

**MINUTES OF THE
REGULAR COUNCIL MEETING
CITY OF AUSTELL
AUGUST 4, 2008**

Present: Mayor Joe Jerkins
Kirsten Anderson
Randy Green
Virginia Reagan
David "Bo" Traylor

Absent: Beverly James Boyd
Scott Thomas

The regular meeting of the Mayor and Austell City Council was held on Monday, August 4, 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; Denise Soesbee, Finance Director; Tim Williams, Fire Chief; and Bob Starrett, Police Chief.

1. CALL TO ORDER

Mayor Jerkins called the meeting to order. Reverend Brian DeHart, of First United Methodist Church gave the Invocation, and Mayor Jerkins led the Pledge of Allegiance. Mayor Jerkins asked if any Council Member would like to add items to the Agenda. Mr. Traylor stated he would like to add 11-3E. – 2009 Local Assistance Road Program.

Ms. Reagan moved to follow the recommendation of Mayor Jerkins to approve items added to the agenda. Seconded by Mr. Green. Motion passed (4-0).

Mayor Jerkins presented Robert Woodard his 25 Year Service Plaque and Pin. Mayor Jerkins thanked Robert for his hard work, dedication and service for the City of Austell.

Mayor Jerkins stated he had a Proclamation for the MDA. He asked if anyone was present to accept the proclamation. Betsy Grumm was present to accept the proclamation. Mayor Jerkins read the Proclamation and asked a motion be made to accept the proclamation.

Mr. Traylor moved to follow the recommendation of Mayor Jerkins to accept the MDA Proclamation. Seconded by Ms. Reagan. Motion passed (4-0).

Ms. Grumm thanked the City of Austell for raising money for the MDA during the last ten years .The Fire Department last year raised \$5, 425.00 and this year we hope you can raise \$5000.00 to \$6,000.00 and this is to help over two hundred families that actually live in Cobb County.

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The money does stay local. Ms. Grumm asked if photos could be made at this time of the Mayor and Fire Department.

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 \$2,095.06
- C. Approve Minutes of Regular Meeting July 7, 2008

Ms. Reagan moved to follow the recommendation of Mayor Jerkins to approve the Consent Agenda. Seconded by Mr. Traylor. Motion passed (4-0).

4. EXCEPTION TO CONSENT AGENDA

5. CITIZENS REPORT

Mayor Jerkins asked if anyone would like to speak to Mayor and Council. Ms. Carolyn Newell stated she would like to speak. Ms. Newell stated she lived on Stovall Road and she said my husband could not be here to speak, although he wanted to so, I will use his words. The first time we came here was not to block the development behind our property but to maintain the integrity of our property. That would affect three to four lots in our entire neighborhood. It was our understanding the house at 2125 Hydrangea Lane was supposed to be a single-story structure and it is not. There was supposed to be a twenty to twenty-five foot buffer from our fence to be left open to nature. The deer did use that area before the privacy fence went up. This is part of this resident's private fence that has covered this buffer zone. I do not know the ins and outs of the process but when the first plat was approved the buffer zone was on it and the single level structure but when it was approved those were left off. We do not understand how the process works and why the neighbors were not included. We had one understanding at the original meeting when the development was approved and now we have a fence backed up to our fence. Basically, it was a four story house because the dirt was put in two stories high and then a two story house was put there. There is a fence there and I can see my neighbor's back porch. We feel like we were not treated right in this and we still don't feel like there is any privacy on the property and we just wanted the Mayor and Council to know that. Mayor Jerkins stated he would like to pull the minutes on this and ask if was Cuerton Woods Development. Mayor Jerkins stated it would be Phase II in Cureton Woods. Mr. Bowens confirmed it was Phase II.

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Mayor Jerkins stated he remembered the developer stated there was to be a fence but he couldn't remember a buffer but it should be in the minutes. I don't remember them saying it was to be one story homes built. Ms. Newell stated it could have come straight from the developer. Mayor Jerkins stated he didn't believe the Council told them it had to be one story homes. Ms. Newell stated when she and the other citizens came to the meeting to see what was going to happen on the property behind mine and the Payne's property was supposed to be one level homes. Mayor Jerkins asked Carolyn Duncan, City Clerk to please pull the minutes and check on this and Mayor Jerkins told Ms. Newell to please leave her phone number and we will get in touch with you. Mayor Jerkins thanked Ms. Newell.

**6. GAS SYSTEM REPRESENTATIVE
JOE JERKINS**

Mr. Kimbrough, City Attorney stated he attended the meeting almost two weeks ago. We did the minimal routine of adopting the gas schedule for the billing period. The good news is that gas prices have been going down the last couple of days.

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

A. Financial Report

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

A. Fine Change as per Senate Bill 350

Ms. Anderson stated during the 2008 Legislative Session, OCGA. 40-5-20 was amended. A copy of the change is included in this material. As a result of the change, there is a mandatory minimum fine of \$500.00 for Driving Without A License in the State of Georgia. Currently, we charge \$306.00 for that offense, and we are asking Council to approve the Legislative change for the City of Austell.

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The General Administration Committee recommends a fine of \$505.00, which includes the \$5.00 charge for the Academy, for the offense of Driving Without a License, OCGA 40-5-20.

Ms. Anderson moved to follow the recommendation of the General Administration Committee to approve a fine of \$505.00, which includes the \$5.00 charge for the Academy, for the offense of Driving Without a License, OCGA 40-5-20. Seconded by Ms. Reagan. Motion passed (4-0).

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

- A. Police Report
- B. Code Enforcement Report
- C. Dixie Wrecker Service – Update

Ms. Reagan stated she would turn this over to Chief Starrett to discuss. Chief Starrett stated at a previous Council meeting a hearing was held to discuss Dixie Wrecker overcharging customers on tow bills from vehicles impounded by the Austell Police Department. This information is to update the Council on what is taking place at this time.

The owner told Chief Starrett he is sending a letter to everyone whose vehicle he towed for the Austell Police Department, from January 1, 2008, up to July 1, 2008. The letter will state that they should contact him about their bill. We have provided them with names and addresses. Chief Starrett has not received a copy of the letter.

- D. Willie's Wrecker Service – Update

The owner told Chief Starrett he is sending a letter to everyone whose vehicle he towed for the Austell Police Department, from January 1, 2008, up to July 1, 2008. The letter will state that they should contact him about their bill. We have provided them with names and addresses. Chief Starrett has not received a copy of the letter.

- E. Nana's Fish and Wings – Alcohol License Request

Ms. Reagan stated an application for a Privilege License has been received from Nana's Fish-N-Wings. located at 5770 Veteran's Memorial Highway, Austell, GA.

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This application is for consumption on the premises for malt beverages and wine. This information has been presented at a previous Council meeting. The business is under the required distance (too close) to a Day Care Center which teaches Pre-K classes, if that Day Care Center is to be classified as a "School". This was carried over to this Council meeting, for more research.

The Owner's of Al's Package Store, husband of Nana from Nana's Wings, brought to the Police Department a copy of the Alcohol Beverage Laws and Regulation's section pertaining to the term "school building". A copy of that Code Section is attached for your review.

Ms. Reagan asked if anyone had been back out there to measure again. Chief Starrett answered, no, they had not. Mayor Jerkins stated we went by and looked at the location. Mayor Jerkins stated Mr. Kimbrough, City Attorney was going to do some research on it. Mr. Kimbrough stated he did some research on this and to my understanding they do offer a Pre-K Program which has to be State certified in order to teach the Pre-K Program. There have been a couple of cases in the Georgia Supreme Court discussing the issue weather a kindergarten would be considered a school that would fall into that statue that would prohibit the sale of these items in regards of that property, not the building, but the property itself. Basically, the case as a whole is that a kindergarten is a school. This is a Pre-K but the definition of a kindergarten the Georgia Supreme Court used in 1982 case *Risser vs. the City of Thomasville*, 248, GA 866 (1982). They defined kindergarten as a school a division of a school below the first grade usually serving people of the four to six age group and fostering their natural growth and social development through construction play, with blocks, clay, crayons, group games, songs and exercise which is what Pre-K defines. According to the Georgia Supreme Court adopting those definitions I would say this would fall into what a school is. They did make some decisions between just nursery or daycare centers and a place like this which provides that type of additional program or baby sitting/daycare type of facility.

Ms. Reagan moved to follow the recommendation of the Police Committee to deny this request due to close proximity of a school. Seconded by Mr. Green. Motion passed (4-0).

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F. Fat Cats – Extending Hours Request

Ms. Reagan stated the owner, Greg Estes, of Fat Cats has requested Council extend the hours of alcohol sales. Mr. Estes states that Cobb and Douglas County allows alcohol to be sold later than Austell's required hours of operation, and he is losing business due to this.

Greg Estes is requesting Council vote to extend these hours from Monday – Thursday to 2:55 A.M. on each day, allowing him one more hour Monday – Thursday, and two and half more hours on Sunday.

A copy of Cobb and Douglas County's hours allowed for alcohol consumption is attached, as well as the City of Austell's requirements.

Ms. Reagan moved to follow the recommendation of the Police Committee to approve and extend the hours from Monday through Thursday from 7:00 A.M. until 2:55 A.M. Seconded by Mr. Green. Mayor Jerkins asked if anyone had any questions. Ms. Anderson stated it was brought up at the pre-agenda meeting that the surrounding areas are allowed to serve longer and that's why they wanted us to extend this. I suggest since they did bring up Cobb County's statues as many other things such as animal control enforcement, water, and we just changed our wrecker service fees so that they would be in line with Cobb County. I suggest we adopt the Cobb County's requirements for hours of business operation and serving. This suggestion comes because it was brought up that it would be advantageous for people in the surrounding counties if we did not serve they would go to other counties and they would lose business because they would be going to establishments in Cobb County as opposed to going to Fat Cats because they would close early. This would alleviate that because we would have the same code that Cobb County would have. I suggest we stay in line with the rest of the things we do for code and adopt the code for business hours. Motion passed (3-1) Ms. Anderson voted against.

**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. Information Only:

A. Purchase of Sewer Auger

Mr. Traylor stated at the end of the Fiscal Year 2008 there were designated funds within the Sewer division budget that were used to purchase a new sewer auger. The existing auger has reached its useful life. This equipment is necessary to clear sewer main and service laterals. The copy of the bill is attached which is \$7765.00.

B. Proposed Road Name Change

Mr. Traylor stated a request has been submitted to our office to change the name of Hotel Street, between Line Street and Center Street, to Calebs Crossing. Notification letters will be mailed to each affected resident. If no responses are received we will ask the Mayor and City Council for approval to rename this street at the September 8, 2008 City Council meeting.

2. Recommendation and Approval:

A. Street Lighting for Spring Street Park

Mr. Traylor stated the Public Works Committee recommends approval to install five (5) 150-watt HPS cobra lights along Spring Street and three (3) 400-watt HPS flood lights facing the parking lot for the new walking trail. Lights would be installed on existing poles. The monthly lease cost would be \$134.72.

Mr. Traylor moved to follow the recommendation to approve the Street Lighting for Spring Street Park. Seconded by Mr. Green. Motion passed (4-0).

C. Purchase of Stormwater Testing Equipment

Mr. Traylor stated the Public Works Committee would like to request the purchase of stormwater testing equipment. This equipment will be used for our water quality monitoring program.

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Following are two quotations that were received:

Aquatic Eco-Systems, Inc.	\$2,773.35
AMJ Environmental	\$2,871.00

Mr. Traylor moved to follow the recommendation of the Public Works Committee to approve this request and the purchase to be made from Aquatic Eco System, Inc. in the amount of \$2,773.35. Funding will come from the Stormwater Management division (505/4320), Small Equipment (53.1600). Seconded by Ms. Reagan. Motion passed (4-0).

D. 2009 Local Assistance Road Program

Mr. Traylor stated the Public Works Committee recommends the approval of the following list to be submitted for the 2009 Local Assistance Road Program.

Road	Beginning	Ending At
1 Shannon Drive	Fessenden Avenue	Old Marietta Road
2 Windy Lane	Owens Drive	Edith Street
3 Old Marietta Road	Joe Jerkins Boulevard	Fessenden Avenue
4 Sweetwater Street	Old Marietta Road	Austell-Powder Springs Road

These streets were approved by Mayor and City Council on November 5, 2007. We are asking for re-approval as a formality to have a current approval date for documentation required by the Georgia Department of Transportation.

Mr. Traylor moved to follow the recommendation of the Public Works Committee to approve the 2009 Local Assistance Road Program. Seconded by Ms. Reagan. Motion passed (4-0).

Mr. Traylor announced a Committee Meeting is scheduled for August 13, 2008 at 2:30 P.M. at the Threadmill Complex.

**12. PARKS DEPARTMENT
RANDY GREEN, CHAIRPERSON
Jim Graham, Director**

A. No Report

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**13. COMMUNITY DEVELOPMENT
BEVERLY JAMES BOYD, CHAIRPERSON
Jim Graham, Director**

A. No Report

14. CITY ATTORNEY – DUPREE & KIMBROUGH

A. No Report

15. MAYOR'S REPORT

A. CMA MEETING

DATE:

NO MEETING

TIME:

LOCATION:

B. MDA Proclamation

Mr. Green moved to follow the recommendation of Mayor Jerkins to approve the MDA Proclamation. Seconded by Ms. Reagan. Motion passed (4-0).

16. ADJOURN

Ms. Reagan moved to follow the recommendation of Mayor Jerkins to adjourn the meeting. Seconded by Mr. Green. Motion passed (4-0).