

MINUTES OF MEETING, ATHENS CITY COUNCIL, SEPTEMBER 21, 2010

The Athens City Council met in regular session on Tuesday, September 21, 2010, at 6:00 p.m. with Mayor Buttram presiding. The invocation was given by Vice Mayor Perkinson; and upon roll call, the following members were present:

Davis, Jackson, Pelley, Perkinson, Buttram

The following decisions were made and ordered made a part of the records of the Athens City Council.

- 1 -

MINUTES

The Minutes of the regularly scheduled meeting on August 17, 2010 were submitted for approval. Vice Mayor Perkinson noted that on page three of the minutes, the third sentence under Item 11 – Ordinance No. 991 – Second/Final Reading – Public Hearing should be amended to read as follows: “He stated that the Fire Department is currently enforcing the 2000 South Building Code *which no longer exists.*” There being no further changes, the minutes were approved as amended by unanimous consent.

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COMMUNICATIONS

PRESENTATION OF CERTIFICATE OF ACHIEVEMENT PLAQUE

Mayor Buttram announced that the City had received the Government Finance Officers Association “Certificate of Achievement for Excellence in Financial Reporting” for fiscal year ended June 30, 2009. The Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting. This marked the 18th consecutive year the City had received this award. Mayor Buttram presented a plaque to Finance Director Brad Harris in recognition of outstanding financial reporting for the City of Athens.

- 3 -

MISCELLANEOUS CORRESPONDENCE

Mayor Buttram acknowledged receipt of letter of appreciation for services performed by city staff members.

- 4 -

PETITIONS AND REQUESTS

AUDIENCE

Mayor Buttram opened the meeting for petitions and requests from the audience. There were none presented at this time.

- 5 -

REPORTS

FINANCE DEPARTMENT REPORT

Mr. Brad Harris, Finance Director, presented the Finance Department Report for the month of August 2010. He advised the Council that property tax notices typically go out the beginning of October, however, they will be going out late this year but people will still be able to pay their bills in October. A press release will be prepared to let everyone know that notices will be late. The report was accepted as presented.

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POLICE DEPARTMENT REPORT

Chief Chuck Ziegler presented the Police Department Report for the month of August 2010. He stated that the City was going to be partnering with MADCAT, Athens Elks Lodge, and McMinn County Sheriff's Department on Saturday, September 25, 2010 from 10 a.m. to 2 p.m. on a National Drug Take Back Day. The number one drug problem in Athens is the illegal use of prescription drugs. Since this has become such a big problem, the DEA has relaxed their requirements on local law enforcement and was working with the City and its partners on this program. After brief discussion and comments, the report was accepted as presented.

- 7 -

FIRE DEPARTMENT REPORT

Fire Chief Jim Dyer presented the Fire Department Report for the month of August 2010. After brief discussion and comments, the report was accepted as presented.

- 8 -

CONSENT AGENDA

Mayor Buttram advised that there were no items to be considered under the Consent Agenda.

- 9 -

NEW BUSINESS

RETAIL AND TOURISM COMMITTEE APPOINTMENT – MICHAEL HUNTER

A motion was made by Council Member Davis, seconded by Vice Mayor Perkinson, to appoint Michael Hunter to the Retail and Tourism Committee as the Business Owner/Business Manager Athens Plaza/Congress Parkway area representative. After brief comments, the appointment was approved by the following roll call vote:

AYES: Davis, Jackson, Pelley, Perkinson, Buttram
NAYS: None

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RETAIL AND TOURISM COMMITTEE APPOINTMENT – NEIL MISTRY

A motion was made by Council Member Pelley, seconded by Council Member Jackson, to appoint Neil Mistry to the Retail and Tourism Committee as the Business Owner/Business Manager I-75 Exits area representative. After brief comments, the appointment was approved by the following roll call vote:

AYES: Davis, Jackson, Pelley, Perkinson, Buttram
NAYS: None

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RETAIL AND TOURISM COMMITTEE APPOINTMENT – STUART MASON

A motion was made by Council Member Jackson, seconded by Council Member Davis, to appoint Stuart Mason to the Retail and Tourism Committee as the At Large Member from Athens Business Community representative. After brief comments, the appointment was approved by the following roll call vote:

AYES: Davis, Jackson, Pelley, Perkinson, Buttram
NAYS: None

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MANAGER’S REPORT

City Manager Moore presented the Manager's Report. He reviewed the progress of current city projects/meetings scheduled during the months of September and October. Mr. Moore advised the Council that a public hearing will be held for comments on the Roadscapes project at the October 19, 2010 meeting. After brief comments, the report was accepted as presented.

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BEER BOARD

6:43 P.M.....The Athens City Council recessed and reconvened as the Athens Beer Board

Chairman Buttram opened the Beer Board hearings. City Attorney Trew stated that the Board would take the hearings one at a time. He would present the City’s evidence and then the permit holder would be allowed to present their evidence. After all the evidence had been presented for the four permit holders, the Board would determine whether or not the City Code had been violated in each case, announce their findings, and determine the penalties to be imposed for any violations of the City of Athens Beer Code then move on to the next permit

holder following the same process. Mr. Trew advised the Board that they had the authority to suspend or revoke a beer permit for violation of the City of Athens Beer Code.

City Attorney Trew provided into evidence the legal notice published in the Daily Post-Athenian on September 16, 2010 providing notice that the Beer Board would hold a hearing on September 21, 2010 on these proceedings.

THE PANTRY, INC. DBA KANGAROO EXPRESS #3548

City Attorney Trew presented into evidence the application held in the name of Peter Sodini, President, for The Pantry, Inc. doing business as the Kangaroo Express #3548 located on South White Street along with a copy of the letter notifying Mr. Sodini of the scheduled hearing. He acknowledged legal counsel representing The Pantry, Inc. Mr. Chris Oliver, Esq. introduced himself as well as Ms. Lisa Norris, Division Manager for The Pantry, Inc. City Attorney Trew questioned Chief Ziegler regarding the beer sting operation. The permit holder and the clerk responsible for selling beer to a minor under 21 were cited into City Court. Chief Ziegler stated that both the permit holder and clerk were found guilty. Attorney Oliver agreed that the City Judge did convict them. He presented his case to the Board stating that there was a statute in the State of Tennessee that governed how sting operations should be carried out. Mr. Oliver commented that his employer would like him to go over the statute and gave a copy of the statute to each Beer Board member. He felt that since the statute had not been followed the Board should dismiss the charges. City Attorney advised the Board that Mr. Oliver presented these arguments in court and the same arguments were rejected by the City Judge.

THE PANTRY, INC. DBA KANGAROO EXPRESS #3606

City Attorney Trew presented into evidence the application held in the name of Peter Sodini, President, for The Pantry, Inc. doing business as the Kangaroo Express #3606 located on Decatur Pike along with a copy of the letter notifying Mr. Sodini of the scheduled hearing. Copies of the citations issued to The Pantry, Inc. and the clerk were also presented into evidence. Mr. Oliver stated that he would raise the same issues with regard to this case as he did for the previous case.

ATHENS GURUKRUPA, INC. DBA STOP N GO #2

City Attorney Trew presented into evidence the application held in the name of Ashok Patel for Athens Gurukrupa Inc. doing business as Stop N Go #2 located on Old Riceville Road. Copies of the citations issued to Athens Gurukrupa, Inc. and the clerk were also presented into evidence. Attorney Van Michael was present representing both Athens Gurukrupa, Inc. and Nayan Founders USA Inc. Mr. Michael questioned Chief Ziegler regarding the sting operation.

NAYAN FOUNDERS USA INC. DBA SUPER MART

City Attorney Trew presented into evidence the application held in the name of Daxesh Patel for Nayan Founders USA Inc. doing business as Super Mart located on Decatur Pike. Copies of the citations issued to Nayan Founders USA Inc. and the clerk were also presented into evidence. Attorney Van Michael questioned Chief Ziegler regarding the sting operation.

ACTION OF BEER BOARD

City Attorney Trew reminded the Board that they had the authority to revoke or suspend the beer permits. Each permit holder had been adjudged in City Court of violating Section 8-213 (8) of the Athens Municipal Code. He asked the Board for a finding that the permit holders had violated the provisions of the City Code. After consultation with the City Manager's Office and Chief of Police, Mr. Trew stated that they were not asking for a revocation since this was a first violation but for a suspension at the Board's discretion of from 30 to 60 days. Mr. Trew advised the Board that they could offer as an alternative to a suspension, a civil penalty not exceed two thousand five hundred dollars (\$2,500) for each offense. He would recommend a penalty not to exceed one thousand five hundred dollars (\$1,500) but that would be up to the discretion of the Board. Mr. Trew addressed Mr. Oliver's argument that the State statute had not been followed by the Athens Police Department with regard to the sting operation. The attorneys for the beer permit holders were given an opportunity to make their final arguments.

After discussion concluded, **a motion was made by Board Member Pelley, seconded by Board Member Davis, to find The Pantry, Inc.'s Kangaroo Express #3548 and Kangaroo Express #3606 in violation and to suspend their beer licenses for thirty (30) days, with the alternative of paying a civil penalty in the amount of \$1,500 per store.** Upon roll call, the motion was approved by the following vote:

AYES: Davis, Jackson, Pelley, Perkinson, Buttram
NAYS: None

A motion was made by Board Member Pelley to find Stop N Go #2 in violation and to suspend their beer license for forty (40) days, with the alternative of paying a civil penalty in the amount of \$2,500. The motion died for lack of a second.

A motion was made by Board Member Perkinson, seconded by Board Member Pelley, to suspend Stop N Go #2 beer license for forty (40) days, with the alternative of paying a civil penalty in the amount of \$2,000. Upon roll call, the motion was approved by the following vote:

AYES: Davis, Pelley, Perkinson
NAYS: Jackson, Buttram

A motion was made by Board Member Jackson to find Super Mart in violation and to suspend their beer license for thirty (30) days, with the alternative of paying a civil penalty in the amount of \$1,500. The motion died for lack of a second.

A motion was made by Board Member Pelley, seconded by Board Member Davis, to suspend Super Mart beer license for forty (40) days, with the alternative of paying a civil penalty in the amount of \$2,000. Upon roll call, the motion was approved by the following vote:

AYES: Davis, Pelley, Perkinson
NAYS: Jackson, Buttram

City Attorney Trew stated that under City Code when the Council offers a civil penalty in lieu of a suspension, that civil penalty must be paid within seven (7) days or the suspension goes into place.

RELINQUISHMENT OF BEER PERMIT – VALLEY MART #14

Mayor Buttram acknowledged receipt of a letter from Scott Shankle relinquishing the Package Beer Stores (Off Premises) Beer Permit at Valley Mart #14 located at 1124 West Madison Avenue due to a change in ownership. **A motion was made by Board Member Perkinson, seconded by Board Member Davis, to accept the relinquishment of the Package Beer Stores (Off Premises) Beer Permit by Valley Mart # 14 as submitted.** Upon roll call, the motion was approved by the following vote:

AYES: Davis, Jackson, Pelley, Perkinson, Buttram
NAYS: None

BEER APPLICATION – B.P. ONE MART, 1124 WEST MADISON AVENUE

An application for a Package Beer Stores (Off Premises) Beer Permit at B.P. One Mart, 1124 West Madison Avenue, was presented for consideration.

A motion was made by Board Member Perkinson, seconded by Board Member Pelley, to approve the beer application from B.P. One Mart as submitted. Upon roll call, the motion was approved by the following vote:

AYES: Davis, Jackson, Pelley, Perkinson, Buttram
NAYS: None

RELINQUISHMENT OF BEER PERMIT – VALLEY MART #15

Mayor Buttram acknowledged receipt of a letter from Scott Shankle relinquishing the Package Beer Stores (Off Premises) Beer Permit at Valley Mart #15 located at 1300 Railroad Avenue due to a change in ownership. **A motion was made by Board Member Pelley, seconded by Board Member Davis, to accept the relinquishment of the Package Beer Stores (Off Premises) Beer Permit by Valley Mart # 15 as submitted.** Upon roll call, the motion was approved by the following vote:

AYES: Davis, Jackson, Pelley, Perkinson, Buttram
NAYS: None

BEER APPLICATION – B.P. TWO MART, 1300 RAILROAD AVENUE

An application for a Package Beer Stores (Off Premises) Beer Permit at B.P. Two Mart, 1300 Railroad Avenue, was presented for consideration.

A motion was made by Board Member Davis, seconded by Board Member Pelley, to approve the beer application from B.P. Two Mart as submitted. Upon roll call, the motion was approved by the following vote:

AYES: Davis, Jackson, Pelley, Perkinson, Buttram

NAYS: None

8:08 P.M.....The Athens Beer Board adjourned and reconvened as the Athens City Council

ADJOURNMENT

There being no further business to come before the meeting and upon motion duly made and seconded, the meeting adjourned at 8:09 p.m.

R. HAL BUTTRAM, Mayor

MITCHELL B. MOORE, City Manager