

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

January 16, 2015

The Regular Meeting of the Mayor and Commissioners of the City of Rehoboth Beach was called to order at 7:02 p.m. by Mayor Samuel R. Cooper on Friday, January 16, 2015 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

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

ROLL CALL

Present: Commissioner Toni Sharp
 Commissioner Patrick Gossett
 Commissioner Bill Sargent
 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 the August 4, 2014 Workshop Meeting, September 8, 2014 Workshop Meeting, October 6, 2014 Workshop Meeting, November 10, 2014 Workshop Meeting, November 25, 2014 Special Workshop Meeting, December 8, 2014 Workshop Meeting and December 19, 2014 Special Workshop Meeting Minutes. Motion carried unanimously.

CORRESPONDENCE

There was none.

APPROVAL OF MINUTES

Minutes of the August 15, 2014 Regular Meeting and December 19, 2014 Regular Meeting were distributed prior to the meeting. Minutes of the August 4, 2014 Workshop Meeting, September 8, 2014 Workshop Meeting, October 6, 2014 Workshop Meeting, November 10, 2014 Workshop Meeting, November 25, 2014 Special Workshop Meeting, December 8, 2014 Workshop Meeting and December 19, 2014 Special Workshop Meeting were not available for approval.

Commissioner Stan Mills made a motion, seconded by Commissioner Lorraine Zellers, to approve the August 15, 2014 Mayor and Commissioners Regular Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Zellers, to approve the December 19, 2014 Mayor and Commissioners Regular Meeting minutes as written. Motion carried unanimously.

REPORT OF THE POLICE DEPARTMENT

(See attached report.)

Police Chief Keith Banks presented the report of the Police Department for the month of December 2014. There were 18 criminal, 116 traffic and one civil charges made during the month. Eight traffic crashes were investigated. The Dispatch Center handled 128 police incidents, 190 ambulance incidents, 30 fire incidents, 127 traffic stops, assisted other agencies five times during the month and 9-1-1 calls totaling seven 309 were received.

REPORT OF REHOBOTH BEACH VOLUNTEER FIRE COMPANY

There was no report.

REPORT OF THE BUILDING AND LICENSING DEPARTMENT

(See attached report.)

Chief Building Inspector Terri Sullivan presented the report of the Building & Licensing Department for December 2014. During the month, 62 permits were issued for a value of work totaling \$2,195,352.38. Fees collected totaled \$56,712.45 for the month. Fifty-eight permit processing fees were received in the amount of \$1,160.00. The Board of Adjustment heard no cases in December. One restaurant application was received in December. One notice of violation was issued for a contractor working without a building permit. One notice of violation was issued for a contractor working without a license. One notice of violation was issued for abuse of trees. There were 55 building inspections, 10 plumbing inspections, five rental inspections, two meetings regarding trees, 20 meetings regarding new projects and 14 meetings regarding City business.

PERMIT OF COMPLIANCE HEARING

Mayor Cooper opened the Permit of Compliance hearing requested by Michael Ludden of Sands Inc., to modify the floor plan of an existing restaurant with a patio known as "The Sandcrab Beach Bar" pursuant to the City of Rehoboth Beach Municipal Code, Chapter 215-11 – Modifications of Floor Plans and 270-19(A) – Use Restrictions; Patios. The restaurant is located at 101 North Boardwalk. 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 December 19, 2014. Notice of Public Hearing was published in the Cape Gazette on December 26, 2014, Coast Press on December 31, 2014 and Delaware State News on December 26, 2014. 2. Building Inspector's Report dated January 9, 2015. 3. Application for a Restaurant Permit of Compliance signed and notarized on December 19, 2014 and received on January 9, 2015. 4. Menu. 5. Conceptual Kitchen Renovation & Floor, Sheet A-0001 received on January 9, 2015. 6. Conceptual Kitchen Renovation & Floor Plan, Sheet A-2001 received on January 9, 2015. 7. Conceptual Kitchen Renovation & Floor Plan, Sheet A-2002 received on January 9, 2015. 8. Property record. 9. Illustration of the properties within 200 feet that were notified for this hearing.

Building Inspector Sullivan presented a complete report, and her findings were based on the application and her knowledge of the Code. (See attached report.) The Applicant has stated that the approximate percentage of revenue between the sale of alcohol and food is 35% alcohol and 65% food. The Application is for a 6,370 square foot restaurant. The proposed bar area will be 426 square feet with a proposed ratio of bar permanent seated dining of .23. In summary, this was an Application to remodel an existing restaurant which has a patio. The restaurant is moving from the two farthest rooms into the three nearest rooms to service the patio. The restaurant is below the 7,500 square feet allowed for a restaurant inside a hotel. The three new rooms are being utilized as a kitchen and service bar. There is a keg and cooler area to be used as a service bar for the waite staff. There is no new bar area accessible by the public.

Mr. Michael Ludden noted that the No. 1 goal is to move the stack away from the Boardwalk and eliminate it, and beautify the front of the building. Currently, the two vacated rooms will sit empty; but they may be used for retail space in the future. There is no change in the number of seats outside on the patio area.

There was no correspondence and no public comment.

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

Commissioner Bill Sargent made a motion, seconded by Commissioner Mills, to approve the Certificate of Compliance to Michael Ludden of Sands Inc. at 101 North Boardwalk.

Commissioner Sargent 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.

(Sharp – aye, Gossett – aye, Sargent – aye, Cooper – aye, Mills – aye, Zellers – aye, McGuinness – aye.) Motion carried unanimously.

REPORT OF PLANNING COMMISSION

Planning Commission Chair David Mellen presented the report of the Planning Commission. The Regular Meeting was held on January 9, 2015. The Planning Commission conducted a Public Hearing for a property located at Lot Nos. 36 & 38 Surf Avenue, found that the submitted documents were substantially complete and voted to move the Application to Public Hearing. The Planning Commission approved the partitioning with a condition that any curb-cut/driveway for Lot No. 38 be located on Pennsylvania Avenue. The Planning Commission voted for final approval of the partitioning of 104 Rodney Street. Based on the Building Inspector's report, all conditions required for the partitioning had been met. The Planning Commission continued its discussion of the procedure/process of the 5-year review of the 2010 Comprehensive Development Plan (CDP). The Commission will initially utilize an Excel format document which summarizes the current goals and action items that had been defined in the 2010 approved Plan. The Commission will gather and update the most current status of those goals/action items. It is expected that part of the process will be complete by March 13, 2015. No new subdivision applications have been submitted to date. No February 2015 meeting is scheduled due to multiple travel plans by various members of the Commission.

OLD BUSINESS

Mayor Cooper called to Consider adoption of an ordinance to amend Chapter 224 title "Smoking, Outdoors" by adding a definition of Electronic Cigarette and adding the operation of same to the definition of Smoking, which has the effect of banning the use of electronic cigarettes from public locations within the City where smoking is currently prohibited.

Commissioner Mills provided a brief history and rationale of the Smoke Free initiative ordinance originally adopted in 2011. In 2014, an ordinance was adopted which expanded the ban of smoking tobacco products in the remainder of the parks, Bandstand area, the entirety of the Boardwalk and access ways, and the beach except in designated areas. The proposed ordinance would include e-cigarettes.

City Solicitor Mandalas noted that the proposed ordinance provides a revision to the definitions in Chapter 224. It adds a definition for Electronic Cigarette. In the definition of smoking, it adds that the operation of electronic cigarette is considered smoking. The definition of electronic cigarette is any device employing a mechanical heating element, battery or circuit, regardless of shape or size, that can be used to deliver nicotine or other substances into the body through inhalation, including but not limited to, an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or other similar product that relies on vaporization or aerosolization. As used in this Chapter, the definition of Electronic Cigarette does not include any product that has been approved by the United States Food and Drug Administration for tobacco cessation or other medical purposes. This definition was used in legislation proposed for the General Assembly last session. The City's definition should be consistent with the State's definition.

Commissioner Mills, in developing the proposed ordinance, he focused primarily on the health impacts on bystanders. The Town of Bethany Beach has added e-cigarettes to its ban on the beach, boardwalk and parks last summer. The City of Lewes is enacting legislation to ban smoking of tobacco products and e-cigarettes on its beach and parks. Last week the Town of Ocean City, MD, included e-cigarettes in its ban of tobacco products that is going to be implemented prior to the 2015 summer season.

Commissioner Kathy McGuinness made a motion, seconded by Commissioner Mills, to adopt the Ordinance

amending Chapter 224 related to electronic cigarettes.

Dr. Barrett Morrisson, health care provider in the State of Delaware, noted that his focus has always been on harm reduction, and that is what public health is all about. Electronic cigarettes have been shown and have proven to be very effective. Recently, the FDA has concluded that it is not known whether e-cigarettes are safe. Nothing has been proven to show that e-cigarettes are not safe. There is no aerosol in an electronic cigarette. With regard to secondhand exhalation, there is no valid proven indication that there is any kind of secondhand emission of any aerosol or anything that is going to affect anyone. The ingredient most people are concerned with is propylene glycol which has been approved by the FDA to be in products used every day. Dr. Morrisson encouraged the Commissioners to reconsider and take a harder, more firm look at this. No reliable studies have been done that say there is any secondhand expulsion from the body.

Commissioner Sargent said that no one can smoke cigarettes or any tobacco product on the Boardwalk, so a safer product is not being substituted for something. In this case, Dr. Morrisson was not offering something that would lead to any reduced harm on the Boardwalk. Dr. Morrisson does not have a product that would improve health on the Boardwalk. The purpose of eliminating e-cigarettes is that there is no benefit to have them. One of the drawbacks of allowing e-cigarettes is confusion. Commissioner Sargent was convinced that the vast majority of people do not want e-cigarettes. E-cigarettes have a place and if they are used to reduced tobacco use, it is very valuable for society, but that does not justify using e-cigarettes when tobacco products are not allowed on the Boardwalk and other public places.

Commissioner Mills said that the FDA has not approved electronic cigarettes. They are not an approved therapy for smoking cessation. A balance was sought for smoking/non-smoking.

Commissioner Kathy McGuiness agreed. Designated areas are offered for smoking. There are alternatives to smoking such as patches, lozenges, gums for smoking cessation.

Commissioner Zellers agreed. Not everything is known about e-cigarettes. They are not being banned throughout the entire City. There are areas when they can be used.

Commissioner Patrick Gossett said that there is confusion about cigarettes and e-cigarettes. Two messages and two different standards are being sent. Including e-cigarettes in the current legislation is the right thing to do.

Mayor Cooper opposed the proposed ordinance because he has not seen evidence that e-cigarettes are harmful to bystanders. The evidence is very slim. He took exception to the idea that this is what the majority of the public wants. With a valid documented health risk, Mayor Cooper would agree to the ban; but if 80% of the people in this country, town or state are going to dictate to the other 20% of the people what they can and cannot do, even in public spaces, is an argument that goes on continually. Just because 80% of the people do not like someone using an e-cigarette that has no effect on them, he did not get it. Give him a good valid health reason for the bystanders and he will go along with the ban, but Mayor Cooper has not seen that. Because they can be confused is not a reason.

(Sharp – aye, Gossett – aye, Sargent – aye, Cooper – no, Mills – aye, Zellers – aye, McGuiness – aye.) Motion carried.

Mayor Cooper called to discuss possible Code changes to Chapter 227 – Solid Waste and Chapter 270-27 – Storage of Refuse including but not to: Timeline for putting out refuse-yard waste-recycling for collection and for retrieving containers in the residential areas to include addressing refuse put curbside for collection and non-collection days, e.g. on Saturdays; feasibility of the City providing special pickup service, screening of refuse-yard waste-recycling containers; and miscellaneous updates to Code.

Commissioner Mills provided a brief summary of this topic. Refuse/yard waste/recycling containers are being put out too far in advance of the collection day. There is nothing in the Code that says how far in advance refuse can be put out for collection. There is a provision in the Code for untimely retrieval of refuse/yard waste/recycling containers, but there needs to be enforcement. Two avenues of compliance were looked at: 1. The property owner, resident, tenant, rental agency, etc. is informed of the new code, and they are expected to comply. 2. The City could provide a special valet service. Valet service would be that the collector walks on to the property, take the containers to the street, empty the containers and return them to the same location on the property. Certain rules would have to be developed. Examples of rules are: 1. Refuse waste has to be bagged and fit inside the container. 2. The City would provide the container. 3. The container would have to be readily accessible. 4. The path has to be accessible in inclement weather. 5. The container has to be screened from

public view similar to the commercial code. 6. Valet service would be a premium service, above and beyond what is being paid for the refuse service. Two ways of providing valet service would be to: 1. Hire an outside company to perform the service through a contract. The thought is that the service would need to be the same day city-wide. 2. City performs the service in-house. It would be difficult to bid out the service because the number of participants is unknown. Commissioners Mills and McGuinness have met with a vendor to discuss the possibility of providing the valet service in conjunction with all of the residential collection service. Commissioner Mills noted that providing the valet service has certain benefits over contracting it out such the City work crews maintain responsibility for the collection. The day of the valet collection would be the same as it is now. The City may have a much better ability to handle startup in regards to the unknown number of participants. Providing an in-house valet service would require additional labor, equipment and the purchase of containers. The containers would be supplied whether the valet service is provide in-house or contracted out. Commissioners Mills and McGuinness, City Manager Sharon Lynn and Mr. Mike Peterman, Public Works Superintendent, held a meeting to discuss the option of providing an in-house service. For the first year, the estimated cost would be \$252,000.00, based on an extra crew if it is needed full-time and a new truck. The same manufacturer can be used for yard waste/recycling containers as the refuse containers. Two hundred containers would cost approximately \$16,000.00. Fee structures would need to be determined. Approximately \$24,000.00 would be received in revenue each year if there are 100 participants at the \$20.00 per month fee, \$36,000.00 at \$30.00 per month, \$72,000.00 with 300 participants at \$20.00 per month or \$108,000.00 with 300 participants at \$30.00 per month. At the meeting, it was discussed whether or not it would be feasible to also provide valet service for yard waste. The contract for collection of recyclables is held by an outside company. It may be feasible to ask for a bid to provide valet service for recyclables. A potential path forward would be to: 1. Amend the codes and codify time restrictions on how far in advance containers can be put out. 2. Confirm the existing time requirement for retrieval. 3. Codify screening of refuse of containers and collection of yard waste/recycles at the same time. The next step beyond that would be that a working group would meet to establish rules, determine fees and return to the Commissioners for a vote. After the rules would be adopted, the work group would generate and distribute letters to single-family homeowners notifying them of code changes, implementation of the valet services, rules, fees and an order form for the valet services. From there, the date of implementation would be established.

Commissioner Sargent suggested that people should be required to use only approved containers. This possibly would eliminate half the problem with unsightly plastic bags and animals. He thought the City would have a lot of expense and trouble because of the few people who cannot put it out the morning of pickup. Commissioner Mills noted that this would not relieve trash being put out a week to two weeks in advance of pickup. Commissioner McGuinness agreed that approved containers would eliminate half the problem. The No. 1 offensive thing is the white trash bags. Uniform trash containers would be wonderful. She will be talking about trash, income and expenses, fees at the budget session. This may be an opportunity to get uniform containers.

Mayor Cooper thought it would be tough to implement the valet service. It would make a lot of sense to pick up the recyclables on the same day as the refuse pickup.

City Manager Sharon Lynn noted that there are times during the week in July and August when two crews (six employees with two trucks) cannot get through an entire pickup because of the quantity of trash. In the summer, there is no way that the valet service cannot be done without the costs of three additional people and one additional truck. This may be a discussion for tonight's meeting or during the budget sessions. In speaking with the vendors and business entities, it would be quite difficult to come into the City any day during the summer to provide the valet service because of the unknown quantity of participants and varying factors such as liability issues with parked cars too close to driveways, flowers being stepped on, fences to navigate, etc.

Commissioner Mills proposed that when people are polled, there would be a set of rules formulated and pricing determined at that point. Mayor Cooper thought that a range in pricing should be provided since it is unknown what a determined amount would be. People should be provided with an option of the valet service, but the City should not be heavy handed on this matter that this would be a requirement. He suggested that on January 23, 2015, a Commissioner should ride around in the City to see how many containers are left out. Given the number of people who are here, the number of containers will be pretty astounding.

Commissioner Sargent disagreed with the valet service.

Commissioners McGuinness and Mills, Mayor Cooper and City Manager Lynn will meet again on this issue.

Ms. Bitsy Cochran, First Street, said that getting the trash people to roll the containers up onto the property and get them off of the street would help. She has valet trash pickup at her shop, and it is wonderful. It is

approximately \$35.00 per month and well worth the month. She pays one fee to FSD for both collections of refuse and recyclables.

Mr. Hayden Morris, 216 Laurel Street, said that the renters next door to his property were not informed of trash as to recycling and trash recycling pickup. It is a matter of educating renters and the realty offices to keep them informed of the various problems.

Commissioner Mills said that education would be a component of this process such as the newsletter, and the City would reach out to all the realtors, Chamber of Commerce, etc.

NEW BUSINESS

Mayor Cooper called for discuss Rehoboth Beach becoming an "idle free" city.

Commissioner McGuiness had distributed sample ordinances and research on documented evidence on this matter. The information she provided is that becoming an idle free city has important health and environmental benefits. The pretense is to reduce unnecessary emissions, if possible, through education and awareness. Other municipalities have noted that this is difficult to enforce. The City should encourage people not to idle. If there are certain temperatures or emergency vehicles, this would not apply. This would be more of a clean city awareness that would shame people into behaving properly. Education would be through signage placed on existing poles, the press and the City website.

Mayor Cooper thought that this would be a good public policy, but it does not need to be an ordinance. A few well-placed signs could be put up. He had no objection to putting it on the City website.

Commissioner Sargent agreed that appropriate signs could be put up.

Police Chief Banks noted that unattended delivery trucks that are left idling is a ticketable offense. Tickets have been issued in the past for these trucks.

Commissioner Zellers said that the refrigerated trucks would be considered un the exceptions for idling.

Commissioner Mills liked the concept of an idle-free city; and by codifying this, it would be a tool for the police.

Ms. Christine Hastings of Jolly Trolley asked if the non-refrigerated delivery trucks are to be non-idling and have their engines turned off. Mayor Cooper said that the current ordinance deals with a safety issue because trucks have a way of jumping gears, etc.

Commissioner McGuiness will meet with City Manager Lynn in moving forward with this matter.

CITY MANAGER'S REPORT

City Manager Sharon Lynn reported that currently the General Fund revenues are exceeding budget, and expenses are below year-to-date budget levels. The transfer tax received to date is above budget. The first budget session will be held on February 6, 2015 at 9:00 a.m. Mobilization has begun at the parking lot north of the Henlopen Condominiums with regard to removing a section of pipe next week in order to repair stormwater outfalls. Lights on the trees on Rehoboth Avenue will stay up until at least mid-February 2015. The Christmas trees were not placed on the lakes this year because they were not functional. There may be possible discussion at the budget session to have trees on the lakes next year.

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

01/14/2015	557	Delmarva Power	\$7,873.42 (Street Lights)
01/15/2015	558	Delmarva Power	\$1,568.35 (Street Lights)

Commissioner Sargent made a motion, seconded by Commissioner Mills, to approve the Street Aid expenditures as presented. Motion carried unanimously.

COMMITTEE REPORTS

There were no reports.

CITY SOLICITOR'S REPORT

There was nothing to report.

COMMISSIONER ANNOUNCEMENTS/COMMENTS

Mayor Cooper announced that Secretary Smolick signed the Record of Decision for the wastewater funding issue. It was Mayor Cooper's decision that the City would do a study of the five stormwater outfalls into the ocean and have the City's engineer prepare a report on the impacts of them, what could be done economically, how it could be done, etc. This will have to be budgeted for. Mayor Cooper will be soliciting a proposal from GHD to perform that study. As soon as Mayor Cooper has the task orders to resume the outfall project from GHD, he will forward them to the Commissioners.

Commissioner Sharp announced that on February 15, 2015 from 2:00 p.m. to 5:00 p.m., the 10th annual Gumbo Crawl will be held at participating restaurants in the City. The winner will be announced at 8:00 p.m. at the Purple Parrot.

Commissioner McGuinness announced that she will be volunteering at Convention Hall on February 7, 2015 to give flu shots.

DISCUSS ITEMS TO BE INCLUDED ON FUTURE AGENDAS.

There were none.

CITIZEN COMMENT

There was none.

The next Workshop Meeting will be held on February 9, 2015 at 9:00 a.m.

There being no further business, Mayor Cooper adjourned the meeting at 9:07 p.m.

Respectfully submitted,

(Lorraine Zellers, Secretary)