

Walterboro City Council
Public Hearing and Regular Meeting
May 13, 2008

MINUTES

A Public Hearing and Regular Meeting of Walterboro City Council was held at City Hall on Tuesday, May 13, 2008 at 6:15 P.M. with Mayor Charlie Sweat presiding.

PRESENT WERE: Mayor Charlie Sweat, Council Members: Randy Peters, Bill Young, Charles Lucas, Ted Parker, Franklin Smalls and Mary Anne Cannady. City Manager Jeff Lord, City Clerk Betty Hudson and City Attorney George Cone were also present.

The invocation was given by Council Member Smalls, followed by the Pledge of Allegiance to our flag led by Council Member Lucas.

PUBLIC HEARING:

Ordinance # 2008-06, to Enact a New City Ordinance Regulating Smoking in Public Places to Protect the Public Against the Harmful Effects of Secondary Smoke

Mayor Sweat opened an advertised public hearing to receive public comments on proposed Ordinance # 2008-06. Approximately 20 persons were in attendance at the hearing.

Mayor Sweat then recognized Mayor Pro-Tem Bill Young, who opened the hearing by giving the following statement. "It is the intent of Council to prohibit smoking whenever the private choice of smoking intrudes or has the capacity to intrude upon the right of persons concerned about protecting their own right to be free from the hazards and inconvenience of secondhand smoke in places where they work, stand, sit, walk, dine, drink, read, study, or engage in entertainment and recreation. All provisions shall be construed to achieve these purposes."

Mayor Sweat then asked if anyone wished to speak on this subject.

Mr. Dan Carrigan, Executive Director of the Smoke-Free Action Network based in Charleston, SC, and a resident of Johns Island, SC, addressed Council in favor of implementing the smoke-free ordinance. Mr. Carrigan stated that he has worked with many of the local laws that have passed around the state. There are now 12 local smoke-free laws in the State of South Carolina. The Supreme Court just recently declared that local governments do, in fact, have the right to create their own smoke-free laws in their local municipalities. I have been through an incredible experience over the last 3½ years working on this one issue full time. I have had the pleasure of helping defend Sullivan's Island at their circuit court hearing, and have closely tracked the ordinance in the Supreme Court for Greenville. We also have a lobbyist at the State House who fights and defend your right as a local government to create your own smoke-free laws. We found that nationally, this is the most effective way to protect people from the known hazards of secondhand smoke and in our workplaces.

Mr. Carrigan further stated that according to the Surgeon General's Report issued in June 2006, 50,000 Americans die from secondhand smoke every year. What this report says is, the only way to make indoor air quality safe is to take the smoke outside. It says that ventilation systems do not work, and that businesses do not suffer as a result of having a smoke-free law passed. After six months of passage of this law in Charleston, not a single ticket has been written as a violation. So, you will have a very high acceptance rate on the part of the community. Most smokers know that they must smoke outside. That is what this is about, it's not about banning smoking, but this is about just asking people to step outside. Mr. Carrigan also noted that this does not hurt businesses and there is not a single legitimate piece of research that shows businesses are injured.

As a result of a research study conducted in Charleston in December 2005, Mr. Carrigan stated that passage of this law shows:

1) Residents overwhelmingly supported the smoke-free law in Charleston 70% to 25%

2) 91% of visitors would be as or more likely to return to a smoke-free city. So, it's overwhelmingly supported by visitors. The Charleston Metro Chamber of Commerce conducted a poll and found that 83% of Chamber members supported the law. 93% do not allow smoking inside of their own workplace, 78% support the elimination of smoking indoors in area restaurants, and 75% support government involvement in smoking bans.

Mr. Carrigan summarized by stating that his organization supports protecting the workers in indoor work places. He offered his help to Council with any questions that may arise as you go through this process. He stated that the Supreme Court's decision has had a tremendous impact on people's awareness and the abilities of local government to make a change in the quality of life and the health of your workers. He said, you certainly have that right and that responsibility and I applaud your moving forward with an ordinance.

Ms. Laura Spivey of 742 Smoak Road then addressed Council to speak against the enactment of a smoke-free law. Ms. Spivey, a smoker, stated, as a result of her research on the internet about a year ago, she found that smoking is related to lowering Parkinson's Disease. She felt that the 1993 EPA Report and the 2005 Report were "making numbers look the way you want them to look and only asking questions of people you want to hear from."

Ms. Spivey read from what she indicated was an article written regarding the 1993 EPA Report - "It now turns out the influential 1993 EPA Report on the respiratory health effect of passive smoking, lung cancer and other disorders is as phony as a \$3 bill. State officials and private businesses that believe the ETS ..., was a public health danger and not just a nuisance, was completely misled by the EPA and of course, so was main street American public." Ms. Spivey also read different articles that spoke against the EPA report findings on passive smoking.

Ms. Spivey told Council, the letter that I wrote to you has to do more with "freedom to be who we are." She said, I don't believe that it is the government's business to dictate and legislate what we do and don't do on the level of smoking. She said, but I am serious. Yes, my letter was very sarcastic in tone, and I am a lot more angry about this whole thing than I look right now. I am very serious about what's spreading across the country, on the county level, city level and the national level. Why don't we just put up a sign that says "No loitering, no weapons, no prayer, no smoking, no fowl language, no eating sugar, no

alcoholic beverages, and no wearing red clothes on Thursdays - Welcome to Walterboro/America; Land of the Free.

In concluding, Ms. Spivey thanked Council for listening to her. She said the day is coming when we are losing our freedom. We are losing the right to pray in public, pledge of allegiance to the flag, and how long will it be before you can't go to church. She stated, I totally disagree with the whole ordinance. At the very least, I would ask you to consider the fact that some restaurants have patio smoking. She said, I think it is Vermont that has outlawed smoking in your own home. Where is it going to stop?

Ms. Marlene Y. Babcock of 461 Smoak Road, also spoke against the smoke-free ordinance. A copy of a letter written by Ms. Babcock is attached as part of these minutes. She stated that she is a nonsmoker. She told Council, "I think it is up to the business to say whether we smoke or do not smoke. I don't think it's up to the government to do it. You are taking our freedom away from us and it's got to stop somewhere. So, let's stop it here tonight."

Mr. Greg Spivey, husband of Laura Spivey, of 742 Smoak Road, Walterboro, also spoke against the smoke-free ordinance. Mr. Spivey said, everybody in this room has at least one bad habit. I have one. From the early 50's, I watched my daddy smoke pall malls until he died 2 years ago, but lupus killed him, not from lung cancer or smoking I believe. He said, I do believe smokers have a right to smoke where and when they want. If nonsmokers don't want to go to a restaurant, then don't let them go. He said if I am ever rich enough to open a restaurant, I will put up a sign saying "Smokers Restaurant, non smokers enter at your own risk."

Next, Ms. Tammy Washington, Program Coordinator and Health Education of South Carolina DHEC Region 8 Office, which covers Hampton, Colleton, Beaufort and Jasper Counties, addressed Council in favor of the smoke-free ordinance, by reading the following statement.

"The South Carolina Department of Health and Environmental Control is committed to promoting and protecting the health of the public and environment in the state. In keeping with our vision of healthy people, living in healthy communities, the agency strives to seeing opportunities confirmed through science and research that lead the agency's mission. Secondhand exposure has been identified as a leading health hazard by the U.S. Surgeon General, U.S. Centers for Disease Control and Prevention (CDC), and numerous leading health and environmental groups. As a partnership with CDC, DHEC focuses on the goal of elimination of the public's exposure to secondhand smoke. DHEC supports efforts to protect the state's citizens from proven dangers of secondhand smoke exposure."

Ms. Washington then gave the following referenced statistics:

- 1) Secondhand smoke has been proven to cause premature death in children and adults who do not smoke.
- 2) Children exposed to secondhand smoke are at increased risk of sudden infant death syndrome, acute respiratory infection, hearing problems and more severe asthma.
- 3) Smoking by parents causes respiratory symptoms and slows lung growth in their children.

- 4) Exposure of adults to secondhand smoke has immediate adverse effects on their cardiovascular system and causing coronary heart disease and lung cancer.
- 5) The scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke.
- 6) Many millions of Americans, both children and adults, are still exposed to secondhand smoke in their homes and workplaces, despite substantial progress in tobacco control.
- 7) Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air and ventilating the buildings cannot eliminate the exposure of nonsmokers to secondhand smoke.

Mr. Bob Dennis of Edisto Beach, spoke to Council in favor of the smoke-free ordinance. He said he is a proponent of having a smoke-free workplace. I have seen too many adults develop emphysema and other lung diseases. In the workplace, I think we can control smoke. He said, secondhand smoke is a real killer, and I know that you have an electorate that you are responsible to, but let's be leaders and do the right thing. Smoke-free workplaces are as common as anything these days. People don't mind smoking outside. He said, if you smoke, I make up the difference in your health care bill. I don't think that nonsmokers should have to do that. He told Council, why not do the right thing, get the smoke out of the workplace.

Ms. Linda Davis, owner of The Blarney Stone Restaurant in downtown Walterboro, then addressed Council. She said, we are a nonsmoking pub and restaurant by our choice. It has been mostly a popular decision, but some of our customers get irritated when they discover there are no ash trays inside. She told Council, my concern with the ordinance the way its written is eliminating smoking outside on the patios and decks. From a practical purpose to me, I am not sure where my people will go when they step outside to have their cigarettes to get back ten feet from the door. Are they going to be penalized if they are on the sidewalk and smoking? That's part of our concern, we want to make sure we can service whoever in the community if they want to smoke they have to take it outside anyway.

Ms. Davis further stated she has concerns, too about personal liberty, but I think the nonsmoking issue is a liberty we can perhaps part with. My other concern is for other businesses who will perhaps see some of their customers flee to other areas. Like if the city alone puts in this ordinance, they will flee to things in the county, and this could hurt the local businesses that cannot have smokers. My understanding is if we have a place to put a patio outside, they can't smoke there. Where do they go if they can't go ten feet from the door, onto a patio or deck? Is there some way that could give them that protection that they can have a deck outside where smokers can sit? My concern is getting them 10 feet away from the door.

Mr. James Brown, a State Street resident and a former SC Highway Patrolman who spoke in favor of passage of the smoke-free ordinance at the last meeting, reiterated that he was fighting for the nonsmoking ban for his wife. He said, it is a personal issue too. My wife works in a local restaurant, and she does not want to lose any customers over the deal, but in fact, I don't want to lose her either. One other thing I want to say, I have a brother that just had a 2nd heart attack about 2 months ago and he is a smoker. The doctor told him if he is around smoke or smokes again, he would die within the next year. I don't want

to see that happen. I don't want to cause any problems and no one to be mad over this, but there is a compromise. The compromise is just walking outside of the door and giving the people inside a building a clean environment to work in. He stated, I just want my wife to have the opportunity to work in a smoke-free environment and not to have health issues later on in life.

The public hearing was then closed and the regular meeting began.

OLD BUSINESS:

There was no Old Business before Council.

NEW BUSINESS:

Ordinance # 2008-06, An Ordinance Amending Chapter 8 of the Walterboro City Code of 2002, as Amended, to Enact a New City Ordinance Regulating Smoking in Public Places to Protect the Public Against the Harmful Effects of Secondary Smoke was before Council. A motion to adopt this ordinance on **First Reading Approval** was made by Council Member Young with a second by Council Member Parker. In discussing the motion, Mayor Pro-Tem Young stated that he feels very strongly about Council adopting this ordinance. I really feel like the ordinance will be an inconvenience for smokers, but that it is a matter of life and health and life and death for nonsmokers. I know people my age grew up and your teacher would say, "You know your rights end where my nose begins." You can really apply that to the smoking argument. He said, I know we all want our freedom, and I want us to do what we can to protect the health of the citizens of Walterboro and even for the smokers, if it forces a smoker to smoke a few less cigarettes than they might normally smoke, that is a good thing. He concluded by stating, "I hope that we'll adopt this ordinance."

Council Member Cannady then stated she had a question about the 10 feet. If you are going to say in an ordinance that you have to be 10 feet - I just think that's got to be removed. If you step 2 feet out or if you go 10 feet, you will be in the middle of the street (referring to the downtown area on Washington Street). She stated, I think we need to look at that. Mayor Sweat said, I don't think you'd have to go 10 feet outside the door or the middle of the street. You can go 10 feet outside the door either north or south. Council Member Lucas pointed out that this would be 10 feet in front of somebody's door. There was concern expressed that this may be a problem on Washington Street (downtown).

With regard to the decks for restaurants, Council Member Young stated that he believed that this applied to places that "served food on the deck." So, if you have an area outside where you served food on the outside, then it applies. City Manager Lord added that "if I understand the case correctly, they were allowing people to take food and drink to that other area, which established an additional work space, and that is why it carried over."

With regard to the Washington Street area, Council Member Young stated that Washington Street is a unique place, but if you stand right outside the door and the smoke blows back into the restaurant, then you have not accomplished what you set out to do. Maybe, we need to look and see what we have.

Council Member Cannady then said, "so it will be like many other ordinances that we have, we don't enforce them, so is that what you are saying? How will the ordinance be

enforced, she asked? Council Member Young then replied, "No, Ms. Cannady, that's not what I'm saying, those are your words."

Council Member Peters then said, seriously, the 10-foot rule is a very serious conversation we need to have, because it is a concern on Washington Street, but mostly on Washington Street because of the restaurants that are there. That's where most of the smoking occurs, inside the restaurants and the drinking establishments that are there. Before we pass it as it's written, I think we need to put a little thought into the 10 feet, or something that could give them some kind of relief. Council Member Peters further stated, if we can't come up with anything, then that is something totally different. With this being the first reading, I think we have enough time to look again and see if we can come up with some kind of a compromise on the 10 ft. I agree with Council Member Cannady totally. I know that I could go out in the middle of the street and smoke, but when you look at the doors - The Blarney Stone for example - even if you went in the middle of those two stores, I don't think there is 10 feet. Ms. Linda Davis added that there is about 6½ feet. Council Member Peters then said, we wouldn't be able to enforce that part of the ordinance, so if you can't enforce it, then why have it?

Council Member Smalls asked if the motion could be amended to say "before we pass the second reading that we will revisit and discuss that item?" With there being no concurrence on the question, the motion giving First Reading Approval to Ordinance # 2008-06 passed with a vote of 5/2, with Council Members Lucas, Parker, Smalls, Young and Mayor Sweat voting in favor. Council Members Mary Anne Cannady and Randy Peters voted against the motion for adoption.

Requests by Colleton County Historical Society Regarding the Walterboro Antiques, History and Arts Festival

Mr. Jack Jackson, on behalf of the Colleton County Historical Society, appeared before Council to request that the City: 1) not require business license fees for the town antique vendors who will participate in the upcoming Antiques, History and Arts Festival (to be held this weekend); and 2) one parking space in the City Parking Lot for Leadership Colleton 2007 to sell dinners to support three (3) local youth programs.

A motion granting this request was made by Council Member Parker, seconded by Council Member Cannady and passed unanimously.

Request to Place Banner and Directional Signs in the City Limits by World Changers

Ms. Prissy Griffin, Media Chairperson and on behalf of the World Changers, told Council that on July 14, around 350 youths would be coming off Exit 57 headed toward the High School, to come and work on houses this summer for residents in Colleton County. We want to make sure they can get to the high school without problems. The directional signs we will use are no larger than 18"x 24". They would be erected on July 14th and taken down about 4:00 p.m. that afternoon. We are also asking permission to erect a large banner on Jefferies Boulevard around July 10th to July 19th.

A motion granting this request was made by Council Member Young, seconded by Council Member Smalls and passed unanimously.

Request for Use of City Parking Lot for Community Action Day Event on May 23, 2008

Mr. Leroy Womble, on behalf of Lowcountry Community Action Agency, told Council that the governor has declared the month of May as "Community Action Month". He requested permission to use part of the City Parking Lot on Friday, May 23, 2008 from 1:00 p.m. to 5:00 p.m. to host a Community Action Day Event.

City Manager Lord reminded Council that the City is currently getting bids in for renovation of the parking lot. They will come in a week before that, but it should not interfere at all, but there is a slight chance. You will be on one side of the parking lot and they might be working on the other part, but I think we can work that issue out. It was also noted that there would not be a problem with the Farmer's Market.

A motion to approve this request was made by Council Member Cannady, seconded by Council Member Smalls, and passed unanimously.

Mayor Sweat then announced the following public events. On May 20 is the groundbreaking ceremony at the new high school at 4:00 p.m. He encouraged everyone to attend. City Council and County Council will hold a luncheon meeting on June 6 at 12:00 noon at the Blarney Stone Restaurant.

A motion to enter an executive session to discuss a contractual matter relating to engineering services was then made by Council Member Lucas, seconded by Council Member Cannady and passed unanimously. The meeting returned to Open Session at approximately 7:26 P.M.

A motion was then made by Council Member Peters, seconded by Council Member Lucas to approve the proposal for engineering services from B. P. Barber to conduct an Impact Fee Study, not to exceed a fee of \$7,500.00, which includes all labor and expenses. The motion passed with all members voting in favor.

There being no further business to consider, a motion to adjourn was made by Council Member Cannady, seconded by Council Member Parker and passed unanimously. The Mayor adjourned the meeting at 7:30 P.M. Notice of this meeting was distributed to all local media and posted on the City Hall bulletin board at least twenty-four hours prior to meeting time.

Respectfully,

Betty J. Hudson
City Clerk

APPROVED June 10, 2008