

**MINUTES OF THE
REGULAR COUNCIL MEETING
CITY OF AUSTELL
MAY 5, 2008**

Present: Mayor Joe Jerkins
Kirsten Anderson
Beverly James Boyd
Randy Green
Virginia Reagan
David "Bo" Traylor
Scott Thomas

The regular meeting of the Mayor and Austell City Council was held on May 5, 2008, at 7:00 P.M. at City Hall.

Also present were: Scott Kimbrough, City Attorney; Carolyn Duncan, City Clerk; Sandra Farmer, Assistant Director, General Administration; Randy Bowens, Public Works Director; Jim Graham, Community Development Director; Bob Starrett, Police Chief; Tim Williams, Fire Chief.

1. CALL TO ORDER

Mayor Jerkins called the meeting to order. Scott Kimbrough gave the Invocation. Mayor Jerkins led the Pledge of Allegiance. Mayor Jerkins asked if any member of the Council would like to add items to the agenda. Ms. Boyd stated she would like to add 13. C- Authorization for the City of Austell to continue participation in Cobb County's CDBG Program.

Mr. Green moved to follow the recommendation of Mayor Jerkins to add items to the agenda. Seconded by Mr. Thomas. Motion passed (6-0).

2. CONSENT AGENDA – INFORMATION AND UPDATE

(No Action Required by Council – See Specific Department Director before Meeting.)

3. CONSENT AGENDA

- A. Approve Bills
- B. Approve Legal Bills \$850.00
- C. Approve Minutes of Regular Meeting April 7, 2008

Ms. Boyd moved to follow the recommendation of Mayor Jerkins to approve the Consent Agenda. Seconded by Mr. Thomas. Motion passed (6-0).

4. EXCEPTION TO CONSENT AGENDA

5. CITIZENS REPORT

Ms. Valerie Anderson presented pictures and a petition signed by the residents.

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Ms. Anderson stated their concern is Pine Street Park and its current condition. It needs repairs and renovation. Mayor Jerkins stated we have already made plans to spend some money on the park. Mayor Jerkins asked Mr. Graham when this would be. Mr. Graham stated it would be next year when we receive the grant for the park. Mayor Jerkins stated it does take time to get the money and we are already set up to receive the money. He asked Mr. Graham when we would start on the park. Mr. Graham stated it would be in May 2009 and the county would approve our request and usually it is \$32,000.00. Mayor Jerkins stated it would be about a year and one month before we can do anything to the park. Mayor Jerkins stated he would certainly take into consideration all the requests submitted. I am not sure we can do bathrooms but we will go as far as the money allows. If we have the funds we will do whatever we can. We have already approved a street light and we approved and voted on and there will be a street light before too long. The other thing we are having problems with, they are destroying a lot of the things in the park. If we have help from the residents to keep the park clean this will make a difference. We want to keep the bad out and let the good enjoy the park. We appreciate everyone coming tonight and we will see that Mr. Graham checks on all the park equipment and what needs repairing. Ms. Boyd stated to Mayor Jerkins about the increased police patrols in the area. Mayor Jerkins stated, yes, we have increased the patrol cars due to what happened and we are very sorry about what happened there in the area. Some of you mentioned to me about renaming part of Pine Street and I think the Council would certainly go along with this idea. Just decide what the name should be and submit to me at my office. It will take about a year to get it changed because of the street addresses. Mr. Thomas stated, on the photographs presented by Ms. Anderson the sliding board looks in need of repair and looks very dangerous and unsafe. Mr. Thomas asked Mr. Graham if he would please go by and check on the sliding board. Mr. Graham stated, yes, he would. Mayor Jerkins asked if anyone else would like to speak to Mayor and Council.

Ms. Barbara Watkins stated there are so many abandoned homes in the area. My question is can these homes be torn down or renovated by owners? Mayor Jerkins stated we can try to condemn them and he asked if anyone was living in them. Ms. Watkins stated, no, no one was living in them. Mayor Jerkins asked Ms. Watkins if she could get the addresses to him. Mr. Bowens stated he would get the addresses for Mayor Jerkins. Mayor Jerkins stated if no one is living in them we will try to do something. Ms. Boyd stated she had been out in the area today and noticed five abandoned cars that need to be attended to. I will call Code Enforcement Department tomorrow and report this to them tomorrow.

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Mayor Jerkins stated he was impressed with some of the homes that have been built in the area lately. We will work with you on some of these things and look forward to working with you.

**6. GAS SYSTEM REPRESENTATIVE
JOE JERKINS**

Mr. Kimbrough stated the discussion was the gas rate schedule and increases in gas as oil is going up. On a positive note the Gas System is doing very well financially.

**7. FINANCE DEPARTMENT
BEVERLY JAMES BOYD, CHAIRPERSON
Denise Soesbee, Director**

- A. Financial Report
- B. 2008-09 Preliminary Budget

Ms. Boyd stated to please find attached a copy of the 2008-09 Preliminary Budget for your review. This document will be presented to Council for vote at the June 2nd Council Meeting. The City's entire budget increased from \$11,766.797 to \$12,522.851 which is a difference of * \$756,054. This increase budget proposal includes, but is not limited to the following:

- 1) We have included a 3% cost of living increase for all employees in this proposal. The cost of living increase would be effective as of July 1, 2008, and would cost approximately \$125,000 citywide. There have been no positions added for the 2009 fiscal year.
- 2) Included are all principal and interest for bond payments due as per the most recent CAFR schedule. This budget proposal also includes installment payments for vehicles purchased in FY2008 for Police, Fire and Public Works.
- 3) We are waiting to hear from our health care provider for the increase in premiums for FY2009. For this proposal, we have included a 10% increase from the 2007-08 budgeted premiums.

* Please Note: \$756,504.00 is a typographical error. Correct figure should be \$756,054.00.

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- 4) We have included amounts required to be transferred from the General Fund for excess Threadmill Complex expenditures of \$247,663 and amounts required to be transferred from the General fund for excess E-911 expenditures of \$291,086.
- 5) The SPLOST fund (325) increased the overall budget by \$449,439. These funds represent carry over balances from previous years to be used for future DOT, resurfacing and sidewalks capital projects.
- 6) Our 2008-09 liability insurance estimate from GMA has also been reduced by approximately \$40,000.
- 7) Due to rising gasoline prices we increased our fuel budget by \$41,700. This is a 44% increase from the 2007-08 budgets.
- 8) In the Water Fund, monies are dedicated to removing the remaining pump stations.

Please review the attached budget and if you have any questions, please do not hesitate to contact me. This is the 1st reading of the budget.

**8. GENERAL ADMINISTRATION
KIRSTEN ANDERSON, CHAIRPERSON
Carolyn Duncan, Director**

- A. No Report

**9. POLICE DEPARTMENT
VIRGINIA REAGAN, CHAIRPERSON
Bob Starrett, Police Chief**

- A. Police Report
- B. Code Enforcement Report
- C. Underage Alcohol Sales – Marathon –K&H or Austell Food Mart
Chief Starrett stated a representative from K&H has asked for an extension on this matter. Mayor Jerkins stated, no, the Council would handle this matter tonight and the extension would not be granted.

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Mr. Kimbrough stated just for the record he was contacted by Attorney Steve Smith who said if he was here he would be retained by Austell Food Mart and if he wasn't here obviously he was not retained by Austell Food Mart. Ms. Reagan stated she would like to turn the hearing over to City Attorney, Mr. Kimbrough. Mr. Kimbrough asked who would be representing the City of Austell. Chief Starrett stated he would. Mr. Kimbrough asked who would be representing K&H or Austell Food Mart. Mr. Gordon Smith stated he would be representing K&H or Austell Food Mart. Mr. Kimbrough swore in both representatives.

Chief Starrett stated on January 18, 2008, Jean Delarme, an employee of K&H, did sell alcohol to a person under the age of twenty-one. On February 28, 2008, Jean Delarme pled guilty to the charge, and paid a fine of \$414.00. The history of alcohol sales at this location is listed below:

**UNDERAGE ALCOHOL SALES:
K&H or AUSTELL FOOD MART**

Cited -09/13/2004 – Gian Singh Mahil – Furnishing Alcohol to Minors

Cited - 04/07/2005 – Kiran Shrestha – Furnishing Alcohol to Minors

Cited - 01/18/2008 – Jean Delarme – Selling Alcohol to Minors

Mr. Kimbrough asked if anyone had any questions for Chief Starrett. No one did. Mr. Kimbrough asked Mr. Gordon Smith to state his name and proceed.

Mr. Smith stated Mr. Jean Delarme would give his account of what had occurred. Mr. Delarme stated he had been working for about two and a half years. We do have signs posted in the window for underage persons. Mr. Smith always tells me to ask for proper I.D. I know what the law is and I know what the consequences are. I do understand. It is my fault and I have made a mistake. We all make mistakes and I am asking you for consideration and some kind of probation. Please, I am only a human being and we all make mistakes. Mr. Smith tells me every morning to ask for license.

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Mayor Jerkins stated what you do not understand is when you sell to a minor and they drink alcohol and run the risk of killing someone while drinking and driving this is not something the Council takes lightly because this store has been cited before. When you make mistakes like this you have to understand how serious the consequences may be. Mr. Delarme stated he wanted to ask the Council if they can put this off until I can get counsel. Mayor Jerkins stated, no, you have already had three (3) months to get counsel and you haven't yet. Mr. Kimbrough asked Mr. Delarme if he was still working there and Mr. Delarme stated, no, he wasn't. Mr. Delarme stated he understands it was a serious matter. Mayor Jerkins stated, yes, it is any time you have a privilege license which means the Council can take it away at any time. Mr. Gordon Smith stated since he had been involved he has installed a cash register which has a date system on it which it will not open the drawer if the date is not correct and will identify an underage person. I have signs in the windows and I am fighting a cancer situation and perhaps I have not been as attentive as I should have been. By the same token the location has had some disjointed features. I am in the final stages of a major oil company obtaining a lease over a period of time and they will put in signs and make it a better place. Because of the posture of the location kids think they can come in and purchase beer and we want to upgrade this. Mr. Delarme stated during that time Mr. Smith was getting treatment for his cancer. Mayor Jerkins stated I am sorry you are having health problems but this is a different issue. Mr. Smith stated, yes, it is a different issue but one of attention and allowing someway to have a location there which is managed by a major oil company. We would certainly like the opportunity to do that. Ms. Boyd asked how long Mr. Smith has owned the store. Mr. Smith stated a year and a half. Ms. Boyd asked Mr. Smith if he was involved in the store before the year and a half and who you purchased the store from. Mr. Smith stated he purchased the store from Rosa Sanchez. Mayor Jerkins asked, what does Sam have to do with the store? Mr. Smith stated Sam is difficult and he has no authority. With this new lease signed he will have no privileges. Mayor Jerkins asked, but he is still involved in the store? Mr. Smith stated, yes, in the decision making. Mayor Jerkins stated, but he is still tied in with the store and has been that way since the year 2000, about eight years. Sam was there when you came, right? Mr. Smith stated, yes, he was and holds the lease. We are in the process of transferring the lease agreement. Ms. Boyd asked who the lease would be transferred to. Mr. Smith stated it would be transferred to Mountain Express Oil Company which is a Marathon.

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Ms. Boyd asked Mr. Smith do you own the store, or does Sam or Rosa own the store? Mr. Smith stated Rosa does not own the store. Mr. Smith stated he had invested a lot of money in the business and therefore he owned the business. I have been unable to attend to the store as I should. Mr. Kimbrough asked Mr. Smith if he was leasing that location from Sam. Mr. Smith stated, no, he wasn't but Sam has the lease on the location. Mayor Jerkins stated Sam is a partner. Mr. Smith stated Sam is an independent contractor. Ms. Reagan asked Mr. Smith when he became involved in the store was he aware of the history of it. Mr. Smith stated, yes, he was aware of the severity of the problem. Mr. Kimbrough asked if anyone had questions at this time. No one did. Mr. Kimbrough stated he would like to close the public hearing for K&H or Austell Food Mart at this time. Mr. Kimbrough turned the meeting over to Ms. Reagan.

Ms. Boyd stated she would like to understand the suspension further. I understand that as of January 1, 2009, he can renew his Privilege License. At that time, Mayor and Council can make another decision to let them renew their license. Ms. Reagan stated, yes, we can. Ms. Boyd stated she would like to do this tonight. Mayor Jerkins stated you cannot deny anything unless someone proposes something. Ms. Reagan stated the license is valid until December 31, 2008. Ms. Boyd asked if he could sell any more beer or wine. Mr. Thomas stated, no, he cannot sell any alcohol because he is suspended. Mayor Jerkins stated the alcohol part would be closed down tonight. Mayor Jerkins stated to Mr. Smith your license has been suspended till the end of the year. All the alcohol has to be locked up and the State has to pickup the alcohol. Mayor Jerkins asked Chief Starrett to please follow-up and make sure the alcohol is secure and locked up.

Ms. Reagan moved to follow the recommendation of the Police Committee to suspend the Privilege License of Austell Food Mart located at 5184 Austell Road, Austell, GA, 30106, owned by Gordon Smith until December 31, 2008. Seconded by Mr. Green. Motion passed (6-0).

D. Underage Alcohol Sales – South Cobb Package

Ms. Reagan stated she would turn this over to Mr. Kimbrough for a public hearing. Mr. Kimbrough stated at this time he would call for a public hearing for Underage Alcohol Sales for South Cobb Package.

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Mr. Kimbrough asked who would be speaking on behalf of the City of Austell? Chief Starrett answered he would. Who would represent South Cobb Package? Livingston Raymond and James Raymond answered they would speak. Mr. Kimbrough swore in all parties concerned.

Chief Starrett stated the subject Basil Sparks, an employee of South Cobb Package, on January 18, 2008, did sell alcohol to a person under the age of twenty-one. On February 28, 2008, Basil Sparks pled guilty to the charge, and paid a fine of \$414.00. The history of alcohol sales at this location is listed below:

SOUTH COBB PACKAGE

Cited – 09/13/2004 – Talvan Singh – Furnishing Alcohol to Minors

Cited – 05/13/2005 – Whitney Grogan – Selling Alcohol to Minors

Cited- 05/13/2005 – Djuan White – Selling Alcohol to Minors

Cited- 05/13/2005 – Kuldip Bhattal – Selling Alcohol to Minors

Cited- 04/28/2008 – Basil Sparks – Selling Alcohol to Minors

Mr. Kimbrough asked if anyone had any questions of Chief Starrett. No one did.

Mr. Kimbrough asked Mr. Livingston Raymond to please come forward and state his name. Mr. Raymond stated his full name and stated James Raymond is my brother. Mr. Raymond stated since they had taken over the store less than three weeks ago this is the first incident of this nature we have ever had. This is unfortunate we have had this incident. What I have done since this incident we have made some changes to make sure this doesn't happen again. I am going to ask from the Council to please give us a suspension or something because this was a onetime thing and to assure you it will never happen again. Mr. Kimbrough asked if anyone had any questions of Mr. Raymond. Ms. Boyd asked how long you have owned the store. Mr. Raymond stated since June of 2005. Ms. Reagan asked did you know you were in ninety day suspension when you bought the store. Mr. Raymond stated, no, he did not know.

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Ms. Boyd asked if he started selling alcohol as soon as you bought the store. Mr. Raymond stated right after we bought the store we waited till December 2005. Ms. Boyd stated, oh! you couldn't sell till December 2005 because you couldn't get a license. Mayor Jerkins asked if anyone had any questions. No one did. Mr. Kimbrough stated he would like to close the public hearing at this time.

Mayor Jerkins asked if anyone had any questions. Ms. Anderson asked if this was their first violation since they had owned the store. Mayor Jerkins stated, yes, it was. Ms. Reagan stated they bought the store and the store was on suspension. Ms. Anderson stated they never sold alcohol until that suspension was over, is that correct? So, it's three years without a violation. Mayor Jerkins stated about two and a half years. Ms. Anderson stated that's about seven (7) months. Isn't that a little bit severe? Mayor Jerkins stated the history of the store has a lot to do with this suspension. Mayor Jerkins stated they turn around and when they get in trouble they settle and they come back and sometimes it involves the same people. The county requirements are after two (2) violations they never let them open the store again. The City hasn't been as tough as some of them have been. Another thing the Police Department goes by and notifies them they will be checked four times a year. The State requires us to go by and check them. Because of automobile accidents by teenagers who are drinking and driving, we are responsible if they get out on the road and kill someone if they have purchased alcohol and they are underage. Ms. Boyd stated, if something happened and the child gets killed and they would come back and look at the history of the store and we would be liable also. Mayor Jerkins stated, yes, it would show bad judgment on us as well. Mr. Green stated the violations were in 2003, 2004, 2005 and 2008 and it's an ongoing thing with the store.

Ms. Reagan moved to follow the recommendation of the Police Committee to suspend the Privilege License of South Cobb Package Store located at 4805 Austell-Powder Springs Road, Austell, GA., until December 31, 2008. Seconded by Ms. Boyd. Motion passed (6-0).

**10. FIRE DEPARTMENT
SCOTT THOMAS, CHAIRPERSON
Tim Williams, Fire Chief**

A. Fire Report

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**11. PUBLIC WORKS DEPARTMENT
DAVID “BO” TRAYLOR, CHAIRPERSON
Randy Bowens, Director**

1. Recommendation and Approval:

A. Street Light – 5818 Dogwood Circle

Mr. Traylor stated it is the recommendation of the Public Works Committee to install one (1) standard street light at 5818 Dogwood Circle at a cost of \$13.65 per month.

Mr. Traylor moved to follow the recommendation of the Public Works Committee to approve the Street Light at 5818 Dogwood Circle. Seconded by Ms. Reagan. Motion passed (6-0).

B. Spring Street and Line Street Sidewalk Improvements

Mr. Traylor stated the sealed bids were accepted, opened, and read out loud at 10:00 A.M. Wednesday, April 23, 2008, for the Spring Street and Line Street Sidewalk Improvements project. This project will consist of the construction of approximately 700 linear feet of 5 foot sidewalk from Wilson Street to the new Sweetwater Creek Greenway Trail and approximately 1,600 linear feet of 5 foot sidewalk from Line Street to Bowden Street.

Following are bids that were received:

<u>BIDDER</u>	<u>BID AMOUNT</u>
K.M. Davis Contracting	\$217,044.00
D&H Construction Company	\$224,067.00
Butch Thompson Enterprises, Inc.	\$228,545.00
J.L. Murray and Associates, Inc.	\$252,450.00
BECAF Consulting	\$261,045.00
Tople Construction and Engineering	\$261,287.75
Lewallen Construction Company	\$263,450.00
Baldwin Paving Company	\$277,144.80
Chatfield Contracting, Inc.	\$313,349.59
JHC Corporation	\$355,495.00

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Mr. Traylor stated the Public Works Committee would like to recommend and award Butch Thompson Enterprises, Inc. in the amount of \$228,545.00. Funding for this project would come from the fiscal year 2008 and 2009 budgets, SPLOST Fund (325), account number 54.1400 (DOT projects). The reason I am making this recommendation for Butch Thompson, Enterprises, Inc., even though they are not the lowest bidder, is because they have done previous work for us and we know the quality of work they do. The two low bidders have never done sidewalks before and, therefore, this is how we made our decision. Seconded by Ms. Boyd. Motion passed (6-0).

12. PARKS DEPARTMENT

**RANDY GREEN, CHAIRPERSON
Jim Graham, Director**

- A. No Report

13. COMMUNITY DEVELOPMENT

**BEVERLY JAMES BOYD, CHAIRPERSON
Jim Graham, Director**

- A. Annexation and Rezoning request from Wayne Dean, Glennis Dutton, Connie Houze and Glenn Dean to annex the property located at 6014 Bowden Street and rezone from R-20 to R-10.

Ms. Boyd stated at this time I will turn this over to Mr. Kimbrough, City Attorney. Mr. Kimbrough stated he would like to do the Rezoning and then the Annexation. At this time we will call a Public Hearing for the rezoning of 6014 Bowden Street from R-20 to R10. Mr. Kimbrough asked who is here on behalf of the applicant? Ms. Glennis Dutton came forward and stated her name as well as Ms. Connie Houze. Mr. Kimbrough swore in both parties.

Ms. Dutton stated this was the home where they had grown up and there has been a house there since 1950 and it is in total disrepair and we would like to tear it down and build a new one. Our older brother will live in the new house. He has been there for almost sixty (60) years. Mayor Jerkins stated it would be a big improvement. Mr. Kimbrough asked if anyone had any questions and did anyone sign up for opposition.

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No one spoke in opposition. I would like to close the public hearing at this time for the request of rezoning of property located at 6014 Bowden Street by Wayne Dean, Glennis Dutton, Connie Houze and Glenn Dean from R-20 to R-10. Mr. Kimbrough turned the meeting over to Ms. Boyd.

Ms. Boyd moved to follow the recommendation of the Community Development Committee to approve the rezoning request from Wayne Dean, Glennis Dutton, Connie Houze and Glenn Dean to rezone the property located at 6014 Bowden Street, in LL94, parcel 8 of the 18th district, 2nd section of Cobb County from R-20 to R-10. Seconded by Mr. Thomas. Motion passed (6-0).

Mr. Kimbrough stated he would like to call for the public hearing for the Annexation of the property located at 6014 Bowden Street. The request made by Wayne Dean, Glennis Dutton, Connie Houze, and Glenn Dean to annex property on LL 94, parcel 8 of the 18th district, 2nd section of Cobb County. Mr. Kimbrough asked them to please state their name for this hearing. Ms. Glennis Dutton and Connie Houze stated their names and were sworn in by Mr. Kimbrough. Ms. Dutton stated she thought they were in the City of Austell already and when we started with all of this we were told we were not. So, we called the county and they said the lot was not big enough to build a house on although there had been a house there since 1950. Our attorney suggested we try to annex into the city. The middle of the road is like the city line or something. Mr. Kimbrough asked if anyone had any questions on the annexation. No one did. Mayor Jerkins asked if any opposition had signed up to speak. No one had. Mr. Kimbrough stated he would like to close the public hearing for annexation for property located at 6014 Bowden Street. I will turn the meeting back over to Ms. Boyd.

Ms. Boyd moved to follow the recommendation of the Community Development Committee to approve the Annexation of property located at 6014 Bowden Street. Seconded by Mr. Green. Motion passed (6-0).

Mayor Jerkins stated Cobb County had sent a letter and stated they didn't have any problem with this rezoning and annexation.

Ms. Boyd stated she was out looking at property today and there is a bank behind this property and it looks like some old pallets on the property. Ms. Dutton informed me it was property of George Bentley.

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So, I would like to see if we can get this cleaned up. I would suggest we contact his widow in reference to this matter. Mayor Jerkins stated he thought his son was handling everything. Ms. Boyd stated it looked bad and needed cleaning up.

B. Term Renewals for Members of the Planning & Zoning Commission and Board of Variance Appeals.

Ms. Boyd stated the Community Development Committee recommends approval of the following term renewals: They are as follows:

<u>Planning and Zoning</u>	<u>Term</u>	<u>New Expiration Date</u>
Don Foster	2 year	May 31, 2010
Bill Foster	2 year	May 31, 2010
George Beavers	2 year	May 31, 2010
Diane Evans	2 year	May 31, 2010
Trudie Causey	2 year	May 31, 2010
 <u>Variance Board</u>		
Ersa King	2 year	May 31, 2010
James Hardy	2 year	May 31, 2010
Lance Lamberton	2 year	May 31, 2010

Ms. Boyd moved to follow the recommendation of the Community Development Committee to approve the Term Renewals for Members of the Planning & Zoning Commission and Board of Variance Appeals. We also have other Board Members who have rotating years and they will not be all up all at the same time. Seconded by Mr. Traylor. Motion passed (6-0).

C. Authorization for the City of Austell to continue participation in the CDBG Program.

Ms. Boyd stated the Community Development Committee has received notice from the CDBG Program Office requiring authorization for the City of Austell's continued participation in Cobb County's CDBG Program. The City may vote to "automatically renew" or "not to participate".

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Ms. Boyd moved to follow the recommendation of the Community Development Committee to give authority to the Mayor to sign the automatically renewed participation form for the CDBG Program. Seconded by Mr. Green. Motion passed (6-0).

14. CITY ATTORNEY – DUPREE & KIMBROUGH

A. No Report

15. MAYOR'S REPORT

A. CMA MEETING

DATE:	MAY 13, 2008
TIME:	6:30 P.M.
LOCATION:	Powder Springs

16. ADJOURN

Ms. Boyd moved to follow the recommendation of Mayor Jerkins to adjourn. Seconded by Mr. Green. Motion approved (6-0).