

City Hall
Fayette, Alabama
January 31, 2017

A special meeting of the City Council of the City of Fayette met at 5:30 o'clock, p.m. on January 31, 2017, in the Council Chambers of the City Hall.

Upon roll call the following were found to be present: Mayor Ray Nelson, Councilmembers Linda McCraw, Eddy Campbell, Jason Cowart, Cedric Wilson and Jerry Nichols. Also present were Police Chief Danny Jenkins, City Attorney Dale Lawrence, City Clerk Dawn Clapp and City Engineer Dewayne Roby.

The opening prayer was given by Councilmember Jerry Nichols.

Mayor Nelson announced a quorum was present and the meeting was open for the transaction of business.

APPROVAL OF MINUTES

Councilmember Wilson moved the minutes of the regular meeting held on January 10, 2017, be approved. Upon the motion being seconded by Councilmember McCraw, the same was unanimously approved.

DITCHING PROJECT

City Engineer Dewayne Roby reported on the work the City performed on the ditch between the Fayette First United Methodist Church and Fayette First Baptist Church. He stated the ditch was located on the churches property, and, therefore, was private property. The ditch is the property line between the Methodist property and the Baptist property.

Mr. Roby stated concerns were expressed about the ditch with kids playing on the Methodist church property. He stated Mr. Joe Acker on behalf of the Methodist Church approached him about the easement the City was requesting the Methodist Church sign concerning the 2015 TAP grant for the west side of Temple Avenue. He said Mr. Acker told him the Methodist Church would be glad to sign an easement if the City would do some in-kind work on the ditch. Mr. Roby reported that if the Methodist Church had not donated the easement for the TAP grant, the City would have had to purchase it. Mr. Roby stated Mr. Acker presented him with an agreement whereby the Methodist Church would sign the easement if the City did some in-kind work on the ditch. Mr. Roby reported he signed the agreement and that Mr. Acker signed the easement on behalf of the Methodist Church.

Mr. Roby stated the Methodist Church wanted the ditch piped and had agreed to pay for the pipe in the agreement; however, when the work on the ditch started the Fayette First Baptist Church pastor stopped them and said he was not aware of any project concerning the ditch. The Baptist Church said they would rather have an open ditch instead of one with a pipe. Mr. Roby stated the churches had agreed to pay for the material. Mr. Roby stated that the cost for piping the ditch would have been more than the cost of clearing it and placing "riprap" in it.

Mr. Roby said that with other projects, the City had traded in-kind work for an easement. He said the ditch on the churches property was not a significant problem and would not have been worked except for the agreement.

Councilmember Cowart stated that Section 94 of the Alabama Constitution prohibits the City from operating or working on private property. Mr. Cowart read from an attorney general's opinion that stated a governing authority should not enter private property unless it would serve a public purpose. He then read a quote from the Alabama Supreme Court stating the test for a "public purpose". It stated "*[T]he paramount test should be whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefitThe trend among the modern courts is to the give the term "public purpose" a broad and expansive definition.*"

Councilmember Cowart suggested any work to be done on private property should come before the Council. Councilmember Nichols asked that notice also be placed in the newspaper to give notice to the public. Councilmember Cowart said if someone wanted to cut a deal concerning in-kind work on private property, it should be brought before the Council. He said the deal should have been sign the easement and get a new sidewalk through the TAP grant.

Councilmember Nichols said he would like to find a way to address the drainage issues in Ward 5. Mr. Roby said there were also drainage issues in Haughton Acres.

RAILS PROJECT APPRAISAL

Mayor Nelson provided the Council with a copy of the contract with Wombwell Appraisal Group to perform the appraisal on the land to be acquired for the “Rails to Trails” project.

COMMERCIAL EVENT CENTER LICENSE

Councilmember Cowart stated he had received a request from a business owner for changes to the City’s Commercial Event Center License. The requested changes were for the following sections to be stricken, to-wit:

1. **“Sec. 3A-3. Definitions.**

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~~Whenever used in this article, the definitions set forth in the Code of Ala. 1975, § 28-3-1 are hereby adopted by reference, and made a part hereof as if fully set forth herein. In addition thereto, the following terms shall have the meanings herein specifically ascribed to them:~~

~~Whenever used in this article, the definitions set forth in the Code of Ala. 1975, § 28-3-1 are hereby adopted by reference, and made a part hereof as if fully set forth herein. In addition thereto, the following terms shall have the meanings herein specifically ascribed to them:~~

~~a. — *Alcoholic beverages:* Any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquor, a part of which is spirituous, vinous, fermented or otherwise alcoholic, and all drinks or drinkable liquids, preparations or mixtures intended for beverage purposes, which contain one-half of one (0.5) percent or more alcohol by volume, and shall include liquor, beer, and wine, both fortified and table wine.~~

~~b. — *Association:* A partnership, limited partnership, limited liability company (LLC), or any form of unincorporated enterprise.~~

~~c. — *Bartender/server:* An employee of a retail alcoholic beverage licensee who is directly involved with the opening, mixing, dispensing, serving, or final sale of alcoholic beverages to a customer of the licensed establishment.~~

~~d. — *Beer, or malt or brewed beverages:* Any beer, lager beer, ale, porter, malt or brewed beverage, or similar fermented malt liquor containing one-half of one (0.5) percent or more of alcohol by volume.
Board: The Alabama Alcoholic Beverage Control Board.~~

~~e. — *Business owner:* A person or persons issued a privilege license by the City to conduct routine business.~~

~~f. — *Child development facility:* Any child development program or club that promotes extended educational services that is funded partially or completely by federal, state, or local government revenue (i.e., Head Start Programs, Boys & Girls Club, etc.). The definition of "child development facility" shall also include any day care center licensed by the Alabama Department of Human Resources.~~

~~g. — *Church:* An entire house or structure set apart primarily for use for purposes of public worship, and whose sanctuary is tax exempt under the laws of this state, and in which religious services are held and with which a clergyman is associated, and the entire structure is kept for that use and not put to any other use inconsistent therewith.~~

~~h. — *City alcoholic license fee:* A fee charged by the City to a person who has been granted approval by the state alcoholic beverage control board for the privilege of selling alcoholic beverage within the City limits as herein enumerated and defined.~~

~~i. — *Commercial Event Center:*~~

(5) The commercial event center licensee and any customer, invitee or guest at the facility are prohibited from charging admission or any type of fee for admission to the facility or to charge a fee for remaining in the facility.

2. **“Sec. 3A-79.1 Commercial event center license fees and requirements.**

(a) Each person licensed by the City, who shall engage in operating a commercial event center, prior to engaging in such business shall pay to the City, for the privilege of so engaging in business, an annual privilege business license fee and further license fees as established below:

(1) *Commercial event center.* Each person licensed by the City to operate a commercial event center shall pay to the City an annual license fee of \$500.00.

The following shall apply to the applicant for this license:

- a. Submit the required filing fee (\$300.00).
- b. Receive approval from the City Council.
- c. Pay the required license fee to City. (\$500.00)
- d. public liability insurance in the amount of \$100,000.00 or more.”

Councilmember Wilson moved that this matter be tabled to the next meeting. Upon the motion being seconded by Councilmember Cowart, the same was unanimously approved.

REPORT OF CITY CLERK

City Clerk Dawn Clapp reported the Alabama Power Company business license fee in the amount of \$274,000.00 had been received by the City.

WASTEWATER DEPARTMENT

Mayor Nelson reported they had a prospect to fill the position of Grade-3 operator at the Wastewater plant.

REPORT OF COUNCILMEMBER CAMPBELL

Councilmember Campbell said the City is still in the process of hiring an assistant for City Electrician Joey Byars.

REPORT OF COUNCILMEMBER NICHOLS

Councilmember Nichols reported on a concern he had received from citizens in Ward 5 concerning dogs and cats running at large in the neighborhoods on the Southside.

APPROVAL OF FINANCIAL STATEMENT

Councilmember Cowart moved that the City’s financial statement be approved. Upon the motion being seconded by Councilmember Wilson, the same was unanimously approved.

APPROVAL OF PARK & RECREATION FINANCIAL STATEMENT

Councilmember Cowart moved that the Park & Recreation financial statement be approved. Upon the motion being seconded by Councilmember McCraw, the same was unanimously approved.

ADJOURNMENT

There being no further business to come before the Council, upon the motion to adjourn being made by Councilmember Wilson and seconded by Councilmember Cowart, the same was unanimously approved.

Mayor

Attest:

City Clerk