

REGULAR MEETING CITY COUNCIL
March 21, 2011

The City Council of the City of Albemarle met in a regular session on Monday March 21, 2011 at 7:00 p.m. in the City Hall. Mayor Elbert L. "Whit" Whitley, Jr. presided, and the following Councilmembers were present, to-wit: Troy E. Alexander, Martha Sue Hall, Judy Holcomb, Jeanette M. Napier, Jack F. Neel, Dexter Townsend and T. Ed Underwood. Absent, none.

Upon a motion by Councilmember Hall, seconded by Councilmember Underwood and unanimously carried, the minutes of March 7 regular session, March 7 closed session, March 8 adjourned session, and March 10 adjourned session were approved as submitted.

The Mayor and Council received a status report on store finances and operations from the Albemarle ABC Board and store manager. The City Manager noted that the City Council had requested that newly appointed ABC Board Chairman John McIntyre and the other board members attend a Council meeting to provide an opportunity to discuss the status of the store's finances and operations.

Mr. McIntyre came before City Council and gave an overview of the ABC Board. He stated that the board has retired \$1 million building debt in 5 years. Also he gave a report on the board's actual working capital in the amount of \$102,120 and their hope to build the working capital up to \$200,000 on a permanent basis. Councilmember Neel asked Mr. McIntyre what the board would be using the working capital for. Mr. McIntyre as well as the store manager Karen Cranford stated that the working capital would allow them to be able to order inventory and have funds to operate the store.

Councilmember Alexander asked if the major reason for the drop in working capital is due to the 2009 and 2010 economy. Mr. McIntyre stated that the drop is due to the economy and the sales being down.

Mr. McIntyre gave fiscal year-end profits and after-profit distributions for years 2003-2010. He stated that the board members and the general manager have completed mandatory ethics training and have completed Law Enforcement reporting for January 2011.

In closing, Mr. McIntrye stated that the Albemarle ABC Board will make after-profit distributions to the City of Albemarle in the amount of \$8,000 a month on a monthly basis beginning March 31, 2011. The board will also be upgrading their Point of Sale system to be PCI compliant, costing \$19,000.

Mayor Whitley stated that City Council has a copy of the monthly departmental reports in their agenda packets and asked if there were any questions.

Upon a motion by Councilmember Hall, seconded by Councilmember Underwood and unanimously carried, the following Ordinance passed second reading and was duly adopted:

(Ordinance 11-04. To rezone two lots from R10 Residential Single Family to GHBD at 2000 E. Main Street.)

The Mayor and City Council considered a street closing for Vac n Dash and the 2nd Time Around April Fool's Day 5K Classic. This event will be held on April 1 from 6:10 – 8:30 pm at the YMCA. Council is asked to consider the approval of Glenn Avenue from First Street to Second Street.

Upon a motion by Councilmember Hall, seconded by Councilmember Underwood and unanimously carried, the City Council approved the closing of Glenn Avenue from First Street to Second Street for the Vac n Dash and the 2nd Time Around April Fool's Day 5K Classic on April 1 from 6:15 - 9:15 pm at the YMCA.

The Mayor and City Council considered a street closing for the Uwharrie Running Club. This request is for the 7th Annual Beach Blast 5K Race. This event will take place in the downtown on May 7th from 6:00 - 10:00 am. Council is asked to consider the approval of street closings as follows:

Depot Street from North Street to Main Street.

Depot Street from Main Street to the parking lot behind Albemarle Tae Kwan Doe

Start of race will be in front of the Stanly County Sheriff's office on Second Street.

Upon a motion by Councilmember Holcomb, seconded by Councilmember Napier and unanimously carried, the City Council approved the closing of Depot Street from North Street to Main Street and Depot Street from Main Street to the parking lot behind Albemarle Tae Kwan Doe for the 7th Annual Beach Blast 5K Race which will take place in the downtown on May 7th from 8:00 - 10:00 am.

Councilmember Neel stated that he would like to speak about his concern pertaining to morning runners. He stated that it is very hard to see them and some are running on the streets and need to be on the sidewalks.

Mr. Peter Ascutto with Vac and Dash came forward and stated that most runners wear reflective clothing and shoes now but he will pass this along.

The Mayor and City Council considered a street closing request from Stanly County Family YMCA. This request is to close a portion of Franklin Street between North First and Second Streets between 9 am and 12:30 pm on April 16 for YMCA Healthy Kids Day.

Upon a motion by Councilmember Hall, seconded by Councilmember Napier and unanimously carried, the City Council approved the closing of Franklin Street between North First and North Second Streets between 9 am and 12:30 pm on April 16 for YMCA Healthy Kids Day.

The Mayor and City Council discussed the status of code enforcement for vacant buildings. Councilmember Holcomb requested that this item be placed on the agenda for discussion. The City Manager noted that since we do not anticipate that our revenues will increase for FY11-12 we are looking for other City programs to cut or reduce so that more resources can be devoted to this. It can cost as much as \$10,000 to test, abate and demolish an abandoned dwelling, so we have been only able to do a very small number of these per year.

Planning and Community Development Director Keith Wolf came before City Council and spoke about the list of pending cases provided by Centralina COG that provides our minimum housing code and housing condemnation services and answered any questions that Council had. Mr. Wolf stated that there are 105 properties on this list, of which, 20 are closed, 26 commented to discuss with the City, and 59 are in progress at some level. He also said that he had talked with James Luster with Centralina Council of Governments and Mr. Luster is willing to meet and talk about in detail any property that Council is particularly interested in.

Mr. Wolf said that sometimes it is difficult to locate the owner. If the property is in foreclosure, then the bank becomes the new owner and sometimes we have to start over. If the property is in bankruptcy, we have to stop until that is resolved. He also stated that Mr. Luster does this part-time. He and others are paid by the month to do the paperwork.

Mayor Whitley stated that City Council needs a priority list. He asked Mr. Wolf to come back with the top 10 in the worst condition, and let Council take a look at those. Councilmember Underwood spoke of one of the listed properties on N 2nd Street and said someone has been in there working, and a property on N 1st Street where clean up has taken place. Councilmember Hall stated that she had spoken with Mr. Luster several weeks ago and he said that he is glad that Council asked about these properties. Some property owners have multiple properties on the list. Also, she said Council needs to understand the process and have a priority list.

Councilmember Townsend asked Mr. Wolf what FFO represents under the compliance section. Mr. Wolf stated that he will ask Mr. Luster. Mr. Townsend stated that a few of the properties reference CDBG. He asked about Alfred Street in particular where we have closed out Phase I. Where do we stand and are there funds to take care of this. Mr. Wolf stated that some CDBG funds are left and may be used for the Morrow Chase project. He also stated that he is not sure there are CDBG funds to do this but will ask.

There were questions concerning the property at 732 N. 2nd street and the City Attorney stated that it is in bankruptcy. Councilmember Holcomb stated that there are several properties commenting the owner did not attend scheduled meetings. Mr. Wolf stated that when the owner does not attend the meeting, Mr. Luster has to locate the owner and sometimes it is very difficult to find them and determine why they did not attend the meeting. Ms. Holcomb asked that all properties and owners be treated the same. She said that no preference should be shown by Council by doing the same for each one.

Councilmember Hall stated that Council needs a list with dates showing when the actions began on each property. She said Council needs more information for each property on the list. Mr. Wolf said that he will ask Mr. Luster to add more fields of information for each property. Mayor Whitley asked Mr. Wolf to come back with a priority list and let Council determine the number of houses to consider. The Fire Department can burn some of the condemned properties as training in their house burning program.

The Mayor and City Council discussed the status of Internet Gaming Regulations. The City Manager noted that last year the Council adopted ordinances regulating the zoning of these establishments and establishing license fees for these. However, after lawsuits were filed against other cities and after the General Assembly passed legislation banning these, the Council decided upon recommendation of the City Attorney and City staff to hold enforcement in abeyance. The laws prohibiting these have been challenged in court, with some mixed results. However, since these lawsuits, establishments have once again proliferated after many of them closed down at the end of 2010.

Assistant City Manager Michael Ferris came before City Council and gave an overview and history of internet sweepstakes. He stated that in late November, 2010, Guilford County Superior Court Judge upheld the ban on 8 of 9 gaming activities described in the State legislation, but ruled the ban on a 9th type to be unconstitutional as a violation of the First Amendment. Mr. Ferris stated that it is unclear what this means in terms of the ban and new operations are opening throughout the City and State. However, UNC School of Government and NCLM indicates that no part of the confusion has to do with a jurisdiction's ability to zone and charge a business license.

In recommendation, he said the numbers are growing again and the City needs to address and control these operations while the NCGA and courts work out where this matter is going. If Council wants to move forward, we recommend that City Council reinstate Ordinance 10-14 to regulate the location and operation of internet sweepstakes operations and collect a business license fee, enforcing zoning immediately. Existing locations would be grandfathered and considered non-conforming uses as the City made the decision to suspend enforcement of the Ordinance.

He also stated that the City proposes to bill fees at new rates beginning with the new fiscal year on July 1, 2011. It is recommended to establish an escrow account to hold the revenues until the matter is completely resolved.

Councilmember Hall asked why we are waiting until July 1 when we still have one quarter left in this fiscal year. Councilmember Holcomb stated that most of the internet sweepstakes businesses are still operating and we could start April 1. City Manager Raymond Allen stated the problem would be getting a list of the businesses and getting them billed before April 1. Mr. Ferris stated that staff can go back out and get a handle of the locations and machines registered again and could then bill for a partial year by prorating.

Finance Director Colleen Conroy stated that generally, if they come in after the 1st six months of the fiscal year, their fee is prorated. The problem was, when they came back, the ordinance was suspended and we did not know what to charge them in

fees. Permits were issued for non fee, no charge. If permits are already issued, how do we go back and ask for more money.

City Attorney David Beaver stated that this would cause problems and Council should consider taking Mr. Ferris' advice and wait until the new fiscal year starts on July 1.

Mr. Ferris stated that the first two computers are charged at \$2,000 each and the 3rd-remaining machines are charged at \$3,000 each. Mr. Beaver stated that we need to strike a balance in conservative business license fees.

Councilmember Neel stated that we need to notify these businesses and bill fees at new rates beginning with the new fiscal year on July 1, 2011.

Upon a motion by Councilmember Holcomb, seconded by Councilmember Neel and unanimously carried, the City Council approved enforcing the zoning regulations immediately on internet gaming establishments, bill fees at new rates beginning with the new fiscal year on July 1, 2011, and to establish an escrow account to hold the revenues until matters are completely resolved.

In closing, Mr. Ferris mentioned that Senate Bill 209, that was introduced in the NC General Assembly on March 7, 2011 would make internet sweepstakes a state regulated activity, eliminate local control, and provide all revenues from the licensing of such businesses be provided to the State of NC.

City Manager Raymond Allen stated that Bill 209 does not contain provisions for the State to provide law enforcement over these activities with the revenues they are proposing to keep. The City would have to handle that and the State would collect the revenues from the licensing of these businesses.

The Mayor and City Council considered recommendations for resurfacing for 2010-11. City Council received a memo from Public Works Director Mike Lambert with recommendations. The City Manager noted that City Council is aware that we have been forced to reduce the amount of funds budgeted for street repairs and resurfacing over the past few years due to declining Powell Bill funds and other municipal revenues such as sales tax and investment income. This year we were able to budget \$77,000 which will only allow us to focus on small resurfacing projects and other maintenance activities this year.

Public Works Director Michael Lambert came before Council and stated that all of the resurfacing will be done in-house between now and the end of this fiscal

year on June 30. Mr. Lambert answered questions that Council had pertaining to the streets chosen for resurfacing or edging and heavy maintenance.

Councilmember Neel and Holcomb were concerned about the choosing of Fox Run Drive for resurfacing since the street is only around 40 years old.

Upon a motion by Councilmember Holcomb, seconded by Councilmember Hall and unanimously carried, the City Council approved street resurfacing recommendations for resurfacing in the amount of \$77,000 for 2010-11.

(Street Resurfacing List)

The Mayor and City Council received a status report from City Attorney David Beaver regarding amendments to the City Fire Protection Fees.

Mr. David Beaver came before Council with proposed ordinances and resolutions to amend the fire protection fees. City staff will review these proposed ordinances and resolutions. Mr. Beaver recommended a public hearing, first reading on Monday, April 4. He also stated that there is plenty of time to publish a notice for the hearings on March 24 and March 31.

Upon a motion by Councilmember Hall, seconded by Councilmember Underwood and unanimously carried, the City Council approved setting public hearing for Monday, April 4 at 7 pm to amend the fire protection fees.

The Mayor and City Council considered approval of a contract for audit services. This contract would be with Anderson, Smith & Wike PLLC for audit and preparation of 2010-2011 City of Albemarle financial statements. City Council received a copy of the contract. There is no price increase for this one-year extension.

Councilmember Neel stated that spending \$30,000 for audit services is a lot of money without first comparing with some other firms. The Local Government Commission sometimes makes it difficult to where there may not be many other choices for estimates. Councilmember Alexander agreed with Councilmember Neel that maybe we should look at other bids. Mayor Whitley stated that we may need to wait until next year to do that.

Upon a motion by Councilmember Napier, seconded by Councilmember Holcomb and unanimously carried, the City Council approved a contract for services

from Anderson, Smith & Wike PLLC for audit and preparation of 2010-2011 City of Albemarle financial statements.

The Mayor and City Council considered approval of assessment write offs. These are two assessments beyond the statute of limitations in the amount of \$347.18 that are uncollectable. The Finance Department has recommended that these assessments be written off as they cannot be legally collected.

Councilmember Holcomb moved that Council approve that these assessments be written off as they cannot be legally collected. Councilmember Hall seconded the motion.

Councilmember Neel stated that he would like to make public who the charge offs are for.

Accounting Manager Susan Bailey came before Council and explained that the street assessment to be charged off was due to no title search being done by the closing attorney. Councilmembers Holcomb and Neel stated that the City should bill the closing attorney for this amount. Ms. Bailey stated that the water/sewer assessment being charged off is due to the owner being deceased and the statute of limitations running out.

Councilmember Holcomb withdrew her motion. Councilmember Hall asked that this be brought back before Council once the closing attorney had been contacted for payment.

Upon a motion by Councilmember Alexander, seconded by Councilmember Underwood, and unanimously carried, an Ordinance entitled (Ordinance 11-05) "AN ORDINANCE OF THE CITY OF ALBEMARLE, NORTH CAROLINA TO AMEND 2009 GRANT ORDINANCE 09-38 PUBLIC HOUSING CAPITAL FUND." passed first reading.

Upon a motion by Councilmember Hall, seconded by Councilmember Townsend, and unanimously carried, an Ordinance entitled (Ordinance 11-06) "AN ORDINANCE OF THE CITY OF ALBEMARLE, NORTH CAROLINA TO AMEND 2010 GRANT ORDINANCE 10-34 PUBLIC HOUSING CAPITAL FUND." passed first reading.

The Mayor and City Council considered a resolution opposing legislation to limit community broadband initiatives. Stanly County Board of Commissioners Lindsey Dunevant requested that City Council consider adoption of this resolution. He is going to request that the Board of County Commissioners adopt the same resolution.

Upon a motion by Councilmember Hall, seconded by Councilmember Alexander and unanimously carried, the City Council approved a resolution opposing legislation to limit community broadband initiatives as presented.

(Resolution 11- 08 . To oppose anti-broadband legislation.)

The Mayor and City Council discussed designating filing fees for the 2011 Municipal Elections. Council received a memo and accompanying information regarding the upcoming municipal elections. The City Manager noted that City Council will need to designate filing fees for this election, which will be used to partially offset the cost of holding the election. These filing fees have not been increased in many years, and have been \$20.00 for Mayor and \$10.00 for City Council. The Board of Elections has also asked the City to review boundary maps and City streets for accuracy which staff will do and report back to the Board of Elections on any discrepancies.

Upon a motion by Councilmember Underwood, seconded by Councilmember Alexander and unanimously carried, the City Council approved filing fees for the 2011 Municipal Elections to remain at \$20 for the Mayor and \$10 for each Councilmember.

The Mayor and City Council considered attendance at the NC League of Municipalities Town Hall Day. This will take place on Wednesday, May 4, 2011 at the Quorum Center in Raleigh. The City Manager noted that he would encourage as many members of City Council who can attend this event to consider doing so. More than any legislative session in memory, the autonomy and financial stability of local governments are under attack by legislative proposals. It is critical that municipalities show up on Town Hall Day and other occasions during the legislative session to voice their concerns.

Mayor Whitley and Councilmembers Alexander, Hall, Napier, Neel and Holcomb confirmed their attendance for Town Hall Day.

The Mayor and City Council received Public Housing's 2009/2010 Audit Information in HUD Format. This financial information was included in the City's 2009/2010 Audit, but also has to be prepared in the format specified by the US Department of Housing and Urban Development. The City Manager noted that no presentation is planned, since the same information was included in the City's most recent annual audit.

Councilmember Hall stated that she attended the Albemarle Criterium this past Saturday and only one police call was made. The lesson learned is if we have this again, we need to make sure all businesses that may be affected are made aware of this event in advance. She stated that she was thrilled to have this event.

Ms. Hall also stated that citizens have an ace in the hole with Larry Kissell as a representative. He is very open for us to talk with him over issues.

Upon a motion by Councilmember Underwood, seconded by Councilmember Napier and unanimously carried, the meeting was adjourned.