

ADOPTED MINUTES  
MEETING OF THE CITY COUNCIL  
CITY OF GREENVILLE, NORTH CAROLINA  
MONDAY, SEPTEMBER 10, 2012



The Greenville City Council met in a regular meeting on the above date at 6:00 PM in the City Council Chambers, third floor of City Hall, with Mayor Allen M. Thomas presiding. The meeting was called to order, followed by the invocation by Council Member Marion Blackburn and the Pledge of Allegiance to the flag.

Those Present:

Mayor Allen M. Thomas; Mayor Pro Tem Rose H. Glover; Council Member Kandie D. Smith; Council Member Marion Blackburn; Council Member Calvin R. Mercer; Council Member Max R. Joyner, Jr.; and Council Member Dennis J. Mitchell

Those Absent:

None

Also Present:

Barbara Lipscomb, City Manager; David A. Holec, City Attorney; Carol L. Barwick, City Clerk and Polly Jones, Deputy City Clerk

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**APPROVAL OF THE AGENDA**

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Motion was made by Council Member Blackburn and seconded by Council Member Mercer to approve the agenda and to move Items 3 (Resolution of intent to close a portion of Carolina Avenue) and 4 (Resolution of intent to close a portion of McKinley Avenue) after the Consent Agenda for discussion. Motion carried unanimously.

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**PUBLIC COMMENT PERIOD**

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Killian Moore – 304 Millbrook Street, Greenville, North Carolina

Mr. Moore spoke in support of the resolution to overturn Citizens United's ruling through a constitutional amendment stating corporations are not people and financial contributions are not speech. Mr. Moore asked that the Greenville City Council support the resolution along with nine other cities.

Jake Gellar-Good – 1821 Green Street, Durham, North Carolina

Mr. Gellar-Good spoke in support of the resolution supporting transparent and clean elections and opposing the influence of unlimited secret funds in elections through the Citizens United ruling. Mr. Gellar-Good stated that without clean elections, it is difficult to have a commitment to good government. Whether the issue is education, healthcare, crime



or the environment, all residents of Greenville are affected, if public policies are unduly influenced by money rather than what is best for the public.

Charles Pennington – Cypress Glen, 100 Hickory Street, Greenville, North Carolina

Mr. Pennington stated that he collected 25-30 used golf clubs to give to young people as part of a new program created to encourage and to teach them to play golf at the Bradford Creek Public Golf Course. Mr. Pennington asked for the City's update on erecting wayfinding signs for Bradford Creek.

Minerva Freeman – PO Box 37, Falkland, North Carolina

Ms. Freeman stated that she supports clean elections and certainly hopes that the City Council will consider adopting the resolution on the agenda for same.

Andrew Gorman – 213 White Hall, East Carolina University, Greenville, North Carolina

Mr. Gorman spoke in opposition of the Citizens United decision because he is increasingly worried about the government being under control of the money interest. It would be a step in the right direction to overturn this decision.

Melissa Price Kromm – No Address Given

Ms. Kromm stated that Greenville is about to become the tenth City in North Carolina to join with its citizens to take a stand on this very important issue.

Dan Swordoff – No Address Given

Mr. Swordoff made comments about how a monetary donation made by one person was able to influence a presidential primary election and stated that is how important the decision is about the Citizens United ruling.

Rebecca Powers – No Address Given

Ms. Powers spoke in support of clean elections and the resolution amending the United States Constitution that is before the City Council for consideration.

Ann Eleanor – No Address Given

Ms. Eleanor spoke in support of the Open and Clean Government Act and asked the City Council to support this resolution for clean elections.

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**CONSENT AGENDA**

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City Manager Barbara Lipscomb introduced items on the Consent Agenda, reading out the title of each as follows:

- Minutes from the April 12, 2012 City Council meeting and the May 21, 2012 joint City Council-Greenville Utilities Commission meeting



- Request to withdraw rezoning application by The East Carolina Bank
- Revisions to the City of Greenville Investment Policy (Document No. 12-01)
- Resolutions declaring as surplus and authorizing the disposition of two 2013 International Model 7400 rear loader refuse trucks (Resolution Nos. 039-12 and 040-12)
- Business Applications Needs Assessment (BANA) project update and approval of associated request for proposals
- Supplemental municipal agreement with the North Carolina Department of Transportation for the Green Mill Run Greenway Phase 2 project
- Resolution approving the execution of a municipal agreement with the North Carolina Department of Transportation for Section 5303 Planning Grant Funds (Resolution No. 041-12)
- Memorandum of agreement with the North Carolina Sedimentation Control Commission for the City of Greenville's erosion control program
- Electric Capital Projects Budget ordinance for Greenville Utilities Commission's Generator – EPA Carbon Monoxide Emission Reduction (Ordinance No. 12-036)
- Series resolution for Greenville Utilities Commission's Westside Pump Station and Force Main Project (Resolution No. 042-12)

Council Member Blackburn asked if the City received money for the disposition of the two refuse trucks.

City Manager Lipscomb responded that the rear loader refuse trucks were sold to two municipalities, and there was a deficit in the amount of \$25,000.

Council Member Blackburn asked should the City dispose of trucks that may be needed for future use.

Assistant City Manager Moton responded that these particular rear packers were not the low entry cab refuse trucks, which will be used in the near future knowing that the City will be transitioning to the automatic trucks. The surplus trucks were ordered based on specifications suitable for services in effect last year. Those services have changed, and that type of truck is being phased out of the City's fleet.

Motion made by Council Member Blackburn and seconded by Council Member Mercer to approve the Consent Agenda as amended. Motion carried unanimously.



### RESOLUTION OF INTENT TO CLOSE A PORTION OF CAROLINA AVENUE - ADOPTED

Council Member Smith stated she requested that this item be removed from the Consent Agenda in order for staff to speak more about it so that residents of District #1 will be aware and better informed of the City's intent to close Carolina Avenue.

Director of Community Development Merrill Flood stated that the intent of closing Carolina Avenue results from a parcel of property purchased by the City. There are three structures on the property and a paper street, which is a right-of-way that was dedicated but the street was never built. This portion of Carolina Avenue is basically a dirt cart path. The City would like to close Carolina Avenue and use the additional property for renovation of the existing three homes and potentially, there will be construction of a new one. Fleming Street will be used to access the properties. Under the current code, there is not enough room for the requirements for the setback of the additional structure or to maintain the setback requirements on the existing structures, if modifications are needed.

Mayor Thomas asked if there are any properties that are accessed from these cart paths.

Director of Community Development Flood responded currently, there are none with the exception of the City property. There is a dead end on Douglas Avenue that the City could use and make some modifications for the structures.

City Attorney David A. Holec stated that the first step of the street closure process is for the City Council to adopt a resolution of intent which, after its adoption, is posted on the street for four weeks and the resolution of intent is advertised. After the required four weeks, a resolution to order closing of the street will come to the City Council for consideration following a public hearing.

Motion was made by Council Member Smith and seconded by Council Member Mercer to adopt the resolution of intent to close a portion of Carolina Avenue. Motion carried unanimously. (Resolution No. 043-12)

### RESOLUTION OF INTENT TO CLOSE A PORTION OF MCKINLEY AVENUE - ADOPTED

Director of Community Development Merrill Flood stated that there is a section of McKinley Avenue in the Douglas Avenue area that is supposed to go through to Fleming Street directly across from Sadie Saulter Elementary School. There is a white house that the City Council directed staff to dispose of to a local nonprofit. The paper street was never built and the street needs to be closed in order for the City to use the right-of-way and accommodate the setback requirements for the structure.

Council Member Joyner asked if the City received a complaint last year from a citizen about a City fence blocking her property in this area.



Director of Community Development Flood stated that it is in the same area. Closing of McKinley Street may not solve that problem, but it will certainly solve the setback problem that the City has encountered.

Mayor Pro-Tem Glover requested staff to contact the individual so that she will be aware of the City's intent and purpose to close McKinley Avenue.

Motion was made by Council Member Smith and seconded by Council Member Blackburn to adopt the resolution of intent to close a portion of McKinley Avenue. Motion carried unanimously. (Resolution No. 044-12)

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**NEW BUSINESS**

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RESOLUTION REQUESTING AN AMENDMENT TO THE UNITED STATES CONSTITUTION TO CLARIFY THAT CORPORATIONS ARE NOT PEOPLE AND FINANCIAL CONTRIBUTIONS ARE NOT SPEECH - ADOPTED

City Manager Lipscomb stated that this item was requested by Council Members Blackburn and Smith.

Council Member Blackburn stated that the Supreme Court ruling stating that basically corporations are not limited in their ability to contribute to political campaigns has created a lot of concerns. Even at the local level, there is concern that big money can make a big difference and that money does not represent people. Corporate money can affect elections at all levels, and corporations have buying large profit motives while elections have different motives. Elected officials are representing the public and ideally, some very important concepts and things that need to take place. A resolution opposing the use of corporations as people and money as speech is important at the local level to support.

Council Member Smith stated when considering the amount of money that is spent for political campaign advertisements, people are not getting information about what candidates stand for and will do for the citizens of the country. In her opinion, the advertisements are negative and people want to listen to reality and are interested in what will be done for them. She is in support of transparency, and the City must continue to have clean elections. The more money that is involved clouds what people are really looking for because everybody is not in a position or at the same level to contribute big money to elections. Hopefully, Greenville will be the tenth city to get on board with the other cities that are supportive of same.

Council Member Mercer stated money is important and useful when rightly used. For example, capital is needed for both government and private projects that all want to see in our city. Undue financial influence at all levels of government can be detrimental to our democratic process. He is very cautious about voting on issues related to amending the



Constitution and is concerned about the language in this resolution, but that is a technical matter. The main point and spirit of this issue are what he supports.

Council Member Joyner stated that consideration of the adoption of this resolution should not be on the City Council's agenda because it is a national level concern and not a local one.

Motion was made by Council Member Blackburn and seconded by Council Member Smith to adopt the resolution requesting an amendment to the United States Constitution to clarify that corporations are not people and financial contributions are not speech. Motion passed with a 5:1 vote. Mayor Pro-Tem Glover and Council Members Blackburn, Smith, Mercer and Mitchell voted in favor of the motion and Council Member Joyner voted in opposition. (Resolution No. 045-12)

RESOLUTION AMENDING THE CITY OF GREENVILLE PERSONNEL POLICIES FOR PAY OF RECLASSIFIED EMPLOYEE/PAY FOR EMPLOYEE AFFECTED BY REORGANIZATION OR RESTRUCTURING – CONTINUED TO OCTOBER

Director of Human Resources Gerry Case stated that a reclassification is a change in the hierarchy or placement of a position in the pay plan. It is based on job content, duties and the labor market wage data. The City currently has that section in its Personnel Policies, but there is no provision for any type of pay adjustment when a position or a classification does take on higher skills and job duties and there is no reward involved. Staff is recommending an amendment in the City of Greenville Personnel Policies giving the City Manager the authority to grant up to a five percent salary increase for those employees moving to a higher classification and that resets the performance evaluation review date to one year from the date of the reclassification. Obviously, if the employee's position is reclassified to the same or a lower pay grade, no salary change occurs. There would be a minimum budget impact each year as the City Council and staff goes through the budget process. Normally this is done through general operating funds and of course, this year, the City has some specific monies for the reclassifications that have been allocated. This is a good item because it does reward an employee for their higher skills or higher level of duties. It is consistent with best practices and was recommended in the Waters Consulting Group's report on the City's Classification Pay Plan.

Council Member Blackburn stated it was her understanding that the City Council had already approved all of the consulting firm's recommendations. She asked if this recommendation was omitted when the City Council adopted the other recommendations, or if it did not fit in the City's budget last year.

Director of Human Resources Case responded that the recommendation was not written up into an amendment form and there are several others. Those recommendations involve staff comparing them to the City's sister cities and equivalent cities and obtaining the policy wording.



Council Member Mitchell asked if this recommendation must be approved in order for the City to use the \$100,000 that was for the merit pool or are these two different issues. Director of Human Resources Case responded they are two different issues. This recommendation is the authority for the City Manager to actually do it and the other was the authority for the budget funding.

Council Member Mercer asked how much this action will impact the budget.

Director of Human Resources Case responded the current amount is approximately \$29,000 for the full fiscal year.

Council Member Mercer asked is this reoccurring money and this is not one time.

Assistant City Manager Thom Moton stated it is reoccurring in the sense that once the five percent is added to an employee’s salary, the City does not take it back. It is not reoccurring in the sense that the City does reclassification for every employee every year. The reclassification process is done once every ten years when the pay and classification study is done. Infrequently, there may be one or two positions in any given year that may be reclassified.

Mayor Pro-Tem Glover asked how this recommendation addresses pay compression.

Assistant City Manager Moton responded that this request does not directly address compression because it applies to people who are already on the payroll. It is not a promotion. It impacts employees whose duties have been adjusted over time. This was discussed at great length during the budgeting process. This is an important process as there are times in which it is certainly appropriate to provide employees recognition in terms of monetary awards because their jobs are at a higher level.

Mayor Pro-Tem Glover stated that at a Joint City of Greenville/Greenville Utilities Commission Pay and Benefits Committee meeting, their main concern was that something should be done about pay compression. The former City Manager discussed pay compression involving 90 employees and a motion was approved to look into the issue. Mayor Pro-Tem Glover stated she is not ready to vote on this item until she receives information on how the City is going to address pay compression.

Assistant City Manager Moton stated the comprehensive plan for addressing the pay compression issue will be presented to the City Council in October. Assistant City Manager explained the following preliminary plan for pay compression.

**\$100,000 Pay Adjustment Pool Allocation**

Allocation	Amount	%
Reclassifications	\$ 29,474.00	29%
Pay compression (multi-incumbent positions)	\$ 65,316.16	66%
Pay compression (single-incumbent positions)	\$ 3,348.80	3 %



Other – To Be Determined	\$ 1,861.04	2 %
TOTAL	\$100,000.00	100%

Mayor Pro-Tem Glover stated that she would like to know who is impacted by the pay compression issue and she wants to make sure that the money is allocated. She stated that she dislikes receiving recommendations from staff about one or two positions or issues when there is a larger study that affects a lot of people and not just one or two individuals.

Council Member Smith stated when the reclassification study was done, there were some employees who were participating in the appeals process because they were concerned about the original decision about their pay classifications. Council Member Smith asked if this recommendation affects those employees and if the review has been completed yet.

Director of Human Resources Case responded the appeals were completed and were part of the final package that the City Council adopted. This recommendation applies to those positions that have come up since then because of reorganization within a department or changes in technology.

Council Member Joyner asked how many employees will the amendment affect, if the City Council adopts this resolution.

Director of Human Resources Case responded that it will affect 23 employees.

Council Member Mitchell asked how often are recommended reclassifications done.

Director of Human Resources Case stated historically, reclassifications have been done every year in the budget process. Normally, the City Council receives the budget and a list of the positions that are recommended for reclassification. It was done a little differently this year.

Council Member Mitchell asked is it possible in a year that the City does the market rate increase and the merit rate increase, an employee can also get a reclassification increase on top of that.

Director of Human Resources Case responded it is possible, depending upon the timing.

Council Member Blackburn stated that some reclassification is done every year, but as far as the big consulting overhaul, the City does that every 10 years.

Assistant City Manager Moton responded that staff receives requests for reclassification annually, but that does not mean that those requests are approved every year. The process for reclassification is very objective and a request has to go through several thresholds in order for reclassification to be achieved. Even if the City Council approves this policy tonight, nothing will change until the City Council actually approves the amendment to the pay classification.



Council Member Smith stated there seems to be some confusion among employees about the status of their appeal requests. She asked if all employees have been notified.

Director of Human Resources Cases responded employees were notified by sending those employees individual letters.

Council Member Smith announced that employees who are unsure of the status of their appeal should contact the Human Resources Department.

Council Member Mitchell asked if employees can tell staff about their having more job duties and request their position to be reclassified.

Director of Human Resources Case responded that the employees report to their supervisors. If the department head agrees that there is merit in the request, the department head initiates the process of the employee completing the job description questionnaire; the supervisor completing the job evaluation manual; and the department head analyzing both, making comments and submitting the request to the City Manager's Office; and sending all of the documentation to Human Resources to begin the review process.

Council Member Mitchell asked how many reclassifications have been done by the City in the last five years.

Director of Human Resources Case responded that in some years there were no reclassifications, but the average is 3-4 per year. The 23 reclassifications this year is more than usual.

Motion was made by Council Member Joyner and seconded by Mayor Pro-Tem Glover to postpone this item and look at all of the information simultaneously at next month's meeting. Motion carried unanimously.

RESOLUTION AMENDING THE CITY OF GREENVILLE PERSONNEL POLICIES BY ADDING A NEW SECTION ON SUPPLEMENTAL INTERIM PAY - ADOPTED

Director of Human Resources Gerry Case stated that the City's Supplemental Interim Pay standard practice has been in place for over 40 years. City employees take over the duties of vacant positions 100 percent and are given a supplement in their paychecks which is 10 percent of their base salary. However, currently, there is no provision in place to recognize the performance of other key exempt employees.

Motion was made by Council Member Joyner and seconded by Council Member Blackburn to adopt the resolution amending the City of Greenville Personnel Policies by adding a new section on Supplemental Interim Pay. Motion carried unanimously. (Resolution No. 046-12)



## AMENDMENT TO UPTOWN GREENVILLE CONTRACT FOR SERVICES - APPROVED

Carl Rees stated that the City has contracted with Uptown Greenville since 2010 to perform a range of services related to downtown revitalization. In discussions over the last three or four months, Uptown Greenville has indicated an interest in expanding their services to the City of Greenville, particularly with regard to teaming up with the City and its adopted economic development plan. Uptown Greenville would like to continue to assist the City with those items that would have some impact in the downtown area and are economic development items as the City has extended its focus.

President of Uptown Greenville, Todd Hickey, stated that the City currently contracts with Uptown Greenville for \$25,000, and Uptown Greenville is requesting an additional \$25,000 to match the contributions of Vidant Medical Center and East Carolina University. The function of Uptown Greenville's service is to develop the business of uptown Greenville beyond the level of events and planning, to recruit new businesses, to be attractive to new businesses and to have infrastructure in place to be able to react promptly to inquiries. Uptown Greenville wants to form a business recruitment team that creates a supportive business environment that will partner with the City and business owners. There has been discussion about arts incubation opportunities to bring cultural activities to the downtown area. Marketing is important and resources are needed in order for Greenville to be seen as a viable alternative to its competitors. In the infrastructure plan alignment, Uptown Greenville will allow public input and will work to develop consensus of their work in order to get buying, foot traffic, etc. needed to have a vibrant downtown area. Our organization will provide other niche services such as increasing programs downtown that increase security and a lighting program that can engage merchants to keep their lights on and also give them energy based incentives for doing so. Their plan is to continue to invest in that service and to be able to provide a better service to the City, but to also create a better leveraged area for the downtown to recruit businesses there.

Council Member Blackburn stated that the City is currently working on a major marketing effort with the Convention and Visitors Bureau (CVB) and others. Council Member Blackburn asked if Uptown Greenville is involved in what CVB is doing.

Director of Uptown Greenville Bianca Shoneman responded that Uptown Greenville is willing to collaborate with the City and the Convention and Visitors Bureau on marketing efforts that come out of the branding initiative.

Council Member Smith stated that making sure that all of Greenville is being represented is a big issue, and she emphasized that last year other nonprofits could ask the City for money. The City Council must justify why the money is being used, where it is going, etc. to ensure that groups, agencies or organizations are not doing a repetitive process. Also, people want answers to their questions and citizens should be informed of what is happening in Greenville. Council Member Smith asked what have been Uptown Greenville's efforts in downtown revitalization thus far and what does it plan to do.



Ms. Shoneman responded that in the year 2000, the taxable base in the City of Greenville's Uptown District was \$36,000,000. Over the course of 10 years, Uptown Greenville and the City of Greenville worked as partners and that tax base grew from \$30,000,000 to \$66,000,000. Partnerships are formed naturally and organically around the initiatives of promoting uptown through events such as Freeboot, PirateFest, Artwalk, The Umbrella Market and business recruitment. Uptown Greenville is working with other organizations to support small business creation. For example, Women for Women recently submitted an application to create a woman owned business to support diversity and ownership in retail environments.

Council Member Smith asked what progress has been made with diversity marketing for the downtown area.

Ms. Shoneman responded over the last two months, Uptown Greenville has been fortunate to leverage support for the Freeboot Friday music series. There was a 21 percent increase in trade agreements to support media purchases and that includes the diversity of the media channels such as Mixer magazine and Pirate radio. Uptown Greenville is working across all media lines to promote their events and make sure that everyone is aware of the Uptown District events to make a welcoming and inclusive environment. The diversity at the Umbrella Market includes some new vendors, i.e., children, women, students, and farmers. It is really a great opportunity which attracts a cross section of Greenville at the Five Points Plaza as the result of the investment that Greenville made.

Council Member Smith asked if Uptown Greenville has included bar owners in the lighting program because bar businesses were considered as a separate issue and not a part of uptown. If so, has there been an increase of people visiting downtown since the bar owners have been aboard.

Ms. Shoneman responded Uptown Greenville had a meeting recently with the bar owners to introduce herself as the new director and to discuss some of Uptown Greenville's initiatives. The uptown bar owners would be targeted for inclusion in the lighting program, which is tentatively called Light Up Uptown.

Council Member Mitchell suggested that perhaps next year, the Uptown Greenville contract with the City could include some key performance indicators to measure services that the City received versus what was expected. Uptown Greenville is one of the few nonprofits that are receiving money from the City. Regarding the deliverables in the contract, Uptown Greenville should have the expertise to carry out the services because of the funding behind them.

Council Member Blackburn asked what are the top five infrastructures that Uptown Greenville would like to do.

Mr. Hickey responded that there are small items such as speed bumps, bike racks, planters and items that add beautification to the downtown area. Bigger ticket items address how



the City migrates toward the river, how the City develops different services and perhaps larger infrastructure, and what the City could do with a river front organization. Uptown Greenville and others are developing potential stakeholders that would be interested in that area. Uptown needs some large infrastructure that smaller businesses and organizations will want to be near it. That area is the key to the uptown infrastructure development.

Mayor Thomas stated that hopefully, the City will look back in a few years at 2012 as a step up for the City's downtown area. It is essential for a city's downtown to have life and vitality.

Motion was made by Council Member Joyner and seconded by Council Member Blackburn to approve the amended contract for services to reflect the new services and increased fee of \$25,000. Motion carried unanimously.

#### REPORT ON STANDARDS FOR INTERNET SWEEPSTAKES BUSINESSES – CONTINUED UNTIL OCTOBER

City Manager Lipscomb stated that this item was placed on the agenda at the request of Council Member Smith.

Chief Planner Chris Padgett stated staff visited five of the fifteen local establishments finding that internet sweepstakes operations contain computer gaming terminals where customers pay for internet time. While regular internet service and some limited programs are generally available on these terminals, seventy percent to ninety percent of the customers use them to play sweepstakes according to the operators. Sweepstakes come in many forms, but winning is not based on random chance or skill, it is based on predetermined odds. That is really the difference between video poker and these internet sweepstakes games. One is based on skill or chance and the other is predetermined odds.

When customers enter these facilities, there is typically an attendant at a counter or kiosk where customers pay to rent internet time. The game rate that staff saw was \$.20 per minute. The attendant gives the customer a log-in number and the customer chooses which terminal to use and logs in. At this point, the customer can begin playing the sweepstakes games or using the terminal for other purposes. If the customer wins a sweepstakes, they can receive their cash prize from the attendant.

Some of the other characteristics that staff noted included the following:

- Most offer refreshments (water, soft drinks, coffee, chips, candy, etc.). Some of these refreshments are complimentary as long as customers are "playing", while others are sold.
- Some are open 24 hours a day, while others do close in the early morning hours (i.e. closed between 2:00 a.m. and 9:00 a.m.).



- Some limit entrance to those 18 years of age or older. Others allow minors, but prohibit them from playing sweepstakes games.
- All of the facilities visited provided smoking and non-smoking areas. Several provided a small area designated non-smoking, while the vast majority of the facility allowed smoking.
- None offer alcoholic beverages; however, this type of facility is eligible to apply for an ABC permit.
- Many offer ancillary office services such as access to fax machines, copiers, and ATM's. Some also have limited inventories of basic office supplies available for sale.
- Based upon police records, these establishments generate few calls for service.

There is a long and complicated legal history associated with these establishments. In 2006, the General Assembly banned video poker in North Carolina. With that being in place, the industry responded with a shift from video poker machines to video sweepstakes machines. The General Assembly then adopted the State Law in 2010 which expanded the prohibition to include video sweepstakes machines and similar devices. On March 6, 2012, the State Court of Appeals held that the 2010 ban was unconstitutional. Appeals to this decision have been filed, but the result is that the internet sweepstakes businesses are currently legal in North Carolina. Municipal zoning authority may be exercised in connection with these businesses. There was certainly an attempt at the State level to make them illegal. There was a bill at the General Assembly last session that would have regulated and taxed them, but that bill did not move forward out of the committee it was in. It is anticipated that bill or a similar bill coming forth in the long session.

The first internet sweepstakes businesses were established in Greenville in 2008. The first establishments presented themselves as "business centers" because they offered computers with internet access, fax machines and similar business support services. In the fall of 2011, it was determined that the primary purpose of these establishments was sweepstakes and they were classified as "Game Centers", which was an existing land use category in the City's current Zoning Ordinance. Game Centers are permitted with a special use permit in the Heavy Commercial (CH), General Commercial (CG), Downtown Commercial Fringe (CDF) and Downtown Commercial (CD) zoning districts.

Two of the 15 local facilities were issued a special use permit by the Board of Adjustment last month. Six operate under special use permits, and nine are nonconforming meaning that they were permitted prior to the requirement for a special use permit and are technically grandfathered.

Staff surveyed nine other North Carolina communities to obtain information about how they are regulating these establishments. It is interesting that six of the nine communities have separation requirements from one or more of the following list:

- Another Internet Sweepstakes Business
- Residential zoning or uses
- Gateway corridors
- Schools
- Playgrounds
- Churches



- Daycares

- Libraries

Separation standards are fairly widely used in relation to these types of facilities.

Staff is asking the City Council to give direction for a potential text amendment and standards. First, internet sweepstakes businesses must be defined. Staff is proposing that they be allowed with a special use permit in the City's two most intense zoning districts which are CH and CG and that specific criteria be adopted that the City's Zoning Ordinance currently is lacking. That would be the following:

Specific Criteria:

- ✓ ¼ mile separation from existing or approved internet sweepstakes businesses.
- ✓ 500 foot separation from any conforming use single family dwelling, single family residential zoning district, or school.
- ✓ Require that the use be conducted within building with no outside congregation of customers.

Chief Planner Padgett delineated on a map the areas where new facilities would be permitted with a special permit under the proposed standards. Chief Planner Padgett stated these areas are primarily located around primary thoroughfares and separate from the residential areas.

Council Member Smith asked since staff has added schools within the 500 foot separation requirement, has staff considered adding churches as well.

Chief Planner Padgett responded that the portion of the City's zoned area available for these facilities is about 2 percent of the City's overall jurisdiction. When churches were added to that, the portion shrunk to the extent that there may have been a couple of sites remaining in the City. It became a lot more difficult and staff wanted to be sure that the direction received from the City Council was to regulate these facilities in a way that they will be placed in appropriate locations. Not necessarily to have standards that would prohibit them entirely.

Council Member Smith asked is it legal to have a cap on the number of businesses because they are already saturating the City.

City Attorney Holec responded that the better approach rather than the cap is to actually have the restrictions that are suggested by staff. Having the cap involves an issue similar to the taxicab franchises that they are not regulated based upon the land use, which is suggested. If the City Council wants to discuss adding churches, then maybe the City could have a lesser than a 500 foot separation requirement, i.e. a 100 foot one and that would be another potential approach.



Council Member Smith asked staff to consider a separation requirement for churches and playgrounds.

Council Member Mitchell stated his concern is that the majority of these businesses are in low income neighborhoods. Council Member Mitchell asked what was the typical customer demographic in internet sweepstakes businesses.

Chief Planner Padgett responded that the majority of the customers were minority.

Council Member Mitchell stated these businesses could negatively impact a neighborhood's economic factors. Council Member Mitchell asked if census tract data could be used to identify those with a median income below the federal poverty line and prohibit these businesses from locating in those areas.

City Attorney Holec responded that the City would have difficulty with that restriction. The best approach is the separation from residential neighborhoods, which would still provide the separation of all neighborhoods including low income neighborhoods.

Council Member Mitchell asked could the City create certified economic development zones and not allow these businesses to be established in those zones.

City Attorney Holec stated that the City could possibly do that, and again that is something that could be looked at, but there should be caution in doing so.

Council Member Smith asked if there is caution for including the churches and playground in the 500 foot separation requirement.

City Attorney Holec responded the City has to ensure that there are some reasonable areas for the internet sweepstakes businesses to be located. That is one of the changes that have to be met. Staff can look at that and see if it is something that is justifiable, but there is a caution for that as well.

Council Member Joyner asked of the 15 internet cafes that are located in Greenville, have any of them been a problem.

Interim Police Chief Joseph Bartlett responded the businesses are not in general a problem as far as calls for service. The general complaint received at the Police Department is out of concern about what the businesses are perceived to have done to an area.

Council Member Joyner asked are calls for violent crimes occurring at these businesses received at the Police Department.

Chief Bartlett responded other than those listed in staff's report on standards for internet sweepstakes businesses; there is generally a low call for service at those businesses.



Council Member Joyner stated that last week, he visited some of the internet sweepstakes businesses and was surprised that they were quiet like a library. At one location, there was mostly adults and smoking and nonsmoking areas, and at another location, small children were banging on computers. An age limit is required at these businesses. Council Member Joyner asked if the City could propose standards at the nine grandfathered internet sweepstakes businesses.

Chief Planner Padgett responded that the typical process when somebody is approved under existing standards is that they would be legal non-conforming and could continue to operate under the provisions of their previous approval. If they ceased operating for a period of six months, they would lose those non-conforming rights. There are mechanisms to look at that the businesses wherein the City would consider that these individuals do not abide by the City's current standards. Therefore, the City would give them a certain amount of time for them to comply. Some of those facilities probably would not fall within the areas and be able to pursue a special use permit.

Council Member Joyner asked about the number of machines in use at local internet sweepstakes businesses.

Chief Planner Padgett responded that staff does not have information regarding the number of machines at the five of the fifteen locations surveyed, but for those they do have, the number ranges from 15 to 50.

Council Member Joyner stated that there should not be locations where there are only one or two machines and people are gathering outside at the locations.

Chief Planner Padgett stated that the definition that is proposed defines that an internet sweepstakes business is any business enterprise, whether as a principal or an accessory use, where persons utilize electronic machines, including but not limited to computers and gaming terminals, to conduct games, including but not limited to sweepstakes and video poker, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. This use does not include any lottery approved by the State of North Carolina. That is whether the business has one or 50 machines, if the business is meeting this definition and having these machines and conducting this activity then the business falls under the same use category and have to meet these standards.

Mayor Thomas asked during the visits, did staff find alcohol as limited or unlimited.

Chief Planner Padgett responded that it was interesting that the local entities do not sell alcohol nor do they in the communities surveyed. It was the interpretation of an individual who reviews the ABC permits in Raleigh that this type of facility falls within the definition of the type of business that could apply for an ABC license, but he did not say that one was issued.



City Attorney Holec stated that the general understanding across the State is that the sweepstakes businesses would not be entitled to receive a permit, but staff received the previous response when staff actually asked.

Mayor Pro-Tem Glover stated Morrisville has a 1,600 foot separation requirement from any residential use. Staff is proposing a separation for single family residential use and, in her opinion, the businesses should not be located near any residential use.

Chief Planner Padgett stated that staff's proposal is a 500 foot separation standard. It would include any conforming single family dwelling located in any district as long as the district allows single family dwellings and any single family residential zoning district. The actual residence itself is what that would be measured from similar to how the City does private clubs. Morrisville is extremely strict; 1,600 feet is substantial and Morrisville limits no more than five machines per establishment and restricts the hours of operation to 9:00 a.m. through 6:00 p.m. Those are very strict operational requirements.

Mayor Pro-Tem Glover stated that there should be a separation standard from churches. Monroe has a 400 foot separation standard from residences churches, schools, and other gaming centers. With the local tobacco stores, there is one on both sides of the streets and sometimes two doors down for one another. She is sure that the Police Department receives service calls from those stores regarding illegal activity. Mayor Pro-Tem Glover asked staff to add a separation standard for not having the internet sweepstakes businesses and tobacco shops in close proximity of each other by including a 500 foot separation from any residences, churches, and schools, and gaming centers. West Greenville is in a revitalization area, but the City has these establishments that are bringing down the efforts of revitalizing the community.

Council Member Blackburn stated the City should make sure that children do not visit the internet sweepstakes businesses. The businesses should not be established near federally funded housing complexes. It is an unregulated, untaxed market making money hand over fist from the City's poorest residents.

Council Member Mercer agreed with the issue about residential areas.

Motion was made by Council Member Blackburn and seconded by Council Member Joyner to direct staff to use all of the information from this evening and to come back in October with additional information and draft text amendments for the City Council's consideration. Motion carried unanimously.

#### DISCUSSION OF PRIVILEGE LICENSE FEE STRUCTURE FOR INTERNET SWEEPSTAKES BUSINESSES - DENIED

Director of Financial Services Bernita Demery stated based on the Financial Services Department's review, there are annual gross receipts recorded from four internet sweepstakes businesses at \$50 for the first \$25,000 of sales. There is also a maximum of



\$2,000 for any business which does apply to the internet sweepstakes businesses. If the City Council would decide this evening to change that fee, staff could implement that if the City Council adopts a fee schedule of \$1,000 per location based on staff's survey. In the results of the survey, staff saw ranges from \$500 to \$5,000 per location. If the City was to adopt a fee schedule of \$1,000 per business location and \$500 per internet sweepstakes computer terminal, the City could generate an additional \$200,000 this fiscal year using an estimate of 25 terminals per location.

Director of Financial Services Demery stated that staff's recommendation is that the City Council should discuss the privilege license fee structure related to internet sweepstakes businesses, and direct staff of any actions to be taken.

Council Member Blackburn stated that she requested this item to be placed on the agenda for the City Council's discussion. Having the ability to apply the business fees is a good direction for the City.

City Attorney Holec stated that the City Council's action would be to direct that an ordinance be prepared for the City Council's implementation.

Council Member Joyner stated that the internet sweepstakes business is a legal business that complies with rules and regulation as other businesses. In January 2013, the State of North Carolina will tax the machines and do away with the municipalities' ability to do so. The City asked for a six-month moratorium and it is not too far from January. Since this item is also going before the Court of Appeals, his recommendation is to wait for the State's action to be taken.

Council Member Mitchell stated that he was shocked to hear about the service calls to the Police Department. If the City Council will consider taxing or having a special type of privilege license for businesses, it should be based on those businesses that use more City resources. Is the logic to penalize internet sweepstakes businesses or is the need for the City to raise additional tax revenues. The City should increase the privilege license fee. There is a huge issue with the box stores' calls for services, entities that increase additional stormwater runoff. If the City Council will look at businesses and maybe create a special type of privilege license, he would like to have a purpose for it. If businesses are not requiring any additional City services, he does not see a reason to increase the tax on them.

Mayor Thomas asked is staff basing this off of gross receipts or net receipts. A business could be next to bankruptcy and the City could literally push them in bankruptcy based upon the fees that the City would want to put on any business. The City is not aware of what the net results are for businesses.

Chief Financial Services Demery responded the requirement is that the businesses submit their gross receipts to the City.



Council Member Blackburn stated that other cities surveyed by staff charge \$2,500 for a machine plus a \$2,000 flat fee and some of these charges have been legally challenged. 49 cities are using this approach to regulate and to make sure that there is not an epidemic of these businesses.

Motion was made by Council Member Blackburn and seconded by Council Member Mercer to direct staff to bring back an ordinance to adopt the fee schedule of \$1,000 per business location and \$500 per internet sweepstakes computer terminal. Motion failed with a 2:4 vote. Council Members Blackburn and Mercer voted in favor of the motion and Mayor Pro-tem Glover and Council Members Mitchell, Joyner and Smith voted in opposition.

RESOLUTION CALLING FOR A PUBLIC HEARING TO REFUND BONDS (2009 INSTALLMENT FINANCING AGREEMENT AND SERIES 2004 CERTIFICATES OF PARTICIPATION) - ADOPTED

Financial Services Director Bernita Demery stated that staff has been working with its financial advisors to refinance the 2009 Installment Financing Agreement and the Series 2004 Certificates of Participation. Based on the amount to be refunded, commercial banks can purchase the bonds, which will lower costs compared to the option of a public offering through investment banks. Proposals were sought from commercial banks and proposals from four banks were opened on August 28, 2012. Ms. Demery recommended approval.

Upon motion by Council Member Joyner and second by Council Member Mitchell, the City Council voted unanimously to adopt the resolution calling for a public hearing on September 13, 2012 to refund bonds and authorizing the Director of Financial Services to file an application with the Local Government Commission to enter into this transaction.

BUDGET ORDINANCE AMENDMENT #2 TO THE 2012-2013 CITY OF GREENVILLE BUDGET (ORDINANCE #12-027) AND AMENDMENTS TO THE SPECIAL REVENUE GRANT FUND (ORDINANCE #11-003) - ADOPTED

Motion was made by Council Member Joyner and seconded by Council Member Mitchell to adopt the ordinance approving budget ordinance amendment #2 to the 2012-2013 City of Greenville budget (Ordinance No. 12-027) and amendments to the Special Revenue Grant Fund (Ordinance No.11-003). Motion carried unanimously. (Ordinance No. 12-037)

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**REVIEW OF SEPTEMBER 13, 2012 CITY COUNCIL AGENDA**

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The Mayor and City Council reviewed the agenda for the September 13, 2012 City Council meeting.



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### COMMENTS BY MAYOR AND CITY COUNCIL

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The Mayor and City Council made general comments about past and future events. Council Member Blackburn expressed interest in adding an item to the agenda for the Thursday, September 13, 2012 meeting related to the proposal to create an overlay district, which was approved by the City Council on August 11, 2012, although she did not vote for it. That motion called for an overlay district in the University community that would allow four unrelated people to live together in a single-family home. This week, the City Council received information that the proposed district has been substantially changed by excluding significant areas, therefore the proposal is no longer the motion that was passed by the City Council. She requested the item be added to Thursday's agenda for review because it is scheduled to go before Planning and Zoning, yet the public and especially the residents who will be impacted by the overlay have not had time to incorporate these changes into their efforts or their understanding and their knowledge of the proposal. Council Member Blackburn stated she feels the City Council has a legal responsibility to reconsider the motion and review it and vote on it again given the changes that have taken place.

City Attorney Dave Holec stated the motion that was made by Council Member Joyner and approved by the City Council identified where the overlay district was to be applied as all the properties located within a boundary which was the Tar River, Elm Street, Fifth Street and Reade Street. The proposal which will go to the Planning and Zoning Commission will be to implement the motion to the fullest extent possible while complying with State law and being consistent with best-practices. There are basically two adjustments that were made to that boundary, one being to remove areas owned by the State of North Carolina because State law dictates that an overlay district cannot be applied to land owned by the State of North Carolina without the express consent of the Council of State and the other being to remove areas to be consistent with a best-practice of avoiding the splitting of existing lots. In the case of this overlay area, the Northeast and Northwest Corners are City-owned park properties which extend outside the proposed boundary. Mr. Holec displayed a map which had been colorized to depict state owned properties in yellow and the park properties in red. Staff believes these adjustments are implementing the motion adopted by the City Council that is in compliance with State law and compatible with best-practices.

Mr. Holec stated this revised information was provided to all individuals who requested a protest petition form and it was included in the information giving notice of the Planning and Zoning Commission meeting which was sent to all owners and Commission members so they have pre-knowledge of the adjustments before the matter goes before the Commission.

Council Member Joyner asked if the City Council was notified of the changes.



Mr. Holec stated the Mayor and Council Members were notified when the adjustments were made.

Council Member Joyner stated he would not support a motion to add this item to Thursday's agenda because he believes the matter was handled properly.

Council Blackburn stated she was previously offering her comments, but she would now like to make this in the form of a motion to add discussion of adjustments to the proposed overlay district to the agenda for the September 13, 2012 City Council meeting. She stated her reason for bringing this up was that a group of people, in addition to herself, objects to this change. To be as fair as possible, she believes it is the City Council's responsibility to provide for time for discussion and to take another vote because this is essentially a different district being proposed.

Council Member Mercer seconded the motion.

Council Member Mitchell observed this is the second meeting in a row that the City Council is being asked to add something to an agenda that is a non-emergency item.

Council Member Mercer stated the rationale for adding this item is that it is about to go before the Planning and Zoning Commission, so the only way the City Council can address the concern is to add it to Thursday's agenda. In case the motion to add does not pass, he wanted to acknowledge that citizens have been very frustrated in trying to understand the proposed boundaries. Removing the State-owned property is a fairly significant change and in the interest of good communication with citizens, he feels the City Council should be clear before sending it to Planning and Zoning.

Council Member Blackburn added that it is important to do this in a public way because of transparency. Resident homeowners do not want this and she feels it is important that the City Council have a proper and transparent airing of any changes that are made.

Council Member Mercer stated the City Council passed a motion, which has been amended before sending the matter to the Planning and Zoning Commission. He feels it is very appropriate that the matter come back to the City Council for a clear vote before it moves forward. He stated he is not suggesting the City Council is doing anything illegal if that does not happen, but he feels the City Council should want to err on the side of clarity and advanced communications for citizens.

Council Member Joyner stated he has had calls from citizens who live in the impacted area who are in support of the change, but they are afraid to come to a City Council meeting to show their support because of the people who are against the change. He said he hopes the City Council will not have to sit through this discussion again.

There being no further discussion, the motion to add discussion of adjustments to the proposed overlay district to the agenda for the September 13, 2012 City Council meeting



failed by a vote of 4 -2, with Council Members Blackburn and Mercer casting the only affirmative votes.

The Mayor and City Council made comments about past and future events.

Mayor Pro-Tem Glover stated that she has some concerns about mosquito spraying because of the West Nile Virus and there have been a few cases in North Carolina. Mayor Pro-Tem asked does the City still have mosquito control.

Interim Public Works Director Scott Godefroy responded that personnel trap and collect mosquitoes to verify the types of mosquitoes that are in the City before spraying.

Mayor Pro-Tem Glover stated that there is concern about the overwhelming amount of mosquitoes in areas such as Hop Tyson where there is a significant amount of ditches and stagnant water.

Mayor Pro-Tem Glover asked staff for the current number of City code enforcement officers providing service to the districts.

Interim Chief Bartlett responded that the Police Department has seven code enforcement officers.

Mayor Pro-Tem Glover stated there have been a lot of code enforcement efforts mainly in the Tar River/University Neighborhood Association (TRUNA) area because there are two designated code enforcement officers assigned to that area. Sometimes officers who are assigned to service Districts 1 and 2 and other areas are asked to work specifically around the University area, and that is not fair for the remainder of the community. She is aware that it is difficult for the City personnel to handle the violations in Districts 1 and 2. Hopefully, code enforcement officers will be able to stay in their respective areas since there are not that many of them. Every year, she recommends that more code enforcement officers should be hired because the City continues to grow and to make sure that the entire community is well maintained. She has been informed that citizens are not receiving returned telephone calls from the Code Enforcement Division. She realizes that the code enforcement officers are not in the office 100 percent of the time, but telephone calls should be returned at least the next day.

Interim Police Chief Bartlett stated that there are six code enforcement areas. The East Carolina University funded a position and the geographic overlay is part of one of those districts. That officer is dedicated to part of that particular code district and the other officer is responsible for that area and the remainder of that particular code district. It is the Police Department's intent to make sure that the officers are assigned to and work their districts. Recently, staff has assigned some clerical assistance to the Code Enforcement Division to answer the telephone calls and make sure that the calls are forwarded to the appropriate officers for action. The complaints are received by the code enforcement officers and the complainants should be responded to in a timely manner.



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### CITY MANAGER'S REPORT

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City Manager Lipscomb thanked the City Council for their confidence in having her in Greenville and stated she is very pleased to be here to serve the community. Already, she has experienced some of the City Council's hot issues and had the opportunity to meet the City staff, visit City facilities, become familiar with the budget, and to visit Greenville, South Carolina with community leaders. As the City moves toward building that center place in Greenville, quality makes a difference between successful communities versus others. She hopes to be part of all of the economic development and revitalization and working cooperatively with others. City Manager Lipscomb thanked the City Council for her welcome reception.

City Manager Lipscomb recommended cancelling the third meeting in September because there are no pressing issues for that meeting.

Motion made by Council Member Mercer and seconded by Council Member Smith to cancel the September 24, 2012 City Council Meeting. Motion carried unanimously.

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### CLOSED SESSION

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Council Member Joyner moved to enter closed session in accordance with G.S. §143-318.11(a)(1) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes, said laws rendering the information as privileged or confidential being the Personnel Privacy Statute and the Open Meetings Law and in accordance with G.S. §143-318.11(a)(5) to establish or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease. The property being discussed is owned by Vandermere Partnership, consists of Tax Parcel #77037 and is intended to be used for parking purposes. Council Member Blackburn seconded the motion, which passed by unanimous vote.

Mayor Thomas declared the City Council in closed session at 8:46 pm and called a brief recess to allow Council Members time to relocate to Conference Room 337.

Upon conclusion of closed session discussion, motion was made by Council Member Mitchell and seconded by Council Member Blackburn to return to open session. Motion was approved unanimously, and Mayor Thomas returned the City Council to open session at 9:07 pm.



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**ADJOURNMENT**

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Motion was made by Council Member Joyner and seconded by Council Member Blackburn to adjourn the meeting. Motion carried unanimously. Mayor Thomas declared the meeting adjourned at 9:08 p.m.

Respectfully Submitted

Polly Jones  
Deputy City Clerk