

**MINUTES
REGULAR MEETING OF THE NEWTON CITY COUNCIL**

September 2, 2014 – 7:00 P.M.

The regular meeting of the Newton City Council was held on Tuesday, September 2, 2014 at 7:00 p.m. at Newton City Hall.

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

STAFF: City Manager Todd Clark, City Clerk Amy S. Falowski, Assistant City Manager Sean Hovis, City Attorney John Cilley, City Department Heads and members of the management team

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

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

ITEM 2: OPENING – Mayor Pro Tem Mary Bess Lawing

Council Member John Stiver thanked city staff for all their hard work during Soldiers Reunion Week then led the Pledge of Allegiance.

ITEM 3: APPROVAL OF MINUTES FROM THE August 5, 2014 REGULAR CITY COUNCIL MEETING

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

That the Regular Minutes of the August 5, 2014 City Council Meeting be –
APPROVED

ITEM 4: CONSIDERATION OF CONSENT AGENDA ITEMS

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

That Consent Agenda be – APPROVED

- A. Tax Releases
- B. Sewer Adjustments
- C. Consideration to Ratify Resolution in Honor of Tom Warlick
- D. Annual Report of Fire Conditions
- E. Request for Street Closure from Virgie Mungro and St. John's Holiness Church Closing One Block of S. Coulter Ave. Between East A and East B Street on Saturday Sept. 6th from 9:00 a.m. – 9:00 p.m.
- F. Consideration of Public Fee Structure for Public Events – Butts and Beans BBQ Competition – American Legion Fairgrounds

(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 anyone present would like to make any comments concerning non-agenda items.

David Collins stated that he had applied with the city to open a new business (an indoor firing range) and was asking for approval. He stated that at a previous meeting the City Council had discussed that firing ranges not be allowed to operate within 1,000' of a school or child care facility. Mayor Stedman stated that City Council would be discussing this matter later on in during the meeting.

Mayor Stedman thanked Mr. Collins for his comments and asked if there was anyone else that would like to speak.

Ms. Amelia Kennedy of 1080 Loblolly Lane stated that she had a letter from Javier Diaz de Leon, the Consulate of Mexico in Raleigh, acknowledging and congratulating the City of Newton for the city's initiative to reflect its multicultural population during the Soldiers Reunion Day Parade. Ms. Kennedy stated that the letter went on to offer the assistance and support of the Consulate's office in any activity or matter which would benefit the city.

Mayor Stedman thanked Ms. Kennedy and asked if there was anyone else that would like to speak. No one appeared.

ITEM 6: **Old Business**

- A. Consideration to Amend City Code of Ordinances Chapter 66 "Offenses and Miscellaneous Provisions" Subsection (a) of Section 66-3 "Discharge of Firearms, Explosives, etc."

Assistant City Manager Sean Hovis stated that at the July 8, 2014 City Council meeting it was requested that the discharging of a firearm be restricted to 1000 ft. of a school or daycare. Mr. Hovis stated the federal law on Gun Free School Zones does not apply to private property. Therefore City Council may adopt an amendment to the ordinance to incorporate restrictions on the discharge of firearms within 1000 ft. of a school or daycare.

Chapter 66, "OFFENSES AND MISCELLANEOUS PROVISIONS" of the City Code of the City of Newton shall be amended by adding the following to section Sec. 66-3 (a) entitled "Discharge prohibited exceptions.

Sec. 66-3. Discharge of firearms, explosives, etc.

- (a) Discharge prohibited; exceptions. No person shall discharge any gun or other firearm, shoot any blank cartridge, torpedo, air rifle (BB guns or pellet guns), slingshot, bow and arrow or cross bow; except that permission may be given by the chief of police for:
 - 1. The shooting of rodents,
 - 2. The training of law enforcement personnel at the police pistol range,
 - 3. Indoor firing ranges that are located at a minimum of one thousand (1,000) feet from a school or daycare and authorized for such use under any local, state, or federal regulations or guidelines,
 - 4. Memorial services or funerals,
 - 5. High school field and track events, or
 - 6. Special events held in connection with Soldiers Reunion activities.

Mr. Hovis stated that staff recommends that Newton City Council consider the proposed ordinance as drafted by staff.

Council Member Robert Abernethy stated that if City Council votes in favor of the ordinance then Mr. Collins will not be allowed to open his business. Mr. Collins stated that the building would have ballistic protection and that he is confused about the 1,000'. City Manager Todd Clark stated that the ordinance amendment would apply uniformly to all such businesses. Council Member Wayne Dellinger stated that state and federal laws would protect with rules to keep bullets from going outside the building. Mr. Collins stated that the closest school is 986'. Mayor Stedman asked what type of guns would be fired in the building. Mr. Collins stated that only pistols would be shot. Council Member Tom Rowe asked if the roof would be bullet proof. Council Member Stiver stated that the plans would have to be permitted by inspectors, and Mr. Collins stated that the building must be approved for use first.

Council Member Dellinger stated that 5 or 6 new ranges have opened in Charlotte, and that they are training people how to use guns. Council Member Wes Weaver stated that the building would have to pass inspections. Council Member Tom Rowe stated that he has a problem with the gun range being that close in town. Council Member Wayne Dellinger stated that the building inspector could be asked about pistol or rifle ammunition going through the building. Council Member John Stiver stated that he would like to see a buffer zone from schools because accidents do happen. Mayor Pro Tem Mary Bess Lawing stated that she has a problem with the location being right on main street because of the amount of traffic and the fact that she would like to see North Newton developed.

Council Member Dellinger asked about the 75' right of way, and what that meant. Fire Chief Kevin Yoder stated that ammunition cannot be sold within 75' of the right of way.

Council Member Tom Rowe stated that the distance from the schools is his main concern.

City Attorney John Cilley stated that this is an amendment to an ordinance and would need a two-thirds vote to pass on this first reading. In the case of a tie vote, it would have to have a second reading, similar to the yard sale vote a few months back.

Council Member Wayne Dellinger made a motion to change the amendment to the ordinance from 1000' from a school or child care facility to 300'. The motion was seconded by Council Member Wes Weaver. With Council Members Wayne Dellinger, Robert C. Abernethy, Wes Weaver and John Stiver voting in favor of the motion, and Council Member Tom Rowe and Mayor Pro Tem Mary Bess Lawing voting against, motion CARRIED.

That City Code of Ordinances Chapter 66 "Offenses and Miscellaneous Provisions"
Subsection (a) of Section 66-3 "Discharge of Firearms, Explosives, etc. be AMENDED
with the Change in Section 66-3(a)(3) from 1000' from a School or Child Care Facility
to 300'

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

- B. Consideration to Amend City Code of Ordinances Sec. 66-1(a)(3) – Consumption, serving, etc., of Certain Alcoholic Beverages Prohibited in Certain Places

Assistant City Manager Sean Hovis stated that Dennis Baucom of Carolina Vines has requested that the City Code that prohibits the sale of malt beverages and/or wine in public places be amended to allow for profit businesses to hold events and sell malt beverages and/or wine in a public area that would require a street closure request.

Mr. Hovis stated that City staff has met with Mr. Baucom since the August 5th meeting to arrive at a proposal for City Council's consideration.

As per those discussions, Chapter 66, "OFFENSES AND MISCELLANEOUS PROVISIONS" of the City Code of the City of Newton will be amended upon approval of City Council by adding the following to section Sec. 66-1 entitled "Consumption, serving, etc., of certain alcoholic beverages prohibited in certain places.

Sec. 66-1(c)(3). Exception; special use permit.

Section 1:

Subsection (d) *Exception; special use permit.* of Section 66-1. Consumption, serving, etc., of certain alcoholic beverages prohibited in certain places. of Chapter 66, "Offenses and Miscellaneous" of the City Code of the City of Newton shall be amended from its current language to include the following text highlighted in **RED**, which reads as follows:

(a) *Exception; special use permit.* Notwithstanding any provision of this section in conflict herewith, a person who is not an occupant of a motor vehicle and who is of the age permitted by North Carolina statute may consume or possess malt beverages and/or unfortified wine on the public streets or on any property owned, occupied or controlled by the city or on parking lots which the public is not prohibited from using provided by industrial, commercial, business, professional and governmental establishments or agencies which are temporarily closed to regular traffic for community events and festivals under the following conditions:

- (1) Upon the issuance of a special use permit therefor by the city manager or designee.
- (2) Application(s) must be made by and a special use permit can only be **obtained by** the sponsoring organization of the event or festival **up to three (3) times per calendar year**. Applications must be filed with the city manager at least **120** days prior to the beginning of the event or festival.
- (3) The applicant must be a nonprofit organization, organized and existing for the purpose of either some charitable or public benefit or for the promotion of business in the downtown area of Newton or **a business that has proper permitting by state agencies to allow alcohol sales and consumption in a designated area that is a direct extension of the premise.**
- (4) The applicant shall have in place an insurance policy with a company authorized to do business in North Carolina with comprehensive general liability coverage in the amount of not less than \$300,000.00 for bodily injury per person and \$1,000,000.00 per occurrence and not less than \$100,000.00 for property damage. A copy of the policy or endorsement must be filed with the city manager prior to the event. The time period must cover the event and time for reading for the event and cleanup.

- (5) The applicant must provide a sketch of the area where such beverages will be sold and consumed. The area shall be delineated by barricades, with the entrance to be clearly marked and so constructed as to allow ready control of patrons, including viewing of identification and to avoid underage persons being within the barricaded area. Signs shall be posted stating that no one shall leave the barricaded area with alcoholic beverages. Applicant shall set out what security measures will be in place to insure compliance with this provision during the event or festival.
- (6) Application must be made to proper state authorities for special permit for sale of alcoholic beverages and a permit issued prior to the event. The special permit shall be available for inspection by the city at any time.
- (7) The applicant shall at all times during the event or festival comply with all laws, rules and regulations, federal, state and local, pertaining to the sale or consumption of alcoholic beverages. Failure to do so will result in immediate and summary revocation of the special use permit.
- (8) The responsible party shall provide adequate trash receptacles for its patrons within the perimeters of the barricades. At the end of each business day and during operating hours the operator shall remove all trash and debris of any sort from the area within the barricade and between it and the curb, and in addition shall remove from the sidewalk alongside and abutting properties any trash or debris originating as a result of the operation of the sidewalk café. All debris and trash removal cost shall be the responsibility of the applicant.**
- (9) The sponsoring organization shall be responsible for the provision of adequate bathroom facilities and shall incur all associated expenses.**
- (10) Security shall be provided for each event the cost of which shall be paid by the applicant. Security personnel must be sworn law enforcement or persons with powers of arrest and jurisdiction to enforce local and state statutes at each event.**

Mr. Hovis added that the ABC permit must be present when the application process was completed.

Mr. Baucom stated that this is the first time that he has heard the three times a year stipulation and he finds it arbitrary and limited. Council Member Robert Abernethy asked how many Mr. Baucom had originally planned for this year. Mr. Baucom stated that he started with six. Council Member Dellinger pointed out that there are other businesses in town that could ask for three events as well. Council Member Wes Weaver stated that he didn't understand the limit of three per year, and that he has a problem with the 120 filing period. Mr. Hovis explained that the application would have to come before City Council and then there is a 90 wait period with the state. Council Member Dellinger asked why the city needs to put that in the ordinance.

Mr. Baucom stated he really just has a problem with the number of events allowed per year. Council Member Weaver agreed that the number of events is a big issue. Mayor Stedman stated that is the reason why city council is considering this change to the ordinance.

Council Member Dellinger stated that this change to the ordinance would be for everyone, and City Attorney John Cilley agreed and stated that the change would affect all the downtown businesses as long as they meet requirements. City Manager Todd Clark stated that there would be an obligation to issue the permit if the business is compliant. Council Member Robert Abernethy stated that it would be the businesses responsibility to plan it out to meet the time frame required. Mr. Abernethy stated that he would like to see the three times per year be changed to five times. Council Member Wes Weaver stated he would like to see it changed to eight times per year.

Upon motion duly made by Council Member Wes Weaver to change the number of events allowed to six per calendar year, seconded by Council Member Robert C. Abernethy, Jr., with Mayor Pro Tem Mary Bess Lawing, and Council Members Stiver, Weaver, Rowe and Abernethy voting in favor of, and Council Member Wayne Dellinger voting against, it was RESOLVED:

That Code of Ordinances Sec. 66-1(a)(3) – Consumption, serving, etc., of Certain Alcoholic Beverages Prohibited in Certain Places be AMENDED to six times per year, with permit issued by the City Manager and approved by the City Council.

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

ITEM 7: New Business

A. Consideration of Awarding the Bid for the Oakland Circle Sewer Rehabilitation Project

Assistant Public Works and Utilities Director Dusty Wentz stated that the Oakland Circle sewer easement line is in need of replacement due to pipe that is cracked and broken in many locations allowing infiltration and inflow to the sewer system. Mr. Wentz explained that this line has required too many hours of staff time to clear obstructions of roots and debris due to the broken line and represents a threat to the environment.

Mr. Wentz further explained that staff solicited bids from 4 companies for the rehabilitation project and received 4 bids as listed below:

1.	C.K. Contracting, Inc.	NO BID
2.	Hickory Sand Company	\$111,526.50
3.	Iron Mountain Construction	\$65,405.00
4.	Neil Grading & Construction Co.	NO BID.

Mr. Wentz stated it was determined that Iron Mountain Construction was the lowest qualified.

Mr. Wentz stated that if approved by City Council the project will be funded through unused contingency budgeted from other projects including the South Fork Sewer Project completed in 2012, Shannonbrook Phase II Water Rehabilitation Project completed in FY 2013, and West 18th to West 15th Sewer Rehabilitation Project completed in FY 2013.

Mr. Wentz recommended that Council consider awarding the bid for \$65,405 by Iron Mountain Construction for the Oakland Circle Sewer Rehabilitation Project and authorize another \$6,540 for contingency, for a total project construction cost of \$71,945.

Council Member Wes Weaver stated that there is a big difference between bids. Council Member Robert Abernethy asked if there is a time constraint to do this project. City Manager Todd Clark explained that in order to avoid arbitrage the city needs to expense these borrowed funds.

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

That Bid for the Oakland Circle Sewer Rehabilitation Project to Iron Mountain Construction be – AWARDED.

A. Consideration of Application for Grant/Loan Through NC Department of Environment and Natural Resources

Assistant Public Works and Utilities Director Dusty Wentz stated the City of Newton Capital Improvement Plan for FY 2015 includes the implementation of a smart metering project that will improve the efficiency of the water and electric utility systems. Mr. Wentz stated that staff recently learned that the NC Department of Environment and Natural Resources (DENR) is accepting loan applications for eligible projects at zero percent interest through the State Revolving Fund (SRF).

Mr. Wentz explained the SRF has been made available through the Federal Clean Water Act Amendments of 1987 and the North Carolina Water Infrastructure Act of 2005 (NCGS 159G) which authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of wastewater treatment facilities, wastewater collection systems, stream restoration, stormwater treatment, drinking water treatment facilities, and/or drinking water distribution systems or other “green” projects.

Mr. Wentz stated that in order to begin the application process leading to the potential offer of a loan through the DENR, the City of Newton must submit a resolution supporting the proposed project and agreeing to meet certain conditions as outlined in the draft resolution attached to this Request for Council Action. After DENR has reviewed the City’s application and scored it among other eligible projects, they will notify the City whether or not a no interest loan is offered. If approved, the SRF loan may be up to 100% of the costs associated with the conversion of the water meters. Mr. Wentz stated the conversion of electric meters is not eligible under the SRF program.

Mr. stated if the Council approves the resolution it does not mean the City is automatically locked into accepting the loan or grant. He stated that once the DENR responds with an acceptance letter the Council can choose to accept or decline the loan offer. If accepted, the City will be responsible for paying the closing costs on the loan presently estimated to be \$40,000 for the water portion of this project (\$2M X 0.02%).

Mr. Wentz stated the Smart Meter program includes installation of the data collection network and replacement of meters throughout the City. He explained this loan would be applicable to only the water portion of the project cost estimated at \$2 million and that the \$1.5 million for the electric portion of the project will be financed through a commercial lender.

Mr. Wentz asked that the City Council consider adoption of the Resolution of Intent to Apply for Grant or Loan Assistance and authorize the Mayor to sign the resolution.

Council Member Robert C. Abernethy, Jr. stated that this sounds like an opportunity to be awarded an interest free loan. Finance Director Serina Hinson stated that the closing cost for the city would be 2%.

Council Member Abernethy asked if this could only be used for the water portion of the smart grid program. Project Manager Leah Martin stated that is correct and that there is an October deadline. City Manager Todd Clark reminded City Council that this does not mean the city has to accept the loan and that staff should hear something by the end of December.

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

That Resolution for the Application for Grant/Loan through NC Department of Environment and Natural Resources for the Water Portion of the Smart Grid Project be – ADOPTED.

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

ITEM 8: City Manager's Report

- Newton 101 runs from Sept. 11-Oct. 23.
- Ribbon Cutting, Wednesday, September 3, 2014 at Phostell's Barber Shop 2:00 p.m.
- Retirement Luncheon for Doug Carswell – 17 years of service – Wednesday, September 3, 2014 at the Water Treatment Plant 11:30 a.m – 1:00 p.m.
- NCLM Conference October 11-14 – Greensboro
- Public Power Week is Oct. 5-11
- Spooktacular is Saturday, Oct. 25 from 5 to 9 p.m.
- Pool Report

Parks and Recreation Director Sandra Waters gave a brief report on the swimming pool for the 2014 season; June 14th – August 20th. Ms. Waters also gave a brief history of the pool renovations/upgrades.

Council Member Robert C. Abernethy asked how often the pool has to be re plastered. Ms. Waters stated every three to five years and that the drain has to be reviewed then as well.

ITEM 9: Questions and Comments from Mayor and Council

Mayor Stedman asked the City Council if they had any comments. Council Member Tom Rowe stated that he would like to have a map of Danner Park so that he could see the vacant pieces and acreage and how it is subdivided.

Mayor Stedman asked the City Council if they would like to have a workshop at the next City Council meeting. Council Member Robert C. Abernethy, Jr. stated that he would not be at the next meeting. Mayor Stedman stated that the City Council will have a workshop at the October 7, 2014 City Council Meeting at 5:30 p.m. City Code of Ordinances Chapter 66 "Offenses and Miscellaneous Provisions" Subsection (a) of Section 66-3 "Discharge of Firearms, Explosives, etc

ITEM 10: Adjournment

Upon motion duly made by Council Member Wes Weaver, seconded by Council Member Robert C. Abernethy, Jr., the meeting was ADJOURNED.

Amy S. Falowski, City Clerk



Anne P. Stedman, Mayor