

May 23, 2019

STATE OF ALABAMA,  
LIMESTONE COUNTY,  
CITY OF ATHENS.

The City Council of the City of Athens, Alabama met in regular session at the Athens Municipal Building, 200 Hobbs Street West in Athens on May 23, 2019, at 4:30 p.m. The meeting was called to order by Councilman Harold Wales, President of the Council. Upon roll call, the following were found to be present: Councilmembers Harold Wales, Frank Travis, Wayne Harper, Chris Seibert and Joseph Cannon. Mayor Marks led the Pledge of Allegiance. Annette Barnes, City Clerk, was present and recorded the minutes of the meeting. Frank Travis offered the invocation. The Chairperson stated that a quorum was present and that the meeting was open for transaction of business.

The Chairperson stated that the Minutes of the May 13, 2019 City Council Meeting had been submitted for approval. Councilman Cannon moved that the reading of the Minutes be suspended and that the Minutes be approved as recorded. The motion was seconded by Councilman Seibert and was unanimously carried. The Chairperson stated that the Minutes of the May 13, 2019 City Council Work Session Meeting had been submitted for approval. Councilman Cannon moved that the reading of the Minutes be suspended and that the Minutes be approved as recorded. The motion was seconded by Councilman Seibert and was unanimously carried.

Mayor Marks introduced Kristi and Abbey Williams, whose son and brother, Eli William, lost his battle with brain cancer in 2017. Abbey addressed the Council concerning her work toward achieving her Gold Award, the highest award available for girls in Scouting, equal to the Eagle Scout award in the Boy Scouts. Her project is developing and implementing a community engagement program directed at children ages 5 to 13 to create a positive early interaction with law enforcement. She stated she hopes to fund her program designed to “build bridges” between police and youth by applying for grant funding.

A public hearing was held concerning an appeal of denial of a request for an alcoholic beverage license for Daniel Espinoza, d/b/a Sabor Latino Taqueria, Inc..

Council President Wales opened the public hearing.

Council President Wales started the public hearing by giving everyone a little background on the issue by stating that Daniel Espinoza, d/b/a Sabor Latino Taqueria, Inc. applied for an on-premises alcoholic beverage license for a restaurant to be located in one of the suites in the Athens Plaza Shopping Center located on Hobbs Street and Highway 31. That request was denied by the Public Works Department because it said the location didn’t satisfy the requirements of the City’s alcohol ordinance.

The City’s ordinances generally require that a business selling alcoholic beverages be located at least 500 feet from a church building (*i.e.*, defined as a structure set apart by a church for public worship). Public Works denied the license because it was less than 500 feet from the Cultivate Church, which is located in the same shopping center. There are a few exceptions to the 500 feet rule in the ordinance, but Public Works didn’t think any of them applied.

The City’s alcohol ordinance allows a business owner to appeal Public Work’s decision to the City Council if it believes that Public Works’ decision was incorrect. Mr. Espinoza, represented by Mr. Richard Chesnut, its lawyer, appealed.

Council President Wales stated that the purpose of the public hearing was to allow Mr. Espinoza to address the Council, present his reasons for the appeal, and present any evidence that he wants to present. The City Council would then determine whether or not Public Works correctly applied the City’s ordinances in this situation after hearing the appeal.

Mr. Wales then asked the Council members if they were able to make an impartial decision in the matter based solely on the matters discussed at the hearing. He stated that any member that was unable to act in that way, for whatever reason, could asked to be excused. There being none, Mr. Wales proceeded.

A copy of the alcohol license application, with the denial on it, as well as a copy of the appeal was given to each Council member, along with a copy of an excerpt of the City’s alcohol ordinance dealing with the distance limitations and a church building.

Council President Wales explained that he would allow Mr. Espinoza to address the Council and present whatever evidence and argument that he had. Then, he would allow any Council member to ask Mr. Espinoza questions, if they

wanted to do so. He would then permit a representative from the Public Works Department to address the Council and then allow any Council members to ask questions. Any member of the public would then be permitted to address the Council concerning this issue.

Mr. Wales noted that the public hearing was not a court hearing and that although he mentioned evidence, legal rules of evidence did not apply and that he would not allow any cross-examinations of the parties.

As Council President, Mr. Wales stated that if needed, he would use his discretion to limit or disallow certain testimony or evidence as he deemed appropriate. He recognized Shane Black as the City Attorney, and that he may call on him as needed throughout the process.

Council President Wales explained that when the public hearing is concluded, the City Council may go into an executive session in order to consider what action should be taken and that Council members should not give their opinions at this point in the process, but wait until after they have deliberated this issue in executive session.

He then asked if there were any question. There being none, the Council proceeded with the public hearing.

Mr. Wales then gave a representative for Mr. Espinoza permission to address the Council.

Mr. Richard Chesnut, the attorney for Mr. Espinoza, addressed the Council on Mr. Espinoza's behalf. He argued that the 500 foot rule which had been cited in the Public Works Department's denial of the alcohol license doesn't apply in this case. He stated that although church services are being held in the location adjoining Mr. Espinoza's proposed restaurant, Sabor Latino Taqueria, since the structure is not a free-standing, separate church building, the rule that there must be at least 500 feet between the location where church services are held and any business selling alcohol is not applicable. Mr. Chesnut read the relevant excerpt from the City's alcohol ordinance.

Council President Wales asked the Council if they had any questions.

Council members Seibert and Cannon inquired as to when the restaurant space was leased and whether Mr. Espinoza had any knowledge that a church intended to locate next door. Mr. Espinoza's daughter, Emma and grandson, Louis, helped to translate the Council's questions and Mr. Espinoza's responses. Mr. Espinoza indicated (through translation) that he signed the lease for his restaurant in August, 2018 and was not aware that the church (Cultivate Church) would be located next door until October, 2018.

Mr. Wales then gave Public Works permission to address the Council.

Erin Tidwell with the City's Building Department then addressed the Council. She stated that the alcohol license application was denied based on the 500 foot rule applicable in a zoned business district location. She stated that a strict interpretation of the City's zoning and alcohol ordinance would recognize the Cultivate Church as a church building of which the 500 foot rule would apply, therefore, the application was denied.

Council President Wales asked the Council if they had any questions.

No further questions were addressed to Ms. Tidwell.

Mr. Chesnut did request an opportunity to respond, and again, took issue with the applicability of the 500 foot rule to his client's alcohol license application.

Mr. Wales then state that this was a public hearing and asked if any member of the public would like to address the City Council on this issue.

Scott Marshall, 410 East Washington Street, Athens, addressed the Council in support of overturning the denial of this application. He stated that there should not be the same distance rule in shopping centers that allow church facilities to lease space.

The City Council then convened into executive session to consider what action should be taken on the appeal. The Alabama Open Meetings Law allows the council to go into executive session to discuss and deliberate evidence and testimony presented during a public hearing such as this one.

Council President Wales asked for a motion to convene into executive session to deliberate the matter. Councilman Harper made a motion to go into executive session at approximately 5:30 p.m. The motion was then seconded by Councilman Seibert. City Clerk, Annette Barnes, then called roll. Councilman Harper's motion was unanimously approved.

The Council came out of executive session at approximately 5:45 p.m.

Mr. Wales announced that their deliberation was complete and that they were prepared to vote. He asked for a motion.

**Councilman Harper introduced the following resolution:**

**RESOLUTION NUMBER 2019 - 1618**

**A RESOLUTION REVERSING THE PUBLIC WORKS DEPARTMENT'S DETERMINATION TO DENY DANIEL ESPINOZA, D/B/A SABOR LATINO TAQUERIA, INC.'S ALCOHOLIC BEVERAGE LICENSE APPLICATION**

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**WHEREAS**, Daniel Espinoza, d/b/a Sabor Latino Taqueria, Inc. ("Espinoza") seeks an on-premises alcoholic beverage license for a restaurant to be located at 100 US Highway 31 South, Suite M, and requested the City's approval for the sale of alcoholic beverages at that location;

**WHEREAS**, the convenience store is located in a B-2 conventional zoning district;

**WHEREAS**, the Public Works Department denied that request due to the restaurant's proximity to a church building, and, as permitted by the City's ordinances, Espinoza appealed that determination to the City Council;

**WHEREAS**, the Athens City Council has held a public hearing to fully and fairly hear and consider Espinoza's appeal;

**WHEREAS**, the City Council finds and determines that § 6-34(e) of the City Code does not prohibit the sale of alcoholic beverages at Espinoza's restaurant located at 100 US Highway 31 South, Suite M, because both the structure in which the restaurant is located and the structure in which Cultivate Church is located, are parts of the same structure under the same ownership, and thus, since the entire structure is not kept for purposes of public worship, it is not a "church building" and the § 6-34(e) rule does not apply; and

**WHEREAS**, the City Council finds and concludes that the aforementioned ordinances are valid exercises of the municipal police power by the City Council.

**THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA** while in regular session on May 23, 2019 at 5:30 p.m., that the Public Works Department's denial of an alcoholic beverage license for a restaurant located at 100 US Highway 31 South, Suite M is reversed, and that Espinoza's appeal is granted.

**ADOPTED** this the 23<sup>rd</sup> day of May, 2019.

/s/ Harold Wales  
PRESIDENT, CITY COUNCIL,

CITY OF ATHENS, ALABAMA

The public hearing was closed.

**Councilman Seibert introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve travel expenses as follows:

Frank Travis	Alabama League of Municipalities Annual Conference Mobile, Alabama May 3 – 7, 2019	\$ 413.64
Wayne Harper	Alabama League of Municipalities Annual Conference Mobile, Alabama May 3 – 7, 2019	\$ 1,243.65
Chris Seibert	Alabama League of Municipalities Annual Conference Mobile, Alabama May 3 – 7, 2019	\$ 881.56

The motion was seconded by Councilman Travis and was unanimously carried.

**Councilman Seibert introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to reappoint Wade Batts to the Houston Memorial Library Board of Directors for another 4 year term, expiring June 11, 2023.

The motion was seconded by Councilman Travis and was unanimously carried.

**Councilman Seibert introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to appoint Frank Crafts to the Historic Preservation Commission for a three year term, expiring May 23<sup>rd</sup>, 2022.

The motion was seconded by Councilman Travis and was unanimously carried.

**Councilman Seibert introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve the travel/education expenses for the following Gas Department personnel:

Mason Matthews	ANGA Site Visit Amelia Island, FL March 16-19, 2019	\$215.00
Mason Matthews	APGA Governmental Relations Conference Operations & Safety Alexandria, VA Mary 5-8, 2019	\$993.57

Max Fisher

Trimble Workshop  
Nashville, TN  
May 6-8, 2019

\$575.82

The motion was seconded by Councilman Travis and was unanimously carried.

**Councilman Seibert introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to set a Public Hearing for the regular meeting of June 24, 2019 to review the request from Jackie Perry II, Lisa Swindall, and Dennis Perry to rezone +/- 32 acres from an R-1-1 Single Family Low Density Residential District to an R-1-3 Single Family High Density Residential District, located +/- 1500 feet west of the intersection of Newby Road and Mooresville Road on the northern side of Newby Road.

The motion was seconded by Councilman Travis and was unanimously carried.

**Councilman Seibert introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to set a Public Hearing for the regular meeting of June 24, 2019 to review the request of Doris W. French Family Trust and French Farms Pavilion, LLC to rezone +/- 51.7 acres from an R-1-3 Single Family High Density Residential District, B-1 Neighborhood Business District, and C-PUD Conventional Planned Unit Development to an R-2 Multi-family District located on the northwest corner of Brookhill Drive and French Farms Boulevard; and request for approval of a Master Development Plan for Brookhill Apartments located on the northwest corner of Brookhill Drive and French Farms Boulevard.

The motion was seconded by Councilman Travis and was unanimously carried.

**Councilman Seibert introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to reschedule the regular meeting for June 10<sup>th</sup>, 2019 to June 3<sup>rd</sup>, 2019, at the same place and time.

The motion was seconded by Councilman Travis and was unanimously carried.

**Councilman Harper introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to authorize the Electric Department Manager, contingent upon final FY 20 budget approval, to award a contract for FY 2020 Line Clearance and Tree Maintenance – Hourly Labor and Equipment to Trees, LLC.

The motion was seconded by Councilman Seibert and was unanimously carried.

**Councilman Harper introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to authorize the Electric Department Manager, contingent upon final FY 20 budget approval, to award contracts for FY 2020 Line Clearance and Tree Maintenance as follows:

Lewis Tree Service, Inc. - Total for all circuits: \$498,435.00

1. Ardmore 244: \$150,524.00

2. Athens Primary 264:	\$208,368.00
3. Athens District 264:	\$ 30,262.00
4. Peach Orchard 224:	\$ 79,294.00
5. Peach Orchard 254:	\$ 29,987.00

Trees, LLC. – Total for all circuits: \$792,200.46

1. Ardmore 264:	\$131,882.17
2. Ardmore 274:	\$144,246.87
3. Athens Primary 294:	\$123,482.65
4. Athens District 254:	\$ 48,956.35
5. Ardmore 234:	\$181,286.19
6. Breeding Park:	\$104,673.68
7. South Limestone 244:	\$ 57,672.55

The motion was seconded by Councilman Cannon and was unanimously carried.

**Councilman Cannon introduced the following resolution:**

**RESOLUTION NUMBER 2019 - 1619**

**WHEREAS**, the Alabama Community Development Block Grant Program has been established to assist local governments in meeting community development and housing needs consistent with the objectives as set forth in Title I of the Housing and Community Development Act of 1974, as amended; and

**WHEREAS**, the City of Athens has received a Community Development Block Grant to construct drainage improvements in the First Avenue Neighborhood.

**THEREFORE**, in accordance with CDBG regulations the City of Athens advertised and awarded on February 25, 2019, a contract to Hawkins Groundwork, Incorporated, to construct the above referenced drainage improvements.

**WHEREAS**, the contract award amount shown in the February 25, 2019 Resolution #2019-1609 awarding this contract to Hawkins Groundwork, Incorporated was incorrect;

**NOW, THEREFORE**, be it resolved that the Athens City Council is amending Resolution #2019-1609 to reflect the correct contract award amount to Hawkins Groundwork, Incorporated from \$326,561.50 to the correct contract award amount of \$372,995.50 to construct the above referenced drainage improvements.

**READ AND ADOPTED** this the **23rd** day of **May 2019**.

/s/ William R. Marks  
MAYOR, CITY OF ATHENS, ALABAMA

ATTEST:

/s/ Annette Barnes  
CITY CLERK, CITY OF ATHENS, ALABAMA

Councilmember Harper moved that unanimous consent be given for immediate consideration of and action on said resolution, which motion was seconded by Councilmember Travis, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Travis, Cannon and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said resolution had been unanimously carried. Councilmember Cannon thereupon moved that the resolution be finally adopted, which motion was seconded by Councilmember Travis and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Travis, Cannon and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said resolution had been unanimously carried.

**Councilman Cannon introduced the following resolution:**

**RESOLUTION NUMBER 2019 - 1620**

**WHEREAS**, the City of Athens has received a Community Development Block Grant to construct drainage improvements in the First Avenue Neighborhood; and

**WHEREAS**, the City of Athens has awarded the drainage improvement phase of this project to Hawkins Groundwork, Incorporated; and

**WHEREAS**, the drainage improvement phase of this project is nearing completion and the City of Athens is prepared to award the street resurfacing phase of this project; and

**NOW, THEREFORE**, be it resolved that the Athens City Council is authorizing the Mayor to enter into a contract with Reed Contracting to complete the street resurfacing portion of this project;

**THAT**, Reed Contracting will complete the street resurfacing portion of this project in accordance with unit prices provide as part of the city's annual street resurfacing bid and the estimated cost of the resurfacing portion of this project is \$49,225.00 based on estimated quantities provided the City's Consulting Engineer.

**READ AND ADOPTED** this the **23rd** day of **May 2019**.

/s/ William R. Marks

MAYOR, CITY OF ATHENS, ALABAMA

ATTEST:

/s/ Annette Barnes

CITY CLERK, CITY OF ATHENS, ALABAMA

Councilmember Seibert moved that unanimous consent be given for immediate consideration of and action on said resolution, which motion was seconded by Councilmember Harper, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Travis, Cannon and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said resolution had been unanimously carried. Councilmember Cannon thereupon moved that the resolution be finally adopted, which motion was seconded by Councilmember Seibert and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Travis, Cannon and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said resolution had been unanimously carried.

**Councilman Cannon introduced the following resolution:**

**RESOLUTION NUMBER 2019 - 1621**

**WHEREAS**, the City of Athens has received a Community Development Block Grant to construct drainage improvements in the First Avenue Neighborhood; and

**WHEREAS**, the City of Athens has awarded the drainage improvement phase of this project to Hawkins Groundwork, Incorporated; and

**WHEREAS**, the drainage improvement phase of this project is underway; and

**WHEREAS**, the city has encountered some additional drainage improvements that must be constructed as part of this project;

**WHEREAS**, the total cost of the additional drainage improvement is estimated to be \$48,816.25, which is more than 10% of the contract award amount;

**WHEREAS**, the proposed change order provided by Hawkins Groundwork has been reviewed by the Athens City Council and their Consulting Engineer, and

**NOW, THEREFORE**, be it resolved by the Athens City Council that the Mayor, is hereby authorized to execute the above referenced change-order which will increase the original amount of Hawkins Groundwork contract from \$372,995.50 to \$421,811.75 to complete the construction of drainage phase of the above referenced project.

**READ AND ADOPTED** this the **23rd** day of **May 2019**.

/s/ William R. Marks

MAYOR, CITY OF ATHENS, ALABAMA

ATTEST:

/s/ Annette Barnes

CITY CLERK, CITY OF ATHENS, ALABAMA

Councilmember Seibert moved that unanimous consent be given for immediate consideration of and action on said resolution, which motion was seconded by Councilmember Travis, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Travis, Cannon and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said resolution had been unanimously carried. Councilmember Cannon thereupon moved that the resolution be finally adopted, which motion was seconded by Councilmember Travis and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Travis, Cannon and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said resolution had been unanimously carried.

**Councilman Seibert introduced the following resolution:**

### **RESOLUTION**

BE IT RESOLVED that:

1. The term of the City Prosecutor expired on September 30, 2018, and Attorney Patrick Chesnut has continued to serve the City in that role in the interim period pending the City Council's appointment of a successor. Attorney Chesnut has indicated that he will not seek reappointment for another term and will return to the full-time private practice of law. The City Council extends its sincere gratitude for his service, and his term will conclude on July 31, 2019.

2. Lucas Beaty is appointed as City Prosecutor, effective on August 1, 2019, for a term to be effective until November 1, 2020. (At the conclusion of such term, it is the council's present intention to resume two-year terms, coinciding with the terms of the part-time municipal judge.) The Mayor, on behalf of the City, is authorized to enter into a contract with Attorney Beaty to serve in that capacity for the amount of \$60,000.00 per year (payable in monthly installments).

The motion was seconded by Councilman Cannon and passed with four yeas and one nay by Councilman Travis.

**Councilman Harper made for "Introduction Only" the following resolution:**

### **RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to transfer \$600,000 from the Alcohol Fund to the Capital Projects Fund for funding additional paving projects, to be shared equally among the City's five voting districts.

This resolution will be presented at the June 3, 2019 meeting.

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There being no further business to come before the meeting, Council President Wales asked if there were any objections to adjourning the meeting. There being none, the meeting was duly and properly adjourned.

/s/ Harold Wales

PRESIDENT, CITY COUNCIL

ATTEST:

/s/ Annette Barnes

CITY CLERK