

**MINUTES OF THE MEETING OF THE
BOARD OF COMMISSIONERS
TOWN OF MINT HILL, NORTH CAROLINA
DECEMBER 10, 2015**

The Board of Commissioners of the Town of Mint Hill met in regular session on Thursday, December 10, 2015 at 7:00 p.m. in the Mint Hill Town Hall.

ATTENDANCE

Mayor: Ted H. Biggers
Commissioners: Lloyd Austin, Carl M. Ellington, Richard Newton and Katrina (Tina) Ross
Commissioner-Elect: Dale Dalton
Town Attorney: Kevin M. Bringewatt
Town Manager: Brian L. Welch
Deputy Town Manager: Lee Bailey
Planning Director: John Hoard
Fire Chief: David Leath
Police Chief: Tim Ledford
Town Clerk: Michelle Wells

CALL TO ORDER, INVOCATION AND PLEDGE

Mayor Biggers called the meeting to order, ruled a quorum present and the meeting duly constituted to carry on business. Following the invocation offered by Commissioner Newton Mayor Biggers led the Pledge of Allegiance to the Flag of the United States of America.

ORDER OF BUSINESS

Addition, Deletion or Arrangement of Agenda Items: *Mayoral Appointments, Item #9* was deleted. Mayor Biggers stated he would add this agenda item to the January agenda.

Approve Minutes of November 12, 2015 Regular Meeting: Upon the motion of Commissioner Austin, seconded by Commissioner Ellington, the Board unanimously approved the minutes of the November 12, 2015 regular meeting.

Certification of 2015 Municipal Election Results for Mint Hill: Manager Welch read the November 3, 2015 General Election Abstract of Votes for the Town of Mint Hill's candidates as certified by the Mecklenburg County Board of Elections. Based on the election results, the following individuals were elected to serve on the Town's Board of Commissioners for a two year term: Ted H. Biggers, Jr., Mayor; and, Katrina "Tina" Weaver Ross, Carl "Mickey" Ellington, Richard Newton and Dale Dalton, Commissioners.

Mayor Biggers stated Commissioner Austin had served the Town since 1997; in the 18 years positive changes had ensued. He stated in 1997 there were 9 full-time employees responsible for the daily operation of municipal services including administration of recreational facilities, emergency services, planning and zoning and public works. The Post Office on Lawyers Road

opened in 1997. In 1998, NCDOT began construction on I- 485 and the Town webpage was launched. The library on Matthews-Mint Hill Road was built in 1999 and the Veteran's Breakfast began in 2000. In 2002, the Town provided a new fire truck plus three Town employees to the Fire Department and Queens Grant Charter School opened. In 2003, the Mint Hill Police Department began operations. Movies on the Lawn began in 2006. The Korean War Memorial began the planning stages of construction in 2007. The Carolinas Medical Center building opened in 2008. In 2012, Town Hall was built and opened at 4430 Mint Hill Village Lane. In 2013, the Mint Hill Police moved into a newly renovated building located at 7151 Matthews-Mint Hill Road and the Korean War Memorial was dedicated at the Mint Hill Veterans Memorial Park. Mayor Biggers stated Commissioner Austin had seen many changes in the last 18 years; he appreciated his years of service to the Town residents.

Mayor Biggers stated Commissioner Austin had been a loyal servant and had volunteered in a Town capacity along with civic groups and organizations. He brought the Mint Hill Lion's Club 5K to Town. He had served as Mayor Pro Tem several times. Mayor Biggers was sure they would remain good friends. He stated Mrs. Ann Austin had been a good supporter of the community, too. He presented Mrs. Austin with flowers and Commissioner Austin with a shadow box with the pictures of the old and new Town Hall along with the Town Seal.

Mrs. Austin stated she was very proud of Commissioner Austin as he placed the Town before anything else. She was amazed by his tact; he had been a wonderful commissioner.

Commissioner Austin had enjoyed serving the Town along with working with the elected officials. He stated there were many dysfunctional towns where the elected Boards and Staff couldn't get along. He stated Mint Hill wasn't dysfunctional at all. He thanked everyone from the bottom of his heart.

Commissioner Ross thanked Commissioner Austin for being the champion for sidewalks in Mint Hill. She had enjoyed sitting beside him at council meetings and she would miss him.

Commissioner Ellington said he joined Commissioner Austin on the Board in 1998 when the Board appointed him to serve the remainder of Commissioner Don Wilson's term. He stated Commissioner Austin had been a good Commissioner and if he ever needed anything that he would help in any way he could.

Commissioner Newton stated he and Commissioner Austin had found trouble and fun over the years. He recalled a story of removing a gumball tree from Commissioner Austin's front yard that was to be done while Mrs. Austin was away. They did get the tree down but not in time as they were caught by Mrs. Austin. Commissioner Austin was hoping she wouldn't notice. He reiterated he had enjoyed being friends with Commissioner Austin.

Manager Welch stated he would miss Commissioner Austin; the journey had been a good one.

Clerk Wells would miss Commissioner Austin.

Attorney Bringewatt had joined the Town in 1996 and couldn't recall not sitting beside Commissioner Austin. It had been a blessing to work for the Town and there was a lot Commissioner Austin should be proud of because Mint Hill was a spot of excellence. He enjoyed the friendship and he didn't take that for granted.

Planning Director Hoard had enjoyed working with Commissioner Austin.

Deputy Manager Bailey stated he would miss solving the world's problems with Commissioner Austin. He reminded Commissioner Austin that a title or position didn't define someone. Instead character and service to the community defined a person.

Fire Chief Leath thanked Commissioner Austin for watching out for the Fire Department and wished him the very best.

Police Chief Ledford had enjoyed, and would miss, the working relationship and friendship with Commissioner Austin. He wished him the best of luck.

Commissioner Austin thanked everyone.

Oaths of Office: Clerk Wells administered the Oath for the Office of Mayor of the Town of Mint Hill, North Carolina to Ted H. Biggers, Jr. Mayor Biggers administered the Oath for the Office of Commissioner of the Town of Mint Hill to Dale Dalton, Carl M. (Mickey) Ellington, Richard Newton and Katrina (Tina) Weaver Ross.

Comments from Mayor and Commissioners: Mayor Biggers thanked Commissioner Austin for his 18 years of service to the Town. He welcomed Commissioner Dalton. He thanked the residents for re-electing him and he would do his very best to grow the Town in a responsible manner based on the desires of the majority of the resident of Mint Hill. He pledged to maintain the quality of life and safe town atmosphere so people could live, work and retire here. He complimented the Board on running a clean campaign.

Commissioner Dalton thanked Commissioner Austin for offering assistance and being one of the first to call to congratulate him. He stated Commissioner Austin was a good friend and barber. Commissioner Dalton had grown up in Tennessee and just wanted to serve Mint Hill; he knew had big shoes to fill. He thanked his wife, neighbors, friends and family and pledged his service to the Town of Mint Hill.

Commissioner Ross stated it was her pleasure and privilege to serve the Town. She pledged to support all of the residents and would look out for the best interest of Mint Hill.

Commissioner Ellington thanked the residents of Mint Hill for their support. He expressed appreciation to the Fire Department and Police Department.

Commissioner Newton thanked the voters for re-electing him to his second term; he would do all he could for the Town. He said the people made the Town and he was proud of the great services offer to the residents.

Mayor Biggers realized Commissioner Austin was a good steward of money when they, had attended training in Chapel Hill, were invited to The Top of the Tower restaurant and Commissioner Austin ordered meatloaf while others were eating other entrees.

Election of Mayor Pro Tempore: Upon the motion of Commissioner Ellington, seconded by Commissioner Newton, the Board unanimously elected Katrina (Tina) Weaver Ross as Mayor Pro Tempore.

Commissioner Ross accepted and appreciated the honor.

Mayoral Appointments: Mayor Biggers stated he would make the appointments at the January meeting.

Ten-Minute Recess to Honor Elected Officials: Mayor Biggers declared a ten-minute recess.

Public Hearing on #ZC15-9, Filed by Wendell Long, Requesting Tax Parcels 139-121-13, 139-121-09 and 139-121-24 to be Rezoned from R to I-G: Planning Director Hoard's memo stated:

The applicant is requesting approval to rezone tax parcels 139-121-09, 139-121-13 and 139-121-24 from R to I-G district.

Please note the request is for by-right zoning. A Zoning Plan is not connected with the petition. Conditions are not permitted with by-right rezoning. The properties are governed by the Unified Development Ordinance.

*I-G, General Industrial District
By-Right*

Permitted Uses

Parking Garages; Radio and Television Stations; Truck Terminals; Governmental Essential Services Class 1; Post Offices; Public Garages, Service Buildings and Yards; Laboratories, Analytical, Experimental and Testing; Laboratories, Medical and Dental; Printing Plants, including Blueprinting and Photo Processing; Shops for Building Trades; Sign Painting; Storage Warehouse and Yards; Wholesaling with Outside or Inside Storage; Contractor Offices without Accessory Storage; Financial Institution; Office, Medical Services and Professional and Business; Outpatient Wellness Center; Brewery Tap Room; Retail Nurseries

Special Requirements

Car Wash (automatic and self service); Commercial Parking Areas; Animal Hospital (indoor kennel only); Lumber or Building Material Yards

*Conditional District
and Zoning Required*

Automobile Body Shop, Repair Shop, Service Station, Towing Wrecker Service, Sales and Rental (including trucks, boats, motorcycles, manufactured homes and RVs); Truck Washing Facility; Bus or Train Passenger Terminal; Bus Stations; Heliport/Helistop; Radio, Telephone and TV Broadcast Tower and/or Station (other than telecommunication towers);

Railroad Terminal and Yard; Transit Station; Truck Stop; Medical Education Center; Governmental Essential Services Classes 2-4; Flammable Liquids and Gases, Bulk Storage; Heavy Industrial Farm Equipment Sales and Service; Industrial Heavy Equipment Bulk Storage Yard; Junkyard and Salvage Yard; Machine, Metal and Woodworking Shop; Manufacturing, Processing or Fabrication; Mining; Mini-Warehouse; Moving and Storage Facilities; Crematorium; Health Centers; Hospitals; Orphanages; Physical Rehabilitation Hospitals; University/Teaching Hospitals; Personal Health Clinic; Firing Range; Nursing Homes and Rest Homes; Assisted Living; Convenience Store; Dry Cleaning /Laundry Plant; Dry Cleaning/Laundry Service Outlet; Restaurant; Restaurant with in-car dining; Restaurant with Drive Through; Retail Sales & Services (Less than 10,000 square feet gross floor area and not otherwise defined/listed)

Commissioner Ellington asked if Staff had received any complaints. Planning Director Hoard stated Staff had received a lot of calls and interest about the application. Commissioner Ross asked if there were any specific or particular concerns. Mr. Hoard stated the questions centered on what the zoning would do to surrounding property values, traffic, what may be built and the setback requirements. Mayor Biggers asked how many other “by-right” areas were in Town. Mr. Hoard stated there were a few and an example would be Downtown.

Mr. Wendell Long, applicant, stated he had discussed the project with the neighbors and had answered many questions. Mayor Biggers asked what questions he had encountered. He said neighbors had inquired about the growth in the area. They asked about fencing on the property; many neighbors thought the fencing would make it safer. Commissioner Ellington stated he was originally under the impression that it would include mini-storage but that would require a Conditional Use District zoning. Commissioner Ross stated storage/warehouse were By-Right whereas a storage facility appeared to be Conditional Use District. Mr. Long stated he wanted to build what the community and businesses needed and it would be an expansion of the other location. Commissioner Newton asked about wholesaling with outside or inside sales. How was mini-warehouse defined? Mr. Hoard stated the applicant would still need to submit a site plan and additional information would be needed for Staff to make a determination. Commissioner Newton stated it would be nice to have the information beforehand.

There being no public comments, Mayor Biggers declared the public hearing on Petition #ZC15-9 closed.

Public Hearing on #ZC15-10, Filed by The Town of Mint Hill, Requesting A Text Amendment to the Downtown Code: Planning Director referenced his memo to the Board:

The Board Retreat was held this past March. Staff was directed at this meeting to draft several amendments to the Downtown Code.

- Prohibit meters on the front elevation of new buildings facing Matthews-Mint Hill Road and Lawyers Road.

- Specify a requirement to use the green enclosure box for backflow.
- Require sod for new developments in the Downtown.

TEXT AMENDMENT:

4.4 Shopfront Building:

D. Techniques.

(2)

4.5. Workplace Building:

D. Techniques:

(3)

All rooftop equipment, utility boxes, transformers, meters, and similar structures must be screened from public view. The rooftop equipment shall be screened in building material that matches the structure or is visually compatible with the structure. Meters shall not be located on the building elevation facing Matthews-Mint Hill Road or Lawyers Road nor should the meters be installed in the yard area between building and said roads. The backflow enclosure box shall be green in color and screened.

8.1 Types of Landscaping:

Add D.

TYPE D (SOD REQUIREMENT). This type functions as the required ground cover for lawn areas exposed to public view. To this end sod shall be installed in a manner consistent with best practices prior to the certificate of occupancy being issued, including planting strips for newly constructed public streets. Exceptions may be authorized by the administrator when temporary ground cover is required for erosion control purposes (e.g. outparcels)

Discussion of the Board included illumination of the utility boxes, transformers, meters and/or similar structures from public view at the new Zaxby's. Staff was asked what was enforceable in the current Code. When Staff was asked if the Town could ask for more screening on current buildings, it was mentioned that even the new ordinance wouldn't cover it because it was on the side of the building. Mr. Hoard agreed that the illuminated items were not on the front elevation. Staff agreed to ask for additional screening the Board's request. It was mentioned, there had been confusion around the wall erected from the dumpster to the building. The Board all agreed building turned out very nice and was very pretty. Issues with the front elevation regarding meters and hardships/physical limitations may make this something the Board would want to refine more to avoid additional requests for exceptions on front elevations. Screening and L-shaped walls were mentioned as additional remedies to the current concern.

There being no public comments, Mayor Biggers declared the public hearing on Petition #ZC15-10 closed.

Public Comments:** None.

Appoint Trustees for Firefighter Relief Fund: Commissioner Tina Ross had been appointed to a one-year term in December 2014 to off-set the appointment cycle. Mayor Biggers recommended appointing Commissioner Ross to serve a two-year term as Trustee for the Firefighters' Relief Fund.

North Carolina requires that Trustees for the Firefighters' Relief Fund be appointed as follows: two appointments by the Volunteer Fire Department; two appointments by the Town (for municipal fire district) or County (for VFD fire district established by the County); and one appointment by the Insurance Commissioner. Historically, the Town's two appointments have included a citizen at large and the Town's liaison to the Fire Department.

Mr. Dick Lamb of McEwen Lake Lane had been appointed in December 2014 to serve a two-year term.

Upon the motion of Commissioner Ellington, seconded by Commissioner Newton, the Board unanimously appointed Commissioner Ross (Town Board's liaison to MHVFD) to a two-year term as Trustee for the Firefighters' Relief Fund.

Appointments to the Board of Adjustment: The following terms for the members of Board of Adjustments would expire December 31, 2015: Gary Isenhour, Ronald Rentschler and June Simpson Hood.

Upon the motion of Commissioner Ross, seconded by Commissioner Newton, the Board unanimously appointed Gary Isenhour, Ron Rentschler and June Hood to the Board of Adjustment with terms ending December 31, 2018.

Mayor Biggers asked Clerk Wells to place an ad in the Matthews-Mint Hill Weekly to advertise for additional positions for alternates and ETJ members for the Board of Adjustment.

Consider Amendments to the Peddling Ordinance; Action Deemed Appropriate: Manager Welch referenced his memo to the Board:

Over the past several months we have received complaints revolving around aggressive solicitors operating within the public right of way. Specifically, they were approaching vehicles in intersections and oftentimes were not completely out of the roadway before the light changes allowing vehicular movement. If continued unchecked, this had the potential for disaster.

Staff researched what other municipalities have done to address this situation and discovered specific authorization granted by NCGS 20-175. The following text illustrates the additions Staff is recommending. The changes/new language were in italics AND underlined. The new language is almost verbatim with current State law so Staff does not anticipate any legal hurdles. You will note the new ordinance provides for an application potential solicitors may request from the Police Department. Chief Ledford and Attorney Bringewatt were finalizing this document and we will get the BOC a copy for your information as soon as it is ready.

Staff hereby recommends that the Board amend Article VI—Peddlers, Hawkers and Solicitors to include changes made to Section 8-143 and the addition of Section 8- 147 as provided with this memo.

ARTICLE VI. - PEDDLERS, HAWKERS AND SOLICITORS

Sec. 8-143. - Organizations excluded from *certain subsections of this* article.

Except as provided in subsection 8-147, Additional Provisions regarding Pedestrians Soliciting Rides, Employment, Business or Funds upon Highways or Streets, below, this article shall not apply to solicitation for charitable, civic, religious, patriotic or governmental purposes by persons who serve without compensation or remuneration. For clarity, subsection 8-147 below is intended to apply, to all solicitations by pedestrians, specifically including, without limitation, solicitation for charitable, civic, religious, patriotic or governmental purposes by persons who serve without compensation or remuneration.

(Ord. No. 643, § 29-1, 9-12-2013)

□ **Sec. 8-144. - Solicitors and peddlers.**

(a)

Purpose. The purpose of this section shall be to protect the health, safety and general welfare of the public by regulating the business activities of solicitors and peddlers.

(b)

Definitions. The following words, terms, and phrases, when used in this section shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Business means the business carried on by any person who is a peddler or solicitor as defined in this section.

Peddlers, whether referred to as peddlers or hawkers, means and includes any person who travels by any means from place to place or door-to-door of residences with an inventory of goods, wares, or merchandise who sells or offers to sell the same at retail and who delivers the identical goods, wares, or merchandise.

Residence means and includes every separate living or dwelling unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

Solicitors, whether referred to as solicitors or canvassers, means and includes any person who travels by any means from place to place or door-to-door of residences for the purpose of taking or attempting to take orders for goods, wares, merchandise or services, whether for present or future delivery or performance.

(c)

License required. It shall be unlawful for any person to engage in business as a peddler or solicitor within the town limits without having first completed and filed an application and obtained a license from the Town of Mint Hill Police Department. Applicants shall be at least 18 years of age. The license shall be in the form of an "identification badge" that shall be displayed by the applicant in accordance with subsection (k) below.

(d)

Term and renewal of license. A license issued pursuant to this section shall:

(1)

Expire 90 days after the issuance thereof.

(2)

Be renewable for additional 90-day periods upon application submitted to the chief of police no later than 14 days prior to the expiration of the preceding term, accompanied by a fee as provided in the town's schedule of rates and fees, and duly approved by the chief of police or his designee.

(e)

Application. An application pursuant to this section shall be made on a form supplied by the chief of police or his designee and shall contain or be accompanied by the following:

(1)

The name, address, and telephone number of the applicant and, if a corporation, the name and registered agent of the corporation and the address of the registered office of the corporation as filed with the Secretary of State.

(2)

The name, address, and telephone number of the individual having management or supervisory authority over the applicant's business, if applicable, during the time that it is proposed to be carried on in the town and credentials authorizing the applicant to carry on business as an agent or representative of the principal.

(3)

A physical description of the applicant.

(4)

A state-issued driver's license or identification card bearing a photograph and the date of birth of the applicant.

(5)

If a vehicle is to be used, a complete description of the vehicle including make, model, color, and license number.

(6)

A description of the goods or services to be sold or offered for sale.

(7)

Evidence that the applicant has complied with any relevant state or local business license requirements.

(8)

The time period or periods during which business is proposed to be carried on in the town.

(9)

A fee as provided in the town's schedule of rates and fees to cover the costs of processing and investigating the application and issuing the license.

(10)

A complete statement by the applicant of any conviction for a felony or any crime involving fraud, deceit, or the receiving or possessing of stolen goods.

(11)

A statement by the applicant consenting to a criminal background check.

(12)

Any other information that the chief of police deems necessary to determine the character and ability of the applicant to comply with the requirements of this section.

(f)

Procedure and standards for issuance. Prior to the issuance of a license under this section, a criminal background check may be required which may include a search of local and state criminal records to determine if the applicant has a history of criminal convictions or crimes by use of the Division of Criminal Information Network (DCI). Any such background check shall be completed at the earliest practical time not to exceed 14 days from date of submittal of a completed application. As part of any such background check, the applicant shall be photographed and fingerprinted by the Mint Hill Police Department. In determining the acceptability of an application, the chief of police or his designee may consider any factors presented in the application or in any staff report relating to the application concerning the past record and ability of the applicant to perform the conditions of this section in a manner which

serves the public interest. Tangible evidence that the applicant has done one or more of the following shall constitute valid reasons for disapproval of an application:

(1)

Has been convicted of a felony or any crime involving fraud, deceit, the receiving or possessing of stolen goods, or moral turpitude.

(2)

Has made willful misstatements or fraud in the application or the application is incomplete.

(3)

Has committed prior violations of ordinances relating to peddlers, solicitors, vendors and the like.

(4)

Any other tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public health, safety, morals, or general welfare. Prior to the denial of a license based upon criminal history record information received from the DCI, the town shall verify the existence of the record by either obtaining a certified public record or by submitting a fingerprint card of the individual to the criminal information and identification section for verification that the criminal history record belongs to that individual.

(g)

Denial of license. An application may be denied if it is found that granting the license would not be in the public interest. An applicant denied a license under this section shall receive a written statement outlining the grounds on which the denial is based. The applicant then may appeal the denial of the license to the town manager within 15 days after the date of the written denial. In response to the appeal, the town manager may take such action as (s)he shall deem to be necessary. The findings and determination of the town manager shall be final.

(h)

Prohibited conduct. No peddler or solicitor shall engage in the business of peddling or soliciting except between the hours of (i) 9:00 a.m. and (ii) the earlier of (a) 9:00 p.m. or (b) sunset unless invited by the an adult resident of the residence to be at the residence before or after said time, or as otherwise further limited by the terms of the license.

(i)

Revocation of license. The chief of police or his designee may revoke a license issued pursuant to this section if he finds that the licensee has:

(1)

Willfully misrepresented or provided false information in the license application.

(2)

Been convicted of a felony or any crime involving fraud, deceit, the receiving or possessing of stolen property, or moral turpitude.

(3)

Been convicted of any offense or engaged in any activity that would be grounds for denial of issuance of the license.

(4)

Failed to comply with any terms or conditions of the license.

(5)

Conducted the business licensed in an unlawful way or in such a way as to constitute a hazard to the health, safety, morals, or general welfare of the public.

(6)

Has failed to comply with any requirement of this section.

(j)

Notice and hearing. Before revocation of a license, the chief of police or his designee shall notify the licensee of his intent to revoke the license and the reasons therefore and shall afford the licensee a reasonable opportunity to appear and be heard on the question of such revocation. After the hearing, the chief of police shall notify the license holder in writing of his decision and the reasons therefore. A decision of the chief of police to revoke a license may be appealed to the town manager in accordance with the provisions of subsection (g).

(k)

Display and possession of license and identification. Any person doing business as a peddler or solicitor shall have a license issued pursuant to this section with him at all times (s)he engages in the business for which the license is held. Each license issued under the provisions of this article shall be carried at all times by the licensee when he or she is engaged in business allowed under the permit. It shall be unlawful for such licensee to fail or refuse to exhibit such license when requested to do so by a police officer. Upon request of any customer, state or local revenue agent, or law enforcement agent or officer, a peddler or solicitor shall provide a valid driver's license, a special identification card issued under G.S. 20-37.7, a military identification, or a passport bearing a physical description of the person named, reasonably describing the peddler or solicitor. If the peddler or solicitor is a corporation, it shall, upon request of any customer, state or local revenue agent, or law enforcement agent or officer, give the name and registered agent of the corporation and the address of the registered office of the corporation, as filed with the Secretary of State.

(l)

Penalties. Any person found to be in violation of the requirements of this section shall be guilty of a misdemeanor, punishable as provided in G.S. 14-4.

(Ord. No. 643, § 29-2, 9-12-2013)

□ **Sec. 8-145. - Sale of merchandise on streets, sidewalks and parking lots.**

(a)

Permits generally. Unless having obtained a permit issued pursuant to this section, no person shall peddle, sell, barter, trade or auction merchandise of any description on any street, sidewalk, pedestrian way or public parking lot in the town.

(1)

Special occasion permits. The town manager or his designee may issue nonexclusive special occasion permits not to exceed eight hours in duration for purposes which are directly related to an occasion such as a parade, festival or promotional activity occurring in the town. Any such permit issued by the town manager must specify the effective date, the hours of duration, the merchandise to be sold, the name of the person selling the merchandise and the name of the person owning the merchandise for sale, if different, along with each such person's address and telephone number.

(2)

Street vendor permits. The town manager or his designee may issue nonexclusive permits for the sale of merchandise by a vendor from a cart in the area of the town known as the downtown municipal service district, provided that such merchandise shall be limited to hot dogs, sausages, bagels, pastries, candy, prepackaged sandwiches, chips, cookies, crackers, biscuits, popcorn, nuts, pretzels, other snack foods, ice products, ice cream, milk products, frozen yogurt, hot and cold beverages (containing no alcohol) and other related food and beverage items. Street vendor

permits may be issued as provided in this chapter and as further authorized by the town's schedule of rates and fees. A copy of the town schedule of rates and fees is located in the office of the town clerk and is incorporated by reference herein.

(b)

Definitions. The following definitions shall apply in this section:

Cart. Any portable vending device, pushcart or any other wheeled vehicle or device which may be moved without the assistance of a motor and which is not required to be licensed and registered by the department of motor vehicles, which is used for displaying, storing or transporting merchandise offered for sale by a vendor and which does not exceed four feet in width, six feet in length, and five feet in height (excluding any canopy or cover).

Sidewalk or pedestrian way. An improved walk or passageway intended for use by pedestrians and located between the curblines of the street, or between the lateral lines of a roadway if there is no curb, and the adjacent property line.

Vending business. The business of selling or offering for sale merchandise from a cart on or along a sidewalk or pedestrian way.

Vendor. The person engaged in the selling or offering for sale of merchandise from a cart on or along a sidewalk or pedestrian way.

(c)

Application. Any person desiring to operate a vending business within the downtown [municipal service district of] the town shall prepare and file an application with the town manager or his designee which shall contain the following information:

(1)

The name, address, and telephone number of the proposed vendor, and the name, address, and telephone number of the owner (if different from the vendor) of the cart to be used in the operation of the vending business.

(2)

The type of food and/or beverage to be sold and/or served from the cart.

(3)

The proposed sidewalk or pedestrian way location(s) of the cart(s) for which the permit is sought.

(4)

The proposed days and hours of operation of the vending business.

(5)

The number of carts proposed to be operated by the vendor, and a description and photograph or drawing of the cart(s) proposed to be used.

(6)

The location and description of off-street cart storage facilities.

(7)

The methods and routes for transporting the cart(s) to and from the sidewalk or pedestrian way location(s) and the storage facilities identified above.

(8)

The names, addresses and percentage of stock owned by each shareholder in any corporate vendor or cart owner, the names, addresses and percentage interest of each partner in any partnership vendor or cart owner, and the names, addresses and percentage interest of each member in any limited liability company vendor or cart owner.

(9)

Evidence of adequate insurance or other form of security to hold the town, its officers, agents, employees and taxpayers, harmless from any and all claims arising out of the operation of the vending business, in such amounts and forms as shall comply with subsection (d)(2) below as determined by the town manager in consultation with the town attorney.

(10)

An indemnity agreement, approved by the town attorney, whereby the vendor and cart owner, if different, agree to indemnify and hold harmless the town, its officers, agents, employees and taxpayers, from and against any and all claims arising out of the operation of the vending business.

(11)

Such additional information as may be required by the town manager or his designee to determine compliance with this section and/or to demonstrate that the applicant has the financial ability to satisfy the requirements hereof.

(12)

A fee as provided in the town's schedule of rates and fees to cover the costs of processing and investigating the application and issuing the permit.

(d)

Issuance of permit. No permit for the operation of a vending business may be issued unless the application is complete and unless the following requirements are met:

(1)

A certificate of inspection or compliance as required by any applicable health regulations and evidence of compliance with the fire code, all of which must be filed with the town clerk before any merchandise sales are made from any cart.

(2)

Proof of an insurance policy, issued by an insurance company licensed to do business in the state and acceptable to the town manager, protecting the vendor, cart owner (if different), and the town, its officers, agents, employees and taxpayers, from and against any and all claims for damages to property and bodily injury, including death, which may arise from operation of the vending business, which must be filed with the town clerk before any merchandise sales are made from any cart and annually thereafter. Such policy shall be a general liability policy naming the vendor as insured in an amount not less than \$500,000.00 per occurrence and \$1,000,000.00 aggregate combined single limit for bodily injury, personal injury and property damage. The policy shall specifically provide that the insurer shall provide written notice to the town at least 30 days prior to cancellation, termination or modification of any of the coverage provisions.

In determining the acceptability of an application, the town manager or his designee also may consider any factors presented in the application or in any staff report relating to the application concerning the past record and ability of the applicant to perform the conditions of this section in a manner which serves the public interest.

(e)

Denial of permit. A permit may be denied if it is found that the granting of the permit would not be in the public interest. Such would be the finding if, for example, the application fails to include all of the information required by subsection (c), if the requirements of subsection (d) are not met, or if the applicant proposes operation of a vending business at a location prohibited by subsection (f). Any applicant denied a permit to operate a vending business shall receive a written statement outlining the grounds on which the denial is based. The applicant then may

appeal the denial of the permit to the town board of commissioners within 15 days after the date of the written denial. In response to the appeal, the town board of commissioners may take such action as it shall deem to be necessary. The findings and determination of the town board of commissioners shall be final.

(f)

Permitted locations. No cart location shall be permitted except as authorized by the town's schedule of rates and fees. Additionally, no cart location shall be permitted:

(1)

Within 50 feet of the principal public entrance of any food service business not owned by the vendor which sells substantially the same merchandise proposed to be sold by the vendor, except by written permission of the food service business whose entrance is affected.

(2)

At any location which does not provide a clear passageway for pedestrians of at least four feet in width.

(3)

Within ten feet of an entrance to any building, except by written permission of the business whose entrance is affected.

(4)

Within 50 feet of any driveway entrance to any police or fire station or within 25 feet of any other driveway.

(5)

At any location where it would obstruct either pedestrian traffic at crosswalks or sight clearance at intersections.

(6)

Within 25 feet of any bus stop sign.

(g)

Prohibited conduct. No vendor shall do any of the following:

(1)

Vend on any street, sidewalk or pedestrian way beyond the location approved in the permit or in any area where vending is otherwise prohibited.

(2)

Vend between 11:00 p.m. and 6:00 a.m. or at any hours not allowed by permit.

(3)

Leave any cart unattended.

(4)

Store, park or leave any cart overnight on any street, sidewalk or pedestrian way.

(5)

Sell merchandise for immediate consumption unless there is a convenient litter receptacle available for customer use.

(6)

Leave any location without first removing and disposal of all trash or refuse remaining from sales made by the vendor.

(7)

Allow any items related to operation of the vending business to be placed anywhere other than in, on, or under the cart.

(8)

Set up, maintain or permit the use of any table, crate, carton, rack or any other device to increase the selling or display capacity of the cart.

(9)

Solicit or conduct business with persons in motor vehicles.

(10)

Sell anything other than that merchandise for which a permit has been issued.

(11)

Sound or permit the sounding of any device which produces a loud or raucous noise, or use or operate any loud speaker, public address system, radio, sound amplifier, or similar device which attracts the attention of the public.

(12)

Vend without the insurance coverage specified in subsection (d)(2) above.

(13)

Allow the cart or any other item relating to the operation of the vending business to lean against or otherwise be supported in any manner by any building or other structure without the owner's permission.

(14)

Permit advertising on any cart except such as to identify the name or type of merchandise being sold, the name of the vendor, and the applicable prices.

(15)

Vend or operate in any manner inconsistent with the terms of a valid permit.

(h)

Permit revocation. The town manager or his designee may revoke a permit issued pursuant to this section if he finds that the vendor has:

(1)

Deliberately misrepresented or provided false information in the permit application.

(2)

Violated any applicable provision of the Town Code or any county health department regulations.

(3)

Operated the vending business in such a manner as to create a public nuisance or to constitute a hazard to the public health, safety, or welfare, specifically including the failure to keep the sidewalk, pedestrian way and surrounding areas clean and free of refuse.

(4)

Failed to maintain any health, business or other permit or license required by law for the operation of the vending business.

(5)

Failed to use the permit fully in accordance with its terms within 90 days after issuance or within 15 days after notice of nonuse during the permit term.

(6)

Failed to qualify for a privilege license or a determination that either of the requirements set forth in subsection (d) above no longer is met.

(7)

By reason of background, financial condition, or conditions relating to the vending business, failed to render acceptable service to the public.

(8)

Failed to comply with any terms or conditions of the permit. Before revocation of a permit, the town manager or his designee shall notify the vendor of his intent to revoke the permit and the reasons therefore and shall afford the vendor a reasonable opportunity to appear and be heard on the question of such revocation. After the hearing, the town manager shall notify the permit holder in writing of his decision and the reasons therefore. A decision of the town manager to revoke a permit may be appealed to the town board of commissioners in accordance with the provisions of subsection (e).

(i)

Reservation of rights. The town reserves the right to require any vending business permitted under this section to cease part or all of its vending business within any location or locations in order to allow for construction, maintenance or repair of any street, sidewalk, utility or public building by the town, its agents or employees, or by any other governmental entity or public utility, and to allow for use of the street, sidewalk or pedestrian way in connection with parades, civic festivals and other events or a temporary nature as permitted by the town. In addition to those events described in subsection (h) above, the town also reserves the right to revoke any permit if the town manager or his designee determines that no permit should be granted to any applicant for a particular location within the downtown municipal service district.

(j)

Term, transfer, modification and renewal. Nonexclusive permits issued in accordance with the provisions of this section shall:

(1)

Be issued for the period beginning July 1, and expiring June 30 of each year.

(2)

Be in addition to any applicable annual privilege license required pursuant to applicable law.

(3)

Be subject to modification at any time deemed necessary by the town manager or his designee for protection of the public interest.

(4)

Be renewable for additional one-year periods upon application submitted to the town manager no later than April 30 preceding the June 30 expiration date and duly approved by the town manager or his designee for another one-year term.

(5)

Be nontransferable in any manner. Sale of a cumulative majority of stock in a corporate vendor or cart owner, if different, and sale of a cumulative majority interest in a partnership or limited liability company vendor or cart owner, if different, shall be deemed a transfer of permit which is prohibited.

(Ord. No. 643, § 29-3, 9-12-2013)

□ **Sec. 8-146. - Peddlers refusing to leave.**

Any peddler or hawker of goods or merchandise who enters upon premises owned or leased by another and willfully refuses to leave such premises after having been notified by the owner or possessor of such premises, or his agent, to leave the same, shall be guilty of a misdemeanor.

(Ord. No. 643, § 29-4, 9-12-2013)

□ **Sec. 8-147. – Additional Provisions regarding Pedestrians Soliciting Rides, Employment, Business or Funds Upon Highways or Streets.**

(a) *No person shall stand in any portion of the State highways, except upon the shoulders thereof, for the purpose of soliciting a ride from the driver of any motor vehicle.*

(b) No person shall stand or loiter in the main traveled portion, including the shoulders and median, of any State highway or street, excluding sidewalks, or stop any motor vehicle for the purpose of soliciting employment, business or contributions from the driver or occupant of any motor vehicle that impedes the normal movement of traffic on the public highways or streets: Provided that the provisions of this subsection shall not apply to licensees, employees or contractors of the Department of Transportation or of any municipality engaged in construction or maintenance or in making traffic or engineering surveys.

(c) [intentionally omitted]

(d) Except as provided in subsection (e) below, all persons are prohibited from standing on any street, highway, or right-of-way excluding sidewalks while soliciting, or attempting to solicit, any employment, business, or contributions from the driver or occupants of any vehicle. For clarity, this subsection is not intended to prohibit any person from engaging in the distribution of newspapers on the non-traveled portion of any street or highway except when those distribution activities impede the normal movement of traffic on the street or highway. Additionally, this subsection does not permit additional restrictions or prohibitions on the activities of licensees, employees, or contractors of the Department of Transportation or of any municipality engaged in construction or maintenance or in making traffic or engineering surveys except as provided in subsection (e) of this section. (e) Notwithstanding the foregoing a person may stand in, on, or near a street or State roadway, within the local government's municipal corporate limits, to solicit a charitable contribution if the requirements of this subsection are met.

A person seeking authorization under this subsection to solicit charitable contributions shall file a written application with the local government. This application shall be filed not later than seven days before the date the solicitation event is to occur. If there are multiple events or one event occurring on more than one day, each event shall be subject to the application and permit requirements of this subsection for each day the event is to be held, to include the application fee.

The application must include:

- (1) The date and time when the solicitation is to occur;*
- (2) Each location at which the solicitation is to occur; and*
- (3) The number of solicitors to be involved in the solicitation at each location.*

This subsection does not prohibit a local government from charging a fee for a permit, but in no case shall the fee be greater than twenty-five dollars (\$25.00) per day per event; said fee to be set by the Town Board of Commissioners

The applicant shall also furnish to the local government advance proof of liability insurance in the amount of at least two million dollars (\$2,000,000) to cover damages that may arise from the solicitation. The insurance coverage must provide coverage for claims against any solicitor and agree to hold the local government harmless.

A local government, by acting under this section, does not waive, or limit, any immunity or create any new liability for the local government. The issuance of an authorization under this section and the conducting of the solicitation authorized are not considered governmental functions of the local government.

In the event the solicitation event or the solicitors shall create a nuisance, delay traffic, create threatening or hostile situations, any law enforcement officer with proper jurisdiction may order the solicitations to cease. Any individual failing to follow a law enforcement officer's lawful order to cease solicitation shall be guilty of a Class 2 misdemeanor.

Commissioner Ross asked if section 8.145(c) *Application* could be applied to the entire Town instead of just Downtown. Manager Welch said perhaps Attorney Bringewatt could bring back a town-wide policy at a future meeting; if that was the desire of the Board. Commissioner Ross stated she was just suggesting changing the word Downtown to Town. It was mentioned that there was a hot dog cart operating outside of the Downtown area on the weekends. Attorney Bringewatt stated his focus had been simply on adding this new section. His initial reaction would be “no big deal at all” to make that change; however, there was another location in the document where Downtown was mentioned. He stated he didn’t have a good handle on whether the requests were broadening or narrowing the current confines; he felt more comfortable with placing it on the next agenda if that was agreeable to the Board. The consensus of the Board was to agree with the changes suggested by Commissioner Ross and revisiting it at a later date.

Manager Welch asked if the Board would like to adopt what was presented and modify it at the next meeting.

Upon the motion of Commissioner Ross, seconded by Commissioner Newton, the Board unanimously approved the amendment the Peddlers’ Ordinance as presented.

Other Business/Council Matters: Commissioner Dalton thanked everyone who voted for him. He stated it was an honor to be elected.

Commissioner Ross welcomed Commissioner Dalton to the Board. She thanked the Board for mentioning the passing of her mother-in-law Betty Ross. Mrs. Ross would be missed and she appreciated the thoughts and concern. Commissioner Ross stated Veronica Maldonado, Mint Hill Arts, had been selected by Adams Outdoor as a regional artist to have her painting turned into a billboard and posted for one year in Charlotte; it was a great honor. The Mint Hill Volunteer Fire Department, in October, responded to 246 EMS and 85 Fire Calls for a total of 331. In November they responded to 259 EMS and 93 Fire Calls for a total of 352. So far this year, the calls had exceeded last year’s amount. The career side of the Fire Department was fully staffed. Concern was expressed by the Fire Department over the roundabout construction at the same time. Expansion and renovation of the current fire station was on the radar. She attended the developer meeting for property at Idlewild and Highway 51. It was very well attended and had positive reactions from those in attendance. She attended Coffee with a Cop, the Senior Citizens Christmas Party, the Employee Breakfast, the Christmas Tree Lighting, the Zaxby’s Grand Opening (which was very popular and very well attended) and the Park and Recreation meeting.

Commissioner Ellington attended the Zaxby’s Grand Opening and it was very nice. He attended the Tree Lighting and stated the Senior Citizens Christmas Party was one of the best yet.

Commissioner Newton attended the Employee Breakfast, the Christmas Tree Lighting and Zaxby’s Grand Opening. He enjoyed each of them.

Manager Welch stated an organization meeting for the Athletic Facility on Brief Road was held with the architect. Clerk Wells would be in touch soon to set up dates for the upcoming called

meeting regarding the Athletic Facility. He welcomed Commissioner Dalton and stated he'd have "big shoes" to fill.

Chief Ledford wished everyone a Merry Christmas. He stated Coffee with a Cop would be held January 5th at Happy's Grill.

Chief Leath thanked the Board and looked forward to next year.

Mayor Biggers hated to miss the Zaxby's opening but he was in Raleigh at the State Board of Education. He joked that he did stop by the Zaxby's in Cary the same day and there was no crowd. He was tickled with the Zaxby's building and stated Commissioner Ross had a sharp eye. He stated Mint Hill was a special place around Christmas; he was looking forward to spending it with his family especially his 93 year old mother. He wished everyone a wonderful Christmas.

Closed Session for Real Estate: Upon the motion of Commissioner Ellington, seconded by Commissioner Ross, the Board unanimously voted to go into closed session for a real estate matter. No announcement was expected.

Following closed session, the Board returned to open session.

Adjournment: Upon the motion of Commissioner Ross, seconded by Commissioner Newton, the Board unanimously agreed that the meeting be adjourned. Mayor Biggers adjourned the meeting at 8:28 p.m.

Michelle Wells, Town Clerk