

**CITY OF CAYCE  
Regular Council Meeting  
May 6, 2010**

The Regular May 2010 Council meeting was held this evening at 6:05 p.m. in Council Chambers. Those present included Mayor Elise Partin, Council members Steve Isom, James Jenkins, Kenneth Jumper and Rick Myers, City Manager John C. Sharpe, Tammy Barkley, Municipal Clerk, JoAn Roland, Human Resources Manager 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. Mr. Jumper gave the invocation and Mayor Partin led everyone in the Pledge of Allegiance.

**Approval of Minutes**

The minutes of the March 2, 2010 Regular Meeting were presented for approval. Mr. Myers made a motion to approve the minutes as presented. Mr. Isom seconded the motion which was unanimously approved by roll call vote.

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**Presentations, Resolutions, Proclamations**

- A. Approval of Resolution Expressing Congratulations to Mr. Bill West, Recipient of the SC Press Association 2009 Weekly Journalist of the Year Award

Council considered for approval a Resolution expressing congratulations to Mr. Bill West, Recipient of the SC Press Association 2009 Weekly Journalist of the Year Award. Mr. Isom made a motion to approve the Resolution. Mr. Myers seconded the motion which was unanimously approved by roll call vote. Mayor Partin, on behalf of Council, presented the Resolution to Mr. West and congratulated him on this major accomplishment.

- B. Approval of Proclamation – Municipal Clerks Week

Council considered for approval a Proclamation proclaiming May 2 – 8, 2010 as Municipal Clerks' Week. Mr. Isom made a motion to approve the Proclamation. Mr. Jenkins seconded the motion which was unanimously approved by roll call vote. Council extended their appreciation to Ms. Barkley for her dedication to her profession and for all that she does for Council.

C. Presentation by Lolly Petrov re Cayce-West Columbia Library Summer Programs

Ms. Lolly Petrov and Ms. Rose Grayson of the Cayce-West Columbia Library appeared before Council and brought them up to date with the various summer reading programs that would be available to residents (see attached notes). Ms. Petrov noted that last year, the library had 150 teams participating in summer programs. Mayor Partin provided input on the great job done by the library in providing fun and interesting programs for all ages.

D. Presentation by Julie Isom, Chair of Events Committee, re Spring Event Funding Request

Ms. Julie Isom, Chair of the Cayce Events Committee, appeared before Council to discuss a shag event to be held at Cayce Riverwalk Park. She stated that the Committee is in the preliminary planning stages of the event and asked that Council consider setting aside Accommodation Tax funding for the festival. She stated that it was difficult to determine if this event would bring in tourists to the Cayce area, but pointed out that this was an unknown with the Congaree Bluegrass Festival and that now it has become quite successful and has had a positive effect on the City's ability to bring in tourists.

E. Presentation by Harvey Watford re Cayce City Elections

Mr. Harvey Watford appeared before Council stating that he was an advocate for changing Cayce's election laws. He asked Council to consider changes to Section 16.4 of the City Code which calls for nonpartisan elections in accordance with the polarity method. He stated he would like to see that changed to have nonpartisan elections in accordance with the run off method and stated that most municipal elections use this method.

**Public Comment regarding Items on the Agenda**

Mr. Larry McKenzie – Item IV. A. Mr. McKenzie stated that he was employed by the SC Farm Bureau located in Cayce. He stated that one thing his company has prided itself for was the banning of smoking areas. He stated that his company developed a smoking room that ventilates all smoke outside and is not circulated within the building. He stated that his company feels it has complied with the intent of the ordinance and would like to be able to utilize the room and provided accommodations

for those that do smoke. He stated that by having the room, it does not force people to go outside in inclement weather and keeps people from standing around the front of the building. He stated that Farm Bureau is trying to eliminate second hand smoke as much as possible and through practical application that if a business has gone to this extent in protecting both smokers and non-smokers, he hopes that Council can consider an amendment to the current Ordinance. He stated that he has sent the City Manager a letter that explains in detail how the ventilation system works.

Ms. Hellen Dekle – Item IV. A. Ms. Dekle stated that she is a representative with the SC Department of Health & Environmental Control and asked Council not to consider amending the Ordinance. She stated that no matter what type room or ventilation system is installed, it would not keep second hand smoke from entering a building 100% of the time.

Ms. Daytona Jarman – Item IV. E. (see notes attached)

### **Ordinances and Other**

#### **A. Approval of Ordinance to Amend Chapter 35 Regulating Smoking in Places of Employment – First Reading**

The City Manager advised that at the March 2, 2010 Council meeting, Council gave second and final approval to an ordinance adding a new Chapter 35 to the Cayce Code which regulated smoking in places of employment with an effective date of June 1, 2010. He stated that after adoption, inquiries were received on the Ordinance with questions concerning specific sections as to how to interpret the wording, enforce the ordinance, and how businesses would be impacted by the Ordinance. He stated that one business had already constructed a smoking room that would no longer be able to be used in accordance with the Ordinance. In addition, inquiries were made regarding salesmen working from company vehicles who would no longer be able to smoke in the cars, and companies who had a large covered roof area and how the Ordinance would apply to them.

He stated that in order to refine the Ordinance for better interpretation, the City Attorney was asked to address these and other concerns. He stated that this resulted in amendments to Chapter 35 as outlined in the draft ordinances.

The City Manager stated that one amendment to the ordinance was regarding the dedicated smoking room and also manufacturing facilities with 20 foot ceilings. Also on the enforcement part of the ordinance it now addresses the situation of someone wanting to get a business in trouble by smoking inside that business so the business may potentially lose its business license.

Mayor Partin inquired as to what other businesses besides Farm Bureau called asking for an exception to the ordinance. The City Manager said that most businesses

called for interpretation of the smoking ban ordinance. Mayor Partin asked Mr. Myers to start the discussion off. Mr. Myers stated the current ordinance describes a workplace as a structure, building or facility or any portion thereof and does not define any portion thereof. He stated that the proposed amendment works to define that by saying a building should be enclosed on three sides.

Mr. Myers stated he has proposed 4 changes to the current ordinance and sent these to Council prior to the May Council meeting for feedback. He stated he believes the changes are business friendly changes since some businesses have been negatively affected by the current ordinance and some businesses misunderstood the ordinance.

Mr. Myers distributed photographs to Council explaining the extended roof area that he was trying to clarify includes some businesses in Parkland Plaza that would like to add outdoor tables at least ten feet from the businesses front door for their customers and stated the current ordinance does not allow that. He pointed out photographs of other businesses in Cayce that are enclosed on three sides and have an extended roof and the question becomes is it legal for customers or employees to smoke in these areas.

Another photograph Mr. Myers addressed was of a manufacturing facility that is a wide open building open on at least three sides but under the current ordinance smoking would not be allowed there. The last photograph Mr. Myers addressed is a picture of the 18' x 12' smoking room at Farm Bureau that was built for smoking employees. The room is completely separated and glassed off and has positive pressure. Mr. Myers feels that if the council is not careful they are going to be too restrictive on businesses and stated council should be receptive to businesses when they come to them with requests.

Mayor Partin asked Mr. Myers to show council where the enclosed spaces are in the photographs he distributed. Mr. Myers stated he did not see any enclosed spaces but under the current ordinance it says any portion thereof of the roofline is open to interpretation. Mr. Myers questioned any portion thereof of a building, any portion thereof of a facility. Mayor Partin stated workplace means any enclosed, indoor, area, structure, building or facility or any portion thereof. Mr. Myers said the ordinance is not clearly defined. He stated that the amendment he has suggested clarifies the definition. Mr. Myers stated that the City Attorney has proposed adding the words "therefore enclosed on at least three sides." Mayor Partin stated she felt the definition was already included in the current ordinance. Mr. Myers stated that he did not think there would be a problem with additional clarification as he felt it was not clarified in the current ordinance.

Mayor Partin stated that in November Council began discussions on the smoking regulation and Mr. Myers suggested that the issue be postponed until the beginning of the year. She stated that the request to postpone was agreed upon and since that time,

the public has been aware that Council was going to be addressing this issue. She stated that the Ordinance received first reading approval, public comment and a couple months later, a second and final reading approval. Mr. Myers stated he brought these points up at both readings and Mayor and Council chose to not address them at that time. Mayor Partin said these points were already in the current ordinance. Mr. Myers said he disagrees and suggested that the amendments be approved since they clarify the ordinance. Mayor Partin stated there were four pieces to what Mr. Myers was suggesting. Mr. Myers stated Council was only discussing the outdoor amendment at that time. Mr. Myers said it was determined a moving vehicle that was a work vehicle could potentially be considered a work space so that was also clarified in an amendment saying that it would not be considered a work space. Mayor Partin asked Hellen Dekle of SC DHEC to come to the podium to help with the discussion. Ms. Dekle questioned whether the motion on the floor was to approve all the amendments or just the first piece of discussion. Mayor Partin said the motion was to approve all of it. Ms. Dekle recommended that Council discuss each amendment separately. Mr. Myers asked Mayor Partin and Ms. Dekle what legal authority Ms. Dekle had to interpret an ordinance. Ms. Dekle stated she had professional experience as the Second Hand Smoke Prevention Coordinator for the state but no legal experience. Mr. Isom said he had some concerns about the enforcement aspect of the ordinance.

Ms. Dekle said she thought it was a good idea to further clarify the enforcement part of the ordinance and to include more details to protect business owners and managers from having their business license taken away if someone is smoking in the business even though that have been asked not to smoke.

Mr. Myers said another aspect of the amendments refers to manufacturing facilities. He said Council should not require a business owner to ask his employees to leave their work station to walk to an outside area to smoke a cigarette within an open ended building with very high ceilings.

Mr. Myers said the fourth part of the amendment refers to allowing dedicated smoke rooms that are already in place and designed for employees only and meet all criteria. He stated he only knew of two, possibly three such facilities in the City right now. Mayor Partin asked what those facilities were. Mr. Myers said he was not at liberty to say. Mayor Partin asked Mr. Larry McKenzie if he had documentation regarding what standards the dedicated smoking room adheres to. Mr. McKenzie said they were the specifications the contractor followed who constructed the room. Mr. Jenkins said to have a positive pressure room one has to take into consideration the size of the room, how many people are going to be in it and what is used to take the smoke out. He stated that according to the environmental tobacco smoke reports, tobacco odor is very difficult to control and a standard filtration system in a building does not totally remove carbon monoxide.

Mr. McKenzie said the smoking room in the Farm Bureau building has an extremely high ventilation system, ventilating air thirty times per minute which is very

strong. He stated that the room draws air in and expels it and the smoke is pulled up and out of the room and outside of the building. He said there are two vents in the room to deliver either heated or cooled air and three exhaust vents. Mr. Jenkins said the Farm Bureau is asking Council to amend an ordinance yet there is no scientific documentation to show the room is safe and does not allow smoke seepage. Mr. Jenkins also asked for clarification from City Attorney Danny Crowe if there was a conflict of interest since Mr. Myers works for the Farm Bureau and he is also the person who made the motion for the amendments to the ordinance. Mr. Myers said he does not work for the people who own the building. Mr. Jumper said the pictures of the smoking room do not really show how the room looks. He went by to see the room in person and said the room looked good and was nice. Mr. Jenkins said the room was not completely sealed. Mr. Myers said what is important is how often the air is being exchanged out of the room. Mayor Partin stated that she was not invited to view the room. Mr. Jenkins stated he also was not asked to see the room. Mr. Myers stated every councilmember received an e-mail two weeks ago saying if anyone would like to meet or discuss this issue to let him know. He said Mr. Jenkins replied to this e-mail and said he was not interested in making any changes in the ordinance. Mayor Partin said nowhere in the e-mail was it mentioned meeting or going to the Farm Bureau to see the smoking room.

Mayor Partin told Mr. McKenzie Council was not trying to create initiatives that are going to be damaging to city businesses. She stated that a Public Hearing regarding the ordinance was held many months ago and months later a second reading was held and Council never heard from the Farm Bureau until now. Mr. McKenzie said the Farm Bureau felt they had already taken care of second smoke in their building with their policies. Then they realized the smoking room that was already established to take care of second hand smoke would not comply and they came forward at that point. Mr. McKenzie stated that if needed, he could get an engineer to present additional information.

Mayor Partin asked if the Farm Bureau would be amenable to doing yearly testing where the City picks a refrigeration specialist to perform the testing. He said they have no problem doing testing to show their facility is meeting the goals of council. Mayor Partin said she would be supportive of the smoking room at Farm Bureau if they had a variance request form and as long as the room meets certain standards she would be more interested in looking into that option.

Mayor Partin asked Attorney Crowe if it was necessary for Mr. Myers to recuse himself from this agenda item. Mr. Crowe said whether a councilmember has a conflict under the rules of ethical conduct under the State code is determined by that individual councilmember. The rule is no one else can call a conflict on a member including the presiding officer. Mr. Jenkins said Mr. Sharpe and Ms. Barkley brought up the issue of him recusing himself when Council was voting on an issue for CMC Steel and he works for CMC.

Mr. Jenkins made a counter motion to postpone until scientific information can be presented to Council regarding the smoking room. Mr. Crowe said that would be a motion to table and it is an order that requires a second. There was no second so that motion failed. Mayor Partin asked if there were any other questions on the amendments. No other questions were asked.

Mr. Myers made a motion to approve the Ordinance to amend Chapter 35 as submitted on first reading. Mr. Isom seconded the motion. The motion passed three to two by roll call vote with Mr. Isom, Mr. Jumper and Mr. Myers voting yes and Mr. Jenkins and Mayor Partin voting no.

B. Approval of Ordinance to Amend Chapter 16 Elections – First Reading

Council considered for first reading the approval of an Ordinance to Amend Chapter 16 of the Cayce Code regarding Elections. The City Manager advised that staff has been reviewing the City's current election ordinance in preparation for the 2010 Municipal elections. In doing so, it was noted that Section 16-1 needed to be updated to denote the correct district maps that were approved by Council in April, 2004 and remove language that has become obsolete and no longer enforceable. Mr. Isom made a motion to approve the Ordinance on first reading. Mr. Myers seconded the motion which was unanimously approved by roll call vote.

C. Approval of Ordinance Amending the City of Cayce Sewer Use Ordinance – First Reading; and Approval of Resolution Adopting Enforcement Response Plan

Council considered for first reading approval an Ordinance amending the City of Cayce Sewer Use Ordinance and approving a Resolution adopting an Enforcement Response Plan.

Mr. Frank Robinson stated the City's NPDES permit which is a discharge permit for the Wastewater Plant had a compliance section in it that specified that the City had to review its pretreatment program and bring it up to comply with the current code. American Engineering staff and City staff have brought it up to comply with the current code. Mr. Robinson said all that information went back and forth between the City and DHEC and DHEC has given approval to the documents that have been presented to Council tonight for adoption. He said the City has no choice in this matter, it is basically complying with federal regulations that DHEC enforces.

Mayor Partin asked what the cost was to the City to comply with the current code. Mr. Sharpe said American Engineering will invoice the City for their work on this project. Mayor Partin asked if a lot of this had to do with industrial customers. Mr. Robinson said the Sewer Use Ordinance applies to the whole system but the pre-treatment program is industrial. Mayor Partin inquired if the City is charging fees that are in association with what the City is having to take care of in the pre-treatment. Mr.

Robinson stated the City follows the guidelines and stated with this amendment the City had to modify all the pre-treatment permits that have already been done to meet these regulations. He stated there is an annual flat fee for permits that is charged by the City. Mr. Robinson said this fee is in alignment with what the City has to do to oversee the program.

Mr. Myers made a motion to approve the Ordinance on first reading. Mr. Jenkins seconded the motion which was unanimously approved by roll call vote.

D. Approval of Ordinance to Rezone Property Located on Foreman Street from RS3 to M1 – First Reading

Council considered for first reading approval an Ordinance to rezone property located on Foreman Street from RS3 to M1. Mr. Isom made a motion to approve the Ordinance on first reading. Mr. Jumper seconded the motion. Mr. Myers inquired if the property was located in the floodway. Mr. Knudsen stated that the back section of the property includes a small creek, and is technically not in the floodway.

Mr. Knudsen stated the property owner compromised on this property because it is zoned single family residential and basically he cannot do anything with it because it is in an industrial area. Mr. Myers asked if the owner has any plans for the property. Mr. Knudsen said the owner would like to go before Lexington County Stormwater to see what he can do with the property but he cannot be given approval to go before the board because he does not comply with zoning. He stated that the owner has a residential piece of property in a commercial, industrial area and wants to use it for industrial use but he could not give him tacit approval to get it reviewed for commercial use.

Mayor Partin inquired if there were any barriers to guide what is put on the property. Mr. Knudsen stated there is a physical barrier on the rear side of the property because there are wetlands in there and the owner cannot build within 25 to 35 feet of that. Mayor Partin asked if there would still be a thicket of trees on the part of the property that faces 12<sup>th</sup> Street. Mr. Knudsen said that is in the highway right-of-way therefore it is highway property. Mr. Jenkins asked if there was anything in the City's comprehensive plan that pertains to buffers on the side of the road. Mr. Knudsen explained that the City cannot make existing businesses comply.

Mr. Jumper asked if the building on Foreman Street belonged to the property owners. Mr. Knudsen said that was not the owner's building and explained he cannot have any commercial buildings on the property since it is zoned residential. The property owner's wife stated the land facing 12<sup>th</sup> Street is in the wetlands so it will not be used for anything. Mr. Myers asked if they have any plans for the property and Mr. Knudsen said Mr. Spires would like to put a building on the property to store his heavy equipment and lease the equipment out.

After discussion the motion was unanimously approved by roll call vote.

E. Approval of Ordinance to Adopt 2009 Comprehensive Plan as Revised –  
Second Reading

Council considered for second and final reading the approval of an Ordinance to adopt the 2009 Comprehensive Plan as revised. Mr. Isom made a motion to approve the Ordinance on second and final reading. Mr. Myers seconded the motion. After discussion, Mr. Isom amended his motion to approve the Ordinance on second and final reading based on changes and recommendations that have been made and approved to date. Mr. Myers seconded the motion which was unanimously approved by roll call vote.

F. Appointment to the West Metro Chamber of Commerce Board of Directors

The City Manager advised that Ms. Barkley's term on the West Metro Chamber of Commerce Board of Directions would expire in June 2010 and a replacement was needed. He stated that Ms. Barkley has served in this capacity for the past six years. He stated that changes to the Chamber's bylaws were proposed and adopted by the Board a few years ago which states that a representative from each municipality would be included as a non-voting member of the Board. He stated that both Ms. Barkley and Ms. Donna Smith of West Columbia were grandfathered in as voting members until their terms expired. Council discussed potential appointees. Mr. Jenkins made a motion to postpone the issue until the June Council meeting. Mr. Jumper seconded the motion which was unanimously approved by roll call vote.

**Committee Matters**

A. Committee Minutes

Council reviewed the following Committee meeting minutes for approval to enter into the official city record:

Planning Commission – January 19, 2010  
Cayce Events Committee – April 1, 2010  
Accommodations Tax Committee – April 13, 2010  
Cayce Housing Authority – April 13, 2010  
Cayce Museum Commission – April 14, 2010

Mr. Myers made a motion that the Committee meeting minutes be entered into the official city record. Mr. Isom seconded the motion which was unanimously approved by roll call vote. Mr. Myers inquired if the Cayce Housing Authority is required to submit information to Council for any type of grant awards. The City Manager stated he would check and advise.

B. Committee Matters

Recommendations from the Accommodations Tax Committee – Council was provided with a copy of the requests for funding submitted for FY10-11. Mr. Myers made a motion to approve requests as recommended by the Committee with the exception of the Congaree Shag Festival. Mr. Isom seconded the motion. Mayor Partin inquired if discussions had taken place with the Columbia Museum of Art regarding the purpose of the Accommodations Tax funds and how it can be used. Ms. Barkley advised that she had held discussions with the Museum and they were aware of the guidelines. Mr. Jumper stated he would like to see the money used to fund other things the City needs. Mr. Myers stated that Council's hands are tied on how the money can be used and must follow State law regarding distribution of funds. After discussion the motion was unanimously approved by roll call vote.

Mr. Myers made a motion to postpone the request for funds for the Congaree Shag Festival until more details can be provided by the Committee and that funds be placed on reserve until the project is re-presented but not later than the December 2010 Council Meeting. Mr. Jumper seconded the motion which was unanimously approved by roll call vote.

C. Committee Appointments/Reappointments

Cayce Events Committee – Three (3) Positions

The following members' terms expire May 2010: Ms. Brenda Cole, Ms. Julie Isom, Ms. Rachel Scurry (recently appointed to fill an unexpired term). All have been contacted and would like to serve again. Reappointment applications are attached for Council's review. It is recommended that Ms. Cole, Ms. Isom and Ms. Scurry be reappointed to the Committee.

Cayce Housing Authority – One (1) Position

Mr. Jack Sightler's term expires April, 2010. He has been contacted and would like to serve again. His reappointment application is attached for your review. It is recommended that Mr. Sightler be reappointed to the Authority.

Consolidated Board of Appeals – Five (5) Positions

The Housing/Construction Board of Appeals has been replaced with the Consolidated Board of Appeals. We have written the seven members of the previous board asking if they would like to serve on the Consolidated Board and awaiting their reply. Council appointed 2 members to the Board at the April, 2010 meeting.

Mr. Charles Mellette and Mr. Lemuel Knight have agreed to serve on the new Board. Their applications are attached for Council's review. Ms. Barkley advised that the city had also received the application for Mr. Ron Lawson who has agreed to serve on the Consolidated Board. It is recommended that Mr. Mellette, Mr. Knight, and Mr. Lawson be appointed to the Board.

Mr. Myers made a motion to approve all recommendations as stated above. Mr. Isom seconded the motion which was unanimously approved by roll call vote.

D. Appointments to Foundations

Beautification Foundation – Five (5) Positions

The following potential member application has been received and is attached for your review. Mr. Jumper also recommended the appointment of the following:

District 1 – Maryellyn Cannizzaro

District 3 – Ross Shealy and George Calder, Jr.

Mr. Jenkins made a motion to appoint Ms. Cannizzaro, Mr. Shealy and Mr. Calder to the Foundation. Mr. Isom seconded the motion which was unanimously approved by roll call vote.

Public Safety Foundation – Ten (10) Positions

The following potential member applications have been received and are attached for your review. Mr. Isom also recommended the appointment of Randy Summer.

District 1 – Phyllis “Kay” Hutchinson

District 1 – Randy Summer

District 4 – Murray Fant

Mr. Isom made a motion to appoint Ms. Hutchinson, Mr. Summer and Mr. Fant to the Foundation. Mr. Jenkins seconded the motion which was unanimously approved by roll call vote. Ms. Barkley advised that she would update the membership rosters for the Foundations and send a copy to Council in Friday’s mail.

**City Manager’s Report**

The City Manager advised that the April Financial Report would be sent to Council next week. He provided Council with the following dates:

May 10 - Special Council Workshop, 5:30 p.m.

May 19 - Employee Picnic, Granby Pavilion, 11:30 – 1:30

May 24 - MASC Annual Meeting Worksheet Due to Tammy

May 28 - American Legion will display white crosses and flags on front lawn City Hall and will remove after Flag Day

May 31 - Memorial Day Holiday, City Hall Closed, normal garbage collection

The City Manager provided Council with updates on the follows issues:

Revised Beautification and Public Safety Foundation By-Laws – A copy of the revised by-laws were provided to Council. The City Manager advised that the City Attorney had made changes and corrections as requested by Council.

Budget Workshop Discussion - The City Manager advised he would get the budget material to Council the following day. He said there would not be any formal papers or white papers but he would put together some talking points and have handouts along with the memo for discussion at the budget workshop.

Taylor Road Update - The City Manager advised Council that the contractor is working on Taylor Road and about to begin paving and should be finished by the end of May. He stated some of the sidewalks have been removed from the project to offset the cost of the increased cost of asphalt. The City Manager said when he spoke to Les Shear recently he said the force account still had \$65,000 plus in it and once the last payment is applied to that account the City should get a refund which should be sufficient to pay for the sidewalks to be added back into the project. The City Manager advised Council there would be a \$35,000 in-kind rebate paid to the City from CSX.

Mayor Partin asked the City Manager if there was going to be a separate and additional construction cost to put the sidewalks back in the project and inquired if it would not be easier to do it all at once. The City Manager stated the contractor for the developer is putting sidewalks in the subdivision at a later date and stated the he could do these as well when he does the subdivision's. Mayor Partin asked the City Manager if he felt sure the funds were coming in for the sidewalks. She stated she did not want the sidewalks to not be there by the school. The City Manager stated Mr. Shear assured him there would be funds left over in the force account based on the amount in there now and what is to be spent.

Capital Investment Plan - The City Manager stated the Capital Projects Administrative Review team met recently and the ground rules have been set and they have looked through the schedules to rate the projects. He stated the Review team will finalize the rating of the projects by the end of May and get those back to American Engineering so they can compile the projects and provide the ranking. The City Manager said once the ranking is provided then everything will be given back to the City Manager so he can present it to Council.

### **Discussion of City Manager's Evaluation Form and Action**

Mayor Partin stated last year was the first time she was asked to do the City Manager's evaluation and she asked what form was used and she was informed there was no form and in the past it had always been a verbal evaluation. Mayor Partin contacted the Municipal Association and asked if there was a template they use for evaluating a City Manager. She received the form and shared it with Council. Mayor Partin said at that time Mr. Myers and Mr. Isom did not like the form and she asked if they would like to create a form together for Mayor and Council to use. She said Mr.

Myers and Mr. Isom said they would. A year later is it past time to do the City Manager's evaluation and it was stated last year if a new form was not available then the current form would be used.

Mr. Isom asked Mayor Partin if she received a form in her packet a week ago, she stated she did receive it. Mr. Isom said he had not heard any questions from any one of Council in reference to that form so he was assuming everyone was happy with it. Mayor Partin said this was not a correct assumption and said JoAn Roland, the City's Humans Resources Manager, was present at the meeting to guide council through the various evaluation documents.

Mr. Jenkins stated the evaluation form he received in his packet had Draft stamped on it. Mayor Partin said her assumption was they were using the form used last year and they were discussing what form to use in the future. Mr. Isom stated that last year Council did not agree to a form to use for this year. Mayor Partin said they sat in executive session and talked about the form to use for next year. At this point Mr. Isom interjected and said he did not think they should discuss executive session matters in public. Mayor Partin asked Danny Crowe to help and he stated matters discussed in executive session are confidential and the City has an ordinance pertaining to that.

Mayor Partin asked are they not supposed to discuss which form to use. Mr. Crowe said Council could discuss the various forms but could not refer to the executive session or quote from it. Mayor Partin stated that would be difficult to do. Mr. Myers said basically there are two forms; one was used last year and one was submitted last week. Mr. Myers said if everyone has had a chance to look at them then Council should vote on the one to use. Mayor Partin disagreed and said there were actually two different discussions. She said she felt strongly that if an employee was going to be evaluated then they deserved to know what they were going to be evaluated on. Mayor Partin said a form was given to the City Manager ahead of time and now to use a new form to evaluate him would be unfair. She also stated to use a new form in the future is acceptable.

Mr. Isom said the City uses the Archer Performance Appraisal form and it has been used by the City for some time and the City Manager is familiar with it. Mr. Isom asked Ms. Roland if the form would be appropriate to use for the City Manager and she felt it was. She also stated the Archer Performance Appraisal form has a separate section to evaluate managers.

Mr. Isom made a motion to use the Archer Performance Appraisal form the city uses going forward. Mr. Myers seconded the motion. He stated he would like to use this form now and he had not prepared any forms to use for tonight's evaluation. Mayor Partin said it was on the agenda. Mr. Myers stated he knew it was on the agenda but he did not think anyone had any clear understanding of what form was actually being used or at least he did not. Mayor Partin said she made it pretty clear last year that it is

not fair to change at the last minute what you are expecting someone to be evaluated on.

Mr. Isom said he completely agreed with the Mayor and that is one reason he liked the Archer Performance form because each question is asked in triplicate and it is a robust form. Mr. Myers stated the form Mr. Isom had created almost parallels the Archer form. Mr. Myers said he liked the fact that the City form has been through human resources and legal and is a professional form. Mr. Jenkins questioned how it is possible to really evaluate the City Manager since Cayce's form of government is Council-Manager. Mr. Myers said you base your evaluation of the City Manager on your opinion based on what you know. Mr. Jenkins disagreed. He said some of the questions on the Archer form were not questions he could truthfully answer. Mr. Isom asked Mr. Jenkins to give him an example from the Archer form so he could understand what he is referring to. Mr. Jenkins said he just did not see how you could evaluate the City Manager honestly and properly based on the Archer form. He said if you look at the city code of the City Manager you hire him to run the city so you cannot tell him how to run the city. So he questioned how you can evaluate him if you cannot tell him or discuss it.

Mr. Isom asked Ms. Roland her opinion of the Archer form in evaluating a city manager. She replied she contacted all cities through the list serve regarding how they evaluate their city manager and only two responded, Woodruff and Hartsville. She stated that the Mayor also got a form through MASC. Ms. Roland said she did not have anything to base her opinion on since the city had never used a form when evaluating a city manager.

Mr. Myers said he felt that maybe being a Councilman for 12 years helped him to evaluate the city manager because he could answer all the questions on the evaluation form. Mr. Jenkins said he could answer the questions in relation to he and Mr. Sharpe's relationship but not about Mr. Sharpe's relationship with staff. Mayor Partin asked whether council is allowed to know how the city manager disciplines other employees. Mr. Crowe said they do not have a role in the discipline of employees and said if there is a question on the form they do not have a sufficient basis to answer then just not answer it. He advised Council could put not applicable. Mr. Crowe asked if the question council is asking him is if they should not use a form because one question on the form may not be susceptible to an answer. If so, that is not a legal question. He said Mr. Jenkins is right that under Cayce's form of government the area of managing the employees is up to the city manager so council's only knowledge would be what they might have heard or been advised of. He said the city manager does have a relationship with council where he presents budgets and the information he gives them at meetings so they would in fact have a basis for determining the performance of the city manager. He said Mr. Jenkins is correct that they may not be able to answer every single question and if that is the case then the question becomes whether that form is inoperable.

Mayor Partin asked Ms. Roland her opinion on the form Mr. Myers and Mr. Isom drafted. Ms. Roland said she likes the Archer form because on the back of the form it gives you things from the past and things to work on in the future and everyone finds that very helpful. Mr. Isom agreed with Ms. Roland that the Archer form is better. Mayor Partin said there was a motion on the table to use going forward the Archer instrument and asked if anyone had any further discussion. Mr. Jenkins said he felt the form should be revised and made a motion going forward with next year that Ms. Roland create an evaluation form to follow Archer Performance Appraisal. Mayor Partin asked Mr. Isom if he was willing to amend his motion to include having the Human Resources Manager review the form. The Mayor said the motion on the table for going forward for next year is to use the Archer Appraisal with some guidance from Ms. Roland. The motion was unanimously approved by roll call vote.

Mayor Partin said for the tonight's evaluation they are using the form they used last year. Mr. Isom stated he was not in agreement with using the 3 point scale. He said last year he used the 5 point scale and advised the Mayor that she had a copy of it and asked her to review it. Mayor Partin stated that she did not have a copy with her. Mr. Isom asked Mr. Sharpe if he had a copy and he said he did not. Mr. Myers said he remembered Mr. Isom did use a 5 point scale. Mr. Isom explained it was the same form that council used but he used a 5 point grading scale instead of the 3 point. Mayor Partin said Mr. Isom was welcome to use a 5 point scale this year.

Mr. Isom said another issue from last year's form is there are several inappropriate spots in the form and he is concerned about the robustness of the form. He said he mentioned this in an e-mail he had sent the Mayor but he did not receive a response and thinks communications is still a problem. Mr. Myers recommended that they move into executive session since they are going to be discussing the city manager's review. He stated the issue could be debated once they are in executive session. Mr. Jenkins made a motion going in to Executive Session and to have the City Manager's personnel file available to Council. Mayor Partin asked the City Manager if he had a personnel file they could review. The City Manager advised he would make the file available to Council. Mr. Jumper seconded the motion which passed four to one with Mr. Isom voting no and Mr. Jumper, Mr. Jenkins, Mr. Myers and Mayor Partin voting yes.

### **Executive Session**

- A. Receipt of Legal Advice and Discussion of Negotiations Incident to Proposed Contractual Arrangements Related to Financing for Tennis Complex
- B. City Manager's Annual Review

Mr. Myers made a motion to move into Executive Session to discuss the matters above. Mr. Jenkins seconded the motion which passed four to one with Mr. Jumper, Mr. Jenkins, Mr. Myers and Mayor Partin voting yes and Mr. Isom voting no.

### **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**

Mr. Myers made a motion to authorize the City Attorney and City Manager to proceed as discussed in Executive Session concerning the TIF District. Mr. Jumper seconded the motion which was unanimously approved by roll call vote.

Mr. Jenkins made a motion to resume the City Manager's evaluation at the Special Meeting scheduled for Monday, May 10, 2010. Mr. Isom seconded the motion which was unanimously approved by roll call vote.

There being no further business, the meeting adjourned at 12:30 a.m.

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Elise Partin, Mayor

**ATTEST:**

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Mendy C. Corder, Interim Municipal Clerk