

MINUTES OF MEETING, ATHENS CITY COUNCIL, JULY 21, 2015

The Athens City Council met in regular session on Tuesday, July 21, 2015, at 6:00 p.m. with Mayor Davis presiding. Council Member Pelley asked for a moment of silence to remember the five servicemen in Chattanooga that gave their lives last week. The invocation was given by Council Member Pelley; and upon roll call, the following members were present:

Burris, Pelley, Raper, Perkinson, Davis

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 of June 16, 2015 was submitted and approved by unanimous consent.

- 2 -  
COMMUNICATIONS

PRESENTATION - CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING

Mayor Davis 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, 2014. The Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting, and its attainment represents a significant accomplishment by government and its management. This marked the 23rd consecutive year the City has received this award. Mike Keith, Finance Director, thanked the City Council for their support of the Finance Department, City Manager Moore for pressing his department to do things very well, his staff and the City auditors, Neal, Scouten & McConnell, who audit the City's books and prepare the financial statements as well as work with the Finance Department to make sure things are done correctly.

- 3 -

MISCELLANEOUS CORRESPONDENCE

Mayor Davis acknowledged receipt of a letter of appreciation from the staff at the McMinn County Living Heritage Museum to Chief Dyer and the Athens Fire Department for their program on fire prevention that they presented to two Kids Connection groups.

- 4 -  
PETITIONS AND REQUESTS

AUDIENCE

Mayor Davis opened the meeting for petitions and requests from the audience. Linda Womac, 264 County Road 576, Englewood, spoke as a representative of the congregation of Genesis Baptist Church located at 111 Elizabeth Street. Ms. Womac read a letter from the congregation dated July 19, 2015 in response to the public notice placed in the Daily Post-Athenian stating that Hiwassee Wine & Spirits, LLC had applied to the City of Athens for a Certificate of Compliance to place a liquor store at 330 South White Street in Athens. The letter stated "We, the members of Genesis Baptist Church located at 111 Elizabeth Street in Athens, due to the very close proximity of this proposed liquor store to our church, respectfully ask that you deny this request. We are unsure whether legally this building will be far enough away from our church building for a certificate of compliance to be granted in the first place – even though it would be very close we feel – ask you out of respect for our children and out of respect for our church and our Lord to deny this request from Hiwassee Wine & Spirits, LLC." A copy of the letter was given to members of the City Council. Ms. Womac called the Council's attention to Ordinance No. 1035 Section 8-205 which states "in no event shall such store be located within five hundred feet (500') of any building used as a school or church. The minimum distance

requirement from a church shall only be applicable provided a church service is held at the church premises at least on one day of each week.” Members of Genesis Church measured the distance from nearest corner of the proposed store location and the church. According to their measurement the distance is 445 ft. The congregation therefore asked that Hiwassee Wine & Spirits, LLC be denied a Certificate of Compliance to operate at the location of 330 South White Street because of the proximity to the church and proposed liquor store.

Lauren Shepherd, 1717 Chesapeake Drive, thanked the City Council for their continued support of the Athens Area Arts Council. Ms. Shepherd, Executive Director of the Athens Area Council for the Arts and native Athenian, asked the Council to vote in favor of the Main Street program. The Arts Council draws hundreds of participants each year from outside of Athens and McMinn County. The Arts Council receives inquiries as to where to eat and what was there to do in Athens until show time. She commented that there was a need for Downtown revitalization as a simple walk or drive through the Square makes it pretty clear that they were not living up to their full potential. In her opinion, the City has an overwhelming number of local assets that can contribute to and benefit from a successful downtown revitalization. What the City lacks is a bustling commercial and cultural district. Athens is a place where people come to for a specific event. Ms. Shepherd felt the most compelling reason the City needed the program was because it would help make it a destination in itself. The more successful the downtown becomes the more successful the landmark non-profits sitting in the outskirts of downtown will be and that compounded success will only enrich the community. She commented that many young people leave Athens in the evening and on the weekends in search of a taste of big city life. A revitalized downtown would capture the attention of those 20 and 30 somethings and inspire them to spend more time and money locally.

- 5 -

#### REPORTS

##### FINANCE DEPARTMENT REPORT

Mr. Michael Keith, Finance Director, presented the Finance Department Report for the month of June 2015. The report was accepted as presented.

- 6 -

##### POLICE DEPARTMENT REPORT

Chief Chuck Ziegler presented the Police Department Report for the month of June 2015. The report was accepted as presented.

- 7 -

##### FIRE DEPARTMENT REPORT

Chief Dyer presented the Fire Department Report for the month of June 2015. The report was accepted as presented.

- 8 -

#### NEW BUSINESS

##### AWARD OF BID – BITUMINOUS SURFACE TREATMENT

**A motion was made by Council Member Raper, seconded by Council Member Burris, to approve staff's recommendation to award the bid for Bituminous Surface Treatment to Sealmaster. The motion was approved by the following roll call vote:**

**AYES:           Burris, Pelley, Raper, Perkinson, Davis**  
**NAYS:           None**

- 9 -

AWARD OF BID – SANITATION SIDELOADER

**A motion was made by Vice Mayor Perkinson, seconded by Council Member Burris, to approve staff’s recommendation to award the bid for a Sanitation Sideloader to Lee Smith.** The motion was approved by the following roll call vote:

**AYES: Burris, Pelley, Raper, Perkinson, Davis**  
**NAYS: None**

- 10 -

CONSIDERATION OF RESOLUTION IN SUPPORT OF MAIN STREET PROJECT

RESOLUTION NO. 2015-18

A RESOLUTION AUTHORIZING PARTICIPATION IN THE TENNESSEE MAIN STREET PROGRAM AND DESIGNATING A CITY OFFICIAL TO REPRESENT THE CITY ON THE LOCAL NONPROFIT MAIN STREET GOVERNING BOARD OF DIRECTORS.

**A motion was made by Vice Mayor Perkinson, seconded by Council Member Raper, to approve Resolution 2015-18 in support of the Main Street Project. A motion was made by Council Member Pelley, seconded by Vice Mayor Perkinson, to table the issue for further discussion at the City Council’s August Work Session.** Council Member Pelley stated he liked the concept but felt the City could come up with a plan that would not require a three year commitment of \$20,000/year as a proposed apportionment from the City for the Main Street project. He asked for an opportunity to bring to the Council a plan to compete with Main Street. Council Member Burris stated he would feel like a hypocrite if he didn’t support the Main Street project and pointed out that past efforts to revitalize Downtown Athens only led to marginal success. He was willing to spend more time exploring other avenues that could produce the same results at a lesser expense to the city. The motion to table the issue was approved by the following roll call vote:

**AYES: Burris, Pelley, Raper, Perkinson**  
**NAYS: Davis**

- 11 -

LOCAL LIQUOR STORE PRIVILEGE LICENSE

Prior to opening the public hearing, Mayor Davis asked City Attorney Trew if the applicant, Hiwassee Wine & Spirits, LLC, had met all the requirements for a public hearing. City Attorney stated that the applicant had met all the requirements and presented the Council with the Proof of Publication from the Daily Post-Athenian. Mayor Davis then opened the public hearing. First speaker Mr. Prakash Patel, 1117 Tellico Avenue, stated Mr. Nimesh Patel owns a business on Railroad Avenue that was found in violation for selling beer to a minor. He stated that he had been a resident of Athens for ten years and Mr. Nimesh Patel owns a business in Athens but was not a resident. He stated Mr. Nimesh Patel’s business was also cited for an EBT violation. Mr. Prakash Patel stated that according to his research and sources Mr. Nimesh Patel has a home somewhere in Rossville, Georgia and leases his apartment in Athens to his employees. Second speaker Mr. Pete Mullins, Pastor of Genesis Baptist Church, stated he had spoken to City Attorney Trew and was told that the distance was measured from the nearest point of their building to the nearest point of the applicant’s building and it had to be at least 500 feet between them. His people measured the distance and came up with a little less than 445 feet. If the Council approved the Certificate of Compliance they would be violating their own ordinance and urged them to refuse the request. Council Member Pelley asked Mr. Mullins if the person that measured the distance was a surveyor. Mr. Mullins responded the individual was not a surveyor but was a licensed contractor. Council Member Raper asked Anthony Casteel, Director of Community Development, if the applicant was proposing to demolish the existing building and build the new building further away. Mr. Casteel stated the proposal did state the existing building would be demolished and the new building would probably be moved over approximately nine feet. He advised the Council that the applicant had submitted a survey from a licensed Tennessee surveyor showing they met the distance requirements and only another

licensed Tennessee surveyor could challenge the surveyor. To the best of his recollection, the distance was 530 feet and they were going to move the building approximately nine feet closer to Elizabeth Street. Another speaker Mr. Joe Crabtree, Attorney representing Hiwassee Wine & Spirits, LLC, addressing the concerns of the church stated the survey they submitted with their application packet was done by Christian Medders and was in excess of 500 feet. He felt his client had satisfied the distance requirement and the new building would add value to the City and will improve the appearance over what is presently there. In response to the residency requirement, the applicant had submitted a lease as well as an AUB receipt stating that Mr. Patel had utilities put in his name at that location. The Rossville address shown on Mr. Patel's income tax returns was his parents address. Mr. Patel is the managing partner of the LLC and has met the residency requirements. The applicant will follow and comply with all applicable signage laws with regard to a package store. Mr. Crabtree responded to the comments regarding sale of liquor to a minor. He stated that they were not convictions against either Nimesh Patel or Dharmistha Patel but against the employees. The convictions were two or three years old. He did not feel that it created a pattern of disregard for making sure that there were no sales to a minor. Mr. Crabtree felt his client had fulfilled all the requirements and should be granted a Certificate of Compliance. Mr. Prakash Patel spoke again stating Nimesh Patel does not live in the apartment. He stated Ms. Nikki Patel, cousin of Nimesh Patel, lives in the apartment. Mr. Crabtree stated Mr. Prakash Patel is a competitor who was granted a Certificate of Compliance in June and he had not presented evidence to prove Mr. Nimesh Patel does not live in Athens. A discussion followed on the distance requirements. As there were no other comments, the public hearing was closed.

City Attorney Trew stated pursuant to Tennessee Code Annotated, Title 57, Sections 57-3-208 and 57-3-213, before ABC will grant a retail liquor license for a person to operate a retail liquor store in the state of Tennessee, ABC has to receive from the municipality a Certificate of Compliance. The Certificate of Compliance has to state from the City Council three things. First is that the applicant or applicants that are in charge of the business have not been convicted of a felony, which was not an issue for the applicant. The last part of the requirement is the Council also has to certify that in the officials' opinion the applicant will not violate any of the provisions of the chapter. In this chapter it states that you will not sell alcohol to someone who was not of age. The chapter talks about an applicant but also recognizes that applicant could be an LLC or corporation which would be the executive officers or the persons in control of that entity. Mr. Trew commented that one of the prior applicants was issued a Certificate of Compliance in the name of the LLC. ABC came back and said that the applicant must be in the name of the individual having controlling interest in the company. You have to express in your honest opinion that the persons having control of the entity asking for a license to operate a retail liquor store will comply with the law. Second, the Council has to certify that the applicant has secured a location which complies with all of the local laws and ordinances of the local jurisdiction. Lastly, the Council has to certify that the applicant has complied with any of the other laws that were adopted by the local jurisdiction with respect to the number of retail licenses and other provisions in the Code. On July 6, 2015, the application dated June 30, 2015 was submitted by Hiwassee Wine & Spirits, LLC. The application was reviewed by the departments that needed to look at the application including Community Development, Finance, Police, Fire and Administration. The departments came up with some deficiencies and it was up to Council to decide the weight of those deficiencies. As Mr. Crabtree had already alluded to, some of the things that were missing were the title of a particular person, the addresses for the wife of Nimesh Patel and husband of Dharmistha Patel and current years of employment. The applicant was also provided the list of deficiencies. On July 16<sup>th</sup>, the applicant brought back to the City offices a packet of materials that appears to be the original application that the Council had already denied. After staff discovered the error, they did not review the submission. City Attorney Trew stated one of the items he felt was substantive was the residency requirement. In the documents the City received, Nimesh Patel is the only one that has more than 50% interest in the LLC. As such he is the one that must show he has resided in the city of Athens for greater than two years from the time the application was submitted or he is a resident of McMinn County and owns 50% of developable land in the city. A residential lease was submitted dated May 13, 2011 between the landlord, Sherlin Enterprises, and Nimesh and Chhya Patel for an apartment located at 1515 West Madison Avenue, Apt. 2C. City Attorney Trew commented that the number of occupants that are supposed to be at this residence are two persons and the lessees are Nimesh and Chhya Patel yet it has already been established that the cousin lives there as well. A receipt was also submitted from the Athens Utilities Board indicating utilities were taken out in the name of Nimesh Patel. The City received a letter addressed to the City Manager's office on July 17, 2015, which is what the public notice stated, if you want to address

this application you could either appear in person or you could send something in writing. The letter addressed issues that had already been addressed in the meeting asserting that Mr. Patel does not live at 1515 West Madison Avenue but actually lives at 50 Sweet Birch Drive, Rossville, Georgia. There was also an issue with the tax returns submitted. There was a copy of a letter to Nimesh Patel from Kamala LLC dated March 17, 2015 providing him with his Schedule K-1 (Form 1065) addressed to the 50 Sweet Birch Drive address. Kamala LLC operates a business on Railroad Avenue. The 2014 K-1 shows Nimesh Patel has 75% interest in Kamala LLC and his address is listed as 50 Sweet Birch Drive, Rossville, Georgia. The other person who has an interest in Kamala LLC is Dharmistha Patel and her address is listed as Macon, Georgia. In March 2014, again when they were doing their 2013 tax return, another entity that Mr. Patel has an interest in was mailed to the 50 Sweet Birch Drive address. The actual address on the K-1 was 1515 West Madison Avenue. There was also a 2013 Form 1065 for Kamala LLC and the name of the designated tax partner is Nimesh Patel and has the address as 50 Sweet Birch Drive, Rossville, Georgia. The return has an address of 1515 West Madison Avenue. It appears that Mr. Patel uses both addresses. There are some concerns as to where Mr. Patel actually resides since he uses both addresses. As part of the background check, it was discovered that Mr. Patel was not issued a Tennessee driver's license until April 30, 2015 and the address was 1515 West Madison Avenue. Mr. Trew assumed that Mr. Patel would not have asked for the Tennessee driver's license except for the fact that he had a Georgia driver's license with the 50 West Birch Drive address on it. It was up to the City Council to decide whether Mr. Patel had met the residency requirement. Mayor Davis commented that she thought there was a state law requiring you to change your driver's license within 30 days of a move. Police Chief Ziegler responded that in the state of Tennessee you have ten days to change your driver's license when you change your residence. Council Member Pelley asked Mr. Nimesh Patel to explain the different addresses on his income tax return and why he did not change his driver's license until April 30, 2015. Mr. Patel stated his accountant had made the mistake on the tax return and he asked him to correct it. Mr. Patel stated his Georgia driver's license was still valid and so he did not get a Tennessee driver's license when he moved. He was unaware of the law requiring him to change his driver's license. Vice Mayor Perkinson stated he did not understand whose signature was on the lease above the name of Nimesh Patel. Mr. Patel was asked if it was his signature and he stated it was the signature of his cousin. Council Member Raper noted there was no date on the AUB receipt submitted as proof of residency. City Attorney Trew stated the lease was signed by the husband of Nikki Patel who had acknowledged she lived at 1515 West Madison Avenue. City Attorney Trew stated the City Council had to determine whether in their opinion the applicant, which in his opinion is the members of the LLC, will not violate any of the provisions of the liquor law. The main one that they were concerned with was the sale of alcohol to someone not of age. Mr. Trew stated he felt it was relevant and prudent for the Council to look to see if any of the members of this LLC had been involved with another entity that perhaps had a license to sell beer and violated a beer code somewhere. He felt it was the only way they could judge in a reasonable manner the past history of the persons that were going to control Hiwassee Wine & Spirits, LLC. The only two members of the LLC were Nimesh Patel and Dharmistha Patel. Nimesh Patel has a 75% interest and Dharmistha Patel has 25% interest in the LLC. Mr. Patel and his sister have had other beer permits in the City under different LLCs. One of them is Kamala LLC and the tax returns submitted for that LLC show that 75% of the LLC is owned by Nimesh Patel and 25% is owned by Dharmistha Patel. Kamala LLC was issued a beer permit to sell beer at a convenience store located at 1300 Railroad Avenue. The permit was issued in May 2011. The 2013 and 2014 tax returns show that 75/25 percent ownership interest. The importance of that is to show they had that ownership interest when they had a matter in City Court. In May of 2012 there was a finding in City Court against an employee of Kamala LLC. The employee violated the City Code by selling beer to someone under age. Kamala LLC was also found guilty of violating the Code in May 2012. The fines were paid. In another entity named Raguhrum LLC, Nimesh Patel had a 75% ownership interest; Dharmistha Patel had a 25% interest according to the tax returns they submitted. There was an employee at that location in October 2013 who sold beer to an underage person. The employee and Raguhrum LLC were found guilty in City Court and paid the fine. Raguhrum LLC allowed the employee to continue to sell beer after the finding of guilt. It was discovered that the permit holder was allowing that to happen and was cited for knowingly employing someone who had been convicted of selling beer to a minor. According to the City Code, after you have been found guilty of selling beer to a minor you cannot sell alcohol for five years and under state law it is ten years. Raguhrum was found guilty in City Court and paid the fine. Lastly, a violation occurred in East Ridge. The violation was by AmRut LLC doing business as Sunrise Market # 3 with the permit holder listed as Dharmistha Patel who has 25% interest in Hiwassee Wine & Spirits, LLC. The finding was that the permit holder and AmRut LLC had violated the Code of the City of East Ridge by

selling beer to a minor. The violation occurred on October 24, 2014 and they were given a fine and possible suspension. Copies of the certified documents were presented to the City Council. City Attorney Trew stated the Council needed to decide if they felt the applicant had met all the criteria for issuing a Certificate of Compliance. A part of the Certificate asks them to state that in their good faith opinion the Applicant will not violate any provisions of Tennessee Code Annotated, Title 57, Chapter 3. The Council had evidence before them that Nimesh Patel has controlled entities that had beer permits in the City of Athens that have violated the provision with regard to the sale of alcohol to a person underage in 2012 and 2013. There was also evidence that another entity controlled by Dharmistha Patel in the City of East Ridge violated laws with respect to selling alcohol to a person underage as recent as October 2014. If the Council felt they could make that certification then they should issue a Certificate of Compliance. If they did not feel the criteria had been met, then they cannot issue the Certificate of Compliance. Vice Mayor Perkinson stated for the record he was disclosing that the Applicant has business with the company he works for but he does not have a direct conflict and would not benefit in any way from that business with his company so he was permitted to participate in the vote. **A motion was made of Council Member Burris, seconded by Mayor Davis, to deny the Certificate of Compliance for Hiwassee Wine & Spirits, LLC.** Council Member Raper stated there was a lot of information presented and she would like to be able to go over all of it before she makes a decision since it is such an important decision. Council Member Burris stated he moved to deny the Certificate because there were a lot of things in the application that were done wrong and there were things that were untrue. Council Member Pelley stated his objection was not with the residency or distance requirements but with the number of cases. He shared Council Member Raper's concerns and asked City Attorney Trew if they could defer their decision and have a Called Meeting within one week to give the Council the opportunity to go over the information. City Attorney Trew stated that as long as the Council made their decision concerning the application within 60 days of when it was submitted then they could make the decision whenever they wanted to make it. City Manager Moore advised the Council that their next Council meeting was within 60 days of the date of the application. **A motion was made by Council Member Pelley, seconded by Council Member Raper, to table this item with a decision to be made within 60 days of June 30, 2015.** The motion to table the issue failed by the following roll call vote:

**AYES: Pelley, Raper**  
**NAYS: Burris, Perkinson, Davis**

After brief discussion, the motion to deny the Certificate of Compliance passed by the following roll call vote:

**AYES: Burris, Perkinson, Davis**  
**NAYS: Pelley, Raper**

- 12 -

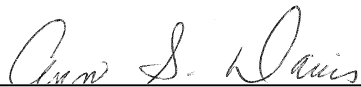
#### MANAGER'S REPORT

City Manager Moore presented the Manager's Report. He reviewed the progress of current city projects/meetings scheduled during the months of July/August. The report was accepted as presented.

- 13 -

#### ADJOURNMENT

There being no further business to come before the meeting and upon motion duly made and seconded, the meeting adjourned at 8:23 p.m.

  
\_\_\_\_\_  
ANN S. DAVIS, Mayor

  
\_\_\_\_\_  
MITCHELL B. MOORE, City Manager