

Salisbury, North Carolina
November 3, 2021

REGULAR MEETING

PRESENT: Mayor Karen K. Alexander, Presiding; Mayor Pro Tem Al Heggins, Council Members William Brian Miller, David Post, and Tamara Sheffield; City Manager W. Lane Bailey, Deputy City Clerk Connie Snyder; and City Attorney J. Graham Corriher.

ABSENT: City Clerk Kelly Baker.

In response to the State of Emergency declaration related to the spread of COVID-19 and to limit physical interactions and the potential spread of COVID-19 the Salisbury City Council met electronically. The meeting was called to order by Mayor Alexander at 3:00 p.m. A moment of silence was taken.

PLEDGE OF ALLEGIANCE

Mayor Alexander led participants in the Pledge of Allegiance to the United States flag.

RECOGNITION OF VIEWERS

Mayor Alexander welcomed all viewers.

ADOPTION OF THE AGENDA

Thereupon, Councilmember Post made a **motion** to adopt the Agenda as presented. Upon a roll call vote Mayor Alexander voted AYE, Mayor Pro Tem Heggins voted AYE, Councilmember Miller voted AYE, Councilmember Post voted AYE, and Councilmember Sheffield voted AYE. (5-0)

PROCLAMATIONS

Mayor Alexander proclaimed the following observance:

INDIAN AND NATIVE AMERICAN HERITAGE MONTH November 2021

CONSENT AGENDA

(a) Minutes

Adopt Minutes of the Regular meeting of October 19, 2021 and the Recessed Meeting of October 22, 2021.

(b) Budget Ordinance Amendment

Adopt a budget Ordinance amendment to the FY2021-2022 budget in the amount of \$112,000 to appropriate a donation to the Fire Department.

ORDINANCE AMENDING THE FY2021-2022 BUDGET ORDINANCE OF THE CITY OF SALISBURY, NORTH CAROLINA TO APPROPRIATE REVENUE FOR THE FIRE DEPARTMENT.

(The above Ordinance is recorded in full in Ordinance Book No. 29 at Page No. 158, and is known as Ordinance 2021-67.)

Thereupon, Mayor Pro Tem Heggins made a **motion** to adopt the Consent Agenda as presented. Upon a roll call vote Mayor Alexander voted AYE, Mayor Pro Tem Heggins voted AYE, Councilmember Miller voted AYE, Councilmember Post voted AYE, and Councilmember Sheffield voted AYE. (5-0)

PUBLIC COMMENT

Mayor Alexander opened the floor to receive public comments.

There being no one to address Council, Mayor Alexander closed the public comment session.

CLOSING THE 100 BLOCK OF WEST 16TH STREET

City Engineer Wendy Brindle presented information regarding the request to permanently close the unimproved right-of-way at 100 West 16th Street, located in the 1600 block of North Main Street. She added staff received petitions from the three surrounding property owners and on October 5, 2021 Council adopted a Resolution of Intent to permanently close the right-of-way.

Ms. Brindle commented staff followed NCGS 160A-299 and found the closing is not contrary to the public interest and that no one would be deprived of reasonable means of ingress and egress to their property.

Councilmember Post asked if the City owned the property in question. Ms. Brindle commented it is a right-of-way and the City does not own the property.

Councilmember Post asked if deeds were researched for the proposed right-of-way closure. Mr. Corriher commented the deeds were not researched, and he noted half of the right-of-way will go to each of the properties north and south of the right-of-way. He explained the Resolution and the Order will be recorded at the Register of Deeds and the property owners will have the right to add that property to their deeds.

Mayor Alexander convened a public hearing after due notice to receive comments regarding the proposed closing of the 100 block of West 16th Street.

There being no one to address Council, Mayor Alexander closed the public hearing.

Thereupon, Councilmember Post made a **motion** to adopt a Resolution pertaining to the proposed closing of the 100 block of West 16th Street a 60' wide unimproved right-of-way. Upon a roll call vote Mayor Alexander voted AYE, Mayor Pro Tem Heggins voted AYE, Councilmember Miller voted AYE, Councilmember Post voted AYE, and Councilmember Sheffield voted AYE. (5-0)

RESOLUTION PERTAINING TO THE PROPOSED CLOSING OF THE 100 BLOCK OF WEST 16TH STREET, A 60' WIDE UNIMPROVED RIGHT-OF-WAY.

(The above Resolution is recorded in full in Resolution Book No. 16 at Page No. 34, and is known as Resolution 2021-28.)

Thereupon, Councilmember Post made a **motion** to adopt an Order closing an unimproved right-of-way in the 100 block of West 16th Street. Upon a roll call vote Mayor Alexander voted AYE, Mayor Pro Tem Heggins voted AYE, Councilmember Miller voted AYE, Councilmember Post voted AYE, and Councilmember Sheffield voted AYE. (5-0)

(The above Order is recorded in full at the Register of Deeds and maintained in the City Clerk's Alley Closing File dated November 3, 2021.)

SPECIAL USE PERMIT – 118 WEST INNES STREET

Mayor Alexander stated Special Use Permit (SUP) 03-2021 is proposed for the property located at 118 West Innes Street to permit the sale and on-site consumption of alcohol.

City Attorney Graham explained in deciding an SUP, City Council follows quasi-judicial hearing procedures and the Council acts as the decision-making body. He noted the purpose of

the hearing is to gather evidence as to whether or not this particular application is consistent with the standards set forth in the City's Land Development Ordinance (LDO). He stated Council's task is to consider all of the competent and material evidence presented by the applicant and other parties, to ask questions about and deliberate on that evidence, to make findings of fact based on that evidence, and to apply those findings of fact to the City's LDO.

Mr. Corriher noted all of the witness must be sworn-in, and he explained the hearing will be an evidentiary hearing and only individuals with relevant and material evidence are allowed to participate.

Ex Parte Disclosure

Mr. Corriher explained Council has a responsibility when making a quasi-judicial decision to act as a fair and impartial decision maker. He asked the following questions:

- Does any member of City Council have a fixed opinion on this matter that is not susceptible to change? Upon a roll call Mayor Alexander stated NO, Mayor Pro Tem Heggins stated NO, Councilmember Miller stated NO, Councilmember Post stated NO, and Councilmember Sheffield stated NO.
- Has any member of City Council had any ex-parte communication about the subject matter of this request with the applicant? Upon a roll call Mayor Alexander stated NO, Mayor Pro Tem Heggins stated NO, Councilmember Miller stated NO, Councilmember Post stated NO, and Councilmember Sheffield stated NO.
- Does any member of City Council have a close familial, business, or other associational relationship with the applicant? Upon a roll call Mayor Alexander stated NO, Mayor Pro Tem Heggins stated NO, Councilmember Miller stated NO, Councilmember Post stated NO, and Councilmember Sheffield stated NO.
- Does any member of City Council have a financial interest in the outcome of this matter? Upon a roll call Mayor Alexander stated NO, Mayor Pro Tem Heggins stated NO, Councilmember Miller stated NO, Councilmember Post stated NO, and Councilmember Sheffield stated NO.

Public Hearing

Mayor Alexander convened a public hearing, after due notice thereof, to receive testimony regarding SUP-03-2021. She indicated anyone who wished to speak for or against this item must be sworn in. She noted the oath will be administered to each speaker who joins the proceeding as a panelist.

City Attorney Graham Corriher administered the oath to Development Services Manager Teresa Barringer.

Ms. Barringer stated the SUP request is for 118 West Innes Street and the petitioner is Mr. Larry Roth. She displayed a map of the area, and she noted the request is to permit the sale and on-site consumption of alcohol. She explained the LDO defines the property as a bar/tavern/night club and a business where alcoholic beverages are sold for on-site consumption that is not part of

a larger restaurant. She stated the property is zoned Downtown Mixed-Use (DMX) and is located within a local historic overlay.

Ms. Barringer presented the standards for decision required for the SUP:

1. The use meets all required principles and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit; and
2. The proposed plan as submitted and approved will be visually and functionally compatible to the surrounding area; and
3. The public health, safety and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed

Ms. Barringer referenced the additional use standards, and she pointed out Chapter 3 of the LDO states a bar/tavern/night club shall not be located within 500 feet of any lot containing a school. She reviewed photographs of the property.

Ms. Barringer noted the STL Club will include classic games of bowling, foosball, pinball, shuffleboard, darts, chess, trivia, pop-a-shot basketball, interactive TV games, and board games. She stated the STL Club will not offer internet sweepstakes gaming. She displayed photographs of Mr. Roth's proposal. She added the hours of operation will be Wednesday through Saturday from 3:00 p.m. until midnight. She indicated the facility is for adults only and a membership fee will be required. She commented an attendant will check memberships at door and two to three employees will serve customers.

City Attorney Graham Corriher administered the oath to Mr. Larry Roth.

Mr. Roth stated he is a member of the Downtown Salisbury, Inc. (DSI) Downtown Revitalization Committee. He noted the landscape for restaurants and entertainment has changed over the last 24 months due to COVID-19. He added he and his wife own the Shuckin' Shack Oyster Bar on North Main Street which recently celebrated its fifth anniversary in the City. He explained the Shuckin' Shack offers live entertainment on Friday and Saturday nights and when the business closes patrons often ask what else there is to do in the downtown area. He pointed out the STL Club is a classic gaming social club and is not a gambling establishment. He commented desserts and 10-inch pretzels will be served. He explained the club is membership driven with a membership fee of \$125 annually. He noted tournaments will be offered and prizes, including gift certificates to downtown restaurants, will be awarded. He added the target audience will be 40 to 65 years old and the establishment will provide mature patrons a place to go after 10:00 p.m.

Deliberation

Mayor Alexander noted deliberation will include asking supplemental questions. She opened the floor to receive questions from Council.

Councilmember Post pointed out our SUPs are permanent, and he asked why the proposal is being brought to Council as an SUP and not a Conditional District (CD) Overlay. Ms. Barringer explained Chapter 2 of the LDO requires a SUP for a bar/tavern/ or nightclub.

Councilmember Post referenced the hours of operation, and he asked if the petitioner will have to come back before Council to make changes to the hours of operation. Ms. Barringer explained if Council approves the SUP and the hours of operation are not part of the condition the hours can change without Council's consent. Mr. Corriher clarified Council can find as fact that Mr. Roth will operate in the listed hours and if the hours of operation are not a condition of approval than it is not relevant. He suggested Council eliminate the hours of operation to avoid confusion.

Councilmember Post referenced Condition 3 which states the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed, and he questioned if this component has been met in Mr. Roth's testimony. Mr. Corriher stated Council must make a finding that the proposed development will not substantially injure the value of adjoining property and it is the applicant's responsibility to provide proof. Mr. Roth noted there is one adjacent property and an alley located on the other side of his business. Mr. Corriher noted the petitioner can testify to the value of his property, but he cannot testify to how his proposal will affect the value of neighboring property. He indicated the LDO requires proof that property values will not be impaired by the proposed development. He added state legislature requires expert testimony regarding property values and traffic impact. He commented an adjoining property owner can testify that the use will not negatively impact their property.

Ms. Barringer stated she contacted Mr. Lane Yates who owns 116 West Innes Street, the property next door to the proposed location, and he is willing to provide expert testimony regarding property values.

City Attorney Graham Corriher administered the oath to Mr. Lane Yates.

Mr. Yates stated he does not believe the proposed use will negatively affect his property or any neighboring property. He added he visited the site and the developer has done a great job with the revisions. He indicated the proposed development would enhance the value on West Innes Street by providing an additional entertainment choice and ties in well with the use of his property. He stated he is a licensed North Carolina real estate broker and owner of Yates Development and Yates Realty. He noted he also owns multiple commercial properties in Salisbury, Kannapolis, and Lake Norman, and in his opinion Mr. Roth's proposal will add value to West Innes Street and the downtown area.

Mayor Alexander asked if Council has any other questions or comments.

Councilmember Post suggested removing the finding of fact regarding business hours so Mr. Roth would not have to come back before Council to expand his business hours. Mr. Roth agreed to the proposed change.

Mr. Corriher suggested Council go through the finding of fact and remove the ones it deems irrelevant. He also suggested adding a section regarding Mr. Yates testimony. He stated he will make sure the final Order reflects Council's action.

Thereupon, Councilmember Post made a **motion** to find the following Finding of Fact:

1. The use meets all required principles and specifications of the Ordinance and any adopted plans and is in harmony with the general purpose and intent and preserves its spirit as evidenced by the following testimony:

- The site is located within the Downtown Mixed Use (DMX) zoning district
- The principal use of the business is a membership only classic game social club
- The planned accessory use for the bar is compatible with the current business and with surrounding businesses
- The use will allow for alcohol consumption inside the establishment, provided that a permit is issued by the North Carolina State Alcoholic Beverage Control (ABC) Commission and Petitioners' use is consistent with said ABC permit
- The use is not located within 500 feet of any lot containing a school as defined in Chapter 18 of the LDO

2. The proposal as submitted and approved will be visually and functionally compatible to the surrounding area as evidenced by the following testimony:

- The use will be located within an existing commercial building that is visually and functionally compatible to the surrounding area
- Alcoholic beverage sales and consumption will be allowed during the business hours only
- Alcohol will not be consumed outside the building unless a separate sidewalk dining permit or other permit is obtained from the City
- Additional conditions as specified herein are required to ensure that the use is functionally compatible with the surrounding area with local Ordinances
- Alcohol sales remain subject to state law, including permitting and licensing requirements
- The nature of the business will be principally a social gaming club with on-site consumption as an accessory business activity
- The use is compatible with other downtown uses
- Additional conditions as specified herein are required to assure that the use ensures the health, safety, and welfare of the surrounding area. Private security system in place and will have a full time attendant at the front door entrance

3. The public health, safety and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed as evidenced by the following testimony:

- The use meets all required principles and specifications of the Salisbury Land Development Ordinance and any adopted plans and is in harmony with the general purpose and intent and preserves its spirit. (Standard 1, Chapter 15.18 B.2.a.)
- With additional conditions as provided herein, the proposal as submitted and approved will be visually and functionally compatible to the surrounding area. (Standard 2, Chapter 15.18 B.2.b.)
- With additional conditions as provided herein, the public health, safety and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed. (Standard 3, Chapter 15.18 B.2.c.)
- A licensed North Carolina Real Estate Broker who is familiar with the property and owns adjacent property testified that the proposed use would not substantially injure the value of adjoining property and would in fact increase the value of adjoining property
- City Attorney will draft and prepare any conditions related to the Finding of Fact.

Upon a roll call vote Mayor Alexander voted AYE, Mayor Pro Tem Heggins voted AYE, Councilmember Miller voted AYE, Councilmember Post voted AYE, and Councilmember Sheffield voted AYE. (5-0)

Thereupon, Councilmember Sheffield made a **motion** to issue Special Use Permit SUP-01-2021 to permit alcohol sales and on-site consumption at 118 West Innes Street. Upon a roll call vote Mayor Alexander voted AYE, Mayor Pro Tem Heggins voted AYE, Councilmember Miller voted AYE, Councilmember Post voted AYE, and Councilmember Sheffield voted AYE. (5-0)

REVISIONS TO DOWNTOWN REVITALIZATION INCENTIVE GRANT PROGRAM

Thereupon, Councilmember Post made a **motion** to postpone Item 10 - Council to consider revisions to the Downtown Revitalization Incentive (DRI) Grant Program until Council's November 16, 2021 meeting. Upon a roll call vote Mayor Alexander voted AYE, Mayor Pro Tem Heggins voted AYE, Councilmember Miller voted AYE, Councilmember Post voted AYE, and Councilmember Sheffield voted AYE. (5-0)

CITY ATTORNEY'S REPORT

City Attorney Graham Corriher had nothing to report to Council.

CITY MANAGER'S REPORT

(a) Employee Salary Study

City Manager Lane Bailey commented the MAPS group preliminary study related to Fire

Department salaries was shared with Fire Chief Bob Parnell. He added the Management team will meet Monday, November 8, 2021 to discuss and begin the City-wide study. He noted a preliminary 5% pay increase was recommended for Fire Department personnel and depending on where each employee is located on the pay scale will determine whether an increase will be received. Mr. Bailey stated there are funds in the budget so the salary increase will not require Council's approval. He stated the salary study will continue to move forward for the Fire Department and the rest of the organization.

(b) Fire Department Donation

Mr. Bailey noted on the Consent Agenda Council voted to accept a donation for the Fire Department. He explained a citizen, who wishes to remain anonymous, donated \$112,000 to provide each member of the Salisbury Fire Department, a \$1,000 bonus.

(c) City Attorney Salary Increase

City Manager Lane Bailey noted in August Council conducted City Attorney Graham Corriher's annual review. He indicated Mr. Corriher received an outstanding performance review, but a Councilmember was absent and the review was never completed. He added based on Mr. Corriher's review there is a recommendation to increase his salary to \$132,500.

Thereupon, Councilmember Post made a **motion** to approve adjusting the City Attorney's salary to \$132,500 as discussed by Council during the City Attorney's performance review on August 17, 2021 and making the adjustment retroactive to July 1, 2021. Upon a roll call vote Mayor Alexander voted AYE, Mayor Pro Tem Heggins voted AYE, Councilmember Miller voted AYE, Councilmember Post voted AYE, and Councilmember Sheffield voted AYE. (5-0)

COUNCIL COMMENTS

Councilmember Sheffield thanked Mr. Larry Roth for serving on Downtown Salisbury, Inc. (DSI) Board and for investing in the City.

Councilmember Sheffield reminded the public of the leaf pickup flyer in the Lamplighter newsletter.

Councilmember Post thanked Mr. Larry Roth and Mr. Lane Yates for their great work in revitalization of the downtown.

MAYOR PRO TEM COMMENTS

Mayor Pro Tem Heggins thanked the Parks and Recreation Department for their work with the Halloween celebration at the Bell Tower Green Park. She noted it was a great event which included a movie and a costume contest.

MAYOR'S ANNOUNCEMENTS AND COMMENTS


Bell Tower Green Park Concert on the Green

Mayor Alexander announced Salisbury Parks and Recreation, in partnership with Bell Tower Green, Inc. will host a Concert on the Green at the new Bell Tower Green Park. The first ever concert will take place Saturday, November 6, 2021 from 4:00 p.m. until 7:00 p.m. Bring a chair or a blanket and enjoy the concert with music from three acts including Destiny Stone, Sydney Lett, and the Kruger Brothers. Admission to the event is free. For more information call (704) 216-PLAY.

Mayor Alexander commented the Halloween Fun Fest was an exciting event, and she thanked the Parks and Recreation Department for its work to make the event a success. She also thanked Downtown Salisbury, Inc. (DSI) for their great work with the downtown Halloween Trick or Treating event.

ADJOURNMENT

Motion to adjourn the meeting was made by Councilmember Sheffield. Upon a roll call vote Mayor Alexander voted AYE, Mayor Pro Tem Heggins voted AYE, Councilmember Miller voted AYE, Councilmember Post voted AYE, and Councilmember Sheffield voted AYE. (5-0) The meeting was adjourned at 4:44 p.m.



Karen Alexander, Mayor



Kelly Baker, City Clerk