

Meeting of the Sandy Springs City Council was held on August 16, 2022, Following Work Session, Mayor Rusty Paul presiding.

I. Call to Order

Mayor Rusty Paul called the meeting to order at 8:21 p.m.

II. Roll Call and General Announcements

Members Present: Mayor Rusty Paul, Councilmember John Paulson, Councilmember Melody Kelley, Councilmember Melissa Mular, Councilmember Jody Reichel, Councilmember Tibby DeJulio, Councilmember Andrew Bauman

III. Pledge of Allegiance

Mayor Rusty Paul led the Pledge of Allegiance.

IV. Public Comment

There was no public comment.

V. Approval of the Meeting Agenda

Motion and vote. A motion was made by Councilmember Tibby DeJulio, seconded by Councilmember John Paulson, to approve the meeting agenda with the following changes: (1) move agenda item 2022-224 from the last item on the agenda to the first item on the agenda and (2) add a discussion at the end of the agenda to consider a resolution to join a legal action regarding the local option sales tax. The motion carried by unanimous vote.

VI. Consent Agenda

Motion and vote. A motion was made by Councilmember Jody Reichel, seconded by Councilmember Melody Kelley, to approve the consent agenda. The motion carried by unanimous vote.

- A. 2022-210** Meeting Minutes
August 2, 2022 City Council Work Session
August 2, 2022 City Council Meeting
August 9, 2022 City Council Special Called Meeting
August 9, 2022 City Council Special Called Work Session
August 9, 2022 City Council Special Called Townhall Meeting

VII. Presentations

- H. 2022-224** Request for Mayor and City Council Consideration of the Reappointment of Don Schaeffer as Judge of the Municipal Court for the City of Sandy Springs, Georgia

Motion and vote. A motion was made by Councilmember Andrew Bauman, seconded by Councilmember Tibby DeJulio, to approve the reappointment of Don Schaeffer as Judge of the Municipal Court for the City of Sandy Springs, Georgia. The motion carried by unanimous vote.

VIII. Public Hearing

- A. **2022-2011** Ad Valorem Tax Rate Public Hearing 3 for 2022 Millage Rate and Request for Mayor and City Council Consideration of Adoption of the 2022 Millage Rate

Toni Carlisle, Chief Financial Officer, presented a proposed ad valorem tax rate for the City of Sandy Springs for the 2022 calendar year. Per the City of Sandy Springs Charter, Section 1.03 subsection 37(A), Taxes: Ad Valorem, it states:

(37) To levy and provide for the assessment, valuation, revaluation, and collection of taxes on all property subject to taxation; provided, however, that: (A) For all years, the millage rate imposed for ad valorem taxes on real property shall not exceed 4.731 unless a higher limit is recommended by resolution of the city council and approved by the qualified voters of the City of Sandy Springs.

It recommended the ad valorem tax rate for the City of Sandy Springs based on a fixed rate of 4.731 mills for property subject to ad valorem taxation. The properties shall be assessed 40% of each \$1,000 of property value by the City.

The GA Taxpayers Bill of Rights requires the City to advertise a millage rate as a property tax increase if this rate is not fully rolled back. The advertisements are on our City's website as well as in the Marietta Daily Journal. The impact of the rollback calculation, which evaluates total revenue from property taxes year to year, resulted in an overall tax increase. The FY2023 budget proposes the adoption of the millage rate of 4.731 mills, which is the same rate documented in the Charter. The millage rate does not increase, the increase is a result of the increase seen in the property values in the City.

The Sandy Springs millage rate combined with the homestead exemption results in a lower tax levied than many of our neighboring municipalities (as shown on the current slide). We will continue to provide service of excellence to the residents of Sandy Springs by leaving the millage rate at 4.731.

There being no public comment, **Mayor Rusty Paul** closed the public hearing.

Mayor Paul stated that while revenues have increased, the tax rate has not gone up. In addition to the cap on the millage rate, there is a rollback, so most anyone's taxes can appreciate based on increased valuations is the consumer price index or 3%, whichever is lower.

Motion and vote. A motion was made by Council Member John Paulson, seconded by Council Member Tibby DeJulio, to adopt the existing millage rate at 4.731. The motion carried by unanimous vote.

Ordinance No. 2022-08-09

- B. **2022-212** RZ22-0003
Request for Mayor and City Council Consideration of a Zoning Map Amendment (Rezoning) from RD-18 (Residential Detached, 18,000 square feet minimum) to RT-3 (Residential Townhouse, 3 Stories Maximum Height).

Michele McIntosh-Ross, Planning & Zoning Manager, presented RZ22-0003, a Zoning Map

Amendment (Rezoning) from RD-18 (Residential Detached, 18,000 square feet minimum) to RT-3 (Residential Townhouse, 3 Stories Maximum Height) at 1015 and 1025 Pitts Road. Currently, the site is developed on two (2) individual RD-18 lots, with two (2) single unit detached homes. The ranch style homes were originally built in the 1950s and are currently vacant. The subject properties were each designated with Urban Neighborhood Character Areas as a part of the citywide rezoning process, which is inconsistent with the current zoning of RD-18. The zoning district request of RT-3 would be consistent with the existing character area of the properties. The applicant is proposing to build 16 units in a cottage-court styled development.

Proposed development considerations:

- A site plan is not required. The goal is to consider the appropriateness of proposed change in regard to potential allowed uses within proposed zoning district – in this case primarily one single unit detached to multiple single unit attached.
- The site is mostly surrounded by Urban Neighborhood character developments: multi-unit, single unit attached, and smaller more compact single unit detached lots.
- From a residential perspective, the proposed use allowance would expand from single unit detached homes to what would allow for multiple single unit attached homes.

Zoning Map amendments (rezoning) considerations:

- 1015 & 1025 Pitts Road is currently in the RD-18 District (Protected Neighborhood zoning) but also in the Urban Neighborhood Character Area (which contains the RT-3 zoning district).
- Meets the goals of The Next Ten to help realize redevelopments which promote more compact and walkable places.
- Appropriate for the current and planned character of the area.

Staff recommends approval of the Zoning Map Amendment (rezoning). The Planning Commission recommended approval at the July 20, 2022, meeting.

There being no public comment, **Mayor Rusty Paul** closed the public hearing.

Motion and second. A motion was made by Council Member Jody Reichel, seconded by Councilmember John Paulson, to approve RZ22-0003, a Zoning Map Amendment from RD-18 to RT-3.

Vote on the motion. The motion carried by unanimous vote.

Ordinance No. 2022-08-10

C. **2022-213** TA22-0002

Request for Mayor and City Council Consideration of Amendments to the Following City Code of Ordinances Article and Development Code Sections:

Sec. 7.8.16. – Short-Term Rental

Sec. 8.2.10. – Fences and Walls

Ginger Sottile, Community Development Director, presented TA22-0002, amendments to the following City Code of Ordinances Article and Development Code Sections: Sec. 7.8.16. – Short-Term Rental Sec. 8.2.10. – Fences and Walls. The commercialization of subdivisions through saturation of short-term rentals can cause conflicts in Sandy Springs neighborhoods that are not in keeping with City Codes or the vision of the Next Ten Comprehensive Plan. Unauthorized short-term rentals, whether rooms, homes, or the curtilage surrounding homes are a growing reality in the City of Sandy Springs. This Text Amendment proposal is an attempt to curb abuses and prohibited short-term rental uses by providing a clearer and more enforceable Code. Ultimately, the goal is to modify the Code to make creating nuisances more difficult. Short-term rentals, if not regulated responsibly, can put a strain on public resources and infrastructure and impact the residential fabric of the City's neighborhoods. An overview of the proposed text amendment to City Code of Ordinances Section 7.8.16 - Short Term Rentals include:

- Clarify the rentable space on a parcel, which will specify as interior space (overnight accommodations) and exterior space or the property grounds
- Clarify and reference similar uses (Party House, Group Living)
- 1 unit rental max per 24-hour period, where the property owner is not on the premises for the full duration of the rental period
- Owner present exemption allowing for up to 2 units, with the caveat that only one of the rentals can be outside the main dwelling. So one can have a one house/room rental and a one pool or outdoor rental in a 24 hour period. Or one can have two separate room rentals and no outside rental, but the property owner must be present for the entirety of the rental(s).
- The rentals be limited to 100 calendar days per year.
- There be no supplemental services offered for free or fee, as an enticement to stay or rent the premises.
- Rentals for more than two units shall not be permitted under this section of the code. If more than two units are desired, that would fall under the Group Living section of the Code

Also included in TA22-0002 is an addition in Sec. 8.2.10. Fences and Walls, to help clarify a fire safety requirement by including it in the Development Code, concerning access for first responders into gated properties. Historically, the Fire Marshal's office has verbally requested a knock box or similar feature on the locked gate to be able to gain access in the event of an emergency. This amendment puts it in writing and makes it a mandatory requirement.

Staff recommends approval of the presented text amendments. The Planning Commission also recommended approval of the presented text amendments.

Mayor Rusty Paul opened the public hearing.

Support

1. **Ronda Smith, 76 Long Island Place**

Opposed

1. **Aaron Rosenhaft, 215 River N. Court, Sandy Springs**

Motion and vote. A motion was made by Council Member Melody Kelley, seconded by Council Member Melissa Mular, to approve the TA22-0002, amendments to the following City Code of Ordinances Article and Development Code Sections: Sec. 7.8.16. – Short-Term Rental and Sec. 8.2.10. – Fences and Walls.

Councilmember Melody Kelley stated the presented 100 day maximum feels unfairly punitive to many property owners. Also, in Staff's research where there cases where there were exemptions to the numbers that can be rented if properly owners were present to the max.

Community Development Director Sottile replied there have been complaints from residents throughout the years about the constant noise and disruption in neighborhoods. When researching potential amendments opportunity, there were many jurisdictions that restricted the numbers of days - some for 180 days and others for 100. It is up to the Council to determine what is the appropriate restriction. Also, yes, there are examples of other jurisdictions where they regulate the number of rentals, though primarily in California, which has experienced this phenomenon more than the Sandy Springs. Additionally, Staff is seeing various examples of using these rentals to bring in commercial actives in these residential neighborhoods.

Councilmember Jody Reichel asked is there is a distinction between houses where owner lives and those where the owner does not live.

Community Development Director Sottile replied every license issued by the City of Sandy Springs, the home must have a homestead exemption. This implies the owner resides in the home at six months and one day. But in practice, it is hard for Staff to prove that. Less offensive things happen when owners are present and can see what is happening inside their homes, which is why the second rental opportunity is proposed.

Mayor Paul stated the challenge is when the homes go from being a residence to a hotel, which is not what intended for the short-term rentals. It is not permitted to operate a hotel in a residential district. Neighbors complain because they constantly see strangers coming in going, and Council is trying to find the balance.

Councilmember Reichel asked will owners with existing gates have to add knock boxes.

Community Development Director Sottile replied the requirement is for new gates, but it would be beneficial for all participating property owners.

Mayor Paul stated it is difficult for first responders to access homes with the boxes and without property owners present. The cost of installing would be relatively inexpensive compared to the potential damage if the Fire Department cannot access a burning building.

Councilmember Tibby DeJulio asked is the 100 days rental limit for each room, or combined.

Community Development Director Sottile stated the two rooms would have to be simultaneously rented, so there could be potentially be 200 rentals over 100 days. Additionally, outdoor rentals are one per 24-hour period, based on a calendar/solar day.

Amendment to the motion. **Councilmember John Paulson** offered a friendly amendment to change the 100 days rental limit presented to 180 days rental limit. Councilmember Melody Kelley and Councilmember Melissa Mular accepted the amendment. The amended motion carried by majority vote.

Passed Yes 5, No 1, Abstained 0

Yeas: Councilmember John Paulson, Councilmember Melody Kelley, Councilmember Melissa Mular, Councilmember Jody Reichel, Councilmember Tibby DeJulio

Nays: Councilmember Andrew Bauman

Vote on the main motion, as amended. The motion carried by unanimous vote.

Ordinance No. 2022-08-11

- D. **2022-214** TA22-0003
Request for Mayor and City Council Consideration of Amendments to the Following
Development Code Division:
Div. 9.6. Stormwater Management (Nancy Creek)

Ginger Sottile, Community Development Director, presented TA22-0003, amendments to the following Development Code Section: Division 9.6 Stormwater Management (Nancy Creek). Sandy Springs universally and the Nancy Creek watershed especially, experience recurring flooding during significant rain events, which causes damage to private property. While only a very short segment of the creek itself runs through Sandy Springs, nearly 3,800 acres of its basin and several of its tributaries are within city limits. In 2016, the Sandy Springs City Council adopted the Atlanta Regional Commission's updates to its Georgia Stormwater Management Manual ("Blue Book"), which equips communities with tools for managing stormwater associated with construction activities. The Blue Book is a required State standard. In 2017, the City of Sandy Springs Engineer declared a portion of the Nancy Creek watershed as a Sensitive Area, subject to additional performance and regulatory criteria. The City Council approved staff recommended changes that exceed the Blue Book standards to enhance water quality, especially related to residential requirements, for new development and additions to include swimming pools.

Staff was asked to look into raising the limits for impervious coverage, so that the water quality regulations kicked in after more coverage or disturbance occurred during a typical smaller construction project within the City. As a result, Staff brought a presented a proposal at the June 7, 2022 City Council Work Session, at which time Staff was encouraged to proceed. This text amendment will allow the City to codify a formal process, framework and development requirements for any area within the City that is designated as a Declared Sensitive Area. The text amendment will match the 2016 Council Approved recognition of the Nancy Creek Declared Sensitive Area with adjustments to allow for more minor work to be exempt in residential proposals and will set those requirements within the Development Code and Technical Manual. The text amendment also relaxes the stormwater management requirement across the board, to avoid catching smaller and less impactful projects, while still setting the standard far above most jurisdictions. With regards to the "Declared Sensitive Area" specific edits, the amendment is written to provide the framework for any other area within the City that may require treatment beyond what is currently required in the Development Code, Technical Manual, and Georgia Stormwater Management Manual for proper management and design of the Stormwater Infrastructure within the City for both development and re-development.

The first amendment seeks to codify into a formal process, the development requirements for any area within the City limits that is designated as a declared sensitive area. This will include the Nancy Creek Declared Sensitive Area. The current limit on impervious coverage citywide is 1,000 sq ft, or 5,000 sq ft of disturbance. This amendment is seeking to raise that threshold to 2,000 sq ft. That is the only change. The first part of this amendment seeks to simply add the text that relates to the Nancy Creek Declared Sensitive Area policy that the City Engineer proposed and ultimately the City Council endorsed through its adoption back in 2017. The second part of this text amendment seeks to raise the current threshold limit on impervious coverage or disturbance within the Nancy Creek Declared Sensitive Area. Today that threshold

is zero. This amendment is seeking to raise that threshold to 500 sq ft. At the Planning Commission meeting, the Planning Commission denied the proposed text amendments. Staff however, recommends approval of these amendments. If you have any questions, either myself or The City Engineer is present to answer any technical questions you all may have.

Mayor Rusty Paul opened the public hearing.

Support

1. None

Opposition

1. Ronda Smith, 76 Long Island Place
2. Bill Gannon, 505 Taunton Way
3. Karen Meizen-McEnery, 4604 Meadow Valley, Sandy Springs
4. Jewell Sanders, 565 Pine Forest Road
5. Jane Kelley, Windsor Park Place

There being no more public comment, **Mayor Paul** closed the public hearing.

Motion and second. A motion was made by Councilmember Melody Kelley, seconded by Councilmember Tibby DeJulio, to approve the TA22-0003, amendments to Development Code Section: Division 9.6 Stormwater Management (Nancy Creek), with the following changes from Staff's recommendation:

1. Change the phrase "new development that creates or adds 2,000" to "new development that creates or adds 1,000"; and
2. Change "redevelopment excluding routine, maintenance, exterior remodeling that creates, adds or replaces 2,000" to "redevelopment excluding routing maintenance or exterior remodeling that creates, adds or replaces 1,000"; and
3. Change the phrase "water quality in the form of water reduction is required on all projects exceeding 500" to "water quality in the form of water reduction is required on all projects".

Councilmember Tibby DeJulio stated Councilmember Kelley's motion codifies the existing practices, not change it. One of the concerns the City had when first incorporating and working with stormwater, stormwater has not been fixed, but has been improved. We have to continue to improve this situation. I am in support that we do not change anything.

Councilmember John Paulson asked if there is an existing 10 x 20 deck that needs to be replaced, is that work exempt from these regulations?

Community Development Director Sottile advised the NC DSA, there is no exemption for replacing projects.

Mayor Paul asked, similarly, if a deck's boards have began to rot, but the sub-structure is fine, would this work be exempt from these regulation in the NC DSA.

Community Development Director Sottile replied that the particular scenario is maintenance work.

Jon Amsberry, City Engineer, noted if it could be shown the deck boards are a safety issue, then the work be considered maintenance. The sub-structure would have to remain in place. City Code currently reads that if one replaces or adds new impervious, regardless of where you are in the city, that is considered new impervious.

Councilmember Paulson stated it seems then that anything that touches the surfaces requires new impervious, which seems unfair in terms of replacement work.

City Engineer Amsberry replied yes because the work will require equipment will be brought in and require construction. The Staff's interpretation of development is once dirt is moved, then that is land disturbance. This is consistent with the Georgia Stormwater Manual.

Dan Lee, City Attorney, stated delivering materials is not just land disturbance. If you take down the deck and put the deck back, I do not see how it would trigger any of these rules.

Mayor Paul suggested the Council defer the item to the following meeting.

Councilmember Andy Bauman stated the intent is to not bootstrap the whole property. The impact of replacement is a different question that will not hold up the Council tonight. Can the Council act on this proposal as amended, and Staff come back to discuss with the Council to review real-life examples.

Mayor Paul replied that the Council will need to define what is "routine maintenance," as inserted in the proposed amendments.

Community Development Director Sottile stated Staff tries to be consistent with how the rules are implemented.

Councilmember Bauman stated what is being asked is does the City permanently grandfather existing conditions. Replacement can be at a lot of different levels, and the City needs to delineate a time where we upgrade.

Community Development Director Sottile stated the Code reads that any kind of improvement in water quality is required for the improvement.

Vote on the motion. The motion carried unanimously.

Ordinance No. 2022-08-12

- E. **2022-215** TA22-0004,
Request for Mayor and City Council Consideration of Amendments to the
Following Technical Manual Sections:
Section 10 – Grading and Drainage
Section 14 – Construction Standards

Ginger Sottile, Community Development Director, presented TA22-0004, amendments to the Technical Manual Section 10 – Grading and Drainage and Section 14 – Construction Standards. As Declared Sensitive Areas are proposed to be codified in TA22-0003, this edit within the City Technical Manual looks to provide the technical standards and Best Management Practices (BMPs) for the water infiltration and stormwater management systems used, and especially for Declared Sensitive Areas. The

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reference Declared Sensitive Areas proposed to be codified in TA22-0003 in the Grading and Drainage Section 10 of the Technical Manual. To add the text of the Manual, a new Section M would reference and reiterate the requirements for areas declared to be sensitive. To specific the construction details for stormwater infiltration and management, the Technical Manual. And to add text to Section 14 Construction Standards. Construction standard details added for water quality systems such as bio retention areas, enhanced swales, details of standard infiltration practices and pervious pavers. No Planning Commission review is required for the Technical Manual amendments. These are consistent with the State manual.

There being no public comment, **Mayor Rusty Paul** closed the public hearing.

Motion and vote. A motion was made by Councilmember John Paulson, seconded by Councilmember Melissa Mular, to approve TA22-0004, amendments to the following Technical Manual sections: Section 10 – Grading and Drainage and Section 14 – Construction Standards. The motion carried by unanimous vote.

Ordinance No. 2022-08-13

- F. **2022-216** TA22-0005, Property Maintenance Code - An Ordinance to Amend the Following City Code of Ordinances Section:
 Sec. 105-20. International Property Maintenance Code.

Ginger Sottile, Community Development Director, presented TA22-0005, Property Maintenance Code - an amendment to the following City Code of Ordinances Section: Sec. 105-20. International Property Maintenance Code. The purpose of the text amendment is to release the Property Maintenance Code from a specific year's adoption and to modify the Property Maintenance Code to read in such a way that the City Code accepts the regular updates to the State minimum requirements without having to come back to the City Council every time there is an update. This request is consistent with other adopted codes in Section 05 of the City Code. The proposed text amendment is as follows:

Text Amendment Overview

• **Sec. 105-20. International Property Maintenance Code.**
"That a certain document, three copies of which are on file in the City of Sandy Springs, one at the office of the city clerk and two at the office of community development department, being marked and designated as the latest edition of the International Property Maintenance Code as adopted and amended by the state department of community affairs ~~International Property Maintenance Code, 2006 edition~~, as published by the International Code Council, be hereby adopted as the Property Maintenance Code of the City of Sandy Springs..."

Motion and vote. A motion was made by Councilmember John Paulson, seconded by Councilmember Melody Kelley, to approve TA22-0005, Property Maintenance Code, and amend City Code of Ordinances Section 05-20. International Property Maintenance Code. The motion carried unanimously.

Ordinance No. 2022-08-14

IX. New Business

A. **2022-217 Request for Mayor and City Council Consideration of an Amendment to the City of Sandy Springs Purchasing Policy**

William H. Martin, Jr., AIA, Public Works Director, presented a recommendation that City Council approve amendments to the City's Purchasing Policy adopting the use of the Georgia Department of Transportation's (GDOT) Procurement Policy for the procurement, management and administration of engineering and design related consultant services for all state and Federal-Aid Highway Programs (FAHP), as it pertains to local governments. Maintaining that LAP certification is a requirement in order to receive those funds. Every three years the City must recertify in order to retain it's LAP status. As a part of that several members of staff have participated in GDOT Training over the course of the last six months to a year to update certifications. One strong indicator in a change in policy, with GDOT since our last recertification, is a requirement that we get much closer to GDOT's Procurement Manual in the delivery of engineering and design procurements. With that GDOT offer three options by Policy:

1. Adopt GDOT's Procurement Policy (by letter),
2. Provide the Local Government's own stand-alone Procurement Policy Manual for this work which must satisfy GDOT's requirements for all phases of the work, or
3. Conduct procurements with GDOT oversight and review.

William H. Martin, Jr., AIA, Public Works Director, stated staff does not see a big change in how we do things now compared to how we would do things under GDOT Procurement Manual. Their procurement manual is geared specifically how they hire engineering and design services. One change between how we handle qualifications-based solicitations and the way GDOT handles it is GDOT has a two-step process where they receive more proposers so there is an initial screening to confirm qualifications, step one. Step two goes into the greater details of what a particular consulting firm brings to the game for procurement. That is used as the meat to the qualification phase. Staff states they can execute GDOT's Procurement Policy Manual. We recommend the change to the Procurement Policy.

Motion and vote. A motion was made by Councilmember Melody Kelley, seconded by Councilmember John Paulson, to approve an Amendment to the City of Sandy Springs Purchasing Policy.

Councilmember John Paulson asked if this policy relaxed what we currently do with projects because there have been projects, even with our system of evaluation, where contractors that were problematic and had challenges. If we follow the GDOT standards, do we have less control? Or are we as a City imputing more control that we might go backwards if we adopt this?

William H. Martin, Jr., AIA, Public Works Director, stated he doesn't think this truly changes anything. This is exclusively for consultants; this is engineering and design. It is not for construction. It helps standardize the GDOT lingo that are for the different consultants in the different areas the provide engineering services for. He does not see it diminish the quality but makes it simpler and more straight forward.

Councilmember John Paulson stated we have used this two-step process ourselves.

Vote on the motion. The motion carried unanimously

Resolution No. 2022-08-105

- B. **2022-218** Request for Mayor and City Council Consideration of a Contract Award to Art Sandy Springs to Conduct Interim Arts Programming at the Abernathy Arts Center

Michael Perry, Director of Recreation and Parks, stated staff is recommending an agreement with Art Sandy Springs Inc. to provide temporary programming of the Abernathy Art Center. ArtSS is requesting a \$20,000 one-time allocation to fund startup costs and support programming initiatives, in preparation for a September 1, 2022, opening. The agreement would continue through July 31, 2023. ArtSS has been able to raise private dollars to enable the programming to proceed at a reduced cost to the City. The City will be responsible for building operations and utilities, cleaning, and the purchase of tables and chairs to equip the space.

Motion and vote. A motion was made by Councilmember Tibby DeJulio, seconded by Councilmember Melody Kelley, to approve an Award to Art Sandy Springs to Conduct Interim Arts Programming at the Abernathy Arts Center.

Vote on the motion. The motion carried unanimously

Resolution No. 2022-08-106

- C. **2022-219** Request for Mayor and City Council Consideration of the Use of Eminent Domain for the Appropriation of Certain Property Rights and Interests Located at 255 Mount Vernon Highway, NE Fulton County, Georgia, Parcel ID: 17 0089-0007-016-7; TS-191 Mount Vernon Corridor Improvements Project

Dan Lee, City Attorney, stated that he brings before the council five request for the Use of Eminent Domain. As a general statement I want to remind the public that staff has worked very hard not just on this project but working exhaustively trying to negotiate a settlement for the purchase of this property. Four of the five properties are represented by the same law firm and the City has not received a counter proposal from them. The reason we are here with you tonight asking for permission to Use Eminent Domain is because we are running up on the strike date. The date was moved up because of the great work done by the City Manager's officer in getting Georgia Power committed to making the utility moves that we need in order to carry out the project. We are seeking the Use of Eminent Domain on properties that we have yet to get a counter proposal to.

The first property is 255 Mount Vernon. It is currently a vape shop and been appraised at \$214,700. That offer was made, and we have not received a response. I want to point out an issue we have with all appraisals now. What I call ancillary cost, the law calls them cost to cure consequential damages far exceed the value of the property that we will be taking and using for the road. The compensation summary sheet that goes in every appraisal. At the bottom, the actual value of the property that we will use is \$66,799. The consequential damages are \$147,832. That is primarily the loss of parking spaces. In the appraisal world, it has placed a value on the loss of these parking spaces and that number is somewhere around the 50,000 range so the City is actually paying twice for it. Paying for the actual property that will be turned into a sidewalk and park of a roadway and the loss to the property owner of the use of parking spaces and that's how the appraiser got to \$214,700.

Mayor Rusty Paul asked and that's based on a piece of property value to what? The whole parcel?

Dan Lee, City Attorney, replied that the tax digest has it at \$230,000.

Mayor Rusty Paul clarified we are basically paying for a strip for what we could buy the whole things for.

Dan Lee, City Attorney, responded I would argue it is not worth that. What we usually do when we authorize the Use of Eminent Domain is continue the negotiations and if that is a goal, we can attempt that.

Mayor Rusty Paul stated most of the time this stuff gets worked out before we get to court anyways. Let's see what happened and then we can explore this further if we need to.

Motion and vote. A motion was made by Councilmember Melissa Mular, seconded by Councilmember Melody Kelley, to approve the request for consideration of the Use of Eminent Domain for the Appropriation of Certain Property Rights and Interests Located at 255 Mount Vernon Highway, NE Fulton County, Georgia, Parcel ID: 17 0089-0007-016-7; TS-191 Mount Vernon Corridor Improvements Project. The motion carried unanimously.

Resolution No. 2022-08-107

- D. **2022-220** Request for Mayor and City Council Consideration of the Use of Eminent Domain for the Appropriation of Certain Property Rights and Interests Located at 265 Mount Vernon Highway, NE Fulton County, Georgia, Parcel ID: 17-0089-0007-017-5; TS-191 Mount Vernon Corridor Improvements Project

Dan Lee, City Attorney, stated this is 265 Mount Vernon which is adjacent to the property we just discussed. The same issues have occurred. According to the appraiser we are after \$53,000 worth of property with a consequential damage to the remainder of \$117,000. The appraisal itself has this at about \$333,000, total value of the property. This is a little different in that this is owned by a partnership and two partners have died and there is an estate dispute by the family of the two parties that have died. If there is such a thing, they want this condemnation so they can fight over the money and not the use of the property.

Motion and vote. A motion was made by Councilmember Melissa Mular, seconded by Councilmember Melody Kelley, to approve the request of the Use of Eminent Domain for the Appropriation of Certain Property Rights and Interests Located at 265 Mount Vernon Highway, NE Fulton County, Georgia, Parcel ID: 17-0089-0007-017-5; TS-191 Mount Vernon Corridor Improvements Project. The motion carried unanimously.

Resolution No. 2022-08-108

- E. **2022-221** Request for Mayor and City Council Consideration of the Use of Eminent Domain for the Appropriation of Certain Property Rights and Interests Located at 275 Mount Vernon Highway, NE Fulton County, Georgia, Parcel ID: 17 0089-0007-024-1; TS-191 Mount Vernon Corridor Improvements Project

Dan Lee, City Attorney, stated this is 275 Mount Vernon. It is an owner-occupied building. The land value of the part needed for the road is \$59,856 with \$152,329 toward the consequential damages which once again include the loss of future parking spaces for their remainder. The total asking of the independent appraisal is \$220,300.

Motion and vote. A motion was made by Councilmember Melissa Mular, seconded by Councilmember

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Melody Kelley, to approve the request for the Use of Eminent Domain for the Appropriation of Certain Property Rights and Interests Located at 275 Mount Vernon Highway, NE Fulton County, Georgia, Parcel ID: 17 0089-0007-024-1; TS-191 Mount Vernon Corridor Improvements Project. The motion carried unanimously.

Resolution No. 2022-08-109

- F. **2022-222** Request for Mayor and City Council Consideration of the Use of Eminent Domain for the Appropriation of Certain Property Rights and Interests Located at 285 Mount Vernon Highway, NE Fulton County, Georgia, Parcel ID: 17 0089-0007-020-9; TS-191 Mount Vernon Corridor Improvements Project

Dan Lee, City Attorney, stated adjacent 285 Mount Vernon Hwy is a chiropractors office who rents from the building owner and the building owner maintains an office in the terrace side of the building. The appraised value of the amount needed for the roadway and sidewalk plus the consequential damages is \$233,500. The breakdown on the compensation summary is similar to what we just discussed, with \$178,000 in consequential damages is the parking that will be lost to the remainder.

Motion and vote. A motion was made by Councilmember Melissa Mular, seconded by Councilmember Melody Kelley, to approve the request for the Use of Eminent Domain for the Appropriation of Certain Property Rights and Interests Located at 285 Mount Vernon Highway, NE Fulton County, Georgia, Parcel ID: 17 0089-0007-020-9; TS-191 Mount Vernon Corridor Improvements Project The motion carried unanimously.

Resolution No. 2022-08-110

- G. **2022-223** Request for Mayor and City Council Consideration of the Use of Eminent Domain for the Appropriation of Certain Property Rights and Interests Located at 295 Mount Vernon Highway, NE Fulton County, Georgia, Parcel ID: 17 0089-0007-040-7; TS-191 Mount Vernon Corridor Improvements Project

Dan Lee, City Attorney, stated this is the Chevron at the corner. This one is a little bit different as it is a challenge because of the intersection anyway in the triangular shape of the property and it has gas tanks in the ground. The actual value of the property need for the roadway has a value of \$183,244. Our appraiser has assessed that there are \$449,713 in consequential damages to the property related to the loss of the ability to circle through the parking lot to make normal turns and parking that go with a gas station. The basis for the appraisal has to do with a per pump of \$535,000 and there are three pumps there so they come to a value of 1.6 million for the entire property. They take the square footage of the entire property and divide it into that number and that gives them a square footage value then they multiply it times the square footage that we need for the roadway. It's very hard to swallow in that we are not interfering with one of the pumps, but that is the mechanism that the appraiser has used to determine the value of this property. The total is \$683,700.

Motion and vote. A motion was made by Councilmember Melissa Mular, seconded by Councilmember Melody Kelley, to approve the request for the Use of Eminent Domain for the Appropriation of Certain Property Rights and Interests Located at 295 Mount Vernon Highway, NE Fulton County, Georgia, Parcel ID: 17 0089-0007-040-7; TS-191 Mount Vernon Corridor Improvements Project.

Council Member Melody Kelley asked what would be the next step now that these are approved?

Dan Lee, City Attorney, replied we would make contact with all those represented by an attorney except for 265 Mount Vernon. We will attempt again to make contact with the attorneys to tell them that we have the resolution for Eminent Domain. We don't want to use it, but we would like to negotiate the pricing.

Vote on the motion. The motion carried unanimously
Resolution No. 2022-08-111

- I. **2022-224** Request for Mayor and City Council Consideration of a Resolution
 Authorizing the City Manager to Enter Into A Joint Defense Agreement with
 All Fourteen of the Other Cities in Fulton County, Georgia, In Seeking a
 Declaratory Judgement to Accomplish the Purpose of Securing A Distribution
 of Local Option Sales Tax and For Other Purposes

Dan Lee, City Attorney, stated there are two issues we are asking you to approve in this resolution. One is that all the cities, but Atlanta and Sandy Springs are represented by the same lawyer. We did not join in that because of a conflict, in that the firm has a case against the City of Sandy Springs. In the practice of law and order and to maintain the attorney client privilege you have to have communications with just your client. So in this scenario, all sixteen cities are in agreement in the position that we take in our contest against Fulton County, but to maintain that attorney client privilege, we need a mutual defense agreement. Part of this resolution is requesting you give the City Manager the authority to sign a mutual defense agreement with the other fifteen cities so that we can maintain those confidentiality that the law would allow.

The second part of this is that in these negotiations that we have entered into so far two issues have arisen. There is a disagreement about the definition of two things. The sixteen cities agree that the LOST Law was intended for local government to roll back property taxes spent on fourteen enumerated services. Most of those services, the County does not do anymore so that alone in our position says that they are not entitled to the same rollback or thus the same percentage. The second point of controversy is the County has this notion, it's a make-believe formula, that the way you count the population is an aggregation, which we can find nowhere in the law. Their theory is that you count everybody twice. It is a strange way for them to try and argue that instead of Sandy Springs being ten percent, we would be five percent. That fifty percent of the population, they see about with all the things they do. That is where that annumerated powers comes into play. They do not see about everybody for everything. Everybody in Fulton County voted to have a city do that for them and that is our argument. The question of how you count the population is the second question. The cities are proposing to seek a declaratory judgement action with the court on those two issues. Dan Lee stated County Commissioner Arrington mentioned that they would agree to have a judge decide those two issues because once those two issues are decided then it is dispositive of all of the argument about how the distributions should be calculated. The second part of the resolution, we are asking you for authorization to join in with the other fifteen cities in that declaratory judgement action, if it is necessary.

Mayor Rusty Paul clarified and here is why it is complicated in Fulton County. Let's take Rockdale County because they have one city. City of Conyers has a population, and they serve that population, then the county serves everybody else. It is fairly easy to identify what services the county provides and which one the city provides. In Fulton, all but two square miles now are municipalized. As a result, if you went by that the County's amount of the LOST would be about two-point four percent,

and they are arguing between twenty five and thirty five percent should be theirs and the only way they can get to twenty five percent is by double counting everybody. This is where the fourteen enumerated services become important because the County is arguing that they should be compensated for the courts and the jail and the tax assessors office and all the other constitutional duties that they have which are the enumerated powers. We believe the LOST revenue is only supposed to go to fourteen supplemental powers and they are clearly enumerated in the state law and that is the dispute.

Dan Lee, City Attorney stated a couple of the powers which included Police, Fire, the County does have some libraries, animal control, elections, which the City already pays for.

Mayor Rusty Paul stated there were two suggestions, one we go to the Attorney General, and I talked to the Attorney General and he said he could only provide opinions if asked by a state agency and there is a state agency involved so that took him out. The only option we have now is to go to a superior court judge outside our jurisdiction, and outside of the County to rule. This is unique to Fulton County. It is particularly contentious because the County wants to expand the law to include what they are constitutionally required to provide. We need to get that resolved before we can really get down to the brass tacks of negotiating LOST. We have made allot of progress but are still no nowhere close to having a final resolution. There has been movement in a proposal that kind of keeps the cities whole. We are preparing on Friday a counter offer back, but still kind of stuck on this how do you count people. The census bureau says there is 1.1 million people in Fulton County and Fulton says there is 2.2 million people.

Motion and vote. A motion was made by Councilmember Tibby DeJulio seconded by Councilmember John Paulson, to Enter Into A Joint Defense Agreement with All Fourteen of the Other Cities in Fulton County, Georgia, In Seeking a Declaratory Judgement to Accomplish the Purpose of Securing A Distribution of Local Option Sales Tax and For Other Purposes. The motion carried by unanimous vote.

Resolution No. 2022-08-113

X. Reports

A. 2022-225 Mayor and Council Report

There were no reports from Mayor and Council.

B. 2022-226 Staff Reports

1 June 2022 Unaudited Financials

Toni Carlisle, Chief Financial Officer reported that we are at 100% percent of the fiscal year. The revenues ended at 87.99%. The categories of total taxes, licenses, and permits achieved 100% of budget. The expenditures ended at 94.99% of the budget and at this point we are preparing for our annual audit. The total revenue is \$118,162,172.

XI. Executive Session – Real Estate and Litigation

Motion and vote. A motion was made by Councilmember John Paulson, seconded by Councilmember Tibby DeJulio, to suspend the regular order and enter executive session for the purposes of real estate and litigation discussions. The motion carried by unanimous vote.

Passed Yes 6, No 0, Abstained 0

Yeas: John Paulson, Melody Kelley, Melissa Mular, Jody Reichel, Tibby DeJulio, Andrew Bauman
Nays: None

The executive session began at 10:11 p.m.

Motion and vote. A motion was made by Councilmember John Paulson, seconded by Councilmember Tibby DeJulio, to adjourn the executive session and return to regular order. The motion carried by unanimous vote.

Passed Yes 6, No 0, Abstained 0

Yeas: John Paulson, Melody, Kelley, Melissa Mular, Jody Reichel, Tibby DeJulio, Andrew Bauman
Nays: None

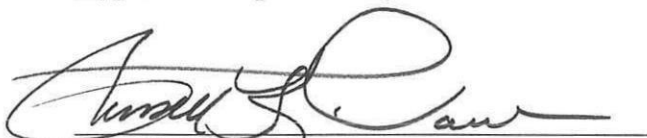
The executive session ended at 10:34 p.m.

XII. Adjournment

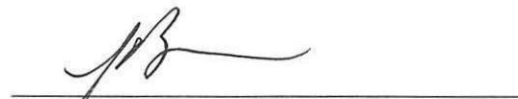
Motion and vote. A motion was made by Councilmember Tibby DeJulio, seconded by Councilmember John Paulson, to adjourn the meeting. The motion carried by unanimous vote.

The meeting adjourned at 10:34 p.m.

Approved: September 6, 2022



Russell K. Paul, Mayor



Karina Reyna, Assistant City Clerk