

**Town Council Minutes
Morehead City, North Carolina**

Tuesday, September 11, 2012

The Honorable Council of the Town of Morehead City met in Regular Session on Tuesday, September 11, 2012, at 5:30 p.m., in the Municipal Chambers located at 202 South 8th Street, Morehead City, North Carolina. Those in attendance were:

MAYOR:	Gerald A. Jones, Jr.
MAYOR PRO-TEM:	Harvey N. Walker, Jr.
COUNCIL:	George W. Ballou Bill Taylor Demus L. Thompson Diane C. Warrender
CITY MANAGER:	David S. Whitlow
CITY CLERK:	Jeanne M. Giblin
CITY ATTORNEY'S OFFICE:	Nelson W. Taylor, III, Derek Taylor, Mike Thomas

OTHERS: G. K. Corbin; Stevie Levy; Donald J. Hartis; Jerry Cooper; Porter Wilson; Richard Abell; Lennie Griffin; Mark Hibbs, Reporter, THE CARTERET NEWS TIMES; Tom Kies; Leinster Lewis, Beckie Lewis; D. A. Lewis; Tolsie Lewis; William Lewis; Bernette Morris; Dale Gillikin; Art Gill; Sammy Brooks, Mindy Fitzpatrick; Stephanie McIntyre; Richard McIntyre; Bob Sherwood; Eric Broyles; Chuck Sewell; Jane Sewell and several others

I. Regular Meeting Call to Order

Mayor Jones opened the meeting at 5:30 p.m., and welcomed the new City Manager, David Whitlow. Mayor Jones called for a moment of silence in memory of September 11, 2001. Councilman Thompson related a story about Ronald Fabio who had worked at the World Trade Center and lost his life on that date because he held the door for over 1,000 people in order for them to escape. All joined in The Pledge of Allegiance.

II. Special Presentations

II.A. Resolution of Retirement for Leinster K. Lewis, Morehead City Fire/EMS Department

As is customary, the Town of Morehead City honors retirees with a Resolution of Retirement. EMT/Paramedic/Firefighter Lewis retired from the Morehead City Fire/EMS Department on August 1, 2012. He began his career as a volunteer with the Morehead City Rescue Squad in 1986 and retired as an EMT-Paramedic/Firefighter with 26 years of service to the citizens of Morehead City. While his family watched, Mayor Jones presented Resolution of Retirement 2012-33 to Mr. Lewis.

II.B. Mayor's Proclamation in Support of the Carteret Literacy Council Eleventh Annual Literacy Spelling Bee

The 11th Annual Literacy Spelling Bee benefitting the Carteret Literacy Council will be held on Friday, October 19, 2012, beginning at 6:00 p.m., at The History Place at 1008 Arendell Street, Morehead City. This non-profit organization provides free one-on-one tutoring of reading, writing and math skills through trained volunteers to adults, out of school youth and high school, middle school and elementary school students. Mayor Jones presented the Literacy Council a Proclamation.

II.C. Recognition to City Clerk Jeanne Giblin and Deputy City Clerk Janet Hill Upon Receiving North Carolina Certified Municipal Clerk Designation

City Clerk Jeanne Giblin and Deputy City Clerk Janet Hill were awarded the North Carolina Certified Municipal Clerk Certification under the auspices of the North Carolina Association of Municipal Clerks and the School of Government of the North Carolina University at Chapel Hill. This program acknowledges the educational pursuits and goals of municipal clerks and their pledge to stay abreast of changes both in legislative actions and developments on the local community level. Mayor Jones presented the certificates of achievement to City Clerk Jeanne Giblin and Deputy City Clerk Janet Hill.

III. Adoption of the CONSENT AGENDA

Councilman Ballou requested that Item III.F. be removed from the CONSENT AGENDA and placed as Item V.C. New Business. Councilman Walker requested that Item III.D. be removed from the CONSENT AGENDA and placed as Item V.D. New Business.

III.A. Approval of Minutes: Tuesday, August 14, 2012, Regular Meeting

Approved the Minutes of Tuesday, August 14, 2012, Regular Meeting, and dispensed with the reading.

III.B. Approve the Requests for Release of Overpayment of Ad Valorem Taxes for August 2012, in the amount of \$1.34; Accept the Finance Director and Tax Collector Reports for August 2012

Approved the requests for release of overpayment of ad valorem taxes for August 2012, in the amount of \$1.34; and accepted the Finance Director and Tax Collector Reports for August 2012.

III.C. Adopt Ordinance 2012-32 Amending the Morehead City Code of Ordinances, Chapter 11, Parks and Recreation, by Adding Section 11-9 regarding Park Rules and Regulations Relating to Concealed Handguns and Other Weapons

The General Assembly in its 2011 session adopted House Bill 650, Session Law 2011-268, which changed various provisions of law related to the use of firearms. These changes amended G.S. 14-415.23 and eliminated the general authority to prohibit concealed handguns in parks and replaced this authority with a provision allowing local governments to prohibit, by posting, the carrying of concealed handguns on municipal recreational facilities that are specifically identified by the unit of local government. The term “recreational facilities” as described by law, includes only playgrounds, athletic fields, swimming pools and athletic facilities. The Public Safety Committee of the Council reviewed the proposed ordinance and recommended adoption.

Mayor Jones reported that this version of the ordinance has removed the walking trail along Bridges Street Extension from the regulation as was proposed under the prior ordinance.

Adopted Ordinance 2012-32 Amending the Morehead City Code of Ordinances, Chapter 11, Parks and Recreation, by Adding Section 11-9 regarding Park Rules and Regulations Relating to Concealed Handguns and Other Weapons. [Ordinance 2012-32 is attached to Ordinance Book #7 in the vault.]

III.D. Renew Resolution 2012-31 to Extend the Enacted and Established Temporary Moratorium on the Issuance and Approval of Requests/Applications for Nonathletic Special Uses of Certain Athletic Facilities

This item was removed from the CONSENT AGENDA and listed as Item V.D. under New Business.

III.E. Adopt Resolution 2012-34 Approving the 2007 Local Water Supply Plan

Morehead City was recently advised that the information contained in the 2007 Local Water Supply Plan [LWSP] update as submitted by the City was complete and met the minimum criteria established by North Carolina General Statute 143-355 [I]. The Council needs to formally adopt Resolution 2012-34 as required by the state.

Adopted Resolution 2012-34 Approving the 2007 Local Water Supply Plan. [Resolution 2012-34 is attached to these minutes and incorporated herein by reference.]

III.F. Approve Fire/EMS Station No. 2 Project Change Orders

This item was removed from the CONSENT AGENDA and listed as Item V.C. under New Business.

III.G. Adopt Budget Ordinance Amendment 2012-40 Relating to the Police Department DPR Grant and Federal Drug Fund Forfeitures.

The purpose of this amendment was to update the budget as follows:

- Increase revenue and expenditures \$118,915 related to Police Department DPR grant. Morehead City is the “lead” agency responsible for ordering a total of ten [10] message boards for the eastern region governmental units. The original budget included funding for 1 (the Town’s) message board only.
- Increase revenue and expenditures \$39,984 related to federal drug fund forfeitures.

The Finance/Administration Committee of the Council reviewed the proposed budget ordinance amendment and recommended adoption.

Adopted Budget Ordinance Amendment 2012-40 Relating to the Police Department DPR Grant and Federal Drug Fund Forfeitures. [Budget Ordinance Amendment 2012-40 is attached to Ordinance Book #7 in the vault.]

III.H. Adopt Resolution 2012-33 in Honor of Leinster K. Lewis upon His Retirement from the Morehead City Fire/EMS Department on August 1, 2012

Adopted Resolution 2012-33 in Honor of Leinster K. Lewis upon his retirement from the Morehead City Fire/EMS Department on August 1, 2012. [Resolution 2012-33 is attached to these minutes and incorporated herein by reference.]

III.I. Adopt Resolution 2012-35 Policy Statement for Funding of Civic Organizations’ Requests for Donations

The Finance/Administration Committee of the Council discussed updating the current donation policy which was adopted by the Council in 1994. In order to provide flexibility to fund projects in a timely manner, the Committee recommended authorizing the City Manager to approve expenditures of \$2,000 or less per organization without Council action if budgeted funds were available. Other provisions of the original policy remain in place.

Adopted Resolution 2012-35 Policy Statement of Funding of Civic Organizations’ Requests for Donations. [Resolution 2012-35 is attached to these minutes and incorporated herein by reference.]

III.J. Approve the Lease Extension for Crystal Coast Ferry Service for Use of City Spaces at South 6th Street

At the recent Public Works Committee of the Council meeting the request for the extension of the current lease for use of City spaces at South 6th St. for the operation of a ferry service was reviewed and discussed. The current lease expired on July 31, 2012, and is currently on a month to month basis. The proposed extension will be for one [1] year and will begin August 1, 2012 to July 31, 2013. The current rate of \$100.00/month is proposed for the new period.

The Public Works Committee recommended approval of the proposed lease extension for Crystal Coast Ferry Service.

Approved the Lease Extension for Crystal Coast Ferry Service for use of the City spaces at South 6th Street from August 1, 2012, to July 31, 2013, at the rate of \$100 per month. [The lease extension is attached to these minutes and incorporated herein by reference.]

III.K. Approve the Execution of an Interlocal Contract with HGACBuy for Cooperative Purchasing Opportunities

The Council was requested to execute an interlocal contract for cooperative purchasing with HGACBuy. HGACBuy is a regional planning commission and political

subdivision of the State of Texas and is authorized to contract with eligible entities (e.g. states, counties, municipalities, special districts) to perform governmental functions and services, including the purchase of goods and services. It has instituted a cooperative purchasing program under which it contracts with eligible entities.

City staff believes that the Town of Morehead has the potential to benefit by being a party to this contract in several ways including the opportunity for more favorable pricing for vehicles, equipment, and other items than could be received by acting individually as well as additional flexibility in meeting the statutory requirements for purchases requiring the formal bid procedures required in the NC General Statutes. It is understood at this time is that there is no cost to the City under the program if the City elects not to make purchases.

Approved the Execution of an Interlocal Contract with HGABuy for cooperative purchasing opportunities. [The contract is attached to these minutes and incorporated herein by reference.]

Councilwoman Warrender MOVED, Seconded by Councilman Taylor, and carried unanimously, to adopt the CONSENT AGENDA in one [1] motion.

IV.A. Old Business: Adopt Ordinance 2012-39 Amending the Code of Ordinances of the Town of Morehead City Chapter 8, Licenses, Permits and Business Regulations, Art. VI., Taxicabs

Mayor Jones reported that at the August 14, 2012, Council Meeting, City Attorney Nelson Taylor reviewed Ordinance 2012-39, a revision of the Taxi Ordinance 2012-28 which was adopted July 10, 2012. Ordinance 2012-39 further defines the definition of “independent driver”. This class of service will now be covered under the definition of “limited taxi service” and will be regulated under Division 3. The Council vote on the proposed ordinance was four [4] to one [1] with Councilman Ballou voting opposed and Councilman Thompson absent. General Statute 160A-75 states that no ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two-thirds of all the membership of the government body. Therefore, Ordinance 2012-39 requires a second hearing before Council before adoption.

Councilman Walker MOVED, seconded by Councilwoman Warrender, to adopt Ordinance 2012-39 Amending the Code of Ordinances of the Town of Morehead City Chapter 8, Licenses, Permits and Business Regulations, Art. VI., Taxicabs. The motion carried with a vote of four [4] to one [1] with Councilman Ballou voting opposed. [Ordinance 2012-39 is attached to Ordinance Book #7 in the vault.]

IV.B. Old Business: Appointments and Reappointments to the Morehead City Planning Board

Planning Director Linda Staab reported at the August 14, 2012, Council Meeting, that there are currently four [4] appointments to the Planning Board which are expiring; In-City Members: Chair Corinne Geer, Gordon Thayer and Tom Outlaw and ETJ [extraterritorial jurisdiction] Member Gordon Patrick. Gordon Thayer, Gordon Patrick and Tom Outlaw have expressed interest in continuing to serve and are eligible to serve. Corinne Geer did not seek reappointment. At the August 14th Council Meeting, Councilman Ballou nominated Gordon Patrick to serve as an ETJ [extraterritorial jurisdiction] Member, therefore, his reappointment was a recommendation to Carteret County Board of Commissioners. Councilwoman Warrender nominated Claude Fournier to be considered as an In-City Member.

The following individuals are available to serve as In-City Members to the Planning Board for the three [3] open In-City seats:

- Tom Outlaw [Incumbent]
- Gordon Thayer [Incumbent]
- William Barts
- Claude Fournier
- Denny Lawrence
- Katherine MacLeod
- Tom Saunders

The results of the initial vote were as follows:

Councilman Ballou	Tom Outlaw, Gordon Thayer, Claude Fournier
Councilman Thompson	Tom Outlaw, Gordon Thayer, Denny Lawrence
Councilman Taylor	Tom Outlaw, Gordon Thayer, Tom Saunders
Councilman Walker	Tom Outlaw, Gordon Thayer, Tom Saunders
Councilwoman Warrender	Tom Outlaw, Gordon Thayer, Denny Lawrence

Tom Outlaw and Gordon Thayer were appointed as In-City Members of the Morehead City Planning Board. As there was a tie on the initial vote between two [2] candidates, Mayor Jones requested that the Council once again cast votes between Denny Lawrence and Tom Saunders only.

The results of the second vote were as follows:

Councilman Ballou	Denny Lawrence
Councilman Thompson	Tom Saunders
Councilman Taylor	Tom Saunders
Councilman Walker	Tom Saunders
Councilwoman Warrender	Denny Lawrence

Tom Saunders was appointed as an In-City Member of the Morehead City Planning Board. Mayor Jones stated that Tom Saunders previously served on the Board of Adjustment for many years and will be an asset to the Planning Board.

V.A. New Business: North Carolina Seafood Festival [NCSF] Board of Director's Request to Modify Resolution 2012-27 Adopted May 8, 2012

Mayor Jones reported that the North Carolina Seafood Council [NCSF] Board of Directors has requested that the Council consider adding the following or similar statement to Resolution 2012-27:

“In conformity with the rights that are guaranteed in the United States Constitution, The North Carolina Seafood Festival allows people to exercise freedom of speech, and groups to assemble peacefully, within the Festival. In order to protect the rights and safety of Festival guests, the Seafood Festival manages these activities by providing a specific location where people and groups can assemble to exercise their First Amendment rights to free speech. Therefore, the North Carolina Seafood Festival respectfully requests that the Town of Morehead City amends the current resolution with the North Carolina Seafood Festival to include a First Amendment Free Speech Zone located on the corner of Evans and 9th Street extending halfway up 9th Street towards Arendell Street.”

Stephanie McIntyre, Executive Director of NCSF spoke on behalf of the NCSF Board of Directors and all the participants. The NCSF for the past 25 years has been praised and has won state, national and international awards. The Board is seeking a way to protect the history, integrity and safety of the Festival. She also wanted to note the many hours of devotion that the board members and volunteers give to create the event. She stated that the Festival wants to give groups that wish to express their ideas and beliefs an opportunity to do so, but within safety parameters for Festival participants.

Sammy Brooks, Chairman of the Festival, stated that for safety reasons, the Festival wanted to add a free speech area on the north side of 9th Street between Evans and Arendell Streets.

Bob Sherwood, Co-Chairman of the Festival requested the free speech area to protect the over 100,000 people who visit.

Mayor Jones commented that the request is not new to the Council and has been discussed with the attorney and within committee, however, the laws and constitution of both the United States and North Carolina need to be upheld.

City Attorney Nelson Taylor commented that those participating in the demonstration are exercising their free speech rights. While the City and the NCSF may not agree with the message and the methods of such groups or individuals, neither the City nor the Seafood

Festival can control what these groups or individuals do. Other cities have faced the same situation and a number of lawsuits against such prohibitions were instituted by such groups. The request to designate a free speech area would not prevent free speech anywhere else within the Festival. City Attorney Nelson Taylor further had concerns about the involvement of the City in such a request.

Councilman Walker, Chairman of the Public Safety Committee, felt that the City's hands were tied and that there was little that the City could do.

Mindy Ballou Fitzpatrick commented that the Festival has had to deal with many angry individuals during the confrontations and felt that Festival participants needed to be protected.

City Attorney Taylor advised that if the demonstrators wanted to leave the free speech area, they will be free to do so.

Councilman Ballou stated that he was the Chairman of the Festival last year and it was a difficult situation. He commented that he understood that no one can infringe on anyone's constitutional rights, however, all the NCSF Board was requesting was a free speech area be made available to anyone to express whatever.

Stephanie McIntyre stated that the free speech area has been placed in the NCSF Rules and Regulations and was adopted by their Board of Directors.

Further discussion ensued.

Councilman Ballou MOVED, seconded by Councilwoman Warrender, to amend Resolution 2012-27 Endorsing the North Carolina Seafood Festival and authorizing action necessary for the event to be held October 5-7, 2012, on the Morehead City Waterfront by adding, "the Festival shall include a First Amendment Free Speech Zone located on the corner of Evans and 9th Streets extending halfway up 9th Street towards Arendell Street." The Motion carried with a vote of three [3] to two [2] with Councilmen Taylor and Walker voting opposed.

Councilman Taylor stated that it was his opinion that the amendment was unfair to the taxpayers as to possibly incur the burden of being sued.

Councilman Walker commented that it was his opinion that the amendment did not solve the problem and it was the writing of the principal and how it can be perceived.

V.B. New Business: Appoint a Representative to the Municipal Committee of the Coastal Regional Solid Waste Management Authority

The Coastal Regional Solid Waste Management Authority has a standing Municipal Committee comprised of one [1] representative from each town or city within the Authority service area. The Town of Morehead City's representative was the previous City Manager Randy Martin. The Authority is requesting that due to Mr. Martin's retirement that the Council appoint another individual to serve on this Committee.

Councilman Taylor MOVED, seconded by Councilman Walker, and carried unanimously to appoint City Manager David S. Whitlow to the Coastal Regional Solid Waste Management Authority.

V.C. Fire/EMS Station Change orders

At the recent Public Safety Committee meeting information was presented concerning change orders at the new Fire/EMS Station No. 2 building project. Change orders consist of heavy duty paving for a portion of the drives located in front of the equipment bays and recalling the epoxy floor coating for the equipment bays back into the project

Pricing has been received for the heavy duty paving for a portion of the drives from three [3] contractors. The best pricing is from the General Contractors initial subcontractor in the amount of **\$21,244.00** including the general contractor's markup. Other pricing received including markup would be from Barnhill Construction in the amount of \$21,885.00 and from

Hardy Construction in the amount of \$23,345.00. The Committee recommended proceeding with this change.

The second change order deals with the equipment bay floor area and the installation of epoxy flooring over a floor area which has seen many years of heavy use. The recommendation is to prepare the flooring to accept the epoxy surface by grinding the entire floor surface before application. Cost for this project is **\$29,125.00** including the contractor's markup. The Committee recommends proceeding with this change.

Total cost for these changes are \$50,369.00 and will add ten [10] days to the contract. With approval of these changes the contract completion date will become October 24, 2012. The Committee also reviewed a current accounting of the project contingency.

Councilman Ballou stated he was not against the project or change orders, he just needed an explanation of the money available at the beginning of the project, the costs of the change orders and what funds were left.

Public Works Director David McCabe reported that the Council approved \$50,000 for contingency funds at start of project. Grant funds of \$200,000 became part of the contingency. There is currently \$91,694 available in contingency funding. The project is not over the contingency budget at this time. [The time line of the Fire/EMS #2 Capital Project Fund Contingency Funds is attached to these minutes and incorporated herein by reference.]

Councilman Ballou MOVED, seconded by Councilman Walker, and carried unanimously, to approve the Fire/EMS change orders as presented.

III.D. Renew Resolution 2012-31 to Extend the Enacted and Established Temporary Moratorium on the Issuance and Approval of Requests/Applications for Nonathletic Special Uses of Certain Athletic Facilities

At the March 13, 2012, Council Meeting, the Council discussed requests received for other than athletic uses of the City's sports facilities such as Big Rock Stadium, O'Neal Field and Rotary Park among others. In an attempt to allow time for the City to develop a suitable policy in order to handle such requests, Resolution 2012-15 was adopted by the Council which placed a moratorium on the issuance and approval of requests for nonathletic uses of these facilities for a 90 day period. At the June 12, 2012 Council Meeting, City staff requested an additional 90 day extension of the moratorium in order to further develop such a policy which was granted by the adoption of Resolution 2012-31. The Council was requested to renew Resolution 2012-31 to grant another 90 day period for the development of a policy.

Councilman Walker questioned the delay on the proposed policy.

Mayor Jones explained that the Council decided to concentrate on the Marlin contract. The Committee is continuing to work on the policy.

Councilman Walker MOVED, seconded by Councilman Taylor, and carried unanimously, to approve the extension and to renew Resolution 2012-31 to extend the enacted and established temporary moratorium on the issuance and approval of requests/applications for nonathletic special uses of certain athletic facilities for an additional 90 day period for the development of a policy.

VI. Citizens Requests/Comments: [2 Minutes Time Limit]

Kenneth Ball, Morehead City wanted it known that with regard to the North Carolina Seafood Festival discussion there were laws against profanity.

Chuck Sewell, 3407 Snead Street, Morehead City stated that Morehead City has a noise ordinance and perhaps that could be enforced as a way to prevent megaphones and loud speeches by demonstrators at public festivals.

Eric Broyles, 904 N. Yaupon Terrace, Morehead City spoke about the ordinance prohibiting concealed handguns in municipal parks. He was of the opinion that such a law prevents citizens from their God given right to protect themselves. He continued that it was his opinion that enforceability was not possible.

VII. City Manager's Report

City Manager Whitlow stated that he had no formal report. He continued that he has been the Morehead City Manager for just over a week, he is excited to be here and honored to have been selected. He commented that he sees good things for Morehead City in the future.

VIII. Council Requests/Comments

Councilman Walker commented that the North Carolina Seafood Festival [NCSF] issue needs to be solved and he thanked the City Attorneys for their counsel.

Councilman Ballou commented that the Council faced a tough issue regarding the NCSF and Morehead City was not the only town with issues. We all do the best we can.

Councilman Thompson stated that the NCSF is made up of volunteers and needed something from the City in writing that will back up Festival policy.

City Attorney Nelson Taylor stated in a canvass of the votes for In-City Planning Board Member the results were as announced, Tom Saunders will be appointed to hold an In-City seat.

Mayor Jones reported that the City is close to setting a public meeting date on the Jib property project.

IX. Adjourn

There being no further business, the meeting was adjourned at 7:30 p.m.

Gerald A. Jones, Jr., Mayor

Attest:

Jeanne M. Giblin, City Clerk