

MINUTES OF MEETING, ATHENS CITY COUNCIL, JANUARY 18, 2005

The Athens City Council met in regular session on Tuesday, January 18, 2005, at 6:00 P.M. with Mayor Proffitt presiding. The invocation was given by Council Member Alvey; and upon roll call, the following members were present:

Alvey, Myers, Pelley, Perkinson, Proffitt

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 held on December 21, 2004, were submitted. Upon motion by Vice Mayor Perkinson, seconded by Council Member Myers, said Minutes were unanimously approved.

- 2 -

COMMUNICATIONS FROM THE MAYOR

PRESENTATION OF VIVID AWARD

Council Member Pelley presented the *Very Important Volunteer Individual Award* for January 2005 to the Downtown Business Association. The DBA was recognized for its leadership and support in the downtown business community. President Stuart Mason, along with other members of the DBA, was in attendance to accept the award on behalf of its 100 plus membership.

- 3 -

RECOGNITION OF SOIL CONSERVATION'S 50<sup>TH</sup> ANNIVERSARY

The City Council congratulated the McMinn County Soil Conservation District on the celebration of its Golden Anniversary. In recognition of that achievement, the following resolution was presented for adoption:

**RESOLUTION NO. 2005-01**

**“A RESOLUTION TO ACKNOWLEDGE AND TO CELEBRATE IN EXCESS OF FIFTY YEARS OF SERVICE TO THIS COMMUNITY BY THE MCMINN COUNTY SOIL CONSERVATION DISTRICT.”**

Vice Mayor Perkinson invited representatives Doug Watts (Chairman) and Howard Whitaker (Vice Chairman), to come forward in representation of the local Soil Conservation District. After the reading of the resolution by Vice Mayor Perkinson, motion was made by Council Member Myers, seconded by Council Member Pelley, to approve Resolution No. 2005-01. Upon voice vote, the resolution was unanimously approved.

MISCELLANEOUS CORRESPONDENCE

Mayor Proffitt acknowledged receipt of numerous letters and notes of appreciation for services performed by city staff members.

PETITIONS AND REQUESTS

AUDIENCE

Mayor Proffitt opened the meeting for petitions and requests from the audience. Mr. Clay Chastain, a resident of 311 Pope Street, advised that he has withdrawn his previous request for a downtown theatre due to a lack of support by both the community and this council. Relative to a new sales tax initiative and request, he proposed the same financial package (implementation of a one-quarter cent sales and use tax for a period of five years as of June 1, 2005 through May 31, 2010) to fund construction of the following projects: downtown farmers market and concert park on city owned property at North Jackson and Madison; outdoor family aquatic center at the Athens Regional Park to replace and consolidate three existing city pools; and green belt connecting downtown to Mayfield Visitor Center and E. G. Fisher Library and proceeding along Oostanaula Creek and an abandoned railroad right-of-way. In his effort to define a better approach as a community activist, Mr. Chastain announced his desire to conduct a public hearing relative to the above projects on Thursday, January 20. He invited the community as well as the City Council to attend this public meeting at 6:45 p.m. at the E. G. Fisher Library. In closing remarks, Mr. Chastain stated, "If the response is negative and no one shows up, my wife and I will move on and make a fresh start." However, if the response is positive, he urged City Council to hold its own public hearing for validation purposes and to place this sales tax increase on the ballot for referendum this spring. Council Member Alvey informed Mr. Chastain that she has a previous commitment on that evening and will not be able to attend the public hearing. She further advised Mr. Chastain that she would review his proposal and respond in writing prior to the hearing. Mayor Proffitt thanked Mr. Chastain for his continued interest in the City of Athens and deferred discussion of this proposal to the Council's annual planning meeting scheduled for the weekend of January 21.

REPORTS

FINANCE DEPARTMENT REPORT

Mr. Mike Keith presented the Finance Department Report for the month of December 2004. The report was accepted as presented.

POLICE DEPARTMENT REPORT

Chief Chuck Ziegler presented the Police Department Report for the month of December 2004. The report was accepted as presented.

FIRE DEPARTMENT REPORT

Chief Bob Miller presented the Fire Department Report for the month of December 2004. The report was accepted as presented.

COMMUNITY DEVELOPMENT ANNUAL BUILDING REPORT

Mr. Harold Hunter, Community Development Director, presented the Building Permit Report for 2004. Quarterly totals for period ending December 31, 2004 reflect 159 permits, with valuation fees estimated at \$4,446,920; annual totals reflect 627 permits, with valuation fees estimated at \$22,516,233. After further comments, the report was accepted as presented.

CONSENT AGENDA

Mayor Proffitt advised that the following items were discussed during the recent work session and are presented as a part of the Consent Agenda:

- 1.) Approve **Resolution No. 2005-02** to authorize the Mayor and City Manager to execute a contract with the State of Tennessee, Department of Transportation for installation of multiphase traffic signal at the intersection of Madison Avenue (SR 11/39) and Keith Lane (all costs for installation to be paid by the developer);
- 2.) Accept **Comprehensive Consolidated Financial Audit** (City of Athens, City Schools, AUB) as prepared by Neal, Scouten & McConnell for period ending June 30, 2004;
- 3.) Approve **Resolution No. 2005-03** to declare the week of January 24-28, 2005, **Athens Flood Week**;

On motion by Council Member Myers, seconded by Council Member Alvey, the Consent Agenda as stated above was unanimously approved by voice vote.

ORDINANCES

**ORDINANCE NO. 925 – SECOND/FINAL READING – PUBLIC HEARING**

**“AN ORDINANCE TO AMEND CERTAIN SECTIONS OF CHAPTER 2 OF TITLE 8 OF THE ATHENS MUNICIPAL CODE TO REMOVE TAVERNS AS A CLASSIFICATION ELIGIBLE FOR A BEER PERMIT.”**

Upon the reading of the caption by the recording clerk, Mayor Proffitt opened the Public Hearing on Ordinance No. 925. There being no one present wishing to discuss the Ordinance, Public Hearing was closed. Motion was made by Council Member Myers, seconded by Vice Mayor Perkinson, to

approve Ordinance No. 925 on Second and Final Reading, and upon roll call, Ordinance No. 925 was approved by the following vote:

AYES: Alvey, Myers, Pelley, Perkinson, Proffitt  
NAYS: None  
ABSENT: None

- 12 -

**ORDINANCE NO. 926 – SECOND/FINAL READING – PUBLIC HEARING**  
**“AN ORDINANCE TO AMEND CHAPTER 2 OF TITLE 8 OF THE ATHENS MUNICIPAL CODE TO ADD A NEW CLASSIFICATION ELIGIBLE FOR A BEER PERMIT.”**

Upon the reading of the caption by the recording clerk, Mayor Proffitt opened the Public Hearing on Ordinance No. 926. Mr. Bill Bennett, a downtown business owner, questioned the difference between this new “Club” classification in comparison to a “Tavern.” It was noted that the “Club” classification is much more restrictive in that its interpretation, being derived from TCA §57-4-102 (7)(A)(B), includes the following qualifications: must be non-profit; must hold an existing license from the Alcoholic Beverage Commission; must have been in existence a minimum of two years; must have a fee structure and a membership of at least 100. There being no further questions or comments from the audience, the Public Hearing was closed. Motion was made by Vice Mayor Perkinson, seconded by Council Member Alvey, to approve Ordinance No. 926 on Second and Final Reading, and upon roll call, Ordinance No. 926 was approved by the following vote:

AYES: Alvey, Myers, Pelley, Perkinson, Proffitt  
NAYS: None  
ABSENT: None

- 13 -

**ORDINANCE NO. 927 – SECOND/FINAL READING – PUBLIC HEARING**  
**“AN ORDINANCE TO AMEND TITLE 14, CHAPTER 1, SECTION 14-101, OF THE ATHENS MUNICIPAL CODE ENTITLED MUNICIPAL PLANNING COMMISSION.”**

Upon the reading of the caption by the recording clerk, Mayor Proffitt opened the Public Hearing on Ordinance No. 927. There being no one present wishing to discuss the Ordinance, Public Hearing was closed. Vice Mayor Perkinson noted that this ordinance reflects language as depicted in TCA §13-4-101 pursuant to creation of planning commissions. After other brief comments, motion was made by Council Member Myers, seconded by Vice Mayor Perkinson, to approve Ordinance No. 927 on Second and Final Reading, and upon roll call, Ordinance No. 927 was approved by the following vote:

AYES: Alvey, Myers, Pelley, Perkinson, Proffitt  
NAYS: None  
ABSENT: None

OLD BUSINESS

CONSIDER CLAY CHASTAIN REQUEST FOR PUBLIC HEARING

As discussed in last month's regular meeting and recent work session, Mayor Proffitt acknowledged Mr. Clay Chastain's request for the City Council to call a public hearing for the purpose of considering a referendum to increase sales tax to finance the construction of a downtown theatre. Upon discussion, Council Member Pelley alluded to Mr. Chastain's recent withdrawal of this request; however, for official documentation, he moved that Council reject the request to call a public hearing for the purpose noted above. The motion was seconded by Council Member Alvey and upon voice vote, was unanimously approved.

NEW BUSINESS

APPROVE PURCHASE - TRUCK CAB/CHASSIS FOR PUBLIC WORKS

As discussed in recent work session, city staff's memorandum dated January 7, 2005, recommended the purchase of a truck cab/chassis for Public Works from Superior Ford of Athens in the amount of \$23,967. In reviewing Bid No. 1393, city staff noted that the apparent low bidder Reeder Chevrolet (Chev. 3500 - \$23,364) did not meet specifications and for the following reasons, recommended this bid be rejected: trailer towing package is not available; maximum gross vehicle weight is 4000 lbs. under specification; tire and wheel size not as specified; and axle ratio not as specified. In comparing the second (McNelly-Whaley Ford of Sevierville - Ford F-350 @ \$23,946) and third (Superior Ford of Athens - Ford F-350 @ \$23,967) lowest bids, city staff recommended approval of the local vendor based on availability of service within one to two miles of the public works service center. After further comments, motion was made by Council Member Pelley, seconded by Council Member Myers, to approve the purchase of a truck cab/chassis from Superior Ford as recommended above. Upon voice vote, the motion was unanimously approved.

RECOMMENDATION FROM ARPC - REZONING REQUEST

Mr. Harold Hunter, Community Development Director, presented Minutes of the Planning Commission, meeting in regular session on January 3, 2005, unanimously recommending that City Council rezone 121 acres located at 900 North Congress Parkway from I-1 (Light Industrial District) to B-4 (Highway and Major Arterial Serving District). As noted in the official Minutes, this property is located at the intersection of Congress Parkway and the New Mt Verd Road (SR 305). After brief comments, the following ordinance was presented for consideration:

**ORDINANCE NO. 928 - FIRST READING**

**“AN ORDINANCE AMENDING ORDINANCE NO. 914 ENTITLED, ‘THE ZONING ORDINANCE OF THE CITY OF ATHENS, TENNESSEE,’ SO AS TO REZONE APPROXIMATELY 121 ACRES LOCATED AT THE INTERSECTION OF CONGRESS PARKWAY AND NEW MT. VERD ROAD (STATE RT. 305), DESCRIBED IN THE BODY OF THIS ORDINANCE, FROM I-1, LIGHT INDUSTRIAL DISTRICT, TO B-4, HIGHWAY AND**

**MAJOR ARTERIAL SERVING BUSINESS DISTRICT, SAID PARCEL BEING MORE ACCURATELY DESCRIBED AS BEING 900 N. CONGRESS PARKWAY WITHIN THE CORPORATE LIMITS OF ATHENS, TENNESSEE AND TO OFFICIALLY CHANGE THE ZONING MAP OF THE CITY OF ATHENS, TO REFLECT AND SHOW SAID CHANGE IN ZONING MADE BY THIS ORDINANCE.”**

Upon the reading of the caption by the recording clerk, motion was made by Vice Mayor Perkinson, seconded by Council Member Alvey, to approve Ordinance No. 928 on First Reading, and upon roll call, Ordinance No. 928 was approved by the following vote:

AYES: Alvey, Myers, Pelley, Perkinson, Proffitt  
NAYS: None  
ABSENT: None

- 17 -

**MANAGER'S REPORT**

City Manager Moore presented the Manager's Report. He reviewed progress of current city projects/meetings scheduled during the months of January and February. The following special meetings were announced: Strategic Planning Meeting to be held on January 21 (6:00 p.m. to 10:00 p.m.) and on January 22 (9:00 a.m. to early afternoon) at the Red Brick House (Athens Regional Park); Joint Meeting with School Board on January 25, 7:00 p.m. at the Administrative Building located at 943 Crestway Drive; and Joint Meeting with Utilities Board on February 3, 6:00 p.m. in the Regional Park Conference Center. After additional discussion, the report was accepted as presented.

- 18 -

**DISTRIBUTION OF ELECTED OFFICIALS LITTLE HANDBOOK**

Mayor Proffitt distributed a copy of a book entitled Elected Officials Little Handbook to each council member. He urged each council member to read the handbook and submit any comments or feedback to the City Manager or to him.

**7:12 P.M.....The Athens City Council recessed and reconvened as the Athens Beer Board**

- 19 -

**BEER BOARD**

**BEER BOARD HEARING**

As advertised in the local newspaper and upon certified notification of beer permit holder William Bigham at Mexi-Wing II (2547 Decatur Pike), Mayor Proffitt opened the Beer Board Hearing to determine if the City of Athens Beer Code has been violated. To present the findings before the Beer Board, City Attorney Chris Trew advised that the Tennessee Alcoholic Beverage Commission conducted a sting last year, finding one violation in that beer was sold to an individual under the age of 21 by an employee (Elizabeth M. Martin) of Mexi-Wing II. To be made a part of the record, Mr. Trew

presented certified documentation of the employee's conviction in General Sessions Court on May 7, 2004. It was noted that the defendant plead guilty and was fined \$50 plus court costs, with six months diversion. City Attorney Trew explained that state and local laws hold the permit holder (in this case, Mr. Bingham) responsible for the acts of all employees who are found to be in violation of beer and alcohol laws. Therefore, the Alcoholic Beverage Commission fined Mr. Bingham's business in the amount of \$1,500 for this violation. Mr. Trew invited Mr. Bingham to address the Beer Board as to the guilt or innocence in respect to this incident. Mr. Bingham conceded that one of his employees did sell beer to a minor. He acknowledged that the employee had received adequate training; however, it was a busy time and she failed to check for identification. Mr. Bingham confirmed that additional employee training has been conducted recently as a result of this incident. Upon Mr. Bingham's concession of the violation, Mr. Trew addressed the Beer Board relative to its options for this violation of the Beer Code. Noting that this is the first offense for this business (Mexi-Wing II) and in an effort to be uniform in its punishment of violators, Mr. Trew advised that first-time offenders have in the past received a revocation of their beer permit from ten to 60 days (usually 30 days), with that revocation being suspended and the business being placed on probation for a period of time (usually one year). Mr. Trew stated that should a violation occur during the time of probation, this revocation would go into effect immediately and a new offense would be considered by the Beer Board. Mr. Trew further noted that 8-217 of the Athens City Beer Code offers the permit holder an alternative of paying a \$1,500 fine in lieu of revocation. It was Mr. Trew's suggestion that the Beer Board might want to consider revocation since this business has already been fined \$1,500 by the Alcoholic Beverage Commission. After further comments, motion was made by Council Member Myers, seconded by Vice Mayor Perkinson, to revoke the beer permit at Mexi-Wings II for a period of 30 days, and further that the revocation be suspended in lieu of a probationary period of one year, effective this date. During discussion, Council Member Pelley stated that Mr. Bingham rents property from him and for that reason recused himself from the vote. After further comments and upon voice vote, the motion was approved by four ayes, with Council Member Pelley not voting.

- 20 -

#### RELINQUISHMENT OF PERMIT – EL CASTILLO MEXICAN RESTAURANT

City Manager Moore presented a letter of relinquishment from Amalia Castillo of El Castillo Mexican Restaurant located at 710 South White Street. It was noted that a change of ownership has occurred at this location. Upon motion by Council Member Pelley, seconded by Vice Mayor Perkinson, the relinquishment was unanimously accepted by voice vote.

- 21 -

#### REQUEST FOR RESTAURANT BEER PERMIT - 710 SOUTH WHITE STREET

City Manager Moore presented an application for a restaurant beer permit at the El Castillo and Tony's Restaurant located at 710 South White Street. Mr. Moore stated that the application is properly completed and executed, the investigation by the Chief of Police and the Inspection of the facility by the Building Inspector reveal that all requirements for the issuance of a permit have been met and that the \$250 application fee has been collected. Upon questioning, the new owner/manager, Mr. Julio Resendiz, acknowledged that he is familiar with all beer laws in the City, particularly those prohibiting the sale of beer to individuals less than 21 years of age. After further discussion, motion was made by Vice Mayor Perkinson, seconded by Council Member Pelley, to approve the beer application as submitted. Upon voice vote, the motion was unanimously approved.

**7:40 P.M.....The Athens Beer Board recessed and reconvened as the Athens  
City Council**

- 22 -

ADJOURNMENT

There being no further business to come before the meeting and upon motion duly made and seconded, the meeting adjourned at 7:40 p.m.

---

JOHN M. PROFFITT, Mayor

---

MITCHELL B. MOORE, City Manager