



# City of Marietta

## Meeting Minutes

205 Lawrence Street  
Post Office Box 609  
Marietta, Georgia 30061

### CITY COUNCIL

*R. Steve Tumlin, Mayor*  
*Annette Paige Lewis, Ward 1*  
*Griffin "Grif" L. Chalfant, Jr., Ward 2*  
*Johnny Sinclair, Ward 3*  
*Irvan A. "Van" Pearlberg, Ward 4*  
*Rev. Anthony C. Coleman, Ward 5*  
*James W. King, Ward 6*  
*Philip M. Goldstein, Ward 7*

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Wednesday, June 8, 2011

7:00 PM

Council Chamber

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**Presiding:** R. Steve Tumlin, Mayor

**Present:** Annette Lewis, Grif Chalfant, Johnny Sinclair, Van Pearlberg, Rev. Anthony Coleman, Jim King, and Philip M. Goldstein

**Also Present:**

*William F. Bruton, Jr. City Manager*

*Douglas R. Haynie, City Attorney*

*Stephanie Guy, City Clerk*

### CALL TO ORDER:

*Mayor R. Steve Tumlin called the meeting to order at 7:05 p.m.*

### INVOCATION:

*Mayor Tumlin called upon Council member Chalfant to give the invocation.*

### PLEDGE OF ALLEGIANCE:

*Mayor Tumlin asked everyone to remain standing for the pledge of allegiance.*

### PRESENTATIONS:

### PROCLAMATIONS:

#### 20110263      **Lemon Street School Proclamation**

Proclamation presented to Mr. and Mrs. Louis Walker for the Lemon Street School.

**Presented**

### ANNOUNCEMENTS OF GENERAL COMMUNITY INFORMATION BY THE MAYOR, COUNCIL AND/OR CITY MANAGER:



- \* **20110525**      **Municipal Judge**
- Reappointment of Roger J. Rozen as the Marietta Municipal Chief Judge.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 – 0**                      **Approved**

- \* **20110526**      **Municipal Associate Judges**

Reappointment of the following Municipal Associate Judges:  
Lawrence E. Burke  
Nancy Ingram Jordan  
Mazi Mazloom  
John Storey Morgan  
Robert F. Schnatmeir  
Melinda Taylor  
Nathan Wade  
Steve Yaklin

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 – 0**                      **Approved**

- \* **20110527**      **Municipal Associate Judge**

Appointment of the following Municipal Associate Judge:  
Phyllis Gingrey Collins

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 – 0**                      **Approved**

#### **CITY COUNCIL APPOINTMENTS:**

- \* **20110528**      **City Solicitor**

Appointment of Robert I. Donovan as the City Solicitor to serve at the pleasure of and upon the concurrence of the Mayor and a majority of City Council.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 – 0**                      **Approved**

- \* **20110538**      **Associate City Solicitors**

Reappointment of the following Associate City Solicitors to serve at the pleasure of and upon the concurrence of the Mayor and a majority of City Council:

Steve Cook  
Susan M. Miller  
Michael B Syrop  
Keith M. Olmert  
Carmen Porreca  
Thomas Griner  
Jason Treadway  
Latonia Patrice Hines

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 - 0                      Approved**

\*     **20110189            Board of Zoning Appeals**

Appointment William "Bill" Martin to the Board of Zoning Appeals Ward 6, for a term of three years expiring June 8, 2014.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 - 0                      Approved**

\*     **20110529            Board of Lights and Water (BLW)**

Reappointment of Alice Summerour to the Board of Lights and Water (Non-Resident Member), for a 4-year term expiring July 14, 2015.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 - 0                      Approved**

**ORDINANCES:**

\*     **20110160            Z2011-04 Tower Partners 819 and 821 Cogburn Avenue**

**[Ord 7538](#)**

Z2011-04 [REZONING] TOWER PARTNERS request rezoning for property located in Land Lot 10140, District 16, Parcels 0750 and 0760, 2nd Section, Marietta, Cobb County, Georgia and being known as 819 and 821 Cogburn Avenue from R-2 (Single Family Residential 2 units/acre) to OI (Office Institutional).

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 - 0                      Approved**

**20110451            Z2011-05 Robert & Theresa Sykes 451 Atlanta Street**

**[Ord 7539](#)**

Z2011-05 ROBERT & THERESA SYKES request rezoning for property located in Land Lot 02880, District 17, Parcel 0440, 2nd Section, Marietta, Cobb County, Georgia and being known as 451 Atlanta Street from OI (Office Institutional) to OI (Office Institutional w/additional use - Single Family Residence) and the granting of

stated variances and the condition that all variances are for the current developed property only and shall be discontinued upon redevelopment of site, according to Section 706.03 Continuance of a Non-conforming Building or Structure). Ward 5.

*Planning Commission recommends approval    Vote:    5 – 0*

*Motion: Mr. Kinney made a motion to recommend approval to city council, as submitted, seconded by Mr. Carter.*

*Stipulations: N/A*

*PUBLIC HEARING (all parties sworn in)*

*Mayor Tumlin opened the public hearing. City Attorney Douglas Haynie explained the rules of order and swore in those wishing to speak.*

*Development Services Director Brian Binzer presented information regarding the rezoning request for property located at 451 Atlanta Street from OI (Office Institutional) to OI (Office Institutional w/additional use – Single Family Residence) The applicant, Dr. Robert Sykes, also spoke regarding the proposed rezoning.*

*In depth discussion was held regarding the additional use for a specific part of the property.*

*Motion to approve the rezoning for property located at 451 Atlanta Street from OI (Office Institutional) to OI (Office Institutional w/additional use – Single Family Residence):*

*The following variances are granted:*

- 1. Variance to reduce the side yard setback for the existing accessory structure from 10' to 1'. [Section 708.23 (F)(1)]*
- 2. Variance to reduce the side yard setback for the existing principal building from 15' to 10'. [Section 708.23 (H)]*
- 3. Variance to waive the minimum tree density for the existing improvements to the property. [Section 712.08 (D)(4)]*
- 4. Variance to waive the required street trees along Atlanta Street. [Section 712.08 (G)(2)]*

*All variances are for the current developed property only, and shall be discontinued upon redevelopment of the site, according to Sect. 706.03, continuance of a nonconforming building or structure.*

*The following stipulation is included:*

*The additional use of a single family residence shall only apply to the 450 square foot building located along the southerly property line.*

The motion was made by Council member Pearlberg, seconded by Council member Chalfant, that this matter be Approved as Stipulated. The motion carried by the following vote:

**Vote: 6 - 1 - 0**                      **Approved as Stipulated**

Voting Against: Philip M. Goldstein

**20110453**

**Z2011-06 Vet West Properties, LLC 1101 Whitlock Avenue**

[Ord 7540](#)

[Z2011-06 [REZONING] VET WEST PROPERTIES, LLC request rezoning for property located in Land Lot 03240, District 20, Parcel 2140, 2nd Section, Marietta, Cobb County, Georgia and being known as 1101 Whitlock Avenue from NRC (Neighborhood Retail Commercial) to NRC (Neighborhood Retail Commercial w/additional use - veterinary clinic, with stipulations and the granting of stated variances). Ward 2.

*Planning Commission recommends approval*      *Vote: 5 – 0*

*Motion: Mr. Kinney made a motion to recommend approval to city council, as submitted, seconded by Mr. Diffley, without stipulations.*

*Stipulations: N/A*

*PUBLIC HEARING (all parties sworn in)*

*Mayor Tumlin opened the public hearing. City Attorney Douglas Haynie explained the rules of order and swore in those wishing to speak.*

*Jane Hawkins, one of the Managing Partners, presented information regarding the rezoning request for property located at 1101 Whitlock from NRC (Neighborhood Retail Commercial) to NRC (Neighborhood Retail Commercial w/additional use – Veterinary Clinic.) Mrs. Hawkins stated that the property would be used for a Veterinary Clinic; however, it would not be used as a boarding facility.*

*Council member Sinclair disclosed that he has pets that receive care at the veterinary clinic.*

*In depth discussion was held regarding the additional use for the property.*

*Motion to approve rezoning of property located at 1101 Whitlock from NRC (Neighborhood Retail Commercial) to NRC (Neighborhood Retail Commercial w/additional use – Veterinary Clinic.)*

*The following stipulations are incorporated as condition of zoning:*

- 1. All animals shall be located within an enclosed building and adequate sound and odor control shall be maintained.*
- 2. Dog walking activities be limited to the front (north of the building) and east side of the property.*
- 3. The property will not be used as a boarding facility.*

*The following variances were granted:*

1. *Variance to waive the optional elements for site design. [Section 712.09 (G.)(2.)(a.)]*
2. *Variance to waive the optional elements for building design. [Section 712.09 (G.)(3.)(a.)]*
3. *Variance to waive the minimum building height of two stores or eighteen feet (18'). [Section 712.09 (G.)(3.)(b.)(ii.)]*
4. *Variance to waive the requirement that window frames be recessed at least 2 inches from the exterior building face. [Section 712.09 (G.)(3.)(b.)(vi.)]*
5. *Variance to allow the exterior window trim be flush with the exterior wall. [Section 712.09 (G.)(3.)(b.)(vii.)]*
6. *Variance to waive the pedestrian lighting fixtures every 60 ft on Whitlock Avenue. [Section 712.09 (G.)(4.)(a.)(ii.)(8.)]*
7. *Variance to waive the construction of a six foot sidewalk along Whitlock Avenue. [Section 712.09 (G.)(4.)(a.)(i.)]*

**The motion was made by Council member Chalfant, seconded by Council member Sinclair, that this matter be Approved as Stipulated. The motion carried by the following vote:**

**Vote: 7 - 0 - 0**

**Approved as Stipulated**

## **RESOLUTIONS:**

### **CITY ATTORNEY'S REPORT:**

\* **20110546 Denial of Claim**

Denial of claim of Faye McBee

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 - 0**

**Approved**

### **CITY MANAGER'S REPORT:**

### **MAYOR'S REPORT:**

### **COMMITTEE REPORTS:**

#### **1. Economic/Community Development: Grif Chalfant, Chairperson**

\* **20110496 HOME Consortium Cooperation Agreement**

Approval of a Resolution authorizing the renewal of the three year HOME Consortium Cooperation Agreement (2012-2015) with Cobb County, Cherokee County, and the City of Canton.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 – 0                      Approved**

\*     **20110497            CDBG Budget Reallocation**

Approval of a Resolution authorizing the submittal of the City's Revised FY2011 CDBG Project Funding List to Cobb County for inclusion in their submittal to the U.S. Department of Housing and Urban Development (HUD); and further, approving the use of \$626,803 of CDBG FFY' 2011 funds the City will receive from HUD.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 – 0                      Approved**

**2. Finance/Investment: Annette Lewis, Chairperson**

\*     **20110440            Franklin Road Early Learning "Parent Projects"**

[Ord 7534](#)

Approval of an Ordinance amending the Fiscal Year 2011 Weed and Seed Fund to receive and appropriate \$2,500 from the United Way for the Franklin Road Weed and Seed Early Learning Initiative Parent Projects program.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 – 0                      Approved**

\*     **20110465            Adoption of recommended Budget for FY2012**

[Ord 7535](#)

Approval of an Ordinance adopting an Annual Budget for the fiscal year beginning July 1, 2011, and ending June 30, 2012, for the various funds of the City of Marietta and enacting the tentative Ad Valorem tax levies for said fiscal year for support of the City of Marietta governmental operations and other public purposes, and debt service obligations.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 – 0                      Approved**

**20110466            Welcome Center Contract**

Motion approving a request to allocate hotel/motel and 3% auto rental tax funds according to the FY2012 Preliminary Budget Welcome Center Contract Worksheet for approval of a FY2012 Welcome Center Contract.

*Council member Goldstein disclosed that he is the owner of and a general manager for the Herbert S. Goldstein Family Limited Partnership that owns the Earl Strand Theater at 115-119 North Park Square, Marietta GA. The tenant is Friends of the Strand, Inc. The tenant has an agreement with the Atlantic Lyric Theater, Inc., to use the facility. Council member Goldstein also owns the properties occupied by and leased to Theatre in the Square, Inc. Council member Goldstein abstains on and will not participate on allocation of funds to the above three (3) entities.*

*Council member Goldstein is or has been a member of: Friends of Brumby Hall, Inc., Cobb Landmarks and Historical Society, Inc., Marietta-Cobb Museum of Art; and the Marietta Museum of History. He is also the Council's appointed member serving on the board of the Marietta Welcome Center and Visitors Bureau, Inc.*

*Council member Pearlberg disclosed that he is a member of Cobb Landmarks & Historical Society, Marietta-Cobb Museum of Art and has served on the Marietta Museum of History Board. He subscribes to the Atlanta Lyric Theatre and has performed at the Earl Smith Strand Theatre. Further, his wife is Chairperson of the Georgia Ballet*

*Mayor Tumlin has served as a director, but is currently not serving, of the following organizations being considered for sponsorships: Marietta-Cobb Museum of Art; Theatre in the Square, Inc.; Marietta Museum of History, Inc.; and Friends of the Strand, Inc. Additionally, Mayor Tumlin has provided legal services to Friends of the Strand, Inc. and accounting services to Marietta Museum of History, Inc. Mayor Tumlin has been/is a Member of Brumby Hall, Inc. and Cobb Landmarks & Historical Society.*

*Council member Sinclair disclosed that he is a past Chairman of the Board of the Art Museum and Cobb Landmarks, has been a member of the Welcome Center and the Museum of the History.*

*Council member Goldstein made mention his disclosures listed on the agenda, then left the dais.*

**The motion was made by Council member King, seconded by Council member Lewis, that this matter be Approved. The motion carried by the following vote:**

**Vote: 4 - 3 - 0**

**Approved**

Voting Against: Grif Chalfant, Van Pearlberg and Anthony Coleman

Absent for the Vote: Philip M. Goldstein

(Mayor Tumlin voted on this matter due to the tie vote.)

\* **20110480**      **Tree Preservation Fund**

[Ord 7537](#)

Approval of an Ordinance amending the Fiscal Year 2011 Tree Preservation Fund Budget to receive and appropriate a donation from Steve Rayman Chevrolet.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 – 0**                      **Approved**

\* **20110505**      **Franklin Road "Little School"**

[Ord 7536](#)

Approval of an Ordinance amending the Fiscal Year 2011 Weed and Seed Fund to receive and appropriate \$3.500 from Communities of Schools in Georgia for the Franklin Road Kindercamp "Little School" project.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 – 0**                      **Approved**

**3. Judicial/Legislative: Philip M. Goldstein, Chairperson**

**20110266**      **Vehicle Immobilization Ordinance**

Approval of Vehicle Immobilization Ordinance for the city limits of Marietta.

*Philip M. Goldstein disclosed that Benny and Sue Robinson (Robinson's Coins) lease parking spaces from him at 48 Atlanta Street, Marietta. Further and I own property at 19-21 Atlanta Street, Marietta, as well as many other properties in Downtown Marietta and in the City of Marietta. Other family members and entities also own property in the City of Marietta.*

*Council Member Goldstein disclosed that he has an agreement with Gary Eubanks on property located at or near Denmead Street, Marietta, GA.*

*Mayor Tumlin disclosed that he has had a business relationship with Eubanks, but does not any longer.*

*Council Member Goldstein disclosed that Gary Leake is a tenant of PMG Whitlock Avenue, LLC at 19 Atlanta Street, Marietta, GA, and he is the owner of and manager of said LLC.*

*Mayor Tumlin called for discussion regarding the Vehicle Immobilization ordinance. Discussion was held regarding amendments to the ordinance related to fees and signage.*

*At various times during the discussion, Council member Chalfant and Council member Pearlberg expressed concern regarding Council member Goldstein's participation in the discussion regarding booting, both stating that there seemed to be a conflict of interest.*

*Further discussion was held.*

**The motion was made by Council member Goldstein, seconded by Council member King, that this matter be Approved. The motion carried by the following vote:**

**Vote: 4 - 3 - 0**

**Approved**

Voting Against: Annette Lewis, Grif Chalfant and Anthony Coleman

**20110491**

**Rules and Procedures of Council**

Motion to approve amendments to Marietta City Code Section 1-4-040 entitled "Rules and Procedures of Council."

*Mayor Tumlin called for discussion regarding this matter. City Attorney Doug Haynie mentioned that if this matter were approved along with waiving the requirement to amend the rules being on two agenda as set forth in 1-4-040 L, then there would be no need for action regarding the next item 20110554.*

*A motion was made by Council member King, seconded by Council member Coleman, to approve waiving the requirement to amend the rules being on two agenda as set forth in 1-4-040 L and approving the attached Rules and procedures of council.*

*Discussion was held regarding amendments to the Rules and Procedures and the need for a second reading.*

*An amendment to the motion was made by Council member King, seconded by Council member Coleman, to move the Rules and procedures of council forward, as amended. This would require a second reading on the July 13, 2011 agenda.*

**The motion was made by Council member King, seconded by Council member Coleman, that this matter be Moved Forward. The motion carried by the following vote:**

**Vote: 6 - 1 - 0**

**Moved Forward**

Voting Against: Philip M. Goldstein

**First Reading; this would require a second reading on the July 13, 2011 agenda.**

**20110554**

**Waiving of agenda procedure and approval of rules and procedures of council**

Motion to approve waiving the requirement to Amend the rules being on two agenda as set forth in 1-4-040 L and approving the attached Rules and procedures of council as requested by Council Member Goldstein.

**No Action Taken**

\*      **20110501      Manget**

Motion to approve the Detailed Plan and Final Plat for Manget Phase I in Land Lots 12870 and 12880, 16th District, 2nd Section, Marietta, Cobb County, Georgia, in accordance with Section 708.14.J.4 of the Marietta City Code. Incorporated into this approval is the letter from applicant's attorney dated June 6, 2011 including all special stipulations set forth therein. In addition, the city shall not be required to sign the final plat until special stipulation 3 and 4 have been completed.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 - 0                      Approved**

**4. Parks, Recreation and Tourism: Johnny Sinclair, Chairperson**

\*      **20110121      Laurel Park Tennis Center Lighting**

Motion authorizing the allocation of \$150,000 from the 2009 Parks Bond in the category of Improvements to Existing Parks for repairs and upgrades to the Laurel Park Tennis Center lighting.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 - 0                      Approved**

\*      **20110488      2011 Art in the Park Event**

Motion waiving City Code Section 10-4-070 (C) and (E) to provide for the consumption of beer and wine in Glover Park and the sale and consumption of beer and wine adjacent to Glover Park for the annual Labor Day Weekend "Art in the Park" event sponsored by the Marietta Business Association with the stipulation that the applicant conduct the sale of beer and wine from a location on a portion of the street at the N.E. corner of N. Park Square.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 - 0                      Approved**

\*      **20110489      Aviation Sports Complex Construction Project**

Motion authorizing additional funding for the Aviation Sports Complex in the amount of \$50,000 from the 2009 Parks Bond Category D., Contingency Fund, to complete construction activities approved in August 2010.

**This Matter was Approved on the Consent Agenda.**

**Vote: 6 - 0 - 1                      Approved**  
Abstaining: Philip M. Goldstein

**5. Personnel/Insurance: Van Pearlberg, Chairperson**

- \* **20110495**      **Position allocation and compensation plan**

**Ord 7541**

Motion to approve an Ordinance adopting the position allocations to departments for the City of Marietta and the Board of Lights and Water and the City of Marietta/BLW position classification and compensation plans for the period of July 3, 2011 to June 30, 2012.

**This Matter was Approved on the Consent Agenda.**

**Vote: 6 - 1 - 0**                      **Approved**  
Voting Against: Anthony Coleman

**6. Public Safety Committee: Anthony Coleman, Chairperson****7. Public Works Committee: Jim King, Chairperson**

- \* **20091263**      **Approval of Transportation Improvement Program (TIP)**

Approval of the Transportation Improvement Program (TIP) for use in selecting projects for various funding sources.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 - 0**                      **Approved**

- 20110360**      **Remnant Property Sales**

Motion approving to market the following remnant properties:  
994 Roswell Street  
470 Roswell Street  
942 Roswell Street  
416 Roswell Street

**This matter was Referred to the PUBLIC WORKS COMMITTEE**

**SCHEDULED APPEARANCES:****UNSCHEDULED APPEARANCES:**

*Larry Wills, who resides at 60 Oakmont Drive, expressed concern regarding the passage of agenda item 20110266. Mr. Wills explained that the public has not had a chance to review and comment on the changes made during the meeting.*

**OTHER BUSINESS:**

- \* **20110541**      **MEAG Annual Business Meeting**

Appointment of R. Steve Tumlin as voting delegate and Rev. Anthony Coleman as alternate voting delegate for the 2011 MEAG Power Annual Meeting to be held July 19, 2011 in Amelia Island, Florida.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 – 0                      Approved**

\*        **20110502                      V2011-19 David Newton (Westbury Park) 1295 Franklin Drive**

V2011-19 [VARIANCE] DAVID NEWTON request a variance for property located in Land Lot 655, District 17, Parcel 0010, 2nd Section, Marietta, Cobb County, Georgia and being known as 1295 Franklin Drive. Variance to establish a gated community. Ward 7.

*Motion to approve the variance request to establish a gated community for property located at 1295 Franklin Drive, with the following stipulations:*

- 1.) The stipulations contained in the motion signature including Attachments A, B and C are including herein, and*
- 2.) The gates shall not be installed until all conditions in the motion have been met and completed.*

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 – 0                      Approved**

\*        **20110559                      639 Franklin Road**

Motion authorizing acquisition of property at 639 Franklin Road from Laxmi, Inc for the purpose of constructing the Franklin Road Improvement Project in exchange for \$17,054.00.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 – 0                      Approved**

\*        **20110560                      210 N. Fairground Street**

Motion to authorize the acquisition of property owned by Fairground Street Motors, LLC on behalf of the City of Marietta by means of eminent domain. A description of the interest to be acquired is attached hereto and incorporated herein by reference, including the legal description of the property and a survey of such property. The city attorney is hereby authorized and directed to take any and all action necessary to acquire such property by virtue of eminent domain, including the right to file any appeals in such case. The Order Authorizing Condemnation attached is incorporated herein by reference.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 – 0                      Approved**

\*        20110523        **BLW Actions of June 6, 2011**

Review and approval of the June 6, 2011 actions and minutes of the Marietta Board of Lights and Water.

**This Matter was Approved on the Consent Agenda.**

**Vote: 7 - 0 - 0                      Approved**

**ADJOURNMENT:**

*The meeting was adjourned at 9:24 p.m.*

**Date Approved:        July 13, 2011**

\_\_\_\_\_  
**R. Steve Tumlin, Mayor**

**Attest:** \_\_\_\_\_  
**Stephanie Guy, City Clerk**