

MINUTES
OF THE
BOARD OF MAYOR AND ALDERMEN
JANUARY 12, 2017

The Board of Mayor and Aldermen of the City of Henderson, Tennessee met in regular session on Thursday, January 12, 2017 at 7:00 P.M. in the Council Chamber of the City of Henderson City Hall. Present and presiding was Mayor Robert W. (Bobby) King. City Recorder Jim E. Garland called the roll with the following being present:

Aldermen: Mark A. Barber, Donna R. Butler, Johny R. Farris, Buel Maness,
Michael Phelps and Keith Smith

Absent: None.

There also present at the meeting were: City Recorder Jim E. Garland, Police Chief Wilton Cleveland, Public Works Director Carter Scales, Fire Chief Glenn Bryan, Building Official Brent Beshires and Utility Director Darryl Green.

Mayor King called the meeting to order at the appointed time. Alderman Mark Barber gave the invocation and Alderman Michael Phelps led the Pledge to the Flag. The following proceedings were entered here-to-wit:

The minutes of the previous regular meeting were presented for approval. Recorder Garland advised that it had been brought to his attention that Assistant Fire Chief Lipford attended the meeting in place of Chief Bryan. This error needed to be corrected. There being no other corrections to the minutes, motion was made by Ald. Farris, duly 2nd by Ald. Butler to approve the minutes as corrected. Motion carried.

The accumulated accounts were presented for informational purposes. Several questions were asked by board members and Recorder Garland and the department heads answered each question. There being no other questions, the meeting continued.

Mayor King asked if anyone in the audience wished to address the board.

Mrs. Nancy Canada, Librarian for the Chester County Library addressed the board asking for the city's help in funding a Library Addition. Chester County had encumbered \$100,000 for the project and Mrs. Canada feels that a \$100,000 grant can be acquired from the State if local funds could be raised for the balance. She presented a proposed floor plan showing a 28' x 50' addition on the west end of the building. The cost estimate was approximately \$307,000 for addition. The estimate also showed a Phase II that would make improvements and upgrades to the old structure in the amount of \$194,000. She stated the Library Building Fund has a little over \$30,000 due to donations and fund raisers. Mrs. Canada was not requesting an answer tonight but wanted to be included in the upcoming budget. This project has been discussed for six years.

Ald. Smith stated that the city had been concentrating our funds on improvements to the Downtown and Gene Record Park. He reviewed the amount of city funds that had been used on the

parks for the entire community. Ald. Smith stated we had been taking the lead on the parks and he felt the library needs to be more of a county funded service. Ald. Farris mentioned the total cost of the project for both phases almost totals \$500,000. Mrs. Canada stated they were only asking for Phase I. The city budget was discussed briefly. Mrs. Canada spoke of the benefits the Library makes to the community.

No action was taken but the city board members stated they would consider the request during budget discussions.

There being no other delegations to speak to the board, the meeting continued.

An ordinance amending Title 8, Chapter 1 of the Municipal Code to allow Package Liquor Stores under certain regulations was presented for consideration on the second reading as follows:

ORDINANCE NO. 497

**AN ORDINANCE TO AMEND TITLE 8 OF THE
HENDERSON MUNICIPAL CODE
BY ESTABLISHING PACKAGE LIQUOR REGULATIONS**

WHEREAS, the sale of retail package liquor was approved by the voters of the City of Henderson at the November 2016 referendum election; and

WHEREAS, currently the ordinances of the City of Henderson do not permit or regulate retail package liquor sales; and

WHEREAS, the Board of Mayor and Aldermen of the City of Henderson desires to be in compliance with state statutes regarding such liquor sales

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Aldermen the City of Henderson, Tennessee, that:

SECTION 1. Title 8 of the Henderson Municipal Code is amended by deleting Chapter 1 in it's entirety, and by replacing it with the following new Chapter 1:

CHAPTER 1

PACKAGE LIQUOR STORES

SECTION

- 8-101. Alcoholic beverages subject to regulation.
- 8-102. Application for certificate.
- 8-103. Applicant to agree to comply with laws.
- 8-104. Applicant to appear before Board of Mayor and Aldermen; duty to give information.
- 8-105. Action on application.
- 8-106. Applicants for certificate who have criminal record.
- 8-107. Where establishments may be located.
- 8-108. Retail stores to be on ground floor; entrances.
- 8-109. No consumption on premises.
- 8-110. Amusement devices and seating facilities prohibited in retail establishments.
- 8-111. Inspection fee.
- 8-112. Distance requirements.
- 8-113. Violations.

8-101. Alcoholic beverages subject to regulation. It shall be unlawful to engage in the business of selling, storing, transporting, distributing, or to purchase or possess alcoholic beverages, as that term is defined in *Tennessee Code Annotated*, Title 57, Chapter 3, within the corporate limits of this city except as provided by *Tennessee Code Annotated*, Title 57, Chapter 3 and this Chapter.

8-102. Application for certificate¹. Before any Certificate of Compliance, as required by *Tennessee Code Annotated*, § 57-3-208 or a renewal as required by § 57-3-213 shall be signed by the Mayor, or by any Aldermen², an application in writing shall be filed with the City Recorder. If an application for a Certificate of Compliance is to be submitted for a business entity other than a sole proprietorship, the application shall be accompanied by an application completed by each owner of the retail package store business, including each and every partner, shareholder, member or any other person or entity, however described, who has any ownership interest in the retail package store business on a form to be provided by the city, giving the following information:

- (1) Name, date of birth, address, social security number and telephone number of the applicant.
- (2) The name of the business entity that owns or will own the retail package store business and the names, dates of birth, addresses and telephone numbers of each person who has or will have an ownership interest in the business.
- (3) Whether or not the applicant or applicants has been convicted of a felony or “any” violation of state or local liquor laws within a ten-year period immediately preceding the date of application.
- (4) The location of the proposed store for the sale of alcoholic beverages.
- (5) The name, address and telephone number of the owner(s) of the real estate to be used for the proposed location of the retail package store.
- (6) The ownership interest of each applicant in the retail package store business.
- (7) A true, complete and accurate Tennessee Bureau of Investigation criminal history report on each applicant.

The information in the application shall be verified by the oath of the applicant.

8-103. Applicant to agree to comply with laws. The applicant for a Certificate of Compliance shall agree in writing to comply with the state and federal laws and ordinances of the City of Henderson and rules and regulations of the Alcoholic Beverage Commission of the State for sale of alcoholic beverages.

8-104. Applicant to appear before Board of Mayor and Aldermen. After submitting an application for a Certificate of Compliance an applicant may appear in person before the Board of Mayor and Aldermen and provide additional information that the applicant elects to provide.

8-105. Action on the application. Every application for a Certificate of Compliance shall be referred to the Chief of Police for investigation and to the City Attorney for review, each

¹ State law reference

Tennessee Code Annotated, § 57-3-208.

² State law reference

Tennessee Code Annotated, § 57-3-208 requires the certificate to be signed by the mayor or a majority of the governing body.

of whom shall submit his findings to the Board of Mayor and Aldermen within twenty (20) days of the date each application was filed.

Provided that the applicant(s) has submitted an application that fully complies with Section 8-102 above, the Board of Mayor and Aldermen may issue a Certificate of Compliance to any applicant, which shall be signed by the Mayor or by a majority of the Board of Aldermen.

8-106. Applicants for certificate who have criminal record. No Certificate of Compliance shall be issued to any person, (or if the applicant is a partnership, any partner, or if the applicant is a corporation, any stockholder), who, within ten (10) years preceding the application for such Certificate of Compliance, has been convicted of any felony or of any offense under the laws of the state or of the United States prohibiting the sale, possession, transportation, storage or otherwise handling of intoxicating liquors, has suffered the suspension or revocation of any license or certificate providing for the sale of intoxicating liquors and or beverages in any civil proceeding for violations of the laws of the State of Tennessee and/or the City of Henderson, Tennessee or who has during such period been engaged in business, alone or with others, in violation of such laws.

8-107. Where establishments may be located. It shall be unlawful for any person to operate or maintain any retail establishment for the sale, storage or distribution of alcoholic beverages in the City except at locations zoned for that purpose.

8-108. Retail stores to be on ground floor; entrances. No retail store shall be located anywhere in the City except on the ground floor thereof. Each such store shall have only one main entrance; provided, that when a store is located on the corner of two (2) streets, such store may maintain a door opening on each such street.

In addition, all retail package liquor stores shall be a permanent type of construction. No retail package liquor stores shall be located in a manufactured or other moveable or prefabricated type building. All liquor stores shall have night lights surrounding the premises and shall be equipped with a functioning burglar alarm system on the inside of the premises. The minimum square footage of the interior of the liquor store shall be one thousand (1,000) square feet. Full, free and unobstructed vision of the interior of the store shall be afforded to and from the street or public highway by the way of large windows in the front. Said windows shall cover a minimum of 70% of the total square footage of the ground floor building front between three and eight foot in height. Said required windows shall not be covered by any signage, merchandise, shelving, security bars or shutters during the hours of operation. Security shutters may be used when the package store is closed. Where due to distance or the nature of the real property upon which any such store is situated, such view from a street or highway is not feasible, unobstructed vision shall nevertheless be provided to and from the parking lot of such store. Regardless, no fence, landscaping or other impediments are allowed other than vehicles temporarily parked on the premises on which the package liquor store is located, that obstruct the full and free vision of the interior of any such store.

All liquor stores shall be subject to applicable zoning, land use, building and life safety regulations, adopted by the city, unless specifically provided otherwise.

8-109. No consumption on premises. No alcoholic beverages shall be sold for consumption, or shall be consumed, on the premises of the retail seller.

8-110. Amusement devices and seating facilities prohibited in retail establishments. No television sets (for public viewing), pinball machines, slot machines or other devices which tend to cause persons to congregate in such place shall be permitted in any retail package liquor store. No seating facilities shall be provided for persons other than employees.

8-111. Inspection fee. The City of Henderson hereby imposes an inspection fee in the maximum amount allowed by *Tennessee Code Annotated*, § 57-3-501 on all licensed retailers of alcoholic beverages located within the corporate limits of the city.

8-112. Distance requirements. No retail package liquor store shall be allowed within one thousand (1,000) feet of any school, church, day care center or public park in existence on the date of the applicant's application for certificate. The distance described herein shall be measured in a straight line from building to building, or in the case of a public park, from the closet point in the nearest property line of the public park.

8-113. Violations. Any violation of this chapter shall constitute a civil offense and shall, upon conviction, be punishable by a penalty under the general penalty provision of this code. Each day that any person fails to fully comply with the provisions of this Chapter shall constitute a separate offense and violation. Upon conviction of any person under this chapter, it shall be mandatory for the city judge to immediately certify the conviction, whether on appeal or not, to the Tennessee Alcoholic Beverage Commission. However, nothing herein shall be construed to prevent the city from exercising any criminal or civil remedies that it may have with respect to violations of this ordinance.

SECTION 2. If any section, phase, sentence or portion of this Ordinance is held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 3. This ordinance shall take effect after its final passage, the public welfare of requiring it.

With the ordinance already being presented and approved on the first reading at the last meeting, motion was made by Ald. Butler, duly 2nd by Ald. Farris to pass Ordinance No. 497 on the second/final reading. Upon a roll call vote the following was cast:

Ayes: Mark A. Barber, Donna R. Butler, Johny R. Farris, Buel Maness,
Michael Phelps and Keith Smith.

Noes: None.

Therefore Mayor King declared Ordinance No. 497 passed on the second/final reading and the Municipal Code amended.

Recorder Garland presented an Ordinance amending Title 8, Section 8-112 to allow for a potential applicant for a Retail Package Store to file a "Letter of Intent" to apply for a package store location. Under the current ordinance, the proposed building for a package store has to be complete prior to the person(s) or corporation making an application to the city. This would put a person at risk of a church or daycare being put within the 1,000 foot limit between the time he/she begins the construction or renovation of a building and the time of the application. The staff felt that the person(s) or corporation needs to be afforded some protection from this if they were making this investment. Therefore an amendment was being proposed to allow for the Letter of Intent. If the Letter of Intent is approved by the Mayor and the Building Official as to the zoning and the distance requirement being met, the applicant and location would be granted a six month period to complete the building and to file their final Application for a Certificate of Compliance with the city. The ordinance reads as follows:

ORDINANCE NO. 498

**AN ORDINANCE TO AMEND TITLE 8, SECTION 8-112 OF THE
HENDERSON MUNICIPAL CODE**

WHEREAS, local regulations for the sale of retail package liquor have been approved; and

WHEREAS, the Board of Mayor and Aldermen of the City of Henderson realize the process to procure, update or construct a building that meets the regulations for a retail package liquor store may take a sufficient amount of time; and

WHEREAS, the current ordinance uses the “Application Date” as the date in which a building or site meets the “Distance Requirements”.

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Aldermen the City of Henderson, Tennessee, that:

SECTION 1. Title 8, Section 8-112 of the Henderson Municipal Code is hereby amended by deleting Section 8-112 in it’s entirely, and by replacing it with the following new Section 8-112:

8-112. Distance requirements. No retail package liquor store shall be allowed within one thousand (1,000) feet of any school, church, day care center or public park in existence on the date of the applicant’s application for a certificate of compliance. The distance described herein shall be measured in a straight line from building to building, or in the case of a public park, from the closest point in the nearest property line of the public park.

If a potential applicant selects a site that is legal under these regulations but due to substantial remodel of an existing building or the construction of a new building there will be a significant amount of time prior to the applicant being eligible to file an application for a certificate of compliance, said potential applicant can complete a “Letter of Intent” on a form provided by the city. The purpose of the Letter of Intent is to gain prior approval for the proposed site as to the distance requirements and the proper zoning. If the Letter of Intent is approved by the Building Official and the Mayor as to the distance and zoning requirements, this approval will remain effective for a period of six months from the date of filing. Approval of the Letter of Intent is only as to distance and zoning requirements and in no way approves that the structure or building meets any other regulations of this chapter or the building code. An approved Letter of Intent is non-transferrable.

SECTION 2. If any section, phase, sentence or portion of this Ordinance is held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 3. This ordinance shall take effect after its final passage, the public welfare of requiring it.

After due discussion of the proposed change, motion was made by Ald. Farris, duly 2nd by Ald. Barber to pass Ordinance No. 498 on the first reading. Upon a roll call vote the following was cast:

Ayes: Mark A. Barber, Donna R. Butler, Johny R. Farris, Buel Maness,
Michael Phelps and Keith Smith.

Noes: None.

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With the first reading being passed unanimously, Mayor King asked for consideration on the second/final reading. Motion was made by Ald. Barber, duly 2nd by Ald. Butler to pass Ordinance No. 498 on the second/final reading. Upon a roll call vote the following was cast:

Ayes: Mark A. Barber, Donna R. Butler, Johny R. Farris, Buel Maness,
Michael Phelps and Keith Smith.

Noes: None.

Therefore Mayor King declared Ordinance No. 498 passed on the second/final reading and Title 8, Section 8-112 amended.

The next item was to hold a Public Hearing on an amendment to the Henderson Municipal Zoning Ordinance on the second/final reading to allow Package Liquor Stores as a Use Permitted in a B-1 General Business and B-4 Highway Business Districts. Said public hearing was duly advertised in the “Chester County Independent” newspaper. Mayor King opened the public hearing for comments from the audience. There being none, the hearing was closed. The ordinance was presented as follows:

ORDINANCE NO. 499

AN ORDINANCE AMENDING SECTIONS 11-701 & 11-704, (A), USES PERMITTED, (6) RETAIL, LIMITED TO, OF THE OFFICIAL MUNICIPAL ZONING ORDINANCE OF HENDERSON, TENNESSEE ALLOWING PACKAGED LIQUOR STORES AS USES PERMITTED IN B-1 (GENERAL BUSINESS) AND B-4 (HIGHWAY BUSINESS) DISTRICTS

WHEREAS, Section 13-7-201 through 13-7-210 of the Tennessee Code Annotated empowered the City to enact the Henderson Zoning Ordinance and Official Zoning Map, and provide for its administration and enforcement; and,

WHEREAS, the Board of Mayor and Aldermen deems it necessary, for the purpose of promoting the health, safety, prosperity, morals and general welfare of the City to amend said Official Municipal Zoning Ordinance; and,

WHEREAS, the Henderson Municipal-Regional Planning Commission has reviewed said proposed amendment pursuant to Sections 13-7-203 and 13-7-204 of the Tennessee Code Annotated and recommends such amendment to the Henderson Board of Mayor and Aldermen; and,

WHEREAS, the Board of Aldermen has given due public notice of hearing on said amendment and has held a public hearing; and,

WHEREAS, all the requirements of Section 13-7-201 through 13-7-210 of the Tennessee Code Annotated, with regard to the amendment of a zoning ordinance and map by the Planning Commission and subsequent action of the Board of Mayor and Aldermen have been met;

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Aldermen of the City of Henderson, Tennessee, that the Henderson Official Municipal Zoning Ordinance be amended as follows:

SECTION 1. That the following amendment be made to Section 11-701, B-1 (General Business) Districts, Letter (A), Uses Permitted, Number (6) Retail, limited to (:), be amended by adding a new Letter (j) to read as follows:
j. Packaged liquor stores

SECTION 2. That the following amendment be made to Section 11-704, B-4 (Highway Business) Districts, Letter (A), Uses Permitted, Number (6) Retail, limited to (:), be amended by adding a new Letter (k) to read as follows:
k. Packaged liquor stores

SECTION 3. BE IT FURTHER ORDAINED, that this Ordinance shall become effective immediately after its final reading, the public welfare so requiring it.

Motion was made by Ald. Farris, duly 2nd by Ald. Smith to pass proposed Ordinance No. 499 amending the Uses Permitted in the B-1 and B-4 districts to allow for Package Liquor Stores on the second/final reading. Upon a roll call vote the following was cast:

Ayes: Mark A. Barber, Donna R. Butler, Johny R. Farris, Buel Maness,
Michael Phelps and Keith Smith.

Noes: None

Therefore Mayor King declared Ordinance No. 499 passed and the Zoning Regulations amended to allow Retail Package Stores in B-1 and B-4 Districts.

An ordinance was presented to amend Title 8, Chapter 2 “Beer” to: (1) change the definition of beer to conform to the new definition in State Law and (2) update the wording on the 1,000 foot distance to mirror that in the package store ordinance. Recorder Garland was made aware that the State had updated the definition of beer by increasing the alcoholic percent from the current 5% to 8% by weight. This change was effective on January 1st and in order to make the local ordinance mirror the state law the change was recommended. The other amendment dealt with the distance wording. The change makes the regulations for beer and package stores the same. The proposed ordinance was presented as follows:

ORDINANCE NO. 500

**AN ORDINANCE TO AMEND TITLE 8, CHAPTER 2 “BEER”,
SECTIONS 8-206 AND 8-210 OF THE
HENDERSON MUNICIPAL CODE**

WHEREAS, the State of Tennessee amended the definition of “Beer” in Tennessee Code Annotated effective January 1, 2017; and

WHEREAS, the Board of Mayor and Aldermen of the City of Henderson desires to have the Local Beer Regulations mirror the State definition; and

WHEREAS, the Board of Mayor and Aldermen of the City of Henderson desires to have the identical wording for the 1,000 foot distance requirement for both Package Stores and Package Beer Sales.

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Aldermen the City of Henderson, Tennessee, that:

SECTION 1. Title 8, Chapter 2, Section 8-206 of the Henderson Municipal Code is amended by deleting Section 8-206 in it’s entirely, and by replacing it with the following new Section 8-206:

8-206. “Beer” defined. For purposes of this chapter, “Beer” shall mean beer, ale or other malt beverages, or any other beverages having an alcoholic content of not more than eight percent (8%) by weight, except wine as defined in TCA § 57-3-101; provided, however, that no more than forty-nine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other non-beverage ingredients containing alcohol.

SECTION 2. Title 8, Chapter 2, Section 8-210 of the Henderson Municipal Code is amended by deleting Section 8-210 in it’s entirely, and by replacing it with the following new Section 8-210:

8-210. Distance requirements. No permit authorizing the retail sale of packaged beer shall be issued if the proposed or existing business is within one thousand (1,000) feet of any school, church, day care center or public park in existence on the date of the applicant’s application for the permit. The distance described herein shall be measured in a straight line from building to building, or in the case of a public park, from the closet point in the nearest property line of the public park.

SECTION 3. This ordinance shall take effect after its final passage, the public welfare of requiring it.

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After due discussion of the proposed change, motion was made by Ald. Butler, duly 2nd by Ald. Smith to pass Ordinance No. 500 on the first reading. Upon a roll call vote the following was cast:

Ayes: Mark A. Barber, Donna R. Butler, Johny R. Farris, Buel Maness,
Michael Phelps and Keith Smith.

Noes: None.

With the first reading being passed unanimously, Mayor King asked for consideration on the second/final reading. Motion was made by Ald. Barber, duly 2nd by Ald. Phelps to pass Ordinance No. 500 on the second/final reading. Upon a roll call vote the following was cast:

Ayes: Mark A. Barber, Donna R. Butler, Johny R. Farris, Buel Maness,
Michael Phelps and Keith Smith.

Noes: None.

Therefore Mayor King declared Ordinance No. 500 passed on the second/final reading and Title 8, Sections 8-206 and 8-210 amended.

Mayor King took this moment to advise that if anyone wished to open a package store, they should contact Brent Beshires to make sure their potential site would meet the regulations as adopted by the city. This could save them a lot of headaches and money in the future. Recorder Garland stated that Application Packets and Letters of Intent forms could be picked up at City Hall beginning on Monday, January 23rd. He also stated that the city was reserving the right to require an applicant to hire a licensed surveyor to prove that the distance is greater than 1,000 if the city's measurement is inconclusive by measuring ± 50 feet of the required distance.

UD Green reported that three bids were received for Natural Gas materials. The low bid came from Consolidated Pipe and Supply Co. He recommended the bid be awarded to the low bidder and asked permission to purchase additional pipe under this pricing if the budget amount allows. Motion was made by Ald. Farris, duly by Ald. Butler to award the bid as recommended. Motion carried.

UD Green reported that four bids were received on mini-excavators for consideration. UD Green explained the benefits of using a mini-excavator. The low bidder was First Choice Farm and Lawn Equipment of Savannah for a 2017 Kubota KX-040-4R3A at a cost of \$48,900.00. The next lowest bid was Williams Equipment for a Bobcat machine at \$50,202.96. This piece of equipment was included in the budget. After discussion, motion was made by Ald. Farris, duly 2nd by Ald. Maness to purchase the Kubota Mini-Excavator from the low bidder as recommended. Motion carried.

PWD Scales reported that the amber warning light for North Ave at the Methodist Church had been ordered.

UD Green updated the board on the Proctor Road Water Main project stating that he hoped to advertise the project in February and have bids to the board at the March meeting. He planned for completion by June 30th.

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When asked by Ald. Smith, UD Green advised the board that the bid for per unit installation of gas lines was awarded to R. Jones Underground. The bid would guarantee the contractor a minimum of \$50,000 of work but the total work may exceed \$100,000 based on the projects the city was planning.

Mayor King reminded the board of the final SOAR Meeting on Monday, January 23rd at 6:00 PM in the City Hall classroom.

There being no other business, motion was made by Ald. Farris, duly 2nd by Ald. Phelps to adjourn. Motion carried.

Signed: Robert W. King

APPROVED: _____
MAYOR

ATTEST:

Signed: Jim E. Garland

CITY RECORDER