

**Minutes of the
Simpsonville City Council
Committee of the Whole Meeting
August 28, 2018
6:30pm**

City Council Chambers – 118 N.E. Main Street

CALL TO ORDER – Mayor Curtis

COUNCIL PRESENT – Councilmember Gooch, Councilmember Kelley, Councilmember Hulehan, Councilmember Roche, Councilmember Cummings, Councilmember Hutchings, Mayor Curtis

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

Mayor Curtis asked if there were any corrections to the minutes of July 24, 2018. No corrections noted the minutes were approved as written.

CITIZEN COMMENTS - None

STAFF REPORTS

- a. *Monthly Financial Report – Finance Director, Christine Furino*
- b. *Monthly City Administrator Report – City Administrator, Dianna Gracely*
- c. *Community Relations Specialist – Justin Campbell*

BUSINESS

a. *Items Anticipated to Come Before Council*

1) AXZ-2018-05, Proposed Annexation/Rezoning of Property Along Fowler Road

Motion by Councilmember Hulehan with a 2nd by Councilmember Hutchings to approve AXZ-2018-05, Proposed Annexation/Rezoning of Property Along Fowler Road and to move to the next business meeting for vote. Motion carried unanimously.

2) Z-2018-04, Proposed Rezoning of Property located at 219 Ladean Court

Motion by Councilmember Hutchings with a 2nd by Councilmember Cummings to approve Z-2018-04, Proposed Rezoning of Property located at 219 Ladean Court and to move to the next business meeting for vote. Motion carried unanimously.

3) TX-2018-02, Refinements to the City’s Land Development Regulations

Motion by Councilmember Hulehan with a 2nd by Councilmember Gooch to approve TX-2018-02, Refinements to the City’s Land Development Regulations and to move to the next business meeting for vote. Motion carried unanimously.

4) Councilmembers/City Contracts Relationships

In light of recent court decisions and judgements against neighboring municipalities, as well as opinions rendered by our City Attorney on the matter, I feel strongly that future solicitations for bids and/or contracts to employ and pay individuals or entities to complete work on city projects, in part or whole, should be restricted to **only** individuals and entities not already employed by the City of Simpsonville or elected to positions that serve the City of Simpsonville in any capacity.

To be clear, anyone already employed, part time or full time, anyone serving on City Council or in an elected or appointed board position (such as Board of Zoning Appeals, Planning Commission, A-Tax Committee, etc.) should not be able to bid on city work projects or be paid in any form for completing contracted work, for the City of Simpsonville. Also, if any company that city employees or elected or appointed city officials are vested in through familial or financial relationship bids on and receives a contract for a city-funded project, the related council member will proactively recuse themselves from voting on matters that would award said contract, for the sake of impartiality.

I strongly believe that we as City Council members should remain transparent and above reproach in all matters having to do with taxpayer, private, charitable and governmental funding. As such, I think we should avoid the appearance of nepotism and impropriety when it comes to separation between our governing duties and our personal financial gain. As members of City Council, we exercise the creative abilities to design and announce city projects that will require outsourced contractual agreements and compensation, as well as appropriate funding for those projects in the city's budget. It is my opinion that we, as the primary representatives of city taxpayers, are in a position to require and appropriate taxpayer funds and grants obtained by the City of Simpsonville. As such, I believe that we, as well as members serving on city boards and commissions that we elect or appoint, should refrain from any form of personal financial gain from those requisitions and appropriations made on behalf of the City of Simpsonville.

Motion by Councilmember Roche with a 2nd by Councilmember Hulehan that City Council adopt an ordinance to reflect that decision and that our City Attorney pen the proper verbiage for such an ordinance and to move this to the next business meeting for vote.

A vote in favor of this motion would allow our City Administrator and City Attorney to complete the written ordinance for final approval by the next Business Meeting for a final vote by City Council.

Mayor Curtis

A motion made by Ms. Roche being seconded by Ms. Hulehan. Discussion. Ms. Kelley.

Councilmember Kelley

Mr. Holmes can you tell us how this differs from the State law that we already follow?

Mr. Holmes

If you are talking about the State Ethics Act, there's already recusal provisions in that. You already have an ordinance that adopted some new rules a couple of years ago I believe that requires recusal and covers many of the areas which is if you have economic and other interest in business or familial relationship that's all covered under Title 8 which we call the State Ethics Act. This proposal goes farther however in that it prohibits any bidding on City business that would not otherwise be prohibited by the State Ethics Act. For example, if a bid were being proposed to a Department Head where City Council would be voting on it there would be no recusal, no review process. It would be done under your procurement code. You have the ability to pass such a more comprehensive prohibition that is not already covered by the State Ethics Act.

Councilmember Kelley

If I listened right and I read it correctly that includes not only us and employees but also includes our like A-Tax Committee and all our committees and things like that.

Mr. Holmes

That's correct. So if you have .. So, let's say if you have a hotel representative on your A-Tax Committee and you were planning some convention and you needed the hotel to provide services whatever hotel that person was affiliated with would not be able to bid on or provide that service under the proposal. Which goes further than the State Ethics Act would provide, would simply say that person affiliated for example A-Tax Committee could never vote or make a decision about where to award the contract for the City.

Councilmember Kelley

We are simply limiting some of the businesses ability to do business in this capacity.

Mr. Holmes

Yeah it has that potential.

Councilmember Kelley

Because they volunteered.

Mr. Holmes

That's correct.

Councilmember Hutchings

Clarify what was said. Does that mean that that member would recuse themselves ...? Could that business not be involved in any way?

Mr. Holmes

Under the State Ethics Act that person couldn't be involved in the decision. Under this proposal though it says they couldn't bid on work that was being offered by the City to be done. So that's the only thing ... I haven't thought it all through, but it reaches Boards and Commissions, it reaches employees and employees have family members so it's a wide-ranging prohibition being proposed.

Mayor Curtis

Mr. Gooch.

Councilmember Gooch

You're raising some questions in my mind Mr. Holmes. It's far ranging you talking about extended ... I know there are some employees who have businesses that operate with the City now. That may be a question for Ms. Gracely is that not accurate? Or is that accurate that we know. I know we have small businesses in town that have family members that work for the City. Somehow exclude them.

Ms. Gracely

The way it's proposed yeah it would appear that would create an exclusion.

Councilmember Gooch

We're potentially taking business away from local folks.

Mr. Holmes

What becomes complicated I think council has to wrestling with is that's why the State Ethics Act if you read Title 8 is quite lengthy and there numerous prohibitions and definitions that you have to take a look at. The bottom line, the State Ethics Act it doesn't prohibit businesses from bidding on City business but it keeps the decision makers completely out of the process if they have any relationships with that business. Whether it is a volunteer relationship whether paid relationship whether it's a family relationship it covers that. That's why I say this proposal goes even further because it says the way I read it, it doesn't matter whether you're fully in compliant with the State Ethics Act if you any employment or appointment relationship with the City then you cannot do business with the City. So, you know a fireman's family for example, he's a fireman and his family has I don't know a mechanics business in City, that that business under this proposal couldn't submit a bid to the City to work on fix cars. Just throwing that out as example.

Councilmember Gooch

OK. The current Ethics Act if someone who is employed here is doing business with the City are they required to report that? Are there incidences where that would be required to report in some public form, ethics report something like that?

Mr. Holmes

Well there's another whole section of the State Ethics Act that requires certain people to report things. For example, your front-line employees there's no reports statements of economic interest which all of you have to file that kind of thing probably would have to be reported on a statement of economic interest but your regular employees don't file statements of economic interest. They're not required to.

Councilmember Gooch

But they are not the actual decision makers. Ultimately, it's either a Department Head, this Council would make a large-scale decision if it is beyond local level procurement.

Mr. Holmes

That's right. Sometimes it committee that makes the decision. If you have a Request for Proposal your required to setup committee to evaluate them.

Councilmember Gooch

And does state law already require someone to recuse themselves if they're in that position?

Mr. Holmes

Yes

Councilmember Gooch

Would they have a conflict?

Mr. Holmes

Yes

Councilmember Gooch

OK

Councilmember Roche.

I have a question of Mr. Holmes as well. We do not currently have anything in place that keeps councilmember from receiving funds from the City for doing work for the City? Am I correct?

Mr. Holmes

That's correct. Under the State Ethics Act councilmembers business or a business that councilmember has a financial interest in is not prohibited from doing business with the City under the State Ethics Act. However, the councilmember cannot participate in or influence any decision that's made by part of city council to engage in business with them. There's scores of State Ethics Act opinion on that issue. They must rescue, they can't be in the room, can't participate in it. I normally suggest that they file statement saying that I have a financial interest in it and physically get up and leave the room, so they cannot be accused of participating. If they're not in the room they can't participate. But there is no universal prohibition such as this.

Councilmember Roche

I'm not necessarily talking about them just rescuing themselves from the vote where they could later on down the line gain profit. I'm talking about receiving City signed check for services rendered for a project they voted for and put into motion. Do you understand what I'm saying? Actually, physically doing the contracted work. That's more what I'm addressing. I know neighboring City's have had to deal with real estate dealings as well. You know being in a position where we can approve, disapprove land deals and then a City council person owns the land and then sells it for that purpose. We have prior knowledge and puts themselves at an advantage. Do you understand what I'm saying?

Mr. Holmes

I hope so, but if the sitting council member has an economic interest in the issue that is being voted on by council then that council member is required to recuse. And if the councilmember does recuse and the council votes to go ahead with the project anyway it does not violate the State Ethic Act. Because the councilmember did not participate in the vote. Didn't use their office to influence the decision.

Mayor Curtis

If we move this to our business meeting, we are actually handling it in an ordinance?

Mr. Holmes

Yes ma'am. This goes beyond the prohibitions in the State Ethics Act. It would basically say if you are an elected official or you are employed by the City or you're appointed then they require no circumstances under which you can ask or do any business with the City. So, it has nothing to do with economic interest it has to do with your status as an elected official, appointed official or employee.

Mayor Curtis

Thank you. Mr. Cummings

Councilmember Cummings

So, on that point from your understanding of this and the example you gave earlier of the committee person who works or manages a hotel for example. We have a bid for work for hotel rooms. If they recuse themselves of voting in that matter, if it is still selected that that hotel is selected per this would they be OK or from this would they have to be prohibited per this?

Mr. Holmes

They say the devils in the details the words have been written but on the face of the proposal it looks like they could not submit a bid. Maybe the way to put it would be a little more concrete I'm not picking on you but let's say the City went out and bid its banking relationship. The bank that you work for might be prohibited submitted a bid simply because your employed by that bank and you're on City council. It's appropriate under the Ethics Act the bid from the bank you are employed by has submitted a bid is

being evaluated you would have to say I cannot participate in this vote, I'm employed by that bank and step down. As I read this proposal it would prohibit your bank from submitting a bid at all regardless of the fact that you rescue yourself.

Councilmember Cummings
OK

Mayor Curtis
OK Mr. Hutchings.

Councilmember Hutchings
If we vote to move this forward to the business meeting Ms. Gracely would we be able to get some input from MASC between now and then to advise us as to how organizations and other councils deal with this subject?

Ms. Gracely
Yes, if they have examples of what other communities have done I'm sure they would provide that information to me.

Councilmember Hutchings
I think that would be wise.

Mayor Curtis
Anyone else? Yes Ms. Kelley.

Ms. Kelly
Mr. Holmes, to the best of your knowledge has the City ever had this issue with any of this before?

Mr. Holmes
If your asking me for legal advice, I'll be glad to give that in Executive Session.

Mayor Curtis
Thank you

Mr. Holmes
I'll say that the issue has arisen before.

Councilmember Kelley
OK that

Councilmember Cummings
Just to sum it up speaking for myself I mean I can see where and I guess we've all seen here recently in the news there's been some issues in what municipalities where this has come into question. I fully believe maybe there's some I guess the devil in the details and figuring out what makes the most sense, so we don't handicap potential volunteer's ability or inability to do business with the City where it could not be deemed a conflict. Does that make sense, so I guess I'm hopeful that we can of dive into the details makes sense for all parties so that citizens and everyone can understand them and transparency that we're trying to create.

Mayor Curtis
Thank you. Yes Ms. Hulehan.

Councilmember Hulehan

Mr. Holmes said this is something we are going to have the wrestle with, so I would like to wrestle with it and in favor of moving it the business meeting, so we can get something in writing we can actually look at scratch through play with the language until we get something we are happy with.

Mayor Curtis
OK. Mr. Gooch

Councilmember Gooch

Thank you OK it does have some issues I think it is too far reaching and I do not want to limit someone that is volunteering them doing business with the City and take a portion of their business away. So, I don't want to take someone's business away. I'm not opposed to the idea I like the idea that Ms. Roche has presented. I think there is probably another path through as long as we are not damaging our small business owners just because they happen to have some association. MASC covers a lot of this stuff already I don't want to double up and create another layer of bureaucracy and potentially cause harm to somebody trying to do something good. Their trying to provide for their family service to the City because there may be places we can't even get those services. I'm willing to move it forward but it's going to have to be a new draft that would be.. that doesn't harm these folks potentially. So, I'd like to see what you come up with. I'm 51% I'll move forward with it but if it doesn't clean up and make it easier to others to continue to do business. I may say no in the end in the need but I'm willing to move forward at this moment.

Mayor Curtis

OK. I would like to say that I don't want to harm any small business either being that I am a small business owner and I realize what it takes to make a small business work. With that being said I know that there may not be anything ethically wrong anyone doing business with the City but I'm a firm believer that if it looks bad and smells bad and we as leaders of our community need to be as transparent and above reproach as we can be and I think that this moves us into that direction but I certainly don't want to harm anyone's business in this and I grateful for all the volunteers that we have that serve on our various boards and committees and I think we have some top notch citizens that have volunteered for these different positions and I don't want to harm any of them but I do want the public to feel confident in their elected officials and people that are in a position that we are always going to come down on the side of what's right be it it may not be the most expediate way or the most advantageous way to do it but it's going to be the right thing to do . So, I will be voting to move this forward tonight. So, with that being said I'll call for the vote. All those in favor signify by saying Aye. Opposed? Motion carries.

Yes = 5, No=2. Councilmember Gooch and Councilmember Kelley voting No.

5) Lighting and Display of all Personal Fireworks

Motion by Councilmember Roche with a 2nd by Councilmember Hulehan to approve changes to the Fireworks Ordinance and to move to the next business meeting for vote. Roll call vote taken. Yes = 2, No = 5. Councilmember Gooch, Councilmember Kelley, Councilmember Cummings, Councilmember Hutchings and Mayor Curtis voting No. Motion failed.

6) Volunteer STEAM Program for the Arts Center

Motion by Councilmember Gooch with a 2nd by Councilmember Kelley to approve the Volunteer STEAM Program for the Arts Center and to move to the next business meeting for vote. Roll call vote

taken. Yes=2, No= 5. Councilmember Hulehan, Councilmember Roche, Councilmember Cummings, Councilmember Hutchings and Mayor Curtis voting No. Motion failed.

7) Discussion of MASC Setoff Debt Collection Program

Motion by Councilmember Gooch with a 2nd by Councilmember Cummings to approve an Ordinance and Resolution for the MASC Setoff Debt Collection Program and to move to the next business meeting for vote. Motion carried unanimously.

8) Discussion of Proposed Ordinance to create a Special Tax Assessment for Rehabilitated Historic Property

Motion by Councilmember Hulehan with a 2nd by Councilmember Kelley to approve writing an Ordinance to create a Special Tax Assessment for Rehabilitated Historic Property and to move to the next business meeting for vote. Motion carried unanimously.

9) Discussion of Proposed Ordinance to Charge Capacity Fees for new sewer Connections

Motion by Councilmember Cummings with a 2nd by Councilmember Gooch to approve writing an Ordinance to Charge Capacity Fees for new sewer Connections and to move to the next business meeting for vote. Motion carried unanimously.

10) Discussion of a Policy and Fee Structure Requiring Plan Review Fees and Construction Monitoring for New Development

Motion by Councilmember Cummings with a 2nd by Councilmember Gooch to approve writing a Policy and Fee Structure requiring Plan Review and Construction Monitoring for New Development and to move to the next business meeting for vote. Motion carried unanimously.

ADJOURNMENT

Motion by Councilmember Gooch with a 2nd by Councilmember Cummings to adjourn. Motion carried unanimously.