

Minutes of the Atoka City Council Meeting of May 1, 2023, 6:00 p.m., Atoka City Hall, 353 East A Street, Atoka, Oklahoma. Original Agenda Posted April 28, 2023, at 4:00 p.m., Atoka City Hall, 353 East A Street, Atoka, Oklahoma.

I. Convene Meeting

- A. Meeting Called to Order- 6:00 PM
- B. Welcome- Mayor Brian Cathey
- C. Pledge of Allegiance- Council Member Diane McGee
- D. Invocation- Council Member Colby Sherrill
- E. Roll Call- Council Member Coby Sherrill, Council Member Erica Pogue, Council Member Pat Turner, Council Member Diane McGee, Mayor Brian Cathey
- F. Public Recognition- Miranda Donihoo, Shirley Taylor, E.L. Coplen, Bobby Ward, Phyllis Bates, Rick Mitchell, Carol Ervin, Cindy Wallis and Jerry Stephens.

II. Public Comments - (limited to 3 minutes per speaker)

III. Business Agenda

- A. Public Hearing
- B. Agenda Items

1. Discussion and/or action regarding approving or rejecting the minutes of the meeting of April 17, 2023. (Attachment #1)

A motion was made by Council Member McGee and seconded by Council Member Pogue to approve the minutes of the meeting of April 17, 2023. Voting aye, Pogue, Turner, McGee, Sherrill, and Mayor Cathey. Voting nay, none. Motion carried.

2. Discussion and/or action regarding accepting or rejecting the City Manager's Report (Attachment #2).

A motion was made by Council Member Pogue and seconded by Council Member McGee to accept the City Manager's Report. Voting aye, Turner, McGee, Sherrill, Pogue, and Mayor Cathey. Voting nay, none. Motion carried.

3. Discussion and/or action on approving or rejecting the blanket purchase orders for the City of Atoka. (Attachment #3)

A motion was made by Council Member Pogue and seconded by Council Member McGee to approve the payment of blanket purchase orders for the City of Atoka. Voting aye, McGee, Sherrill, Pogue, Turner, and Mayor Cathey. Voting nay, none. Motion carried.

4. Discussion, consideration and possible vote regarding the finding from the Administrative Hearing for the property located at 587 S Montana. (Attachment #4)

Code Enforcement Officer, Phyllis Bates, informed the Council of the Administrative Hearing Findings regarding the property located at 587 S Montana. Ms. Bates stated that this has been

an ongoing issue since March and seeking deferrals. Ms. Bates also provided photos of the property. City Attorney, Johnny Sandmann, gave an update to the council regarding this property as well including the statement that while the council may grant an extension, it is not required to do so. The property owners and/or Lien Holder(s) have obtained structural inspections. If the Council votes to condemn the dilapidated building, 30 days must pass in such case an appeal be made. Ms. Bates stated that the property has been trimmed and manicured, but no structural security has been put in place. Council Member Pogue questioned the extension requested and Ms. Bates answered that the letter was received that day. Council discussion ensued regarding notices being sent, violations, and intent to have property go through the Sheriff's Sale. Mr. Sandmann stated that this foreclosure has been in process since 2014. Council Member Sherrill asked for Jerry Stephens to answer whether or not he has been contacted regarding this property, as he is interested in purchasing the property. Mr. Stephens and the City Attorney reviewed a letter that was sent to Mr. Stephens. Mr. Sandmann was able to determine that a date has been set for May 24<sup>th</sup> and a consent to judgement was filed. Council discussion took place regarding the process and time frame of a sale and new ownership. Mayor Cathey stated that the property needs secured and discussed the hazards. Mr. Sandmann suggested that the Council allow 10 days to secure the property to address the immediate safety issues or the City will secure and/or order the removal of the carport and place a lien on the property, as well as bring back before the council in 30 days. Ms. Bates stated that the storage building is irreparable.

A motion was made by Council Member Pogue and seconded by Council Member McGee to order removing the storage building, shoring up or removing the carport, and securing the openings in the structure withing 10 days or the City will take action to complete the tasks with a lien against the property. Voting aye, Sherrill, Pogue, Turner, McGee, and Mayor Cathey. Voting nay, none. Motion carried.

5. Discussion and/or action regarding approving or denying the purchase of a 9035 Cabbed LiuGong Excavator from Apex Equipment Inc. in the amount of \$46,865.00. (Attachment #5)

City Manager, Danny Delay, stated that the city budgeted 225,000 for a dump truck, however this equipment is needed more at this time and he then asked Public Works Director, Bobby Ward, to supply the Council with information on this item. Mr. Ward stated that this is a local business which allows as well as the benefits of this machine. Mr. Ward stated that this machine will replace the water/sewer machine and comes with a 3 year/ 4,000 hour warranty. Mr. Ward introduced Rick Mitchell, owner of Apex Equipment, Inc. Mr. Delay stated that this price is through Source Well, which is for the use of Cities and/or Counties and is similar to State Contract Pricing. This machine will replace the 2017 Bobcat with has to be serviced out of Tulsa or Oklahoma City rather than locally. The current machine will be used as a back-up and kept at the Water or Wastewater plants. The Size difference between items 5 and 6 were discussed.

A motion was made by Council Member McGee and seconded by Council Member Pogue to approve of the purchase of a 9035 Cabbed LiuGong Excavator from Apex Equipment Inc. in the amount of \$46,865.00. Voting aye, Pogue, Turner, McGee, Sherrill, and Mayor Cathey. Voting nay, none. Motion carried.

6. Discussion and/or action regarding approving or denying the purchase of a 915E LiuGong Excavator from Apex Equipment Inc. in the amount of \$137,998.18. (Attachment #6)

Council Member Pogue questioned the pricing at which Mr. Ward stated State contract pricing came in higher than Source Well.

A motion was made by Council Member McGee and seconded by Council Member Pogue to approve of the purchase of a 915E LiuGong Excavator from Apex Equipment Inc. in the amount of \$137,998.18. Voting aye, Turner, McGee, Sherrill, Pogue, and Mayor Cathey. Voting nay, none. Motion carried.

#### C. Public Requested Agenda Items

1. Discussion and/or action on request by E.L. Coplen for a refund for sewer services paid but not received. – E.L. Coplen

Mr. E.L. Coplen informed the council that his property has been owned by himself for the past 8 years, and he is not on the City Sewer. Mr. Coplen stated that he knew at the time of purchasing the property that he was not on city sewer, but was advised by a previous City Manager that due to past owners paying for sewer, he would have to do the same. Mr. Coplen stated that this property is used for storage only and after having tests ran at the authority of current City Manager, Danny Delay, it was concluded that this property is not on city sewer, it has its own septic system. Mr. Delay stated that he consulted with the City Attorney and was informed that only the past year could be refunded, not all eight years. Mr. Delay asked Mr. Coplen to call the City Attorney at the time of questions, at which Mr. Coplen stated he did not do, as it should have been the city's job to handle. City attorney, Johnny Sandmann, stated that his initial reaction was to refund the one year, but after further investigation, under the tort claim act, he believes the city can pay up to five years back, which is roughly \$1650.00. As five years is the highest statute of limitations. Mr. Coplen stated that he did challenge this at the time of purchase but was denied. Mr. Sandmann then stated that if arguing in court, it could be justifiable to refund the five years, but no more and that Mr. Coplen didn't press more forcefully for his account to have sewer removed. Council discussion ensued and it was asked by Council Member Sherrill is more can be paid, at which Mr. Sandmann stated yes, however, if contested by a lawsuit, the City will lose and have to pay the difference of five and eight years to the party contesting plus legal fees. Five years can be defended, eight years cannot. Council discussion took place on the legality of paying the full eight years owed to Mr. Coplen. Council Member Sherrill stated that due to a lawsuit being mentioned in the minutes, it is a liability for the city to refund any more than the allowed five years. Mr. Sandmann stated that the exact amount of the refund for five years would be \$1,663.80.

A motion was made by Council Member Pogue and seconded by Council Member McGee to refund Mr. E.L. Coplen in the amount of \$1,663.80 for sewer services paid but not received. Voting aye, McGee, Sherrill, Pogue, Turner, and Mayor Cathey. Voting nay, none. Motion carried.

#### IV. Consent Agenda Items

#### V. Executive Session

#### VI. Return from Executive Session

#### VII. New Business

VIII. Council Comments

Council Member McGee commented about a meal program to be held on Monday, May 22, 2023 from 11 am-2 pm, at the Choctaw Community Center for ages 1-18. There will be no delivery.

Rick Mitchell of Apex Equipment thanked the Council for the vote of confidence in his company and that the machines ordered should be delivered by the end of the week.

IX. Adjournment

A motion was made by Council Member Sherrill and seconded by Council Member McGee to adjourn this meeting at 6:43PM. Voting aye, Sherrill, Pogue, Turner, McGee, Chairman Cathey. Voting nay, none. Motion carried.

**Adjourned at 6:43 PM**

**Attest:**

**Atoka City Council**

**(seal)**

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**Rhonda Givens, Deputy City Clerk**

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**Brian Cathey, Mayor**