

MINUTES
REGULAR MEETING OF THE NEWTON CITY COUNCIL

October 16, 2012 – 7:00 P.M.

The regular meeting of the Newton City Council was held on Tuesday, October 16, 2012 at 7:00 p.m. in the Council Chambers at City Hall.

PRESENT: Mayor Anne P. Stedman, Mayor Pro Tem Bill Lutz, Council Members Mary Bess Lawing, Tom Rowe, Robert C. Abernethy, Jr., Wayne Dellinger and Wes Weaver

STAFF: City Manager Todd Clark, City Clerk Amy S. Falowski, City Attorney Larry Pitts, City Department Heads, and members of the Management Team

ITEM 1: CALL TO ORDER – Mayor Anne P. Stedman

Mayor Anne P. Stedman welcomed everyone and called the meeting to order.

ITEM 2: OPENING – Council Member Tom Rowe

Council Member Mary Bess Lawing provided the invocation and led the Pledge of Allegiance.

ITEM 3: APPROVAL OF MINUTES FROM THE October 2, 2012 REGULAR CITY COUNCIL MEETING

Upon motion duly made by Council Member Mary Bess Lawing, seconded by Robert C. Abernethy, Jr., it was unanimously RESOLVED:

That the Minutes of the October 2, 2012 Regular City Council Meeting be – APPROVED

ITEM 4: CONSIDERATION OF CONSENT AGENDA ITEMS

Mayor Stedman stated that a request has been made to remove Item 4D from the Consent Agenda.

It was unanimously RESOLVED:

That Request to Remove Item 4D – Consideration of Ordinance Relating to Article VII – Sec 22 – 195 – Privilege License – Internet Sweepstakes/Electronic Gaming Business Ordinance from Consent Agenda be – APPROVED

Upon motion duly made by Mayor Pro Tem Bill Lutz, seconded by Council Member Mary Bess Lawing, it was unanimously RESOLVED:

That Consent Agenda be – APPROVED

- A. Sewer Adjustments
- B. Proclamation Hunger and Homelessness Awareness Week – November 10-18, 2012
- C. Consideration of Resolution to Authorize the Governor’s Highway Safety Grant
- D. REMOVED – Placed Under New Business

(Ordinances, Resolutions, and Proclamations are hereby referenced and on file in the office of the City Clerk)

ITEM 5: **COMMENTS FROM THE PUBLIC: (PERSONS WANTING TO MAKE A PUBLIC COMMENT ON NON-AGENDA ITEMS ARE REQUESTED TO SIGN IN WITH THE CITY CLERK PRIOR TO THE MEETING):**

Mayor Anne P. Stedman asked if there was anyone present that would like to make any comments concerning non-agenda items. No one appeared.

ITEM 6: **Public Hearing**

- A. Consideration of Zoning Text Amendment 2012-04 – Roadside Stands

Mayor Stedman closed the Regular Meeting and opened the Public Hearing.

Assistant Planning Director Alex Fulbright stated that the City of Newton Planning Commission is requesting that the City Council approve a text amendment to the Zoning Ordinance that would establish a definition and regulations for Roadside Stands within the City.

Mr. Fulbright explained that at the direction of the City Manager, the Planning Department was asked to review existing regulations as they pertain to roadside stands allowed as temporary and seasonal uses within the City. He stated that the staff was also asked to make recommendations to the Planning Commission if updates were needed to the City Code of Ordinances.

Mr. Fulbright stated that temporary and seasonal uses have been informally allowed on lots with commercial zoning in the past, but that recently there have been more citizens engaging in activities that are typically believed to be temporary in nature. He explained that often these types of uses include the sale of fresh local produce which would be easily accessible to consumers. Mr. Fulbright stated that unfortunately the planning staff has not been able to adequately advise the public with regard to temporary and seasonal uses due to the absence of regulation.

Mr. Fulbright stated that planning staff reviewed the current situation with the Planning Commission at the June 2012 meeting with the goal of identifying needs and forming a set of regulations that would be used for temporary uses. He stated that during subsequent meetings of the Planning Commission, the staff conducted further research and revised proposed changes as requested by the Commission.

Mr. Fulbright stated that the request for a zoning ordinance text amendment that addresses “Roadside Stands” include the following changes:

- A. “Roadside Stands” are separately defined with the same definition as “Temporary and Seasonal” uses;
- B. By definition will allow for the sale of such items as Christmas trees, pumpkins, seasonal produce, and similar agricultural products;
- C. Will be allowed by a permit issued by the City for a period of time not to exceed 90 days per calendar year;
- D. May not utilize more than 20% of any required parking area on a site with all sales located out of the street right-of-way, outside of transportation sight triangles, and outside of landscaped areas. All parking associated with a roadside stand must be located outside of the street right-of-way;
- E. Allows the City to require additional permits if such permits are determined necessary from other various agencies such as the Department of Environmental Health, Catawba County Building Inspections, Newton Fire Department; and
- F. Allow the City to revoke a permit if any of the sections have been violated or if there is a hazard to the public health, safety or welfare

Mr. Fulbright stated that the Text Amendment to create a definition and a set of regulations for Roadside Stands was recommended unanimously by the Newton Planning Commission for approval by the Newton City Council.

Mayor Stedman asked if there was anyone present that would like to speak in favor of or against the proposed Text Amendment.

Mr. Leatherman, of Vale, stated that he was the one that had the carport and that he was asked to take it down, move it off the lot and that he would need a peddler’s license. He stated that he removed the carport and that he was told by Major Yarborough of the Newton Police Department that he could use a tent, but that he would have to take it down and put it up every day. Mr. Leatherman stated that there was a tent across the street, and that it was left up every day. He stated that he did as he was told and took his tent down every afternoon because he doesn’t want to cause trouble. Mr. Leatherman stated that 90 days cannot cover all the seasonal farming, and that April 1-November 1 would be a better time frame.

Council Member Wayne Dellinger agreed with Mr. Leatherman concerning the 90 day period, and also stated that every day that the tent was not there would not be counted against the roadside stand.

Council Member Mary Bess Lawing asked why the other stand wasn't asked to remove their tent every day. Mr. Leatherman stated that that particular stand doesn't even grow his own produce, he buys it.

Mr. Fulbright explained that staff is concerned about these structures becoming permanent, and that they looked at other city's ordinances.

Council Member Dellinger stated that he has a problem with the stands becoming permanent, not with the temporary stands.

City Manager Todd Clark stated that this proposed text amendment is to help guide staff on how to regulate these businesses.

Council Member Robert C. Abernethy, Jr. asked how the City is going to police these roadside stands. Council Member Wes Weaver agreed with Council Member Wayne Dellinger in that he didn't think these stands should turn into permanent structures. He stated that the land owners should police their property. Council Member Dellinger agreed and said that if someone owns land they should obey the law.

Mr. Leatherman stated that he would abide by whatever the Council decided, he would just like for everyone to be treated fairly.

Upon motion duly made by Council Member Wayne Dellinger, seconded by Council Member Robert C. Abernethy, Jr., it was unanimously RESOLVED:

That Public Hearing be – CLOSED.

Council Member Wes Weaver made the motion that the code should remain the same, but that no permanent structures should be allowed. Council Member Wayne Dellinger seconded the motion.

Council Member Mary Bess Lawing asked if this would just address produce stands, or other businesses as well. Mr. Fulbright stated that there is no definition, and that this proposal is just designed to treat everyone fairly. Council Member Lawing stated that she thought there needs to be an ordinance and guidelines. Council Member Wes Weaver stated that he doesn't see any abuse.

Council Member Tom Rowe stated that maybe they should think about it a little longer.

Council Member Bill Lutz stated that he is okay with not allowing permanent structures, but he would like for staff to have the guidelines to follow.

Council Member Tom Rowe stated that he thought roadside stands should only be allowed to have produce. Council Member Abernethy asked if that would include food trucks, Mr. Fulbright stated that it would not.

Mayor Stedman stated that there is a motion and a second and asked for a vote.

Upon motion duly made by Council Member Wes Weaver, seconded by Council Member Wayne Dellinger, it was unanimously RESOLVED:

That the City Code remain as is, but that City Staff bring an Ordinance Amendment back to Council with an addition that states no permanent structures be allowed for use as roadside stands.

ITEM 7: New Business

- A. To Consider the Adoption of a Budget Ordinance and the Award of Bids for the Theater Alley Paving Project

City Manager Todd Clark stated that the owner of the State Cinema movie theater in Newton contacted the City and County about the deteriorated alley behind the theater, stating that the gravel was being washed onto the street and sidewalk every time it rained, leaving a deep gully in the alley. The condition of the alley made it difficult and dangerous for the City Dumpster Truck to pick up the dumpster behind the theater. Mr. Clark explained that the alley is a part of the old library property that is owned by Catawba County and that the County's deed requires the County to keep the subject alley open. Mr. Clark stated that after meetings with the owner, the County and the City it was decided that all three would share in the repair and paving expense contingent upon Council approval.

Mr. Clark stated that it was agreed that the City would do the design, bid the project and invoice the County as well as the State Cinema owner each for a third of the cost. He stated that the retaining wall on the east side of the alley will have to be re-built as a part of the alley repair project. The retaining wall lies on the edge of property line between the County's property and a parcel owned by Family Care Center of Catawba Valley. Mr. Clark stated that the adjoining property owner, Family Care Center of Catawba Valley, has given permission for the City to use the Family Care Center property for access to the wall.

Public Works and Utilities Director Wilce Martin stated that bids were sent out on September 11, 2012 and the bids were opened on September 24, 2012. The results of the bidding are listed below:

	Heavy Truck	Light Truck	Retaining wall
1. Carolina Paving		No response	
2. Maymead Inc.	\$19,926.28	\$19,057.50	\$ 8,107.00
3. JT Russell & Sons	No bid		
4. MidState Contractors	\$ 7,648.45	\$ 5,033.60	\$ 11,550.00

Mr. Martin stated that the bids requested a heavy truck bid and a light truck bid alternative to compare the costs of installing more base and paving, which would allow the dumpster truck to continue picking up the garbage dumpster for the theater, to the cost of a lighter base and paving,

which would only allow roll-outs to be used by the theater. He explained that Staff found that the two alternative quotes by MidState were \$2,614.85 apart, and that it appears that the heavy truck ramp should be installed to allow dumpster service as requested by the theater owner as opposed to the more cumbersome and less effective use of six roll-outs and curb pickup.

Mr. Martin stated that Staff has reviewed the three bids received for the alley paving project and found MidState Contractors to have submitted the lowest qualified quote at \$19,198.45 for the heavy truck ramp and retaining wall installation. He stated that the City will fund \$6,399.49 of the project and \$12,798.96 will be collected from the other two parties as “Reimbursement of Costs” per the attached budget ordinance.

Mr. Martin recommended that City Council award the bid for the alley ramp installation and paving as well as the retaining wall installation to MidState Contractors as the lowest qualified bidder, and approve the attached budget ordinance to account for the County and theater contributions for funding this project.

Upon motion duly made by Council Member Mary Bess Lawing, seconded by Council Member Wes Weaver, it was unanimously RESOLVED:

That Project - Theater Alley Paving Project be – APPROVED.

Upon motion duly made by Council Member Tom Rowe, seconded by Council Member Wes Weaver, it was unanimously RESOLVED:

That Robert C. Abernethy, Jr. be RECUSED from Voting in the Matter of the Award of Bid for Paving for the Theater Alley Paving Project.

Upon motion duly made by Council Member Wes Weaver, seconded by Mayor Pro Tem Bill Lutz, it was unanimously RESOLVED:

That the Award of Bid for Paving for the Theater Alley Paving Project be – APPROVED.

Upon motion duly made by Council Member Mary Bess, seconded by Council Member Tom Rowe, it was unanimously RESOLVED:

That Ordinance 2012-30 To Amend Revenues and Expenditures be – ADOPTED.

Upon motion duly made by Council Member Tom Rowe, seconded by Robert C. Abernethy, Jr., it was unanimously RESOLVED:

That Contract – With Catawba County and Roger and Lisa McCoy, owners of the State Cinema – for the Theater Alley Paving Project be – APPROVED.

(Ordinances, Resolutions, and Proclamations are hereby referenced and on file in the office of the City Clerk)

ORDINANCE 2012-30
AN ORDINANCE TO AMEND REVENUES AND EXPENDITURES FOR FISCAL
YEAR 2012-2013 FOR THE CITY OF NEWTON

WHEREAS, the City Council of the City of Newton have adopted a Budget Ordinance for fiscal year beginning July 1, 2012, and ending June 30, 2013, in accordance with the General Statutes of the State of North Carolina, and

WHEREAS, City Council desires to enter into agreement with Catawba County and Roger and Lisa McCoy (owners of Theater) for the purpose of repairing a 15-foot alley behind the Theater. The existing condition of the alley has made it difficult for the City to provide dumpster service. The County and the McCoys own contiguous parcels of land. The City will complete the design work and bid the project to repair the 15-foot alley behind the Theater. Each of the three parties will be responsible for 1/3 of the repair costs. The lowest responsible bid was \$19,198.45; therefore, the City will bill each of the respective parties for their 1/3 share, and

WHEREAS, the City Council desires to recognize the respective revenue and authorize the related expenditure appropriation within the operating budget

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON, NORTH CAROLINA, THAT:

THE FOLLOWING SOURCE OF REVENUE AND APPROPRIATION ARE HEREBY APPROVED.

Section 1

General Fund Revenues

Reimbursement of Cost	11.0000.3760	\$12,800
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Section 2

General Fund Appropriations

Economic Development Incentive	11.6900.6996	\$12,800
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Adopted this 2nd day of October, 2012

ITEM 4D: Consideration of Ordinance Relating to Article VII – Sec. 22 – 195 – Privilege License – Internet Sweepstakes/Electronic Gaming Business Ordinance

Council Member Robert C. Abernethy, Jr. stated that he asked to remove this item from the Consent Agenda so that it could be discussed. Mr. Abernethy stated that he has two issues. Mr. Abernethy stated that after he voted on this matter previously he felt like he had done the wrong

thing by voting in favor of the fee for Internet Sweepstakes/Electronic Gaming. He stated that the second issue is that it bothers him that there are no other privilege taxes in the City and he felt like enforcement of these fees would have no teeth unless this Ordinance is passed tonight.

Council Member Wes Weaver stated that he appreciates the points that Mr. Abernethy is making, however he has two small children and that he prefers not to raise them around these kinds of businesses. Mr. Abernethy stated that he felt like the properties had been well kept, even better than before they moved in, and that people gambled by buying lottery tickets.

Mayor Anne Stedman stated that 3 or 4 of these businesses are now breaking the law and that Council needs to pass an Ordinance to make the fees enforceable.

Mary Bess Lawing made a motion to ADOPT Ordinance Relating to Article VII – Sec. 22 – 195 – Privilege License – Internet Sweepstakes/Electronic Gaming Business Ordinance and was seconded by Council Member Wes Weaver.

Council Member Robert C. Abernethy, Jr. stated that if someone's breaking it, it is the law.

Mayor Pro Tem Bill Lutz stated that the Council wants to promote business. He doesn't want to see these businesses proliferate and pop up all over town.

Upon motion duly made by Council Member Mary Bess Lawing, seconded by Council Member Wes Weaver, and with Council Member Robert C. Abernethy, Jr. voting in opposition to – it was RESOLVED:

That Ordinance Relating to Article VII – Sec. 22 – 195 – Privilege License –
Internet Sweepstakes/Electronic Gaming Business Ordinance be - ADOPTED

Ordinance 2012-31

ARTICLE VII. – PRIVILEGE LICENSE – INTERNET SWEEPSTAKES/ELECTRONIC GAMING BUSINESSES

Sec. 22-195. - License Required.

A privilege license is required for any business, whether as a principal or accessory use, engaged in the provision of internet, computer services or gaming terminals which include access to electronic sweepstakes or games wherein the user may receive prizes, products, tokens or similar markers which may be redeemable for cash or credits. Electronic gaming operations may include, but are not limited to, internet cafes, internet sweepstakes, electronic gaming machines/operations or cybercafés. This use does not include any lottery approved by the State of North Carolina that is otherwise lawful.

Sec. 22-196. - Period of License.

A license in accordance with this ordinance is issued for a twelve-month period beginning July 1 and ending June 30.

Sec. 22-197. – Fee.

Fees are determined annually by the City of Newton City Council and are stated in the City of Newton’s Fees and Charges Schedule for each respective fiscal year.

Sec. 22-198. - Proration of Fee.

If the business begins after December 31 and prior to June 30, the amount of the fee is one half of the original fee.

Sec. 22-199. - Due Date.

All privilege license – internet sweepstakes/electronic gaming business fees are due and payable to the City by July 1 of each year. In the event a business begins operation after July 1, the privilege license fee for that year is due before the business can begin.

Sec. 22-200. – Penalties.

The penalty for failure to obtain a license shall begin on July 2 at the rate of five (5) percent of the original fee due for each month that the fee is delinquent, up to a total of twenty-five (25) percent in accordance with G.S. 105-236(a)(2).

Sec. 22-201. – Refunds.

If a business is discontinued before the end of the period for which the license was issued, the fee will not be refunded.

Sec. 22-202. – Exemption.

Except as otherwise provided in this section or by state statute, no business is exempt from the payment of a fee levied by this ordinance.

Sec. 22-203. – Refusal or Revocation of a Privilege License – Internet Sweepstakes/Electronic Gaming.

The City may refuse to issue a license or shall revoke a license for the following reasons:

- a) The business misrepresents a fact relevant to the amount of fee due or his or her qualifications for a license.
- b) The business refuses to provide information necessary to compute the amount of the license fee due.

Sec. 22-204. – Changes in business information during Fee Year.

A licensee shall report a change in the information contained in the license application to the City of Newton within ten days after the change occurs.

Sec. 22-205. – Remedies for Non-Payment.

- a) Attachment and garnishment of intangible property (N.C.G.S. 160A-207;105-368)
- b) Levy and sale of tangible personal property (N.C.G.S. 160A-207; 105-366 and 367)
- c) Set-off debt collection (N.C.G.S. 105A-5)
- d) Civil Lawsuit
- e) Prosecution for a criminal misdemeanor (N.C.G.S. 14-4)

ITEM 8: City Manager's Report

- NCLM Annual Conference, Oct. 21-23
- Newton 101 – This Thursday, October 18th - City Hall
- WPCOG Mayors/Chairmen/Managers – Brushy Mountain Club of Golf, Thurs. Oct. 25th
- Tour of Technibilt – October 30, 2012 – 3 p.m.
- BAC hosting a presentation by Gray Stout, AIA of Stoutstudio Architecture in Salisbury “Rehabilitation of Downtown Historic Buildings” – Tomorrow - Wednesday, October 17, 2012, 3:00 to 4:30 p.m.
- The Eastview Cemetery Camera is up and running
Council Member Robert C. Abernethy, Jr. stated that he is concerned about Eastview Cemetery since the trees were removed.
- Spooktacular, October 27, 2012 – 5:00 p.m. to 8:00 p.m. (sidewalk around courthouse will be finished)


ITEM 9: Questions and Comments from Mayor and Council

Mayor Stedman asked if there were any questions or comments from City Council. There were none.

Mayor Stedman thanked Electric Department Employees Matt Croeger and Jeff Cochrane for the great job they did at the schools for Public Power Week.

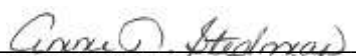
ITEM 10: Adjournment

Upon motion duly made by Council Member Mary Bess Lawing, seconded by Council Member Robert C. Abernethy, Jr., the meeting was ADJOURNED.



Amy S. Falowski, City Clerk





Anne P. Stedman, Mayor