CITY OF HENDERSONVILLE
BOARD OF MAYOR AND ALDERMEN
MINUTES OF REGULAR MEETING
JULY 23, 2013

PRESENT

SCOTT FOSTER, MAYOR
SCOTT SPROUSE, VICE-MAYOR
DON AMES, ALDERMAN
ARLENE CUNNINGHAM, ALDERMAN
HAMILTON FROST, ALDERMAN
PAUL R. GOODE, ALDERMAN
ROSA LONG, ALDERMAN
FRED QUALLS, ALDERMAN
MARK SKIDMORE, ALDERMAN
MATT STAMPER, ALDERMAN
JIM WATERS, ALDERMAN
DARRELL WOODCOCK, ALDERMAN
JOHN BRADLEY, CITY ATTORNEY
KAY FRANKLIN, CITY RECORDER

ABSENT

LISA WEST, ALDERMAN

AGENDA

Skidmore moved; seconded by Sprouse for acceptance of the agenda.

Sprouse moved; seconded by Goode to adopt the revised agenda showing second reading of Ordinance 2013-31 instead of first reading.

There was a unanimous vote for approval to adopt the revised agenda.

Sprouse moved; seconded by Qualls to add reading of Resolution 2013-17 as it has not been two weeks since its review in committee.

The following voted:

Aye: Ames, Frost, Goode, Qualls, Sprouse, Waters and Foster.

Nay: Cunningham, Long, Skidmore, Stamper and Woodcock.

Foster declared the motion carried.

Skidmore moved; seconded by Goode for acceptance of the agenda as amended.

There was a unanimous vote for approval.

PRESENTATIONS

Foster presented members of the Knox Doss at Drakes Creek Junior Mustangs a proclamation proclaiming July 27, 2013 as "Knox Doss at Drakes Creek Blue and Gray Day" in honor of the establishment of a 5th and 6th grade football team.

MINUTES

Waters moved; seconded by Sprouse to approval of the July 9, 2013 minutes.

There was a unanimous vote for approval.

CITIZENS COMMENTS

Mike Crabb, 203 Southburn Drive, addressed the Board stating the City's charter states the fees for copying and certification shall be established by ordinance. He urged the Board to table or withdraw the resolution presented tonight on procedures for inspection or duplication of public records. He questioned the administrative costs to produce the documents included in the schedule of fees.

Stamper moved; seconded by Cunningham to suspend the rules to give Crabb five additional minutes to speak.

Crabb stated he has no problem with reasonable fees but they should not hinder requests.

David Whitt, 1030 Margaret Drive, addressed the Board in opposition to the resolution establishing procedures for inspection or duplication of public records. He stated it is worrisome to try and break citizens financially to obtain public records. He stated the citizens purchased the building, hired the people to work for the City and buy all the supplies. He questioned who tracks the time spent obtaining the documents. He further stated it is the citizens' duty and responsibility to have access to the records in order to find out how the City's money is being spent.

Neil Siders, 1108 Lockland Drive, Gallatin, TN, addressed the Board stating as a journalist he does not usually speak but wanted to clear some misconceptions. He cited the high costs quoted to supply the copies requested and the need to review a large amount of records to justify the time involved to review those records. He stated the requests for records inspections will continue and implored the Board to make a decision to benefit the citizens.

Donna DeSopo, 101 Chambliss Court, addressed the Board stating the proposed policy on records inspections and duplications must be by ordinance. She questioned the prohibition on citizens making their own photos or scans which would lighten the workload. She requested a no vote on the resolution.

REPORTS

Finance Committee – recommended the resolution for the issuance of a $1.25 million capital outlay note and the appropriating ordinance, recommended a resolution establishing procedures for inspection or duplication of public records and reviewed the June financial reports and budget overages.

General Committee – no report.

Goode expressed his appreciation for the paving on Holly Drive done through CDBG grant money.

Public Safety Committee – no report.

Public Works Committee – reported on a meeting with Southburn Drive residents to review and answer questions on the drainage project and visited the Savely Court area to review drainage issues.

Capital Projects Committee – reported a meeting will be held on August 13, 2013 at 5:00 p.m. to review the drainage list and bond funds and reported on a special meeting with the County Executive and some members of the County Commission to discuss the Hendersonville Public Library with the following recommendations: 1) offer to have both the City and the County names listed on the deed; 2) for auditing purposes, the County will place the library on their books alone; 3) the City will continue to fund additional resources for the library and the County will remain completely responsible for the operations of the library and 4) because the City is also listed on the deed, the City can continue maintenance of the building and grounds of the library.

Planning Commission – will review a site plan for Maple Row Properties II and staff approved projects for Collier Wealth Management, 323 West Main Street and J.M. Cranor Water Treatment Plant Bulk Hypochlorite, 317 Rockland Road.

Mayor – reported TDOT is wrapping up punch list items on the Indian Lake Boulevard bridge project and acquisition of construction easements for the New Shackle Island Road project is progressing.

ORDINANCES AND RESOLUTIONS

The caption of Ordinance 2013-31 was read on second and final reading, an Ordinance amending Ordinance 2004-58 regarding appropriation of capital project funds. Sprouse moved; seconded by Waters.

There was a unanimous vote for approval of Ordinance 2013-31 on second and final reading.

The caption of Ordinance 2013-32 was read on first reading, an Ordinance approving a new Preliminary Master Development Plan for Walton Park planned unit development (formerly Donna Drive Townhomes). Goode moved; seconded by Skidmore.

Skidmore stated the Planning Commission agreed with all staff comments and he supports this ordinance as it is a reduction in the number of units from the previous plan.

There was a unanimous vote for approval of Ordinance 2013-32 on first reading.

The caption of Resolution 2013-17 was read, a Resolution establishing procedures for inspection or duplication of public records.

Stamper moved; seconded by Woodcock to defer Resolution 2013-17.

The following voted:

Aye: Cunningham, Long, Skidmore, Stamper and Woodcock.

Nay: Ames, Frost, Goode, Qualls, Sprouse, Waters and Foster.

Foster declared the motion failed.

Skidmore questioned if Aldermen would be exempt from the charges for copies.

Bradley stated the current policy is being carried forward and members of the Board have not been charged for copies.

Skidmore stated he feels the resolution should be more specific. He stated he agrees payment is needed but feels the charges are excessive and prohibits people from getting copies of items. He stated taxpayers have the right to request records and for the City to provide.

Ames moved; seconded by Sprouse to amend Resolution 2013-17 by stating "records requested of the Fire and Police Departments are exempt from this Resolution".

There was a unanimous vote for approval of the above amendment.

Stamper stated he does not see a need for this resolution if there is already a policy in place.

Bradley explained there have been questions whether or not the City has the authority to adopt a policy on record charges. He further explained the City has always had a policy on record charges done by Administrative Policy. He stated rather than spend time debating whether or not the policy is adopted by the Board, it makes sense to adopt a resolution as recommended by MTAS and the Office of Open Records. He stated the policy has not been challenged in the past as not having been adopted by the Board but in last few weeks there has been debate as to the legality of the policy. He stated to eliminate the issue of the legality of the policy, it seemed prudent to have the majority of the Board adopt a reasonable records policy or ratify a policy of records.

Long questioned why this Resolution did not go to the General Committee.

Foster explained it involves money with the setting of fees.

Long stated she opposes this Resolution and feels citizens should be able to review documents. She stated she is appalled a vote is expected tonight as she just received a revised resolution.

Woodcock questioned why this Resolution was being fast-tracked.

Foster stated as Bradley explained to keep from being accused of illegal activity, the Board will need to ratify the policy.

Bradley explained if this Resolution is deferred, the current records request policy will continue to be enforced. He stated it makes more sense for the Board to eliminate needless controversy by adopting a records policy. He explained adopting the Resolution gives the support of the Board and prevents arguments on whether it is the Mayor's policy or the City's. He stated if there are elements of the policy that are not liked, the Board can amend the Resolution.

Woodcock stated he understands there is no charge for labor if less than an hour except for the copy charge.

Bradley explained there is no charge for labor when making copies. He further explained labor charges only apply when there is a lot of staff time involved in getting the records in a form so they can be inspected and copied. He again stated no matter how much time is spent, there is no charge for inspection only and once copies are requested, the approved Office of Open Records Counsel Schedule of Reasonable Charges applies.

Woodcock questioned what type of requests would create such labor charges.

Franklin explained there have been three records requests that incurred charges due to the amount of time spent locating, retrieving, reviewing, redacting and reproducing the records for files dating back to 2004. She stated there have been no denials to review records.

Woodcock questioned why an individual cannot make their own copies.

Franklin explained as per MTAS' recommendation, a citizen should never be left alone with original documents and only municipal employees should make copies using municipal copying equipment.

Bradley stated this is also the position of the Attorney General and the Office of the Open Records Counsel who has stated she has spoken with several of the individuals making the requests and advised them if there is a policy prohibiting them from making their own copies, they cannot use their own equipment. He stated the statute these individuals are citing has not been interpreted to not mean what they thought it meant. He stated by the Board adopting this policy, the Office of Open Records and the City is not continually dealing with this issue. He stated although there is no charge for inspection of records, there are files such as personnel files that contain, by federal law, confidential information that must be physically redacted or removed before the file is available for review and there cannot be any charges levied for this labor. He cited there are many items citizens are interested in available online. He explained the item in the City's charter on fees for copies and certification deal with legal documents and the City has chosen not to charge for certifications.

Woodcock moved; seconded by Skidmore to exempt current Board members as exempt from any fees associated with records.

Sprouse stated the policy is that Aldermen have access to records that are important to them. He further stated if an Alderman is doing something outside of his official duties, he should expect the same fees to apply.

Qualls stated if this amendment were to pass, there needs to be a qualifying statement that the record would be needed in the role of an Alderman representing his district.

Bradley suggested the amendment could read that City staff and members of the governing body are not charged for copies obtained in the course their official duties.

Ames stated he does not want to become the requestor, as part of his official duties, for anyone to obtain free copies and feels this would be an unintended consequence of this policy.

Qualls stated he feels this amendment is unnecessary as Aldermen have been getting what they need to do their job and urged rejection of this amendment.

Goode stated he agrees with the previous comment and feels ratifying the policy by resolution is the appropriate way to go.

Skidmore stated he did not have a problem getting information for a constituent. He further stated if an Alderman did not want to obtain copies, he could tell that person he did not want to do so.

Woodcock stated, if he understands correctly, if there is an item he needs he will get it and questioned why this could not be put in writing.

Bradley explained this is the proposed records policy for members of the public requesting records as adopted throughout the State. He stated he is not familiar with any policy that would address charges to City staff or City officials. He explained this is not the purpose of the policy and is not designed to exempt anyone from charges but to address the absolute right of people to public records. He further explained the policy has nothing to do with Aldermen doing their jobs.

Ames stated as a point of personal preference that he works hard for his constituency and is willing to get those individuals copies of anything they need but this policy would not be needed if he were to become the provider of information and did not feel this is something the Board would want to do.

Sprouse stated he sees this amendment as a loophole that could be used to circumvent the intent of the policy for the general public.

The following voted on the amendment to exempt City staff and elected officials in the scope of their office fees for obtaining records.

Woodcock stated for clarification he did not include City staff in his motion.

Bradley stated if people are going to be exempted then all that are to be exempted need to be included.

Woodcock stated he is fine with the amendment as long as it is known he is not adding that exemption.

Aye: Cunningham, Long, Skidmore, Stamper and Woodcock.

Nay: Ames, Frost, Goode, Qualls, Sprouse, Waters and Foster.

Foster declared the motion failed.

Cunningham stated she understands there is no charge for inspecting records. She stated there is confusion as to whether the charter requires the policy to be adopted by an ordinance or resolution.

Bradley stated there is absolutely no charge to look at any City record even if there are substantial charges involved in preparing those records for inspection. He explained the charter does not address the Open Records Act. He further explained the charter addresses fees for copying and certification by the City Recorder as established by ordinance but that the City has never charged for certification of records. He stated, with the blessing of MTAS and the Office of Open Records, cities across the State have routinely adopted a policy by resolution.

Franklin read a verification from the City's MTAS representative stating it is MTAS' opinion that such a policy can be adopted by resolution and that a sample policy that MTAS supplies in their Open Records Policy document is in the form of a resolution.

Bradley stated if something is adopted in the policy is not working right, it can be amended by the Board.

Stamper stated he feels it is inconsistent to not charge for inspection of records but to charge for copies of those documents as the same amount of work is involved.

Stamper moved; seconded by Woodcock to remove any reference for charges for labor reasonably necessary to produce the requested records when copies are requested.

Sprouse cited the taxes paid by residents that cover City services provided to the community that not everyone utilizes but there are times when requests for specific services or uses of government that a person is expected to bear at least a portion of that extra costs. He stated the vast majority of requests for information are handled in less than one hour without any labor charges accessed. He stated a situation can be created where taxpayers are paying for employees to use a considerable amount of their time for a specific individual's request. He stated he does not feel his constituents would support their tax dollars being spent that way.

Qualls stated the proposed amendment removes responsibility for a portion of the costs from those who want a massive amount of records and the rest of the citizens should not be asked to pick up the tab.

Long stated it is wrong to push something through and questioned what is being hid.

Woodcock stated the current copies requests amount to less than $1,000 and he feels asking citizens to pay two cents so information can be obtained freely is not too much. He cited the funds the City has appropriated for golf carts and the City Hall detention pond.

Foster stated the pond did not cost hundreds of thousands of dollars and documents show the cost of the pond to be approximately $62,000. He stated the difference being talked about is $1,000 and a couple of tens of thousands dollars in this amendment.

Woodcock stated the Board is spending two hours talking about something that is less than $1,000 in total than they did discussing the purchase of $80,000 in golf carts. He questioned what is the big deal about a few hundreds of dollars spent so citizens can get the information they want. He stated it is obviously not about the money and questioned the real reason for this argument.

Qualls stated the reason is, it is fair, honest and upfront and requires an individual to step up to the plate when requesting many records and be willing to pay the bill created by having staff retrieve those records. He stated the Board has a difference of opinion and he does not fault anyone for their opinion.

Stamper stated the reason for this amendment is for equality in the way things are done.

Cunningham questioned who interprets the term "reasonably necessary". She stated the Board recently appropriated raises for City employees and questioned if the citizens should not get their money's worth when they request a public record. She further stated the citizens should not be repressed as they are paying the salaries of the employees.

The following voted on the amendment to remove any reference for charges for labor reasonably necessary to produce the requested records when copies are requested:

Aye: Cunningham, Long, Skidmore, Stamper and Woodcock.

Nay: Ames, Frost, Goode, Qualls, Sprouse, Water and Foster.

Foster declared the motion failed.

Ames stated the Finance Committee reviewed the Resolution that was included in the Board's agenda packet indicated the first five copies for the press would be free but during the Finance Committee's review it was recommended to delete this item. He explained due to the costs involved in processing such a small request he would like to see the first five pages of copies be free.

Ames moved; seconded by Stamper to amend Resolution 2013-17 by allowing the first five copies for all citizens, regardless of their occupation, to be free.

Sprouse stated his concern this amendment might snowball with multiple requests from individuals and asked for clarification on this issue.

Qualls questioned if it would be appropriate to limit the free five pages to once a month per person in order to keep unintended consequences from occurring.

Ames and Stamper agreed to include the above in their amendment.

There was a unanimous vote for approval of the amendment to the amendment.

There was a majority vote for approval of the amendment for the first five copies to be free once a month per person with Woodcock voting nay.

Foster declared the motion carried.

Goode called for the question.

Foster stated there are two speakers in the queue

Goode moved; seconded by Stamper to call for the question after hearing from the two speakers.

There was a unanimous vote for approval of the above motion.

Sprouse explained a revised resolution presented to the Board tonight versus the resolution included in the Board agenda packet included revisions that were made in the Finance Committee. He further explained the changes were removing the language allowing the press five free pages and changing the cost of providing DVD's from $10 to $1.

Skidmore stated he feels if this Resolution is adopted a can of worms will be opened on the public's perception on how this government operates.

The following voted on the main motion as amended:

Aye: Ames, Frost, Goode, Qualls, Sprouse, Waters and Foster.

Nay: Cunningham, Long, Skidmore, Stamper and Woodcock.

Foster declared the motion carried.

Upon motion and second and followed by a unanimous vote for approval, the meeting adjourned at 9:20 p.m.

Approved: Scott Foster, Mayor

Attest: Kay Franklin, City Recorder