



City of Smyrna

2800 King Street
Smyrna, Georgia 30080

Meeting Minutes - Final City Council

Tuesday, January 2, 2018

7:00 PM

Council Chambers

Roll Call

Present: 8 - Mayor Max Bacon, Councilmember Derek Norton, Councilmember Maryline Blackburn, Councilmember Andrea Blustein, Councilmember Charles Welch, Councilmember Susan Wilkinson, Councilmember Doug Stoner and Councilmember Ron Fennel

Also Present: 7 - Scott Andrews, Scott Cochran, Terri Graham, Lisa Moore, David Lee, Ken Suddreth and Jennifer Bennett

Call to Order

Mayor A. Max Bacon called the meeting of the Mayor and Council to order at 7:00 PM.

1. Invocation and Pledge:

Mayor Max Bacon called Pastor Shell Osbon of Life Church Smyrna Assembly of God in Smyrna, Georgia who provided the invocation and led all in the Pledge of Allegiance.

2. Agenda Changes:

There were no changes to the agenda.

3. Mayoral Report:

The Mayor reminded all that the University of Georgia and the University of Alabama will be playing in the National Championship game next Monday night.

4. Land Issues/Zonings/Annexations:

There were no Land Issues, Zonings or Annexations.

5. Privilege Licenses:

A. Public Hearing - Privilege License Request 2018-04 - Beer, Wine, Liquor Package - 1651 Roswell Street - 773 Liquors LLC dba R & L Package Store with Willie Tyler as agent.

Sponsors: Blackburn

The Mayor called the agent, Willie Tyler to come forward. The background was given by Assistant City Administrator, Scott Andrews. City Attorney Scott Cochran added to

the background that the location was involved in a police department sting operation and the applicant was charged with selling alcohol to a minor. There has been an agreement in the court case. Mr. Cochran stated that the Council would want to know why the sale happened and what the circumstances were and want to know that it will not happen again. The Mayor asked if this was a currently licensed location and was merely a change in agent.

The Mayor called the Public Hearing and no one came forward to speak. The applicant's attorney, Alan Bigner, spoke on behalf of Mr. Tyler. Mr. Tyler has submitted an application to own an old, established liquor store. At this store, he was involved in the sting where he sold to a minor. Mr. Tyler admits that there was no excuse for having sold to a minor by not asking for identification. If the Council would give him a second chance, he will check everyone's ID at all times. He realizes he will be watched very closely. Mr. Tyler is retired from the military and has settled in Smyrna and wants to own the liquor store. The applicant will plead guilty to the court case at a court hearing on Thursday, January 4th.

Mr. Willie Tyler addressed the Council. He stated that as a military veteran, he didn't have any excuses for selling to a minor and hoped that the Council would give him a chance. He hoped to be allowed to do business in the City of Smyrna.

Councilmember Maryline Blackburn asked if this will be his first business in Smyrna and asked why he sold to a minor. He stated that it was his fourth day at the store and he was focusing on his training to close the store for the day and not on the sale itself. Ms. Blackburn asked if he knew the age of the minor involved and he stated he did not. Mr. Cochran asked if he was in the process of buying the business and was working on the documents involved. Mr. Tyler stated he was. Mr. Cochran asked when the sale would be complete. Mr. Tyler stated that it would be as soon as the license was issued. He has gone through a lot of training, including the City's required training. Mr. Cochran asked about the arrest. Mr. Tyler was arrested and taken to the police department in handcuffs. It was his first time ever being arrested and he doesn't want that to happen again.

Councilmember Blackburn reminded the applicant that underage drinking is a very serious problem in the state of Georgia and wanted to make sure he understood that he should get identification from everyone. Mr. Tyler stated he understood and as the owner of the store, this would have his attention and the attention of the employees of the store.

Mayor Bacon asked if this sting happened prior to his taking of the City mandated training and the applicant stated it did. If he had the training he would not have sold to the minor.

A motion was made by Councilmember Maryline Blackburn to approve Privilege License Request 2018-04 for a Beer, Wine, Liquor Package license located at 1651 Roswell Street for 773 Liquors LLC dba R & L Package Store with Willie Tyler as the agent; seconded by Councilmember Doug Stoner.

The motion to approve carried by the following vote:

Aye: 7 - Councilmember Norton, Councilmember Blackburn, Councilmember Blustein, Councilmember Welch, Councilmember Wilkinson, Councilmember Stoner and Councilmember Fennel

B. Public Hearing - Privilege License Request 2018-01- Beer and Wine Package - 2175 Old Concord Road STE 100 with Meera Lalchani as the

agent.

Sponsors: Wilkinson

Mayor A. Max Bacon asked Assistant City Administrator, Scott Andrews to provide the background which was that the business has gone through the process with the License and Variance Board and has taken the required classes. Staff recommended approval. The business is located in Council Ward 5.

Mayor Bacon called for a Public Hearing and no one came forward to speak on the license request.

Councilmember Susan Wilkinson asked if they attended the alcohol awareness training required by the City. The applicant stated they had and they understood the seriousness of selling to a minor. The store is a convenience store that sells beer and wine. The store name is Stop & Go and the hours are 6:00 AM – 11:00 PM.

A motion was made by Councilmember Susan Wilkinson to approve Privilege License Request 2018-01, a Beer and Wine Package License located at 2175 Old Concord Road, Suite 100 with Meera Lalchani as the agent; seconded by Councilmember Charles "Corkey" Welch.

The motion to approve carried by the following vote:

Aye: 7 - Councilmember Norton, Councilmember Blackburn, Councilmember Blustein, Councilmember Welch, Councilmember Wilkinson, Councilmember Stoner and Councilmember Fennel

6. Formal Business:

- A. **Second Public Hearing:** Approve the Amendment to the City of Smyrna's Code of Ordinances, Chapter 98 entitled Traffic and Vehicles, to include Section 98-10 Prohibiting the use of handheld Mobile Telephones or Portable Electronic Devices while operating a Motor Vehicle

Sponsors: Norton

Mayor A. Max Bacon asked for the background on the ordinance. Assistant City Administrator asked Mayor Pro Tem Derek Norton to give the background. Mr. Norton discussed the ordinance. Over the last few months, Mr. Norton had been increasingly concerned about distracted driving in the City and the dangers that causes to the citizens of Smyrna. He believed this ordinance will ultimately save lives. Last month, he stood at the Community Center and counted the number of people operating a vehicle with a phone in their hands, not paying attention to other vehicles or pedestrians. He counted over 500. Over the summer he attended meetings of a Georgia House of Representatives study group on distracted driving and listened to testimony from injured victims, advocacy groups and law enforcement. The study group highlighted how much of a problem distracted driving is and that the issue must be addressed. The current texting while driving state law is just not enforceable and won't change driver behavior. The intent of the proposed ordinance is to change driver behavior and to get driver's attention focused on the road. This ordinance is to keep all cell phone use while driving hands-free. Feedback from community has added some changes to the ordinance to address their concerns. The first addition to the ordinance is the one touch rule so that if your phone is affixed to the car, you may use the phone to answer calls or use navigation with one touch. The second addition is that the fine will be capped at \$150; this allows the judge to lower the fine if she

chooses or add another component to the sentencing such as traffic school. The effective date is April 2nd, this is because there is some talk on the state level that they may pass a law that may allow funding for the effort. It is a two year ordinance, so that the data can be reviewed and possibly changed.

Councilmember Norton stated that the feedback he has received has mostly been positive, but he stated some of the concerns he has heard. The Councilmember stated this was not a revenue generator. Police Chief stated that the first 45 days, violators will receive a warning. He stated that he believed it costs the city at least \$150 to write a ticket and process a ticket. Some have said that the Uber and Lyft people will not do business in the city if it is passed. On the contrary, they are in support of the ordinance and helped motivate the development of the one touch rule. There have been some people who claim that there is no data to support the ordinance's ability to prevent distracted driving. The House Study Committee announced their findings that of the 15 states with a hands free law, 13 have seen an average of a 17.5% decrease in distracted driving fatalities within a two year period of enforcing the law. The other two states did not have statistical data because the laws were too new. Mr. Norton stated he has a wife and children and believed this ordinance will keep them and citizens safer on the roads.

Mayor A. Max Bacon called for a Public Hearing, which was the second hearing on the ordinance. He asked for anyone to come forward to speak and City Attorney Scott Cochran swore in those who wanted to speak.

Chuck Martin of 5010 Duxford Drive, Smyrna came forward along with his son, Jackson. He spoke that he was moved by what the Council was considering. He acknowledged the temptation that he and others have to reach for his phone. He said it was not a popular decision. He likened this ordinance to the seatbelt laws when they were passed. People did not like them, but after a while, people changed their behavior and wore their seatbelts. If an ordinance is passed, young people will automatically use their hands free devices instead of reaching for their phones while driving because that will be the norm. It is up to the adults to lead the way. His son, Jackson, noted that the day before he saw someone who was texting who ran two red lights and almost caused an accident.

Craig and Kathy Clark of 1481 Falkirk Lane, Kennesaw came forward. The Clark's lost their daughter, Emily, along with four other nursing students three years ago to a driver who was distracted. They came to support the ordinance. They asked if you could save your family member or someone by passing this ordinance, would you pass it. They strongly encouraged the city to lead the way and set the example for the state. The Mayor wanted to know why the state hasn't done anything about the distracted driving problem. Mr. Clark said there was some opposition and people don't want to give up their technology. He agreed with the previous speaker that with the seatbelt laws, it took a while, but it did change behaviors. People don't believe a tragedy will happen to them.

Steven Jones of 2823 Spring Drive came forward to speak. He has resided in Smyrna for 41 years in Ward 1. He supports the ordinance because he believed it will save lives and it will bring attention to how distracted drivers are on the roads. He discussed that his parents gave him a map book and told him to memorize where to go before he left his home. If he needed to look at the book he should pull over to look at it. The same principles apply to cell phone use. When someone calls him on his cell phone, he asks if it is an emergency or important to talk at that time and if it is, he pulls over to a safe place to talk to them. Everyone should be aware of their

surroundings and what other people are doing on the road when they are driving. Driving is a full time job. He commended Councilman Norton for his for taking the lead and the initiative on this ordinance.

Jennie Hardy of 9545 Fenbrook Court, Alpharetta GA spoke in support of the ordinance. She became an advocate for highway safety when her family was in a violent car wreck in 2002. A logging truck in South Georgia did not pay attention to two rumble strips and a stop sign. He hit an SUV which hit her van and fled the scene of the crash. Her daughter had multiple surgeries, but survived because her car seat saved her life. People should make right decisions, such as putting down their phones, keeping their eyes on the road, their hands on the steering wheel and not being distracted when driving. In 2017, 1493 deaths occurred on the highways of Georgia. She applauds the actions of Councilmember Norton and the Council for their efforts. She asked the Council to approve the ordinance.

Shaun Martin, 2884 Anderson Circle, Smyrna came forward to speak. Ms. Martin is a 21 year Smyrna resident. She opined this ordinance should have a public awareness campaign that is targeted to everyone in the city and not just one part or the other. This is a very important issue for the community. The education component should be to all the people of Smyrna in a democratic manner. She believed these types of violations can impact someone's driving record in a negative way. The education component is very important and should be for all Smyrna and the process should be fair and equal to all.

James Evangual, 1280 West Peachree Street, Atlanta stated that everyone is against distracted driving. The issue is about about hand held. He stated there is no study which shows a difference in distraction between hands free and hand held devices. Mr. Evangual cited a study by Sanford University that found the statistics are the same on both. He reiterated it is about distracted driving, not the actual device. It is about the conversation, not the device that distracts people. He believed that the Council should consider these facts before they vote.

Bill Strickland of 2962 Lexington Trace Drive, Smyrna came forward to speak. He has been a Smyrna resident for 19 years. He appreciated the people who came to speak, but many of them are not city residents. He also noted that when the drinking while driving laws changed, people changed their behavior and refrained from driving while intoxicated. The same thing happened when the seatbelt laws went into effect. He spoke about how many people he sees that are texting and driving and it irritates him, because those people can cause accidents. He believed that if the city can change people's mindset about driving while drinking, we can change their mindset about texting and driving.

Steven Sheffield, 2254 1st Avenue, Atlanta, GA spoke in favor of the ordinance. He is a professional engineer who works and travels in DeKalb and Gwinnett County and sees many people distracted on their phones. He is a volunteer with the Georgia Office of Highway Safety Distracted Driving Task Team. He says there is no silver bullet for this issue, but he believes hands free laws will reduce the number of accidents on the highways. He thinks that a hands-free law will result in people being more aware. Any time you take your eyes off the road, you are distracted. His responsibility for the task team is to educate the public about the dangers of distracted drivers on the road. This is a unique situation that will help to make changes in the state. He adds that he has kids and is concerned about their safety. He would like to see the legislation pass.

The Mayor called Police Chief David Lee to come forward to speak on the ordinance. City Attorney Scott Cochran swore Chief Lee in. The Mayor believes that if the ordinance is passed in Smyrna, many other cities will follow suit. He stated that the more you talk about the issue; the more you become more aware of how many people are texting and driving. The Mayor stated that there are around 80,000 people who are not Smyrna residents and asked how do you educate them? Chief Lee said the numbers of people are an issue. The Assistant City Administrator and the Police Department are producing a video public service announcement which will include students from Campbell High School. The goal is to reach all different age groups. The Chief believed that the children will help teach adults. The Police Department has a device that will be handed out that will make phones hands free as the supply lasts. When you start issuing citations that will help correct desired behavior. The Chief believed the fine is reasonable. The Mayor stated the devices were purchased by revenue from people who participate in the city's traffic school.

City Attorney Scott Cochran asked about the state law. The Chief stated it is very difficult to enforce. This ordinance goes further than the state law and will be easier to enforce. It is set up as a test for two years so that data can be collected to see if it actually changes behaviors. The Chief stated that because this is a city ordinance, it will not affect their driver's history and will not have points associated with it. When a warning is issued, it only goes in Smyrna's internal records management system.

Councilman Charles "Corkey" Welch asked if the ordinance is as simple as if it's in your hand, it will be against the ordinance. The Chief said that is true.

Councilmember Wilkinson asked if the devices that were purchased and the video will be paid by traffic school proceeds. The Chief said that was correct and stated that the video will be produced by a local Cobb County company that the Police Department has been using for other projects.

Councilmember Ron Fennel thanked Councilmember Derek Norton for his leadership on this issue that is important for our city, state and nation. He has been chairman of a non-profit organization called Team Georgia for over 10 years and on the board for over 25 years. It has been a task force for safe drivers and others to make sure there is proper awareness on the roadways and waterways about alcohol related driving and are now involved in distracted driving issues. Distractions can be from the radio, conversations in the car, etc., and are a challenge for everyone. His not for profit work has been all about this issue. He is vexed and conflicted because he is an advocate on this issue, but he works for a group that does this advocacy for this issue. Team Georgia prefers state wide solutions for these types of legislation, but sometimes good ideas can come from local government. Mr. Fennel believed that Smyrna can add some data points to help determine how this law state wide might be written and enforced. One life saved because of this ordinance will be worth it. This is a start of the conversations. Councilmember Fennel reluctantly felt he needed to recuse himself because his professional ties will conflict.

Councilmember Andrea Blustein stated that she believed one city cannot solve the problem. There shouldn't be several different cities with different ordinances. She thinks that the city should pressure the state to put the law into place.

Councilmember Charles "Corkey" Welch stated he will have to make a big change in his habits. He drives a lot around Georgia. He has had two people pull out in front of him who were distracted very recently who were distracted by cell phones. He supports the ordinance despite close objections of friends and family.

Councilmember Doug Stoner stated he was in the General Assembly when the original texting law was put in place. It took some time to realize that the law did not do what it was meant to do. It was his opinion that the state needs a push to do its job. When local governments pass their ordinances on an issue, it presses other cities and eventually the state to pass legislation.

The Mayor stated that he disagreed that Councilmember Fennel did not need to recuse himself. He believed that the City should not wait on the state to pass legislation of this type. He believed that this will begin to educate people and change people's habits. This is a step in the right direction for the city.

Ron Fennel Recused himself with a statement of conflict as the Chairman for Team Georgia. He left the dais and sat in the front row of the Council Chambers.

A motion was made by Councilmember Derek Norton to approve the Amendment to the City of Smyrna's Code of Ordinances, Chapter 98 entitled Traffic and Vehicles, to include Section 98-10 Prohibiting the use of handheld Mobile Telephones or Portable Electronic Devices while operating a Motor Vehicle; seconded by Councilmember Doug Stoner.

The motion to approve carried by the following vote:

With the recusal of Councilmember Ron Fennel after reading a statement of conflict the vote was a tie. Mayor A. Max Bacon who only votes in the event of a tie entered his vote in favor of the ordinance and the ordinance passed with a 4-3-1 vote.

Aye: 4 - Mayor Bacon, Councilmember Norton, Councilmember Welch and Councilmember Stoner

Nay: 3 - Councilmember Blackburn, Councilmember Blustein and Councilmember Wilkinson

Recuse: 1 - Councilmember Fennel

B. Approval of the Ward 5 re-appointment of Cheri Harrington to the Planning and Zoning Board for term to expire December 2019

Sponsors: Wilkinson

A motion was made by Councilmember Susan Wilkinson to approve the Ward 5 re-appointment of Cheri Harrington to the Planning and Zoning Board for term to expire December 2019; seconded by Councilmember Doug Stoner.

The motion to approve carried by the following vote:

Aye: 7 - Councilmember Norton, Councilmember Blackburn, Councilmember Blustein, Councilmember Welch, Councilmember Wilkinson, Councilmember Stoner and Councilmember Fennel

C. Approval of Appointment of Ward 3 resident Adam Taylor to the Keep Smyrna Beautiful Board. This is a two-year term to expire December 2019.

Sponsors: Blackburn

A motion was made by Councilmember Maryline Blackburn to approve the appointment of Ward 3 resident Adam Taylor to the Keep Smyrna Beautiful Board for a two-year term to expire December 2019; seconded by Councilmember Charles "Corkey" Welch.

The motion to approve carried by the following vote:

Aye: 7 - Councilmember Norton, Councilmember Blackburn, Councilmember Blustein, Councilmember Welch, Councilmember Wilkinson, Councilmember Stoner and Councilmember Fennel

D. Approval of re-appointment of Ward 3 resident Keith Bentley to Parks and Recreation Commission for term to expire 12/31/2019

Sponsors: Blackburn

A motion was made by Councilmember Maryline Blackburn to approve the re-appointment of Ward 3 resident Keith Bentley to Parks and Recreation Commission for a term to expire 12/31/2019; seconded by Councilmember Susan Wilkinson.

The motion to approve carried by the following vote:

Aye: 7 - Councilmember Norton, Councilmember Blackburn, Councilmember Blustein, Councilmember Welch, Councilmember Wilkinson, Councilmember Stoner and Councilmember Fennel

E. Approval of the appointment of Ward 3 resident Monty Bye to the Planning & Zoning Board for term to expire 12/31/19

Sponsors: Blackburn

A motion was made by Councilmember Maryline Blackburn to approve the appointment of Ward 3 resident Monty Bye to the Planning & Zoning Board for a term to expire 12/31/19; seconded by Councilmember Doug Stoner.

The motion to approve carried by the following vote:

Aye: 7 - Councilmember Norton, Councilmember Blackburn, Councilmember Blustein, Councilmember Welch, Councilmember Wilkinson, Councilmember Stoner and Councilmember Fennel

F. Approval of appointment of Ward 3 resident Taneisha Simpson to the Smyrna Housing Authority for term to expire 12/31/22.

Sponsors: Blackburn

A motion was made by Councilmember Maryline Blackburn to approve the appointment of Ward 3 resident Taneisha Simpson to the Smyrna Housing Authority for a term to expire 12/31/2022; seconded by Councilmember Charles "Corkey" Welch.

The motion to approve carried by the following vote:

Aye: 7 - Councilmember Norton, Councilmember Blackburn, Councilmember Blustein, Councilmember Welch, Councilmember Wilkinson, Councilmember Stoner and Councilmember Fennel

G. Approval of the appointment of Shaun Martin, representing Ward 7, to the Smyrna Tree Board to fulfill term to expire August 2020

Sponsors: Fennel

A motion was made by Councilmember Ron Fennel to approve the appointment of Shaun Martin, representing Ward 7, to the Smyrna Tree Board to fulfill a term to expire August 2020; seconded by Councilmember Susan Wilkinson.

The motion to approve carried by the following vote:

Aye: 7 - Councilmember Norton, Councilmember Blackburn, Councilmember Blustein, Councilmember Welch, Councilmember Wilkinson, Councilmember Stoner and Councilmember Fennel

- H. To recognize that the Cobb County Marietta Water Authority unanimously approved a new 3-year rate program, with a (2%) two percent annual rate increases for both in-county and out-of-county customers through 2020.

Sponsors: Welch

A motion was made by Councilmember Charles "Corkey" Welch to recognize that the Cobb County Marietta Water Authority unanimously approved a new 3-year rate program, with a (2%) two percent annual rate increases for both in-county and out-of-county customers through 2020; seconded by Councilmember Ron Fennel. The motion to approve carried by the following vote:

Aye: 7 - Councilmember Norton, Councilmember Blackburn, Councilmember Blustein, Councilmember Welch, Councilmember Wilkinson, Councilmember Stoner and Councilmember Fennel

7. Commercial Building Permits:

There were no Commercial Building Permits.

8. Consent Agenda:

A motion was made by Councilmember Derek Norton to approve the Consent Agenda as read aloud by Assistant City Administrator Scott Andrews; seconded by Councilmember Doug Stoner.

The motion to approve carried by the following vote:

Aye: 7 - Councilmember Norton, Councilmember Blackburn, Councilmember Blustein, Councilmember Welch, Councilmember Wilkinson, Councilmember Stoner and Councilmember Fennel

- A. Approval of the December 18, 2017 Mayor and Council Meeting Minutes

Sponsors: City Council

- B. Approval of the December 18, 2017 Pre Council Meeting Minutes

Sponsors: City Council

- C. Approval of the December 14, 2017 Committee of the Whole Meeting Minutes

Sponsors: City Council

- D. Approval to use Council Chambers on Wednesday, January 31, 2018 from 6-9 PM for the Heritage at Vinings Annual HOA Meeting.

Sponsors: Stoner

9. Committee Reports:

Councilmember Derek Norton thanked those who provided input and helped in the support of the ordinance.

Councilmember Maryline Blackburn stated that on January 21st, there will be a stamp increase from 49 cents to 50 cents.

Councilmember Susan Wilkinson thanked the Parks and Recreation and Public Works staff for the beautiful Christmas decorations.

Councilmember Ron Fennel stated that Georgians are proud of the Georgia bulldogs. Remember to drive safely on the roadways.

Assistant City Administrator Scott Andrews acknowledged the Community Relations Department and the Police Department for the work they have done to educate the citizens of the new ordinance.

Councilmember Susan Wilkinson reminded that "Bring One for the Chipper" will be on January 6th at the Vinings Home Depot to recycle Christmas trees.

10. Show Cause Hearings:

There were no Show Cause Hearings.

11. Citizen Input:

There were no Citizen's Input.

12. Adjournment:

Mayor A. Max Bacon adjourned the meeting of the Mayor and Council at 8:28 PM.