intra-state or intra-city transportation, the provisions of this ordinance do not apply to a self-propelled implement of husbandry or an implement of husbandry being drawn by a farm tractor or another implement of husbandry.

(c) The provision of this ordinance related to driver qualifications do not apply to public utility, telephone, and cable television company service employees if those employees are not otherwise being used as a regularly employed driver and are not operating a vehicle that meets the definition of a commercial motor vehicle in 49 CFR part 383.

(d) The requirements of 49 CFR part 395 do not apply to any driver of a public utility service vehicle when being used in cases of emergency. As used in this subsection, "emergency" means any instance of loss of public utility service due to an unforeseen circumstance, a natural disaster, or an act of God. A declaration of emergency by a public official is not required to constitute an emergency under this subsection.

(e) A commercial motor vehicle constructed and maintained so that the body chassis or other parts of the vehicle afford the rear end protection required by 49 CFR 393.86 is in compliance with that section.

(f) This ordinance and the rules promulgated under the federal regulations which are adopted by reference do not apply to a commercial motor vehicle owned and operated by a unit of government or its employees, except as otherwise provided by this ordinance, and except for all of the following parts of 49 CFR:

- (1) Part 382.
- (2) Part 391.
- (3) Part 392.
- (4) Part 393.

(g) A combination of vehicles with an actual combination gross vehicle weight or a gross combination weight rating of 26,000 pounds or less, provided the trailer or semitrailer has an actual gross vehicle or gross vehicle weight rating of 15,000 pounds or less, may be equipped with surge brakes for intra-state

and intra-city operation as allowed by section 705 (1) (c) of the Michigan Vehicle Code, 1949 PA 300, MCL 257.705. Vehicles of any size that are transporting hazardous materials in an amount that requires placarding or vehicles that are designed to transport more than eight passengers, including the driver, are prohibited from being equipped with surge brakes for intra-state and intra-city operation.

(h) This ordinance and the rules promulgated under the federal regulations which are adopted by reference do not apply to a school bus as defined in the Pupil Transportation Act, 1990 PA 187, MCL 257.1801 to MCL 257.1877, or a bus defined and certified under the Motor Bus Transportation Act, 1982 PA 432, MCL 474.101 to MCL 474.141.

(i) As used in Section 33-151 (c) and (d), "public utility" means a person or corporation operating equipment or facilities for producing, generating, transmitting, delivering, or furnishing gas or electricity for the production of light, heat, or power for the public for compensation.

(j) As used in this section:

(1) "Implement of husbandry" means that term as defined in section 21 of the Michigan Vehicle Code, 1949 PA 300, MCL 257.21.

(2) "Farm tractor" means that term as defined in section 16 of the Michigan Vehicle Code, 1949 PA 300, MCL 257.16.

Sec. 33-151.6. - Submission of transportation safety related documents by motor carriers and hazardous materials vehicle inspection and repair facilities to motor carrier officers; facsimile of motor carrier division identification card; inspection of cargo or vehicle without warrant by motor carrier officer.

(a) Motor carriers shall submit, upon demand, all their transportation safety related documents, such as all records and information pertaining to any accident, drivers records of duty status, bills of lading, shipping records, driver time and payroll records, driver qualification records, vehicle maintenance records, and equipment for inspection or copying during regular business hours to any Owosso motor carrier enforcement police officer.

(b) Hazardous materials vehicle inspections and repair facilities shall submit, upon demand, all their transportation safety related documents as required by this ordinance, such as hazardous materials tank certification and repair documents, and annual inspection certification documents to any Owosso motor carrier enforcement police officer.

(c) A motor carrier or a hazardous material vehicle inspection or repair facility operating within the City with main offices in another city, state or province shall submit all transportation safety related documents as outlined in Section 33-151 (a) for inspection and copying within 10 working days after receiving formal notification requesting the documents.

(d) An Owosso motor carrier enforcement police officer, may without a warrant, require the cargo carrying portion of a vehicle to be opened for inspection of the cargo, any object within that portion of the vehicle, or the interior of the vehicle or any compartment within the interior of the vehicle. If a commercial motor vehicle is inspected by breaking the load seal, then the police officer shall give to the driver a signed receipt of inspection and the police officer shall be responsible for applying a City of Owosso seal.

Sec. 33-151.7. - Penalties for violations of ordinance or rules; warrantees stops and investigations of motor vehicles; issuance of citations; enforcement of federal or foreign out-of service orders; penalties for violations of out-of-service orders.

(a) Except as provided in Sections 33.151.9, 33.151.10 and 33.151.11, any person, driver, or motor carrier, as defined by 49 CFR 390.5, who violates this ordinance or a rule adopted by reference under this ordinance, or permits or requires any person to violate this ordinance or a rule adopted by reference under this ordinance, is responsible for a civil infraction and may be ordered to pay a fine of not more

than \$250.00 for each violation.

(b) A Owasso motor carrier enforcement police officer, with probable cause to believe that a motor vehicle is being operated in violation of this ordinance or a rule adopted by reference under this ordinance, may stop the motor vehicle and inspect the motor vehicle. If a violation is found, the officer may issue a notice to appear for that violation.

Sec. 33-151.8. - Adoption by Reference of Rules Promulgated by the Michigan Department of State Police.

Any rules promulgated by the Michigan Department of State Police necessary to the accomplishment of purposes of the Motor Carrier Safety Act, 1963 PA 181, MCL 480.11, et. seq. are hereby adopted by reference, as amended.

Sec. 33-151.9. - Penalties; "serious safety defect" defined.

(a) A driver, person, or motor carrier, as defined by 49 CFR 390.5, who operates or who requires or permits the driver to operate a commercial motor vehicle with a serious safety defect in violation of this ordinance or a rule adopted by reference under this ordinance, is responsible for a civil infraction and shall be assessed a fine of not more than \$500 for each violation. A fine ordered to be paid by the district court under this Section shall be paid to the Court and the Court shall apply the fines to the City and the State for library purposes, as provided by law.

(b) As used in this Section, "serious safety defect" means a violation of this ordinance or a rule adopted by reference under this ordinance relative to brakes, tires, steering, coupling devices, headlights, taillights, brake lights, and turn signals that results in the vehicle being placed out of service.

Sec. 33-151.10. - Offenses relating to operating or requiring or permitting operation of commercial motor vehicle in violation of provisions of ordinance or rules related to transportation of hazardous materials; penalties.

(a) A person who operates or who requires or permits a person to operate a commercial motor vehicle in violation of this ordinance or a rule adopted by reference under this ordinance related to the transportation of hazardous materials, if the vehicle is transporting a package required to be marked or labeled under 49 CFR parts 100 to 180, is responsible for a civil infraction and may be ordered to pay a fine of not more than \$500.00 for each violation.

(b) A person or entity identified in Section 33-151.10 (a) who knowingly or willfully violates this ordinance or a rule adopted by reference under this ordinance is, upon conviction, guilty of a misdemeanor punishable by imprisonment of not more than 90 days or a fine of not more than \$500.00, or both, for each violation.

(c) A person or entity identified in Section 33-151.9 (a), who causes injury or death during a violation of this ordinance, while a vehicle identified in subsection (a) that is transporting a package required to be marked or labeled under 49 CFR parts 100 to 180 is, upon conviction, guilty of a misdemeanor punishable by imprisonment of not more than 90 days or a fine of not more than \$500.00, or both, for each violation.

(d) An officer, employee, owner, or agent of an individual, partnership, corporation, or association, or their lessees or receiver appointed by a court that is the owner or user of any hazardous materials vehicle inspection or repair facility that violates a section of this ordinance, or a rule adopted by reference under this ordinance, related to the transportation of hazardous materials, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both, for each violation.

Sec. 33-151.11. - Issuance and contents of compliance and shut down orders; penalties for failure to comply with shut down orders.

(a) As used in this section:

(1) "Immediate destination" means the next scheduled stop of a commercial vehicle already in motion where the cargo on board can be safely secured.

(2) "Motor carrier division" means the motor carrier division of the Michigan State Police and/or the City of Owosso.

(3) "Person" means an individual, driver, or employee or a firm, motor carrier, lessee, lesser, association, partnership, or corporation, and their affiliated or related successors, that undertakes to control, direct, conduct, or otherwise perform transportation by commercial motor vehicle upon the public highways of this city.

(4) "Shut down order" means a court order issued to the Owosso police department motor carrier enforcement division upon proof shown of unreasonable risk or an imminent hazard.

(5) "Unreasonable risk or an imminent hazard" shall be defined as any condition of commercial motor vehicle, employee, or commercial motor operation which creates, causes, or compounds the substantial likelihood that death, serious illness, or severe personal injury may occur if not discontinued immediately.

(6) Upon determination that the continued operation of commercial motor vehicles by a person upon the highways of this City and State poses an unreasonable risk or an imminent hazard to the public safety, the motor carrier division of the Owosso Police Department shall issue a compliance order. The order may direct a person to make certain changes, repairs, or alterations to the person's vehicles or operations, to comply with the laws of the City and the State of Michigan. In making an order, restrictions shall not be imposed on any employee or person beyond that required to abate the hazard. Any vehicle or driver operating during the specified time period of the order shall be in compliance with all applicable laws and rules.

(7) A compliance order shall include the name and address of the person and the chief operating officer of the person, the reason or reasons for the order, and the requirements or conditions that must be met for rescission of the order. The order shall also include a statement that the person has a set time limit to comply with the order. If the set time limit expires and the person is not in compliance with the order, the motor carrier division of the Owosso Police Department may seek a shut down order from the 66th Judicial District Court. The Motor Carrier Division of the Owosso Police Department shall set the time limit for compliance, with the compliance order to be not less than 30 days and not more than 180 days.

(8) Upon petition to the 66th Judicial District Court by the motor carrier division of the Owosso Police Department, the court may issue a shut down order. The order shall direct a vehicle or vehicles or employee or employees out of service from further operations, or shall direct a person to cease all or part of the person's commercial motor vehicle operation. In making such an order, restrictions shall not be imposed on any employee or person beyond that required to abate the hazard.

(9) A shut down order shall include the name and address of the person and the chief operating officer of the person, the reason or reasons for the order, the requirements or conditions that must be met for rescission of the order, and a statement of the right of appeal.

(10) An order to any person to cease all or part of its operation shall not prevent vehicles in transit at the time the order is served from proceeding to their immediate destinations, unless that vehicle or person is specifically ordered out of service. However, vehicles and drivers proceeding to their immediate destination shall be subject to compliance upon arrival.

(11) A person who fails to comply with a shut down order is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00 for each violation, or by imprisonment for not more than 90 days, or both. A person or vehicle found operating on the highway of this City while under a shut down order

shall be immediately stopped, and impounded or arrested. The owner or lessee of the vehicle shall be responsible for any costs incurred during impoundment. The vehicle shall be released upon the Court's determination that there is compliance with the order.

Sec. 33-151.12. - Venue of prosecutions under this ordinance.

When this ordinance or a rule adopted by reference under this ordinance has been violated, the offense may be prosecuted in the 66th Judicial District Court if the motor vehicle, driver or operator implicated was situated in or passed through the City when the offense was committed.

Sec. 33-151.13. - Incidents involving transportation of hazardous materials; notification of state police and fire department.

Immediately following any of the following occurrences involving the transportation of hazardous materials, the owner, driver, or lessee, or representative of the owner, driver, or lessee, shall notify the motor carrier division of the Department of State Police, the motor carrier division of the Owosso Police Department and the Owosso Fire Department of the known details regarding the incident.

Sec. 33-151.14. - Vehicle combination transporting combustible liquids; requirements; information required to be on file; retention and transfer of information; applicability of requirements in subsections (b) and (c); transport of flammable liquids, gases, or compressed gases by vehicle combinations, equipment requirements; retention of records regarding devices; compliance with other requirements by motor vehicles transporting flammable liquids or gases.

(a) A truck tractor pulling a semitrailer and a trailer, or pulling two semitrailers, shall not transport a combustible liquid unless the vehicle combination meets the following requirements:

(1) Is equipped with a device that restricts the horizontal and vertical rotation of the dolly assemblage of the vehicle combination in a manner that maintains the longitudinal tracking of the dolly and semitrailer in a truck, tractor, semitrailer, and trailer combination, or the dolly and the truck in a truck and trailer combination. This device shall be welded to the vehicle in a workmanlike manner, and the efficiency of a weld shall not be less than 85% of the mechanical properties of the adjacent metal in the chassis.

(2) Is equipped with stops in the spring hangers of each semitrailer and trailer in the vehicle combination in a manner that improves the stability of the vehicle combination by reducing the free play of the leaf spring suspension to a maximum of $\frac{3}{4}$ of an inch when the spring passes from tension to compression.

(b) The owner of the semitrailer or trailer to which the device described in Section 33-151.14(a) is attached shall keep on file in their principal place of business the following information:

(1) Specifications and plans of the device.

(2) Name of the manufacturer of the device.

(3) Date of installation of the device

(4) An individual manufacturer identification number which is stamped or permanently affixed to the device.

(c) The information required in subsection (b) shall be kept by the vehicle's owner and shall be transferred to the new owner if the vehicle is sold, or may be destroyed if the vehicle is retired from service or scrapped.

(d) The requirements specified in Section 33-151.14 (b) and (c) apply to devices affixed to vehicles on or after January 8, 1996.

(e) Commercial motor vehicles used to transport flammable liquids, flammable gases, or compressed flammable gases shall also comply with Section 33-150.11 of this ordinance.

Sec. 33-151.15. - Adoption or enforcement of inconsistent ordinance or resolutions; disposition of fines for operation of vehicles with serious safety defects; issuance of multiple citations within 24 –hour period for violation of provisions substantially corresponding to MCL 257.683 to MCL 257.725a; dismissal of City citations upon production of proof of repair of equipment violations; requirements for classification as motor carrier enforcement officer.

(a) This ordinance shall not be amended by the City of Owosso to adopt or enforce provisions which are inconsistent with the Motor Carrier Safety Act, being MCL 480.11, et. seq. As used in this section, “inconsistent means a provision or rule that is more permissive or more restrictive than the Motor Carrier Safety Act, or that would require more action, equipment, or permits than required by the Motor Carrier Safety Act, or that prevents or obstructs compliance with the Motor Carrier Safety Act.

(b) The fine for operating a vehicle with a serious safety defect, which is ordered to be paid under this ordinance or a resolution adopted by the City of Owosso that is consistent with Section 33-151.9, shall be paid as follows:

- (1) Seventy percent to the City of Owosso.
- (2) Thirty percent for library purposes, as provided by law.

(c) Section 33-151.14 (b) does not apply to a fine ordered to be paid for a case in which the citation is dismissed, as set forth below.

(d) The owner or operator of a commercial motor vehicle shall not be issued more than one citation for each violation of the provisions of this ordinance regulating the operation of a commercial motor vehicle and substantially corresponding to 683 to 725a of the Michigan Vehicle Code, 1949 PA 300, MCL 257.683 to MCL 257.725a, within a 24-hour period. If the owner or operator of a commercial motor vehicle is issued a citation by the City of Owosso for an equipment violation that does not result in the vehicle being placed out of service, the court shall dismiss the citation if the owner or operator of that commercial motor vehicle provides written proof of the court within 14 days after the citation is issued showing that the defective equipment indicated in the citation has been repaired.

(e) In order to be classified as a motor carrier enforcement officer, an Owosso police officer must have training equal to the minimum training requirements, including any annual training updates, established by the Michigan Department of State Police for an officer of the motor carrier division of the Michigan Department of State Police. A police officer who has received training equal to these minimum training requirements before the effective date of this ordinance is considered a motor carrier enforcement officer for purposes of the Michigan Motor Carrier Safety Act and this ordinance.

Sec. 33-151.16. - Transfer of hazardous materials on highways, roads, streets, or alleys; overfilling of containers during transfers; penalties.

(a) Except as provided in Section 33-151.16 (b), a person, driver, owner, carrier, lessee, or lesser shall not transfer or allow to be transferred a hazardous material from a cargo tank, portable tank, or any other container to any cargo tank, portable tank, fuel tank, or any other container on a highway, road, street, or alley within the City.

(b) Section 33-151.16 (a) does not apply to the following transfer situations:

- (1) Fueling machinery or equipment for construction, farm, and maintenance use.
- (2) Fueling emergency vehicles.

(3) Under emergency conditions, a transfer may be made provided it is approved by the Owosso Fire Chief, or his/her designee and the Bureau of Fire Service created in section 1b of the Fire Prevention Code, 1941 PA 207, MCL 29.1b, or a hazardous materials investigator of the motor carrier division of the Michigan Department of State Police pursuant to their respective authority under the Fire Prevention Code, 1941 PA 207, MCL 29.1 to MCL 29.34.

- (c) A person shall not overfill a container, including a storage tank, during a transfer of a hazardous material from or into a vehicle, so that hazardous material is released from the package or container.
- (d) The penalty for violating this section is as prescribed in Section 33-151.10.

Sec. 33-151.17. - Transportation or allowance of transportation of vehicle carrying hazardous materials on publicly maintained route.

- (a) A person, driver, owner, carrier, lessee, or lesser shall not transport or allow to be transported a vehicle carrying hazardous materials in an amount required to be placarded under title 49 of the Code of Federal Regulations on a publicly maintained route as identified on the national hazardous materials route registry as determined by the United States Department of Transportation under title 49 CFR.
- (b) The penalty for violating this section shall be as prescribed in Section 33-151.10.

Sec. 33-151.18. - Enforcement of civil infractions; procedure for provision of security and appearance by nonresidents stopped for civil infractions; disposition by police officers at end of tour of duty of certificates or deposits of money taken as security for appearance; entry of default judgment and forfeiture of posted certificate or deposit.

- (a) A civil infraction action shall be enforced in the manner provided for enforcement under this Chapter.
- (b) When a person who is not a resident of the State of Michigan is stopped for a civil infraction in the City of Owosso, the police officer making the stop may take security for the non-residents appearance in court. The person stopped may recognize to the officer or to the court for his or her appearance by leaving with the officer or court a guaranteed appearance certificate or a sum of money not to exceed \$100.00.
- (c) If a magistrate is available for an immediate appearance, upon demand of the person stopped, the officer immediately shall take the nonresident driver before the magistrate to answer to the civil infraction alleged. If the nonresident defendant requests a hearing, the hearing shall be scheduled and the defendant shall leave with the court the guaranteed appearance certificate or deposit as security for appearance at the scheduled informal or formal hearing.
- (d) The officer receiving a guaranteed appearance certificate or deposit of money shall give a receipt to the person stopped for the guaranteed appearance certificate or the money deposited together with the written citation.
- (e) At or before the completion of his or her tour of duty, a police officer taking a certificate or deposit of money shall deliver the certificate or deposit of money and the citation either to the court named in the citation or to the police chief or person authorized by the police chief to receive certificates or deposits. The police chief or person authorized by the police chief shall deposit the certificate or the money deposited and the citation with the court. Failure to deliver the money deposited shall be embezzlement of public money.
- (f) If the person who posts a certificate or deposit fails to appear as required in the citation or fails to appear for a scheduled informal or formal hearing, the district court shall enter a default judgment against the person, and the guaranteed appearance certificate or money deposit shall be forfeited and applied to any civil fine or costs ordered.

- (g) For purposes of this Section, "guaranteed appearance certificate" means a card or certificate

containing a printed statement that a surety company authorized to do business in Michigan guarantees the appearance of the person whose signature appears on the card or certificate and that the company, if the person fails to appear in court at the time of a scheduled informal or formal hearing or to pay any fine or costs imposed, will pay any fine, costs, or bond forfeiture imposed on the person in a total amount not to exceed \$200.00.

Sec. 33-151.19. - Prevention of throwing of water or other road surface substances from rear wheels of vehicles or combinations; use of flaps.

A truck, truck tractor, trailer, semitrailer, or any combination of these, when used on a highway, shall be constructed, equipped, or operated to prevent water or other road surface substances from being thrown from the rear wheels of the vehicle or combination at tangents exceeding 22 ½ degrees measured from the road surface. If a flap type device is used, it shall not have attached any type of lamp, breakable reflective material, or reflecting buttons nor may the device extend beyond the maximum width of the vehicle or combination

SECTION 4. SEVERABILITY. The various sections and provisions of this Ordinance shall be deemed to be severable, and should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of this Ordinance as a whole or any section or provision of this Ordinance other than the section or provision so declared to be unconstitutional or invalid.

SECTION 5. INCONSISTENT ORDINANCES. All ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are repealed.

SECTION 6. EFFECTIVE DATE. This amendment shall become effective September 23, 2013.

SECTION 7. AVAILABILITY. This ordinance may be purchased or inspected in the city clerks' office, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.



301 W. MAIN • OWOSSO, MICHIGAN 48867-2958 • (989) 725-0599 • FAX (989) 723-8854

MEMORANDUM

DATE: August 29, 2013

TO: OWOSSO CITY COUNCIL

FROM: Adam Zettel, AICP

RE: Delegation of Public Hearing Authority to Brownfield Authority

The Owosso Brownfield Redevelopment Authority (BRA) is charged with reviewing the details of proposed brownfield plans and brownfield amendments. Such plans include reimbursable expenses (like environmental abatement or demolition) on obsolete properties (such as the Wesener Building or Lebowsky Center). They also include the method by which future taxes may pay for such eligible expenses.

To complete this process in accordance with state statute a public hearing is required. Currently, the hearing is required in front of the city council. Because the larger discussion occurs in front of the BRA before the plan is finalized, we have also been holding public hearings at that time and inviting the affected taxing jurisdictions and public. The process is slowed substantially by requiring two public hearings, including publication and mailing, for new plans and amendments alike.

Public Act 502 of 2012 states that, “the governing body may delegate the public hearing process to the authority or to a subcommittee of the governing body subject to final approval by the governing body.”

I recommend the city council do exactly that and delegate the public hearing responsibility to the BRA for new plans and amendments. This will focus review efforts at BRA level, save publishing and mailing costs, and save developer/staff time. Contact me if you have any questions or questions on this matter.

RESOLUTION NO.

**DIRECTING THE OWOSSO BROWNFIELD AUTHORITY TO HOLD ALL
PUBLIC HEARINGS RELATED TO BRA AFFAIRS**

WHEREAS, the city of Owosso, Shiawassee County, Michigan, has an active Brownfield Redevelopment Authority/Local District Financing Authority; and

WHEREAS, Public Act 502 of 2012 of the State of Michigan (aka the Brownfield Act) reads that, "the governing body may delegate the public hearing process to the authority or to a subcommittee of the governing body subject to final approval by the governing body."; and

WHEREAS, delegating the responsibility for public hearings to the BRA would save the city and developers time and money.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that the City of Owosso hereby directs the Owosso Brownfield Redevelopment Authority to hold all public hearings related to the affairs of the BRA on behalf of the city council.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF OWOSSO,
SHIAWASSEE COUNTY, MICHIGAN THIS 3rd DAY OF SEPTEMBER, 2013.

AYES:
NAYS:
ABSTENTIONS:
ABSENT:

CITY OF OWOSSO

ATTEST:

Benjamin R. Frederick, Mayor

Amy K. Kirkland, City Clerk

RESOLUTION NO. _____

**A RESOLUTION CORRECTING ADMINISTRATIVE ERROR
IN RESOLUTION 69-2013 AUTHORIZING THE EXECUTION
OF A CONTRACT FOR REFUSE SERVICE WITH
WASTE MANAGEMENT OF MICHIGAN, INC.**

WHEREAS, the city of Owosso on July 1, 2013 approved Resolution 69-2013 authorizing the execution of a contract for refuse service with Waste Management of Michigan, Inc. which contained an error by stating that the two year bid was calculated at \$19,706.36 instead of \$10,277.62 with the in-Shiawassee County preference.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

FIRST: Resolution 69-2013 authorizing the execution of a contract for refuse service with Waste Management of Michigan, Inc. be corrected to show that the two year bid is \$10,277.62 with the in-Shiawassee County preference instead of \$19,706.36.

SECOND: The corrected bid tabulations dated July 24, 2013 are attached hereto.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF OWOSSO, SHIAWASSEE COUNTY, MICHIGAN THIS 3RD DAY OF SEPTEMBER 2013.

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

ATTEST:

Amy K. Kirkland, city clerk

Waste Management Bid

Est QTY	Unit	Description	2013/2014 Monthly Unit Price	2014/2015 Monthly Unit Price	Total Two Year Monthly Unit Price	
1	EA	Six (6) yard load-all container with lid to be placed at the Public Safety Building & picked up once weekly	\$ 70.72	\$ 70.72	\$ 141.44	\$ 1,697.28
1	EA	Six (6) yard load-all container with lid to be placed at the Public Works Garage & picked up twice weekly	\$ 141.43	\$ 141.43	\$ 282.86	\$ 3,394.32
2	EA	Four (4) yard load-all containers with lids to be placed at the Wastewater Plant and Filtration Plant; each to be picked up once weekly	\$ 47.15	\$ 47.15	\$ 94.30	\$ 2,263.20 (2 units X 24 months)
1	EA	Four (4) yard load-all containers with lids to be placed at the Public Works Garage & picked up twice weekly	\$ 94.28	\$ 94.28	\$ 188.56	\$ 2,262.72
SUBTOTAL			\$ 353.58	\$ 353.58	\$ 707.16	\$ 9,617.52
1	EA	to be placed at the Soccer Fields; to be picked up once weekly April, May & June (3) Months	\$ 47.15	\$ 47.15	\$ 94.30	\$ 282.90 (47.15 X 6 months over 2 years)
1	EA	Four (4) yard load-all container with lid to be placed at the Oakwood Ball Park; to be picked up once weekly May through August (4) Months	\$ 47.15	\$ 47.15	\$ 94.30	\$ 377.20 (47.15 X 8 months over 2 years)
SUBTOTAL			\$ 94.30	\$ 94.30	\$ 188.60	\$ 660.10
Total Monthly Bill			\$ 447.88	\$ 447.88	\$ 895.76	
Total Bid for 12 Months (and 24 Month total)			\$4,903.06	\$4,903.06	\$9,806.12	\$10,277.62
						X 3% \$ 308.33
						<u>\$10,585.95</u>
						Correct Bid per Sec 2-348 (1) of Municipal Code

24-Jul-13

Republic Services Bid

Est. Qty	Unit	Description	2013/2014 Monthly Unit Price	2014/2015 Monthly Unit Price	Total Two Year Monthly Unit Price	
1	EA	Six (6) yard load-all container with lid to be placed at the Public Safety Building & picked up once weekly	\$ 72.07	\$ 74.23	\$ 146.30	\$ 1,755.60
1	EA	Six (6) yard load-all container with lid to be placed at the Public Works Garage & picked up twice weekly	\$ 143.00	\$ 147.29	\$ 290.29	\$ 3,483.48
2	EA	Four (4) yard load-all containers with lids to be placed at the Wastewater Plant and Filtration Plant; each to be picked up once weekly	\$ 47.66	\$ 49.09	\$ 96.75	\$ 2,322.00 (2 units X 24 months)
1	EA	Four (4) yard load-all containers with lids to be placed at the Public Works Garage & picked up twice weekly	\$ 95.52	\$ 98.39	\$ 193.91	\$ 2,326.92
SUBTOTAL			\$ 358.25	\$ 369.00	\$ 727.25	\$ 9,888.00
1	EA	Four (4) yard load-all container with lid to be placed at the Soccer Fields; to be picked up once weekly April, May & June (3) Months	\$ 47.66	\$ 49.09	\$ 96.75	\$ 387.00 (96.75 X 6 months in two years)
1	EA	Four (4) yard load-all container with lid to be placed at the Oakwood Ball Park; to be picked up once weekly May through August (4) Months	\$ 47.66	\$ 49.09	\$ 96.75	\$ 387.00 (96.75 X 8 months in two years)
SUBTOTAL			\$ 95.32	\$ 98.18	\$ 193.50	\$ 774.00
Total Monthly			\$ 453.57	\$ 467.18		
Total Annual Bid (and 24 month total)			\$ 4,976.25	\$ 4,428.00		\$ 10,662.00
						X 6% \$ 639.72
						<u>\$ 11,301.72</u>
						Correct Bid per Sec 2-348 (1) of Municipal Code
24-Jul-13						

Granger Bid

Est. Qty	Unit	Description	2013/2014 Monthly Unit Price	2014/2015 Monthly Unit Price	Total Two Year Monthly Unit Price	
1	EA	Six (6) yard load-all container with lid to be placed at the Public Safety Building & picked up once weekly	\$ 65.00	\$ 65.00	\$ 130.00	\$ 1,560.00
1	EA	Six (6) yard load-all container with lid to be placed at the Public Works Garage & picked up twice weekly	\$ 130.00	\$ 130.00	\$ 260.00	\$ 3,120.00
2	EA	Four (4) yard load-all containers with lids to be placed at the Wastewater Plant and Filtration Plant; each to be picked up once weekly	\$ 85.00	\$ 85.00	\$ 170.00	\$ 4,080.00 2 units
1	EA	Four (4) yard load-all containers with lids to be placed at the Public Works Garage & picked up twice weekly	\$ 85.00	\$ 85.00	\$ 170.00	\$ 2,040.00
SUBTOTAL			\$ 365.00	\$ 365.00	\$ 730.00	\$ 10,800.00
1	EA	Four (4) yard load-all container with lid to be placed at the Soccer Fields; to be picked up once weekly April, May & June (3) Months	\$ 10.75	\$ 10.75	\$ 21.50	\$ 64.50 (10.75 X 6 months over years)
1	EA	Four (4) yard load-all container with lid to be placed at the Oakwood Ball Park; to be picked up once weekly May through August (4) Months	\$ 14.34	\$ 14.34	\$ 28.68	\$ 114.72 (14.34 X 8 Months over 2 years)
SUBTOTAL			\$ 25.09	\$ 25.09	\$ 50.18	\$ 179.22

Total Monthly \$ 390.09 \$ 390.09 \$ 8,939.22

Total Annual Bid (and Total 24 Month) \$ 4,559.22 \$ 4,559.22

	\$ 10,979.22
X 6%	\$ 658.75
	<u>\$ 11,637.97</u>

Correct Bid per Sec 2-348 (1) of Municipal Code



301 W. MAIN • OWOSSO, MICHIGAN 48867-2958 • (989) 725-0599

MEMORANDUM

DATE: August 27, 2013
TO: City Council
FROM: City Manager
RE: Ash and Wheeler school liaison officer agreements

Michael Ash and Michael Wheeler were selected to be the two school liaison officers who were to be employed by the city and assigned to the Owosso Public Schools. Applications were taken and a selection committee selected these two persons, both long-time law enforcement officers who had recently retired, Ash from the Shiawassee County sheriff's department and Wheeler from the Owosso police department.

The intent was to employ them as temporary employees. Then several issues complicated things including law enforcement certifications, liability insurance, taxes and retirements. Thus, to keep everything straight the independent contractor agreements were deemed the best course. The hourly wage was adjusted to cover FICA, unemployment, etc. which the city would have paid had they been temporary employees.

RESOLUTION 2013-____

RESOLUTION AUTHORIZING THE EXECUTION OF AN INDEPENDENT CONTRACTOR AGREEMENT WITH MICHAEL L. ASH

WHEREAS, the city of Owosso, Michigan, has determined that it is advisable, necessary and in the public interest to have school liaison officers; and

WHEREAS, it has been determined that Michael L. Ash is qualified to serve as a school liaison officer;

NOW THEREFORE BE IT RESOLVED by the city of Owosso, county of Shiawassee, state of Michigan:

FIRST: that the city of Owosso has heretofore determined that it is advisable, necessary and in the public interest to employ Michael L. Ash as a school liaison officer.

SECOND: that the city manager of the city of Owosso is hereby instructed and authorized to sign the document attached as Exhibit A, Independent Contractor Agreement Between the City of Owosso and Michael L. Ash effective August 23, 2013

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF OWOSSO, COUNTY OF SHIAWASSEE, MICHIGAN THIS 3th DAY OF SEPTEMBER, 2013.

**INDEPENDENT CONTRACTOR AGREEMENT BETWEEN
THE CITY OF OWOSSO AND MICHAEL L. ASH**

THIS INDEPENDENT CONTRACTOR AGREEMENT (“Agreement”) is between The City of Owosso, a Michigan municipal corporation, which has a principal place of business at 301 West Main Street, Owosso, Michigan 48867 (“City”) and Michael Ash who has a principal place of residence at 1220 Jason Lee Drive, Owosso, Michigan 48867 (“Contractor”).

WHEREAS, the City and Contractor wish to enter into an independent contractor relationship pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth in this Agreement, the adequacy of which is hereby acknowledged, the parties agree as follows:

1. Term of Agreement. This Agreement will become effective when signed by both parties; provided, however, that Contractor acknowledges and agrees that this Agreement is subject to and conditional upon approval by a majority vote of the City Council pursuant to Section 14-01 of the City’s Charter. This Agreement shall continue until terminated pursuant to Section 13 hereof.

2. Services to be Performed. Contractor agrees to provide the services of Michael L. Ash (“Ash”) to perform the functions of a school liaison officer. Contractor will establish its schedule for the performance of such services in accordance with the direction of the Owosso Public Schools Superintendent and the City of Owosso Director of Public Safety.

3. Independent Contractor Status. The parties agree that Contractor is an independent contractor, and that Contractor shall not be deemed to be an employee of the City. In its capacity as an independent contractor, Contractor agrees to and represents the following:

- a. Contractor has the right to perform services for third parties during the term of this Agreement, so long as they do not conflict with the duties that Contractor is performing for the City hereunder.
- b. The services required hereunder must be performed to the satisfaction of the Owosso Public Schools Superintendent and the City of Owosso Director of Public Safety.
- c. The services required by this Agreement shall be performed by Contractor and the City shall not hire, supervise, or pay any assistants to help Contractor.

The parties acknowledge and agree that City is entering into this Agreement with reliance on the representations made by the Contractor relative to its independent contractor status.

4. Payment. In consideration for all of the services to be performed by Contractor beginning August 23, 2013, the City agrees to pay Contractor the total sum of \$18.30 per hour. The City will not:

- a. withhold FICA (Social Security and Medicare taxes) from Contractor’s payments or make FICA payments on Contractor’s behalf, or
- b. make state or federal unemployment compensation contributions on Contractor’s behalf, or withhold state or federal income tax from Contractor’s payments.
- c. Contractor shall pay all taxes incurred while performing services under this Agreement, including all applicable income taxes and, if Contractor is not a corporation, self-employment (Social Security) taxes. On demand, Contractor shall provide the City with proof that such payments have been made.

5. Expenses, Materials, Services and Benefits. The City will provide Contractor with work space, office supplies, uniforms, equipment and such other services that the City determines are necessary for Ash to perform the services required hereunder. The City also will provide Contractor with coverage for Ash under the City's workers' disability compensation, general and police professional liability insurance policies, as they may exist from time to time. Contractor will not be entitled to reimbursement of out-of-pocket expenses relating to the services required under this Agreement unless reimbursement is approved in writing by the City in advance.

6. Permits and Licenses. Contractor represents that Contractor and Ash have complied with all federal, state, and local laws requiring business permits, certificates, and licenses required to carry out the services to be performed under this Agreement.

7. Fringe Benefits. Contractor understands that Contractor is not eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of the City.

8. Unemployment Compensation. The City shall make no state or federal unemployment compensation payments on behalf of Contractor. Contractor will not be entitled to these benefits in connection with work performed under this Agreement. If a Contractor files a petition for and receives unemployment compensation, the total amount of unemployment compensation awarded to and received by Contractor shall be deducted from and be an offset against the amount of compensation due and payable to Contractor by the City under this Agreement.

9. Entire Agreement. This is the entire Agreement between Contractor and Corporation. This Agreement may be modified only by a writing signed by both parties.

10. Applicable Law. This Agreement will be governed by the laws of the State of Michigan (but any provision of Michigan law shall not apply if the application of such provision would result in the application of the law of a state or jurisdiction other than Michigan).

11. Assignment and Delegation. Contractor may not assign or subcontract any rights or obligations under this Agreement without the City's prior written approval. Contractor may not designate anyone other than Ash to perform the services required hereunder without the City's prior written consent.

12. No Partnership. This Agreement does not create a partnership relationship. Contractor does not have authority to enter into contracts on the City's behalf.

13. Termination. This Agreement may be terminated by either party for any reason, with or without cause, upon fourteen (14) days advance written notice. Upon termination, Contractor will return all materials and equipment provided by the City under this Agreement.

14. Compliance with Other Agreements. Contractor represents and warrants that the execution of this Agreement by it and its performance of its obligations hereunder will not conflict with, result in the breach of any provision of or the termination of or constitute a default under any agreement to which Contractor is a party or by which Contractor is or may be bound.

15. Nondiscrimination. The parties agree that this Agreement will not be interpreted or enforced in a manner which discriminates on the basis of race, color, creed, religion, sex, age, national origin or disability.

16. Binding Arbitration. Any controversy or claim arising out of or relating in any way to this Agreement shall be settled exclusively by arbitration administered by the American Arbitration Association ("AAA") under its then-current National Rules for the Resolution of Employment Disputes,

and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. This Agreement to submit to binding arbitration specifically includes, but is not limited to, all claims that this Agreement has been interpreted or enforced in a discriminatory manner. Arbitration shall take place at the AAA office located in Southfield, Michigan. The parties will share equally all administrative charges and arbitrators' fees; provided, however, that, upon the conclusion of the arbitration, the arbitrator shall direct the losing party to reimburse the prevailing party for the prevailing party's actual and reasonable expenses and attorney fees incurred in the arbitration.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CITY OF OWOSSO

Donald D. Crawford, City Manager
Date: _____

Michael L. Ash
Dated: _____

ATTEST:

Amy K. Kirkland, City Clerk
Date: _____

RESOLUTION 2013-___

RESOLUTION AUTHORIZING THE EXECUTION OF AN INDEPENDENT CONTRACTOR AGREEMENT WITH MICHAEL G. WHEELER

WHEREAS, the city of Owosso, Michigan, has determined that it is advisable, necessary and in the public interest to have school liaison officers; and

WHEREAS, it has been determined that Michael G. Wheeler is qualified to serve as a school liaison officer;

NOW THEREFORE BE IT RESOLVED by the city of Owosso, county of Shiawassee, state of Michigan:

FIRST: that the city of Owosso has heretofore determined that it is advisable, necessary and in the public interest to employ Michael G. Wheeler as a school liaison officer.

SECOND: that the city manager of the city of Owosso is hereby instructed and authorized to sign the document attached as Exhibit A, Independent Contractor Agreement Between the City of Owosso and Michael G. Wheeler effective August 23, 2013

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF OWOSSO, COUNTY OF SHIAWASSEE, MICHIGAN THIS 3th DAY OF SEPTEMBER, 2013.

**INDEPENDENT CONTRACTOR AGREEMENT BETWEEN
THE CITY OF OWOSSO AND MICHAEL G. WHEELER**

THIS INDEPENDENT CONTRACTOR AGREEMENT (“Agreement”) is between The City of Owosso, a Michigan municipal corporation, which has a principal place of business at 301 West Main Street, Owosso, Michigan 48867 (“City”) and Michael Wheeler who has a principal place of residence at 1021 North Dewey Street, Owosso, Michigan 48867 (“Contractor”).

WHEREAS, the City and Contractor wish to enter into an independent contractor relationship pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth in this Agreement, the adequacy of which is hereby acknowledged, the parties agree as follows:

1. Term of Agreement. This Agreement will become effective when signed by both parties; provided, however, that Contractor acknowledges and agrees that this Agreement is subject to and conditional upon approval by a majority vote of the City Council pursuant to Section 14-01 of the City’s Charter. This Agreement shall continue until terminated pursuant to Section 13 hereof.

2. Services to be Performed. Contractor agrees to provide the services of Michael G. Wheeler (“Wheeler”) to perform the functions of a school liaison officer. Contractor will establish its schedule for the performance of such services in accordance with the direction of the Owosso Public Schools Superintendent and the City of Owosso Director of Public Safety.

3. Independent Contractor Status. The parties agree that Contractor is an independent contractor, and that Contractor shall not be deemed to be an employee of the City. In its capacity as an independent contractor, Contractor agrees to and represents the following:

- a. Contractor has the right to perform services for third parties during the term of this Agreement, so long as they do not conflict with the duties that Contractor is performing for the City hereunder.
- b. The services required hereunder must be performed to the satisfaction of the Owosso Public Schools Superintendent and the City of Owosso Director of Public Safety.
- c. The services required by this Agreement shall be performed by Contractor and the City shall not hire, supervise, or pay any assistants to help Contractor.

The parties acknowledge and agree that City is entering into this Agreement with reliance on the representations made by the Contractor relative to its independent contractor status.

4. Payment. In consideration for all of the services to be performed by Contractor beginning August 23, 2013, the City agrees to pay Contractor the total sum of \$18.30 per hour. The City will not:

- a. withhold FICA (Social Security and Medicare taxes) from Contractor’s payments or make FICA payments on Contractor’s behalf, or
- b. make state or federal unemployment compensation contributions on Contractor’s behalf, or withhold state or federal income tax from Contractor’s payments.
- c. Contractor shall pay all taxes incurred while performing services under this Agreement, including all applicable income taxes and, if Contractor is not a corporation, self-employment (Social Security) taxes. On demand, Contractor shall provide the City with proof that such

payments have been made.

5. Expenses, Materials, Services and Benefits. The City will provide Contractor with work space, office supplies, uniforms, equipment and such other services that the City determines are necessary for Wheeler to perform the services required hereunder. The City also will provide Contractor with coverage for Wheeler under the City's workers' disability compensation, general and police professional liability insurance policies, as they may exist from time to time. Contractor will not be entitled to reimbursement of out-of-pocket expenses relating to the services required under this Agreement unless reimbursement is approved in writing by the City in advance.

6. Permits and Licenses. Contractor represents that Contractor and Wheeler have complied with all federal, state, and local laws requiring business permits, certificates, and licenses required to carry out the services to be performed under this Agreement.

7. Fringe Benefits. Contractor understands that Contractor is not eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of the City.

8. Unemployment Compensation. The City shall make no state or federal unemployment compensation payments on behalf of Contractor. Contractor will not be entitled to these benefits in connection with work performed under this Agreement. If a Contractor files a petition for and receives unemployment compensation, the total amount of unemployment compensation awarded to and received by Contractor shall be deducted from and be an offset against the amount of compensation due and payable to Contractor by the City under this Agreement.

9. Entire Agreement. This is the entire Agreement between Contractor and Corporation. This Agreement may be modified only by a writing signed by both parties.

10. Applicable Law. This Agreement will be governed by the laws of the State of Michigan (but any provision of Michigan law shall not apply if the application of such provision would result in the application of the law of a state or jurisdiction other than Michigan).

11. Assignment and Delegation. Contractor may not assign or subcontract any rights or obligations under this Agreement without the City's prior written approval. Contractor may not designate anyone other than Wheeler to perform the services required hereunder without the City's prior written consent.

12. No Partnership. This Agreement does not create a partnership relationship. Contractor does not have authority to enter into contracts on the City's behalf.

13. Termination. This Agreement may be terminated by either party for any reason, with or without cause, upon fourteen (14) days advance written notice. Upon termination, Contractor will return all materials and equipment provided by the City under this Agreement.

14. Compliance with Other Agreements. Contractor represents and warrants that the execution of this Agreement by it and its performance of its obligations hereunder will not conflict with, result in the breach of any provision of or the termination of or constitute a default under any agreement to which Contractor is a party or by which Contractor is or may be bound.

15. Nondiscrimination. The parties agree that this Agreement will not be interpreted or enforced in a manner which discriminates on the basis of race, color, creed, religion, sex, age, national origin or disability.

16. Binding Arbitration. Any controversy or claim arising out of or relating in any way to this Agreement shall be settled exclusively by arbitration administered by the American Arbitration

Association (“AAA”) under its then-current National Rules for the Resolution of Employment Disputes, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. This Agreement to submit to binding arbitration specifically includes, but is not limited to, all claims that this Agreement has been interpreted or enforced in a discriminatory manner. Arbitration shall take place at the AAA office located in Southfield, Michigan. The parties will share equally all administrative charges and arbitrators’ fees; provided, however, that, upon the conclusion of the arbitration, the arbitrator shall direct the losing party to reimburse the prevailing party for the prevailing party’s actual and reasonable expenses and attorney fees incurred in the arbitration.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CITY OF OWOSSO

Donald D. Crawford, City Manager
Date: _____

Michael G. Wheeler
Dated: _____

ATTEST:

Amy K. Kirkland, City Clerk
Date: _____



301 W. MAIN OWOSSO, MICHIGAN 48867-2958 · (989) 725-0599 · FAX 723-8854

MEMORANDUM

DATE: September 3, 2013

TO: Owosso City Council

FROM: Mark A. Sedlak, Director of Public Works

RE: Payment #3-Final-Retainage for 2012 Stump Removal Program

A retainage amount of \$1,000 was held by the city to cover any issues that might occur after work was completed on the 2012 Tree and Stump Removal Program. No issues on the completed work have occurred and we are ready to close out the project and return the \$1,000.00 retainage.

We recommend council approve payment of the attached Payment #3-Final-Retainage to Wonsey Tree Service, Inc. in the amount of \$1,000.00. This project is funded through the 2012/2013 Major and Local Streets Tree Trimming Fund.

RESOLUTION NO. _____

**AUTHORIZING PAYMENT #3-FINAL-RETAINAGE TO
WONSEY TREE SERVICE, INC.
FOR WORK RELATED TO
THE 2012 STUMP REMOVAL PROGRAM**

WHEREAS, the city of Owosso, Shiawassee County, Michigan, has entered into an agreement with Wonsey Tree Service, Inc. for the 2012 Stump Removal Program; and

WHEREAS, no issues with the complete work has occurred and the city is closing out the project; and

WHEREAS, the city project manager recommends Payment #3-Final-Retainage in the amount of \$1,000.00, with said retainage amount having been agreed to by Wonsey Tree Service, Inc.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Owosso, Shiawassee County, Michigan that:

FIRST: The City of Owosso has heretofore determined that it is advisable, necessary and in the public interest to pay Wonsey Tree Service, Inc. the \$1,000.00 retainage amount.

SECOND: The accounts payable department is authorized to submit payment to the Wonsey Tree Service, Inc. in the amount of \$1,000.00 as detailed on the attached Payment #3-Final-Retainage as authorized by Council on September 3, 2013.

THIRD: The above expenses shall be paid from the 2012/2013 Major and Local Streets Tree Trimming Fund.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF OWOSSO,
SHIAWASSEE COUNTY, MICHIGAN THIS 3rd DAY OF SEPTEMBER, 2013.

Benjamin R. Frederick, Mayor

Amy K. Kirkland, City Clerk

**PERIODIC COST ESTIMATE
CITY OF OWOSSO
301 W. MAIN
OWOSSO, MI 48867**

1. Estimate No.:

3-FINAL-RETAINAGE

4. Date Prepared

6/3/2013

5. Period Ending

5/24/22013

2. Sponsor's Name

CITY OF OWOSSO

3. Sponsor's Address

**301 W. MAIN
OWOSSO, MI 48867**

6. Project No.

7. Name of Project

2012 STUMP Removal Program

8. Location of Project

Owosso

9. State:

MI

10. Name of Contractor

Wonsey Tree Service

11. Address of Contractor

**PO Box 1142, 10541 N Grafton Rd.
Alma MI 48801**

12. Work Performed Under:

Lump Sum Contract:

Unit Price Contract:

Force Account:

13. Description of Work

14. Sponsor's Contract No.

15. Original Estimated Cost this Contract or Force Account
\$17,700.00

16. Completion Time:

17. Percent Physical Completion

18. Dates

a. Notice to Proceed

b. Work to Commence

c. Completion Date

d. Est. or Actual Completion
104%

19. No of Days Contractor is

a. Ahead

b. In Arrears

20
Item
No.

21. Description of Item

22. LATEST REVISED DETAILED ESTIMATE

a. Quantity

b. Unit

c. Unit Price

d. Amount

23. WORK PERFORMED TO DATE

a. Quantity

b. Amount

c. %

1	Removal of stump size 18" & smaller	57	EA	\$ 75.00	\$ 4,275.00	115	\$ 8,625.00	202%
2	Removal of stump size 18" to 24"	65	EA	\$ 85.00	\$ 5,525.00	42	\$ 3,570.00	65%
3	Removal of stump size 24" & larger	79	EA	\$ 100.00	\$ 7,900.00	63	\$ 6,300.00	80%

TOTAL

\$ 18,495.00

LESS RETAINAGE

\$ -

SUB TOTAL

\$ 18,495.00

LESS PREVIOUS PAYMENT

\$ 17,495.00

TOTAL DUE

\$ 1,000.00

24. CERTIFICATION OF CONTRACTOR

I hereby certify that the work performed and materials supplied to date, as shown on this periodic cost estimate, represent the actual value of accomplishment under the terms of this contract in conformity with approved plans and specification; that the quantities shown were properly determined and are correct; and that there has been full compliance with all labor provisions included in the contract identified above.

BY: _____

Name of Contractor

Signature

Title

25. ACKNOWLEDGMENT AND CONCURRENCE OF PROJECT ENGINEER

I have examined this periodic cost estimate and concur in the certificate of the contractor.

Date

Signature, Director of Public Services



WARRANT 469
August 27, 2013

Vendor	Description	Fund	Amount
Michigan Municipal Risk Management Authority	Building and property insurance- 1 st installment – July 1, 2013 – June 30, 2014	General	\$105,719.50
Michigan Municipal League	Annual membership- October 1, 2013 – September 30, 2014	General	\$ 5,653.00
		Total	\$111,372.50



August 1, 2013

Michigan Municipal League Annual Meeting Notice

(Please present at the next Council, Commission or Board Meeting)

Dear Official:

The Annual Convention of the Michigan Municipal League will be held in Detroit, September 17-20, 2013. The "Annual Meeting" is scheduled for 4:00 pm on Wednesday, September 18 in the Richard Room at the Detroit Marriott at the Renaissance Center. The meeting will be held for the following purposes:

1. Election of Trustees. To elect six members of the Board of Trustees for terms of three years each (see #1 on page 2).
2. Policy. A) To vote on the Core Legislative Principles document.
In regard to the proposed League Core Legislative Principles, the document is available on the League website at <http://www.mml.org/delegate>. If you would like to receive a copy of the proposed principles by fax, please call Susan Vasher at the League at 800-653-2483.

B) If the League Board of Trustees has presented any resolutions to the membership, they also will be voted on. (See #2 on page 2.)
In regard to resolutions, member municipalities planning on submitting resolutions for consideration by the League Trustees are reminded that under the Bylaws, they must be submitted to the Trustees for their review by **August 16, 2013.**
3. Other Business. To transact such other business as may properly come before the meeting.

Designation of Voting Delegates

Pursuant to the provisions of the League Bylaws, you are requested to designate by action of your governing body one of your officials who will be in attendance at the Convention as your official representative to cast the vote of the municipality at the annual meeting, and, if possible, to designate one other official to serve as alternate. Please submit this information through the League website by visiting <http://www.mml.org/delegate> **no later than September 6, 2013.**

Regarding the designation of an official representative of the member to the annual meeting, please note the following section of the League Bylaws:

"Section 4.4 - Votes of Members. Each member shall be equally privileged with all other members in its voice and vote in the election of officers and upon any proposition presented for discussion or decision at any meeting of the members. Honorary members shall be entitled to participate in the discussion of any question, but such members shall not be entitled to vote. The vote of each member shall be cast by its official representative attending the meeting at which an election of officers or a decision on any proposition shall take place. Each member shall, by action of its governing body prior to the annual meeting or any special meeting, appoint one official of such member as its principal official representative to cast the vote of the member at such meeting, and may appoint one official as its alternate official representative to serve in the absence or inability to act of the principal representative."

1. Election of Trustees

Regarding election of Trustees, under Section 5.3 of the League Bylaws, six members of the Board of Trustees will be elected at the annual meeting for a term of three years. The regulations of the Board of Trustees require the Nominations Committee to complete its recommendations and post the names of the nominees for the Board of Trustees on a board at the registration desk at least four hours before the hour of the business meeting.

2. Statements of Policy and Resolutions

Regarding consideration of resolutions and statements of policy, under Section 4.5 of the League Bylaws, the Board of Trustees acts as the Resolutions Committee, and "no resolution or motion, except procedural and incidental matters having to do with business properly before the annual meeting or pertaining to the conduct of the meeting, shall be considered at the annual meeting unless it is either (1) submitted to the meeting by the Board of Trustees, or (2) submitted in writing to the Board of Trustees by resolution of the governing body of a member at least thirty (30) days preceding the date of the annual meeting." Thus the deadline this year for the League to receive resolutions is **August 16, 2013**. Please submit resolutions to the attention of Daniel P. Gilmartin, Executive Director/CEO at 1675 Green Rd., Ann Arbor, MI 48105. Any resolution submitted by a member municipality will go to the League Board of Trustees, serving as the resolutions committee under the Bylaws, which may present it to the membership at the Annual Meeting or refer it to the appropriate policy committee for additional action.

Further, "Every proposed resolution submitted by a member shall be stated in clear and concise language and shall be accompanied by a statement setting forth the reasons for recommending the proposed resolution. The Board shall consider the proposal at a Board meeting prior to the next annual meeting and, after consideration, shall make a recommendation as to the advisability of adopting each such resolution or modification thereof."

3. Posting of Proposed Resolutions and Core Legislative Principles

The proposed Michigan Municipal League Core Legislative Principles and any new proposed Resolutions recommended by the Board of Trustees for adoption by the membership will be available on the League website, to permit governing bodies of member communities to have an opportunity to review such proposals and delegate to their voting representative the responsibility for expressing the official point of view of the member at the annual meeting.

The Board of Trustees will meet on Wednesday, September 18 at the Detroit Marriott at the Renaissance Center for the purpose of considering such other matters as may be requested by the membership, in addition to other agenda items.

Sincerely,



David Lossing
President
Mayor of Linden



Daniel P. Gilmartin
Executive Director & CEO

Enc.



301 W. MAIN • OWOSSO, MICHIGAN 48867-2958 • (989) 725-0599

MEMORANDUM

DATE: August 27, 2013
TO: City Council
FROM: Amy K. Kirkland
City Clerk
RE: Cable Franchise Agreement – PEG fees

At the last meeting Councilperson Fox requested the cable franchise agreement be placed on the agenda for discussion. His intent was to discuss the possibility of charging a PEG fee in addition to the franchise fee. The PEG fee, by law, would be dedicated solely to funding our PEG channels. Currently, the City charges a 3% franchise fee but does not charge a PEG fee. While the addition of such a fee would seem to be a solution to the lack of funding we have for our PEG channels there are two issues that must be recognized: 1. We are 6 years into a 10 year contract, which Charter is under no obligation to amend. 2. Any additional fees required by Council will be passed on to cable customers.

To provide a bit of background on the subject, the City signed a 10-year franchise agreement with Charter Cable in 2007. This agreement was one of the first agreements in the State to be signed under the 2006 Uniform Cable Franchise Act. The Act dictated that local franchising entities must enact the same contract with all cable providers seeking to provide service in their community. Further it capped the amount of franchise fees and PEG fees at 5% and 2% of gross revenues respectively. At the time, Council was very concerned about the impact the fees would have on cable subscribers, as the law allows, such fees to be passed directly along to customers, eventually settling on a 3% franchise fee and 0% PEG fee.

Should Council decide it would be prudent to approach Charter with a request to amend the franchise agreement we will do so and report back to Council on the status of negotiations.

Minutes of the **August 12, 2013**, regular meeting
of the **Owosso Historical Commission** held
at the Curwood Castle, 7:00 p.m.

Members Present: City Treasurer Ronald Tobey, Chairman Michael Erfourth, and members Joni Forster, Shaffer Fox, Elaine Greenway, Scott Newman, Lorraine Weckwert and Gary Wilson

Members Absent: (2 vacancies)

Guests Present: Kerry Baker

The meeting was called to order at 7:06 p.m. by Chairman Erfourth.

Motion to adopt proposed agenda made by Newman, supported by Weckwert and approved after the additions of Project Manager, window paint, floors, e-mail received, gift display and educational displays.

Citizen Comments: none

Motion by Newman to accept and place on file the minutes of the July 8, 2013, regular meeting after noting the correction of a extraneous "the" before Erfourth in the paragraph about June minutes and also that Wilson was not noted as being either present or absent, but was in fact absent. Support was then offered by Weckwert and approved.

The preliminary June Treasurer's report was opened for discussion as informational only until after the auditors have concluded review of the ended fiscal year.

Weckwert reported an order of 2500 Home Tour ticket booklets was set to print today. It was noted \$440 remained in the expenditure approval from last month. The reception, plaques, tea party and wine & cheese event would also require expenditures. Motion by Newman to approve an additional \$1,000 for Home Tour 2013 expenses. Support was given by Fox. Motion carried with dissent by Forster. Also noted was the fact that tickets would be available at the Castle, city hall and the Chamber of Commerce. Wilson offered concern about traffic congestion on Curwood Castle Drive the morning of the tour if tickets were to be picked up at the paymaster building and the castle. The next Home Tour meeting is to take place on August 20 at 7:00 p.m. An e-mail will be distributed regarding this meeting.

By consensus the group changed the Hoskins painting unveiling from August 17th to September 13 during the evening of the Art Walk in Owosso.

Erfourth noted in a brief discussion of computer acquisition that a tablet may be more viable than a desktop configuration.

Three unfinished projects, the Gould house side and rear porch paint touch up, the steps at the paymaster building and the bricks behind the cabin will be referred to the city DPW by Erfourth.

The letter from BASC for bridal show participation at Comstock Center will be declined for this year.

The offer of the WWII uniform by a former Owosso resident was declined by consensus after thoughtful consideration.

Erfourth noted the project manager position had been approved by Council as a part-time position with an additional twenty thousand dollar increase in appropriations.

Newman left at 8:02 p.m..

The bid received for Castle floor finishing is still outstanding. Weckwert had checked references on the contractor finding positive results and offered the list to others who might be interested in speaking to a reference.

The concern received by e-mail regarding home tour advertising was shared.

Forster left 8:16 p.m..

Members visited the main floor to view a display system acquired by Weckwert for souvenir items. Motion by Fox to reimburse Weckwert \$155.00 for display system failed due to a lack of a second.

A request for supplies for education museum displays estimated to cost approximately \$75.00 was shared by Weckwert. Motion by Fox to approved expenditure of \$75.00 by Amanda Wetzel for educational display items. Supported by Weckwert and carried.

Motion to adjourn by Wilson and supported by Weckwert at 8:38 p.m.

Respectfully submitted,
Ronald J. Tobey
Secretary/Treasurer

MINUTES
REGULAR MEETING OF THE OWOSSO ZONING BOARD OF APPEALS
CITY OF OWOSSO
AUGUST 20, 2013 at 9:30 AM
CITY COUNCIL CHAMBERS

The meeting was called to order by Chairman Randy Horton at 9:32 a.m.

Roll call was taken by Recording Secretary Marty Stinson.

MEMBERS PRESENT: Chairperson Randy Horton, Vice-Chairperson Christopher Eveleth, Secretary Daniel Jozwiak, Board Members Kent Telesz, and William Wascher.

MEMBERS ABSENT: None.

OTHERS PRESENT: Adam Zettel, Assistant City Manager and Director of Community Development; Charles Rau, Building Official; Mr. Robert Rowland, owner of 1409 Whitehaven Ct.

AGENDA: IT WAS MOVED BY SECRETARY JOZWIAK AND SUPPORTED BY BOARD MEMBER TELESZ TO APPROVE THE AGENDA AS PRESENTED.

YEAS: ALL. MOTION CARRIED.

MINUTES: IT WAS MOVED BY SECRETARY JOZWIAK AND SUPPORTED BY BOARD MEMBER WASCHER TO APPROVE THE MINUTES OF THE MEETING OF JUNE 18, 2013.

YEAS: ALL. MOTION CARRIED.

COMMUNICATIONS:

1. Staff memorandum
2. ZBA minutes from June 18, 2013
3. Variance request materials – 1409 Whitehaven Ct.
4. Variance request plans – attached
5. Affidavit of notice
6. Public comments received by staff

COMMISSIONER/PUBLIC COMMENTS: None.

PUBLIC HEARINGS: VARIANCE REQUEST – 1409 Whitehaven Ct. # 2013-02

Mr. Adam Zettel, Assistant City Manager and Director of Community Development, referred comments to the applicant as there was no public in attendance for the public hearing portion for the variance request.

Mr. Robert Rowland of 1409 Whitehaven Court, is requesting an additional 20 inches on top of a six foot fence along a 36 foot section of fence on his north property line next to his deck and neighbor's fence at 1405 Whitehaven Court. He distributed documents to board and staff members with pictures of various views of and from his home into his neighbors' yards. The original builder set the house with eight feet between the house and his neighbor's property line. He has an illegally built deck (long time ago) on that side going almost to the property line with little privacy; a safety issue with the current railing; and a neighbor's dog that barks even when he is in his living room.

Mr. Zettel noted that the layout of the house is not unique. There are many other houses built this way on their lots. The porch was built to the property line which probably wouldn't be allowed today. These were obvious choices made by the previous owner and were there when it was purchased by the current owner. This is not a hardship. Mr. Zettel recommends denial of this request.

There are various requirements for a variance which don't fit here. There should not be a deck built all the way to the property line which was built without a permit.

Mr. Telez and Mr. Eveleth indicated that they believed there were unique feature to this property and the layout. They also indicated that the hardships were created by the previous owners and were likely unknown to Mr. Rowland, in terms of their impact, upon purchase.

Draft

Secretary Jozwiak asked if Mr. Rowland was going to take down the railing and put up the fence. Mr. Rowland replied yes. Mr. Jozwiak asked how are you going to maintain the weeds and grass between fences. Mr. Rowland replied that it will be open at the ground so he can maintain it there.

Mr. Rowland indicated that he would also like to build a fence in the front yard, where the current fence is, to a height of 7 feet. The board concluded that this was not part of the variance as applied for and published, so they could not review this part of the case. Mr. Zettel indicated that the ordinance adopted the night before by the city council would permit a front yard fence of six feet in height in that location. Mr. Rowland has a much larger front yard.

MOTION BY BOARD MEMBER TELESZ, SUPPORTED BY BOARD MEMBER EVELETH, WHEREAS, THE OWOSSO ZONING BOARD OF APPEALS, AFTER REVIEWING THE CASE FOR 1409 WHITEHAVEN COURT, PARCEL NUMBER 050-193-000-001-00 HEREBY MAKES THE FOLLOWING FINDINGS:

1. THE ADJACENT NEIGHBOR SUPPORTS WITH PRIVACY HEIGHT REQUEST OF MR. ROWLAND
2. THE PRIVACY HARDSHIP WAS UNKNOWN TO THE PURCHASER AS IT RELATES TO THE ORIENTATION OF THE HOUSE SUCH THAT THE REAR YARD SETBACK IS ONLY EIGHT FEET THAT THE DECK IS LEVEL WITH THE HOME EGRESS
3. WHERE THERE ARE EXCEPTIONAL OR EXTRAORDINARY CIRCUMSTANCES OR PHYSICAL CONDITIONS SUCH AS NARROWNESS, SHALLOUNESS, SHAPE, OR TOPOGRAPHY OR THE PROPERTY INVOLVED, OR TO THE INTENDED USE OF THE PROPERTY, THAT DO NOT GENERALLY APPLY TO OTHER PROPERTY OR USES IN THE SAME ZONING DISTRICT.
4. THE PETITIONER MEETS ALL GENERAL CRITERIA.

BASED UPON THOSE FINDINGS, THE OWOSSO ZBA HEREBY APPROVES THE PETITION TO PERMIT THE FENCE VARIANCE WITH THE HEIGHT OF 92" AS ILLUSTRATED IN THE ATTACHED PETITION, CONDITIONED ON THE FOLLOWING:

1. THAT THE FENCE BE CONSTRUCTED OF COMPOSITE OR VINYL MATERIAL.

ROLL CALL VOTE: AYES ALL. MOTION CARRIED.

COMMISSIONER/PUBLIC COMMENTS: None

ADJOURNMENT:

MOTION BY BOARD MEMBER TELESZ, SUPPORTED BY BOARD MEMBER WASCHER TO ADJOURN AT 10:43 A.M.

YEAS: ALL. MOTION CARRIED.

Dan Jozwiak, Secretary

m.m.s