

CITY OF HENDERSON – RECORD BOOK

Record of Minutes of A Regular Meeting on January 09, 2018

A meeting of the Board of Commissioners of the City of Henderson, Kentucky, was held on Tuesday, January 9, 2018, at 5:30 p.m., prevailing time, in the third floor Assembly Room located in the Municipal Center Building at 222 First Street, Henderson, Kentucky.

INVOCATION was given by Charles Cameron, Calvary Baptist Church followed by recitation of the Pledge of Allegiance to our American Flag.

There were present Mayor Steve Austin presiding:

PRESENT:

Commissioner Patti Bugg
 Commissioner Robert N. Pruitt, Sr.
 Commissioner Bradley S. Staton
 Commissioner Austin P. Vowels

ALSO PRESENT:

Mr. Russell R. Sights, City Manager
 Ms. Dawn Kelsey City Attorney
 Ms. Maree Collins, City Clerk
 Mrs. Donna Stinnett, Community Relations Manager/Public Information Officer
 Mr. Trace Stevens, Parks, Recreation & Cemeteries Director
 Mr. Jason Hargitt, Interim Police Chief
 Mr. Jermaine Poynter, Police Major
 Mrs. Connie Galloway, Human Resources Director
 Mrs. Jennifer Latimer, Executive Assistant
 Mr. Brian Bishop, Planning Commission Executive Director
 Mr. William L. "Buzzy" Newman, Jr., HWU Field Operations Director
 Mr. Tom Williams, HWU General Manager
 Mr. Charles Brettell, Prosody Consulting for Gavilon Grain
 Mr. Chuck Stinnett, Kyndle Public Relations
 Ms. Angela Hagedorn, Humane Society of Henderson County Executive Director
 Ms. Katie Crooks, Humane Society of Henderson County Chief Animal Control Officer
 Mr. Eric Shappell
 Mr. Leo Peckenpaugh
 Mr. Henry Lee Watkins
 Mr. Rob Toerne
 Mr. Rodney Thomas
 Ms. Wanda Sauer
 Ms. Theresa Cartledge
 Ms. Lindsay Locasto, Downtown Henderson Partnership Events and Promotion Manager
 Ms. Abby Dixon, Henderson County Tourist Commission Executive Director
 Mr. Charles Cameron, Calvary Baptist Church
 Mr. Mike Richardson, Reserve Police Officer
 Ms. Samantha Horton, WNIN Radio
 Mr. Jeff Goldberg, 44 News
 Ms. Paige Hagan, 14 News
 Mr. Doug White, the Gleaner

PRESENTATION: Mr. Charles Brettell Representing Gavilon

CHARLES BRETTEL, Prosody Consulting, representing Gavilon Grain gave a brief update of the many upgrades and changes that have been accomplished over the past several months relating to the many complaints to the Kentucky Department of Environmental Protection from residential neighbors which resulted in a settlement between KDEP and Gavilon Grain. Mr. Brettell indicated that his presence was part of the commitment to improve relations with the neighbors and the community in order to be a productive member of the community and continue to support Henderson's agricultural community. He reported that some of the

CITY OF HENDERSON – RECORD BOOK

Record of Minutes of A Regular Meeting on January 09, 2018

improvements to the facility include rerouting truck traffic patterns and paving all truck roadway; asking farmers to tarp their loads; shrouding belts, chains, and conveyors to help tamp down the production of ‘bees wings;’ and installing a new larger capacity dryer with shrouding.

LEO PECKENPAUGH, who lives directly across the street from the granary, indicated that while he appreciates Mr. Brettell’s presence, he and approximately 30 neighbors have spent the last six and one-half years dealing with all of the mess to get to this point and are a little skeptical.

DISCUSSION WAS HELD relating to the settlement agreement-44 violations resulting in a \$25,000.00 fine; that the company operates approximately 120 facilities and this is the only one in a residential area; that the company strongly disagrees with KDEP’s position that regardless of whether or not an emissions permit is held and whether the company is within those standards, those emissions are not allowed to cross property lines; the company’s commitment to the community and the 2,500 farmers that they serve with a \$5,000,000.00 investment of improvements to the facility to help keep visible fugitive emissions from escaping beyond the lot line of the property; and that moving forward KDEP has agreed to notify the company immediately upon receiving a complaint and to allow the company to shadow the inspector so that they can better address issues in a timely manner.

APPROVAL OF CONSENT AGENDA:

MAYOR AUSTIN asked the City Clerk to read the Consent Agenda.

Minutes: December 12, 2017, Regular Meeting
 December 15, 2017, Special Called Meeting

Resolutions: 01-18: Resolution Adopting and Approving the Execution of an Agreement Between the City of Henderson and the Commonwealth of Kentucky Transportation Cabinet, Under the Federal Highway Administration (FHWA), for an Additional Amount of \$20,000.00 for the Wathen Lane Bridge Replacement Project

Motion by Commissioner Staton, seconded by Commissioner Bugg, to approve the items on the Consent Agenda as presented.

The vote was called. On roll call, the vote stood:

Commissioner Staton ----- Aye:
Commissioner Pruitt ----- Aye:
Commissioner Bugg ----- Aye:
Commissioner Vowels --- Aye:
Mayor Austin ----- Aye:

WHEREUPON, Mayor Austin declared the consent agenda items approved.

 /s/ Steve Austin
Steve Austin, Mayor
January 09, 2018

ATTEST:
Maree Collins, City Clerk _____

ORDINANCE NO. 01-18 FIRST READ

COMMISSIONER VOWELS explained that currently our laws restrict Sunday alcohol sales from Noon until 11:00 p.m. to restaurants having more than 50 seats and that have more than 50% of their sales from food, no package alcohol sales are allowed, and that the ordinance for consideration would end those restrictions allowing package sales at grocery stores, liquor

CITY OF HENDERSON – RECORD BOOK

Record of Minutes of A Regular Meeting on January 09, 2018

stores and other establishments and would also change the time of sales to 10:00 a.m. until 2:00 a.m. the following Monday morning.

ORDINANCE NO. 01-18: ORDINANCE AMENDING CHAPTER 4 – ALCOHOLIC BEVERAGES

AN ORDINANCE AMENDING CHAPTER 4, *ALCOHOLIC BEVERAGES*, ARTICLE I, *IN GENERAL*, SECTION 4-15 *HOURS OF SALE AND DELIVERY; SUNDAY SALES IN QUALIFIED ESTABLISHMENTS* TO CHANGE HOURS OF SUNDAY SALES BY THE DRINK AND TO REMOVE THE SEATING REQUIREMENT OF FIFTY PEOPLE AND FIFTY PERCENT OF THE GROSS REVENUES FROM FOOD SALES AND TO ALLOW SUNDAY SALES FOR QUOTA RETAIL PACKAGE LICENSEES AND NONQUOTA RETAIL MALT BEVERAGE PACKAGE LICENSEES IN THE CODE OF ORDINANCES OF THE CITY OF HENDERSON

MOTION by Commissioner Vowels, seconded by Commissioner Staton, that the ordinance be adopted.

DAWN KELSEY, City Attorney, explained that in Kentucky Sunday alcohol sales are a local issue in that the state defers to cities and counties for those regulations. Under the proposed ordinance a state and local Sunday sales retail drink license would be required to serve alcohol by the glass to be consumed on the property. There is no state special Sunday sales retail package license so current package licensees would be automatically eligible to sell alcohol on Sundays. She then detailed the various types of quota and nonquota licenses available.

COMMISSIONER VOWELS indicated that he was the one that requested the proposed ordinance changes and that he had been questioned on whether this would be an ethical conflict because he is involved in an effort to bring a microbrewery to Henderson. He reported that he had reviewed the Code of Ethics for the City of Henderson very carefully and concluded that he does not have a conflict because this ordinance doesn't just apply to the microbrewery, but applies to the entire City and every business in the City that serves or sells alcohol. However, to be certain he had the Henderson Board of Ethics review the matter and they issued an advisory opinion confirming his analysis, that there would be no conflict of interest because this is related not just to the business that he is involved in but to a variety of businesses in the community. He stated that he respects those with religious objections and would be happy to hear them, but disagrees and thinks that it is time to allow Sunday alcohol sales. He indicated that he believes that the current ordinance is outdated and burdensome to small business owners in Henderson and is overly restrictive to our citizens and their personal freedoms.

COMMISSIONER BUGG read a prepared statement citing statistics relating to accidents and deaths due to driving while under the influence and alcohol abuse and consumption risk factors. She stated that she believes in the family unit and will do everything that she can to make Henderson better. She just doesn't see how adding another day of alcohol sales can do that based on the research that she has done. She stated that "as a Christian it is never my intention to offend anyone, but I have to vote my conscience on this. God is my source for everything and after much prayer I just cannot vote for something that can possibly contribute to all of these things that I have shared with you tonight. If we could save just one life it will be worth it to me."

COMMISSIONER VOWELS responded that he respects Commissioner Bugg's opinion on this. He too spent part of the day pouring through statistics from other cities that have allowed Sunday alcohol sales and looked specifically at Owensboro and Bowling Green to see how their alcohol-related collision reports have changed since allowing Sunday alcohol sales. He couldn't find any kind of correlation at all in the changes there. There was no jump in alcohol-related collisions in Owensboro or Bowling Green attributable to them allowing Sunday alcohol sales.

COMMISSIONER PRUITT indicated that attitudes relating to alcohol and driving under the influence have made great strides since the Covington school bus accident. Statistics show

CITY OF HENDERSON – RECORD BOOK

Record of Minutes of _____ *A Regular* _____ *Meeting on* _____ January 09, 2018

that people are taking more responsibility and not driving under the influence. He reported that he believes that our current ordinances are not fair and should be consistent with either no one being able to sell alcohol on Sunday or everyone being able to sell alcohol on Sunday regardless of the size of the restaurant. He does not believe that there should be Sunday sales.

COMMISSIONER STATON indicated that this is a really important subject for Henderson because of the massive amount of community interest. He reported that he wanted to address topic by topic some of the research that he has done and his thought process. He stated that his family goes to church and that he believes that Sunday is a day of worship; however, he recognizes that not everybody in Henderson believe the way he does and so this Board is challenged with having to make, or in this instance take away, restrictions that are placed on the entire community and not just people who believe the same way that he does. If these restrictions are removed it doesn't mean mandating that any business be open on Sundays. He indicated that safety was a big issue for him along with business development. He reported that he requested Driving-Under-the-Influence statistics from the Bowling Green Police department for the immediate years prior to and after 2013 when they passed Sunday sales. In the three years prior to the change there was an average of 633 DUIs a year and an average of 539 per year after the change. In no way is he advocating that passing the Sunday sales was the cause of these lower numbers or that passing this change in Henderson would lower DUI citations here, only that it doesn't necessarily mean that the numbers would go up. Another thing that has been brought to his attention is that some of the local liquor stores have partnered with a taxi service to provide delivery service. This will help keep people that have been drinking from having to get behind the wheel and drive while under the influence. He continued that from a business standpoint it is not fair that certain larger establishments can sell alcohol on Sundays while other small seating facilities cannot. He concluded that he doesn't feel that this is taking away anyone's rights to observe religion especially since it is not mandating any stores be open and that he looked forward to hearing from those interested in speaking on the matter.

RODNEY THOMAS, Rookies Sports Bar & Grill, and ROBERT TOERNE, a partner in the microbrewery opening in Henderson, spoke in favor of the changes. Mr. Thomas indicated that it was not fair that while it was his choice not to sell on Sundays, many new and smaller restaurants are not given a choice because they do not meet the current seating restrictions. Mr. Toerne relayed a story relating to the loss of sales for a certain restaurant in Bowling Green due to the Noon restriction on the sale of alcohol with their meal.

WANDA SAUER, Just Plus/Just Chic, and THERESA CARTLEDGE spoke against expanding the sale of alcohol. Ms. Sauer spoke from a personal point of view and how expanding the hours of sale would cause hardship on her family due to a family members' lack of control when alcohol is available. Ms. Cartledge indicated that she works in the medical field and has seen first-hand the effects of alcohol and substance abuse.

The vote was called. On roll call, the vote stood:

Commissioner Staton -----	Aye:
Commissioner Pruitt -----	Nay:
Commissioner Bugg -----	Nay:
Commissioner Vowels ---	Aye:
Mayor Austin -----	Aye:

WHEREUPON, Mayor Austin declared the ordinance adopted on its first reading and ordered that it be presented for a second reading at a meeting of the Board of Commissioners.

MUNICIPAL ORDER NO. 01-18:

DAWN KELSEY, City Attorney, reported that there is a current lease with the Henderson County Tourist Commission for a portion of City property located at 101 North Water Street and that Downtown Henderson Partnership has requested to sub-lease a part of that

CITY OF HENDERSON – RECORD BOOK

Record of Minutes of A Regular Meeting on January 09, 2018

space for their use.

MUNICIPAL ORDER NO. 01-18: MUNICIPAL ORDER AUTHORIZING SUB-LEASE BETWEEN THE CITY OF HENDERSON, HENDERSON COUNTY TOURIST COMMISSION (“TOURISM”) AND DOWNTOWN HENDERSON PARTNERSHIP (“DHP”) FOR WORK AND OFFICE SPACE PRESENTLY LEASED BY TOURISM LOCATED AT 101 NORTH WATER STREET, HENDERSON, KENTUCKY; AND AUTHORIZING MAYOR TO EXECUTE THE LEASE ON BEHALF OF CITY

MOTION by Commissioner Staton, seconded by Commissioner Vowels, to adopt the municipal order authorizing the execution of a sub-lease between the City, the Henderson County Tourist Commission and the Downtown Henderson Partnership for office and work space currently leased by the Henderson County Tourist Commission located at 101 North Water Street. The sub-lease also increases the amount of DHP leased parking spaces from six to eight.

The vote was called. On roll call, the vote stood:

- Commissioner Staton ----- Aye:
- Commissioner Pruitt ----- Aye:
- Commissioner Bugg ----- Aye:
- Commissioner Vowels --- Aye:
- Mayor Austin ----- Aye:

WHEREUPON, Mayor Austin declared the municipal order adopted, affixed his signature and the date thereto, and ordered that the same be recorded.

 /s/ Steve Austin
Steve Austin, Mayor
January 09, 2018

ATTEST:
Maree Collins, City Clerk _____

REVIEW AND DISCUSSION OF THE CODE OF ORDINANCES: Chapter 17

DAWN KELSEY, City Attorney, gave a brief review of the various staff recommended revisions for Chapter 17 *Parks and Recreation* which include: adding a Section 17-3 reflecting that the Golf Course rates are set by resolution by the board of commissioners from time-to-time; Article III, *Special Events*, Section 17-52 *Indemnification* – adding liability insurance requirements for high risk activities which include but are not limited to rodeos, carnivals, air race, automobile races, hot air balloon events or activities that include a potential hazardous environmental release, to \$2,000,000 per occurrence with a \$4,000,000 aggregate; and Ms. Kelsey reported that in an earlier ordinance review of Chapter 6, Section 6-3, *Pursuing, injuring, killing of animals and birds* was deferred for further research. It has been determined that section should be repealed due to a Kentucky Constitutional amendment protecting the right to hunt in Kentucky. State statutes regulate hunting in Kentucky. The changes reviewed this evening will be brought forward at a future meeting for formal consideration.

CITY MANAGER’S REPORT:

Planning Commission Rezoning Recommendations: #1080 – 120 Clark Street with Development Plan

RUSSELL R. SIGHTS, City Manager, reported that the Planning Commission has acted upon the request for a rezoning with both narrative and graphic development plan amendment for 120 Clark Street, after conducting a public hearing and producing findings of fact at their January 2, 2018 meeting. The Zoning Map Amendment from Gateway to Light Industrial shall be final and the development plan officially amended on Wednesday, January 24, 2018 unless an aggrieved party or the Board of Commissioners files written notice with the Planning

CITY OF HENDERSON – RECORD BOOK

Record of Minutes of A Regular Meeting on January 09, 2018

Commission within the allotted twenty-one day time period to have the Board of Commissioners make the final decision. The deadline for filing written notice is Tuesday, January 23, 2018.

COMMISSIONERS’ REPORT:

COMMISSIONER PRUITT indicated that he had been thinking about the litigation settlement relating to Henderson Municipal Power and Light and how in hindsight that we, he included, missed an opportunity to add other parts of our case into the settlement and agreement.

EXECUTIVE SESSION: Litigation

MOTION by Commissioner Bugg, seconded by Commissioner Staton, to go into Executive Session pursuant to KRS 61.810(1)(c) for the purpose of discussion of proposed litigation by the City and pursuant to KRS 61.810(1)(c) for the purpose of discussion of litigation against the City.

The vote was called. On roll call, the vote stood:

- Commissioner Staton ----- Aye:
 - Commissioner Pruitt ----- Aye:
 - Commissioner Bugg ----- Aye:
 - Commissioner Vowels --- Aye:
 - Mayor Austin ----- Aye:
-

MEETING RECONVENED:

MOTION by Commissioner Pruitt, seconded by Commissioner Bugg, the Board of Commissioners reconvened in regular session.

The vote was called. On roll call, the vote stood:

- Commissioner Staton ----- Aye:
 - Commissioner Pruitt ----- Aye:
 - Commissioner Bugg ----- Aye:
 - Commissioner Vowels --- Aye:
 - Mayor Austin ----- Aye:
-

RESOLUTION NO. 02-18:

RESOLUTION AUTHORIZING INSTITUTION OF PROCEEDINGS UNDER EMINENT DOMAIN ACT OF KENTUCKY AGAINST PROPERTY OWNED BY THE CLORE, THOMPSON AND BURRIS HEIRS, LOCATED ON LAKELAND DRIVE – PARCEL NUMBER 66-72

MOTION by Commissioner Staton, seconded by Commissioner Bugg, to adopt the resolution authorizing institution of proceedings under the Eminent Domain Act of Kentucky against property owned by the Clore, Thompson and Burris heirs, located on Lakeland Drive, being a portion of Parcel No. 66-72 known as lots 3 through 16 of parcel B, for the purpose of flood mitigation in the Lakeland Subdivision.

The vote was called. On roll call, the vote stood:

- Commissioner Staton ----- Aye:
- Commissioner Pruitt ----- Aye:
- Commissioner Bugg ----- Aye:

CITY OF HENDERSON – RECORD BOOK

Record of Minutes of A Regular Meeting on January 09, 2018

Commissioner Vowels --- Aye:
Mayor Austin ----- Aye:

WHEREUPON, Mayor Austin declared the resolution adopted, affixed his signature and the date thereto, and ordered that the same be recorded.

/s/ Steve Austin
Steve Austin, Mayor
January 09, 2018

ATTEST:
Maree Collins, City Clerk _____

MEETING ADJOURN:

MOTION by Commissioner Staton, seconded by Commissioner Pruitt, to adjourn the meeting.

The vote was called. On roll call, the vote stood:

Commissioner Staton ---- Aye:
Commissioner Pruitt ----- Aye:
Commissioner Bugg ----- Aye:
Commissioner Vowels --- Aye:
Mayor Austin ----- Aye:

WITHOUT OBJECTION, Mayor Austin declared the Meeting adjourned at approximately 6:50 p.m.

ATTEST:

Maree Collins, City Clerk

Steve Austin, Mayor
January 23, 2018