



**CITY OF FAIRBURN  
City Council Meeting Minutes  
City Hall  
56 Malone Street  
Fairburn, GA 30213  
December 9, 2013  
7:00 P.M.**

The Honorable Mayor Mario Avery

The Honorable Ron Alderman  
The Honorable Elizabeth Hurst  
The Honorable Jean Barkley Russell

The Honorable Alex Heath  
The Honorable Marian Johnson  
The Honorable Scott Vaughan

City Administrator:  
City Clerk:  
City Attorney:

Mr. Tom B. Barber  
Mrs. Brenda B. James  
Mr. Randy Turner

- I. MEETING CALLED TO ORDER: By Honorable Mario Avery.**
- II. ROLL CALL:** All Members of Council were present which constituted a quorum.
- III. INVOCATION:** Provided by Council Member Heath.
- IV. PLEDGE OF ALLEGIANCE:** Recited in unison.
- V. PUBLIC COMMENTS:**
  1. Hattie Portis Jones, 6724 Rivertown Road, Fairburn GA. 30291 spoke on the Amendment to the Code of Ethics. She said she has concerns regarding the potential passage of ethics language that is being presented one month prior to two new Council Members coming onboard and they have no opportunity to provide input on that language. Secondly, she said the language has a significant impact on the two new Council Members and it is only fair for them to provide feedback and input; and be the individuals who have a vote on that language.
  2. Andrew Whitmore, 25 Somerset Hills, Fairburn, GA. 30213 spoke about the development in the Durham Lakes Subdivision. He said he spoke with the developer who built eight homes on Black Diamond and 30 other lots in the subdivision. He said the developer had an opportunity to purchase other lots on streets that have not been finalized. He said this is posing a great impact on the community. Secondly, he announced that Kerley

Family Homes will be coming to the City of Fairburn to build in the Durham Lakes Subdivision.

**VI. APPROVAL OF THE MINUTES:** Council Minutes of November 25, 2013

Council Member Vaughan made a motion to approve the Minutes of November 25, 2013 with Council Member Johnson providing the second. **The motion carried.**

**VII. APPROVAL OF THE AGENDA:**

Council Member Heath made a motion to adopt the Agenda placing items 9, 10, 11 and 12 on Consent Agenda with Council Member Russell providing the second. **The motion carried.**

**VIII. APPROVAL OF CONSENT ITEMS:**

Council Member Vaughan made a motion to approve Consent Items 9, 10, 11 and 12 with Council Member Russell providing the second. **The motion carried.**

9. Approval of the Professional Services Agreement for LCI Design Services in the amount of \$618,821.92 and for a term of five years.
10. Approval of the Ordinance to Amend Section 2-35 of the City of Fairburn Code of Ethics.
11. Approval of the Resolution to Amend the Personnel Policies Section 2-55.
12. Approval of the Contract with Invoice Cloud for hosting our utility bills in concert with DATAMATX of Atlanta and Online Bill-Pay for Fairburn Utilities.

Mayor Avery addressed the Amendment to the Ethics Code and said it is on the agenda because this came out of an Executive Session and if not done it could create a possible liability that could commence before January 13, 2013.

**IX. PUBLIC HEARINGS:**

1. Resolution to Adopt an Ordinance Amending Chapter 14 - Business Regulations and Taxation Article XII - Massage Therapy Establishment /Massage Parlor

Johne Prince gave an overview of the Massage Therapy Establishment/Massage Parlor. She said the owner of the establishment

must get a license from the City and go through a background check going back ten years. She said each therapist who work in the establishment must be licensed by the State. She said employees of Doctors, Chiropractors or Physical Therapist are exempt from the ordinance. She said the Massage Parlor is not medically related. She said there are provisions for revocation of the establishment's license and there are restrictions on hours of operation. She said there is a use permit which has location restrictions.

Mayor Avery opened the Public Hearing.

**Spoke Against:**

No one came forward.

**Spoke in Favor:**

Andrew Whitmore asked if the hours of operation are 7:00 am or 7:00 pm. Ms. Prince said the hours are from 7:00 am to 10:00 pm.

After hearing no further comments, Mayor Avery closed the Public Hearing.

Council Member Heath made a motion to approve the Resolution to adopt the Ordinance to Amend Chapter -14 Business Regulations and Taxation Article XII - Massage Therapy Establishment /Massage Parlor with Council Member Russell providing the second.

Council Member Vaughan asked about the term morals. Attorney Turner said this a term of convention. Council Member Alderman said there is a misspelling on page 1 under paragraph 2 message therapy. Council Member Alderman asked where the ordinance came from and if this was an ordinance that all cities use. Attorney Ross said yes, the City of Macon Georgia was used as a model. Council Member Vaughan asked if the term buttocks on page 3 could be deleted.

Council Member Vaughan made a substitute motion to delete the word buttocks from specific anatomical region with Council Member Russell providing the second. **The motion failed with Council Members Vaughan, Johnson and Russell voting "Yes" and Council Members Alderman, Heath and Hurst voting no. Mayor Avery broke the tie and voted "No".**

2. Resolution to Adopt an Ordinance Amending Chapter 80 - Article IV Administrative Permits and Use permits and Add the New Section 80-238, Massage Therapy Establishment/Massage Parlor

Jahnee Prince gave an overview of the Massage Therapy and said they are looking to locate them at Hwy 74 South and Downtown Fairburn. She said the separation and distance requirement are listed on the map that was provided to Mayor and Council.

Mayor Avery opened the Public Hearing.

**Spoke Against:**

No one came forward.

**Spoke In Favor:**

Andrew Whitmore said he was speaking in support of the use permit, however; he is not sure of the distant requirements. He said there is a business owner who is looking at upgrading their Hair Salon that would provide masseuse services. He said he is in support of the use permit as long as the distant requirements do not prohibit them.

After hearing no further comments, Mayor Avery closed the Public Hearing.

Council Member Vaughan made a motion to approve the Resolution to Adopt an Ordinance Amending Chapter 80 - Article IV Section 238-Massage Therapy Establishment/Massage Parlor Use Permit with two corrections on page 2; change 200 to 750 ft. and 2500 ft. to 2000 ft. Council Member Russell provided the second.

Council Member Hurst made corrections on the distant requirements on page 2, under number 2; the distance requirements of 200 ft. should be 750 ft. of any parcel land from a church or school. She asked why number 1 has a 350 ft. distant requirement of a subdivision and number 2 has a 750 ft. from a church or school. She asked why they are not the same. Ms. Prince said they reviewed the different distances and this is what was recommended by the Planning Commission. Council Member Hurst said she would prefer being as far away from the establishment as possible and she would not want a church or school near this facility. Ms. Prince said the residential distance is what creates the opportunity for the establishment because of the 750 ft. from a church or school. She said they mapped each distance separation with the GIS and it almost eliminated the establishment on Hwy 74 and downtown Fairburn. Council Member Johnson asked if the 750ft is too much. Ms. Prince said this poses a good question because the map does not show the schools, churches and government buildings in the downtown area. Council Member Russell said the residential and church locations are all within

the same area. Mayor Avery asked if there is an increase of the 750 ft. would it impact the ordinance. Ms. Prince said yes, by expanding the distance requirements it would eliminate any establishment for a Massage Parlor. Council Member Vaughan said this is a legitimate business. Council Member Heath said they need to think about these concerns and how it might bring about crime. Council Member Johnson said they have defined what it is and if it becomes more than that the police should get involved.

Council Member Russell said this is a well thought out ordinance and we need the ordinance in place. Council Member Alderman said they need to make sure the footage is correct. Attorney Turner said the corrections have been made. Chief McCarthy said they had two questionable businesses that they have to deal with, however; it will take time to address any issues. Mayor Avery said he is more confident now, than he was four years ago with the monitoring of this type of business. He said he believes they can maintain the standard they want. Council Member Johnson said number 2, which is within 750ft. of any parcel of land upon a church and government building is located; and number 5 which is within any zoning category other than general commercial and historic downtown commercial are contradictory. Ms. Prince said no. Mr. Barber asked staff if the map reflect all the constraints simultaneously. Ms. Prince said it does not reflect on the schools and government buildings. Mr. Barber said he was not comfortable with approving the first resolution and approving a set of constraints that are not reflected on the map. Attorney Turner said the map is not being adopted. Attorney Ross said the Resolution is the amendment to the zoning ordinance to require use permit requirement with those distance requirements. Council Member Russell said when they worked on the Adult Entertainment Ordinance they worked very diligently to be as restrictive as possible but at the same time they wanted to make sure there were locations in the city where this establishment could be permitted. She asked based on the footage, have we negated them the ability to open anywhere in the city, which is something that could not be court tested and be supported. Council Member Vaughan asked if there were locations in the city which meets these criteria's. Ms. Prince said yes. Mayor Avery asked what conditions could be approved as presented. Attorney Turner said they need to have restrictions put in place and if they do not allow any place this item should be adopted. He said you can follow up on a directive to staff to go back and reevaluate the numbers contained to see if they did leave a realistic possibility of having these businesses located within the city. **After much discussion, the motion passed.**

### **3. Resolution of Necessity for a Fairburn Urban Redevelopment Plan**

Toussaint Kirk gave an overview of the four Resolutions for the Urban

Redevelopment Plan. He said the Resolution Necessity is saying that Council recognizes there is an issue in the City of Fairburn where rehabilitation and revitalization needs to take place. He said this is one of the steps required by DCA to submit a Redevelopment Plan to the State.

Mayor Avery opened the Public Hearing.

**Spoke Against:**

No one came forward.

**Spoke In Favor:**

No one came forward.

After hearing no further comments, Mayor Avery closed the Public Hearing.

Council Member Russell made a motion to approve the Resolution of Necessity for a Fairburn Urban Redevelopment Plan with Council Member Heath providing the second. **The motion carried.**

**4. Resolution for Boundaries of the Fairburn Urban Redevelopment Plan**

Mayor Avery opened the Public Hearing.

**Spoke Against:**

No one came forward.

Mayor Avery opened the Public Hearing.

**Spoke In Favor:**

No one came forward.

After hearing no further comments, Mayor Avery closed the Public Hearing.

Council Member Russell made a motion to approve the Resolution for Boundaries of the Fairburn Urban Redevelopment Plan with Council Member Johnson providing the second.

Council Member Johnson asked if the map they received applies to the Resolution for Boundaries of the Fairburn Urban Redevelopment Plan. Mr. Kirk said yes. Council Member Hurst asked if the light orange

blighted areas on the map were only the blighted areas being considered at this time or is this in concrete. Mr. Kirk said no, it is not in concrete we can always come back and amend. Council Member Russell asked if the color coded areas are blue, red, brown and green; and the yellow and orange are identified but are not currently included in the boundaries. Mr. Kirk said yes. **After much discussion, the motion to approve passed.**

**5. Resolution of Adoption of the Fairburn Urban Redevelopment Plan**

Mayor Avery opened the Public Hearing.

**Spoke Against:**

No one came forward.

Mayor Avery opened the Public Hearing.

**Spoke In Favor:**

Lydia Glaize said there are more blighted areas in the city and asked why those areas would not be included in the plan. Mr. Kirk said we will expand on other areas of the plan at a later date.

After hearing no further comments, Mayor Avery closed the Public Hearing.

Council Member Russell made a motion to approve the Resolution of Adoption of the Fairburn Urban Redevelopment Plan with Council Member Heath providing the second. **The motion carried.**

**6. Resolution Activating the Urban Redevelopment Agency of the City of Fairburn**

Mr. Kirk gave an overview of the Resolution Activating the Urban Redevelopment Agency of the City of Fairburn. He said because of the State Statue a Redevelopment Agency must be created. He said the Downtown Development Authority is being recognized as a part of the statue for having the authority to be a head of the agency. He said the members of DDA will be those members appointed to the Redevelopment Agency. Mayor Avery said for clarity purposes this item identifies the members of the agency.

Mayor Avery opened the Public Hearing.

**Spoke Against:**

No one came forward.

**Spoke In Favor:**

Hattie Portis Jones asked why is there a need to establish another body when they have the Development Authority. She asked why it is necessary to have a separate body. Attorney Turner said the Development Authority is not authorized under law to serve as a Redevelopment Agency and the Downtown Development Authority area of operation does not encompass all of the urban development area. So therefore, a new body is being created to serve as a Redevelopment Agency.

After hearing no further comments, Mayor Avery closed the Public Hearing.

Council Member Russell made a motion to approve the Resolution Activating the Urban Redevelopment Agency of the City of Fairburn with Council Member Johnson providing the second. **The motion carried.**

**7. Resolution to Adopt an Ordinance Amending Chapter 14-Business Regulations and Taxation Article II - Occupation taxes**

Attorney Meredith Germain gave an overview of the Occupational Tax Ordinance. She said the City has been using a tax ordinance that is based on gross receipts and profitability ratios. She said the system used is very antiquated and outdated. She said they have been working on upgrading the system and is requested a fee cap of \$15,000.00. The Administrative Fee is staying the same.

Mayor Avery opened the Public Hearing.

**Spoke In Favor:**

No one came forward.

**Spoke Against:**

No one came forward.

After hearing no further comments, Mayor Avery closed the Public Hearing.

Council Member Russell made a motion to approve the Resolution to Adopt an Ordinance Amending Chapter 14-Business Regulations and Taxation Article II Occupation Taxes, effective January 1, 2014, with Council Member Hurst providing the second.

Council Member Heath asked about page 1, Section 14-22-D; shall it be the specific duty of the Chief of Police and other police officers of the city to see that the provisions of this article are enforced. Council Member Heath asked does this mean the Police would check and see if these businesses have certificates. Attorney Germain said yes, they can go to businesses and ask for certificates, however; they do not have too. She said the Occupational Tax License should be posted in a conspicuous place. Council Member Heath said this would be a Code Enforcement issue more so than a law enforcement issue. He asked if this is normal for Police Officers to do this in other cities. Attorney Germain said other cities use both code enforcement and law enforcement. Council Member Heath asked about page 3, regarding 40 hour fulltime employees and as opposed to part-time employees. He said it seems that the economy is making everyone part-time. Attorney Germain said we wanted to know the number of employees and this was the way it is determined. She said the occupation tax is not based on the number of employees it is based on the profitability ratios and the gross receipts of the business.

Council Member Hurst asked about item E, on page 4, regarding the unpaid taxes. She said if a business have unpaid taxes it is up to the city to initiate proceedings against them for taxes. She asked if they would have to go through another court to get the taxes paid. Attorney Turner said yes, if the business refuses to pay, they would have to take judicial action.  
**After much discussion the motion carried.**

**X. AGENDA ITEMS:**

**8. Resolution to Partner with Georgia Department of Revenue**

Council Member Vaughan made a motion to approve the Resolution to Partner with GDOR with Council Member Johnson providing the second.  
**The motion carried.**

**13. Resolution to adopt a Legislative Agenda for the 2014 Session of the Georgia General Assembly**

Council Member Johnson made a motion to approve the Resolution to adopt a Legislative Agenda for the 2014 Session of the Georgia General Assembly with Council Member Vaughan providing the second.

Council Member Hurst asked about the Redevelopment Powers and said she would like to know the language. She said most people were confused and it was not clearly explained. She asked what language they would use with the legislative session. Attorney Turner said the ballot is drafted and approved through legislative council; and we do not have any power of the

language. Council Member Hurst said since there is no control over the language, what will be done different. Council Member Vaughan said the elected officials should spread the word. Attorney Turner said the City could put informative information in the utility bills to spread the word.

Council Member Alderman said they could have meetings about this item the same way the Urban Redevelopment was done. Council Member Russell said there will be an opportunity to discuss this item as we move forward with the Urban Redevelopment and the Comp Plan. She said there should be a discussion of how tax allocation could work in those planned areas. She said when we go to the legislature to ask for the hotel motel tax increase we should get a letter from each hotel manager showing that they want this to happen for marketing purposes. Mayor Avery spoke about the fine lines of compliance in terms of advocating information. He said several companies ask that the city remain silent as it relates to their negotiation. Mr. Barber said he provided a handout and under item number 6, there are 4 calendar years they will take on more power and buy whether they want it or need it; or whatever it cost. He said they will take on 1.6 megawatts of new power and in 5 years they are going to take on another 1.6 megawatts. He said if the State's Economy does not improve this is a real risk. He said we are facing competition from other sites that have Opportunity Zones. He said they could recruit electric users and not get their business. He said they need to do everything they can do.

Council Member Hurst said she supports redevelopment, however; she needs a better understanding of it. She said she supports the 8% tax increase, however; she said we need to educate the voters. Mayor Avery said we are in a situation where we have no choice but to act on this now. He said we must have a solution to this issue because the next 4 years this city will face a serious deficit. He said this is a long term solution to utility rates. He said he believe we have gotten over the hurdle that would have been impossible three years ago. **After much discussion, the motion carried with Council Members Vaughan, Russell, Heath, Johnson and Alderman voting "Yes" and Council Member Hurst voting "No".**

## **IX. MAYOR AND COUNCIL COMMENTS:**

Council Member Vaughan spoke about two teams. He said Creekside High School Football Team won the first 4 rounds in the State Football Playoffs with an average score of 47 to 9 and the semifinals qualified them for the State Championship game. He said they defeated the number 2 team in the state with an average score of 55 to 10 in the semifinals. He said they will play Tucker this Friday night in the Georgia Dome and encouraged everyone to come out and support the team. He said the second team he wanted to speak about is the City Attorney Randy Turner, Valerie Ross and Meredith Germain. He said they are first rate knowledgeable, diligent good people and he appreciates everything they

have done for the city.

Council Member Johnson said we have updated a lot of things and it is because we have had the expertise of the City Attorneys Team.

Council Member Russell said the City Attorneys has provided excellent support. She thanked Tom Barber and David Smith for getting a new bond rating. She said it is absolutely amazing to have changed the rating and having a financially smart city. She said we are at the next phase and we are getting ready to go into the Comprehensive Plan; and we now have our own redevelopment tools. She said we are moving forward on the LCI Study and our population has grown. She said we need to reach out to all the areas of the communities to educate them as to how critical it is to be thoughtful in this plan process. She said we are a very good and smart small city and we have the ability to continue to be a smart city with excellent smart capabilities.

Council Member Hurst said Fairburn is a fantastic city. She said she moved to the City in 2004 from Atlanta Road in the Vining's Area. She said she never thought of sitting on the Council. However, coming to Council Meetings there were some issues and wanting to be a part of doing something about those issues; she decided to run for Council. She said we have a lot to be thankful for in Fairburn and we have good concerned people in the city. She said she knows 2014 will be a New Year because we all want the best in Fairburn. She wished everyone a Merry Christmas and said remember Jesus is the reason for the season. She encouraged everyone to enjoy family friends and above all enjoy yourself. She said it has been great representing everyone as a Council Person.

Council Member Heath said he wants to thank everyone for being here tonight. He wished everyone a Merry Christmas. He said his main concern is the City. He said this Council is trying to promote and bring things here for the citizens.

Council Member Alderman spoke about the employee luncheon. He said he moved to the city 1968 and there has been a lot of change. He said he was thinking about the employees and the thing that impressed him is the management. He said he always heard to be successful is to surround yourself with successful people. He said the employees and people who run the city are successful people. He said the City Council recommendations come from staff. He said the City is over the hump in development but we have got to carry the Water and Sewer Authority. He said Mr. Barber made a good point about the electricity and we have to sell what we have. He said he is excited where we are and city staff. He said he believes next year will be better. He wished everyone a Merry

Christmas.

Mayor Avery congratulated Creedside High School Football Team. He spoke about the Comprehensive Plan and it is a state requirement which will show what Fairburn will look like in the next 15 or 20 years. He said someone has always been on the wrong side of the vote. He said one of the reasons this government has progressed is because we do not take shots at each other. He thanked Ellen Samuels and D'Avante' Parks for coordinating a phenomenal Employee Luncheon. He said Ms. Glaize was recognized in her absence and Ms. Portis Jones participated in the event. He said the City is coming together. He said the City Attorney and staff have upgraded the different ordinances in the city. He thanked Judge Ewing for her services in the court system.

### **IIIX. ADJOURN COUNCIL MEETING:**

Council Member Alderman made a motion to adjourn the Council Meeting at 8:50 pm with Council Member Hurst providing the second. **The motion carried.**

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Brenda B. James City Clerk

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Mario Avery, Mayor