

**MAYOR AND COMMISSIONERS MEETING  
CITY OF REHOBOTH BEACH**

**May 20, 2016**

The Regular Meeting of the Mayor and Commissioners of the City of Rehoboth Beach was called to order at 7:06 p.m. by Mayor Samuel R. Cooper on Friday, May 20, 2016 on the second floor of the Rehoboth Beach Volunteer Fire Company, 219 Rehoboth Avenue, Rehoboth Beach, DE.

City Solicitor Glenn Mandalas gave the invocation followed by the Pledge of Allegiance.

**ROLL CALL**

Present:      Commissioner    Paul Kuhns  
                 Commissioner    Toni Sharp  
                 Commissioner    Patrick Gossett  
                 Mayor                   Samuel R. Cooper  
                 Commissioner    Stan Mills  
                 Commissioner    Lorraine Zellers  
                 Commissioner    Kathy McGuiness

Also in attendance:    City Manager Sharon Lynn  
                                         City Solicitor Glenn Mandalas

**APPROVAL OF AGENDA**

Commissioner Stan Mills made a motion, seconded by Commissioner Lorraine Zellers, to approve the Agenda with the deletion of approval of the December 7, 2015, January 4, 2016, February 8, 2016, March 7, 2016 and April 4, 2016 Workshop Meeting Minutes. Motion carried unanimously.

**CORRESPONDENCE**

Correspondence received pertains to the Permit of Compliance hearing and will be read at that time.

**APPROVAL OF MINUTES**

Minutes of the November 9, 2015 Workshop Meeting, April 15, 2016 Regular Meeting and May 9, 2016 Workshop Meeting were distributed prior to the meeting. Minutes of the December 7, 2015 Workshop Meeting, January 4, 2016 Workshop Meeting, February 8, 2016 Workshop Meeting, March 7, 2016 Workshop Meeting and April 4, 2016 Workshop Meeting were not available for approval.

Commissioner Mills made a motion, seconded by Commissioner Zellers, to approve the November 9, 2015 Mayor and Commissioners Workshop Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Paul Kuhns, to approve the April 15, 2016 Mayor and Commissioners Regular Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Kuhns, to approve the May 9, 2016 Mayor and Commissioners Workshop Meeting minutes as written. Motion carried unanimously.

**REPORT OF POLICE DEPARTMENT**

(See attached report.)

Police Chief Keith Banks presented the report of the Police Department for the month of April 2016.

Mr. Walter Brittingham, 123 Henlopen Avenue, suggested that four additional police officers should be staffed for the summer due to the dispatch officer being temporarily moved to Georgetown. Improvements in directional signage is needed for the police department because currently it is not well signed.

**REPORT OF REHOBOTH BEACH VOLUNTEER FIRE COMPANY**

Mr. John Meng of the Fire Company reported that there were 40 crew calls, five alarms and five assists to other department for the month of April 2016.

**REPORT OF BUILDING AND LICENSING DEPARTMENT**

(See attached report.)

Chief Building Inspector Damalier Molina presented the report of the Building & Licensing Department for the month of April 2016.

### **PERMIT OF COMPLIANCE HEARING**

The Permit of Compliance hearing was requested by Melissa Moore, to operate a new restaurant with a patio to be known as "Egg" pursuant to the City of Rehoboth Beach Municipal Code, Chapter 215 – Restaurants and Section 270-19(A) – Use Restrictions; Patios. The restaurant will be located at 510 Rehoboth Avenue. Mayor Cooper noted the Public Hearing procedures for this hearing.

City Solicitor Mandalas noted the purpose for the hearing, and he read from Section 215-5 of the Code that in reaching their decision, the Commissioners shall consider the following factors including but not limited to:

1. Whether the Applicant has demonstrated that the establishment's primary purpose will be that of a restaurant or dinner theater as defined in this chapter.
2. Whether the establishment meets all the City's applicable zoning and licensing provisions.
3. Whether the establishment would be a detriment to the peace, order and quiet of the neighborhood and the City.
4. Whether the establishment will have an adverse impact on neighboring properties or on the City of Rehoboth Beach considering the impact on traffic, parking and noise.
5. Whether the Applicant has made any false representation or statements to the City's employees or the Commissioners in order to induce or prevent action by the City, not only in regard to the pertinent pending Application under the statute, but also with regard to the issuance of a building permit or business license for the subject establishment.

City Solicitor Mandalas identified the exhibits: 1. Notice of Public Hearing posted by the City Secretary on April 27, 2016. Notice of today's Public Hearing was published in the Cape Gazette on May 3, 2016, Coast Press on May 4, 2016 and Delaware State News on May 5, 2016. 2. Building Inspector's Report dated April 28, 2016. 3. Application for a Restaurant Permit of Compliance notarized and received on April 20, 2016. 4. Menu. 5. Existing Floor Plan received on April 20, 2016. 6. Proposed Floor Plan received on April 20, 2016. 7. Property record. 8. Illustration of the properties within 200 feet that were notified for this hearing.

Building Inspector Molina presented a complete report, and his findings were based on the application and his knowledge of the Code. (See attached report.) The Applicant had stated that the approximate percentage of revenue between the sale of alcohol and food is 30% alcohol and 70% food. The Application is for a 1,623 square foot restaurant. The proposed bar area will be 170 square feet with a proposed ratio of bar to permanent seated dining of .18. The patio area will consist of 267 square feet with eight seats as proposed. In summary, this is an Application for a new restaurant to serve alcohol in an existing space that was previously used for retail as a delicatessen by Hamels.

Ms. Melissa Moore was in attendance at the meeting. She is seeking approval for an upscale breakfast restaurant with mostly brunch items. Ms. Moore would like to serve alcohol with the upscale food. The patio consists of eight seats. The owners of the property have put in a nine space parking lot which will be for the intended use of the restaurant. Signage will be provided for the parking lot. She acknowledged that the sidewalk under the canopy is City property as well as some distance behind it. The property owners had informed her that the existing deck was on City property, and it has since been removed. Planters will divide and differentiate the patio area.

City Solicitor Mandalas noted that the property owners have a license agreement with the City that allows the canopy to extend over the City right-of-way. So the extent that the permit of compliance is approved, the patio dining would have to remain on the owners' property and not extend into the right-of-way.

Comments from the Commissioners were that alcohol is not listed in the menu, trash shall not be visible to the public and the parking lot will be entered off of Rehoboth Avenue.

Correspondence:

1. Letter received May 13, 2016 from Marilyn & Jackie Harman, 506B Rehoboth Avenue – in opposition to.
2. Email received May 19, 2016 from Paul & Cindy Lovett, 4 Canal Street – in support of.

Public Comment:

1. Ms. Rosemary Lawler, Pennsylvania Avenue – in support of.
2. Ms. Joanne Bremen, 506C Rehoboth Avenue – in opposition to.
3. Ms. Judith Hunter, 506A Rehoboth Avenue – in opposition to.
4. Walter Brittingham – special conditions to open back up to the public.

Mayor Cooper closed the public portion of the hearing and called for discussion among the Commissioners.

After discussion as to possible conditions, Commissioner Mills found the following to be true:

1. The proper Application and supporting documents have been filed.
2. The proper fee has been paid.
3. The proper notifications have been made.
4. All parties wishing to be heard have been heard.
5. The primary purpose is that of a restaurant.
6. The Application meets the City's applicable zoning and licensing provisions.
7. The restaurant would not be a detriment to the peace, order and quiet of the neighborhood and the City.
8. The restaurant will not have an adverse impact on neighboring properties or on the City of Rehoboth Beach considering the impact of traffic, parking and noise.
9. The Applicant has made no false statements to the City employees or Commissioners.

Commissioner Mills made a motion, seconded by Commissioner Kathy McGuinness, to issue a Certificate of Compliance to Egg Restaurant at 510 Rehoboth Avenue. (Kuhns – aye, Sharp – aye, Gossett – aye, Cooper – aye, Mills – aye, Zellers – aye, McGuinness - aye.) Motion carried unanimously.

## REPORT OF PLANNING COMMISSION

(See attached report.)

Chairman David Mellen presented the report of the Planning Commission for the Regular Meeting held on May 13, 2016. Also included with the report were the Complete Final Tree Study Package, redline of the Draft Tree Ordinance by Brian Patterson and the approved Planning Commission Meeting Minutes dated June 13, 2014.

## OLD BUSINESS

### **Discuss possible revisions to Chapters 215, Restaurants and 270, Zoning as they relate to the regulation and permitting of restaurants that serve alcohol including brewery-pubs.**

A draft proposal was distributed to the Commissioners prior to the meeting. (Copy attached.) Mayor Cooper provided a brief history of this subject. The draft proposal had originally been introduced at the April 4, 2016 Workshop Meeting. There was concern expressed from the Board of Adjustment that there is an ambiguity in the Code that is not clear as to what is to be included in the 5,000 square footage limitation, and there were other issues that came up that the Commissioners need to address, one being brewery pubs which the Code does not address. With regard to the draft proposal, there is nothing intended and it is not known that any existing businesses would be impacted under the way they are currently operating or had received permission for a business. This proposal concerns future applications for restaurants. To eliminate the ambiguity about the 5,000 square would be to limit the seating size. The proposed ordinance refers to a 2,500 square foot limitation which is a good alternative to the 5,000 square foot total limitation in the existing ordinance. With regard to the proposed ordinance, unique definitions were placed in the body of the ordinance and not in the definitions. There would be changes from the 5,000 square foot total limitation to the 2,500 square foot of patron and bar area; all establishments must serve food when alcohol is being offered and restaurants can serve up to 1:00 a.m. and quit consumption at 2:00 a.m. This is consistent with State Code. In the future, restaurants that would exceed 2,500 square feet would be required to have closing hours at 11:00 p.m.

There was discussion among the Commissioners. Comments were:

1. Rather than controlling what happens from a liquor perspective by the number of seats in a restaurant or the serving space, alcohol should be regulated by what is put in the permit of compliance application as to the ratio of food vs. alcohol.
2. Enforcement of the laws.
3. Make allowances for all the ancillary areas to not count against the size of a restaurant.
4. Restaurant owners should be part of the process.
5. The restaurant association and Chamber should be notified.

6. Reach out to the residents who have been impacted by restaurants and patios.
7. Consider larger restaurants to close earlier.
8. Goal is have more flexibility for restaurants that would like to do some things outside of their dining and bar areas.
9. Provide cleaner and more defined definitions to the Board of Adjustment so the process would work in a much cleaner way.
10. Limit the amount of time that alcohol can be served.
11. The supplemental permit of compliance for patios and brewing facilities would be part of the ancillary services.
12. If coming before the Board of Commissioners for a permit of compliance, the \$1,000.00 fee would include the restaurant certificate of compliance, patio certificate of compliance and brew-pub certificate of compliance.
13. If there is a current restaurant and a supplemental certificate of compliance would be added for a brew-pub, then the \$1,000.00 fee would need to be paid to go through another permit of compliance hearing.

Public Comment:

1. Mr. Nick Benz, CEO of Dogfish Head Brewings & Eats, 320 Rehoboth Avenue, said that there is concern about facing the dilemma of renovating an old building. The current rules of what can be renovated and the crossing over of a certain threshold would result in the loss of being grandfathered. Mr. Benz was not opposed to putting language in the Code that governs what brew-pubs are, and he welcomed being invited into that process. He suggested that a workshop or special workshop meeting should be held to discuss this matter so that the city will get the protection it needs and to put the code in place to govern appropriately without becoming overly burdensome or removing certain rights that the business side has enjoyed for many years.
2. Mr. Jeff Hamer, owner of Fins Fish House, 243 Rehoboth Avenue and Claws Seafood House, 167 Rehoboth Avenue, said that the Commissioners are trying to create a solution for a problem that does not exist. If there is square footage in the back end of a restaurant, then three to four times that square footage is needed in the front end of the restaurant to pay for the square footage in the back. What would be created with new legislation is a feudal system with a few large property owners which is creating a separate class. Property rights may be disenfranchised.
3. Mr. Mark Grobowski, owner of 220 Rehoboth Avenue, said that no one will give front of the house space for a closet, etc. If someone wants to ancillary space, they can go to the Board of Adjustment. He should be able to risk doing a 9,000 square foot restaurant. The Commissioners should abandon the proposed legislation. He would like to see larger restaurants.
4. Ms. Susan Wood, owner of Cultured Pearl, Rehoboth Avenue, said that the proposed legislation may be the result that there may be people who were restricted by not being able to add ancillary space because of being over 5,000 square feet. The code is antiquated, and the Commissioners need to address it as to why it was written in the first place and what has changed.
5. Mr. Randy Schrader of Arena's, said that the trend is clearly towards less late night business.
6. Ms. Rosemary Lawler, 21 Pennsylvania Avenue, said that the problem is not that restaurants are too large, they are too small.
7. Mr. Sam Calagione of Dogfish Head Brewery, said that no downtown Rehoboth business has gotten to the third infraction with ABCC in the past five years. Downtown Rehoboth has not had an issue with alcohol. All the businesses are willing to talk with the Commissioners about realistic issues.
8. Mr. Walter Brittingham, 123 Henlopen Avenue, said that there is nothing in the books about brew pubs. At the time when Mayor Cooper gave his presentation on the proposed legislation, none of the restaurant owners were in attendance at that meeting.

This item will be placed on the agenda for the Workshop Meeting on June 6, 2016.

## **NEW BUSINESS**

**Consider authorizing the execution of a new 10-year franchise agreement with Comcast of Delmarva, LLC permitting Comcast to continue to occupy the City's right-of-ways to provide cable, phone, internet and other services within the City.**

The current contract expires on May 20, 2016. The City has been give an extension until July 1, 2016. The Government Regulatory Affairs Director, who was in attendance at the last meeting, explained the changes to the agreement. The agreement is a 10-year term with a 5% franchise fee. It was noted that the numbering of the paragraphs would change, but no substance of the agreement would be affected. It was hoped that the City Manager will work with Comcast of Delmarva on cable management.

Commissioner Mills made a motion, seconded by Commissioner Kuhns, to authorize the proper officials to execute the 10-year franchise agreement with Comcast. (Kuhns – aye, Sharp – aye, Gossett – aye, Cooper – aye, Mills – aye, Zellers – aye, McGuiness – aye.) Motion carried unanimously.

**Consider adoption of an ordinance amending Chapter 92 of the City Code related to the types of parking meters used by the city and the various means of paying for parking at meters.**

Section 1 of the proposed ordinance adds back the outsides of Rehoboth Avenue in the first two blocks which had been omitted some time ago by the Code publisher. Changes are being made to Section 92-73(A), (B) & (C) to eliminate the use of “quarters” since alternative methods of payment are being used. Because of the multi-space meters, a person is paying for the space, not the meter. In Section 5, payment can be made with the depositing of quarters by credit cards approved for acceptance by the City where the meter controlling the relevant spaces are equipped to accept credit cards. A \$.50 service fee is added to the price of the parking for the use of a credit card. Payment can also be made by electronic means through a third-party vendor contracted by the City. There is a \$.50 service fee for use of Parkmobile. Section 7 sets out the types of meters and locations. Section 8 outlines the responsibilities of the City Manager.

Commissioner Mills made a motion, seconded by Commissioner McGuiness, to adopt the ordinance amending Chapter 92 related to parking meters. (Kuhns – aye, Sharp – aye, Gossett – aye, Cooper – aye, Mills – aye, Zellers – aye, McGuiness – aye.) Motion carried unanimously.

**CITY MANAGER’S REPORT**

Forty-six new multi-space parking meters have been installed on Rehoboth Avenue. Testing of these meters will be completed next week. Four hundred fifty-three single-space meters have been installed on the first two blocks of Wilmington, Baltimore and Delaware Avenues. All of these new meters will accept credit cards. The Parking Department will be open for business on May 23, 2016. A ribbon-cutting ceremony at the new Parking Department building is scheduled on June 15, 2016 from 11:00 a.m. to 1:00 p.m. The new Communications Department will be moving into the former Main Street trailer. The communications specialist will start on May 23, 2016. Beginning June 1, 2016, the entrance and exit from Lake Avenue and Third Street will be one lane, two-way traffic. Whiting Turner, the contractors for City Hall will then begin the outside work on the Convention Center and work around to the east side of the building. Construction on City Hall and the Police Department is on time. Pool inspection letters were mailed out in late March 2016 to all property owners. The letters included the ordinance and license application. To date, Code Enforcement Officer Ed Graves has received 150 license registrations, 55 of which are rental pools. Building Inspector Dam Molina, Assistant Building Inspector Steve Kordek and Code Enforcement Officer Ed Graves have been to certified pool operator training at DelTech. A sample sign has been prepared by Mr. Graves. The first inspection occurred today. Additional inspections will occur in the next few weeks. The pilot program for valet collection of trash is on schedule to begin June 1, 2016. The Streets Department staff will be delivering 95-gallon trash receptacles next week. Streets Department Superintendent Mike Peterman has met or contacted property owners as to the placement of their receptacles. Fifty property owners have been accepted into the pilot program. Any changes to the customary way of handling trash will be handled softly through education and advisement. Mr. Peterman will monitor this closely as well as the valet program.

City Manager Sharon Lynn recommended the approval of the Street Aid expenditures:

05/18/2016	577	Delmarva Power	\$8,812.76 (Street Lights)
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Commissioner Mills made a motion, seconded by Commissioner Kuhns, to approve the Street Aid expenditures as presented. Motion carried unanimously.

**COMMITTEE REPORT**

There was none.

**CITY SOLICITOR’S REPORT**

There was nothing to report.

**COMMISSIONER ANNOUNCEMENTS/COMMENTS**

There were none.

**DISCUSS ITEMS TO INCLUDE ON FUTURE AGENDAS.**

Items to be included on future agendas are: 1. Trees. 2. Parking. 3. Restaurants.

**CITIZEN COMMENT**

Ms. Rosemary Lawler, 21 Pennsylvania Avenue, was concerned with how the valet service and enforcement will realistically work.

Mr. David Mellen, Rodney Street, said that the 6:00 p.m. timeframe is too restrictive regarding trash pickup. A 3:00 p.m. or 4:00 p.m. timeframe would be better for people who commute.

The next Workshop Meeting will be held on June 6, 2016 at 9:00 a.m.

There being no further business, Mayor Cooper adjourned the meeting at 10:38 p.m.

**Respectfully submitted,**

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**(Lorraine Zellers, Secretary)**