

MINUTES
REGULAR MEETING
CITY COUNCIL

November 2, 2020

Ronnie Thompson, Mayor

Sally W. Sandy, City Manager
Louis E. Vinay, Jr., City Attorney

Wendy Cato)
Christopher Hawkins) Council
Chris Jernigan)
Butch McSwain)

Tiffany Patterson, Interpreters
Danette Steelman-Bridges

I. Call to Order – The Meeting was called to order in the Council Chamber at City Hall at 6:00 p.m. by Mayor Thompson.

II. Public Comment – The Mayor stated the guidelines for public comment and said speakers were to be called in order of sign-up for those who appeared in person; however, due to COVID-19 the Council was still accepting public comments via email, U.S. mail, or hand-delivered letters.

- Mike Pendergrass stated he is President of Concerned Bikers Association. Pendergrass stated he lives in Hickory and is travelling to all area municipalities to speak about grass clippings being blown into streets and the danger that presents to motorcyclists and other passerby. Pendergrass asked Council to consider stepping-up education efforts for citizens about this subject.

Councilman Jernigan, noting that he is an avid motorcyclist, expressed his thanks for Pendergrass coming to share this information.

No other speakers signed up, appeared, or sent letters/email.

III. Pledge of Allegiance to the Flag – The Pledge was led by Councilman McSwain.

IV. Invocation – The invocation was given by the Rev. Daniel Gutierrez, Inglesia de Dios Nueva Vida / New Life Church of God

V. Introduction of Council – The Mayor introduced Council and staff.

VI. Service Pins – The Personnel Committee and City staff have decided to recognize long-term employees for years of service at a Council meeting.

- Chesley Price, a Maintenance Worker in the Recreation Department, was recognized with 20-years' service to the City. Price was unable to attend the meeting and will be given his pin at a later date.

- Randy Loop is Chief Technician in the CoMPAS Department and was recognized for 25 years' service. Councilman Jernigan presented Loop with his service pin. Loop stated that he appreciates the support of the Council and City Manager over the years.

VII. Public Advocacy Issues and Strategies

a. Announcements: The Mayor stated that tomorrow, November 3, is Election Day and encouraged citizens to vote. A COVID-19 Public Service Announcement was played and the Mayor stated the PSA would be posted to social media and the City website.

The Mayor read a proclamation of support for the observance of Burke County Non-Profit Day (aka 1BurkeGives) to be held on Tuesday, December 1, 2020.

Councilwoman Cato presented the proclamation to Jean VanNoppen, who accepted it for Burke County United Way. VanNoppen stated Burke County United Way's mission is to inspire Burke County residents and citizens to help create a stronger, healthier and happier community. VanNoppen said this is a day to support and acknowledge all Burke County non-profits.

b. The Mayor announced the upcoming events Downtown, saying "Watch out for Elves!" Santa's elves will be making pop-up appearances in Downtown beginning the week of November 16; the Virtual Memorial Christmas Tree Lighting will be held November 21; there are Holiday Carriage Rides every Friday and Saturday beginning Saturday, November 21; a Holiday Farmers' Market, November 28; Small Business Saturday and FAB Crawl, November 28; Downtown Storybook Walk begins November 28; and the Downtown Reverse Christmas Parade on December 1.

VIII. North Carolina Municipal Power Agency Number 1 Update – The Mayor read a Proclamation of Thanks to the Fayetteville Public Works Commission for the help they provided following Tropical Storm Zeta which caused widespread disruption of power throughout Morganton. The proclamation was then sent to the Fayetteville Public Works Commission and a copy to the City of Fayetteville.

The City Manager expressed appreciation to the City electric crews for all the work and long hours they put in following the storm. She stated that by 4:30 Friday afternoon all City customers' power was restored. She also thanked other City employees for their storm response efforts.

IX. Consent Agenda – The City Manager presented the Consent Agenda and asked if any items should be removed. No request was made.

Upon motion by Councilman McSwain, seconded by Councilman Hawkins, and unanimously carried, the Consent Agenda was approved and each individual item adopted as stated, those being as follows:

- A. Approved minutes as submitted for a Special Meeting and a Regular Meeting both held on October 5, 2020 and for a Special "Town Hall" meeting held on October 13.
- B. Approved a budget amendment (Ord. #20-33) in the amount of \$19,791.33 to recognize an insurance reimbursement for damage at a fire station.
- C. Approved a budget amendment (Ord. #20-32) in the amount of \$10,695.25 to recognize insurance reimbursement for damage at Shuey Field building.
- D. Awarded a contract to Miracle Recreation Equipment Company in the amount of \$125,000 for replacement playground equipment at Martha's Park.

X. Items Removed from Consent Agenda – There were no items removed.

XI. New Business

A. Public Hearings

1. Public Hearing to Consider an Application for a Text Amendment of the Zoning Ordinance, Specifically Sections 3.2 Overlay Districts, and 4.2 Density and Dimensional Standards

The Mayor opened the public hearing at 6:20 p.m.

Phillip Lookadoo, Director of Development and Design, stated this public hearing was to consider an application from William Andrews for a text amendment of the Zoning Ordinance, specifically Sections 3.2 Overlay Districts, 4.2 Density and Dimensional Standards, and 4.8 Building Design Standards.

He stated these changes are for the proposed addition of a new overlay zone "Restricted Residential Overlay (RR-O)" to the City of Morganton Zoning Ordinance.

The text amendment as proposed by the applicant, is as follows:

Current Zoning Ordinance Relevant Information

- Overlay Zoning- Subject to underlying base zone district, but also with additional requirements or permissions of the overlay zone. This is a tool to apply additional development standards to a district as well as exclude uses that would otherwise be permitted within the underlying base zoning district.

- As proposed, the RR-O would serve to restrict uses in the district to residential and similar uses while allowing higher densities associated with MID, HID and CBD zoning districts.

The Planning and Zoning Commission, at their regularly scheduled meeting held on October 8, 2020, voted unanimously, 8-0, to recommend approval of the request.

- Brian Gulden stated he is an attorney representing Mr. Andrews who requested this text amendment. He stated that this request has a specific intent and was drafted with input from Jesse James, a planner for the City. He stated the intent is to help create a greater variety of residential options. He stated this basically says the City will have ONLY residential in this overlay district. He stated this helps protect the character of the neighborhood by keeping it residential and allows builders to retain density.

There being no further public comment, the Mayor closed the public hearing at 6:29 p.m.

The City Attorney stated that the Planning and Zoning Commission unanimously approved this amendment. He stated that making this kind of change follows the comprehensive Master Plan. He stated that this is very much like the neighborhood conservation overlay.

Councilwoman Cato asked Lookadoo if his department would seek other areas that this overlay would be suitable for or just wait for someone to ask for this in another area. Lookadoo stated this will be case-by-case as requested.

Upon motion by Councilman Jernigan, seconded by Councilman McSwain, and carried unanimously, the Council approved this amendment for the addition of a new overlay zone, "Restricted Residential Overlay (RR-O)", with standards.

2. Public Hearing and Consideration of Petition to Re-Zone Approximately 2 Acres on Either Side of Lyman Court, from Residential Low/Conditional Use to Medium Intensity District (MID) with the Restricted Residential Overlay (RR-O)

The Mayor opened the public hearing at 6:33 p.m.

Phillip Lookadoo, Director of Development and Design, stated William Andrews owns four (4) separate vacant lots, three fronting on Lyman Court and one fronting on Lyman Court and West Union Street, totaling approximately two (2) acres. All of the properties are currently subject to a Conditional Use Permit granted in 2005. The Conditional Use Permit provides for development only in conformity with specific plans submitted in 2005 by Mr. Andrews. The property is currently vacant and undeveloped.

This rezoning request would allow the current owner, Mr. Andrews, or any future owner to develop the property to any density allowed within the MID without the possibility of including commercial development. The base residential density in the MID is two (2)

units per acre expandable up to ten (10) units per acre if the requisite number of performance points are obtained. The array of residential uses includes all that are allowed within the City's zoning ordinance.

After holding a public hearing at its October 8, 2020 meeting, the Planning and Zoning Commission recommended approval, by a vote of 8-0, of the requested re-zoning. Proper notice of this hearing has been mailed to neighbors, posted on the property, and duly advertised in the News-Herald.

The Mayor asked Lookadoo for clarification about the zoning and that it impacts the property and not the owner. Lookadoo stated that zonings remain with the property regardless of ownership.

The City Attorney stated that this was an unusual case as the property is currently under Conditional Use but if Council chooses to rezone this property the Conditional Use would no longer be valid.

- Brian Gulden reminded Council that he represents William Andrews the current property owner. Gulden gave a brief overview of North Carolina planning regulations. He stated that this request is consistent with City's Mission 2030 Plan. Part of the land use map shows this area being in low-intensity residential district. He stated there is no site specific plan but it is in general conformance with the Masterplan.

- William Andrews stated that he was the owner of the property in question. He stated that when he purchased the property it had been on the market for two years; there was a drug house and an older home that was not worth renovating on the property. He stated that he came up with a project but was over budget and did not follow through. He stated that he didn't do anything with the property until his sister, who lives in Morganton, suggested he look at the property again due to housing needs in the area. He stated he is not asking for additional units, just a change of structure. He stated that he wants to keep the quality and beauty and integrate with the surrounding area.

There being no further public comment, the Mayor closed the public hearing at 6:59 p.m.

Upon motion by Councilman Hawkins, seconded by Councilwoman Cato, and carried unanimously, the Council approved the re-zoning of 4 tracts on Lyman Court, owned by William Andrews, from Residential High/Conditional Use to Medium Intensity District/Restricted Residential Overlay (MID/RR-O); and to declare that while this re-zoning would be inconsistent with the City's comprehensive Mission 2030 Plan, that such re-zoning is deemed to amend the Plan, and such amendment is necessary due to changing conditions in the neighborhood and throughout the City; and that such amendment is reasonable, is in accord with the spirit of the Plan, and is in the public interest.

3. Public Hearing and Consideration of an Application submitted by Nancy VanNoppen for Amendment to the Text of the Zoning Ordinance, Table of Permitted Uses, to Allow Body Art Establishments (Tattoos & Body Piercing) as a Permitted Use in the Central Business District with Conditions

The Mayor opened the public hearing at 7:02 p.m.

Phillip Lookadoo, Director of Development and Design, stated the Applicant Proposal is to add "P" for Permitted Use for Body Art Establishment (tattoos & body piercing) under CBD with Conditions under 3.4.4, add new subsection 3.4.4 (D) Tattoo & Body Piercing within CBD.

Conditions for consideration included:

- 1) Business occupies either a back space or not on street level (upper or lower floor).
- 2) Business has no marketing materials or signage on front of building or storefront windows (Primary Façade) beyond directional sign or incidental signage (business name/logo and where they are located in the building).
- 3) Business services no more than one customer at a time ("service" meaning actually having a customer in a chair and performing a service).

The Planning and Zoning Commission, at their regularly scheduled meeting held on October 8, 2020, voted unanimously, 7-0 with one (1) abstention, to recommend approval of the request without conditions

- Nancy VanNoppen stated she is the Creative Director of VanNoppen Marketing as well as a downtown property owner. She stated that tattooing is an art form and those who practice it are artists. She said that as a Morganton native she would like to see all artists be welcome in the downtown area and not be discriminated against because of their medium. She respectfully requested Council to allow this change with or without conditions.
- Abby Nelson, Main Street Manager for the City, spoke in favor of this rezoning. She stated that Downtown Morganton is a center for the creative arts. She stated there are a variety of art businesses in our downtown area. Nelson stated that allowing body art establishments is another step toward a more inclusive downtown.
- Gracie Mode stated she is a student at Freedom High School and Western Piedmont Community College as well as a member of the Main Street Advisory Board. She stated that tattoos are no longer seen as taboo and they are a high dollar ticket item with people being willing to travel to work with a professional artist. She stated that as a progressive and growing community it is important to attract a variety of businesses. She asked the Council to consider allowing this change.

- Cutty Bage stated she is a tattoo artist living in Boone but hopes to move to Morganton. She thanked Council for considering this zoning amendment. She stated she would like to set her roots here saying she loves the way the town supports local businesses and artists. She said the state of tattooing has changed over the years into a more beautiful art form. She mentioned tattooing helping after surgeries, with memories of loved ones, and helping people in a variety of ways. She stated it can also be an economic driver bringing people to Morganton from other areas. She requested the Council approve this amendment.
- Keith Suttles resides at 3106 Hunters Ridge. He stated he and his sons opened a business in Downtown Morganton and said the City Council went out on the limb for them. He stated that things are changing and he supports the change without any conditions.
- The City Manager stated that two letters were received, from Bill Steiner and Marcus McCarthy, both in favor of this amendment. Copies of the letters were given to Council members.

There being no further public comment, the Mayor closed the public hearing at 7:12 p.m.

The City Attorney stated that, just to be clear, Planning & Zoning accepted the change without conditions. He said that enforcing those conditions would be a challenge and it may be treating one type of business different from others, unfairly.

Councilman McSwain asked if this was for all the properties in the Central Business District and not just one particular property. The City Attorney stated that currently this use is only permitted in HID and the change would affect all properties in the CBD.

Councilwoman Cato stated this was hard for her because of her prejudice about tattoos given her generation. However, she stated, after talking with people in town as well as her grandchildren she realizes having a tattoo is looked upon so differently now. She feels it's a good and honest movement toward what we want to become.

Councilman Hawkins stated that agrees with a lot of what Councilwoman Cato shared. He stated that the tattooists are supervised by the health department, they need a permit to operate, it's much more mainstream now than when he grew up. He feels there should be equitable treatment among businesses.

Upon motion by Councilwoman Cato, seconded by Councilman Hawkins, and carried unanimously, the Council adopted the amendment, approving the change to the Table of Permitted Uses with no conditions.

B. Other Business

1. Consideration of Award of Contract to Carolina Power and Signalization, Inc. for Pole Replacement in the Electric Distribution System

The City Manager stated the City has contracted with Southeastern Consulting Engineers, Inc. for engineering and design services. As part of those services they handled the bid process for the electrical distributions system line work pole replacement project.

Ten contractors were solicited for bids on the construction of the Pole Replacement Project. Five contractors responded with bids. The lowest proposal was submitted by Carolina Power and Signalization, Inc. of Fayetteville, NC, in the amount of \$351,722.96. In reviewing the bids, it was noted that City crews had already replaced several poles included in the bid (accidents, storms, etc.). After adjusting for these, the recommended award amount is \$346,731.46. Adequate funds are available in the budget for this project. Southeastern recommends the contract be awarded to Carolina Power and Signalization, Inc.

Upon motion by Councilman McSwain, seconded by Councilman Jernigan, and carried unanimously, the Council awarded a contract to Carolina Power and Signalizations, Inc. of Fayetteville, NC in the amount of \$346,731.46 for pole replacement and to authorize the Mayor or the City Manager to execute and issue those agreements on behalf of the City together with the additional authority to make such alterations, technical amendments and changes as may be necessary to implement the agreement.

2. Consideration of Award of Contract to Carl Grigg Electric & Supply, Inc. for Replacement and Upgrade of Underground Service at Victory Point

The City Manager stated the City has contracted with Southeastern Consulting Engineers, Inc. for engineering and design services. As part of those services they handled the bid process for the upgrade of the distribution system line work at Victory Point. This project involves replacing a lot of underground infrastructure.

Eleven contractors were solicited for bids on the Victory Point Underground Project. Three proposals were received. The lowest responding bid was submitted by Carl Grigg Electric & Supply, Inc. of Shelby, NC in the amount of \$255,340. The bid was over budget. Staff and consulting engineers negotiated with the low bidder, revised the scope of the project, and recommend award of a contract for \$211,170 to Carl Grigg Electric & Supply, Inc. The 2020/2021 CIP includes adequate funds to complete this project at that price.

Upon motion by Councilman Jernigan, seconded by Councilman Hawkins, and carried unanimously, the Council awarded a contract to Carl Grigg Electric & Supply, Inc. of Shelby, NC in the amount of \$211,170 for the Victory Point Underground Project, and to authorize the Mayor or the City Manager to execute and issue those agreements on

behalf of the City together with the additional authority to make such alterations, technical amendments and changes as may be necessary to implement the agreement.

3. Consideration of Award of Contract to Southeastern Consulting Engineers, Inc. for Design Services for Deliver Point #7

The City Manager stated this agreement with Southeastern Consulting Engineers, Inc. (Southeastern), is for design and engineering services for a new electric substation. The new substation will be Delivery Point #7 in our system. After construction is completed the old Rand Street Station, Delivery #1, will be decommissioned.

The design and engineering services contract will allow Southeastern to remain involved through bidding and construction. The cost of the design/engineering proposal is \$237,930. This is included in the 2020/2021 Electric Fund CIP budget.

Upon motion by Councilman Hawkins, seconded by Councilwoman Cato, and carried unanimously, the Council awarded a contract to Southeastern Consulting Engineers, Inc. in the amount of \$237,930 for consulting services for Delivery Point #7 and to authorize the Mayor or the City Manager to execute and issue those agreements on behalf of the City together with the additional authority to make such alterations, technical amendments and changes as may be necessary to implement the agreement.

4. Consideration of Award of Contract with Miki Iwasaki for Artwork to be Installed as Part of Improvements on the Historic Courthouse Square

The City Manager stated that from inception, the City's plans for the re-development of the City-owned portion of the Historic Burke County Courthouse Square have included the creation and installation of works of public art. The Courthouse Square is the most visible and most "public" space in downtown Morganton, and as such is a perfect place for location of art which will be seen by the greatest numbers. There is clear advantage in the incorporation of such art during the construction of the new stage and pavilion. In cooperation with the Burke Arts Council, and with the assistance of the City's chosen contractors, City staff and the volunteer advisory group have selected Miki Iwasaki of California as the preferred artist for the creation of certain artwork on or near the planned performance stage/pavilion.

Through negotiation, the City and Mr. Iwasaki have drafted a proposed contract to govern the design, creation, fabrication and installation of artwork on the Square. Under this Contract, the City would pay Mr. Iwasaki a total of \$57,000, spread over three payments, the last of which would be due upon final acceptance of the work. The design is already complete, and it is anticipated that final acceptance after installation should occur by Spring of 2021. These funds are included in the installment purchase borrowing recently approved for the Courthouse Square project.

Upon motion by Councilwoman Cato, seconded by Councilman Jernigan, and carried unanimously, the Council awarded a contract to Miki Iwasaki for the design, fabrication

and installation of certain artwork as part of the re-development of the Historic Burke County Courthouse Square, and to authorize the Mayor and City Manager to execute the necessary documents.

5. Consideration of Amendments to Code of Ordinances Regarding Smoking and Tobacco Use and Personnel Policy

The City Attorney stated that like many cities, Morganton continues to struggle with issues related to smoking, tobacco use, and the use of alternative systems or products, such as vaping (collectively, “tobacco use”, even though true tobacco is often no longer involved). Broadly, these issues fall into two categories: tobacco use by City employees, and the need to restrict or prohibit tobacco use by any person on City property. In recent years, health requirements, insurance guidelines, public expectations, and societal changes have led to new expectations about the control of tobacco use in public places and by public employees.

The Human Resources and Legal Departments have investigated these issues, researched applicable state laws, and reviewed the policies and ordinances of other local governments. Based on such considerations, City staff recommends amending Chapter 7 of Part 8 of the Code of Ordinances in the following particulars:

Clarify that all City prohibitions or restrictions as to “smoking” also apply to any kind of tobacco use or alternate systems such as vaping;

Extend the prohibition against tobacco use to all City buildings and vehicles, and to all City parks and recreation facilities, with appropriate posting of signage;

Repeal the provision allowing for possible smoking areas inside City buildings; and

Provide that violations of these ordinances result in civil penalties, not misdemeanors.

Upon motion by Councilman Jernigan, seconded by Councilman McSwain, and carried unanimously, the Council amended Sections 8-7001, 8-7002, 8-7003, 8-7005, and 8-7006 of the City of Morganton Code of Ordinances regarding prohibitions or restrictions on smoking or the use of tobacco or alternative products. (Ord. #20-34)

6. Consideration of Award of CDBG Small Business Loan to The Olive of Morganton, LLC

The City Manager stated that Linda Knollmeyer has applied for a CDBG Small Business Loan in the amount of \$30,000 to assist her in the purchase of The Natural Olive & Co. in Morganton. The Natural Olive and Co. offers a selection of healthy olive oils and balsamic vinegars along with wine and beer. The store has been operating for 3 years in Morganton and is profitable. Linda is the manager of the Morganton store. She has over 20 years of management experience and a bachelor’s degree from Western Carolina University in Hospitality Management.

Linda will be changing the name of the business to The Olive of Morganton, LLC. She will continue to operate the business at 111 East Union Street under a new lease with Ben Belton. She will be putting \$7,000 of her own funds into the “reopening” of the store. For the new business, Linda will create one new job and add a martini and cocktail menu. She has already started offering events during the evening hours which has increased the operating revenues of the business.

The City staff feels that this will be a good Small Business Loan to make. Council was asked to consider a \$30,000 CDBG Small Business Loan to the Olive of Morganton, LLC with personal guarantees by Linda Knollmeyer and her husband Clark Knollmeyer.

Upon motion by Councilman Jernigan, seconded by Councilwoman Cato, and carried unanimously, the Council awarded a CDBG Small Business Loan in the amount of \$30,000 to The Olive of Morganton, LLC.

7. Consideration of Appointment to Boards and Commissions

a. Human Relations Commission – These are Mayoral appointments.

At the September City Council meeting an amendment to the Human Relations Commission Ordinance was approved increasing the number of Commission members to a total of up to sixteen.

Daniela Jose Gomez Rodriguez, a Freedom High School junior, and Jared Maksoud, a student at Patton High School, have expressed interest in filling the student positions. Patricia J. Irwin expressed interest in serving an at-large position.

The Mayor appointed Daniela Rodriguez from Freedom High School and Jared Maksoud from Patton High School to the student positions for the 2020/2021 school year and appointed Patricia Irwin to the Human Relations Commission for a term to expire on June 30, 2022.

b. Historic Preservation Commission – The terms of HPC Board Members David Stevenson and Mark Barrier are expiring in November. These members have been excellent participants on the Historic Preservation Commission and have agreed to continue serving.

Upon motion by Councilman Hawkins, seconded by Councilman McSwain, and carried unanimously, the Council reappointed David Stevenson and Mark Barrier to the Historic Preservation Commission for terms to expire June 1, 2023.

8. 30-Day Notice for Boards and Commissions

a. Community House – The Community Building Board of Control is a Council appointed board that advises the Council concerning matters of operation of the

Community House and responds to directives from the Council relating to the operation of the Community House.

The terms of Wanda Burnette, Marchelle Speas, Phil Scarboro, Kay Dignan, Ron George and Colleen Bennett are set to expire on December 31, 2020. These members have been excellent participants on this Board. The Mayor urged citizens to send in an application if they are interested in being considered for a position on this Board.

XII. Other Items from City Manager and City Council Not on Agenda – There were no other items presented.

XIII. Reports – Reports were distributed to Council.

XIV. Adjournment – The meeting was adjourned at 7:33 p.m.

Preparation of Minutes. These minutes were prepared by Mikela D. Russell, Assistant City Clerk. Copies of all resolutions, ordinances and orders referenced in these minutes are intended to be incorporated into these minutes as if fully set forth herein. Prior to including them into the official minute book, the minutes have been read and approved by the City Manager and the City Attorney, then distributed to each member of the City Council for further review and final approval, at a subsequent Council Meeting.

Mayor

Assistant City Clerk