

MINUTES

Regular Meeting
City Hall Council Chamber

May 21, 2012
Monday, 6:00 p.m.

Present: Mayor O. Stanhope Anthony III, presiding; Council Members Christopher H. (Chris) Mabry, David W. White, Jeanette D. Patterson, Dennis C. Bailey, Joel R. Shores, Jr., Dicky Amaya; City Manager Rick Howell, City Attorney Robert W. (Bob) Yelton, City Clerk Bernadette A. Parduski, MMC, Director of Finance Justin S. Merritt, MPA, Director of Human Resources Deborah C. (Deb) Jolly, Director of Utilities Brad R. Cornwell, PLS, EI, Police Chief Jeffrey H. (Jeff) Ledford, Fire Chief William P. Hunt, MPA, Assistant Fire Chief Jacob E. (Jake) Whisnant, Director of Public Works Daniel C. (Danny) Darst, Director of Parks and Recreation Charlie Holtzclaw, Director of Housing Bryan T. Howell, Director of Planning Services Walter (Walt) Scharer, AICP; and media representatives

Mayor Anthony called the meeting to order at 6:00 p.m. and welcomed all who were in attendance. The Mayor gave the invocation and Mr. Yelton led the *Pledge of Allegiance*.

A. Approval of agenda:

- 1) Motion to adopt the proposed agenda

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve the agenda as presented.

B. Public Comment:

- 1) Darryl Stephen Ager who resides at 1217 Dodd Street in Shelby, North Carolina expressed concerns regarding his eviction from said address and being denied medical treatment in Shelby.

C. Special Presentation:

- 1) North Carolina Local Government Debt Setoff Program – Justin S. Merritt, MPA, Director of Finance

Mr. Howell introduced the subject matter as an informational and educational presentation relating to the financial collection practices of the City specific to customers who leave owing past due utility charges.

Mr. Merritt began his presentation by providing background information regarding the Debt Setoff Program. The program began in North Carolina in November 2002 as a way for local governments, both counties and cities, to submit any outstanding delinquent debt totaling \$50 or more that is at least 60 days old to the North Carolina Department of Revenue and the Education Lottery. The North Carolina League of Municipalities (NCLM) and the North Carolina Association of County Commissioners (NCACC) obtained enabling legislation to establish the debt setoff clearinghouse and selected to contract with Five Star Computing, Inc. of Columbia, South Carolina to operate the service and administer the program.

Mr. Merritt shared Debt Setoff Program statistics including the overall amount returned to municipalities since its inception in 2002 totaling more than \$37 million as well as totals among comparative municipalities similar to Shelby. Shelby ranked 77th among all 409 participants in total debt setoff.

Mr. Merritt added there is no cost to the City to participate in the Debt Setoff Program. The collection fees, charged to the debtor, include:

- \$15.00 to the Clearinghouse per debt over \$50 per calendar year
- \$5.00 to the Department of Revenue per tax return

Next Mr. Merritt described the mechanics of how the service works as follows:

- Any NCLM municipality or NCACC county can decide to participate in the Debt Setoff Program. Other member organizations may also qualify to participate.

Shelby joined the program in 2003.

- A municipality submits the debt to Five Star Computing. The amount must be \$50 or greater. Debts of similar type can be combined to meet the \$50 minimum.
- The debt must be at least 60 days old.
- The municipality must have given proper notice of the debt to the debtor and notify the debtor of their right to appeal.
- The municipality must furnish to Five Star Computing the debtor's name and social security number.

- The information on the debts will go from Five Star Computing to the North Carolina Department of Revenue and the Education Lottery.
- If the debtor is due a refund on North Carolina State individual income taxes or Education Lottery prize money, the municipal debt will be withheld (debt setoff) from the refund. If the person owes money to a State agency, the State has priority on collection.
- The money due the municipality is distributed through the North Carolina Capital Management Trust; therefore, a municipality must have an account with the Trust fund to participate in the program.
- There are various reasons to create a request for a refund for a debtor.

The presentation concluded with a discussion about the responsibilities and duties of customers with regard to their utility bills, the City's payment options, and the programs and services available to hardship cases. Staff emphasized the benefits of participating in the North Carolina Local Government Debt Setoff Program and the cooperation among several governmental entities in collecting outstanding delinquent debts.

D. Consent Agenda:

ACTION TAKEN: Mayor Anthony presented the consent agenda. Mrs. Patterson made a motion to approve the consent agenda and each item as presented. The consent agenda and following items were unanimously approved:

- 1) Approval of the Minutes of the Special Meeting of April 30, 2012
- 2) Approval of the Minutes of the Special Meeting of May 3, 2012
- 3) Approval of the Minutes of the Regular Meeting of May 7, 2012
- 4) Approval of a resolution fixing a date of public hearing on the question of voluntary annexation of a non-contiguous area upon petition by M and B Associates I, LLC pursuant to NCGS 160A-58.1: Resolution No. 24-2012
- 5) Adoption of an ordinance concurring with the North Carolina Department of Transportation for speed limit revision on NC 226 (Earl Road) inside the corporate limits of Shelby, North Carolina: Ordinance No. 22-2012

END CONSENT AGENDA

E. Unfinished Business:

1) Consideration of appointments to City advisory boards and commissions:

a. Planning and Zoning Board

Mrs. Parduski reported the terms of five incumbents, Marlene Peeler, Rick Washburn, Mark Carter, Bob Cabaniss (Extraterritorial jurisdiction (ETJ) member), and Roy Dedmon (Extraterritorial jurisdiction (ETJ) member) conclude June 2012. All incumbents wish to continue their service. Mrs. Parduski reminded Council that an ETJ member must be appointed by the Cleveland County Commissioners.

There is an application submitted by Peter Potemkin on file in the Clerk's Office.

Mr. Shores nominated Marlene Peeler, Rick Washburn, and Mark Carter for reappointment to new terms and recommended Bob Cabaniss and Roy Dedmon to the Cleveland County Commissioners for reappointment to new terms as ETJ members.

ACTION TAKEN: Upon motion made by Mr. Bailey, City Council voted unanimously to close the nominations and to accept the nominees by acclamation.

F. New Business:

1) Consideration of a resolution revising the City of Shelby Customer Services Policy Manual: Resolution No. 25-2012

Mr. Merritt introduced Resolution No. 25-2012 along with the proposed revisions to the Customer Services Policy Manual, which, if approved, would become effective July 1, 2012.

Next Mr. Merritt discussed the recommended changes to the Policy Manual as follows:

- Increased deposits for utility customers unwilling to provide their social security number when applying for utility services**

Mr. Merritt stated when reviewing procedures, staff became aware of an issue when an account is established and the customer does not provide a social security number (SSN). The City cannot force a customer to provide a SSN and cannot deny service if refused. This leaves the City in a particularly exposed condition if the customer were to leave without paying their final bill,

which is generally produced after moving from a location. The City is exposed because there is little to no recourse for collection. As previously presented by Mr. Merritt, the City cannot submit the debt to the Debt Setoff Program and other collection options have very little success rates. While the City cannot require the customer to provide a SSN, it can mitigate its risk by charging an increased deposit fee. This will allow the City to hedge against its possible losses should the customer suddenly leave owing a balance on the account. The average amount owed on accounts with no SSN is \$1,038, which has occurred eight times this fiscal year. A double deposit will not totally offset the City's losses but it will reduce some of those losses.

Discussion ensued about utility deposit fees. Mr. Merritt shared the School of Government's recommendations on these amounts being kept reasonable and nondiscriminatory. Mr. Bailey suggested increasing the deposit fee to at least the average amount of delinquent funds per customer in default (currently \$1,038) and requested additional information clarifying the establishment of deposit fee amounts.

- Water and/or sewer adjustment policy

Mr. Merritt stated the City will allow one adjustment to the water and sewer billing per three-year period for each location with documentation.

- No extensions on first bills

Mr. Merritt stated no payment extensions will be granted on a customer's first bill at a location.

- Add a \$1.00 charge for second and additional requests for bill reprints in a twelve-month period
- Addition to the Schedule of Utility Deposits allowing for "Residential Sewer Only" customers to be charged

ACTION TAKEN: Upon a motion made by Mr. Shores, City Council voted unanimously to approve and adopt Resolution No. 25-2012 entitled, "A RESOLUTION REVISING THE CITY OF SHELBY CUSTOMER SERVICES POLICY MANUAL".

- 2) Consideration of a resolution adopting a format for issuing right-of-way encroachment agreements within City maintained rights-of-way and easements: Resolution No. 26-2012

Mr. Cornwell stated the City of Shelby does not currently have a formal right-of-way encroachment agreement to allow third parties to encroach within its

public rights-of-way or utility easements. At Mr. Howell's request, he developed a right-of-way encroachment permit process to be used by anyone conducting construction within the City's rights-of-way. Mr. Cornwell proposed two separate documents which cover requests for Right-of-Way Encroachment Agreements for a corporation and one for an individual. The Corporation Licensee Agreement applies to companies requesting to locate some form of utility or more permanent infrastructure. The Individual Licensee Agreement applies to someone who intends to install an irrigation system or build a brick mailbox, etc. Both of these agreements were modeled after a very similar encroachment agreement utilized by the City of Gastonia. After review, some local modifications were made to include requiring notice to the property owners, requiring membership in the North Carolina 811 System, and requiring a construction time limit on the requested encroachment of one year. Mr. Cornwell said these conditions are particularly important given the questions staff receives about work in and around property, the extensive nature of the City's own four utilities within the public rights-of-way, and locating each for excavation work.

Mr. Howell further explained that under North Carolina law, if a company is doing work on behalf of the holder of a valid North Carolina franchise on file with the North Carolina Secretary of State, they have the right to use all public, including City rights-of-way, as long as they follow, for example, the North Carolina Department of Transportation encroachment process or other local encroachment process. Mr. Howell advised this resolution would establish a reasonable process that requires an applicant to provide the City with basic information regarding how and when someone will be working in a City right-of-way. It is also a protective measure to provide information to both the City and the applicant conducting the work about specific conditions on the ground that may or may not be identified by the North Carolina 811 System. This is important because these rights-of-way are owned by the City's customers and taxpayers who have invested millions of dollars in City owned infrastructure.

Discussion followed and included the City's option of charging a review fee of the proposed construction, billing for property damages, and enforcing penalties. As a follow-up, staff will draft a revision to the City Code to include a provision for the applicable penalties.

ACTION TAKEN: Upon a motion made by Mr. Shores, City Council voted unanimously to approve and adopt Resolution No. 26-2012 entitled, "A RESOLUTION ADOPTING A FORMAT FOR ISSUING RIGHT-OF-WAY ENCROACHMENT AGREEMENTS WITHIN CITY MAINTAINED RIGHTS-OF-WAY AND EASEMENTS".

3) Consideration of an ordinance amending Chapter 16, Article III. (Nuisances) of the City of Shelby Code of Ordinances: Ordinance No. 23-2012

Mr. Howell introduced Ordinance 23-2012 for Council's consideration. He stated as directed at the City Council retreat, staff has been working on a variety of proposed policy amendments that more clearly define a nuisance within the City Code and provide for an avenue for stricter enforcement. Mr. Scharer is presenting the first in a series of recommended changes which help address the revisions desired by Council. In particular, this proposed change will prohibit the accumulation of specified items from front porches and open carports.

Mr. Scharer reviewed the current nuisances as defined by the City Code to include any of the following: High grass, weeds, undergrowth, trash, garbage, offal, stagnant water, building materials, glass, wood, household appliances, tools, inoperative lawn care equipment, broken inoperative or discarded furniture or other household equipment, packing boxes, discarded clothing, junk metal, automobile parts, tires, inoperative boats, motorized equipment or machinery, building materials or other matter deleterious to good health and public sanitation.

Mr. Scharer stated the proposed amendment includes porches, patios, and open carports as areas in which storage of certain nuisance items is prohibited. These items as listed above, if stored on a residential property, must be stored within a completely enclosed building. The proposed amendment also prohibits upholstered furniture designed for indoor use from being used on front porches.

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to approve and adopt Ordinance No. 23-2012 entitled, "AN ORDINANCE AMENDING CHAPTER 16, ARTICLE III. (NUISANCES) OF THE CITY OF SHELBY CODE OF ORDINANCES".

G. City Manager's Report:

1) Presentation of the City Manager's Fiscal Year (FY) 2012-2013 Budget Message and Proposed Budget Ordinance and Supplemental Budget Ordinance

In his opening statement, Mr. Howell said the budget meets all the applicable requirements of the North Carolina Local Government Budget and Fiscal Control Act. As the designated budget officer, he reviewed the responsibility of the City Manager to submit the budget, together with a budget message, to the governing board prior to June 1, which serves that purpose here. It is

also his responsibility to give the governing board a fiscally responsible budget that sets forth appropriate funding levels in order to provide services to citizens at levels determined by City Council. Lastly the budget must be adopted by City Council prior to June 30.

Mr. Howell noted continued difficult economic times lend themselves to continued difficult budgets. He commended staff for the outstanding work in preparing and justifying their budgets, and for practicing, in theory, “zero-based budgeting”.

The recommended budget for FY 2012-2013 for the General Fund is down 1.7 percent or \$302,000 from the current budget.

The tax rate remains at 0.435 cents per \$100 of valuation. This rate has remained unchanged since July 1, 2007. Mr. Howell stated it is no easy task to bring Council a budget without a recommended tax increase. He advised Council they must be prepared to openly have the discussion and debate regarding the expectations the citizens have of their City government and what they are willing to do without or continue to pay for now and in the future. Given the revenue streams from a declining tax base and stagnant growth, Mr. Howell anticipates a fundamental change within the City of Shelby as to how it conducts business and delivers services in the near future. The recommended Shelby property tax rate continues to be among the lowest of full-service North Carolina municipalities with similar populations. It was also noted that Shelby’s rate is among the lowest in the region.

Next Mr. Howell cited some examples of significant expenditure and revenue trends impacting the FY 2012-2013 budget as follows:

- High costs of fuel due to dramatic price fluctuations
- A continuing decline in Powell Bill revenues from the State of North Carolina, decreasing since 2007
- Replacement of City vehicles and equipment to operate and deliver services
- Increasing purchase price of wholesale electricity from the North Carolina Municipal Power Agency 1 (NCMPA1); a 5.9 percent electric rate increase of all customer schedules is included in the budget
- Overall stagnant customer base
- Due to an unusually warm winter, the City will incur a substantial

operating loss in the natural gas fund and will not be able to cover fixed costs this year; monitor the \$1.8 million Natural Gas Fund transfer to the General Fund, which is equivalent to approximately 10 cents on the property tax rate

- The City tax levy has declined since the 2008 revaluation; the 2014 revaluation could result in an overall reduction in property values
- Fund balance appropriation – A reasonable level should be maintained should the City have an unexpected cash need in an emergency situation.

Mr. Howell stated the budget is balanced despite increased costs (for health insurance, fuel, etc.) and decreased revenues with approximately \$302,000 in reductions.

Mr. Howell's budget recommendation takes into account a number of challenges, issues, and concerns set forth as follows:

- Because of the continued economic challenges facing the City, this budget provides limited resources and does not allow for much progress in meeting Council's goals and priorities established via planning retreats and planning documents
- Given the current distribution formula that divides sales tax receipts between Cleveland County and the municipalities based upon overall tax levy and with significant capital investment within the County (but outside municipal limits), it is anticipated will further reduce Shelby's share of these taxes in the coming years.
- Holding utility rates at the current levels will result in delaying capital expenditures and allowing only the most critical needs to be addressed
- The City has been unable to consistently fund the employee performance pay plan

Mr. Howell concluded by stating basic services have been maintained with the anticipation that City staff and employees are up to the challenges of continuing the high quality service provided daily to the citizens of Shelby. The budget is merely a proposal for Council's review to determine the proper expenditure of the available revenues for the upcoming year. The budget documents will be provided to Council for their consideration and the public hearing will be set for June 4, 2012.

H. Council Announcements and Remarks:

- 1) Mayor Anthony reminded all to attend the Fallen Firefighter Memorial Service on May 25, 2012 at 12:00 noon to be held at Shelby Fire Station II on Charles Road. The Mayor also recalled May 25 is the date of the tragic fire of 1979 when four firefighters and a City gas worker lost their lives.

Mayor Anthony encouraged Council members to attend the North Carolina League of Municipalities Town Hall Day on June 6, 2012 in Raleigh, North Carolina.

I. Closed Session:

- 1) To consult with the City Attorney in order to preserve the attorney-client privilege in the matter of Artie Stevenson Smith versus City of Shelby Police Department et al pursuant to North Carolina General Statute 143-318.11(a)(3)

ACTION TAKEN: Mr. Shores made a motion to enter into a closed session to preserve the attorney-client privilege in the matter of Artie Stevenson Smith versus City of Shelby Police Department et al pursuant to the appropriate North Carolina General Statute as cited. Council consulted with Mr. Yelton who advised that the topic met the statutory requirement for a closed session. Mayor Anthony invited all Council members present, Mr. Yelton, Mr. Howell, Police Chief Ledford, and Mrs. Parduski to attend.

Council moved into closed session at 7:37 p.m.

ACTION TAKEN: Upon a motion made by Mr. Shores, City Council voted unanimously to return to regular session.

J. Adjournment:

- 1) Motion to adjourn

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to adjourn the meeting at 7:58 p.m.

Respectfully submitted,

**Bernadette A. Parduski, MMC
City Clerk**

**O. Stanhope Anthony III
Mayor**

Minutes of May 21, 2012