

# GREENVILLE COUNTY COUNCIL MINUTES

REGULAR MEETING

FEBRUARY 21, 2017

6:04 P.M.

COUNTY SQUARE – COUNCIL CHAMBERS

COUNCIL MEMBERS

MR. BUTCH KIRVEN, CHAIRMAN

MR. WILLIS MEADOWS, VICE CHAIRMAN

MRS. XANTHENE NORRIS, CHAIRMAN PRO TEM

MR. JOE DILL

MR. MIKE BARNES

MR. SID CATES

MR. RICK ROBERTS

MR. BOB TAYLOR

MRS. LIZ SEMAN

MR. ENNIS FANT, SR.

MR. LYNN BALLARD

MR. FRED PAYNE



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Pursuant to the Freedom of Information Act, notice of the meeting date, time, place and agenda was posted on the bulletin board at the County Square and made available to the newspapers, radio stations, television stations and concerned Citizens.

## STAFF PRESENT

Joe Kernell, County Administrator

Mark Tollison, County Attorney

Dean Campbell, Deputy County Attorney

John Hansley, Deputy County Administrator

Theresa Kizer, Clerk to Council

Regina McCaskill, Deputy Clerk to Council

Jessica Stone, Administrative Assistant, Clerk to Council

Bob Mihalic, Governmental Relations Officer

Paula Gucker, Assistant County Administrator, Public Works

Chief Deputy Eldridge, Sheriff's Office

John Vandermosten, Assistant County Administrator, Public Safety

Shannon Herman, Assistant to the County Administrator

## OTHERS PRESENT

None

## CALL TO ORDER

Chairman Butch Kirven

INVOCATION – introduced by Councilor Mike Barnes

Pastor Drew Hines  
Washington Baptist Church

## PLEDGE OF ALLEGIANCE

Item (4) **APPROVAL OF MINUTES**

**ACTION:** Councilor Payne moved to approve the minutes of the February 7, 2017, Regular Council Meeting.

Motion carried unanimously.

Item (5) **APPEARANCES – current agenda items**

- **J.R. Christy**, 6 Dove Tree Court, Greenville – appeared regarding 9.b. Public Safety Telecommunications and Road Maintenance Fee
- **Ed Paxton**, 1 York Circle, Greenville – appeared regarding 9.b. Public Safety Telecommunications and Road Maintenance Fee
- **Elizabeth Tickle**, 5325 Geer Highway, Cleveland – appeared regarding 9.b. Public Safety Telecommunications and Road Maintenance Fee
- **John Jennings**, 106 Mamie Black Road, Pelzer – appeared regarding 9.b. Public Safety Telecommunications and Road Maintenance Fee
- **Valerie Wade**, 752 W. Gap Creek Road, Greer – appeared regarding 9.b. Public Safety Telecommunications and Road Maintenance Fee
- **Gary Brock**, 211 Kilburn Lane, Travelers Rest – appeared regarding 9.b. Public Safety Telecommunications and Road Maintenance Fee
- **Brenda Brooks**, 115 S. Blythe Shoals Road, Cleveland – appeared regarding 7.d. State Infrastructure Bank Resolution and 9.b. Public Safety Telecommunications and Road Maintenance Fee
- **Rick Brown**, 6 Sundew Court, Greenville – appeared regarding 9.b. Public Safety Telecommunications and Road Maintenance Fee

Item (6) **CONSENT AGENDA**

- (a) **Best Friends Grant Application**
- (b) **VOCA Grant Application**
- (c) **South Carolina Park and Recreation Development (PARD) Grant**
- (d) **Community Project Application / Berea High School Track**

**ACTION:** Councilor Seman moved approval of the Consent Agenda Items.

Motion carried unanimously.

Item (7)            **RESOLUTIONS**

(a)    **Greater Greenville Sanitation Annexation / Certain Properties on Montague Circle – Request for Public Hearing**

**ACTION:**            Councilor Seman moved for adoption a resolution to hold a public hearing to consider enlarging the Greater Greenville Sanitation District to include the properties on Montague Circle.

                         Motion carried unanimously.

(b)    **Project Desperado Inducement Agreement**

**ACTION:**            Vice-Chairman Meadows moved for adoption a resolution authorizing the execution and delivery of an inducement agreement by and between Greenville County, South Carolina and Project Desperado, whereby, under certain conditions, Greenville County will execute a fee in lieu of tax agreement with respect to certain economic development property in the County whereby the economic development property would be subject to payment of certain fees in lieu of taxes; and providing for related matters.

                         Motion carried unanimously.

(c)    **Project Mousetrap Inducement Agreement**

**ACTION:**            Vice-Chairman Meadows moved for adoption a resolution authorizing the execution and delivery of an inducement agreement by and between Greenville County, South Carolina and Project Mousetrap, whereby, under certain conditions, Greenville County will execute a fee in lieu of tax agreement with respect to a Project in the County whereby the Project would be subject to payment of certain fees in lieu of taxes; and providing for related matters.

                         Motion carried unanimously.

(d)    **State Infrastructure Bank Resolution**

**ACTION:**            Vice-Chairman Meadows moved for adoption a resolution in support of Greenville County's application to the South Carolina State Infrastructure Bank (SIB) for assistance in funding major transportation improvement projects in Greenville County.

                         Motion carried unanimously.

Item (8)            **ORDINANCES – THIRD READING**

(a)    **Zoning Ordinances**

1.    **CZ-2016-49: Property of TCC Venture LLC, Townes at Cardinal Creek HOA and Goldjin Company, Inc., located at 225 Smith Hines Road.**

                         Councilor Dill stated the item was withdrawn by the applicant.

**(b) Adult Entertainment Ordinance Amendment**

**ACTION:** Councilor Dill moved for adoption at third reading an ordinance to amend Ordinance No. 2673, concerning adult entertainment regulations to modify certain definitions.

Motion carried unanimously.

**(c) Hospitality Tax / Supplemental Appropriation –  
SC Children’s Theatre and Greenville Center for Creative Arts**

**ACTION:** Vice-Chairman Meadows moved for adoption at third reading an ordinance to amend Exhibit A established as an addendum to Ordinance 4079, as last amended by Ordinance No. 4868, so as to appropriate additional operating funds for tourist related projects.

**ACTION:** Vice-Chairman Meadows moved to hold the item until March 7th, at which time the public hearing would be held.

Motion to hold carried unanimously.

**Item (9) ORDINANCES – SECOND READING**

**(a) Zoning Ordinances**

**1. CZ-2016-64: Property of Kevin Buckner, MHL, Inc., located on Easley Bridge Road, requesting rezoning from R-M20 to O-D.**

The Planning Commission recommended approval and the Committee recommended denial.

**ACTION:** On behalf of the Committee, Councilor Dill moved approval of the ordinance at second reading.

Councilor Ballard asked if eight votes to deny the request were needed in order to overturn the recommendation of the Planning Commission.

Mark Tollison stated the request required eight votes for passage.

Councilor Norris stated the property was located in her district and she recommended denial of the request.

Motion was denied unanimously.

**2. CZ-2016-66: Property of James Wilson, located on Locust Hill Road, requesting rezoning from R-10 to C-1.**

The Planning Commission and the Committee recommended denial.

**ACTION:** On behalf of the Committee, Councilor Dill moved approval of the ordinance at second reading.

**ACTION:** Councilor Barnes moved to return the docket to the Planning and Development Committee.

Motion to return the item to the Planning and Development Committee carried unanimously.

3. **CZ-2017-01: Property of Byron Ramirez Aristizabal, located at 1703 Rutherford Road, requesting rezoning from I-1 to S-1.**  
The Planning Commission and the Committee recommended approval.

**ACTION:** On behalf of the Committee, Councilor Dill moved approval of the ordinance at second reading.

Councilor Cates stated the property was located in his district and he recommended approval of the request.

Motion carried unanimously.

4. **CZ-2017-02: Property of Jay Beeson, Mark III Properties, located on Reedy Fork Road, requesting rezoning from R-S to R-12.**  
The Planning Commission and the Committee recommended approval.

**ACTION:** On behalf of the Committee, Councilor Dill moved approval of the ordinance at second reading.

Councilor Payne stated the property was located in his district and he recommended approval of the request.

Motion carried unanimously.

5. **CZ-2017-03: Property of Niki P. Kythas, located at 1303 Geer Highway, requesting rezoning from C-1 to C-3.**  
The Planning Commission and the Committee recommended approval.

**ACTION:** On behalf of the Committee, Councilor Dill moved approval of the ordinance at second reading.

Motion carried unanimously.

6. **CZ-2017-04: Property of Two Messers, LLC, located on Turrentine Circle, requesting rezoning from R-20 to R-10.**  
The Planning Commission recommended denial and the Committee recommended approval.

**ACTION:** On behalf of the Committee, Councilor Dill moved approval of the ordinance at second reading.

Councilor Barnes stated the property was located in his district and he recommended approval of the request.

Motion carried unanimously.

7. **CZ-2017-05: Property of Easlan Capital, located on State Park Road and Worley Road, requesting rezoning from PD to PD-MC.**  
The Planning Commission and the Committee recommended approval as amended.

**ACTION:** On behalf of the Committee, Councilor Dill moved approval of the ordinance at second reading.

**AMENDMENT:** Councilor Dill moved to amend the request in order to maintain architectural design characteristics throughout the entire Montebello Planned Development according to the Statement of Intent and to have final development plans brought back to the Planning Commission for review.

Motion to amend carried unanimously.

Motion as amended carried unanimously.

**8. CZ-2017-07: Property of Lisa Marie Stamey-Looper, located at 250 Sulphur Springs Road, requesting rezoning from O-D to R-M2.**

The Planning Commission and the Committee recommended approval.

**ACTION:** On behalf of the Committee, Councilor Dill moved approval of the ordinance at second reading.

Motion carried unanimously.

**9. CZ-2017-08: Property of Charles P. Willimon, located on the west side of Standing Springs Road, requesting rezoning from R-S to R-12.**

The Planning Commission and the Committee recommended approval.

**ACTION:** On behalf of the Committee, Councilor Dill moved approval of the ordinance at second reading.

Motion carried unanimously.

**10. CZ-2017-11: Property of Kevin Buckner, located on Easley Bridge Road, requesting rezoning from R-M20 to FRD.**

The Planning Commission and the Committee recommended approval as amended.

**ACTION:** On behalf of the Committee, Councilor Dill moved approval of the ordinance at second reading.

**AMENDMENT:** Councilor Dill moved to amend the request so that the landscape area called out on the conceptual site plan contain planted landscape material to buffer the residential properties to the north; and the future access identified on the plan is conditionally approved subject to approval by SCDOT. A driveway connection to the parcel to the west may be required during the final development plan to provide a shared access drive at the signalized intersection.

Motion to amend carried unanimously.

Motion as amended carried unanimously.

**(b) Public Safety Telecommunications and Road Maintenance Fees**

**ACTION:** Vice-Chairman Meadows moved for approval at second reading an ordinance to establish a uniform charge for the provision of upgraded county-wide public safety telecommunication services to all real property within Greenville County; and to amend Ordinance No. 2474, as amended, so as to increase the County Road Maintenance Fee.

**AMENDMENT:** Councilor Fant moved to amend the ordinance in regards to the effective date; in compliance with SC Code Section 6-1-330, this ordinance shall take effect upon the date of its adoption by a positive majority vote of the Greenville County Council.

Councilor Ballard stated he took issue with Councilor Fant's proposed amendment. The statute cited by Councilor Fant stated a County could adopt an ordinance by a plurality, which was seven votes for Greenville County, to deal with taxes, fees and other issues. He stated that in 2004, Greenville County Council passed Ordinance No. 3867 and the last section of Ordinance No. 3867 indicated any action, which raised taxes or fees or would harm the County's AAA credit rating, required nine (9) votes to pass. He added since he had served on Council, an amendment to an existing ordinance required three readings and a public hearing.

Councilor Cates asked Councilor Fant if he would be willing to accept a friendly request to withdraw his proposed amendment in order to determine if the ordinance could be split into two separate sections.

Chairman Kirven stated it was inadvisable to split the ordinance. Depending on which way Council voted on the proposed splitting, the question needed to be settled because it would apply to either section of the ordinance as it moved forward.

Councilor Cates asked for clarification of Chairman Kirven's comment.

Chairman Kirven stated the question needed to be settled regarding the ordinance as presented. If Council divided the question, it would still need to apply to whichever way it went after that time. Chairman Kirven stated the question needed to be settled and then it would be sent forward by Council to deal with the remainder of the issue.

Councilor Cates asked if Councilor Fant's amendment, which called for a simple majority vote to pass the ordinance, was settled, could Council then vote to split the ordinance.

Chairman Kirven stated Council could vote to split the ordinance at that time.

Councilor Cates stated the proposed amendment would change the County's normal rule of nine (9) votes for approval to seven (7) votes for any action which would raise taxes, fees or harm the County's AAA credit rating.

Chairman Kirven stated the proposed amendment would recognize State Law which required seven votes as opposed to Greenville County's requirement of nine votes in the case of ordinances such as the item on the floor. He added that legal opinions hold that State law took precedence over County law.

Councilor Cates stated Council would be going against a County ordinance, already in place, in order to approve the ordinance.

Chairman Kirven stated Ordinance No. 3867 could have technically expired at the end of the budget year that it amended.

Councilor Cates asked if the State Law that required seven votes was in place in 2004.

Chairman Kirven confirmed it was in place at that time. The last time the County raised any fees was in 2002.

Councilor Fant stated the nine vote threshold had not been used since it was passed. The intent of his proposed amendment was to get the County rule in compliance with State Law.

Councilor Taylor asked if the County rule was in conflict with the State Law and, therefore, invalid.

Mark Tollison stated the County's authority to levy service fees came from the State. The General Assembly has prescribed a particular method by which a County may adopt a service fee, which was the State law referenced in the amendment. He stated this was the first time Council had undertaken a fee since passing the 2004 ordinance and the first time a question had been asked concerning the number of votes required under State Law.

Councilor Taylor stated the nine vote rule was applied when Council voted on a Schedule A Hospitality Tax.

Mark Tollison confirmed the nine vote rule did apply in that situation and also applied in the adoption of General Obligation debt. The General Assembly has said fees are adopted by a positive majority vote, which is seven (7) for Greenville County.

Councilor Dill stated he remembered when Council approved the ordinance in 2004 and it was for the taxpayers' protection. He stated Council was advised, at that time, that the ordinance could be changed by a vote of seven in favor; now it was being proposed to change it and not follow proper procedure. The only way to get a true understanding was to consult with the Attorney General's Office. Councilor Dill stated he would accept what the Attorney General's office said.

Chairman Kirven asked if there was an Attorney General's opinion on the issue.

Mark Tollison stated in 2008, the Attorney General issued an opinion in Allendale County, stating that with respect to State Statute 6-1-330, the Legislature had prescribed a particular methodology for the adoption of fees.

Councilor Dill asked about the proper procedure to change an ordinance.

Mark Tollison stated that Council could address the nine vote ordinance amendment as a stand-alone ordinance or recognize State Law.

Vice-Chairman Meadows stated the State statute did exactly what Mr. Tollison indicated, but, it did not indicate that the County could not require more votes. He stated several State statutes indicated the Counties must follow exactly what was dictated in the statute. He cited the ordinance that dealt with texting while driving, as an example. Vice-Chairman Meadows stated he agreed with Councilor Dill's suggestion to consult with the Attorney General's office.

Mark Tollison stated that, if Council directed, he would seek an opinion from the Attorney General's office.

Chairman Kirven asked Mark Tollison if there was a conflict between State law and County law, which took precedence.

Mark Tollison stated that under Home Rule, State law took precedence over County law.

Vice-Chairman Meadows asked if the County was following proper procedure in attempting to amend or change an ordinance without a public hearing and three readings.

Mark Tollison stated the issue before Council was in regards to the amount of votes, as it related to State law. As with all of the County's ordinances, there was a repeal section already in the ordinance that says any ordinance in conflict with the provisions presented was repealed. Mr. Tollison also stated that Council has always had the ability to exempt itself, or set another level, or amend directly the 2004 Amendment that was itself an amendment to a Supplemental Appropriation.

Vice-Chairman Meadows asked if it was proper to bring an amendment, without prior knowledge, to the agenda.



Mark Tollison stated the issue was currently at second reading and open to amendments.

Chairman Kirven announced a roll call vote regarding Councilor Fant's amendment.

Motion was denied by a roll call vote of six in favor (Roberts, Norris, Seman, Fant, Kirven and Payne) and six in opposition (Meadows, Cates, Taylor, Ballard, Dill and Barnes).

**ACTION:** Councilor Cates moved to divide the question into two separate issues.

Councilor Fant asked if nine votes in favor were still needed.

Mark Tollison stated it was his opinion that the original amendment could still probably be passed with seven votes in favor at this time. He recommended Council go into Executive Session for additional legal advice.

Chairman Kirven asked if the ordinance passed with less than nine votes, could a complaint be filed indicating passage not in accordance with State law. He suggested Council go into Executive Session to discuss the legalities.

Councilor Taylor asked who could challenge the passage of an ordinance or amendment with seven votes as opposed to nine votes.

Mark Tollison stated a Council member could possibly challenge a vote. He added if Council moved forward under State law that the amendment was to confirm Council's desire to have passage with seven votes. The State statute has established authority for putting in a service fee and the General Assembly has prescribed the method.

Vice-Chairman Meadows stated he felt the original motion violated the State Constitution in that it encompassed two separate subjects. This was called bob-tailing or log rolling. The Supreme Court has ruled this practice was illegal. He recommended supporting Councilor Cates motion.

Motion to split the question was denied by a roll call vote of six in favor (Meadows, Cates, Taylor, Ballard, Dill and Barnes) and six in opposition (Roberts, Norris, Seman, Fant, Kirven and Payne).

#### **EXECUTIVE SESSION (legal matter)**

**ACTION:** Councilor Fant moved to go into Executive Session for legal advice related to pending, threatening, or potential claims.

Motion to go into Executive Session carried by a roll call vote of seven (Roberts, Taylor, Norris, Seman, Fant, Kirven and Payne) in favor and five (Meadows, Cates, Ballard, Dill and Barnes) in opposition. County Council entered into Executive Session at 7:14 p.m.

#### **RECONVENE**

Mr. Tollison reported Greenville County Council out of Executive Session stating no action was taken during the session.

The meeting reconvened at 7:42 p.m.

**ACTION:** Councilor Seman called the question.

Motion to call the question carried unanimously.

Motion as originally presented carried by a roll call vote of seven (Roberts, Taylor, Norris, Seman, Fant, Kirven and Payne) in favor and five (Meadows, Cates, Ballard, Dill and Barnes) in opposition.

Chairman Kirven stated the conflict between the State law which required seven (7) votes to pass and the County ordinance which required nine (9), still existed. He ruled that until the conflict was resolved, State law took precedence over the County ordinance, and the item would move forward for third reading.

**(c) Transfer Property to Campbell Young Leaders**

**ACTION:** Vice-Chairman Meadows moved for approval at second reading an ordinance to authorize and approve the transfer of approximately 6.33 acres of real property located in the Woodside Mill Community to Campbell Young Leaders, a South Carolina non-profit corporation, or its assigns, and to authorize the execution of a deed and any other appropriate documents and agreements related thereto.

Motion carried unanimously.

**(d) Project Desperado / Fee in Lieu of Tax Agreement and Amended and Restated Infrastructure Credit Agreement**

**ACTION:** Vice-Chairman Meadows moved for approval at second reading an ordinance authorizing the execution and delivery of a fee in lieu of tax agreement by and between Greenville County, South Carolina and a Company known to the County at this time as Project Desperado with respect to certain economic development property in the County, whereby such property will be subject to certain payments in lieu of taxes; authorizing the execution and delivery of an amended and restated infrastructure credit agreement between Greenville County, South Carolina and Project Desperado reflecting an extension of the credit period and an increase in the amount of the infrastructure credit; and other matters related thereto.

Motion carried unanimously.

**Item (10) ORDINANCES – FIRST READING**

**(a) Zoning Ordinances**

Councilor Dill presented for first reading Zoning Dockets **CZ-2017-13** through **CZ-2017-17**.

Chairman Kirven referred the items to the Planning and Development Committee.

**(b) False Alarm Ordinance Amendment**

Councilor Ballard presented for first reading an ordinance to amend Chapter 11, Article IV of the County of Greenville, South Carolina Code of Ordinances so as to require an alarm system monitoring company to attempt to verify whether an alarm signal is valid before requesting dispatch; to change the number of permitted false alarms from per calendar quarter to per calendar year; to provide for graduated increases in the civil penalties for false alarms, and related matters thereto.

Chairman Kirven stated the item would remain on the floor.

(c) **Project Mousetrap / Fee in Lieu of Tax Agreement**

Vice-Chairman Meadows presented for first reading an ordinance authorizing the execution and delivery of a fee in lieu of tax agreement by and between Greenville County, South Carolina and Project Mousetrap and with respect to certain economic development property in the County, whereby such property will be subject to certain payments in lieu of taxes; and other matters related thereto.

Chairman Kirven stated the item would remain on the floor.

Item (11) **COMMITTEE REPORTS**

None

Item (12) **APPEARANCES BY CITIZENS**

- **Ed Paxton**, 1 York Circle, Greenville – appeared regarding the County’s request for the new County building proposals.
- **Rufus Perry**, 104 Prioress Place, Piedmont – appeared regarding litter problems in Greenville County
- **William Shives**, 110 Dexter Drive, Taylors – appeared regarding accountability in Greenville County Government
- **Tony Gilliard**, 527 Valley Creek Drive, Greer – appeared regarding property taxes

Item (13) **ADMINISTRATOR’S REPORT**

County Administrator Joe Kernell stated the County has received the first of two vacuum-type litter trucks. He stated they have cleaned up Scuffletown Road, Highway 418, Lily Street, Furman Hall Road, Jonesville Road and were currently working this week in City View, Woodside, and Highway 123. He stated the second truck was due to arrive within the next month which would give them twice the capacity. The trucks would make their way around the County, on a worst-first basis.

Mr. Kernell announced Animal Care has reached a save rate of 91% for dogs, 80% for cats and 88% overall. He stated the County’s goal was to reach the mid-90’s in the coming month. Greenville County accepts some of Spartanburg’s animals, and recently they too have adopted the “trap, neuter, release” program that was adopted by Council some time back. He stated this action by Spartanburg was beginning to pay dividends to Greenville.

Item (14) **REQUESTS AND MOTIONS BY COUNCIL MEMBERS**

- Chairman Kirven expressed his concern with the placement of the Veterans Monument once the County offices were relocated. He announced the formation of a committee to be led by veterans to study and make recommendations to Council concerning the future of the monument. Mr. Kirven appointed Doug Greenlaw to be Chairman of the committee.

- Councilor Norris thanked the County for developing a program to clean up the litter around Greenville. She stated she was glad to hear of the efforts being made regarding the memorial as her husband fought in World War II.
- Councilor Seman stated Greenville City Council recently appointed Bob Knight to a three year term on the SCTAC Board of Directors.
- Councilor Fant stated Vision 25 was a group of people who represented all 18 precincts in District 25 to help coordinate in the areas of resident engagement, public safety, affordable housing and economic development. He stated he has asked that members come and participate in each Council meeting. He introduced the Executive Director, Dr. Don Smith and his wife Cassandra, and Ms. Dogan, Director of Communications and Planning. Also present was Tabitha Crawford of Partners of 25, whom he thanked for attending.
- Councilor Ballard thanked all the fire chiefs and commissioners who came out in support of the Communications Fee. He also thanked the members of Council for supporting the ordinance and moving it forward.
- Councilor Dill inquired about the Chairman's ruling regarding the Public Safety Communications Fee / Road Maintenance Fee ordinance.
- Councilor Barnes thanked the representatives of the fire departments for being present.

**Item (15) ADJOURNMENT**

**ACTION:** Councilor Cates moved to adjourn the meeting.

Motion carried unanimously and the meeting was adjourned at 8:15 p.m.

Respectfully submitted:

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Theresa B. Kizer, Clerk to Council