

STATE OF ALABAMA                    )  
   :  
 COUNTY OF BALDWIN                )(

The City Council, City of Fairhope, met in regular session at 6:00 p.m., Fairhope Municipal Complex Council Chamber, 161 North Section Street, Fairhope, Alabama 36532, on Monday, 22 March 2010.

Present were Council President Lonnie L. Mixon, Councilmembers: Debbie W. Quinn, Daniel Stankoski, Michael A. Ford, and Rick Kingrea, Mayor Timothy M. Kant, City Attorney Marion E. Wynne, and City Clerk Lisa A. Hanks.

There being a quorum present, Council President Mixon called the meeting to order. The invocation was given by Associate Pastor Jeff Ingram, of First Baptist Church, and the Pledge of Allegiance was recited. Council President Mixon asked if there were any corrections to the minutes from the 8 March 2010, regular meeting. He then stated if there are no corrections, the minutes stand approved as written. Council President Mixon then asked if there were any corrections to the minutes from the 8 March 2010, work session. He then stated if there are no corrections, the minutes stand approved as written. Councilmember Quinn stated she did not approve of the minutes. Council President Mixon then called the question, all in favor: Stankoski, Mixon, Ford, and Kingrea; all opposed: Quinn.

Mayor Kant addressed the City Council and stated that Bill Payne had passed away. Mr. Payne was a member on the Fairhope Airport Authority, the Industrial Development Board, the Museum Board, the Historic Preservation Committee, and the Fairhope Single Tax Corporation. A moment of silence was observed.

Councilmember Stankoski stated this is an electricity rates' clarification. There was no increase in rates, but we deleted the revenue enhancement part of the ordinance. He mentioned the City Council wants to do the same thing with all of the utilities. Natural gas will have a \$700,000 to \$1.0 million shortfall this year. The rates were adjusted without Council's knowledge. This fuel adjustment will be a true adjustment. He also thanked Ken Eslava and Gregg Mims were thanked for their help with the Library.

Lorenzo Howard from the Personnel Board addressed the City Council and gave a brief update on salary ranges. He used the Public Works Department as a benchmark model. Mr. Howard mentioned there were 19 job titles for positions with similar or like duties. They streamlined the pay process for the same jobs and renamed the position based on experience and minimized job titles. We went from 19 job titles to three: Operator 1, Operator 2, and Operator 3.

Councilmember Stankoski left the dais at 6:12 p.m. and returned at 6:46 p.m.

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The next item on the agenda was the hearing on the suspension of the Jubilee Bar & Grill's business license. City Attorney Marion E. Wynne told the City Council that they would be acting as a quasi judicial body or as a court tonight. You will actually make a decision like a judge on the suspension of the license for Jubilee Bar & Grill. Notice was given by the City for the suspension of the business license and/or license to have alcoholic beverages. The requirements are for both sides to present evidence and call witnesses to support their case. The notice given must set forth specific reasons for the suspension. Mr. McKay should present his case of why his license should not be revoked. We must give him due process and give him at least a 10 day notice of the hearing for the revocation and/or suspension on his business license. Mr. McKay has waived that requirement per his attorney Robert Stankoski and would like to be heard tonight. Section 8-19 of the City of Fairhope Code of Ordinances states any lawful license issued to any person to conduct any business shall be subject to revocation by the municipal governing body for the violation by the licensee, his agent, servant, or employee of any provision of this article or of any ordinance of the municipality, or any statute of the State of Alabama relating to the business for which such license is issued; and shall also be subject to revocation by the municipal governing body if the licensee, his agent, servant, or employee under color of such license violates or aids or abets in violating or knowingly permits or suffers to be violated any penal ordinance of the municipality or any criminal law of the State of Alabama. Specific reasons must be given and notice was given by Mayor Kant.

Chief Press addressed the City Council and briefly stated that arrests were made with seven felony counts, seven misdemeanor counts, and nine ABC violations. It is clear and obvious that Mr. McKay knew what was going on. In January, we purchased cocaine from patrons, received cash for illegal gambling, witnessed serving intoxicated persons; and in February, we purchased cocaine from the bartender and patrons, witnessed drinking while tending bar, and the establishment received violations from the Alcoholic Beverage Control Board. We arrested the bartenders and Peyton McKay. Mr. McKay was present or within five feet of these violations. We are asking for the license to be revoked.

Robert Stankoski, representing Peyton McKay who is owner of Jubilee Bar & Grill, addressed the City Council and stated he would waived the 10-day requirement and be heard on the issue tonight.

Mr. Stankoski stated that he represented Peyton McKay and the Jubilee Bar & Grill. The business has been in this location for the past six years and Mr. McKay holds a valid liquor license issued by the Alcoholic Beverage Control Board. He operates this establishment to make a living and feed his family. He employs four to five members of the Fairhope community which promotes and contributes to the stability of our economy.

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On March 12, 2010, Mr. McKay received notice from the Mayor that his license was suspended and no longer in operation. Upon such suspension, a notice by the Mayor is to be immediately given to the business owner with the right to appear before the next regularly scheduled City Council meeting. Section 4-46 of the Fairhope Code of Ordinances states:

(a) Any liquor license issued under the provisions of this article shall be subject to revocation by the City Council for the following causes: 1) violation by the person holding such license of any provision of this article or of any other ordinance of the City relating to the business covered by the license issued hereunder; 2) the person holding such license, under color of such license, violates or aids or abets in the violation, or knowingly permits or suffers to be violated any penal ordinance or law of the City or State. (b) The Mayor may suspend any license issued under the provisions of this article when, in such Mayor's opinion, cause exists for the revocation of such license by the City Council. Upon such suspension the Mayor shall give notice to the person holding such license to appear before the City Council at such time as the Mayor shall designate, but not later than the next regular meeting of the Council, and then and there show cause why the Council should not revoke such license. No person whose license has been suspended by the Mayor shall engage in the business for which such license was issued, unless and until the City Council shall pass upon such suspension and determine that the license ought not to be revoked.

He never received that notice, came to me for representation, and on March 17, 2010, I sent a letter to the City requesting a hearing.

On March 18, 2010, I requested to be on the agenda for March 22, 2010. Later that afternoon, I was hand delivered a personal copy of the formal charges instrument for the violations of the restaurant and bar. Section 4-46 is a due process for the license.

On March 6, 2010, the arrests occurred and what they witnessed is not part of the charges. Kenneth Davies and Diamond Smith were both arrested and charged with a Class B felony. Peyton McKay was only charged for gaming machines which is a Class A misdemeanor with up to a one year in jail. The most important issue here is the government has to follow the specific ordinances that are set forth.

The notice gave the following reasons for the revocation: seven misdemeanor counts of gambling, possession of a firearm while drinking, and operating an establishment where one of your employees sold illegal drugs seven times.

The gambling was a minor offense and a misdemeanor. This violation has been corrected and the machines removed. Other establishments in the City have the same or similar type of machines. If these are treated the same, you are violating the Equal Protection Clause of the Constitution.

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The possession of a firearm while drinking was the second reason. Mr. McKay has a valid pistol permit issued by the Baldwin County Sheriff. They did a thorough background and issued him the permit. Mr. McKay carries the pistol for protection. There was no evidence or proof that he was drinking. This violation has also been corrected. His permit was pulled until the case is settled.

The third reason violating, aiding, or abetting in the violation, or knowingly permits or suffers to be violated in the distribution of a controlled substance is not an issue. Mr. McKay was not arrested for that crime. No criminal offense was given for Mr. McKay. And, Mr. McKay maintains that he did not know this was occurring.

There are other establishments where crimes are going on. One business owner threatened to blow up a whole block. This was a terroristic threat and his license was not suspended and he was charged with a Class C felony. There are constant complaints of violations of the noise ordinance. When other patrons are arrested, will the Mayor step in and suspend their license? You have to treat them all the same or you violate the Equal Protection Clause of the Constitution which is a federal law. Mr. McKay has corrected his violations. This is an important hearing and his livelihood depends on the outcome. The City building inspector came in and found no violations. The Health inspector also came in and found no violations. The ABC Board still considers his license to be valid and have not suspended or revoked this license. All we ask is that the City follows what the ABC Board is doing. The City Council has the power to review and decide on this license. We ask that you review the contents of the packet in front of you with the charging instrument included and understand what Mr. McKay is asking from you.

Councilmember Kingrea asked; are you making the argument that due process has not been followed. Mr. Stankoski replied yes, but was not bringing that up as part of his argument. Mr. Kingrea then asked; when will criminal counts come against Mr. McKay. Mr. Stankoski replied May 10, 2010. Mr. Kingrea stated this is one criminal offense with seven counts. Mr. Stankoski responded one event with seven counts.

Mayor Kant addressed the City Council and stated he wanted to be heard since his name was mentioned throughout the brief. He said the Police Department came to his office, told him about the different felony charges, and asked for a hearing. He signed the document in order for the hearing. This is the first I have heard of these charges.

City Attorney Wynne reiterated the Code section regarding that any liquor license issued under the provisions of this article shall be subject to revocation by the City Council if the licensee, his agent, servant, or employee under color of such license violates or aids or abets in violating or knowingly permits or suffers to be violated any penal ordinance of the municipality or any criminal law of the State of Alabama.

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Chief Press introduced one of his officers who went undercover at Jubilee Bar & Grill. He mentioned she made purchases and witnessed everything that transpired in this event.

Lawanda Hewitt, undercover officer at the Jubilee Bar & Grill, addressed the City Council and stated that each and every time I was in the club Mr. McKay was there. Every time I witnessed the bartender drinking while on duty Mr. McKay was there. He may not have been an active participant, but there was no way he did not know what was going on. Hand to hand transfers throughout the bar and non-stop throughout the night. Ms. Hewitt said Mr. McKay just turned the other cheek. The first night I bought cocaine at the club, the persons were Diamond Smith and Kenny Davies, and Mr. McKay was standing right there. He told them she is good to go. There is no way he did not know what was going on in his bar.

Chief Press stated that anyone can get a pistol permit. The Sheriff runs an NCIC background check and if no arrests you get the permit. As to conspiracy, we may need to take a look at this issue for the future. We do not use the breathalyzer for witnessing drinking; it is just used for DUIs. All bars should be treated the same, but we must follow procedures and policies with safety in mind. If we are looking at establishments with misdemeanors or felonies, the felonies will have priority.

Councilmember Ford questioned; how long has this been going on. Chief Press replied for a while, but we cannot go into details on other issues and specifics.

Mr. Stankoski reminded the City Council that they could not review evidence that was not charged and there was no criminal conviction. These are simply charges and Mr. McKay has not had his day in court. He has new employees and is now asking for you to overturn this suspension and put him back in business.

City Attorney Wynne stated this decision does not require a criminal conviction for revoking the license. This is the Council's decision to suspend or revoke this license.

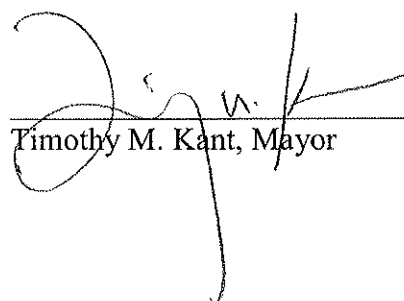
Councilmember Quinn moved to uphold the suspension of the license. The motion failed for lack of a second. Councilmember Kingrea asked; if after the hearing in May, if convicted, could the Mayor reinstate the suspension. City Attorney Wynne replied if conviction is ever given, then you could come back and suspend.

Councilmember Quinn introduced in writing, and moved for the adoption of the following resolution, a resolution authorizing City Administration to develop and issue a Request for Proposal for garbage services in Fairhope which will allow Mayor Timothy M. Kant and the Councilmembers to review proposals and evaluate City versus private operation of garbage services. Seconded by Councilmember Stankoski, motion passed unanimously by voice vote.

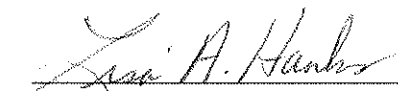
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**RESOLUTION NO. 1628-10**

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA**, that the City Administration has authorization to develop and issue a Request for Proposal ("RFP") for garbage services in Fairhope

Adopted on this 22nd day of March, 2010  
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Timothy M. Kant, Mayor

Attest:

  
\_\_\_\_\_  
Lisa A. Hanks, City Clerk

Councilmember Kingrea introduced in writing, and moved to amend the resolution authorizing Mayor Timothy M. Kant to finalize and execute a lease agreement between the City of Fairhope and Auburn University to use a location for Water Storage Tank, Well, Sewer Pump Station and Force Main to allow Mayor Kant to negotiate the agreement and then bring back to the City Council. We do not want to say yes without seeing the final document. Seconded by Councilmember Ford, motion passed unanimously by voice vote.

After further discussion, Councilmember Ford moved for the adoption of the following resolution as amended, a resolution authorizing Mayor Timothy M. Kant to negotiate a final Lease Agreement between the City of Fairhope and Auburn University to use a location for Water Storage Tank, Well, Sewer Pump Station and Force Main and bring back to the City Council for approval. Seconded by Councilmember Kingrea, motion passed unanimously by voice vote.

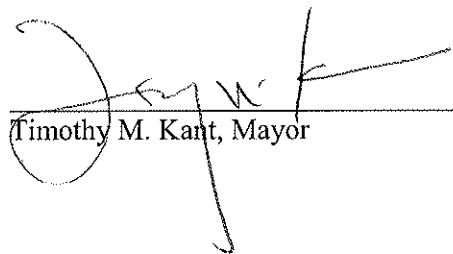
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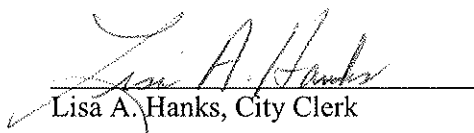
**RESOLUTION NO. 1629-10**

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA**, that Mayor Timothy M. Kant is hereby authorized to negotiate a final Lease Agreement between the City of Fairhope and Auburn University to use a location for a Water Storage Tank, Well, Sewer Pump Station and Force Main and bring back to the City Council for approval. The term of this Lease Agreement shall be for 50 years.

Adopted on this 22nd day of March, 2010


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Timothy M. Kant, Mayor

Attest:



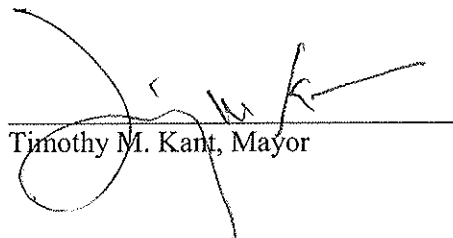
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Lisa A. Hanks, City Clerk

Councilmember Kingrea introduced in writing, and moved for the adoption of the following resolution, a resolution to purchase a Rotary Cutter (Bush Hog) for the Street Department. Seconded by Councilmember Ford, motion passed unanimously by voice vote.

**RESOLUTION NO. 1630-10**

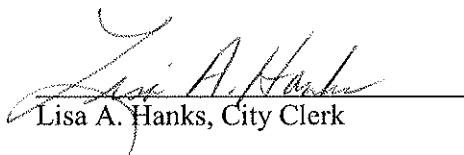
**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA**, as follows:

[1] That the City of Fairhope has voted to purchase a Rotary Cutter (Bush Hog) for the Street Department. The cost will be \$11,990.00.

Adopted on this 22nd day of March, 2010


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Timothy M. Kant, Mayor

Attest:



\_\_\_\_\_  
Lisa A. Hanks, City Clerk

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Councilmember Stankoski introduced in writing, and moved for the adoption of the following resolution with the proviso that the Fire Department keeps this in mind for future use because of the need for training, growth, and support, a resolution to rescind Bid No. 026-09 and Bid No. 002-10 for the Burn Building and Training Classroom Construction for the Fairhope Volunteer Fire Department. Seconded by Councilmember Kingrea, motion passed unanimously by voice vote.

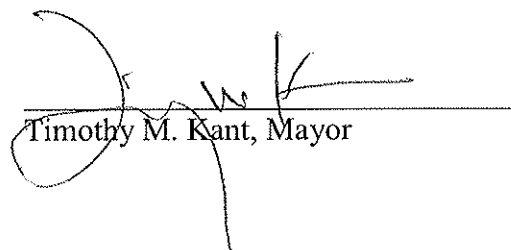
**RESOLUTION NO. 1631-10**

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA**, as follows:

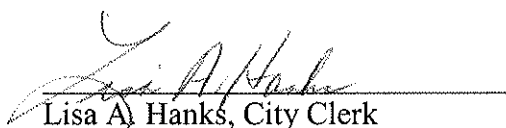
[1] That Bid No. 026-09 for Repairs to Burn Building for the Fairhope Volunteer Fire Department is hereby rescinded at the request of Fire Chief John Saraceno.

[2] That Bid No. 002-10 for Training Classroom Construction for the Fairhope Volunteer Fire Department is hereby rescinded at the request of Fire Chief John Saraceno.

Adopted on this 22nd day of March, 2010

  
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Timothy M. Kant, Mayor

Attest:

  
\_\_\_\_\_  
Lisa A. Hanks, City Clerk

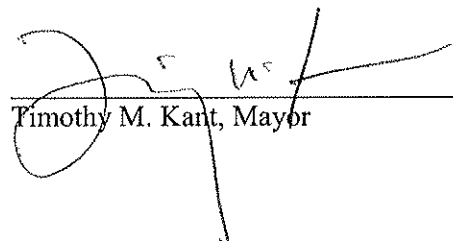
Councilmember Ford introduced in writing, and moved for the adoption of the following resolution, a resolution authorizing Mayor Timothy M. Kant to execute an agreement for Professional Services with Hutchinson, Moore & Rauch, L.L.C. to perform engineering services regarding the relocation of our 6 inch steel high pressure gas main on Highway 13 from Westminster Village to Highway 181 for the Gas Department. Seconded by Councilmember Stankoski, motion passed unanimously by voice vote.



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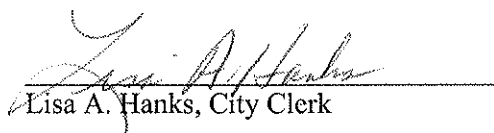
**RESOLUTION NO. 1632-10**

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA**, that Mayor Timothy M. Kant is hereby authorized to execute an Agreement for Professional Services with Hutchinson, Moore & Rauch, L.L.C. to perform engineering services regarding the relocation of our 6 inch steel high pressure gas main on Highway 31 from Westminster Village to Highway 181 for the Gas Department of the City of Fairhope.

DULY ADOPTED THIS 22ND DAY OF MARCH, 2010


Timothy M. Kant, Mayor

Attest



Lisa A. Hanks, City Clerk

Councilmember Stankoski moved for final adoption of Ordinance No. 1413, an ordinance to amend Ordinance No. 1175; to amend Chapter 8, Article II, Tobacco Products, Section 8-38, of the Fairhope Code of Ordinances. (Introduced at the March 8, 2010 City Council Meeting) The motion was seconded by Councilmember Kingrea. Councilmember Ford stated this has been in effect for 30 plus years. The "sin tax" worked and anytime money was spent the Council had to authorize the expenditure. Councilmember Kingrea stated we are moving money around so we don't have a shortfall in other departments; and all funds raised will go into the Capital Projects Fund. Councilmember Stankoski stated he agreed with Councilmember Kingrea and we need to look at the bigger picture. We put all in one fund and treat them all the same. After further discussion, motion for final adoption passed by the following voice votes: AYE – Quinn, Stankoski, Mixon, and Kingrea. NAY – Ford.

Councilmember Kingrea moved for final adoption of Ordinance No. 1414, an ordinance to amend Ordinance No. 705; to amend Chapter 4, Article II, Beer, Sections 4-27 and 4-28, of the Fairhope Code of Ordinances. (Introduced at the March 8, 2010 City Council Meeting) Seconded by Councilmember Stankoski, motion for final adoption passed by the following voice votes: AYE – Quinn, Stankoski, Mixon, and Kingrea. NAY – Ford.

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Councilmember Quinn introduced in writing Ordinance No. 1415, an ordinance to amend Ordinance No. 1371, Section VI of the City Council Rules of Procedure; and repealing Ordinance No. 1395. In order to take immediate action, Councilmember Stankoski moved for immediate consideration. Seconded by Councilmember Kingrea, Councilmember Ford abstained, but changed to yes in order to discuss the ordinance, motion for immediate consideration passed unanimously by the following votes: AYE – Quinn, Stankoski, Mixon, Ford, and Kingrea. NAY - None. Councilmember Kingrea then moved for final adoption of Ordinance No. 1415. Seconded by Councilmember Stankoski, motion for final adoption passed unanimously by the following votes: AYE – Quinn, Stankoski, Mixon, Ford, and Kingrea. NAY - None.

City Council reviewed an application for a Beer and Wine Off Premises License by Margarita E. Kellen on behalf of Walgreen Co., d/b/a Walgreens #06084, located at 2 South Greeno Road, Fairhope, Alabama. Councilmember Ford moved to approve the issuance of the license. Seconded by Councilmember Kingrea, motion passed unanimously by voice vote.

City Council reviewed an application for a Restaurant Liquor License by Claire D. West, President of CTC Group, Inc., d/b/a The Attic, located at 10 1/2 North Section Street, Fairhope, Alabama. Councilmember Stankoski moved to approve the issuance of the license. Seconded by Councilmember Kingrea, motion passed unanimously by voice vote.

Councilmember Ford moved to grant the request of Chief of Police Press requesting permission to close Section Street, from Equality to the driveway of City Hall, on April 24, 2010 for the Fairhope Police Department's Open House from 8:00 a.m. until 4:00 p.m. Seconded by Councilmember Stankoski, motion passed unanimously by voice vote.

Ron Allen, 435 Liberty Street, addressed the City Council and asked why the business license was not suspended or revoked. He stated we had a witness stating she saw the owner there while these activities were going on. Why did no one second the motion?

Paul Ripp, 22985 High Ridge Road, addressed the City Council and stated a sixth person has been killed at Parker Road. He mentioned there is cutting on the right-of-way again at the Publix. He brought up two different tree violations and the violation of trees at the Publix. The Fire Department wants to put a fire station on a dead-end road. He said that three people went to Washington, D.C. for a meeting and asked; what did we get for our money. He also mentioned the take home vehicles and gas being paid by the City.

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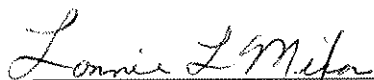
Erik Cortinas, Commissioner of Baseball, addressed the City Council and requested that no work on the Dog Park fence would proceed until the fence line has been settled.


Gary Wolfe, owner of Wolfe Funeral Home, addressed the City Council regarding a situation with Chief Press and Assistant Chief Sanders. Mr. Wolfe stated he met with Press and Sanders last Wednesday at 2:00 p.m. At this meeting, Mr. Wolfe was told that Chief Press had a meeting with the officers and said that the City of Fairhope did not charge for funeral processions and this would change on Monday. Mr. Wolfe said if the Chief had a problem he could have called and asked to speak with me. Mr. Wolfe went on to say that Chief Press told him I am Chief now, but Monday morning any funeral will be escorted by an off-duty officer who will be paid. Mr. Wolfe said he did not like the way it was handled and how he was talked to by the Chief. Council President Mixon thanked Mr. Wolfe and told him to write a letter to the Mayor regarding this issue.

Tony Wade, owner of Tony's Towing, addressed the City Council regarding a certified letter he received from Chief Press. The accident site in question was worked by the State Troopers. Mr. Wade said Chief Press told him he had a monopoly and would be going to change that. Chief Press told him, "I am always going to be right until proven wrong." Mr. Wade stated he was going by the ordinance the City Council put in place. Council President Mixon thanked Mr. Wade and told him to write a letter to the Mayor regarding this issue.

John Brandon, 108 Section Street, addressed the City Council regarding an Arts and Crafts' issue where access to his property was blocked. Mr. Brandon said he has been working with Sherry Sullivan. He stated that when you grant permission, you should also give access to businesses. Council President Mixon thanked Mr. Brandon and told him to write a letter to the Mayor regarding this issue.

There being no further business to come before the City Council, the meeting was duly adjourned at 7:30 p.m.

  
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Lonnie L. Mixon, Council President

  
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Lisa A. Hanks, City Clerk