



CITY OF FAIRBURN
City Council Meeting Minutes
City Hall
56 Malone Street
Fairburn, GA 30213
November 25, 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 Alderman.
- IV. PLEDGE OF ALLEGIANCE:** recited in unison.
- V. PRESENTATIONS AND AWARDS:** Chief Weller made a presentation and gave Certificates of Appreciation to Stanley Pruitt and Mr. Perlero for their willingness to put their own safety aside on October 3, 2013 during the fire at the home of the Berry Family.
- VI. PUBLIC COMMENTS:**
 1. Irene May, 180 Malone Circle, Fairburn, GA. 30213, congratulated the newly elected Council Members and said she was glad she had the opportunity to run as a candidate in the November Election. She said she has made new friends and learned a lot about the City. She said she looks forward to working with the Mayor and Council and wished everyone a Happy Thanksgiving; and a very Merry Christmas.
 2. Lorenzo Williams, 147 Durham Lakes Parkway, Fairburn GA. 30213, representative of the Durham Lakes Homeowners Association, thanked the City for the repairs on Strandhill and Bayberry.

He said they have received concerns about Augusta Drive and Heather Glen; and would like to know how they go about getting repairs done on the streets. He said the investors cannot move forward until the streets are finished.

3. Andrew Whitmore, 25 Somerset Hills, Fairburn GA. 30213, congratulated all the candidates on the election. He said everyone did a beautiful job and everything ran smoothly. He thanked Council Member Vaughan and said he has been a champion for recreation and he will be greatly missed. He also thanked Council Member Russell for her tenure of service with the City of Fairburn and said he appreciates her addressing the various concerns they had in the Durham Lakes Subdivision. He congratulated Council Member Heath on his reelection and the comments he shared with him and he looks forward to those ideas for implementation in the City of Fairburn. He congratulated the new Council Members Elect for their victory. He wished everyone Happy Thanksgiving.

VII. APPROVAL OF THE AGENDA:

Council Member Vaughan made a motion to approve the Agenda for November 25, 2013 placing items 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14 and 15; on the Consent Agenda and add item 13-A Resolution of the Mayor and City Council to waive formal bid requirements for Market Research Analysis regarding proposed Duncan Park Aquatic Complex. Council Member Russell made the second. **The motion carried.**

VIII. APPROVAL OF CONSENT ITEMS:

Council Member Alderman made a motion to approve Consent Items 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14 and 15 with Council Member Heath providing the second. **The motion carried.**

1. Approved the Acceptance of the Certified Official Election Results for November 5, 2013. The General Election results for the City of Fairburn is listed as follows:

Mayor

Mario B. Avery	814
Write-in-votes	33

City Council

Lydia Glaize	686
Alex Heath (I)	418
Irene May	222

Hattie Portis-Jones	546
Jean B. Russell (I)	400
Write-in-votes	10

Fairburn Redevelopment Powers

Yes	430
No	457

2. Approved the Appointment to the Planning and Zoning Commission. Mayor Avery appointed Mr. Jerry Williams and his term will end January 31, 2016.
4. Approved the Georgia Department of Transportation: Right of Way Maintenance Agreement.
5. Approved the Task Order TCF 2014.03 Comprehensive Plan in the amount of \$63,000.00.
6. Approved the South Fulton Comprehensive Transportation Plan.
7. Approved the Grant Application - Duncan Park. A 50% local match of \$88,345.50 is required and will be provided from the General Obligation Bond Funds.
8. Approved the Outsourcing Utility Bill Printing, Mailing and Hosting, Online Bill-Pay for a period of three years with Datmatx Inc. of Atlanta.
9. Approved the Merchant Services Agreement with Courtware for debit/credit card processing at Municipal Court.
10. Approved the Lease Agreement with GRASP, Inc. and Marnessa Vital for the Youth Center beginning January 7, 2014.
11. Approved the Annual CPI Adjustment for Advance Disposal with a 2.7% increase in commercial solid waste fees effective January 1, 2014.
12. Approved the Authorization to Engage Architect for Conceptual Design of Phase Two at Duncan Park with the Howell Group, Inc. not to exceed \$10,000.00
14. Authorization to Engage Lee Sound Design to conduct an acoustical evaluation of the conference room at the Educational Campus at a cost not to exceed \$2500.00.

15. Approval of Group Insurance Coverage with Lincoln National Life Insurance Company effective January 1, 2014.

IX. APPROVAL OF THE COUNCIL MINUTES: City Council Minutes of October 28, 2013

Council Member Heath made a motion to approve the Council Minutes. Council Member Heath said on page 6, under Council comments; change the word service to serve. Council Member Hurst made a correction on page 1; change the word tax payer to taxpayer. Council Member Alderman made a correction on page 6 under Council comments; change the number 18 to 8. Council Member Johnson provided the second. **The motion carried.**

X. APPROVAL OF AGENDA ITEMS:

13A. A Resolution to Waive the Formal Bid Requirements for a Market Research Analysis for Duncan Park Aquatic Complex

Council Member Alderman made a motion to approve the Resolution to Waive the Formal Bid Requirements for a Market Research Analysis for Duncan Park Aquatic Complex with Council Member Vaughan providing the second. **The motion carried.**

13. Authorization to Engage Market Analysis for Aquatic Program

Council Member Russell made a motion to approve the authorization to engage Four Square Research, Inc. to conduct market analysis for Aquatic Complex at Duncan Park at a cost not to exceed \$28,000.00 with Council Member Johnson providing the second. **The motion carried.**

16. Ordinance to Prohibit Parking on Part of Fairview Drive

Council Member Russell made a motion to approve the Ordinance to Amend Section 56-27 Prohibit Parking on Part of Fairview Drive effective November 25, 2013 with Council Member Heath providing the second. **The motion carried.**

17. Ordinance to Prohibit Obstruction and Resisting Fairburn Officers

Council Member Heath made a motion to approve the amendment to Article II, Section 41 of the Code of Ordinance to Prohibit Obstruction and Resisting Fairburn Officers effective November 25, 2013 with Council Member Vaughan providing the second. **The motion carried.**

18. Employment Agreement for City Administrator

Council Member Vaughan made a motion to approve the Employment Agreement for the City Administrator with Council Member Johnson providing the second.

Attorney Turner said the agreement should go into effect on January 13, 2014 instead of January 14, 2014 under Section A of the Employment Agreement.

Council Member Vaughan amended his motion to include January 13, 2014 with Council Member Johnson providing the second.

Council Member Hurst said she had some proposed inclusions she would like for Council to review in the contract. She said she looked at the contract for the previous three years and there should be more items added. She said the contract, duties and salaries are basically the same. She said she is asking that the City Administrator maintains his CPA License and she is requesting something in the contract regarding the usage of the City Credit Card. She said she is requesting an annual review under the anniversary of the annual employment or the renegotiated contract. She said the termination by the Mayor and City Council, under Section 9 should be reviewed. She said the present contract gives a without cause or for cause and would like for cause to be elaborated on under Section 9. She said this will benefit the City and protect the City Administrator. She said there is nothing in the contract that talks about his disability in the event he cannot fulfill his job duties. She said the proposed inclusions do not take away from the contract, it only adds to the contract. She asked the City Attorney to provide a legal opinion. Attorney Turner advised against the revision of the for cause termination under Section 9. He said the language needed is already specified in the contract and this would not be an addition to the contract with the broad language that is already there. He said Council could review this language and approve it they desire to do so. He said Council could approve any of the proposed inclusions if they chose. Mayor Avery asked about the item number 9 where the City agrees to extend and not terminate the City Administrator after a 90 day period following an election. Council Member Hurst said she attended a training class and it talked about when new Council Members are elected to the City Council and Council Members are leaving. The Council Members who are leaving have voted for the City Administrator, however; the new Council Members did not vote for the City Administrator. She said she is not saying the new Council would terminate the City Administrator. She said this will allow them an opportunity to work with Mr. Barber if something came up. Attorney Turner said Georgia recognizes that City Councils cannot bind future City Councils.

He said it would not be possible for this City Council to approve his contract and take away the next City Council's ability to terminate Mr. Barber without cause. He said City Council has the ability in the contract to terminate at will and without cause. She said those were her proposed inclusions in the contract and Mr. Johnson did explain Mr. Barber's duties and responsibilities because the City Code calls for 10 Sections, however; since a Human Resource Director has been hired it is 9. Mayor Avery said it is standard market practice not to allow a contract to expire or get as close to expiring. He said he is a Compliance Manager and the City Administrator has the right to say his contract has ended which is an option for Mr. Barber. He said he was aware of the renewal of the contract two months ago and decided to wait until the election was over to bring it before Council. Council Member Alderman asked about the additional language for the City's Credit Card regarding business purchases. He asked was there an issue with the credit card. Council Member Hurst said no, however the addition should be added because all employees have to abide by the rules of the credit cards. Council Member Alderman said he would not use his credit card for any other purpose other than business and he does not believe Mr. Barber would either. Council Member Hurst said she signed a document when she received her credit card. Council Member Alderman asked about the disability clause for 12 weeks any calendar year. Human Resource Director David Johnson said Mr. Barber falls under the same disability rights as any other employee in the City. He said Mr. Barber would have up to 12 weeks off under the Family Medical Leave Act (FMLA), in addition; there is the American Disability Act (ADA). Council Member Alderman asked how long Mr. Barber would have before he left the City and became disabled. Council Member Hurst asked if there should be an addition in the event Mr. Barber cannot perform his duties. Mr. Johnson said an employee is eligible up to 12 weeks whether it is sick leave, vacation leave or FMLA. He said an employee has paid or unpaid absence depending on their paid time off. She said on last Friday they had a discussion on succession plans and that is very hard to have a person on board to take over the duties of the City Administrator. Council Member Johnson said Mr. Johnson said she thought Mr. Barber would be covered the same as any other employee. She said she was ready to vote on the contract and did not see where the additions are necessary. Council Member Vaughan said he was not comfortable with the proposed inclusions provided by Council Member Hurst and they just received them tonight. He asked if an annual review was already in place for all employees and would it be applicable to the City Administrator. Mr. Johnson said the City Administrator is not covered by the City Personnel Policy. He said the revised or replaced Personnel Policy does establish a structure for review, however; it is not a mandatory requirement. Council Member Russell said the City Attorney has covered the necessary language needed for the contract. She said it is an asset that the City Administrator is a CPA but can it be put in the contract.

Council Member Hurst said she wanted to answer Council Member Vaughan's question as to why the Council was just given the proposed inclusions. She said it is because the Mayor included it on the agenda because he ran out of time in the workshop. Council Member Heath said if Mr. Barber is a contractual employee would the same criteria as regular at will employees apply to him because he is in an executive area. Mr. Johnson said no it is not the same; it is based on the terms of his agreement. He said there are certain items that are federal laws. Attorney Turner said because of Mr. Barber's position, it is difficult for the employer to make extensive accommodations for a disability. Therefore what becomes reasonable accommodation under federal law gets more narrowly defined when you talk about employees who cannot readily be replaced. Council Member Vaughan asked about the requirement to maintain a CPA License. Mayor Avery asked Mr. Barber if he pays for his CPA License. Mr. Barber said no; he pays for housing and traveling and the City pay for the class.

Council Member Hurst made a substitute motion to ask the City Attorney to give the Mayor and Council a written opinion regarding the additions to the contract. The motion failed due to the lack of the second.

Mayor Avery asked for a vote on the original motion made by Council Member Vaughan. **After much discussion, the motion carried to approve the Employment Agreement for the City Administrator in the amount of \$125,000.00 per year for three years effective January 13, 2014 with Council Members Vaughan, Johnson, Russell, Heath and Alderman voting "Yes and Council Member Hurst voting "No".**

18. Ordinance to Amend the Code relating to Compensation and Expenses of Officers

Attorney Turner said he developed an amendment to the City Ordinance pertaining to compensation for the Mayor and City Council to address the fact that it is the intent that the City's obligation to pay such expenses would not exceed funds budgeted for that purpose and any request made administratively prior to the budgeted amount would be denied. He read an Ordinance to amend Section 2-58 which is the provision that set out the compensation for Mayor and City Council.

Council Member Alderman made a motion to approve the Ordinance to amend Section 2-58 of the Code relating to Compensation and Expenses of Officers with Council Member Heath providing the second.

Council Member Johnson asked if an individual can make a request if they go over their budgeted amount on page 2; under the administrative process.

Attorney Turner said if excessive funds are already spent; an individual has 90 days to come back to Mayor and Council to request an increase or the excessive amount spent has to be reimbursed to the City. Secondly, prior to spending the excessive funds the individual is to ask the City if an arrangement can be made to pay in advance that would take the person over the budget and the obligation of whoever the request was made too would be denied the request and come back to Mayor and Council for review. Council Member Hurst asked if it is up to the individual who goes over their budget to request Mayor and council to increase the travel budget. Attorney Turner said yes. Council Member Vaughan asked why a person would make such a request. Mr. Barber said there was a case when a person would cancel their trip once they realize they have gone over their budgeted amount. Mayor Avery said one of the concerns was to keep staff out of the middle. He said once it is determined by the City Clerk that a Council Member will exceed their travel budget then that Council Member would bring the request before the Mayor and Council. **After much discussion, the motion carried.**

3. Ordinance to Establish New Occupational Tax Fee structure

Mr. Barber spoke about the current rate structure used. He said they are taking the companies income and dividing it by their revenues to determine how profitable an industry is. He said they are putting companies in the categories of businesses and then putting those categories into one of the six classes. He said this means if an individual is in a business that is a low profitability industry that business would be in class 1. He said if a company is in an industry that is in a top tier they would pay a higher percentage of revenue. He said they are recommending that they cap the fees at \$15,000.00. He said they are proposing to change the numbers, the coding system and Attorney Meredith Germain has brought major language changes to the text. Attorney Germain said the Occupational Tax Ordinance provided by state law has three components listed as follows:

1. Administrative fee
2. Occupational tax fee and;
3. A regulatory fee.

She said the Administrative Fee is \$50.00 and it will remain the same. She said the Occupational Tax Fee and the regulatory will change as discussed. Attorney Germain said an example of businesses is listed on page 6 and 7 of the handout provided to Council. Mayor Avery asked about page 3; under other real-estate activity. Attorney Germain said these are the NAICS Codes. Council Member Alderman asked Mr. Barber to give an example of a Regulatory Fee. Mr. Barber said the regulatory fee has nothing to do with the arithmetic of the occupational license; but it is

revenue neutral.

Council Member Alderman made a motion to table the Ordinance to Establish New Occupational Tax Fee Structure with Council Member Russell providing the second. **The motion carried.**

XI. COMMENTS FROM MAYOR AND COUNCIL:

Council Member Vaughan said Creekside Football Team is 12 and 0. He congratulated Langston Hughes and Landmark for making it to the playoffs. He congratulated Hattie Portis Jones on her election and hopes she bring new and positive energy. He also congratulated Council Member Heath on his reelection. He said Council Member Russell is a loss of talent however, he knows she will continue serving the City. He said Mr. Barber is talented, honest and has integrity. He said the City is full of great and talented people. Troy is unbelievable and every one of the department heads are great. He said the City of Fairburn has great employees and they are professional hard working people.

Council Member Johnson congratulated Council Member Hurst on her appointment to the NLC Board. She said the City has a good thing going and a great staff. She said two years ago she had decided not to seek reelection, however; she decided she wanted to stay on the Council because of the different projects going on in the City. She spoke about the ongoing developments and the different projects in the City. She thanked the City Administrator Tom Barber for the improvement of the City's Budget. She said she is looking forward to 2014.

Council Member Russell said the City truly has a talented staff. She commented Mr. Barber for getting a million dollars from a very tight budget. She said she will not be able to attend the Employee Luncheon. She said she will be attending a Christmas Parade December 7th in Atlanta. She said a lot of good things are going on. She said she is glad to see the stage being bided out. She said she was glad to see that the LCI Study is moving forward and the Fairview Parking. She said she will not be disappearing.

Council Member Hurst congratulated Hattie Portis Jones and Council Member Heath on the election. She said she see Lydia Glaize is not in attendance. She said she knows Council Member Jean Barkley Russell and Scott Vaughan will not be going far away and she still expect to see and hear from them. She said when she went to Seattle Washington in November her goal was to campaign for the NLC Board of Directors. She said the campaign was very hard and at the end of the campaign she had to speak before a 15 member nominating committee. She said it was very nerve racking. She said she was number 10 on the list to speak. She said she is glad to be a newly elected NLC Board Member for 2014-2015.

She said the training at NLC is very important to Council Members, Mayors and Administrators. She said if they do not bring back what they learn in the meetings, the training is useless. She said that is her goal when she attends the meetings. She said the conference in Seattle had 3300 participates and they are looking for 5000 at conference in Washington D.C. and 7000 participates in Austin Texas. She said they are encouraging City Clerks and City Administrators to attend the meetings. She congratulated all the elected candidates and said they all ran a good race. She said she looks forward to working with the new Council for 2014.

Council Member Heath said he has deep emotions and has grown attached. He said he has enjoyed working with Council Member Vaughan and Russell and it feels like losing a member of your family. He said the Christmas Tree Lighting was great and he has never been so impressed. He said Mr. Parks never cease to amaze him. He said he never seen a reindeer before and this is the spirit of Christmas. He spoke about the Comcast program for 9.95 per month for children who are challenged. He thanked everyone who was involved with the Christmas Tree Lighting. He thanked the City Clerk, City Administrator and the City Attorney for their service.

Council Member Alderman said he has sentimental feelings about Council Member Vaughan and Russell. He said he is happy to have served with them. He congratulated the newly elected Council, and Mayor Avery. He said the City has a super staff. He wished everyone a Happy Thanksgiving.

Mayor Avery said 65 families received energy assistance through the program held last Friday. He congratulated Council Member Hurst on becoming a Member of the NLC Board of Directors. He said he will miss Council Member's Vaughan and Russell. He said Council Member Vaughan is a diehard recreation person and Council Member Russell is an expert in public relations. He congratulated Council Member Heath on his reelection. He said there are two young men, in our City the Berry Brothers who are committed to the University of Tennessee. He said his wife asked him to thank the staff for the Christmas Tree Lighting and Mr. Parks for his imagination. He spoke about the homegoing celebration for Lawrence Arnold and said the City of Fairburn celebrated a great man. He congratulated Hattie Portis Jones and Lydia Glaize on the election. He said the City of Fairburn has received kudos from the Bonding Rating Company and he was proud to announce the City of Fairburn got another great rating of an A-. He commended Mr. Barber, the Finance Director and everyone who is involved in this accomplishment. He said he was happy to say he does not have to worry about the City going bankrupt the way he did in 2010.

Council Member Vaughan made a motion to recess at 8:50 pm and go into Executive Session to discuss 3 litigation matters with Council Member Alderman providing the second. **The motion carried.**

XII. ADJOURN COUNCIL MEETING:

Council Member Russell made a motion to adjourn the Council Meeting at 9:16 pm with Council Member Alderman providing the second. **The motion carried.**

Brenda B. James City Clerk

Mario Avery, Mayor