

REGULAR MEETING - MARCH 2, 2017

The Mayor and City Council met in regular session on Thursday, March 2, 2017 at 7:00 pm in the Council Chambers of City Hall located at 114 West Sycamore Street Lincolnton, North Carolina.

Mayor Ed Hatley called the meeting to order and led the Pledge of Allegiance. The following Council members were in attendance:

SMITH BLACK EADDY JETTON

Councilman Black made the motion unanimously approved to amend the **REGULAR AGENDA** moving the presentation from the NC Department of Labor, Ms. Cherie Berry, as the first item of business on the agenda.

Councilman Eaddy made the motion unanimously approved the **CONSENT AGENDA** as follows:

- Approved the minutes of the regular meeting held February 2, 2017
- Approved the following Calls to Public Hearing for the April 6th City Council meeting:
- CUZMA-1-2017 – Application from The BTR Communities Group, LLC requesting the conditional use rezoning of approximately 3.5 acres of land from General Business (GB) District to the Conditional Use-Residential-Office District. The conditional use permit would allow for the construction of a 48 unit Planned Residential Multi-Family Development. The subject property is located on East Main Street (formerly 2480/2490 East Main Street) and Ross Street (Parcel ID 00448, 90927, 90928, 90929)
- ZTA-1-2017 – Application from the Downtown Steering Committee to revise the permitted uses in the CB District by allowing automobile service stations, bail bond services, check cashing establishments, churches, Financial Institutions, and pawn shops as conditional uses rather than permitted uses.
- ZTA-2-2017 – Application from Natalie Ridge and Will Fox requesting a text amendment to the Unified Development Ordinance (Section 153.106). The proposed text amendment would allow for Open-Air Venue/Outdoor Venue as a Conditional Use in the R-15 and R-10 zoning districts.

REGULAR MEETING - MARCH 2, 2017

REGULAR AGENDA:

PRESENTATION FROM THE COMMISSIONER OF THE NC DEPARTMENT OF LABOR (OSHA DIVISION) TO THE CITY'S DISTRIBUTION AND COLLECTIONS DEPARTMENT – SAFETY, HEALTH ACHIEVEMENT RECOGNITION PROGRAM (SHARP AWARD)

Debbie Rogers-Lowery, Safety Consultant from Compliance Training Associates gave an overview of the requirements for receiving this award and introduced Ms. Cherie Berry, Commissioner of the NC Department of Labor, who presented the award to the Distribution and Collections Department employees.

Ms. Roger-Lowery, told Council members that the Distribution and Collections Department, comprised of 12 employees, maintains 350 miles of waterline and 225 miles of sewer line. They also check daily 20 sewer pump stations. She commended this department for the great job they do with only a department of twelve people. She explained this designation is awarded to Public Sector employers who are successful in protecting employees from death, injury and illness by implementing comprehensive and effective safety and health programs. Of fifty sites considered for the SHARP Award, only ten departments that are Distribution and Collections.

Ms. Cherie Berry then spoke praising the City's Distribution and Collections Department for receipt of this award. She called all department members present forward, along with Steve Peeler Director of Public Works, to receive the award. Mayor and Council thanked the Distribution and Collections Department for their hard work and dedication to receive this award for the City.

PROPOSED AMENDMENT TO THE CITY'S CODE OF ORDINANCES AS FOLLOWS: TITLE XV. LAND USAGE – CHAPTER 150. BUILDINGS; CONSTRUCTION AND RELATED ACTIVITIES ADD: SECTION 150.100 – MINIMUM NONRESIDENTIAL STANDARDS, IN ORDER TO ESTABLISH MINIMUM STANDARDS FOR MAINTENANCE OF COMMERCIAL BUILDINGS:

(O-03-17)

Mayor Hatley opened the Public Hearing. Laura Elam, Planning Director, reviewed the request from the planning department, explaining that at the City's 2016 budget retreat Council requested that the Planning Staff research and propose a Commercial Maintenance Code. The proposed amendment would establish minimum standards for maintenance and sanitation of commercial

REGULAR MEETING - MARCH 2, 2017

properties based on specific state enabling legislation. The proposed amendment was presented as follows:

An Ordinance to Amend the City of Lincolnton
Code of Ordinances to Establish
Minimum Nonresidential Building Standards

Section 1. Add new Section 150.100, Minimum Nonresidential Building Standards, to read as follows:

MINIMUM NONRESIDENTIAL BUILDING STANDARDS

150.100 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, and shall apply in the interpretation and enforcement of this article:

Basic structural elements means the parts of a building which provide the principal strength, stability, integrity, shape and safety of the building, including, but not limited to, plates, studs, joists, rafters, stringers, stairs, sub-flooring, flooring, sheathing, lathing, roofing, siding, window frames, door frames, porches, railings, eaves, chimneys, flashing, masonry and all other essential components.

Building means any structure, place, or any other construction built for the shelter or enclosure of persons, animals, chattels or property of any kind or any part of such structure, shelter or property.

Code enforcement officer shall mean a code enforcement officer of the City of Lincolnton or any agent of the code enforcement officer who is authorized by the code enforcement officer to enforce the provisions of this article.

Nonresidential means any building or structure or portion of a building or structure occupied or intended to be occupied, in whole or in part, for a use other than a dwelling, home, residing place, living space or sleeping space for one (1) or more human beings, either permanently or transiently.

Occupant shall mean any person who is a tenant or has actual possession of a nonresidential building or structure or part thereof.

Operator shall mean any person who has charge, care, or control of a nonresidential building or structure, or part thereof.

Owner shall mean any person who alone, or jointly, or severally with others:

REGULAR MEETING - MARCH 2, 2017

(1) Shall have title in fee simple to any nonresidential building or structure, with or without accompanying actual possession thereof; or

(2) Shall have charge, care or control of any nonresidential building or structure as owner or agent of the owner, or as executor, executrix, administrator, administration, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this article and of rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.

Parties in interest means all individuals, associations, and corporations who have interests of record in a nonresidential building or structure and any who are in possession thereof.

Premises means any lot or parcel of land inclusive of any building or improvements located thereon.

Safe means a condition which is not likely to do harm to humans or to real or personal property.

Structure means anything constructed or placed upon a property which is supported by the ground or which is supported by any other structure, except a currently operable licensed vehicle.

Structurally sound means substantially free from flaw, defect, decay or deterioration to the extent that the building or structure or structural member is capable of adequately or safely accomplishing the purpose for which it was intended or designed.

Unsafe means a condition which is reasonably likely to do harm to humans or to real or personal property if not corrected or stopped.

Vacant manufacturing facility means any building or structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one (1) year and has not been converted to another use.

Vacant industrial warehouse means any building or structure designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one (1) year and has not been converted to another use.

150.101 Purpose.

In order to protect the health, safety and welfare of the city and its citizens, it is the purpose of this article to establish minimum standards of maintenance, sanitation, and safety relating to nonresidential buildings or structures, as

REGULAR MEETING - MARCH 2, 2017

expressly authorized by North Carolina General Statute 160A-439. This article provides for the repair, closing or demolition of nonresidential buildings or structures as a result of a public necessity caused by conditions that are dangerous to the public health, safety and welfare.

150.102 Applicability and compliance.

(A)The provisions of this article shall apply to all nonresidential buildings or structures which are now in existence or which may be built within the corporate limits of the city.

Every nonresidential building or structure and the premises on which it is situated shall comply with the provisions of this article, whether or not such building or structure shall have been constructed, altered, or repaired before or after the enactment of this article, and irrespective of any permits or licenses which have been issued for the use or occupancy of the building or structure or for the installment or repair of equipment or facilities. This article establishes minimum standards for all nonresidential buildings and structures and does not replace or modify standards otherwise established for the construction, repair, alteration, or use of the building or structure, equipment or facilities contained therein.

105.103 Maintenance standards for nonresidential buildings and structures.

All nonresidential buildings and structures shall be free of all conditions that are dangerous and injurious to the public health, safety, and welfare of occupants or members of the general public. Without limitation of the foregoing requirement, the existence of any of the following conditions shall be deemed to be dangerous to the public health, safety and welfare for which a public necessity exists for the repair, closing, or demolition of such building or structure and must be corrected in accordance with the provisions of this article:

- (A)Exterior walls that are not structurally sound, free from defects and damages, and capable of bearing imposed loads safely. Where a wall of a building has become exposed as a result of demolition of adjacent buildings, such wall must have all doors, windows, vents, or other similar openings closed with material of the type comprising the wall. The exposed wall shall be painted, stuccoed or bricked and sufficiently weatherproofed to prevent deterioration of the wall.
- (B)Roofs shall be kept structurally sound and shall be maintained in such a manner so as to prevent rain or other objects from penetrating into the interior of the building
- (C)Such damage by fire, wind, or other causes as to render the building unsafe.

REGULAR MEETING - MARCH 2, 2017

- (D) Dilapidation, decay, unsanitary conditions, or disrepair, which is dangerous to the health and safety of the occupants or members of the general public.
- (E) Buildings and structures including their environs that have accumulations of garbage, trash, or rubbish, which creates health and sanitation problems. All garbage and solid waste shall be in approved containers or stored in a safe and sanitary manner.
- (F) Buildings and structures that have loose and insufficiently anchored overhanging objects, which constitute a danger of falling on persons or property.
- (G) Buildings and structures that have cracked or broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic, or other dangerous objects or similar hazardous conditions.
- (H) Buildings and structures that have objects and elements protruding from building walls or roofs, which are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other brackets, and similar objects.
- (I) Exterior porches, landings, balconies, stairs, or fire escapes which are not structurally sound. All exterior porches, landings, balconies, stairs, and fire escapes shall be provided with banisters or railings properly designed and maintained to minimize the hazard of falling, and the same shall be kept sound, in good repair, and free of defects.
- (J) Windows containing broken or cracked glass that could be in danger of falling or shattering.
- (K) All openings originally designed as windows, doors, loading docks, or other means of egress or ingress which have been temporarily closed by boarding or other manner in a nonsecure manner so as to allow unauthorized admittance. If an opening is temporarily closed by boarding to secure the building or structure, the boarding shall be trim fit, sealed to prevent water intrusion, and the building or structure shall be maintained in a state that secures the building or structure from any unauthorized admittance from humans, animals, or birds.
- (L) Any combination of conditions which in the judgment of the code enforcement officer renders any building or structure dangerous or injurious to the health, safety, or general welfare of occupants or members of the general public.

105.104 Duties of the enforcement officer.

The code enforcement officer is hereby designated as the public officer to enforce the provisions of this article and to exercise the duties and powers herein prescribed. It shall be the duty of the code enforcement officer:

REGULAR MEETING - MARCH 2, 2017

- (A) To investigate the conditions of nonresidential buildings and structures in the city and to inspect nonresidential buildings and structures located in the city in order to determine which nonresidential buildings and structures are not being maintained so that the health and safety of its occupants or members of the general public are jeopardized and for the purpose of carrying out the objectives of this article with respect to such nonresidential buildings and structures;
- (B) To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect the repair or demolition of nonresidential buildings and structures which have not been properly maintained in compliance with minimum standards established by this article;
- (C) To keep a record of the results of inspections made under this article and an inventory of those non-residential buildings and structures which have not been properly maintained in compliance with the minimum standards established by this article;
- (D) To perform such other duties as may be herein prescribed.

105.105 Powers of the enforcement officer.

The code enforcement officer is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this article, including the following powers in addition to others herein granted:

- (A) To investigate nonresidential buildings and structures in the city to determine whether they have been properly maintained in compliance with the minimum standards established by this article so that the safety or health of the occupants or members of the general public are not jeopardized;
- (B) To administer oaths and affirmations, examine witnesses and receive evidence;
- (C) To enter upon premises for the purpose of making examinations and inspections provided that such entries shall be made in accordance with law and in such manner as to cause the least possible inconvenience to the persons in possession; and
- (D) To appoint and fix duties of such officers, agents, and employees as the code enforcement officer deems necessary to carry out the purposes of this article.

REGULAR MEETING - MARCH 2, 2017

105.106 Inspections.

For the purpose of making inspections, the code enforcement officer is hereby authorized to enter, examine, and survey at all reasonable times, nonresidential buildings and structures. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with G.S. 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

150.107 Procedure for Enforcement

(A) Preliminary investigation. Whenever it appears to the code enforcement officer that any nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by this article, the code enforcement officer shall undertake a preliminary investigation.

(B) Complaint and hearing. If the preliminary investigation discloses evidence of a violation of the minimum standards established by this article, the code enforcement officer shall issue and cause to be served upon the owner of and parties in interest in the nonresidential building or structure a complaint. The complaint shall state the charges and contain a notice that a hearing will be held before the code enforcement officer at a place therein fixed, not less than ten (10) days nor more than thirty (30) days after the serving of the complaint, that the owner and parties in interest shall be given the right to answer the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the code enforcement officer.

(A) Procedure after hearing.

(1) If, after notice and hearing, the code enforcement officer determines that the nonresidential building or structure has been maintained in that the property meets the minimum standards established by this article, the code enforcement officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof a copy of said determination.

(2) If, after notice and hearing, the code enforcement officer determines that the nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public is jeopardized for failure of the property to meet the minimum standards established by this article, the code enforcement officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order in accordance with the provisions of

REGULAR MEETING - MARCH 2, 2017

Subsection (C)(3) and (C)(4) of this section and subject to the limitations set forth in Sections [150.108](#) and [150.109](#).

(3) If the code enforcement officer determines that the cost of repair, alteration, or improvement of the building or structure would not exceed fifty (50) percent of its then-current value, then the code enforcement officer shall state in writing the findings of fact in support of such determination and issue an order that requires the owner, within a reasonable time specified in the order, to either (i) repair, alter, or improve the nonresidential building or structure in order to bring it into compliance with the minimum standards established by this article or (ii) vacate and close the nonresidential building or structure for any use.

(4) If the code enforcement officer determines that the cost of repair, alteration, or improvement of the building or structure would exceed fifty (50) percent of its then-current value, then the code enforcement officer shall state in writing the findings of fact in support of such determination and issue an order that requires the owner, within a reasonable time specified in the order, to either (i) repair, alter or improve the nonresidential building or structure to bring it into compliance with the minimum standards established by this article or (ii) remove or demolish the nonresidential building or structure.

(D) Failure to comply with order and ordinances.

(1) If the owner fails to comply with an order to either (i) repair, alter, or improve the nonresidential building or structure or (ii) vacate and close the nonresidential building or structure, City Council may adopt an ordinance ordering the code enforcement officer to cause such nonresidential building or structure to be repaired, altered, or improved in order to bring it into compliance with the minimum standards established by this article or to be vacated and closed. The property shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner(s) in the grantor index.

(2) If the owner fails to comply with an order to remove or demolish the nonresidential building or structure, City Council may adopt an ordinance ordering the code enforcement officer to cause such nonresidential building or structure to be removed or demolished. No ordinance shall be adopted to require removal or demolition of a nonresidential building or structure until the owner has first been given a reasonable opportunity to bring it into conformity with the minimum standards established by the City Council. The property shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner(s) in the grantor index.

REGULAR MEETING - MARCH 2, 2017

150.108 Limitations on orders and ordinances—Historic landmark or historic district.

Notwithstanding any other provision of this article, if the nonresidential building or structure is designated as a local historic landmark, listed in the National Register of Historic Places or located in a locally designated historic district or in a historic district listed in the National Register of Historic Places and the City Council determines, after a public hearing, that the nonresidential building or structure is of individual significance or contributes to maintaining the character of the district, and the nonresidential building or structure has not been condemned as unsafe, an order issued by the code enforcement officer pursuant to [150.107\(C\)](#) and an ordinance approved by City Council pursuant to [150.107\(D\)](#) may require that the nonresidential building or structure be vacated and closed until it is brought into compliance with the minimum standards established by this article.

150.109 Limitations on orders and ordinances—Vacant manufacturing facility or vacant industrial warehouse.

Notwithstanding any other provision of this article, an order issued by the code enforcement officer pursuant to [150.107 \(C\)](#) and an ordinance approved by City Council pursuant to [150.107\(D\)](#) may not require repairs, alterations, or improvements to be made to a vacant manufacturing facility or a vacant industrial warehouse to preserve the original use. The order and ordinance may require such building or structure to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the building or structure closed for any use.

150.110 Vacated and closed nonresidential buildings or structures.

(A)If the City Council has adopted an ordinance or the code enforcement officer has issued an order requiring the building or structure to be repaired or vacated and closed and the building or structure has been vacated and closed for a period of two (2) years pursuant to the ordinance or order, then if the City Council finds that the owner has abandoned the intent and purpose to repair, alter, or improve the building or structure and that the continuation of the building or structure in its vacated and closed status would be inimical to the health, safety, and welfare of the city in that it would continue to deteriorate, would create a fire or safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal

REGULAR MEETING - MARCH 2, 2017

activities, or would cause or contribute to blight and the deterioration of property values in the area, then City Council may, after the expiration of the two-year period, adopt an ordinance and serve such ordinance on the owner, setting forth the following:

- (1) If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards is less than or equal to fifty percent (50%) of its then current value, the ordinance shall require that the owner either repair or demolish and remove the building or structure within 90 days; or
- (2) If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards exceeds fifty percent (50%) of its then current value, the ordinance shall require the owner to demolish and remove the building or structure within 90 days.

In the case of a vacant manufacturing facility or a vacant industrial warehouse, the building or structure must have been vacated and closed pursuant to an order or ordinance for a period of five (5) years before City Council may take action under this section. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner in the grantor index.

- (A) If the owner fails to comply with the requirements of the ordinance within ninety (90) days, the code enforcement officer shall demolish and remove the nonresidential building or structure.

150.111 Methods of service of complaints and orders.

(A) Complaints or orders issued by the code enforcement officer under this article shall be served upon persons either personally or by registered or certified mail and, in conjunction therewith, may be served by regular mail. When the manner or service is by regular mail in conjunction with registered or certified mail, and the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten (10) days after mailing, service shall be deemed sufficient. The person mailing the complaint or order by regular mail shall certify that fact and the date thereof, and such certificate shall be conclusive in the absence of fraud. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

(B) If the identities of any owner or the whereabouts of persons are unknown and cannot be ascertained by the code enforcement officer in the exercise of reasonable diligence, and the code enforcement officer makes an affidavit to that effect, then the serving of the complaint or order upon the unknown owners or other persons may be made by publication in a newspaper having

REGULAR MEETING - MARCH 2, 2017

general circulation in the city at least once no later than the time at which personal service would be required under the provisions of this article. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

150.112 Interim action by the code enforcement officer.

After failure of an owner of a nonresidential building or structure to comply with an order of the code enforcement officer issued pursuant to the provisions of this article and upon adoption by the City Council of an ordinance authorizing and directing the owner to do so, as provided by G.S. 160A-439(f) and Section [150.107 \(D\)](#) of this article, the code enforcement officer shall proceed to cause such nonresidential building or structure to be repaired, altered, or improved to comply with the minimum standards established by this article, or to be vacated and closed or to be removed or demolished, as directed by the ordinance of the City Council. The code enforcement officer may cause to be posted on the main entrance of any nonresidential building or structure which is to be vacated and closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building or structure so posted shall be guilty of a class 3 misdemeanor.

150.113 Costs, a lien on premises.

(A) As provided by G.S. 160A-439(i), the amount of the cost of any repairs, alterations, or improvements, or vacating and closing, or removal or demolition, caused to be made or done by the code enforcement officer pursuant to [Section 150.107 \(D\)](#) or Section 150.110 shall be a lien against the real property upon which such costs were incurred. Such lien shall be filed, have the same priority, and be enforced and the costs collected as provided by Article 10, Chapter 160A of the North Carolina General Statutes. The amount of the costs shall also be a lien on any other real property of the owner located within the city limits except for the owner's primary residence. The additional lien provided in this subdivision is inferior to all prior liens and shall be collected as a money judgment.

(B) If the nonresidential building or structure is removed or demolished by the code enforcement officer, the code enforcement officer shall offer for sale the recoverable materials of the building or structure and any personal property, fixtures, or appurtenances found in or attached to the building or structure and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition, and any balance remaining shall be deposited in the superior court by the code enforcement officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled

REGULAR MEETING - MARCH 2, 2017

thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the governing body to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

150.114 Ejectment.

If any occupant fails to comply with an order to vacate a nonresidential building or structure, the code enforcement officer may file a civil action in the name of the city to remove the occupant. The action to vacate shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying the nonresidential building or structure. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date, and place not to exceed ten (10) days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served and if at the hearing the code enforcement officer produces a certified copy of an ordinance adopted by the City Council pursuant to G.S. 160A-493(f) and [Section 150.107 \(D\)](#) to vacate the occupied nonresidential building or structure, the magistrate shall enter judgment ordering that the premises be vacated and all persons be removed. The judgment ordering that the nonresidential building or structure be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered under this subsection by the magistrate may be taken as provided in G.S. 7A-228, and the execution of the judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a nonresidential building or structure who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this subsection unless the occupant was served with notice, at least thirty (30) days before the filing of the summary ejectment proceeding, that the City Council has ordered the code enforcement officer to proceed to exercise his duties under G.S. 160A-493(f) and [Section 150.107 \(D\)](#) to vacate and close or remove and demolish the nonresidential building or structure.

150.115 Alternative remedies.

Neither this article nor any of its provisions shall be construed to impair or limit in any way the power of the City of Lincolnton to define and declare nuisances and to cause their abatement by summary action or otherwise, or to enforce this article by criminal process as authorized by G.S. [14-4](#) and [Section 150.118](#) of this article and the enforcement of any remedy provided herein or in other ordinances or laws.

REGULAR MEETING - MARCH 2, 2017

150.116 Appeals Process

(A) Within thirty (30) days following receipt of an order from the code enforcement officer any person receiving such order, believing that the literal application of the ordinance will cause undue hardship or has been misconstrued, wrongly interpreted or applied, may appeal in writing to the City of Lincoln Board of Adjustment for such relief as may be granted, after investigation of the grounds thereof, by way of a reasonable extension of time or a variation from strict compliance with the provisions of this ordinance. The circumstances justifying such findings related to hardship are:

- 1) Inability to comply within the time period provided in this article due to clearly documented severe financial distress; or
- 2) The clear and significant non-availability of services or equipment with which to comply, without fault of the applicant; or
- 3) Other extenuating circumstances showing a good faith intention on the part of the applicant or another to comply when able to do so.

(B) Any person aggrieved by the decision of the Board of Adjustment may petition the Superior Court of Lincoln County for an injunction. Any such petition must be filed with Superior Court of Lincoln County within thirty (30) days from the date of the Board's decision.

150.117 Conflict with other provisions.

In the event any provision, standard or requirement of this article is found to be in conflict with any other ordinance or code of the city, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of health and safety of the citizens of the city shall prevail.

150.118 Violations; penalty.

(A) It shall be unlawful for the owner of any nonresidential building or structure to fail, neglect, or refuse to repair, alter, or improve the same, or to vacate and close and remove or demolish the same, upon order of the code enforcement officer duly made and served in accordance with the provisions of this article, within the time specified in such order, and each day that any such failure, neglect or refusal to comply with such order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any nonresidential building or structure, with respect to which an order has been issued pursuant to Section 150.107 (C) of this article, to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration, improvement, or its vacation and closing, and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.

REGULAR MEETING - MARCH 2, 2017

- (A) The violation of any provision of this article shall constitute a misdemeanor, as provided by G.S. 14-4.
- (B) In addition to or in lieu of the other remedies provided by this article, any owner of a nonresidential building or structure that fails to comply with an order of the code enforcement officer within the time specified therein, shall be subject to a civil penalty in accordance with Section 150.999 (C).

Section 2. That this ordinance shall become effective upon its adoption.

Councilman Jetton made the motion unanimously approved to close the Public Hearing.

Councilman Eaddy made the motion unanimously approved to amend the City's Code as recommended.

APPLICATION FROM DR. DERRICK DENMAN FOR BUSINESS INCENTIVE GRANT FOR EXPANSION OF LINCOLN CHIROPRACTIC OFFICES LOCATED AT 108 NEWBOLD STREET:

BIG-04-2017

Mayor Hatley opened the Public Hearing. Laura Elam, Planning Director, reviewed the request from Dr. Derrick Denman for Business Incentive Grant monies in the amount of \$ 5,000 to go toward the construction of additional office space to accommodate expansion of Lincoln Chiropractic office in order to allow room for a new chiropractic offices located at 108 Newbold Street. The total project cost for additional office space was estimated at \$ 69,300.00.

Councilman Black made the motion unanimously approved to close the public hearing. Councilman Jetton made the motion unanimously approved to grant the funds as requested and recommended.

CONSIDERATION OF PROPOSED AMENDMENT TO THE CITY'S CODE OF ORDINANCES – TITLE IX – GENERAL REGULATIONS – CHAPTER 94 – PARADES AND DEMONSTRATIONS AND TITLE XI – BUSINESS REGULATIONS – ADDING CHAPTER 116 – STREET PERFORMERS; PERMITS REQUIRED

(o-04-17)

Mayor Hatley opened the Public Hearing. TJ Wilson, City Attorney, told those in attendance that at this time it is the City's intent to continue to enforce the ordinance currently in place, under Title XIII; Chapter 130 – General Offenses Against Public Peace and Safety. Increased Police presence at special events held in the downtown area will be noticeable.

REGULAR MEETING - MARCH 2, 2017

The current ordinance reads as follows:

(A) The Chief of Police, or his designee, shall define an area within the city for the activities to be conducted and the duration of the activities. He or she shall have the authority to block streets to vehicular traffic, and control the conduct of participants and attendees of special events to the extent necessary to ensure public safety. The area defined, and the duration of activities shall be clearly marked on maps posted on the barricades erected to block vehicular traffic, and shall be published prior to the events in the publication having general circulation in the Lincoln/Lincoln County area prior to the event.

(B) During the time and area so designated, the following activities shall be forbidden:

1. The movement of powered vehicles (except for public safety and public works/utilities vehicles or others as approved for short distance movement on festival grounds while accompanied by law enforcement.
2. Allowing animals not under the control of a competent person; animals not sufficiently near the owner or person in charge of the animal; not under his or her direct restraining control and disobedient to that person's commands; animal not restrained by chain, leash, harness or other means of physical control; provided however, police canines and service dogs trained to provide assistance to special persons for sight, hearing, mobility; and
3. Any conduct deemed to be disruptive or dangerous to participants or attendees of the special event.

(C) A violation of this section shall constitute a Class 2 misdemeanor unless it is alleged that the conduct was intentional or was carried out in a way that constituted willful or wanton disregard for the safety of the participants or attendees of the event, in which case it shall constitute a Class 1 misdemeanor.

Mayor Hatley and City Council felt that the citizens that were in attendance to speak to this matter should be heard as it was an advertised public hearing.

In light of the remarks from the City Attorney regarding the City's position on this topic, several that had originally signed to speak declined once called upon. Wayne Howard spoke in favor of some type of control, that would not allow people to get in someone's face to express their opinion or share a message. He said, "I was actually hoping you might come up with something but I don't think it is necessary if everyone uses a little courtesy." He referenced an incident at last year's Apple Festival where individuals were going up and down the streets with a bullhorn shouting and frightening young children. He said, "When I ask them to tone it down a bit, the man shouted within six inches of my face, "You are going to hell." Wayne said, "I did not appreciate it and I hope people attending these

REGULAR MEETING - MARCH 2, 2017

events downtown in the future will use a little courtesy.”

Carole Howell, Lincoln County Apple Festival Chair, also spoke in favor of some type of free expression area, which would not permit loud and in your face altercations. She said, “I am not against anyone’s freedom of speech rights but I feel the City could help by building their ordinances to encumber provisions for special events”.

Arthur Fisher, Edward Reese, Mike Scott, Scott Rapp, Alan Hoyle and Steve Widdows all expressed their concerns for violating the first amendment rights of citizens should any speech prohibitions be put into place through a ordinance or policy. Several of those speaking indicated they would stand ready to take legal action against the City if an amendment to the ordinance, restricting freedom of speech, was approved.

Mr. Jackson Leatherman also spoke asking the City, in whatever decision they make, to provide a place for preachers to preach. He said, “We are in a time that we need to tell people about Jesus and spread the Gospel.”

This item generated much discussion. All those that spoke were given three minutes to express their thoughts on the matter.

Councilman Eaddy made the motion to close the Public Hearing.

Mayor Hatley said he appreciated everything that we have heard tonight.

Councilman Jetton said, “There is no one I admire more than a man preaching the word of God. We have heard both sides here tonight and there is one word that can settle this whole thing and that word is respect. I hope we will consider that and that everyone will have respect for others when attending these events.”

Councilman Eaddy said, “The focus of this whole initiative has been on the safety of our citizens and those attending the events downtown. It has not been in any way to restrict speech. When you have 40,000 people downtown a small incident can get out of hand quickly. That’s all this discussion was about was trying to allow our citizens to come to events and have fun and be safe. It never had anything to do with restricting speech and I think that is important for everybody to realize”.

REGULAR MEETING - MARCH 2, 2017

Mayor Hatley concluded comment saying he was talking with Alan Hoyle before the meeting tonight and he summed it up well; "If both parties respect each other and respect the rights of everyone, and treat everybody as brothers then I hope good common sense can come into play rather than anything else".

RESOLUTION HONORING THE UPCOMING RETIREMENT OF ROBERT S. BUFF III, PUBLIC WORKS SUPERINTENDENT:

(R-02-17)

Mayor Ed Hatley called on Rob Buff and his family to come forward. He recognized Rob's retirement by reading aloud a retirement resolution drafted in his honor.

Councilman Eaddy made the motion unanimously approved to adopt the resolution as follows:

WHEREAS, Robert S. Buff III, began employment with the City of Lincolnton on August 21, 1990 as a Sanitation Collector I in the Public Works Division. In 1993 he was promoted to Sanitation Equipment Operator II, then in 2000 he was named Solid Waste Supervisor, excelling in 2001 to his current position of Public Works Superintendent; and

WHEREAS, Robert S. Buff III, he has served as a member of the American Public Works Association (APWA); serving on the board of Directors since 2008 then as President of the Solid Waste Division of APWA in 2013. Through his membership to the American Public Works Association, North Carolina Division, he represented not only the City but North Carolina nationally. He has also served locally on the Apple Festival Board since 2004 and received the Main Street Civic Leadership Award in 2013; and

WHEREAS, Robert S. Buff III, has served the City well in the various capacities named above and should be commended for his service to the City and its citizens;

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Lincolnton, that appreciation be shown to **Robert S. Buff III**, honoring him on his upcoming retirement on April 1, 2017 and that we extend congratulations and best wishes to him for continued success in all his future endeavors.

RESOLUTION OPPOSING HOUSE BILL 64 – MOVING MUNICIPAL ELECTIONS TO EVEN NUMBERED YEARS:

(R-03-17)

Mayor Ed Hatley reviewed a resolution opposing HB 64 which if approved would oppose moving municipal elections to even numbered years. The resolution read as follows:

WHEREAS, Municipalities in North Carolina have a long standing history of being well managed without gross mismanagement of power; and

REGULAR MEETING - MARCH 2, 2017

WHEREAS, we as local officials care for the health, safety and well-being of our citizens and the property encompassed within our municipalities; and

WHEREAS, we believe local officials, who live and work daily in the communities they represent, can best determine the specific needs of our citizens and our communities; and

WHEREAS, Municipal Elections in the City of Lincoln are held every two years in odd-numbered years in accordance with the City Charter and in accordance with State law governing municipal elections and are partisan;

WHEREAS, Municipal Elections are held in odd numbered years, with National and State Elections held in even years, in order to separate national elections from local government elections; and

WHEREAS, the separation of National and State Elections from Municipal Elections allow citizens to focus on the issues and candidates that are of singular importance to their individual neighborhoods and communities.

NOW THEREFORE, BE IT RESOLVED that the Mayor and City Council of the City of Lincoln are opposed to House Bill 64 which would move Municipal Elections to even number years due to the following reasons:

1. Elections in odd numbered years allows people to be informed regarding local issues and municipal candidates who can best serve their communities;
2. This bill is not necessary as citizens currently have the ability to move their elections to odd numbered years if they choose to do so by requesting local Legislative action;
3. There would be minimal cost savings as Municipal Governments pay for Municipal Elections;
4. Citizens should retain local control of their municipalities and Municipal Elections without the interference of National and State influences;
5. If moved to even number years to coordinate with National and State Elections, Municipal Elections would become driven by national issues and candidates.

BE IT FURTHER RESOLVED that a copy of this Resolution is recorded in the official minutes of the meeting of the Lincoln City Council and a copy be provided to the State and Local Government II, House Standing Committee Members: Chairman John R. Bradford, II, Representatives: Jay Adams, John Autry, Cynthia Ball, James L. Boles, Jr., Beverly G. Boswell, Charles Graham, George Graham, Joe John, Phillip A. Lehman, Stephen M. Ross, John Sauls, Mitchell S. Setzer, Bob Steinburg, Sam Watford and Linda Hunt Williams.

REGULAR MEETING - MARCH 2, 2017

Upon review Mayor Hatley ask for a motion regarding the resolution. Councilman Black made the motion to not to oppose HB 64 but to join in with other municipalities to move municipal elections to even numbered years.

Councilman Black's motion passed by a three to one vote. Black, Smith and Jetton voted in favor of not opposing HB 64. Eaddy vote no.

CONSIDERATION OF A CONTRACT BETWEEN THE CITY AND EAST COAST PYROTECHNICS FOR THE 2017 FIREWORKS DISPLAY:

(C-05-17)

Donna Flowers, City Clerk, requested that Council to consider entering into a contract with East Coast Pyrotechnics for \$ 10,000 for the 2017 fireworks display. She said this years celebration is scheduled for Tuesday, July 4th and Lincoln County has agreed to fun \$ 6,000 toward the total event. She noted that the City has worked with East Coast, formerly Melrose Pyrotechnics, for twenty years and has received excellent service from their staff and the technicians who shoot the fireworks. She said East Coast has kept cost consistent for the past five years and would not be increasing their amount for this year's show.

Councilman Black made the motion unanimously approved to enter into the contract with East Coast Pyrotechnics in the amount of \$ 10,000 for the 2017 fireworks display.

CONSIDERATION OF AWARDING BID TO SOUTHEASTERN CONSULTING ENGINEERS FOR THE MATERIAL FOR THE FLINT STREET ELECTRIC SUBSTATION UPGRADE

(C-06-17)

Steve Peeler, Public Utilities Director, requested that Council consider entering into a contract for materials to upgrade the Flint Street Electric Substation. Various vendors may be needed and would be subcontractors through Southeastern for this project. The four schedules of upgrades include, 2 15.5 kV Circuit breakers, 12 Voltage Regulators, SCADA & Metering Panel and Equipment House total \$ 257,283.00. The total cost does not include NC Sales tax.

Councilman Eaddy made the motion unanimously approved to award the bid as recommended and to authorize the City Manager to execute the contracts between the City and the four subcontractors.

CONCERNS REGARDING SEWER BILLING THAT ARE INCLUDED ON MONTHLY WATER BILLING:

Aaron Moore, of 835 Carolina Mill Circle Lincolnton, spoke to Council about his concerns with the multiplier the City uses for the sewer billing. He recognized he

REGULAR MEETING - MARCH 2, 2017

is billed the outside rate and he lives in the area where former Route 90 customers left large amounts of unpaid utility bills and he is now paying a monthly minimum in addition to his sewer bill for this unpaid bill. He still felt the cost of his monthly bill, for one person, working out of town, was high.

Mayor Hatley directed the City Manager to meet with Mr. Moore and discuss this matter.

MONTHLY FINANCIAL REPORT/OVERTIME REPORT:

Steve Zickefoose, City Manager, reviewed the following spread sheet of the financials and overtime for the month of March.

REGULAR MEETING - MARCH 2, 2017

PUBLIC COMMENT:

Mr. Alan Hoyle said he would like to encourage everyone to love one another. He also told Council that he would like to see fencing along the rail trail, going north from Pine Street along the trail to City Park. He said there are areas along that portion that need fencing and he feels this would help both Police and Fire with unnecessary calls of vandalism if fencing is erected.

CLOSED SESSION:

Councilman Jetton made the motion unanimously approved to enter into Closed Session to discuss Property and Personnel in accordance with NCGS 143-318.10 (a)(1)(5) & (6).

Councilman Jetton made the motion unanimously approved to return to Regular Session.

Mayor Hatley stated there was no action taken during the Closed Session portion of the meeting.

NEWS MEDIA:

There were no questions from the News. Media.

ADJOURNMENT:

Councilman Black made the motion unanimously approved to adjourn the meeting.

**DONNA C. FLOWERS, MMC
CITY CERK**

**ED HATLEY
MAYOR**