

**CITY OF CAYCE
Regular Council Meeting
City Council Chambers
Tuesday, January 4, 2011 – 6:00 P.M.**

The Regular January 2011 Council meeting was held this evening at 6:00 p.m. in Council Chambers. Those present included Mayor Elise Partin, Council members Steve Isom, Tim James, James Jenkins, and Kenneth Jumper, Interim City Manager Steve Brown, Tammy Barkley, Municipal Clerk, and Garry Huddle, Municipal Treasurer. City Attorney, Danny Crowe, Frank Robinson, Director of Utilities, Ken Knudsen, Director of Planning & Development, and Chief Charles McNair, Director of Public Safety, were also in attendance. Mayor Partin advised that members of the press and the public were duly notified of the meeting in accordance with the FOIA.

Mayor Partin called the meeting to order. Councilmember Jumper gave the invocation and the assembly recited the Pledge of Allegiance.

Approval of Minutes

Councilmember Jumper made a motion to approve the minutes of the December 7, 2010 Council Meeting as submitted. Councilmember Jenkins seconded the motion which was unanimously approved by roll call vote.

Presentations

A. Presentation of Employee of the Quarter Award

Mayor Partin presented the 4th Quarter Employee of the Quarter Award to Officer Katie Bradacs and thanked her for her dedication.

B. Presentation of Decorate Cayce Contest Awards

Mayor Partin presented the Decorate Cayce Contest Awards to first place winners Garrett Humphries and Thomas Bennett of 514 Holland Avenue; second place winners Mary and Curtis Loftis of 815 K Avenue. Third place winner, David McCauley of 820 L Avenue was unable to attend the meeting. Mayor Partin thanked the winners for helping to light up the city during the holiday season.

C. Presentation by Ms. Patricia Shull re Sewer Availability Charges

Ms. Shull appeared before Council to express her concern with the fact that she is paying sewer availability charges when she is not using the City's sewer system. She asked Council to review the current ordinance and consider amending it to exclude this fee on residents who do not use the city's sewer system.

D. Presentation by Mr. Kenneth Kerbs re Bagging Leaves and Code Enforcement

Mr. Kerbs was not in attendance.

E. Presentation by Ms. Kathy Treadway re Chapter 35 Regulating Smoking in Places of Employment

Ms. Treadway appeared before Council to express her concern with the above City Code. She stated that she manages Shooters Grill and since the Ordinance was approved she has lost approximately half of her business. She stated that the surrounding municipalities are not enforcing their Ordinances which have created an unequal playing field for businesses in Cayce. She stated that she has visited surrounding clubs/bars and has found that smoking is taking place in these businesses and her customers are now frequenting those clubs/bars. She asked Council to consider amending the Ordinance to give Cayce businesses an equal playing field and the opportunity to stay in business.

F. Presentation by Mr. Scott Long re Chapter 35 Regulating Smoking in Places of Employment

Mr. Jake Moore, attorney for Mr. Long spoke for Mr. Long. He stated that he and the City Attorney have held discussions to try and work out the situation of smoking not being allowed in Mr. Long's bingo establishment and that to date a resolution has not been reached. He stated that the City's ordinance as written is absolutely killing Mr. Long's business. He suggested that the City's ordinance be repealed or look at a way to revise it and is willing to work with Council to reach a resolution.

G. Presentation by City Manager re Chapter 35 Regulating Smoking in Places of Employment

Mr. Brown advised that he had been asked by Council to do some additional research on this issue. He stated that he had compared the City's Ordinance to West Columbia's, the Town of Lexington's and the City of Greenville's ordinances and they almost mirror Cayce's ordinance. He stated that he has looked at other ordinances throughout the state to see if someone had approached the issue differently and still meet the goals and objectives of the ordinances. He stated he had also reviewed the Municipal Association's model ordinance and it is pretty much like Cayce's ordinance. He stated the one thing that the City cannot overcome is how the Ordinance is enforced in each jurisdiction and that is left to the discretion of City Council and the employees

employed in that City. He stated that it is enforced differently in the City of West Columbia than it is in Cayce and there are some enforcement issues in the Town of Lexington. He stated that the Town of Lexington handles the Ordinance on a complaint basis, but it is not enforced by the Police Department. He stated it is enforced by the City Manager or his designee and if someone wants to make a complaint they have to make a visit to town hall and record that complaint in writing. He stated that would address the issue that Mr. Long was concerned about where someone can pick up the phone and call the police to report a smoking violation. He stated that what Mr. Long's attorney has alluded to that some of the complaints are being made by Mr. Long's competitor is true and staff has verified that fact. Mr. Brown provided Council with a sample of an Ordinance that is not an answer to all of the problems mentioned tonight, but Council would delete "that have no employees", Mr. Long's attorney believes that he would comply with the definition of a private club and could operate accordingly. He stated that other than some prior changes made to the Ordinance at the request of former Councilmember Rick Myers, this is the major difference in the Cayce and West Columbia ordinances. He stated that if Council changes that portion of the ordinance, it would help some of the folks having issues tonight. He stated that he encourages Council to look at what would be best for the City of Cayce. He stated that he felt Cayce's Ordinance was in line with what everyone else is doing and the real issue is enforcement and if you would want to change it from Public Safety enforcement to City Manager's office enforcement whereby an individual would need to come by and file a complaint. He stated that this is the way the Town of Lexington is handling enforcement and they have not had any complaints to date.

H. Presentation by Mr. Kevin Varn re Decorate Cayce Contest

Mr. Varn was not in attendance.

I. Presentation by Mr. Robert Milhous – FY09-10 Comprehensive Annual Financial Report

Mr. Milhous appeared before Council to provide Council with a report on the FY09-10 Comprehensive Annual Financial Report. He stated that based on his conversation with the City Manager, his presentation would be very brief tonight in that it is anticipated that a workshop session can be scheduled to go through the report in greater detail. Mr. Milhous advised that he is pleased to report that the City has a clean and unqualified opinion. He stated his responsibility is to audit the books and records for the City of Cayce which consist of governmental activities and business activities. He stated that the auditor's clean and unqualified report is the highest assurance that you can receive on the city's financial statement. He continued pointing out specific financial information and highlights located within the document. He stated that financial health government-wide is very good. He stated that the General Fund continues to be under financial strains as has been discussed in years past. He stated that the General Fund ended up with a deficit of \$211,655 which can be attributed to

additional expenses in Public Safety, Public Works, and payout to retirees during the fiscal year.

In reference to the Utilities Fund, Mr. Milhous stated that the audit shows a positive increase. He suggested that Council schedule a workshop session to go over the audit in more detail. Mr. Isom inquired if the report is later than normal. Mr. Milhous stated that the report was provided to Council in either December or January last year. Mr. Isom inquired as to the status of the breakdown of Council expenses. Mr. Milhous advised that the report has been completed that can be provided in the workshop session. He stated it was separate from this document because this document goes to the bond agencies and other users and that type of schedule is outside this particular document. Mayor Partin inquired as to the \$211,655 deficit due to the fact that the City paid out unused annual leave to retirees and asked if this was anywhere in the audit to know what other liabilities the city faces in that kind of situation. Mr. Milhous stated that there is a note disclosure included in the document about accrued compensated absences which is the formal term for those individuals who accrue their annual leave and do not use it and when they retire or leave, they get paid that sum. He stated that as part of the audit process, his staff goes through a detailed listing of that expense and it is a liability that is recorded, but the expense in the General Fund and Utilities Fund does not hit until the check is actually issued. He pointed Council to the portion of the audit that contains this information. Council scheduled the workshop for January 18, 2011 at 5:30 p.m. in Council Chambers.

Public Comments regarding Items on the Agenda

Ms. Katy Wynne regarding Item II. F. – Please see comments attached.

Ms. Megan Hicks regarding Item II. G. – Please see comments attached.

Ms. Hellen Dekle regarding Item II. G. – Please see comments attached.

Ms. Tracie Donahue regarding Item II. E. – Ms. Donahue advised that she is a law abiding citizen, pays her taxes and votes in all elections. She stated that she did not think it was fair that she has to go to work and worry how she is going to pay her bills, if her car is going to be repossessed or if she would be available to buy food because of a smoking ordinance. She stated that if a person does not want to go into a building that allows smoking then that is the individual's choice. She stated that there is more important things than to have City of Cayce police come around rather than worrying about the crack out on the street. She stated that she has been exposed to cigarette smoke all her life and that she is fine and has no health issues. She stated there are 15 million people without jobs and asked Council if they were ready to put more people in that group. She stated that she has just caught up her car payment which was repossessed and that before the ordinance was passed, her car payments were never late. She stated that she feels the city is not here to protect her or others in this situation. She stated that the Ordinance has caused Shooter's to lose so much

business that she no longer makes enough to pay her bills, buy her children food, or make her car payments. She mentioned several bars that allow smoking have taken away their business. She stated there are more important things to worry about rather than a cigarette and if you do not want people smoking, then take cigarettes off the market.

Mr. Greg King regarding Item II. E. – Mr. King stated that he owns a business on 12th Street and when West Columbia held meetings regarding the smoking ban, businesses received letters to attend the meetings. He stated that during those meetings although businesses were invited, he sat and listened to all the health associations, cancer society and the like. He stated that when it was his turn to speak, he asked all business owners to stand up and no one stood. He stated that if you are concerned about cigarettes are we going down to McDonalds and advise them that they cannot sell the sweets and other items to keep people from eating the wrong foods. He stated obesity is a far bigger problem than second hand smoke. He stated that as far as playing on a level field, you could have a bar on one side of the street that does not allow smoking and one on the other side that does. He stated let the customer choose and that is about as level as you can get. He suggested that the Ordinance be repealed as it is easier to let the customers decide. He stated that he did not want someone telling him what he has to do when it is his business and he pays taxes, business license fees and the like. He stated that if a customer does not like the idea that he allows smoking in his building, then they can go somewhere else and the same thing with the bars.

Ms. Sonya Clark regarding Item II. E. – Ms. Clark stated that she was a full time student going into the medical field. She stated she was a single mother of three children and has been a bartender at Shooter's for 10 years. She stated that since the smoking ban came into effect she has lost her independence of taking care of her family, her livelihood and my vehicle was picked up yesterday because she could not make her payments. She stated it was either put a roof over my children's heads or make the car payment. She advised her choice was to keep the roof over her children's heads. She stated she has not been in this situation in over 10 years. She stated that she realized Council was trying to help the community with health concerns, but that we were all adults. She stated that Council could not protect her if she was to get into an accident after she left the meeting or the second hand smoke she may inhale or the fire that may start at her house. She stated that Council was not there when her son was diagnosed with cancer, but it was not caused from smoking. She stated that it was in Council's hands now to protect individuals from poverty and welfare and there is less than 5% of customers in their bar that do not smoke. She stated that their customers are now going to a bar called the Rock which is in Lexington County, which allows customers to smoke, stating they are a non-profit organization as they are contracting out their kitchen, have employees that are receiving tips and making lots of money. She stated that Shooter's has been a part of Cayce's community since 1994 and if the law does not change it will be nothing but an empty building. She stated that before the smoking ban was put into place, she and her children had enough to thrive. She stated

that she has awhile before she can obtain her degree in a medical field and she counted on her job at Shooter's as her sole income until she finished school. She stated she was here today to fight for her family, her job, her income, her livelihood and her independence. She stated she was here to fight for Shooter's and for this community.

Other

A. Approval of Resolution to Adopt the Municipal Association's Legislative Agenda for 2011-2012

At the request of the Municipal Association of South Carolina (MASC), Council considered approval of a Resolution adopting MASC's Legislative agenda for 2011-2012. Councilmember Jenkins made a motion to approve the Resolution. Councilmember Jumper seconded the motion. Councilmember Isom stated that MASC is a good organization, but inquired as to who decides what to target. He stated that there are a lot of non-elected people making decisions. He stated their motivation is correct, but based on what he has seen with the transparency issue, he inquired as to why would this Council would support non-elected officials to lobby on agenda items that this Council has not decided to vote on. He stated he felt the lobbying aspect is a little too extensive and there is not enough involvement by elected officials. After discussion, the motion passed four to one by roll call vote with Councilmember Isom voting no, Councilmembers Jumper, Jenkins, James and Mayor Partin voting yes.

B. Approval of State Street Landscaping Plan – Phases III and IV

Mr. Simmons presented Council with the drawings for Phases III and IV landscaping plan. He stated the plan was very similar with Phases I and II utilizing the same light poles, design details and same plant material. He stated that he has had the pleasure of meeting with one or two of the citizens that reside in this area and believes their concerns have been resolved. He stated that if Council approves the plan the next step would apply to SC DOT for the encroachment permit and then go into the bid process. Councilmember Jumper inquired as to the placement of the light poles being so close to the street. Mr. Simmons advised that there is no option other than placing the poles on the green space between the sidewalk and the back of the curb. He stated that it was determined that either the SCDOT right of way is at the rear of the sidewalk or in a few instances, SC DOT has granted private citizens the right to use the property behind the sidewalks. He stated that there are also water lines, sewer lines and electrical lines under ground and there is very little earth to use in that area.

Councilmember Jenkins inquired if the light poles were break-a-way poles. Mr. Simmons stated that they are break-a-way to a point and that SC DOT had new standards on these and on the lights. He stated these lights will be a little closer together, but everything done in the SC DOT right a way must meet their crash concerns. Mayor Partin inquired if there was a difference in the plantings between what is more commercial space and residential space along this corridor. Mr. Simmons

stated that the way we have to design a streetscape is obviously the driveway and curb cuts come first. Then, you work in the sequence of the light poles and then what space is left is where we can and cannot place plantings. He stated the plan calls to continue with the crepe myrtles at the same space as has been done in Phase I and II. He stated residential from commercial is not delineated. He stated in the many towns we have worked with, we have seen a transition from residential and commercial. He stated the plantings can be changed. Mayor Partin stated she would like to see some delineation. He stated that SC DOT is very concerned that certain types of tree not be planted too close to the back of the curb and will not allow oak trees. He stated he would be glad to meet with the Mayor and/or City Manager to discuss the plantings.

Mr. Brown stated that SC DOT would be completing one side of the street and inquired as to how it is possible to ensure continuity on both sides of the street and is that going to be a problem with Mr. Simmons past experience and will one side of the street be different from the other side of the street. He inquired as to what input the city would have to assure that continuity is reached on both sides of the street. Mr. Simmons stated a new rule by SC DOT is that if they are funding the project they will do the design. He stated he did not have an idea as to who would be designing that side of the street and he has not been contacted by SC DOT to discuss this issue. Mr. Brown stated that the municipal agreement to be considered says the foregoing consent shall be the sole approval necessary from the city for SC DOT to complete the project. He stated that once Council approves this agreement, he stated that he does not think the city will have input into the project and that is of great concern. He suggested that prior to signing the agreement that the city meet with SC DOT and see exactly how these projects can be coordinated. Mr. Simmons stated he felt that coordination of the projects is critical.

Councilmember James made a motion to approve the State Street Landscaping Plan for Phases III and IV contingent upon a meeting with the Mayor to decide on the plantings of the plan. Councilmember Isom seconded the motion which was unanimously approved by roll call vote.

C. Approval of Resolution – SC Department of Transportation State Highway Project Agreement (State Street Streetscaping Phases III and IV)

Mr. Brown suggested that Council delay action on this item until the City Manager can obtain an audience with SC DOT to see exactly what their intentions are, explain to them the approved landscape design for the City's side and see if the City can get some type of agreement with them that there will be some type of continuity with the design. He stated that Mr. Knudsen has advised that they do not plan to turn any dirt until spring of 2012, so there is time before this agreement needs to be signed. Councilmember Jenkins made a motion to postpone this issue until additional information can be provided. Councilmember Isom seconded the motion. Mayor Partin inquired if the phases completed were mixed grants as well. Mr. Simmons advised that those phases were funded by mixed grants. He stated that the grants have been

ongoing for approximately ten years and it appears that the Federal government audited SC DOT and the paperwork was not all in order, so they have now put further restrictions on SC DOT and because of that, they have changed the entire process. He stated that the City is the first guinea pig and they are learning what they're supposed to be doing as well as we, the local municipality. He stated that he did not think anyone really understands what is going on right now. He stated that it is mixed money but had a different process. He stated that the city did both sides of the street in Phases I and II. After discussion, the motion was unanimously approved by roll call vote.

D. Approval to Authorize Central Midlands Council of Governments to Administer Water Line Replacement Grant

Mr. Brown stated that Council has authorized staff to apply for a grant for \$500,000 through the Community Development Block Grant funds to begin replacing some of the older water lines in areas of the City. In the past he stated the City would have administered this grant, however, the city's grant specialist has resigned. He stated it was his recommendation to Council that Central Midlands Council of Governments be authorized to administer this grant if the City is able to secure the funds due to the fact that they have expertise in administering CDBG funds. He stated all of their fees would be paid from the grant resources. Councilmember Jumper made a motion to authorize the Central Midlands Council of Governments to administer the water line replacement grant if awarded. Councilmember Jenkins seconded the motion which was unanimously approved by roll call vote.

Committee Matters

A. Committee Minutes

Mayor Partin noted that the Cayce Housing Authority minutes from their December 21, 2010 meeting had been provided to Council tonight and that Council may either approve that they be entered into the City's official record or postpone until Council has reviewed the minutes.

Councilmember Jenkins made a motion to postpone the Cayce Housing Authority minutes until Council has reviewed them. Councilmember Jumper seconded the motion which was unanimously approved by roll call vote.

Councilmember James made a motion to approve that the Beautification Board minutes of December 14, 2010 meeting be entered into the City's official record. Councilmember Isom seconded the motion which was unanimously approved by roll call vote.

B. Committee Appointments

Beautification Board – One (1) Position

Ms. Gloria Cook's term expires January 2011. This item will be discussed at the Board's upcoming meeting.

Cayce Housing Authority – One (1) Position

Ms. Willistine Mosley's term expires January 2011. This item will be discussed at the Authority's upcoming meeting.

Councilmember James made a motion to postpone the above issues until recommendations are received. Councilmember Isom seconded the motion which was unanimously approved.

Foundations

In accordance with the bylaws for both the Beautification Foundation and the Public Safety Foundation, Sec. 3.4(c)(2), Councilmembers are to be elected to serve each January.

Beautification Foundation - Councilmember Steve Isom is currently serving on the Beautification Foundation Board. Councilmember Isom made a motion to appoint Councilmember James to the Foundation. Councilmember Jumper seconded the motion which was unanimously approved by roll call vote.

Public Safety Foundation - Councilmember Skip Jenkins is currently serving as Mayor Pro-Tem on the Public Safety Foundation Board and Councilmember Jumper is serving as a Board Member. As Councilmember Jumper was elected to serve as Mayor Pro-Tem, he will automatically replace Councilmember Jenkins in that position. Councilmember Jumper made a motion to appoint Councilmember Jenkins to the Foundation. Councilmember Isom seconded the motion which was unanimously approved by roll call vote.

City Manager's Report

Mr. Brown stated that Ms. Shull has attended the last two Council meetings and she has spoken to Council about paying the sewer usage fee when she is not using the service. He stated that while he was not at the City when this legislation was passed by City Council, he did speak with some of the long-term employees and obtained additional information. He stated that when Ms. Shull spoke at the December meeting, there appeared to be some sentiment regarding her cause. He stated the first thing that came to him was the financial impact this may have if Council repeals this section of the Ordinance. He stated he could not provide this information fully to Council tonight, but researching the records in Mr. Robinson's office, we found a number of folders that filled with applications from a number of people who are in a similar situation as Ms. Shull. He stated some time ago, Council offered some of the residents a reduced tap fee and many of these people have applications where they have paid a tap fee of \$200 and we are still holding those applications. He stated that Ms. Shull at that time could have

purchased the tap for \$200 and at any time could have tapped into the city's sewer line. He stated the present tap fee is \$1,595. He said today if a new customer comes in they would have to pay the current fee of \$1,595 and there is a lot more to consider on this issue than just repealing the Ordinance. He stated that before Council makes a decision on this issue that they are provided with good financial information and the fairness and equity of repealing this and possibly regretting that decision some time in the future. At the current time, he stated there were about 100 individuals who have tap fee applications on file.

Councilmember Jenkins asked when they paid \$200 did that include that they would be charged a sewer usage fee monthly. Mr. Brown replied yes. Councilmember Isom inquired if there were some strategies that could be developed that Council can review in detail including the financial impact. Mr. Brown stated that this information could be provided to Council. Councilmember James made a motion that City staff provide Council with detailed information to review in reference to the sewer usage fee and any other details that would assist Council with this issue. Councilmember Isom seconded the motion. Councilmember Jenkins inquired about the fairness to all individuals who currently have the \$200 tap fee applications on file. Mr. Brown advised that whatever Council decides on this issue, it should be reviewed from the legal perspective to ensure fairness. After discussion, the motion was unanimously approved by roll call vote.

Mayor Partin inquired about the status of Councilmember Jenkins' request regarding the Housing Authority's preliminary plan. Mr. Brown stated that Councilmember Jenkins inquired if the plan included security and we cannot determine that it did. He stated that the security provided would be an on-call service to the city's Public Safety department. He stated that there is concern that the laundry area could become a gathering place and cause some problems. He stated that if the project comes to fruition that should be addressed.

Mr. Brown stated that this would be his last Council meeting as the Interim City Manager and that the new City Manager would come on board Monday. He thanked Council for the opportunity and he has grown fond of Council and this city. He stated Council has been gracious to him and has allowed him to use his skills and experience. He stated that he leaves with a warm feeling for Cayce and it has been a positive experience for him. He commended Council for the job they are doing and thanked Council for putting their trust in him and taking a chance on an old retired City Manager. He thanked Council from the bottom of his heart. Mayor, members of Council, and the Municipal Clerk individually thanked Mr. Brown for making a difference in the City.

Mayor Partin introduced the new City Manager, Rebecca Rhodes. Ms. Rhodes thanked Council for the opportunity and looks forward to beginning on Monday. Mayor Partin stated Council is very excited about what she brings to the table. She stated that not only is Ms. Rhodes an acclaimed manager, she is a certified planner and that is a unique combination.

Executive Session

- A. Receipt of information regarding potential purchase of property for utility purposes.
- B. Receipt of legal advice relating to claims and potential claims by and against the City and other matters covered by the attorney-client privilege.
- C. Continued discussions of negotiations incident to proposed contractual arrangements: City Manager's Employment Contract.

Councilmember Jenkins made a motion to move into Executive Session to discuss the matters above. Councilmember Jumper seconded the motion which was unanimously approved by roll call vote.

Reconvene

After the Executive Session was concluded, the Regular meeting was reconvened. Mayor Partin announced that no vote was taken in Executive Session other than to adjourn and resume the Regular meeting.

Possible Actions by Council in follow up to Executive Session

Councilmember Jenkins made a motion to authorize staff to submit a bid not to exceed \$20,000 for the purchase of property consisting of 1.38 acres located off Hwy. 1 to be used to construct a pump station. Councilmember Isom seconded the motion which was unanimously approved by roll call vote.

Councilmember Jenkins made a motion to approve the agreement between the City of Cayce and Rebecca Rhodes and authorize the Mayor to execute the agreement on behalf of Council. Councilmember Jumper seconded the motion which was unanimously approved by roll call vote.

Councilmember Isom congratulated Governor-elect Nikki Haley, Comptroller General Richard Ekstrom and S.C. Treasurer, Curtis Loftis as they prepare to take on their roles in State government and wished them well in their efforts to serve the State of South Carolina.

There being no further business, the meeting adjourned at 9:45 p.m.

Elise Partin, Mayor

ATTEST:

Tammy P. Barkley, CMC, Municipal Clerk