

**MINUTES OF THE
REGULAR COUNCIL MEETING
CITY OF AUSTELL
OCTOBER 7, 2013**

Present: Mayor Jerkins
Kirsten Anderson
Trudie Causey
Virginia Reagan
Martin Standard
Scott Thomas

Absent: Suzanne Thomason

The regular meeting of the Mayor and the City Council was held on Monday, October 7, 2013 at 7:00 P.M. at City Hall.

Also present were: Scott Kimbrough, City Attorney; Carolyn Duncan, City Clerk; Denise Soesbee, Finance Director; Randy Bowens, Public Works Director; Jim Graham, Community Development Director; Tim Williams, Fire Chief and Bob Starrett, Police Chief.

1. CALL TO ORDER

Mayor Jerkins called the meeting to order. Pastor Clay Henry gave the Invocation and Mayor Jerkins led the Pledge of Allegiance.

Mayor Jerkins asked the Council if they had any items to add to the Agenda. No items were added to the Agenda.

2. CONSENT AGENDA – INFORMATION AND UPDATE

(No Action Required by Council – See Specific Department Director before Meeting.)

3. CONSENT AGENDA

- A. Approve Bills
- B. Approve Legal Bills \$1,175.00
- C. Approve Minutes of Regular Council Meeting September 9, 2013

Mr. Thomas moved to follow the recommendation of Mayor Jerkins to approve the Consent Agenda. Seconded by Ms. Reagan. Motion passed (5-0).

4. EXCEPTION TO CONSENT AGENDA

5. CITIZENS REPORT

Mayor Jerkins asked if anyone would like to speak to the Mayor and Council. Ms. Ann Turner stated she would like to ask a question. Why there are no barricades on the burned house on the corner of Love and Cochran Streets. I think it burned in May. It is not boarded up, it is just there. Chief Williams stated the demolition permits have been purchased and they have six months to do the demo. We are already three months into it but it should be done within the next three months.

**MINUTES OF THE
REGULAR COUNCIL MEETING
CITY OF AUSTELL
MONDAY, OCTOBER 7, 2013
PAGE 2**

**6. GAS SYSTEM REPRESENTATIVE
JOE JERKINS**

Mr. Kimbrough stated he attended the meeting and they addressed the normal business of adopting the gas rate schedule for this month. They are hoping and praying for a good cold winter.

**7. FINANCE REPORT
VIRGINIA REAGAN, CHAIRPERSON
Denise Soesbee, Director**

- A. Financial Report
- B. Purchase of New Phone System

Ms. Reagan stated after research the committee would like to recommend entering into a service contract with SyncGlobal for the following reasons: (1) at the end of 5 years the City would not own the equipment and have the option to upgrade. (2) The phone system computer/software would be located and maintained offsite and (3) The City would always have up-to-date equipment and any replacements are done free of charge. Total budget impact would be approximately \$1,979.70. This includes a monthly invoice cost of \$3,766.50 minus monthly discounts and savings by SyncGlobal of \$1,786.80. These charges are included in the 2013-14 budget and will be paid out of account 100/1565 52.1300 Technical.

Ms. Reagan moved to follow the recommendation of the Finance Committee to approve the purchase of a new phone system from SynGlobal. Seconded by Mr. Thomas. Motion approved (5-0).

**8. GENERAL ADMINISTRATION
KIRSTEN ANDERSON, CHAIRPERSON
Carolyn Duncan, Director**

- A. No Report

**9. POLICE DEPARTMENT
VIRGINIA REAGAN, CHAIRPERSON
Bob Starrett, Police Chief**

**MINUTES OF THE
REGULAR COUNCIL MEETING
CITY OF AUSTELL
MONDAY, OCTOBER 7, 2013
PAGE 3**

- A. Police Report
- B. Code Enforcement Report
- C. Margarita's Mexican Restaurant (Alcohol Violation Hearing)

Ms. Reagan stated she would like to turn this over to the City Attorney, Scott Kimbrough. Mr. Kimbrough stated at this time he would like to call for a Public Hearing concerning the matter of Margarita's Mexican Restaurant for an alcohol violation. Mr. Kimbrough asked Chief Starrett if he would speak on behalf of the City of Austell. Chief Starrett stated he would speak and also Sergeant Forrister. Mr. Kimbrough asked if anyone was present on behalf of Eric Toso. Chief Starrett stated his wife and son are present. Mr. Kimbrough swore in Chief Starrett, Sergeant Forrister and Anna Toso.

Chief Starrett stated his office investigated a complaint at Margarita's Restaurant involving Eric Toso who is the owner of the business and providing alcohol to a minor. In the course of our investigation he did provide the alcohol to a minor. Mr. Toso did give us a statement and Sergeant Forrister has completed the investigation. There are criminal charges involved and he is still in custody at this time. He will go for a bond hearing on October 10th. The District Attorney's office doesn't want a lot brought up about the criminal charges and nor does his Attorney. I spoke to Mr. Toso's attorney Reid Thompson this afternoon several times and I also went to the jail and spoke with Mr. Toso and explained to him about the hearing. Mr. Toso told me he wasn't so much worried about the alcohol issue because he knows we will pull the license which he expects us to do and he can operate the business without the alcohol. Ms. Reagan's concern was if we could take the business license. Mr. Kimbrough has researched this and has an answer on it. Chief Starrett asked Ms. Toso if she thought the license was in his name and hers. Ms. Toso stated she thought the license was in his name only. Ms. Toso stated the business was in both names. Chief Starrett asked City Clerk, Carolyn Duncan if the business license was in both names and or his name. Ms. Duncan stated the business license was in his name only. Mayor Jerkins asked is this the alcohol license only or what? Ms. Duncan stated his name is on the Privilege License for alcohol. Mayor Jerkins asked what about the business license. Ms. Duncan stated it is the same with his name only. Mayor Jerkins stated so you don't think it is in her name. Ms. Duncan stated, no sir, I checked and it is in his name only. Chief Starrett stated his Attorney said to go ahead and have the hearing without him being present because he did not want him to be here. Basically, what we wanted the Council to be aware of is Mr. Toso gave Sergeant Forrister information that he did in fact give a seventeen year old alcohol and this is what the hearing is about.

**MINUTES OF THE
REGULAR COUNCIL MEETING
CITY OF AUSTELL
MONDAY, OCTOBER 7, 2013
PAGE 4**

He was charged with that and you have to decide to take his license or let him keep them. Mr. Kimbrough stated as far as the business license goes I looked in the Code of Ordinances and it specifically says the granting of the business license and this under 6-7 subparagraph E, granting of this business license under the provisions of this chapter shall be deemed a privilege only and nothing here and contained shall be construed as granting any person who's business is subject to municipal regulations and any legal right to engage in such business. So, by the wording of our ordinances the granting of a business license is a privilege to operate a business within the city limits. So, to me it would be just like the alcohol license subject to be pulled if the Council feels this is the appropriate thing to do based upon these violations not only State Law but Ordinances as well. Chief Starrett stated the reason we haven't provided you with a report is because the District Attorney's office had asked us not too because it is a criminal case. He has actually taken a statement from Mr. Toso regarding the alcohol charge. Mayor Jerkins stated we do need to hear about the alcohol charge.

Sergeant Forrister stated Mr. Toso stated in the interview he knew she had been drinking earlier that day at his business not before she arrived at work. He knew she had been drinking and he didn't stop her from drinking. He then mixed her a drink and then provided her with three shots of tequila and another drink. I can't really go any further than that. Mayor Jerkins asked if the girl was seventeen years old. Sergeant Forrister stated, yes sir, she is seventeen years old. Mr. Kimbrough asked if anyone had any questions. Ms. Anderson stated, yes she had a question. What would be the advantage of taking the entire Business License away because you are taking the Privilege License so they can't serve alcohol so what would be the advantage of shutting them down so they can't be open. Mr. Thomas stated he thought it would not be advantage to do that. Ms. Anderson stated I just thought and understood that might be something that was considered and I just wondered why. Mr. Standard stated so they are both privileged licenses but you can do one without the other. Mr. Kimbrough asked Ms. Toso if she had any questions. Ms. Toso asked if she changed everything in her name would that be possible. Mr. Kimbrough stated of they don't do anything with the business license it will stay in place and the business will be operating. Obviously, if they do something with the Privilege License of the alcohol license and the ability to sell alcohol you would not be able to do that until you got something in your name. If the alcohol license is suspended than two licenses can't be issued to the same location is this correct? Ms. Duncan stated yes that is correct. Mr. Kimbrough stated so, if the alcohol license is suspended you would not be able to do anything with the alcohol until that suspension has been served.

**MINUTES OF THE
REGULAR COUNCIL MEETING
CITY OF AUSTELL
MONDAY, OCTOBER 7, 2013
PAGE 5**

If it is revoked then you would be able to apply for an alcohol license in your name subject to passing all the background checks and all of that then you could be granted the local application process as well as the State process you would have to go through. Ms. Anderson stated she had another question for Ms. Toso. What are the chances of you putting the business in your name do you think that would be a viable solution or do you think this can't happen? Ms. Toso stated that would be a solution, but. Ms. Anderson asked what if Mr. Toso was not willing to give it up. Ms. Toso stated the divorce is already done, and what the Attorney has told me is we can sell the business. I am trying to keep it open and trying to work on it and put it up for sell. Mr. Standard asked if the seventeen year old worked at the business. Mr. Standard asked Ms. Toso if she was at work that night. Ms. Toso stated, no she wasn't. Mr. Thomas asked Chief Starrett what Mr. Toso had told him about the business. Chief Starrett stated Mr. Toso had told him he would like to keep it open and not sell alcohol if possible and he didn't seem to be worried about the alcohol license. Ms. Reagan had asked about them keeping the business license or not and this is not something we are suggesting or recommending it is just a question she asked to see if it could be done. He wanted to keep it in his name and operate just as a restaurant without the alcohol being served. Mr. Toso also told me he is unsure if he wants to let Ms. Toso have the business so this is something they would have to decide. Ms. Toso thought it was in both their names and evidently it is not. Mr. Thomas stated if I understand correctly, if we suspend the alcohol license for a period of time and she got the business in her name she could not apply for an alcohol license until the suspension is over. Mr. Kimbrough stated she could not apply for an alcohol license at all. Even when the suspension is over with then the alcohol license will be reinstated in his name because we cannot grant two alcohol licenses at the same location. What if the business license was revoked then she could go ahead and apply for an alcohol license. Mr. Kimbrough stated the business would not have to be in her name and if it is revoked she then would go and apply for an alcohol license in her name. Mr. Thomas asked even though the business license is in his name. Ms. Duncan asked Mr. Kimbrough would they allow Ms. Toso to get a alcohol license if they don't have a physical business location. In other words, if he doesn't give her the business unless she has another location. Mayor Jerkins stated Ms. Toso would not have any use for the alcohol license without getting a business license in her name. There would not be any benefit to get an alcohol license without a business license. Ms. Reagan stated if we suspend or revoke the license it would not be until after the first of the year and then he would have to apply for a new license and we do not have to give them to him. Ms. Duncan stated that's true. Ms. Causey stated she has a question, isn't this the third offense and shouldn't we revoke the license. Ms. Reagan stated, yes, it is.

**MINUTES OF THE
REGULAR COUNCIL MEETING
CITY OF AUSTELL
MONDAY, OCTOBER 7, 2013
PAGE 6**

Mr. Kimbrough stated it will be up to the Council. Mr. Thomas stated that was the reason for my line of questioning was to help Ms. Toso out. This is what I was thinking if she keeps the business open with the alcohol and it helps us and also her as well. It would be better to revoke it instead of suspending it or suspend it instead of revoking the license. According to our Attorney if we revoke it she could apply. Ms. Duncan stated but she would have to have the business. Mr. Kimbrough stated that would be the first step to get her in that position. If the Council suspends the license there is nothing she can do. Mr. Standard stated are we solving the problem. Ms. Reagan asked what the problem is. Mr. Standard stated there are three problems already. Selling alcohol to minors over there, will this go away just because she owns the property? Are all the employees going to be the same and everything the same except ownership? Mr. Thomas stated it will be under new management. Ms. Reagan stated you can't blame Ms. Toso because she wasn't there. Mr. Standard stated I am not blaming but I am just saying will it change. If you have all the same employees and all the same staff with the same mentality it will not change. Mayor Jerkins stated we need to focus on the concern right now. This is a future concern for whoever applies for the next business license because they will have to come before the Council again. Ms. Causey asked if we revoke the license Mr. Toso would not be able to apply ever again. Mayor Jerkins stated yes, he could but that doesn't mean the Council would give them to him. Also, if he gets a felony charge against him he will not be able to apply. Mr. Kimbrough asked if anyone had any more questions of Ms. Toso or Chief Starrett. No more questions were asked.

Ms. Reagan moved to follow the recommendation of Mr. Kimbrough to close the public hearing. Seconded by Ms. Anderson. Motion passed (5-0).

Ms. Reagan moved to follow the recommendation of the Police Committee to revoke the Privilege License for Alcohol for Margarita's Mexican Restaurant. Seconded by Ms. Causey. Motion passed (5-0).

Mr. Thomas asked Ms. Toso if she understood what had taken place. Ms. Toso stated no more alcohol. Ms. Toso asked when this would be effective. Mayor Jerkins stated right now you cannot sell anymore alcohol. Mayor Jerkins stated he didn't know how much alcohol was on the premises but something has to be with it Chief Starrett. Mayor Jerkins asked Ms. Toso how much alcohol she had in the restaurant. Ms. Toso's son stated they have about forty bottles that are open behind the bar. We have destroyed our surplus. Mayor Jerkins stated you need to remove all of it from the premises. You cannot legally sell the alcohol.

**MINUTES OF THE
REGULAR COUNCIL MEETING
CITY OF AUSTELL
MONDAY, OCTOBER 7, 2013
PAGE 7**

Ms. Toso's son stated we were going to save the liquor to see if my mother can take over the business at some point. Of course if that takes place I will be helping my Mother out. I tried to help my Father out but we had some issues. Mayor Jerkins stated again the alcohol needs to be removed immediately from the premises. Mr. Thomas asked Chief Starrett if he was going to meet with them and go over everything. Chief Starrett stated he would. Mayor Jerkins stated the alcohol needs to be removed and the restaurant part can stay open. Ms. Toso's son asked if the alcohol could be taken to their home. Mayor Jerkins stated yes, you can take it to your house. Chief Starrett stated you cannot transport open containers in a vehicle. Ms. Toso's son stated I guess we will just throw those out.

**10. FIRE DEPARTMENT
SCOTT THOMAS, CHAIRPERSON
Tim Williams, Fire Chief**

- A. Fire Report

**11. PUBLIC WORKS DEPARTMENT
KIRSTEN ANDERSON, CHAIRPERSON
Randy Bowens, Director**

- A. No Report

**12. PARKS DEPARTMENT
SCOTT THOMAS, CHAIRPERSON
Jim Graham, Director**

- A. No Report

**13. COMMUNITY DEVELOPMENT DEPARTMENT
SUZANNE THOMASON, CHAIRPERSON
Jim Graham, Director**

- A. Member Appointment for the Board of Variance Appeals
Mayor Jerkins stated Marlin Lamar will replace the vacant seat of James Hardy for the remainder of the term expired May 31, 2014. This represents Ward 1.

**MINUTES OF THE
REGULAR COUNCIL MEETING
CITY OF AUSTELL
MONDAY, OCTOBER 7, 2013
PAGE 8**

Ms. Reagan moved to follow the recommendation of Mayor Jerkins to approve Marlin Lamar to replace the vacant seat of James Hardy for the remainder of the term expiring May 31, 2014 in Ward 1. Seconded by Ms. Anderson. Motion passed (5-0).

14. ATTORNEY, DUPREE & KIMBROUGH

A. No Report

15. MAYOR'S REPORT

A. CMA MEETING
TIME:
LOCATION:

NO MEETING

16. ADJOURN

Mr. Thomas moved to follow the recommendation of Mayor Jerkins to adjourn the meeting. Seconded by Ms. Reagan. Motion passed (5-0).