

**Regular Meeting of the Sandy Springs City Council was held on Tuesday, October 18, 2011, at 6:00 p.m., Mayor Eva Galambos presiding.**

**INVOCATION**

Pastor Nate Bednar, Metropolitan Baptist Church, offered the invocation.

**CALL TO ORDER**

Mayor Eva Galambos called the meeting to order at 6:04 p.m.

**ROLL CALL AND GENERAL ANNOUNCEMENTS**

**City Clerk Michael Casey** reminded everyone to silence all electronic devices at this time. Additionally, those wishing to provide public comment during either a public hearing or the Public Comment segment of the meeting are required to complete a public comment card. The cards are located at the back counter and need to be turned in to the City Clerk.

City Clerk Casey called the roll.

**Mayor:** Mayor Eva Galambos present.

**Councilmembers:** Councilmember John Paulson, Councilmember Dianne Fries, Councilmember Chip Collins, Councilmember Gabriel Sterling, Councilmember Tibby DeJulio, and Councilmember Karen Meinzen McEnery present.

**PLEDGE OF ALLEGIANCE**

**Mayor Eva Galambos** led the Pledge of Allegiance

**(Agenda Item No. 11-220)**

**APPROVAL OF MEETING AGENDA**

**Motion and Vote:** Councilmember Fries moved to approve the Meeting Agenda for October 18, 2011. Councilmember Paulson seconded the motion. The motion carried unanimously.

**CONSENT AGENDA**

**(Agenda Item No. 11-221)**

1. Meeting Minutes:
  - a) October 4, 2011 Regular Meeting
  - b) October 4, 2011 Work Session*(Michael Casey, City Clerk)*

**(Agenda Item No. 11-222)**

2. Consideration of approval of a contract modification to provide construction field support services for the Community Development Block Grant (CDBG) Sidewalks, Phase 1 Construction Project (T-0033)  
*(Kevin Walter, Director of Public Works)*  
**Resolution No. 2011-10-87**

**(Agenda Item No. 11-223)**

3. Consideration of Acceptance of the Right-of-Way Agreement dedication as part of the zoning requirements  
(Kevin Walter, Director of Public Works)

**Resolution No. 2011-10-88**

**Motion and Vote:** Councilmember DeJulio moved to approve the Consent Agenda for October 18, 2011. Councilmember Sterling seconded the motion. The motion carried unanimously.

**PRESENTATIONS**

There were no presentations.

**PUBLIC HEARINGS**

City Clerk Michael Casey read the rules for the Public Hearings section of the meeting.

**(Agenda Item No. 11-224)**

1. Approval of Alcoholic Beverage License Application for Applebee's Neighborhood Grill & Bar #84 at 6649 Roswell Rd Sandy Springs, GA 30328. Applicant is Kevin Champion for Consumption on Premises Wine, Malt Beverage and Distilled Spirits.

**Revenue Supervisor Brandon Branham** stated Applebee's has submitted a complete application for consumption on premise of beer, wine, and liquor. The application passed all requirements and staff recommends approval.

**Mayor Eva Galambos** called for public comments in support of or opposition to this application. There were no comments from the public. Mayor Galambos closed the public hearing.

**Motion and Vote:** Councilmember Sterling moved to approve Agenda Item No. 11-224, Alcoholic Beverage License Application for Applebee's Neighborhood Grill & Bar #84 at 6649 Roswell Rd Sandy Springs, GA 30328. Applicant is Kevin Champion for Consumption on Premises Wine, Malt Beverage and Distilled Spirits. Councilmember Fries seconded the motion. The motion carried unanimously.

**(Agenda Item No. 11-225)**

2. RC11-02SS – 240 Quiet Water Lane (Chris Wujcik / Neptune Pools Inc.) River Corridor

**Chief Environmental Compliance Officer Michael Barnett** stated this item is a request from an application through the Atlanta Regional Commission (ARC) for a pool at 240 Quiet Water Lane. The ARC has approved the application and it is in compliance with the River Corridor rules and regulations. Staff recommends approval.

**Mayor Eva Galambos** called for public comments in support of or opposition to this application. There were no comments from the public. Mayor Galambos closed the public hearing.

**Motion and Vote:** Councilmember DeJulio moved to approve Agenda Item No. 11-225, RC11-02SS – 240 Quiet Water Lane (Chris Wujcik / Neptune Pools Inc.) River Corridor. Councilmember Sterling seconded the motion. The motion carried unanimously.

**(Agenda Item No. 11-226)**

3. RC11-03SS – 250 Quiet Water Lane (Gilbert Quinones / Q-B Engineering, Inc.) River Corridor

**Chief Environmental Compliance Officer Michael Barnett** stated this item is an application to add an addition to an existing home at 250 Quiet Water Lane. The application has been reviewed by the ARC and is in compliance with the Chattahoochee River Corridor plan. Staff recommends approval.

**Mayor Eva Galambos** called for public comments in support of or opposition to this application. There were no comments from the public. Mayor Galambos closed the public hearing.

**Motion and Vote:** Councilmember DeJulio moved to approve Agenda Item No. 11-226, RC11-03SS – 250 Quiet Water Lane (Gilbert Quinones / Q-B Engineering, Inc.) River Corridor. Councilmember Sterling seconded the motion. The motion carried unanimously.

### **UNFINISHED BUSINESS**

There was no unfinished business.

### **NEW BUSINESS**

#### **(Agenda Item No. 11-227)**

##### **1. Approval for Purchase of Police Replacement Vehicles**

**Chief of Police Terry Sult** stated this agenda item is for the approval to purchase police vehicles that were budgeted for in this fiscal year. \$703,535 was allocated in the budget for the purchase of approximately 27 vehicles. This request is for the purchase of 25 vehicles at a cost \$672,189. The Police Department set a delivery date of ninety days for the vehicles and only one of the bidders could meet that requirement. Another bidder's cost was \$13,000 less for the delivery of 2012 vehicles, but that bidder could not guarantee the price or the delivery date. Chief Sult recommended purchase of the 25 vehicles for immediate delivery.

**Councilmember Tibby DeJulio** asked if the vehicles being recommended for purchase are 2011 models.

Chief of Police Sult responded yes.

**Councilmember John Paulson** asked if the total amount allocated will be spent or if the Police Department will purchase more vehicles at a later date.

Chief of Police Sult stated there are two more vehicles to be purchased. Only one might be purchased this year because of the overspending of \$13,000 on the purchase of the first 25 vehicles. Funds will have to be shifted to purchase the last vehicle or it will not be replaced until next year.

**Mayor Eva Galambos** asked if the vehicles being purchased are Fords.

Chief of Police Sult responded no. Ford no longer makes the Crown Victoria. The majority of the vehicles being purchased will be the Chevrolet Caprice model, which is a law enforcement only edition. These vehicles will save fuel because each car has two batteries. One battery runs the electric appliances in the vehicle separate from the engine. This will allow the Police Department to enforce a no idle policy and save more fuel. There is also a large enough truck space to move towards using LP gas in the vehicles in the future.

**Councilmember Dianne Fries** asked if the ninety day delivery date requirement was set by the City.

Chief of Police Sult responded yes. If the delivery date is not set, the vehicle deliveries sometimes get pushed out until the next fiscal year, and the vehicles might not be delivered until late June or early July 2012.

Mayor Galambos stated it amazes her that in this economy companies are not able to deliver vehicles more timely.

Chief of Police Sult stated typically the Crown Victorias are delivered on time. The Chevrolet Caprice is different because it is a fairly new car. This is the first year Chevrolet has produced the marked patrol version. The Crown Victoria police version was only produced a couple of weeks a year. He is sure that Chevrolet does the same thing. The Caprice is not available to the general public; it is a law enforcement only edition. The public can buy an Impala, but not a Caprice.

**Motion and Vote:** Councilmember Fries moved to approve Agenda Item No. 11-227, Purchase of Police Replacement Vehicles. Councilmember DeJulio seconded the motion. The motion carried unanimously.

**(Agenda Item No. 11-228)**

2. Consideration of Approval of the FY 2012 Capital Paving Contract

**Director of Public Works Kevin Walter** stated this item is a recommendation for approval of a contract for repaving road surfaces for the FY 2012 paving program. The City placed the advertisement and six bids were received. The lowest bid received was from Allied Paving in the amount of \$1,078,908.25, and staff recommends approval.

**Councilmember John Paulson** asked what amount was budgeted for this project.

Director of Public Works Walter stated \$2.5 million was budgeted for the reconstruction and repaving contracts. The total of both bids came in at slightly over \$2 million, which leaves additional funds to spend.

**Councilmember Gabriel Sterling** stated C.W. Mathews was the number two bidder on both contracts. He asked if staff ever goes back to a bidder to see if they can lower their price and then be awarded both contracts.

Director of Public Works Walter stated staff discussed having both contracts awarded together, but decided not to because the equipment needed for paving is different from the equipment used for reconstruction.

Councilmember Sterling stated he is referring to negotiating with C.W. Mathews.

**City Attorney Wendell Willard** stated staff asking the contractor to lower their price could cause a legal problem.

Councilmember Sterling asked if in the future staff could accept package bids from a vendor to try and get a lower price.

Director of Public Works Walter stated staff could advertise that if a vendor bids on both contracts, the vendor can identify a discount in advance, if selected for both contracts. This is not to the advantage of the City, because the companies are typically different. The example of C.W. Mathews bidding on both contracts is an exception.

**Councilmember Dianne Fries** asked if the RFP can be advertised as a package.

City Attorney Willard stated this is a bidding process, as opposed to an RFP being a proposal process. The City could state in the proposal that there will be attempts to negotiate a lower cost than received in the original proposals. Contractual work for construction is looked upon differently by the law compared to providing a service.

Councilmember Paulson stated the alternative is to advertise both bids together and each bid separately.

Councilmember Fries stated she thought the City did offer that option in the past.

**Mayor Eva Galambos** asked if that would be legal.

Director of Public Works Walter responded yes, but it would limit the field of bidders.

Mayor Galambos stated half the bidders would not be able to do the work, because they would not be qualified for both contracts.

Director of Public Works Walter responded yes. Staff felt the City would receive better prices by separating the bids.

Mayor Galambos stated the advantage of the way it is currently being done is there are more bidders. The advantage of doing it the other way might be if the City receives bids for two contracts from the same company; then the cost might be less.

Councilmember Sterling stated the City is consistently choosing the lowest bid. He asked if the company chosen for the project is the most qualified company and also with the lowest bid.

Director of Public Works Walter responded yes. Staff evaluated this company and the company for the reconstruction project. Staff feels comfortable with the companies' experience and their reputation.

Councilmember Fries stated she would like to get a firm answer as to what happened to Hightower Trail, which was included in the last list of roads approved months ago.

Director of Public Works Walter stated in an upcoming agenda item Hightower Trail is included in the local maintenance improvement grant that Council will vote on. Hightower Trail and those roads will be paved this fiscal year.

Mayor Galambos stated that is a different source of money.

Councilmember Fries stated the Council approved a list six months ago and Hightower Trail was on that list.

**Councilmember Karen Meinzen McEnery** stated Whitner Drive was also on that list.

**City Manager John McDonough** stated some of those roads are on the LMIG list.

Director of Public Works Walter stated the previous list was determined prior to URS working for the City. He assumes it was a list of roads approved by the Council and a judgment was made as to which roads the City could receive State aid for. Only certain roads that have a dire need can qualify for State

aid. The grant is for 100%, but the City has to prepare the road first. He believes it was a judgment by previous staff that the road was in such bad shape that it would be eligible for a State grant.

Councilmember Fries stated she would like to know what happened and that the previous contract ended on good terms.

**Motion and Vote:** Councilmember Sterling moved to approve Agenda Item No. 11-228, Approval of the FY 2012 Capital Paving Contract. Councilmember Paulson seconded the motion. The motion carried unanimously.

**Resolution No. 2011-10-89**

**(Agenda Item No. 11-229)**

3. Consideration of Approval of the FY 2012 Capital Reconstruction Contract

**Director of Public Works Kevin Walter** stated this item is a recommendation for the award of a contract to Stewart Brothers for reconstruction of streets in the amount of \$945,900. In advertising for this project four bids were received and Stewart Brothers was the lowest qualified bidder.

**Councilmember Tibby DeJulio** asked why there were only four bidders. He asked if reconstruction is more difficult than paving.

Director of Public Works Walter stated reconstruction is more difficult and more expensive equipment is needed. The process includes grinding the road in place.

**Mayor Eva Galambos** asked if this will be the same process as tried last year.

Director of Public Works Walter responded no.

**Councilmember Chip Collins** asked when the work will be done.

Director of Public Works Walter stated the contract allows the contractor to perform the work any time up through June 1, 2012. This allowed the City to receive the best price. The paving can be done this fall, as long as the weather is warm enough, or in the spring. It is more likely the work will be done in the spring.

**Councilmember Gabriel Sterling** asked if the temperature has to be above forty-five degrees in order for the road work to be done.

Director of Public Works Walter responded yes.

Councilmember Sterling stated at the last City Council meeting there was discussion about having the roads evaluated again.

Director of Public Works Walter stated a proposal will be brought to Council at the second City Council meeting next month.

**Motion and Vote:** Councilmember DeJulio moved to approve Agenda Item No. 11-229, Approval of the FY 2012 Capital Reconstruction Contract. Councilmember Paulson seconded the motion. The motion carried unanimously.

**Resolution No. 2011-10-90**

**(Agenda Item No. 11-230)**

4. Consideration of the Acceptance of the Conveyance of Right-of-Way Agreement as part of the zoning requirements

**Director of Public Works Kevin Walter** stated this item involves a conveyance of right-of-way in accordance with a condition of zoning by Regency Centers L.P. on Roswell Road. It is an area of land totaling 2,683 square feet, which is being dedicated as required by zoning.

**Mayor Eva Galambos** asked if the land is for the streetscape project.

Director of Public Works Walter responded yes.

**Motion and Vote:** Councilmember Sterling moved to approve Agenda Item No. 11-230, Acceptance of the Conveyance of Right-of-Way Agreement as part of the zoning requirements. Councilmember Fries seconded the motion. The motion carried unanimously.

**Resolution No. 2011-10-91**

**(Agenda Item No. 11-231)**

5. Consideration of Approval for the Mayor to sign the Local Maintenance and Improvement Grant Contract between the City of Sandy Springs and the Georgia Department of Transportation

**Director of Public Works Kevin Walter** stated this item requires the approval of a proposed contract between the City and the Georgia Department of Transportation for a new program called the Local Maintenance and Improvement Grant (LMIG). The grant is a combination of the former (LARP) Local Assistance Roads Program and the State aid program. Those two programs were for the State DOT to provide money to local government. This grant was applied for to repave four different roads to include Hightower Trail, Northridge Parkway, Whitner Drive, and Carpenter Drive. The contract value is \$290,063.41. If the contract is approved, the City has agreed to bid out the work. The contract will be placed out for bid and the recommendation for the award of contract will be brought back to Council. The City will be required to prepare the roads by patching them. Staff recommends approval of the contract.

**Councilmember Gabriel Sterling** asked if the work will be paid for by the City and then GDOT will reimburse the City at a later date.

Director of Public Works Walter responded yes.

**Councilmember John Paulson** asked what the grant means by stating the City is responsible for preparing the street for resurfacing.

Director of Public Works Walter stated the City will add this requirement to the contract for repaving to ensure all the roads are patched.

**Mayor Eva Galambos** asked if this program is as generous as or is less generous than the LARP program.

Director of Public Works Walter stated this program is less generous.

**Councilmember Karen Meinzen McEnerny** stated Whitner Drive is in horrible shape. She is sure it will be costly to prepare the street for repaving. She asked if Whitner Drive will be reconstructed or repaved.

Director of Public Works Walter stated Whitner Drive will be a combination of both. There are excess funds in the repaving program that can be used for doing that work.

Councilmember Meinzen McEnery asked if the contract will include getting the road prepared and if the preparation of the road is bid out.

Councilmember Paulson stated this contract is for the resurfacing once the City preps the roads. He asked where the money for preparing the roads comes from.

Director of Public Works Walter stated the money comes from the resurfacing budget for this year.

Director of Public Works Walter stated the intention is to use the contractor that was awarded the paving or reconstruction contract to prepare the road as appropriate. The City Manager can approve and add on to the contracts for the work as long as that amount is not in excess of ten percent of the contract amount.

**Motion and Vote:** Councilmember Fries moved to approve Agenda Item No. 11-231, Approval for the Mayor to sign the Local Maintenance and Improvement Grant Contract between the City of Sandy Springs and the Georgia Department of Transportation. Councilmember Sterling seconded the motion. The motion carried unanimously.

**Resolution No. 2011-10-92**

**(Agenda Item No. 11-232)**

6. Acceptance of an Agreement to Purchase Right-of-Way for the City of Sandy Springs T-6010-9 Glenridge Drive Sidewalk Project from Mt. Vernon Hwy. to Abernathy Road; Parcel 7- Donna D. Glenn

**Director of Public Works Kevin Walter** stated this item concerns a right-of-way that is necessary for the Glenridge sidewalk project. The recommended amount for approval is \$3,100 to compensate the homeowner for movement of vegetation, mailbox, and other requirements. Staff recommends approval of this expense.

**Councilmember Tibby DeJulio** asked if the City would be compensating the homeowner for out-of-pocket expenses and not buying the right-of-way from the homeowner.

Director of Public Works Walter stated this would be a compensation that is roughly equal to the value of the right-of-way. The City is compensating the homeowner for moving their landscaping, mailbox, and other elements.

**Councilmember Gabriel Sterling** stated the City is buying land for a sidewalk in a high traffic area.

**Mayor Eva Galambos** stated the homeowner will receive money from the City, but the homeowner will have the responsibility of moving the shrubs.

Councilmember DeJulio stated the City has had problems in the past and we do not want to set any precedents that will cause problems in the future.

**Councilmember Chip Collins** stated this is different because the homeowner will have to pay for relocating their landscaping and mailbox. He asked if this is what the City has done in the past.



Mayor Galambos stated the City had a situation where we were paying for right-of-way or temporary right-of-way. If people are not willing to give the City right-of-way, then the sidewalks can be built elsewhere.

Councilmember DeJulio stated the City did agree to compensate property owners for actual damages.

**Motion and Vote:** Councilmember Sterling moved to approve Agenda Item No. 11-232, Agreement to Purchase Right-of-Way for the City of Sandy Springs T-6010-9 Glenridge Drive Sidewalk Project from Mt. Vernon Hwy. to Abernathy Road; Parcel 7- Donna D. Glenn. Councilmember Paulson seconded the motion. The motion carried unanimously.

**Resolution No. 2011-10-93**

**(Agenda Item No. 11-233)**

7. A Resolution to Support the submittal of the 2011 10-year Livable Centers Initiative (LCI) update for the Perimeter Community Improvement Districts (PCIDs) to the Atlanta Regional Commission (ARC)

**Manager of Planning and Zoning Patrice Dickerson** stated this item was heard at the September 15, 2011, and October 5, 2011, Planning Commission meetings. The Commission did not have a quorum at the October 5, 2011, meeting, but the members at the meeting made comments and generally support the document with the amendments proposed by staff. Staff recommends approval.

**Councilmember Gabriel Sterling** asked if the UPS pedestrian bicycle bridge that deals with the Peachtree Dunwoody section is the only part that is not completely within the PCID district. He also asked if there was more discussion regarding the node at the North Springs MARTA Station.

Manager of Planning and Zoning Dickerson stated the reference to the North Springs MARTA Station was removed from the plan, but the UPS bridge still remains.

**Mayor Eva Galambos** stated she spoke to Chairman Duncan of the Planning Commission. He conveyed a concern that the development envisioned by the LCI study, in terms of total square footage and number of dwelling units, would be a huge growth item and would impact Sandy Springs traffic. The changes made in the LCI with the assistance of staff and the Planning Commission helped a lot. The number of apartment units that were desired was removed from the plan.

Manager of Planning and Zoning Dickerson responded correct. A specific number of apartment units are not stated in the plan. The language was changed to rely on the comprehensive plans for both cities.

Councilmember Sterling stated many people have been concerned that building out the Perimeter area is going to hurt the Sandy Springs downtown district long term. This cannot be viewed as a zero sum gain in certain areas. There is a limited amount of resources to invest and the PCID is doing a good job for the projects they have been given. As with so many other LCI studies, he is not sure how much will be reality and how much will not. Lowering the apartment numbers and moving the nodes to smaller levels fits in with the City plans. The plan is better than when it first came to the City.

**Councilmember Karen Meinzen McEnerny** stated the development patterns in the Sandy Springs downtown area are distinctly different than the PCID and she does not see the two competing or adversely affecting each other.

Mayor Galambos stated in the original plan the Sandy Springs downtown area and PCID were competing. The PCID was discussing having community events such as performances. These are activities the City would like have in the downtown area.

Councilmember Meinzen McEnery stated the main street concept was removed from the PCID plan.

**Motion and Vote:** Councilmember DeJulio moved to approve Agenda Item No. 11-233, A Resolution to Support the submittal of the 2011 10-year Livable Centers Initiative (LCI) update for the Perimeter Community Improvement Districts (PCIDs) to the Atlanta Regional Commission (ARC). Councilmember Fries seconded the motion. The motion carried unanimously.

**Resolution No. 2011-10-94**

**(Agenda Item No. 11-234)**

8. A Resolution for the Adoption of the Annual Capital Improvement Element (CIE) Update

**Manager of Planning and Zoning Patrice Dickerson** stated the annual CIE update has been reviewed and approved by the Atlanta Regional Commission. This item is the request for approval to adopt the CIE.

**Mayor Eva Galambos** stated the CIE lists the impact fees the City has received. She asked if the City has used any of the impact fees collected.

Manager of Planning and Zoning Dickerson stated the City has not spent any of these funds. The Public Works Department is ready to start using the money.

**Councilmember Dianne Fries** stated the City has not spent any of the previously received funds for the bus shelters, either.

**Motion and Vote:** Councilmember Sterling moved to approve Agenda Item No. 11-234, A Resolution for the Adoption of the Annual Capital Improvement Element (CIE) Update. Councilmember Meinzen McEnery seconded the motion. The motion carried unanimously.

**Resolution No. 2011-10-95**

**(Agenda Item No. 11-235)**

9. Consideration of the Extension of the Atlanta Grand Bohemian Hotel Land Disturbance Permit under Chapter 103, Article 6, Section 103-27(b)(4) Development Regulations Ordinance of the Code of the City of Sandy Springs

**Manager of Planning and Zoning Patrice Dickerson** stated this item is a request for the extension of the land disturbance permit for the Atlanta Grand Bohemian Hotel. Staff recommends approval.

**Joseph Foltz, Representative of the Kessler Collection,** stated Day Dantzer, CFO of Kessler Collection, is in attendance as well. The extension request is for the land disturbance permit for the Sandy Springs Grand Bohemian Hotel. As requested by staff, letters from the lenders have been submitted with the application. Unfortunately, the lenders do not see the lending climate being viable for a project of this scope, which is a \$100 million project cost. The equity requirements for projects to be financed have grown significantly higher as a percentage of total project cost. When the lending climate does improve, the applicant will be ready with their equity commitment. There was excellent news at the last City Council meeting regarding the hospitality trends in Sandy Springs. There is not a better site in the metro Atlanta area for this hotel. The hotel will provide 25,000 square feet of meeting room space, 8,000 square feet of ballroom space, food and beverage alternatives, 275 boutique hotel rooms, and

between 275-300 full time jobs. The applicant is fully committed to the project and appreciates the staff support.

**Mayor Eva Galambos** stated she hopes the lenders are aware that every month the Sandy Springs hotel occupancy rates exceed the occupancy rates of all of the jurisdictions in Georgia.

**Councilmember Dianne Fries** stated she stayed in one of the Kessler hotels in Savannah, GA. She cannot wait until this hotel is built in Sandy Springs. She is glad the applicant is committed to the project, because the Council is equally excited.

**Councilmember John Paulson** asked if the applicant is making any progress with the lenders.

Mr. Foltz stated the general retrenchment of the market created problems. There are some lenders that will work with hotel businesses in smaller markets.

Councilmember Paulson stated there are some apartment projects that are being funded, which is a different market segment.

Mr. Foltz stated as an asset class multi-family projects are preferred because it seems the economy is positive in that direction. The hotel market is still considered a risky asset class.

Mayor Galambos stated she is sure the applicant is pursuing funding and Council appreciates it.

**Motion and Vote:** Councilmember Fries moved to approve Agenda Item No. 11-235, Extension of the Atlanta Grand Bohemian Hotel Land Disturbance Permit under Chapter 103, Article 6, Section 103-27(b)(4) Development Regulations Ordinance of the Code of the City of Sandy Springs. Councilmember Sterling seconded the motion. The motion carried unanimously.

**(Agenda Item No. 11-236)**

10. A Resolution to clarify the Resolution adopted by City Council on August 16, 2011, authorizing a referendum to allow package sales on Sundays by retailers of package malt beverages, wine and distilled spirits and an Ordinance to amend the City's Code of Ordinances to allow for Sunday package sales of malt beverages, wine and distilled spirits; to provide for adoption and an effective date; and to provide for other lawful purposes

**City Attorney Wendell Willard** stated this item is a modification and slight wording change on the resolution that Council adopted August 16, 2011. The resolution authorized the City to move forward with the ballot referendum on November 8, 2011. There is also an ordinance, which would change the hours under the current ordinance, dealing with sales of beer, wine, and spirits. He asked that each item be passed separately, since one is a resolution and the other is an ordinance change.

**Councilmember Dianne Fries** asked if this resolution will replace the previous resolution adopted by Council.

City Attorney Willard responded yes.

**Councilmember Tibby DeJulio** asked if there is a reason the sale of alcoholic beverages will stop at 11:30 p.m. on Sundays.

City Attorney Willard stated that is the limit on the law for the sale of these items.

**Motion and Second:** Councilmember Sterling moved to approve Agenda Item No. 11-236, A Resolution to clarify the Resolution adopted by City Council on August 16, 2011, authorizing a referendum to allow package sales on Sundays by retailers of package malt beverages, wine and distilled spirits. Councilmember Meinzen McEnerny seconded the motion.

**Councilmember Chip Collins** asked if the language should include “or” when referencing retailers of malt beverages, wine, and distilled spirits. Grocery stores will be affected and they do not sell distilled spirits.

City Attorney Willard stated the resolution and ordinance recognize the City of Sandy Springs as authorized for the sales of all three. Some locations are only authorized to sell beer and wine. This wording concludes with the word “and” although licenses may be issued for any of those types of beverages. The language should be fine.

**Vote on the Motion:** The motion carried unanimously.

**Resolution No. 2011-10-96**

**Motion and Vote:** Councilmember Sterling moved to approve Agenda Item No. 11-236, An Ordinance to amend the City’s Code of Ordinances to allow for Sunday package sales of malt beverages, wine and distilled spirits; to provide for adoption and an effective date; and to provide for other lawful purposes. Councilmember Fries seconded the motion. The motion carried unanimously.

**Ordinance No. 2011-10-17**

**(Agenda Item No. 11-237)**

11. Consideration of Revised Non-Profit Policy

**City Manager John McDonough** stated this item was discussed at the last City Council meeting. There have been discussions amongst the Council on how best to proceed. He deferred the item to Council for further discussion.

**Councilmember Dianne Fries** stated a proposal was handed out to Council. From the last City Council meeting it became apparent that the percentages were not the best way to go on allocating money to nonprofit organizations. There was a consensus of Council to allocate a similar amount of money to the Community Action Center as in previous years. Councilmember Fries proposed a line item of \$100,000 to go to the Community Action Center this year; done as an MOU, similar to the recycling center. The total amount of money available to allocate this year is \$120,000. With \$100,000 going to the Community Action Center, only \$20,000 would remain to allocate. As a result of conversations with the City Manager, that amount can be increased to \$50,000 by transferring money out of unused reserves from the transition funds.

**Motion and Second:** Councilmember Fries moved to authorize the City Manager to enter into a MOU with the Community Action Center in the amount of \$100,000. Councilmember Sterling seconded the motion.

**Councilmember Karen Meinzen McEnerny** stated the nonprofit policy references serving people. When the initial policy was created, the role of the City was debated and the use of taxpayer funds being allocated to the nonprofits. The \$30,000 increase in the available funds is creative. She does not want anyone in the community to think the City is giving additional assistance to the Community Action Center unequally, compared to the other nonprofits. She would have appreciated the proposal being shared with Council before the meeting this evening. She is diligent in making sure the Council is not blindsided by the efforts she initiates.

**Councilmember Tibby DeJulio** stated he does not feel that the City is discriminating against other nonprofit organizations in the City. The City recognizes there is a need because of these very strenuous economic times. The allocation of money is something that needs to be reviewed every year to see where Council stands on the decision. The City would be helping a nonprofit that has been successful for many years.

**Councilmember Gabriel Sterling** stated the Community Action Center is a fundamentally different type of nonprofit that provides direct services to the citizens. The Center is different from the arts and environmental nonprofits. The City can recognize this difference by entering into an MOU. Right now there is not another nonprofit that provides similar services to the citizens. The Center provides good services and he has contributed to the organization. The Center helps to directly address the poverty that exists in the City. The MOU is a good compromise. The remaining \$50,000 should go through the normal process and that allows the Council to utilize their own judgment based on how staff applies the policy. This is the best compromise to reach the goals of the majority of Council.

Councilmember Fries stated three or four years ago the economy was different. During that time there were more businesses and individuals willing to donate money to nonprofits.

**Councilmember John Paulson** stated he is in favor of the MOU. There is a need in the community that is stronger than it has been in recent years. The City is fortunate because of money that has been saved due to the change of contracts for City operations. To take a small amount of the money saved and give it to the Center is a worthwhile effort.

**Vote on the Motion:** The motion carried 5-1, with Councilmember Meinzen McEnery voting in opposition.

**Motion and Vote:** Councilmember Fries moved to increase the nonprofit allocation for FY12 from \$120,000 to \$150,000 by transferring \$30,000 from the transition contingency fund. Councilmember Sterling seconded the motion. The motion carried 5-1, with Councilmember Meinzen McEnery voting in opposition.

**Motion and Second:** Councilmember Fries moved to approve Agenda Item No. 11-237, Consideration of Revised Non-Profit Policy, replacing the language that states "most recently completed annual audit" with the language "most recently completed financial statement"; and changing the application due date to December 1, 2011. Councilmember DeJulio seconded the motion.

Councilmember Sterling stated the most recently completed financial statement is a self-produced item. If the nonprofit is a 501(c) 3, they are required to file a tax return.

Councilmember Fries stated proof of filing a tax return is a requirement on the policy.

Councilmember Paulson stated he is interested in the ability of an organization to leverage City money with matching funds; to reward nonprofits that demonstrate the ability to leverage the City's contribution with other contributions.

Mayor Galambos stated that is one of the policy criteria.

**Assistant City Manager Eden Freeman** asked Council to change the timeline for when the applications are due. When the draft originally came to Council there was additional time to complete the application. As it stands now applications would be due in less than a month. She suggested the application due date be changed to December 1, 2011, or around that time.

**Revision to Motion:** Councilmember Fries revised her motion to change the application due date to December 2, 2011. Councilmember DeJulio accepted the change.

Councilmember Collins stated the underserved, homeless, and indigent have been taken care of through the MOU with the Community Action Center. Council has recognized the desire to fund arts, environment, and education. He suggested an amendment to the motion removing the last section referencing the underserved, homeless or indigent, and replacing that with the criteria does the nonprofit benefit or relate to arts, environment, or education.

Councilmember Fries stated she is not interested in that amendment to her motion. The City could receive an application that is totally different than the suggested language. An example would be if a nonprofit submitted an application that assists with rent. Council has the final decision to grade an applicant on merit.

Councilmember Collins stated there is no real direction from Council as to what types of organizations they would like money to be allocated to when staff is scoring the applications. A twenty-five percent benefit would still be given to the groups that are serving the homeless and indigent, even though Council has chosen the preferred provider in that category.

Assistant City Manager Freeman stated underserved also means those that do not have access to similar programs. An example would be a population group that may not have access to free or low cost performances. The nonprofit could provide the service in the underserved category and receive the funding for it.

Councilmember Sterling suggested removing the underserved sentence and that each applicant would be scored on the other two items at 2/3 and 1/3.

Councilmember Meinzen McEnery stated she believes the twenty-five percent rating was aimed directly at the Community Action Center, skewing it unfairly towards the CAC. That percentage should be removed from the policy.

**Substitute Motion and Second:** Councilmember Meinzen McEnery moved to Agenda Item No. 11-237, Consideration of Revised Non-Profit Policy, with the deletion of the sentence "Is the target population to be served underserved, homeless or indigent?", changing the remaining scoring criteria ratios to 66.6% and 33.3%; replacing the language that states "most recently completed annual audit" with the language "most recently completed financial statement"; and changing the application due date to December 2, 2011. Councilmember Paulson seconded the motion.

Councilmember DeJulio asked how a specific due date can be placed in the policy.

Councilmember Fries stated the date is when the application is due.

Councilmember DeJulio asked if the application will then be due every year on December 2<sup>nd</sup>.

Councilmember Meinzen McEnery responded yes.

**Vote on the Substitute Motion:** The motion carried unanimously.

**(Agenda Item No. 11-238)**

12. U.S. Postal Service Zip Code Address Changes

**Mayor Eva Galambos** stated this item is not about changing the zip codes. The USPS has agreed to change the Sandy Springs zip codes on their website to default to the City of Sandy Springs and not to

Atlanta. There may be a second designation which states Atlanta, but Sandy Springs will be listed first. The City has to be careful when sharing this information with the community so that everyone understands that the zip codes are not being changed. This USPS online update applies to every zip code in Sandy Springs except 30092. The reason for this is because an agreement has been reached with the Postmaster for the 303 area. Congressman Price's office was instrumental in assisting the City with this change. Originally, it was assumed the default City would only be changed for 30328 and 30350, which are entirely Sandy Springs zip codes. The Postmaster is now willing to change the default in the postal software for every address in Sandy Springs. In order to get this accomplished, the Post Office has provided conditions that must first be met. The City is required to have a public hearing and a survey is also required. The Post Office will mail out the survey. The USPS has been extremely forthcoming and the City has accomplished its goals and more, not expecting that the change would apply to all the zip codes within Sandy Springs.

**Councilmember Gabriel Sterling** stated over the next year, or when the online retailers update their USPS software, all of those people who were paying eight percent sales tax will begin paying seven percent sales tax. These people were paying the Atlanta tax rate when the Atlanta zip code was the default.

Mayor Galambos stated when this issue is discussed with citizens; she would caution people not to say the zip codes are being changed, but that the default City is being changed when typing in an address on the USPS website.

**Councilmember Chip Collins** stated when someone orders something online or from TV and the zip code is entered, the person may be charged at an eight percent sales tax rate instead of seven. Atlanta is collecting a one percent tax that they are not supposed to be collecting. He asked if there is a way to get that money back.

**City Attorney Wendell Willard** stated, individually, the taxpayer who paid the tax can file with the State Revenue Department for a refund of the one percent tax. The company the individual made the purchase from sent the tax money to the State and the State then pays that money to Atlanta. It would be up to the City of Atlanta refund the money to the individual who made the purchase. The likelihood of the money being refunded is very small.

Councilmember Collins stated there could have been \$1 million worth of online sales in the last five years in Sandy Springs. That would be a decent amount of money to be refunded. Could the money be refunded through a class action in order to get it back from the City of Atlanta?

City Attorney Willard stated the Department of Revenue states the request has to be from the merchant to receive the refund on behalf of the taxpayer. From the Department of Revenue the request goes to the City of Atlanta. This would only apply to zip codes that cover both Sandy Springs and Atlanta. Zip code 30328 would not be involved.

Councilmember Sterling stated the zip codes 30328 and 30350 still default to Atlanta on the USPS website.

Mayor Galambos stated her zip code is 30350 and she discovered the issue when online order receipts showed eight percent. This is how she found out all the computer program software is linked to the USPS.

Councilmember Paulson asked about two small areas on the map in zip codes 30338 and 30319.

Mayor Galambos stated those zip codes are being updated as well.

Councilmember DeJulio stated the Mayor should be commended, because she worked long and hard to get this corrected.

**Assistant City Manager Eden Freeman** stated staff needs direction to authorize the Mayor to write a letter to the Postmaster agreeing to the conditions.

**Motion and Vote:** Councilmember DeJulio moved to approve Agenda Item No. 11-238, U.S. Postal Service Zip Code Address Changes, and to authorize the Mayor to sign a letter confirming the City's agreement and commitment to the conditions specified by the USPS. Councilmember Fries seconded the motion. The motion carried unanimously.

### REPORTS AND PRESENTATIONS

1. Mayor and Council Reports

**Councilmember Karen Meinzen McEnery** stated staff is progressing with planning the Veteran's Day event on November 11, 2011. She offered Council posters to pass out to the local businesses. The ceremony starts at 10:00 a.m., but there will be pre-event music by the 116<sup>th</sup> Army Reserve Band. John Pruitt from WSB has agreed to be the emcee for the event. Lt. General Ron Helmly will be the keynote speaker. The event will be held at 200 Morgan Falls Road at Overlook Park

2. Staff Reports

### PUBLIC COMMENT

**Bill Gannon, 505 Taunton Way**, stated his address zip code is 30319, which defaults to DeKalb County. He hopes that the zip code change will take effect soon. He has had the pleasure of hearing the discussions regarding the allocation of money to nonprofits. He represents the High Point Civic Association and showed Council a yard sign. These signs are used every Sunday for the Church of the Atonement. He hopes the signs will not be picked up inadvertently by City staff.

**Councilmember Dianne Fries** stated two signs per yard are allowed and they have to be ten feet behind the curb.

### EXECUTIVE SESSION – Litigation


There was no Executive Session.

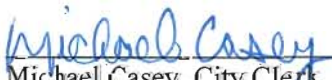
(Agenda Item No. 11-240)

### ADJOURNMENT

**Motion and Vote:** Councilmember DeJulio moved to adjourn the meeting. Councilmember Paulson seconded the motion. The motion carried unanimously. The meeting adjourned at 7:25 p.m.

Date Approved: November 1, 2011

  
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Eva Galambos, Mayor

  
\_\_\_\_\_  
Michael Casey, City Clerk