

A Regular Meeting of the City Council of the City of Hickory was held in the Council Chamber of the Municipal Building on Tuesday, January 16, 2018 at 7:00 p.m., with the following members present:

Brad Lail	Hank Guess	David L. Williams
	Aldermen	David P. Zagaroli
Danny Seaver		Jill Patton

A quorum was present.

Also present were: City Manager Warren Wood, Interim Assistant City Manager Rick Beasley, Assistant City Manager Rodney Miller, Deputy City Attorney Arnita Dula, City Attorney John W. Crone, III, Executive Assistant to the City Manager Deisy Zavala Vazquez and City Clerk Debbie D. Miller

I. Mayor Guess called the meeting to order. All Council members were present except for Alderman Tarlton. Mayor Guess advised that it was with great sadness and a heavy heart that he share with everyone that their friend and fellow Councilman Vernon Tarlton lost his courageous battle with cancer on Monday, January 15th. At the end of the meeting he would give Councilmembers an opportunity to share any words they may have. He requested a moment of silence to reflect upon the memories of Alderman Tarlton.

II. Invocation by Alderman Seaver

III. Pledge of Allegiance

IV. Special Presentations

V. Persons Requesting to Be Heard

A. Ms. Lucy Wade, Connelly Springs, NC advised Council she is involved in a missionary called Reach One Missions. They have been coming to the Hickory area also along with the Morganton/Burke County area. They are trying to bring awareness to the homelessness. They are not trying, by no means, to enable these people. They are trying to get them back up on their feet, get jobs, get back in school and back where they need to be, but we need to get them off the streets. She advised that she knew Council was doing all that they could and they appreciate everything they are doing. She had spoken to Chief Thurman Whisnant who had offered her a pamphlet and she would be picking it up from the Police Department. She didn't know there was as many resources. She reiterated she was from Burke County. They are coming to Hickory giving out gloves, toboggans, hats, non-perishable foods, sleeping bags, etc. She knew about the Salvation Army and a couple other places that take people in. They go over to the Grace House and do their ministry to those people. A lot of people wanted them to come and speak on their behalf. These people have got to be willing to get up and move on their own behalf too. City Council can't do it, they can't do it, and they have got to be willing to do their part also. She reiterated that she would get the pamphlet/resources. She thanked City Council for hearing her. She wanted to bring awareness that it is not just here it is all over the world, it is in Burke County too. She wanted everyone to keep their minds open. There are people out there, some chooses, some chooses not to be. She thanked Council for their time.

Mayor Guess advised Ms. Wade to follow up with the Chief of Police. He asked if anyone else would like to be heard. No one else appeared.

VI. Approval of Minutes

A. Regular Meeting of January 2, 2018.

Alderman Zagaroli moved, seconded by Alderwoman Patton that the Minutes of January 2, 2018 be approved. The motion carried unanimously.

VII. Reaffirmation and Ratification of Second Readings. Votes recorded on first reading will be reaffirmed and ratified on second reading unless Council Members change their votes and so indicate on second reading.

Alderwoman Patton moved, seconded by Alderman Zagaroli that the following be reaffirmed and ratified on second reading. The motion carried unanimously.

A. Budget Revision Number 12. (First Reading Vote: Unanimous)

VIII. Consent Agenda: All items below are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests. In which event, the item will be removed from the Consent Agenda and considered under Item IX.

Alderman Lail moved, seconded by Alderwoman Patton approval of the Consent Agenda. The motion carried unanimously.

A. Approved a Resolution Declaring Surplus (21) Scott Air-Pak Self-Contained Breathing Apparatus with Face Masks and Authorizing Donation to Four Local High Schools.

The Fire Department requests approval to donate (21) surplus Scott Air-Pak self-contained breathing apparatus (SCBA) with face masks to four local high schools for their firefighter programs. The equipment to be donated have met their life expectancy within the department and have no warranty available on any of their components. Also the SCBA no longer meets the NFPA 2013 standard that the department recognizes on front-line SCBA. The masks that will be supplied along with the packs have been replaced with new masks that meet the current NFPA standard. These donation packs have not received the required annual maintenance since the packs were taken out of service. Each school is aware of the conditions of the air packs and the required maintenance needed. The schools which the equipment will be donated to are: Hickory Career & Arts Magnet High, Patton High, Draughn High, and Hibriten High. The Hickory Career & Arts Magnet School will receive six air packs and each of the other high schools will receive five packs each along with masks of multiple sizes. Each school has presented a letter identifying their need for the SCBA for training. These high school programs (Career and Technical Education) provide training and firefighter certification for high school students who may be seeking a career in the emergency service field. The administration at each of these high schools has been told that these packs are not to be utilized in live burn exercises. Fire department staff requests approval to donate (21) Scott Air-Pak air packs and masks to four local high school fire academies.

RESOLUTION NO. 18-01
A RESOLUTION OF THE HICKORY CITY COUNCIL
DECLARING SURPLUS (21) SCOTT AIR-PACK SELF-CONTAINED BREATHING
APPARATUS WITH FACE MASKS AND
AUTHORIZING DONATION TO FOUR LOCAL HIGH SCHOOLS

WHEREAS, the Hickory Fire Department declares surplus (21) Scott Air-Pack Self-contained breathing apparatus with face masks; and

WHEREAS, the Hickory Fire Department wishes to dispose of said property to four local high schools: Hickory Career & Arts Magnet High, Patton High, Draughn High, and Hibriten High, for training use at the high schools fire academies.

WHEREAS, G.S. 160A-280 allows the city to donate to another governmental unit within the United States, or a nonprofit organization incorporated after advertising and Council approval.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hickory, North Carolina:

SECTION 1. That authorization is given to the Hickory Fire Department to dispose of the declared surplus in a manner serving the best interest of the City.

SECTION 2. This Resolution shall become effective upon adoption.

- B. Approved the Submission of the 2018 Urgent Repair Program Application for Funding to the NC Housing Finance Agency.

The City of Hickory Community Development Department requests approval to apply for Urgent Repair Program funds for funding through the North Carolina Housing Finance Agency's. The City of Hickory Community Development Department, in complying with the N.C. Housing Finance Agency's guidelines, has prepared an application for funding for the 2018 Urgent Repair Program. The application incorporates program requirements, applicant eligibility standards, and program capabilities. The City of Hickory will apply for \$75,000 through this program in order to assist approximately 10 eligible homes with urgently needed repairs in an amount not to exceed \$8,000 per housing unit. The City of Hickory will provide \$5,000 in matching funds, available from Rental Rehabilitation program income. Upon approval by Hickory City Council, the application for funding will be submitted with the \$75 application fee to NC Housing Finance Agency. Staff recommends approval of submission of the 2018 Urgent Repair Program Application for funding to the NC Housing Finance Agency.

- C. Approved a Cemetery Deed Transfer from Kathy Moose, Executrix of the Estate of Mary Jane Hefner, Kathy Moose, Individually, and Hickory Rescue Squad Inc., to Juanita Hicks, (Oakwood Cemetery, Eastern Half of Plot D, Lot No. 1, Section 49, Grave Spaces 5, 6, 7, and 8, containing 160 square feet more or less), (Prepared by Monroe Pannell, Martin & Monroe Pannell, P.A.)

- D. Approved a Cemetery Deed Transfer from Rebecca Lyon Houston, Executrix of the Estate of Joyce Yount Lyon, Rebecca Lyon Houston, individually and husband Fred Michael Houston, Earl Lawrence Lyon, divorced, to Homer Lewis Lyon Jr, and wife, Sandra Austin Lyon, (Oakwood Cemetery, Lot 13, Section 26, Grave Spaces 008 and 004), (Prepared by Amber R. Mueggenburg, Sigmon, Clark, Mackie, Hanvey & Ferrell, P.A.)

- E. Approved a Cemetery Deed Transfer from Rebecca Lyon Houston, Executrix of the Estate of Joyce Yount Lyon, Homer Lewis Lyon, Jr., and wife, Sandra Austin Lyon, and Earl Lawrence Lyon, divorced to Rebecca Lyon Houston, and husband Fred Michael Houston. (Oakwood Cemetery, Lot 13, Section 26, Grave Spaces 001 and 005), (Prepared by Amber R. Mueggenburg, Sigmon, Clark, Mackie, Hanvey & Ferrell, P.A.)
- F. Approved on First Reading a Contract to Purchase Approximately 1.35 Acres of Property Adjacent to the Northeast Wastewater Treatment Facility on 1st Street Place NE in the Amount of \$125,000.

Staff requests Council's approval of a contract to purchase approximately 1.35 Acres of property from Porter Auto Sales, LLC in the amount of \$125,000 located adjacent to the Northeast Wastewater Treatment Facility (NEWWTF) on 1st St Place NE, specifically identified as PINs: 371519502169, 371519502325 and 371519503014. The Public Utilities Division has owned and operated the NEWWTF at its current location for approximately 60 years. The community has developed primarily as residential property surrounding the NEWWTF. Porter Auto Sales property is immediately south of the NEWWTF property on the western end. This property would provide a beneficial buffer area between the facility and the adjacent community and could aid in the 50 foot buffer requirements for future expansions. The Public Utilities Division modified original plans for the NEWWTF upgrade project in an effort to reduce expense. When modifications were made, components of the proposed facility were adjusted on the site that resulted in the use of property that staff were reserving for a future Water Resources Education Building, which this property could also be beneficial for a future site for this building. This structure would benefit from the proximity of the NEWWTF and would be neighbor friendly by not being a treatment process. Public Utilities Division Staff was approached by the property owners about the City purchasing the tract. Staff retained Real Estate Advisory Services, Inc. to perform an appraisal of real property. The report showed the opinion of value to be \$120,000. Staff has negotiated with the property owner and feel \$125,000 to be a fair value for the purchase of the property. Property purchase will be paid for from the Public Utilities Division Water and Sewer Fund Balance, with no property tax dollars included. Staff recommends Council's approval of the contract to purchase approximately 1.35 Acres of property from Porter Auto Sales, LLC in the amount of \$125,000.

- G. Approved on First Reading Budget Revision Number 13.

ORDINANCE NO. 18-02
BUDGET REVISION NUMBER 13

BE IT ORDAINED by the Governing Board of the City of Hickory that, pursuant to N.C. General Statutes 159.15 and 159.13.2, the following revision be made to the annual budget ordinance for the fiscal year ending June 30, 2018 and for the duration of the Project Ordinance noted herein.

SECTION 1. To amend the General Fund within the FY 2017-18 Budget Ordinance, the expenditures are to be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Culture and Recreation	32	-
Other Financing Uses	85,000	-
TOTAL	85,032	-

To provide funding for the above, the General Fund revenues will be amended as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Miscellaneous Revenues	32	-
Other Financing Sources	85,000	-
TOTAL	85,032	-

SECTION 2. To amend the Business Park 1764 Capital Project Ordinance (project B1B001), the expenditures are to be established as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
General Capital Projects	170,000	-
TOTAL	170,000	-

To provide funding for the above, the revenues will be established as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Restricted Intergovernmental Revenue	85,000	-
Other Financing Sources	85,000	-
TOTAL	170,000	-

SECTION 3. Copies of the budget revision shall be furnished to the Clerk of the Governing Board, and to the City Manager (Budget Officer) and the Finance Officer for their direction.

IX. Items Removed from Consent Agenda

X. Informational Items

A. Budget Transfer Report

Under Section 22 (b) of the Fiscal Year 2017-2018 Budget Ordinance, the City Manager is authorized to transfer appropriations with a report to City Council as follows:

Section 22 (b): "He may transfer amounts up to \$50,000 between functional areas including contingency appropriations, within the same fund. He must make an official report on such transfers at the next regular meeting of the Governing Board."

*Note: To expedite the availability of insurance-claims revenue to the appropriate department once the City receives said funds, in lieu of a Budget Amendment the City has allocated specific funds within the Risk Management division which may be transferred as necessary for making repairs and/or replacements in the most timely manner.

The following transfer recently occurred under this provision:

January 8, 2018 (BT#37): To recognize an insurance claim payment received for damages sustained to a Spartan fire engine on 12/11/17 when an uninsured motorist crossed the centerline on Cloninger Mill Road and struck the rear side of the city's apparatus. The driver of the car was issued a state citation for driving left of center-line, as well as being arrested for driving while license revoked, displaying a revoked tag, and displaying a fictitious tag.

Mayor Guess asked City Manager Warren Wood to explain the budget transfer report.

City Manager Warren Wood explained the budget transfer report related to moving some insurance claim money to the Fire Department Repair line item for the repair of a fire engine. He advised the backup information was contained in the document, it was just informational and no action was required by Council.

Mayor Guess asked if anyone on Council had any questions. Council did not have any questions.

XI. New Business:

A. Public Hearings

1. Approved on First Reading Consideration of Amending Article II, Section 4-26 and 4-29 of Chapter 4 Animals and Fowl of the Hickory City Code of Ordinances – Presentation by Captain Vidal Sipe, Hickory Police Department.

Hickory Police Department currently enforces Chapter 4 of the City Ordinance as it pertains to the seizure and impoundment of animals and fowl. Within the current ordinance, there is no specific language outlining the general care of an animal, nor is there any language describing prohibited acts against animals that would constitute an animal being seized or impounded. Hickory Police Department staff and the City of Hickory Legal Department have reviewed the current City Ordinance pertaining to animals and fowl (Chapter 4, Section 4-24; Seizure and Impoundment) as it references the general care of animals and prohibited acts against those animals. The recommended amendments to Chapter 4 (adding Section 4-26) will describe in detail the standards of general care of animals and prohibited acts against animals. Section 4-27 will describe the actions to be taken by the animal control officer(s) when there are violations of this amendment. Hickory Police Department recommends City Council amend Chapter 4, Article II, Section(s) 4-26 and 4-27 of the Hickory City Code.

This public hearing was advertised in a newspaper having general circulation in the Hickory area on January 5, 2018.

City Manager Warren Wood advised the first public hearing was for consideration of amending Article II, Section 4-26 and 4-29 of Chapter 4 Animals and Fowl of the Hickory City Code of Ordinances. He asked Captain Vidal Sipe of the Hickory Police Department to the podium to present Council with the amendment.

Mayor Guess congratulated Captain Vidal Sipe on being recognized as the 2018 Martin Luther King recipient award.

Captain Vidal Sipe presented a PowerPoint presentation. He discussed the background of the ordinance. The Hickory Police Department had been enforcing the ordinance for a long time going by General Statutes making sure that they were doing everything that the law allows. The current ordinance does not contain any general care wording. The proposed ordinance addressed that issue. It speaks about some of the general care issues and some of the responsibilities of Animal Control as they go through and deal with any kind of issues with animals, and overcrowding of animals, general care of animals, and things like that. He reiterated the Hickory Police Department currently enforces Chapter 4 of the City Ordinance and as the ordinance is written now there are no general care provisions in there. He advised he would discuss the details for Chapter 4 Sections 4-26 and 4-27. He discussed what was actually in the existing ordinance, Section 4-24, which addressed general care: it basically says abused, overcrowded, receiving insufficient care. That leaves it up to the Animal Control officer as to what they deem as insufficient, abuse, or overcrowding for any kind of animals and the care of them. Section 4-26 states that an animal shall be kept and treated under sanitary and humane conditions, and it is unlawful for any person to engage in one or more of the following acts: failure to provide adequate food, adequate water, adequate shelter, failure or refusal of an owner of a sick, diseased, or injured animal to provide proper medical treatment for that animal. It also detailed animal cruelty: what animal cruelty is; chaining and tethering animals; how they can be chained; how they cannot be chained to abandoned buildings and things like that; what is being harmful to that animal; leaving an animal in a closed vehicle, etc., as the owners are going into a store, depending on the weather, how hot or cold it is outside; whether or not the animals can be left in the car for an extended period of time; failure or refusal to report injured domestic animals if they are hit by a car. If you accidentally hit an animal you are required to notify the owner of the animal or law enforcement. Section 4-27 covered the sanctions, penalties, fines and remedies. An Animal Control Officer may undertake one or more of the following actions when a person fails or refuses to abide by or otherwise violate this article. He pointed out some of the actions that the Animal Control Officer could take. They can obtain a Magistrate's order, take possession of the animals or immediately seize the animals. He referenced the recent news where the Police Department had to immediately seize the animals because of the conditions they were in and the living conditions that they had. It also addressed issuing a notice of violation and directing an owner or possessor of the animal(s) to correct the problem within a certain amount of time. If it is not corrected within the certain amount of time what the Animal Control Officer can do and should do. Some of those can be anywhere from civil penalties, all the way up to criminal summons or criminal warrants for that person. He advised that was the amendment to the ordinance which they were requesting to be approved by City Council. He asked City Council for any questions.

Mayor Guess asked Council for any questions.

Alderwoman Patton asked if the animals were seized where they would take them.

Captain Sipe advised currently the City partners with Catawba County. The City pays a nice amount to have them take care of the animals.

Alderwoman Patton confirmed they would keep them until some resolution.

Captain Sipe responded yes, ma'am.

Alderman Lail applauded the Police Department in working with the Legal team to do these general care provisions. He guessed that out in the field they probably have chronic violators. You are going to have somebody that keeps a dog on a chain in their yard. You might write them up, they may correct it and then three or four weeks later it is back in the same situation. He asked if that was what the idea would be, from an enforcement perspective would the objective first be to maybe take possession of the animal and/or issue a citation.

Captain Sipe replied the initial is to correct the problem, whatever the issue is with it. They try not to take the animal right away but if it is deemed necessary to remove an animal, then yes they would.

Alderman Lail asked if they run into the chronic situation.

Captain Sipe advised most of the time when Animal Control goes out the people do correct the issues that they have. It is rare that they actually seize dogs or any kind of animals, but it does happen whether it is a nuisance, or whether or not they are deemed vicious animals.

Alderman Lail responded he wanted to make sure that the ordinance had enough “teeth” in it for the Police to issue citations, civil citations, or even an arrest warrant if the circumstances were strong.

Captain Sipe advised that it does. A lot of the wording came from Catawba County. They had an ordinance and the City sort of piggybacked on theirs, adding to and taking away some from the ordinance which they have.

Alderwoman Patton questioned if it leads up to an arrest.

Captain Sipe advised it could lead up to criminal charges.

Alderwoman Patton commented and jail time.

Captain Sipe advised the courts decide.

Alderman Zagaroli asked if the Code Enforcement Officers could give the citation.

Captain Sipe advised it was Animal Control or any Police Officer can actually do it, but Animal Control is the ones that they usually have follow up with a lot of these cases.

Mayor Guess asked if there was any further questions from Council. He thanked Captain Sipe. Mayor Guess explained the rules for conducting the public hearing. He declared the public hearing open and asked if there was anyone present to speak in opposition to the proposal. No one appeared. He asked if there was anyone present to speak in favor of the proposal. No one appeared. Mayor Guess closed the public hearing.

Alderwoman Patton moved, seconded by Alderman Zagaroli approval of amending Article II, Section 4-26 and 4-29 of Chapter 4 Animals and Fowl of the Hickory City Code of Ordinances. The motion carried unanimously.

ORDINANCE NO. 18-03

AN ORDINANCE AMENDING CHAPTER 4 OF THE CODE OF ORDINANCES OF THE CITY OF HICKORY BY ADDING SECTION 4-26 GENERAL CARE; PROHIBITED ACTS AND SECTION 4-27 SANCTIONS, PENALTIES, FINES, REMEDIES.

WHEREAS, the City of Hickory has policies to effectively enforce the provisions of Chapter 4 – Animals and Fowl; and

WHEREAS, the City of Hickory desires to protect animals from abuse or conditions harmful to their well-being; and

WHEREAS, the Mayor, City Council Members and Staff finds it in the best interest of the animals for the City of Hickory to enforce the general care and prohibit acts of inhumane conditions; and

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HICKORY that the Hickory, North Carolina Code of Ordinances Chapter 4 is hereby amended by adding Section 4-26 General care; prohibited acts and Section 4-27 Sanctions, penalties, fines, remedies:

Sec. 4-26. General care; prohibited acts.

All animals shall be kept and treated under sanitary and humane conditions, and it is unlawful for any person to engage in one or more of the following acts:

(1) *Failure to provide adequate food.* All animals, unless otherwise indicated in this chapter, must be given at suitable intervals, at least once in a 24-hour period, a quantity of wholesome foodstuff in a container suitable for the age and species of the animal and sufficient to maintain a healthful level of nutrition.

(2) *Failure to provide adequate water.* All animals must have access to a supply of clean, fresh, potable water. If access is not constant, then adequate amounts of water must be provided at least twice in a 24-hour period.

(3) *Failure to provide adequate shelter.* Animals must be provided with adequate shelter to reasonably protect them from the elements and from the weather at all times. It shall be a structure with a roof, floor, and four walls with an entry way. This section does not apply to aquatic animals or livestock and other

large animals which are normally pastured or otherwise live in the open. Examples of inadequate shelter include, but are not limited to, the following:

- a. Underneath outside steps, decks and stoops.
- b. Underneath houses.
- c. Inside or underneath motor vehicles.
- d. Inside metal barrels.
- e. Inside cardboard boxes.
- f. Inside temporary animal carriers or crates.
- g. Shelters located in flood prone areas or areas that lack a suitable method of drainage so as to eliminate excess water or moisture.
- h. Shelters surrounded by waste, debris, obstructions or impediments that may endanger an animal.

(4) *Failure or refusal of an owner of a sick, diseased or injured animal to provide proper medical treatment for the animal.* The owner of an animal must provide the animal with adequate veterinary care and must take steps necessary to protect the health of the animal. All dogs, cats, and ferrets, over the age of 4 months are required to have rabies vaccinations.

(5) *Animal cruelty.* Examples of animal cruelty include, but are not limited to, the following:

- a. Allowing a collar, rope or chain to become embedded in or cause injury to an animal's neck.
- b. Allowing a choke or pinch collar to be used as a primary collar when the animal is left unsupervised.
- c. Allowing a dog or cat to be left outside in inclement weather or extreme temperatures without adequate shelter.
- d. Intentionally allowing animals to engage in a fight.
- e. Allowing animals to live in unsanitary conditions.
- f. Allowing animals to live in crowded conditions.
- g. Failure or refusal to obtain medical treatment for an animal when in an animal control officer's opinion treatment is needed.
- h. Trapping a dog or cat without the use of a recognized humane live animal trap.
- i. Permitting any exhibit, function or activity where animals are being cruelly treated or animals run the risk of causing injury to the public or themselves. The animal control unit shall have the authority to inspect and to close down public exhibits of animals which are part of fairs, carnivals, festivals, fundraising events, petting zoos and any other activity or function carried out in the city if it is determined that animals are being cruelly treated, abused or run the risk of causing injury to the public or themselves.
- j. Animals being confined to or restrained on the premises of a vacant or abandoned structure.
- k. Failure to provide adequate drainage to prevent surface water from standing in the area where the animal is kept or restrained. It shall be within the discretion of animal control as to what constitutes adequate drainage.

(6) *Chaining or tethering an animal to a stationary object for a period of time or under conditions that an animal control officer deems harmful or potentially harmful to the animal.* Examples of improper chaining or tethering include, but are not limited to, the following:

- a. Using a length or weight of a chain or other tether that is not appropriate for the size, weight and age of the animal. Note: Under no circumstances should the weight of the tether exceed ten percent of the total body weight of the animal, but the tether must be of sufficient strength to prevent breakage.
- b. Using a chain or tether made of rope, twine, cord or similar material, unless such chain or tether is sold commercially for the purpose of chaining or tethering an animal.
- c. Using a chain or tether that is less than ten feet in length and/or does not have swivels on both ends. All chains or tethers must be attached to the animal by means of a properly fitting harness or collar of not less than one inch in width.

- d. Allowing an animal to be chained or tethered such that the animal is not confined to the owner's property or the chain or tether can become entangled and prevent the animal from moving about freely, lying down comfortably or having access to adequate food, water and shelter.
- e. Using a chain as a primary collar. All collars used for the purpose of chaining or tethering an animal must be made of nylon or leather.

(7). *Leaving an animal in a closed vehicle, etc.* Leaving an animal in a closed vehicle or other enclosure for such duration or at such temperatures as an animal control officer deems harmful or potentially harmful to the animal.

(8). *Failure or refusal to report injured domestic animals.*

- a. All persons who injure a domestic animal by running over, into or otherwise coming into contact with an animal with an automobile, motorcycle, bicycle or other vehicle must notify the owner of the animal immediately.
- b. If the owner is unknown, the person who injured the animal must immediately notify animal control through the 911 center by giving his or her name and address, a description of the animal and the location of the incident.

Section 4-27. – Sanctions, penalties, fines, remedies.

An animal control officer may undertake one or more of the following actions when a person fails or refuses to abide by or otherwise violates this article:

(1) Obtain a magistrate's order to take possession of the animal.

(2) Immediately seize the animal if the conditions pose an immediate threat to the health or safety of the animal or the public. A notice of seizure describing the exigent circumstances warranting the seizure will be left with the owner or affixed to the premises.

(3) Issue a written notice of violation directing the owner or possessor of the animal to correct the problem within 72 hours, in lieu of subsection (1) or (2) above, if it is determined by the animal control officer that the animal is not in immediate danger, or the problem which gives rise to the inadequate treatment or abuse can be corrected within 72 hours. If the condition or problem is not corrected within 72 hours, the animal control officer may take action as outlined in subsection (1) or (2) above.

(4) Issue a civil penalty for violation of any provision of this section in accordance with section 6-10.

(5) Obtain a criminal summons or warrant.

- 2. Approved on First Reading Consideration of Amending Chapter 24 of the Hickory City Code of Ordinances to Consolidate and Codify Regulations Regarding Solicitors, Peddlers, and Panhandlers into One Chapter – Presentation by Deputy City Attorney Arnita Dula and Chief of Police Thurman Whisnant.

The current Hickory Code of Ordinances has regulations for solicitors, peddlers and panhandlers listed in three different areas of City Code (Section 5.01 of Subchapter A; Chapter V, Chapter 24 and Chapter 29; Section 23). Various amendments to these codes have been adopted over the years resulting in the placement of related codes in different sections. Some of these regulations are no longer feasible and are in need of updating. Also, having the regulations in three different areas of the City Code it often makes it difficult for staff and citizens to find and interpret the regulations. Chapter 24 also has provisions governing stationary vendors. In addition, Section 5.01 found in Part 1 Charter, Chapter V, Subchapter "A" of the Hickory City Code of Ordinances is out of date. City Code regulating Solicitors, Peddlers and Panhandlers should be updated and codified under one chapter (Chapter 24), with Sections 5.01 and 29-23 being repealed. The chapter's provisions related to stationary vendors should be deleted to eliminate any potential conflicts with recently adopted Hickory Land Development Code text amendments which govern stationary and mobile vendors. Section 5.01 found in Part 1 Charter, Chapter V, Subchapter "A" of the Hickory City Code of Ordinances prohibits persons with medical or physical issues from any type of solicitation. The provision is out of date and potentially conflicts with other current law. Hickory Police Department recommends Council amend and codify regulations governing Solicitors, Peddlers and Panhandlers into Chapter 24 of the City of Hickory Code

of Ordinances and repealing Section 5.01 found in Part 1 Charter, Chapter V, Subchapter "A" of the Hickory City Code of Ordinances.

This public hearing was advertised in a newspaper having general circulation in the Hickory area on January 5, 2018.

City Manager Warren Wood advised the second public hearing was for consideration of amending Chapter 24 of the Hickory City Code of Ordinances to consolidate and codify regulations regarding solicitors, peddlers, and panhandlers into one chapter. He advised the presentation would be from Deputy City Attorney Arnita Dula and Chief of Police Thurman Whisnant.

Deputy City Attorney Arnita Dula presented a PowerPoint presentation. She advised that Chief Whisnant would present the bulk of the information and ordinances regulating panhandlers, solicitors, and peddlers were already in existence. This was not something that was brand new. She noted the changes tonight, some of them were technical in nature involving the consolidation of provisions into one chapter because some of them were scattered. And some were substantive in nature. She turned over the presentation to Chief Whisnant.

Chief of Police Thurman Whisnant advised that we already have a lot of what is being presented in three different codes, which is part of the problem. Because over the years it has been a little bit confusing and as courts have ruled on various things, and as we have moved forward and had additions in various sections, some of which has been a little bit hard to interpret or maybe conflicting. For example recently the food truck policy. When we talk about peddling and soliciting it was very close to that. He advised he would hit the high points of what had been changed, added or deleted and the reasons why. He discussed the background. Three current sections of the City code is where we find all of these things, with the addition of street performers which he would discuss later in anticipation of our bond projects and Riverwalk and City Walk. He would also discuss solicitation. When you talk about panhandling, and peddling there was a little bit of confusion, when looking at our code, about what the difference was in peddling and solicitation. They felt and have experienced that folks have a general greater expectation of privacy in their homes. He advised they felt that folks should have a greater expectation of privacy when someone comes to ring their doorbell as opposed to maybe if you are approached out on the street. They took those kinds of things into consideration as they developed this. They had been working on this and looked at case law and other things for probably well over a year and a half. He discussed what had be clarified; solicitors, peddlers, panhandlers and street performers had been clearly defined. That was not so much the case currently. All applicable code had been consolidated into one chapter to make it easier for staff and citizens to locate and interpret applicable regulations. While the majority of our existing regulations, and a lot of the content that is now being proposed under Chapter 24 want change, they just tried to organize it a little bit better and consolidate it where it is easily understandable and therefore easier to enforce the code.

Chief Whisnant discussed the changes and/or removals. The removal of Section 5-01 which was a current chapter, prohibited persons with infirmed or maimed bodies or suffering from diseases from soliciting alms, help or assistance. There had been a lot of case law recently over the last few years and they felt obviously that would not standup to any constitutionality test. He discussed the removal of panhandling permits. They were recommending that they remove the process that deals with panhandling permits. They have had those for a while. It has not been effective, and it has not been an effective use of staff time. They don't get a whole lot of applications so it has had no effect. They had added a non-city endorsement clause, largely due to the previous point. Many times they had issued a panhandling permit, it had led to problems and complaints that they had at the police department. Folks actually think they have a police issued ID and they are asking for money or something from somebody, and maybe they get a little bit aggressive. The citizens calls and says when I ask the person about it they say they have permission to do that and they were a little bit aggressive and they actually held out a City issued ID card almost as an endorsement. They felt that wasn't appropriate and they don't have a lot of them, it really hasn't had any effect on reducing panhandling. They had added the definition of aggressive panhandling. They researched other city codes and that was something that was common that we did not have. They had added the definition of what that is and defined that in Section 24-14. They had removed the requirement for fingerprints and medical certifications of peddler and solicitor applicants. They had been in the City's code for a longtime. It is really not feasible. They had not been practicing that at the police department even though it has been in existence for some time because there are certain regulations on their side as police, certain things that they can legally fingerprint for and actually get a background check done, and this

is not one of those things. It is not even something that is legal by State DCI regulations that they can even do. There are other ways that they can vet or do backgrounds that are just as effective. They requested that be removed.

Chief Whisnant advised they had added regulations for street performers. Researching some other cities that have already went in the way of having areas that are conducive to street performers and musicians and things of that nature. They looked at what they anticipate and what will work well for us that would be a good balance of regulation.

Chief Whisnant commented currently, it is a little bit unclear, but if you are going door to door and you are selling a product that is for future delivery you are required to get a permit from the police department. If you are going door to door currently and you are dealing the product that you are selling right at the time there is no permit required. They felt, just from some of the issues that they had dealt with over the years, and some of the complaints, and issues that they had, they felt that really shouldn't matter. If someone is going door to door, to ring your doorbell to sell, whether they are delivering the product then, at that time, or in the future, they thought there should be a vetting process. They requested that a permit process be in place and that would be the same for either or. The application fee for the permit would be updated yearly in the City fee schedule. He advised there was some wording in the City's current ordinance, a lot of references to privilege licenses, which obviously doesn't exist anymore. They requested an update in that and the application fee being part of the yearly fee schedule.

Chief Whisnant advised peddling, soliciting, and panhandling under the new proposed ordinance would not be allowed after dark. They get calls from time to time of folks ringing a doorbell at 10:00 at night, and they did not think that was appropriate. Currently there is nothing in the current City code to say how long staff would have to do the permitting process. He used as an example they have folks in the summertime that come from out of town, maybe college kids that have a job with some organization and they travel all around to different places and different cities, and there may be 30 of them. They come and follow the process and apply for a panhandling or solicitors permit and they want to start tomorrow. They have 30 applications and the expectation is that they can process those in one day. Normally nine out of ten cases they will easily be able to process the applications in way less time than 15 days, but in those situations they are asking that some standard be added. Fifteen days is consistent with some of the other applications which they have, precious metal applications, taxi cab permit, etc. It makes it consistent with the other things that they do. There would be a permitting exception for solicitors and peddlers; boy scouts, girl scouts, so long as it is for education, religious or charitable organizations that have a base in the City of Hickory or Catawba County. There would not be a permitting requirement. In essence the girl scouts would not have to get any kind of permit to go door to door to sell Girl Scout cookies or things of that nature. They wanted to put that exception in there.

Chief Whisnant discussed the appeal process for denial or revocation of a solicitors/peddlers permit by Hickory Police Department would go to the City Manager's office. If it was denied by Chief Whisnant or one of his staff there would be a due process, appeal process that they would recommend going to the City Manager's office. The language in Chapter 24 would be consistent with the recently adopted Land Development Code governing food truck vendors. They had looked at this carefully to make sure that it was not in conflict with what is defined as a food truck. He advised that was the highlights of what had changed and everything else was just being consolidated. He asked Council for questions.

Alderman Lail gave examples and asked if they would be enforceable under the new ordinance. He realized there was a fine line, you can't regulate speech.

Chief Whisnant responded, it is. In looking at some of the case law a lot of the appellate court decisions are based on first amendment claims of free speech.

Alderman Lail commented it is prohibited on City streets and City rights of way. He asked about State or Federal Highways. He referenced the interstate interchanges.

Chief Whisnant advised there is a State Statute 20-175 that is a statute in essence, another version of impeding traffic. Hickory's police officers use that pretty regularly. The folks that you see that are on interstate ramps, in essence they have to impede traffic. It is that fine line between free speech. They issue citations and charges for that if they are stopping traffic for panhandling.

Alderman Lail commented it is usually a sign and walking up to a window.

Chief Whisnant advised it is not just the mere act of being there with a sign, that doesn't necessarily meet the standard. If they are actually stopping and impeding traffic then they are in violation of a State charge which they would use in that instance.

Alderman Lail asked on the City streets, the City rights of way, would they have a little bit more authority to enforce panhandling.

Chief Whisnant advised there were some places in the ordinance where panhandling was prohibited under this code that goes beyond what is regulated by State law. A lot of the things have always been there, they have been in several different areas. He advised he could go through some of that if Council desired. He gave as an example: road rights of ways, you can't be in the median of the road, like at LR and Highway 70, being in the median of the road, and within 50 feet of an ATM machine. They did a lot of research in looking at what the balance was of what they can regulate and not have something that would be overturned.

Alderman Lail commented so you are at the grocery store, and somebody is working the parking lot at the grocery store. Would this be prohibited under the private property rule?

Chief Whisnant advised that would be up to the private property owner.

Alderman Lail assuming most private property owners.

Chief Whisnant advised that would be a trespassing issue. They have that, and most folks call. If a property owner says it is okay, then that is their property. If they call and say I want this person removed then it is actually trespassing.

Alderman Lail asked about public parking, Union Square on City property.

Chief Whisnant advised he was not sure. He asked if he was talking about Union Square parking area.

Alderman Lail commented in his sense it would be covered as they leave that surface parking lot because there is a prohibition against panhandling in parking facilities including surface parking lots.

Deputy City Attorney Arnita Dula advised so many feet from the entrance for instance.

Alderman Lail commented what is an entrance or an exit to a large parking field. He asked if that was something that law enforcement could enforce under this ordinance, panhandling.

Deputy City Attorney Dula asked where.

Alderman Lail advised folks coming out of the parking lot, Union Square. Parking in the public area walking on Union Square to the businesses.

Deputy City Attorney Dula stated no. Not on Union Square proper. She advised that Chief Whisnant may wish to address some measures that they are using to try to contain that. There are different methods other than this. But no, because that is a public forum. Union Square is considered a public forum and pretty much what you can regulate in public forum is time, place, and manner. You can't do total band. That is considered to be a very traditional public forum.

Chief Whisnant advised there was specific things that are listed out. There are places like at the bus stop, within 50 feet of an ATM machine, within 20 feet of any crosswalk, so there are specific things. Of course if it is aggressive, they have defined aggressive panhandling that was something they didn't have before.

Alderman Lail commented aggressive would apply as an action. They could be entitled to be where they are but if they are acting in an aggressive fashion.

Chief Whisnant commented if they are on public property, yes. That would give them something to do there. He asked for any other questions.

Alderwoman Patton commented when he said impeding traffic, she had seen where they have the sign, the car stops, they are not really impeding, it is the car that is stopping, but the police are considering that they are impeding the traffic by what they are doing.

Chief Whisnant responded the officer in State court would have to be able to prove in court that that person's action caused that person to stop or delay traffic. It may be if there is no traffic behind then it may not apply. If there is no traffic to impede. Those are the kinds of things that they have to show in State court. This is one measure. Obviously we have some issues. He didn't think anybody was really supportive of panhandling, but they have to be tactful and lawful in how they do things and this is one measure. He didn't think any ordinance was going to completely stop it. They are looking at some other techniques and some community policing things that they do. They are doing a whole lot of different issues as a police department. Trying to discourage panhandling. They developed a flyer within the last year. They met with community groups. The flyer has 47 agencies, community resource agencies for 13 essential services, everything from housing to food and other things. They do a lot of education of the community to try and say we are encouraging folks not to give to panhandlers. Give them the flyer, call the police department, they will help somebody get in touch with a legitimate nonprofit agency to get them the resources or the help that they need. That is an ongoing effort that they are really working hard on. This ordinance would be a tool and it would help them to be able to eliminate some of the inconsistency, make it more enforceable for those times when enforcement is the thing to do. As a general rule they are working on a comprehensive strategy to try and address some of the issues that are stemming from homelessness, and panhandling, and those type issues.

Alderman Zagaroli asked if you give a citation to a panhandler what the amount was on that citation.

Chief Whisnant replied if it is a civil citation it would be \$50. A lot of these charges are misdemeanors so most of the time they end up going on a civil code on a State citation and they go to court. Depending on the situation.

Mayor Guess asked if there was any other questions from Council. He thanked Chief Whisnant and Deputy City Attorney Dula. He declared the public hearing open and asked if there was anyone present to speak in opposition to the proposal. No one appeared. He asked if there was anyone present to speak in favor of the proposal. No one appeared. Mayor Guess closed the public hearing.

Alderwoman Patton moved, seconded by Alderman Zagaroli approval of amending Chapter 24 of the Hickory City Code of Ordinances to Consolidate and Codify Regulations Regarding Solicitors, Peddlers, and Panhandlers into One Chapter. The motion carried unanimously.

ORDINANCE NO. 18-04

ORDINANCE REPEALING SECTION 5.01 FOUND IN PART I CHARTER, CHAPTER V, SUBCHAPTER A AND SECTION 29-23 IN THEIR ENTIRETY AND AMENDING CHAPTER 24 IN THE MAJORITY OF THE CODE OF ORDINANCES OF THE CITY OF HICKORY.

WHEREAS, the City of Hickory has the authority, pursuant to N.C.G.S. §160A-178, to regulate solicitors and peddlers; and

WHEREAS, the City of Hickory has the authority, pursuant to N.C.G.S. §160A-179 and N.C.G.S. 20-175(d) to regulate panhandlers; and

WHEREAS, the Chapter 24 only defines solicitors and not peddlers; and

WHEREAS, Sec. 5.01 found in Part I Charter, Chapter V, Subchapter A of the Hickory City Code of Ordinances prohibits persons with infirm or maimed bodies or suffering from diseases from soliciting alms, help or assistance on the streets and sidewalks of the city; and

WHEREAS, Sec. 29-23 defines panhandler and beggars and requires them to obtain a permit from the police department; and

WHEREAS, Chapter 24 does not address street performers or street entertainers; and

WHEREAS, the City Staff and City Council desire to repeal Sec. 5.01, Sec. 29-23 and amend Chapter 24 of the City of Hickory Code of Ordinances in order to better allow the regulation of solicitors, peddlers, panhandlers, and street performers.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HICKORY, SEC 5.01 IS REPEALED, SEC 29-23 IS REPEALED AND

REDEFINED IN CHAPTER 24 OF THE HICKORY, NORTH CAROLINA, CODE OF ORDINANCES IS HEREBY AMENDED TO READ AS FOLLOWS:

Section 1: Repealed.

1. Sec 5.01 will be repealed in its entirety.
2. Sec 29-23 will be repealed. The contents will be updated and placed in Chapter 24.

Section 2: Amended.

1. Chapter 24 will be amended as follows:

The current chapter title "Peddlers and Solicitors" shall be amended as "Peddlers, Solicitors, Panhandlers, and Street Performers".

Section 24-1. Solicitor, Peddler, and Panhandler defined.

- (a) A "solicitor" is defined, for the purposes of this article, whether a resident of the city, or not, as any individual traveling by foot, wagon, motor vehicle, or any other type of conveyance from place to place, from house to house or from street to street, taking or attempting to take orders for the sale of goods, wares, merchandise or personal property of any nature whatsoever, including, without limitation, intangible personal property, stocks, bonds, investment participation shares and product promotions for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether he is collecting advance payments on such sales or not. This definition shall not apply to, and this article shall not apply to, the following persons:

- (1) Those who solicit orders solely to industrial, commercial or professional establishments within the city.

- (2) Those soliciting for schools or approved educational, religious or charitable organizations, when the entire proceeds from any such solicitation goes to the fund of some approved educational or charitable organization that has a base permanently located in the City of Hickory or Catawba County.

- (b) A "peddler" is for the purposes of this article is a person, whether a resident of the city, or not, traveling by foot, motor vehicle, or any other type of conveyances, from place to place, from house to house, or from street to street, carrying, conveying, or transporting any goods, wares, or merchandise of any kind, offering and exposing them for sale, or making sales and delivering articles to purchasers, or who without traveling from place to place, sells the same for sale from a wagon, motor vehicle, or other vehicle or conveyance. This definition shall not apply to, and this article shall not apply to, the following persons:

- (1) Those who solicit orders solely to industrial, commercial or professional establishments within the city.

- (2) Those soliciting for schools or educational, religious or charitable organizations, when the entire proceeds from any such solicitation goes to the fund of some approved educational or charitable organization that has a base permanently located in the City of Hickory or Catawba County.

- (3) Those persons operating under the rules and guidelines of the City of Hickory Mobile Food Truck policy.

- (c) A "panhandler", is for the purposes of this chapter, a beggar or charitable solicitor who attempts to solicit contributions for their own personal gain through use of spoken, written, or printed words, signs, body gestures or other acts.

Section 24-2. Scope.

All peddlers and solicitors must submit an application to the police department pursuant to this article All panhandlers must follow the rules and guidelines of Sec. 24-14.

Section 24-3. Required.

It shall be unlawful for any solicitor and/or peddler to engage in such business within the corporate limits of the city without first obtaining a permit pursuant to this article.

Section 24-4. Display of permit or badge.

It shall be unlawful for a solicitor and/or peddler to fail to display the permit or badge issued under the provisions of this article while soliciting or peddling.

Section 24-5. Application for Solicitors and Peddlers.

(a) Fifteen (15) days prior to the desired start date, every peddler and solicitor under this article must file a sworn application for a permit, with the chief of police, in writing, on a form to be furnished by the chief of police or his designee, which shall give the following information:

(1) The full name, date of birth, permanent address and job title of the applicant.

(2) A physical description of the applicant including height, weight, and eye and hair color.

(3) A brief description of the nature of the business and the goods or services to be sold.

(4) If employed or acting as an agent, the name, telephone number and address of the employer or principal, together with credentials establishing the exact relationship.

(5) The place where the goods or services are proposed to be sold or orders taken for the sale thereof, where such articles are manufactured or produced, where such goods or products are located at the time such application is filed and the proposed method of delivery.

(6) A list of all misdemeanor and felony charges and arrests including the approximate dates of the charges and arrest(s) and city/state of such charges and arrest(s).

(7) A copy of a valid state driver's license, North Carolina Identification Card, passport or military identification.

(8) If the applicant is an employer or principal, a separate application shall be submitted for each person who will be peddling and/or soliciting. A separate permit will be processed for each.

(9) Descriptions of any vehicles being used and registration plates of said vehicles.

(b) At the time of filing the application, a fee, as according to the approved fee schedule by city council, shall be paid to the Hickory Police Department to cover the cost of issuing the permit.

Section 24-6. Decision.

The Chief of Police or his/her designee within 15 days of the application and fee, will either approve or reject the application.

Section 24-7. Issuance and contents; badge.

Upon approval of the application and payment of the prescribed fee, the chief of police or his/her designee shall deliver to the applicant the following:

(1) A permit or ID badge containing the signature of the chief of police or his/her designee, the name, address and photograph of the licensee, the class of license issued ("licensed solicitor" or "licensed peddler") and the kind of goods to be sold, the date of issuance of the permit, the length of time the permit shall be in effect and the license number and other identifying description of any vehicles used in such soliciting.

(2) The permit or ID badge must be displayed in accordance with Section 24-4.

Section 24-8. Rejection; revocation; appeal.

- (a) Rejection: In the event the chief of police or his/her designee rejects the application, the applicant shall be notified in writing as to the reason of rejection.
- (b) Revocation: The chief of police or his/her designee shall have the authority to revoke any previously issued solicitors and/or peddlers permit.
 - (1) The permittee shall be notified in writing as to the reason of the revocation.
 - (2) The revocation shall become effective immediately upon receipt of the notification.
 - (3) The permittee shall not conduct solicitation/peddling pending determination or appeal.
- (c) The chief of police or his/her designee may reject an application or revoke any previously issued permit for the following:
 - (1) The application is incomplete;
 - (2) The application fee has not been paid;
 - (3) The application contains false or misleading statements;
 - (4) The applicant has committed prior ordinance violations pertaining to solicitors and peddlers;
 - (5) The applicant has been convicted of a misdemeanor involving larceny, fraud, forgery, sale of counterfeit goods and/or breaking and entering;
 - (6) The applicant has been convicted of felony; and
 - (7) Any other reasonable evidence that the applicant would pose a substantial threat to the public health, safety, morals or general welfare.

Section 24-9. Appeals.

- (a) Appeals by applicants and/or permittees must be filed in writing within ten days from receipt of notice by the chief of police or his/her designee of rejection of an application and/or revocation of a permit. The chief of police or his/her designee shall:
 - (1) Within ten days of an appeal hold at least one hearing;
 - (2) Make a determination as to reject, revoke or reinstate a permit;
 - (3) Notify applicant and/or permittee in writing of such determination.
- (b) Applicant and/or permittee may file an appeal of the chief's or his/her designee's appeal determination to the city manager. The appeal must be within ten days of receipt of notification of the chief's final decision and in writing. The city manager shall review the rejection and/or the revocation and the appeal determinations. The city manager will:
 - (1) Reinstate the permit; or
 - (2) Uphold the denial or revocation.

The city manager will notify the applicant/permittee of his decision in writing. The city manager's decision shall be final.

Section 24-10. Duration.

All permits issued under the provisions of this division shall be effective during the fiscal year beginning July 1 and ending on the succeeding June 30, unless the applicant requests permission to do business for a lesser period, in which case the permit shall be valid for such period.

Section 24-11. Renewal.

- (a) Any permit issued under the provisions of this division may be renewed by the holder of the permit, upon application in writing to the chief of police, upon a form to be furnished by the chief of police, which shall give any changes in the information required by Section 24-5.
- (b) At the time of filing the application under this section, the applicant shall pay a fee according to the city council approved fee schedule.
- (c) All applications for renewal permits must be filed no later than ten days before the expiration date of the permit to be renewed; otherwise, section 24-5 must be completed in its entirety.

Section 24-12. Prohibited conduct while peddling or soliciting

It shall be unlawful for any solicitor or peddler, or any person in his and/or her behalf to engage in any conduct prohibited by subsection 24-14(b) of this chapter with the exception of 24-14(b)(6).

Section 24-13. Not an endorsement to City of Hickory.

It shall be unlawful for any permittee, or for any agent, employee or representative thereof, to advertise, represent or hold out in any manner the permit required by this article is an endorsement of the holder thereof by the governing body of the city, or any employee thereof, or by the city.

Section 24-14. Panhandlers.

- (a) *Definitions.*

Aggressive panhandling, solicitation, or peddling includes

- (1) accosting a person by approaching or speaking to the individual or individuals in such a manner as would cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon his or her person, or upon property in his or her immediate possession;
- (2) touching someone without his or her consent;
- (3) using obscene or abusive language toward someone while attempting to panhandle or solicit him or her;
- (4) forcing oneself upon the company of another by continuing to solicit in close proximity to an individual who has made a negative response by verbal or physical signs or by attempting to leave the presence of the person soliciting, or by other negative indication;
- (5) blocking the path of the individual being solicited; otherwise engaging in conduct that could reasonably be construed as intending to force a person to accede to a solicitation.
- (6) other conduct that a reasonable person being solicited would regard as intended to compel or force the person to accede to the solicitation.

Automatic teller machine is defined as a device linked to a financial institution's account records, which is able to carry out transactions, including but not limited to, account transfers, deposits, cash withdrawals, balance inquiries, and mortgage, loan, and credit card payments.

Automatic teller machine facility is defined as the area comprised of one or more automatic teller machines and any adjacent space which is made available to banking customers after regular banking hours.

Panhandling is defined, without limitation, use of the spoken, written, or printed word, signs, bodily gestures, or other acts as are conducted in the furtherance of the purpose of obtaining alms or contributions of money, food, or clothing for the use of oneself or others.

Financial institution means any bank, industrial bank, credit union, savings and loan, check cashing business, or other financial business.

Public place means a place where a governmental entity has title and/or to which the public or a substantial group of persons has access,

including, but not limited, to, any street, highway, parking lot, plaza, restaurant, theater, transportation facility, vendor location, school, place of amusement, park or playground.

(b) *Prohibited conduct while soliciting, peddling, or panhandling.*

It shall be unlawful for any person to solicit, peddle, or panhandle, as defined in subsection above:

- (1) By engaging in any acts of aggressive soliciting, peddling, or panhandling as defined in subsection (a) above
- (2) Within 50 feet of the entrance to any financial institution, any automatic teller machine or any automatic teller facility;
- (3) At any permitted outdoor dining area or outdoor merchandise area, provided such areas are in active use at the time;
- (4) At any transit stop or taxi stand, or in a public transit vehicle;
- (5) While the person being solicited is standing in line waiting to be admitted to a commercial establishment;
- (6) On private property, unless the person has written permission from the owner of the property to beg or solicit alms on the property;
- (7) After dark, which shall mean one-half hour after sunset until one-half hour before sunrise;
- (8) While under the influence of alcohol or after having illegally used any controlled substance, as defined in the North Carolina Controlled Substance Act;
- (9) Within 20 feet of any crosswalk;
- (10) in or on city streets to include the right of way, median or shoulder thereof;
- (11) by standing, sitting or loitering in any street or highway, including shoulders or medians, but excluding sidewalks, and/or to stop or attempt to stop any vehicle for the purpose of obtaining employment, business or contribution from the driver or any occupants of the motor vehicle in accordance with N.C.G.S. 20-175. This provision shall not apply to licensees, employees or contractors of the Department of Transportation or city employees engaged in construction, maintenance or in making traffic engineering surveys.
- (12) In a school zone during the time of arrival of students at the beginning of the school day and/or during the time of the departure of students at the end of the school day;
- (13) within 20 feet of the entrance or exit of any parking deck, garage, or surface parking lot;
- (14) within 50 feet of any city owned or operated building or facility.

Section 24-15. Street Performers and Street Entertainers.

(a) *Definitions*

City walk means the defined pedestrian walkway running along Main Avenue from Lenoir-Rhyne University through Downtown Hickory to 9th Street NW.

Performance means, but is not limited to, acrobatics, animal tricks, balloon twisting, card tricks, caricatures, clowning, comedy, contortions, escapology, dance, singing, fire skills, flea circus, fortune-telling, juggling, magic, mime, living statutes, musical performances, puppeteering, snake charming, storytelling or reciting poetry or prose, street art such as sketching and painting, street theatre, sword swallowing, and ventriloquism.

Riverwalk means the defined pedestrian walkway along the Catawba River.

Street performer or street entertainer means a person who performs in a public area, including, but not limited to sidewalks, Union Square, the Riverwalk, and the City Walk and hopes to earn tips for such performances.

Sidewalk means all that area legally open to public use as a pedestrian public way between the curb line and the public right-of-way boundary along the abutting property.

(b) Prohibited conduct while performing or entertaining.

Street performers and street entertainers shall meet the following requirements:

- (1) Not violate the prohibitions on disturbing, annoying and unnecessary noise as set forth in Chapter 19 section 19-1 and 19-2 of the Code.
- (2) Not violate the prohibitions on panhandling as set forth in City Code section 24-14(b).
- (3) Not obstruct or cause to be obstructed pedestrian or vehicular traffic, including but not limited to not obstructing or causing to be obstructed sidewalks, doorways or other access areas, the City Walk, and the Riverwalk. The street performer must provide a minimum of 6 feet of pedestrian passageway on sidewalks, the City Walk, and the Riverwalk.
- (4) The sale of records, tapes or other products shall not be permitted.
- (5) Not perform before 9:00 a.m. or after 10:00 p.m.
- (6) Not perform any closer than 40 feet from another performer.
- (7) Not perform at locations designated for an approved community event festival, or other event unless permitted to play at the community event, festival or other event by the event or festival coordinator.

Section 24-16. Violations.

Any violation of this article shall be a misdemeanor.

Section 3: Severability.

If any portion of this Section is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed severable, and such holding shall not affect the validity of the remaining portions hereof.

Section 4: Repealed.

All ordinances or provisions of the Hickory City Code of Ordinances which are not in conformance with the provisions of the Amendment occurring herein are repealed as of the effective date of this Ordinance.

Section 5: Effective Date.

The amendments to this Ordinance shall become effective immediately upon adoption.

3. Approved a Resolution Directing that Street Improvement Project Be Undertaken for Curb and Gutter along the Property Located at 1440 8th Street NW, Hickory, Petition No. 17-01 – Presentation by Public Services Director Kevin Greer.

The City Clerk has received a petition from the owners of the property located at 1440 8th St. NW to install curb and gutter along a portion of their street as per section 29-2 of the Hickory Code of Ordinances. The petitioners represent a majority, greater than 50 percent, of the property owners as well as a majority, greater than 50 percent, of the property footage of the property frontage requested in the petition and therefore qualifies as a valid petition. The signatures on the

petition represent 100 percent of the property owners affected, who in turn represent 100 percent of the property footage affected. The City Clerk has validated these numbers as shown on the Certificate of Sufficiency. Staff recommends Council's approval of a "Resolution Directing That Street Improvement Project Be Undertaken" for curb and gutter petition 17-01 to install curb and gutter along a portion of the property located at 1440 8th Street NW in response to a petition from the property owners.

This public hearing was advertised in a newspaper having general circulation in the Hickory area on December 22, 2017.

City Manager Warren Wood advised the last public hearing was for consideration of a Resolution directing that a street improvement project be undertaken for curb and gutter along the property located at 1440 8th Street NW, Hickory, petition number 17-01. The presentation would be by City's Public Services Director Kevin Greer.

Public Services Director Kevin Greer presented a PowerPoint presentation. He advised he would discuss curb and gutter petition 17-01. This was a single party petition which means there was one property owner affected. The property was located at the corner of 8th Street NW and 15th Avenue NW. He pointed out on a map, Viewmont Elementary School, Hilton Park, Geitner Road, and a residential subdivision. It was one lot containing almost four tenths of an acre. He advised the improvements proposed were just along 8th Street NW and making the turn onto 15th Avenue. They are not required to actually extend down 15th Avenue. It was approximately 1,070 linear feet of curb and gutter just on the one side. He reiterated it was a single party petition. The property was located at 8th and 15th Avenue. The approximate cost for the owner was \$5,052.50 which was from the adopted fee schedule. The request for Council was to approve the street improvement project for curb and gutter as requested, which was the one side and making the turn onto 15th Avenue. Staff requested Council's approval of a resolution to install curb and gutter along a portion of the west side of 8th Street NW at property 1440. He reiterated this was a single party petition. He asked Council for questions.

Alderman Zagaroli asked what the City's share of cost of that was.

Public Services Director Kevin Greer advised about 50/50. The City would have \$5,000 in it and they would have \$5,000 in it.

Mayor Guess asked if there was any further questions from Council. He declared the public hearing open and asked if there was anyone present to speak in opposition to the proposal. No one appeared. He asked if there was anyone present to speak in favor of the proposal. No one appeared. Mayor Guess closed the public hearing.

Alderman Patton moved, seconded by Alderman Williams approval of the Resolution Directing that Street Improvement Project Be Undertaken for Curb and Gutter along the Property Located at 1440 8th Street NW, Hickory, Petition No. 17-01. The motion carried unanimously.

RESOLUTION 18-02

Resolution Directing That Street Improvement Project Be Undertaken (No. 17-01)

WHEREAS, on November 29, 2017, the property owner of 1440 8th Street NW, Hickory filed with the City Engineer of the City of Hickory a petition for improving said street by placing and constructing thereon curb and gutter according to plans and specifications on file in the office of the City Engineer; and

WHEREAS, the City Clerk has certified to the City Council of the City of Hickory that said petition is sufficient in all respects, the same having been duly signed by a majority in number of the owners, whose property represents a majority of all the lineal feet of frontage of the lands abutting upon the streets or portion of streets hereinabove described; and

WHEREAS, a Preliminary Assessment Resolution was adopted by this City Council and a public hearing thereon duly held.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HICKORY, NORTH CAROLINA:

1. That 1440 8th Street NW, Hickory be improved by placing and constructing thereon curb and gutter under and by virtue of Chapter 160A, Article 10 of the General Statutes of North Carolina and the procedure therein established, and that said improvements be done by the City of Hickory or by contract after due notice and advertisement for bids, as outlined by Chapter 143, Section 129, of the General Statutes of North Carolina.
2. That 50 percent of the total cost of said improvement, exclusive of so much of the total costs as is incurred in improving the street intersections, be hereafter assessed upon the property receiving the improvements.
3. That the assessment herein provided for shall be payable in cash, or if any property owner shall so elect, in accordance with Chapter 160A, Sections 232 and 233, of the General Statutes of North Carolina, he shall have the option and privilege of paying the assessment in five (5) annual installments, said installments to bear interest at the rate of 8 percent per annum.

B. Departmental Reports:

1. Appointments to Boards and Commissions

Mayor Guess asked for nominations to the Boards and Commissions.

BOND IMPLEMENTATION COMMISSION

(Terms Expiring 2-1; 3 Year Terms) (Appointed by City Council)

Mayor Guess Appoints

Allison Holtzman expires 2-1-18 eligible for reappointment

Stacey Rash expires 2-1-18 eligible for reappointment

Mayor Guess reappointed Allison Holtzman and Stacey Rash to the Bond Implementation Commission

Alderman Lail Appoints

Katherine Rogers expires 2-1-18 eligible for reappointment

Nick Walden expires 2-1-18 eligible for reappointment

Alderman Lail reappointed Katherine Rogers and Nick Walden to the Bond Implementation Commission

Alderman Tarlton Appoints

Jennifer Beane expires 2-1-18 eligible for reappointment

Kay Schmucker expires 2-1-18 eligible for reappointment

Alderman Seaver Appoints

James Tilton expires 2-1-18 eligible for reappointment

Patricia Bowman expires 2-1-18 eligible for reappointment

Alderman Seaver reappointed James Tilton and Patricia Bowman to the Bond Implementation Commission

Alderman Williams Appoints

Clise Johnson Plant expires 2-1-18 eligible for reappointment

Susan Walker expires 2-1-18 eligible for reappointment

Alderman Zagaroli Appoints

Jason Yates expires 2-1-18 eligible for reappointment

Burk Wyatt expires 2-1-18 eligible for reappointment

Alderman Zagaroli reappointed Jason Yates and Burk Wyatt to the Bond Implementation Commission

Alderwoman Patton Appoints

Kimberly George expires 2-1-18 eligible for reappointment

Alan Jackson expires 2-1-18 eligible for reappointment

Alderwoman Patton reappointed Kimberly George and Alan Jackson to the Bond Implementation Commission

Alderman Lail requested that Jennifer Beane and Kay Schmucker be allowed to serve until Ward 2 Alderman can reappoint or appoint someone else.

City Attorney John Crone responded yes.

***Ex-Officio Members to Bond Implementation Commission
(Appointed by Boards and Commissions)***

Business Development Committee	
Dana Chambers	Not Eligible
Catawba County Chamber of Commerce	
Will Locke	Not Eligible
Citizens Advisory Committee	
Cliff Moone	Eligible
Community Appearance Commission	
Charlie Hayes	Not Eligible
Community Relations Council	
Sandy Fotheringham	Eligible
Hickory International Council	
Hani Nassar	Not Eligible
Hickory Regional Planning Commission	
Meg Jenkins Locke	Eligible
Historic Preservation Commission	
Ernie Sills	Eligible
Library Advisory Board	
Carolyn Sinclair	Not Eligible
Parks and Recreation Commission	
Jim Powers	Eligible
Public Art Commission	
Jennifer Helton	Not Eligible
Recycling Advisory Board	
Norm Meres	Not Eligible
University City Commission	
Rachel Nichols	Eligible
Youth Council	
Mikaela Simmons	Eligible

COMMUNITY APPEARANCE COMMISSION

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)	
Ward 2 (Tarlton Appoints)	VACANT
Ward 4 (Williams Appoints)	VACANT

COMMUNITY RELATIONS COUNCIL

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)	
African American (Council Appoints) Grover Linebarger Resigned 1-5-18	VACANT
Other Minority (Council Appoints)	VACANT
Other Minority (Council Appoints)	VACANT
Other Minority (Council Appoints)	VACANT

HICKORY REGIONAL PLANNING COMMISSION

(Terms Expiring 6-30; 3-Year Terms With Unlimited Appointments) (Appointed by City Council)	
Burke County (Mayor Appoints)	VACANT

HISTORIC PRESERVATION COMMISSION

(Terms Expiring 6-30; 3-Year Terms (Appointed by City Council)	
Building Trades Profession (Council Appoints)	VACANT

INTERNATIONAL COUNCIL

(Appointed by Mayor with the Concurrence of City Council)	
(2) Positions	VACANT

LIBRARY ADVISORY BOARD

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)	
At-Large (2) (Mayor Appoints)	VACANT

PARKS AND RECREATION COMMISSION

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)	
At-Large Minority (1) (Council Appoints)	VACANT
(David Williams no longer eligible)	

PUBLIC ART COMMISSION

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)	
Ward 4 (Williams Appoints)	VACANT

PUBLIC HOUSING AUTHORITY

(Terms Expiring 6-30; 5-Year Terms) (Appointed by the Mayor)	
Position 1	Grover Linebarger (Eligible for Reappointment)

Position 9 VACANT

Mayor Guess reappointed Grover Linebarger to Position 1 of the Public Housing Authority

RECYCLING ADVISORY BOARD

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)
Ward 4 (Williams Appoints) VACANT

YOUTH COUNCIL

(Terms Expiring 6-30; 1-Year Terms) (Appointed by City Council)
Challenger High School Representative VACANT
Homeschool Representative VACANT
St. Stephens High School Representative VACANT

Alderman Lail moved seconded by Alderman Seaver approval of the above nominations. Alderwoman Patton opposed the reappointment of Grover Linebarger to the Public Housing Authority only. She stated for the reason that the Board Chair assured City Council that he would make changes to the Board, two years ago to Mayor Wright, and he had not followed through and the Board had made no effort to change and become more diverse. Otherwise she was fine. City Attorney John Crone commented let the record so reflect. The motion passed
Ayes: Mayor Guess, Alderman Lail, Alderman Seaver, Alderman Williams, Alderman Zagaroli, Nay: Alderwoman Patton voting no only to the reappointment of Grover Linebarger on the Public Housing Authority.

C. Presentation of Petitions and Requests

XII. Matters Not on Agenda (requires majority vote of Council to consider)

XIII. General Comments by Members of Council, City Manager or City Attorney of a Non-Business Nature

Alderman Seaver thanked everyone who had sent thoughts, prayers, cards, letters, emails, and Facebook messages. He heard from literally hundreds of people. He didn't know that many people really liked him out there, but he appreciated it. He thought that had a lot to do with him being present tonight. He thanked everyone from the bottom of his heart.

City Council members were glad he was back.

City Attorney John Crone reflected briefly on the life of Alderman Vernon Tarlton and his service to the City. Alderman Tarlton was a lifelong resident. He advised he had been in a reflective mood for the last six or seven months with the passing of Mayor Wright, Alderman Tarlton, City Manager Warren Wood's dad, who was a really good lawyer and a good person; the passing of Terry Watts with the City last week, and Cal Overby's wife Adrienne, who left Cal with two beautiful teenage daughters, and the celebration of Alderman Danny Seaver who was probably on deaths bed, but look at him now, he looks pretty dog gone good. Having that reflection he commented life is good, life is short, life is fragile, hug somebody every day and live life to the fullest and God bless the City of Hickory, City Council and the Mayor. They have done and are doing a good job and he was much honored to be a part of it.

Alderwoman Patton commented that she had known Alderman Tarlton her entire life and he will be missed. He had a great sense of humor, a very dry sense of humor. When he would cut his eyes to you, look at you and make a comment. He is just going to be missed.

Alderman Zagaroli commented that he had just gotten started being a Councilman and they were all going to miss him.

Alderman Seaver advised he got to know Alderman Tarlton by teaching his son math at Hickory High School. His son was quite difficult to teach in a group so Alderman Seaver would give him chances to come afterschool, get help and retake test, etc. He really shined then. Alderman Tarlton would be there to pick him up and sometimes would have to wait on him. Alderman Seaver and Alderman Tarlton would sometimes strike up conversations and they got to know each other pretty well. He will miss him. There was a break there between teaching his son and being on the Council with him. Alderman Tarlton had actually sent Alderman Seaver some information one time and told him that he needed to get on Facebook. Alderman Tarlton told Alderman Seaver that was the best way to reach your citizens. Alderman Seaver advised he uses it quite a bit. He has a page that is called Danny Seaver for Hickory. He invited citizens to feel free to like the page. He tries to post things as they come out from the City of Hickory that are beneficial to the citizens, especially their need to know what is going on. He reiterated that Alderman Tarlton was the first person to recommend that to him.

Alderman Lail advised he had known Alderman Tarlton for most of his adult life. At some level they competed in business, they crossed paths that way, but always in a friendly fashion. He enjoyed getting to know him better on City Council. He had the distinct privilege of getting to know him really well last fall when they fished together on an uninhabited island, in a cabin sleeping in bunkbeds. He had shared the room with Alderman Tarlton. He was so generous. At that point he was sick and you could tell it. He was so incredibly generous on that trip and so gracious. It is the little things. It is the last one to get up and make a plate, or it is the person that helps clean up, or the person that is willing to give you whatever they have to enhance your experience. That spoke to Alderman Tarlton's character and care for his fellowman. Alderman Tarlton was particularly a staunch advocate for business on City Council and Alderman Lail appreciated that. He brought a lot of good perspective there. It is very sad, it is certainly not shocking, but he will miss him.

Alderman Williams spoke of Alderman Tarlton's generosity. Alderman Williams had not had the pleasure of knowing Alderman Tarlton as long as the other Council members because he was new on Council. Several years ago when Alderman Williams wanted to apply for the Parks and Recreation Commission it was Alderman Tarlton who came to him and helped him and gave him all the advice that he needed. Alderman Tarlton stayed in contact with him letting him know that if there was anything that he needed he could just ask. Alderman Williams saw that as this guy who didn't know him and was willing to help him in such a way, it really touched his heart. Alderman Tarlton was a very generous man. Alderman Williams hated the fact that he would not be able to serve on Council with him and get to know him even more, but from what he knew he was a very, very great man.

Mayor Guess advised that he had known Alderman Tarlton for 40 years, they graduated together from Hickory High School, Class of 1977. He didn't know if the audience knew this, but Alderman Tarlton knew several months ago what his fate was and knowing that he still showed up to the Council meetings, every time that he was able. There were sometimes when he wasn't able, but if he was able to be there, he was there. He reflected on what that must be like to know the fate that the doctors have given you and to still show up and not resign and still keep on keeping on. He thought that spoke to Alderman Tarlton. He had spoken with Alderman Tarlton's wife Sue and she was doing as well as could be expected under these circumstances. She sent her thanks for all of the thoughts and the prayers to her and her family. The funeral was scheduled for Thursday, January 18th, at 2:00 p.m. at Grace Chapel on the campus of Lenoir-Rhyne University. As far as he knew it would be a public funeral. He asked everyone to continue to remember Susan and the entire Tarlton family in their thoughts and prayers.

XIV. There being no further business, the meeting adjourned at 7:50 p.m.

Mayor

City Clerk