A work session of Beaufort City Council was held on January 19, 2016 at 5:00 p.m. in the City Hall Planning Conference Room, 1911 Boundary Street. In attendance were Mayor Billy Keyserling and council members Mike McFee, George O'Kelley, Stephen Murray and Phil Cromer, and City Manager Bill Prokop.

In accordance with the South Carolina Code of Laws, 1976, Section 30-4-80(d) as amended, all local media were duly notified of the time, date, place, and agenda of this meeting.

Mayor Pro Tem McFee called the work session to order at 5:00 p.m.

Councilman Murray made a motion to add an executive session to the end of the work session agenda for receipt of legal advice on the sale of property. Councilman O'Kelley seconded the motion. The motion passed 4-0. (Mayor Keyserling was not yet present at the meeting.)

BUSINESS LICENSE ORDINANCE

Kathy Todd said the first change to the ordinance is that all businesses in the City of Beaufort will be required to register for a business license – though they might not necessarily have to pay business license fees – so the city knows the business exists. **Al Johnson** said all businesses, whether nonprofit and for-profit, are required to register through zoning, but they are not handed a physical license, so this will give them a tangible license. **Bill Harvey** said this will provide the city with a way to follow businesses' activities.

Mayor Keyserling said this is a "registration," not a license, so a church, for example, would not have to pay for it. Councilman Murray said, "It's regulatory." At this time, for example, the city would have no control over a social club that was operating as a nonprofit and had issues with violence. This way, staff could revoke their license, though the club could come before council to appeal that.

Ms. Todd said nonprofits' licenses will go through the same system as for-profits' business licenses, but nonprofits won't be charged business license fees. Mr. Harvey said they don't want to have two kinds of business licenses, in response to Mayor Keyserling's suggestion that nonprofits receive registrations, rather than business licenses. Councilman McFee said this will allow "more auditing of their information." Mr. Prokop said, "Right now, we have no regulation over them, so that's what's key about this."

Councilman Murray asked if there's precedent for this. Mr. Harvey said yes, with regard to registration. Mr. Johnson said noncompliance, by a church, say, would be "a delicate situation." Councilman Murray said they must communicate well and make it easy for nonprofits to register, but putting "teeth" in the enforcement of this "is a tough one." Mayor Keyserling said no one will want to hear an explanation of why nonprofits have to get a business license, which is why he had suggested they get a registration instead. **Maxine Lutz**, Historic Beaufort Foundation, said she doesn't object to registering as a nonprofit, but good public relations about this matter will be important.

Mr. Johnson said licensing every nonprofit is "a newer, ongoing process that is starting to take place." There are only "a handful" of municipalities doing this in South Carolina. Councilman Murray said if they knew what communities were doing this, it would help council to sell the idea to Beaufort, if council passes this ordinance change. Ms. Todd said they had heard from other South Carolina municipalities that they were doing it on an ongoing basis for new nonprofits but not doing it retroactively.

Ms. Todd said if it's "only applied . . . on a go-forward basis, you won't capture . . . existing" nonprofits right away. Councilman O'Kelley said per the Constitution, there can be "no ex post facto laws," i.e., both established and new nonprofits can only be registered from the effective date of the ordinance change. Mr. Prokop clarified that the city will not tell a currently established organization that it has to have a license until next year, or whenever the effective date is. Ms. Todd said these nonprofit licenses will be annual, anyway. Councilman Murray asked if there's a database of all existing nonprofits in the county now. Mr. Johnson said he believes they can easily get that from the county.

Councilman Murray asked about a building owned by a private property owner that is leased to a non-profit; Councilman O'Kelley said "the owner is not exempt." A for-profit owner has to pay property taxes, whomever (s)he leases to. Councilman McFee said if a nonprofit leases a building to a for-profit company, the nonprofit should be paying taxes on it.

Ms. Todd reiterated that the idea behind this ordinance to register all businesses is to add "administrative oversight." Councilman Cromer said by the time council votes on this, it will be close to April 15. Mr. Harvey said they could well postpone it to 2017. Mr. Prokop said doing so would also add time to do proper PR.

Councilman Murray asked if a business like Second Helpings, which technically has no physical location, would be required to register for a business license. Mayor Keyserling said, to be consistent, the answer should be "Yes."

Ms. Todd asked if council wanted additional language added that ensures the ordinance has teeth: The city can send letters telling nonprofits to get a license, but if they don't do it, should a summons be the next step?

Mayor Keyserling said this ties into the next change to the business license ordinance, in that with registration of nonprofits, the city would benefit from "direct access to a nonprofit's 990" (federal tax form). If the 990 shows a nonprofit has four rental properties, for example, the city can declare those 6% properties and tax them. There was a discussion of the county taxing the city for renting the old post office to a commercial business.

Mr. Johnson said, through zoning, **Libby Anderson** determines what the activity of a business/organization is and if it's allowed at a particular location. Then that business is required to apply for a business license: "We're trying to find out the activity as well," he said.

Even if an organization doesn't need to pay business license fees, by having a license, "they are in a folder," Mr. Johnson said, so they could be shut down if there's a problem at that location.

Ms. Todd described the current language in the business license ordinance about charitable institutions and income. 7-1006 gives more definition to what income is and isn't exempt, she said. "Activities that are . . . ancillary to their charitable purpose" – e.g., a day care or a fitness center that is part of a nonprofit but is open to the public – "are considered unrelated business income," Ms. Todd said, "and this ordinance gives a little bit more teeth to our current ordinance, (requiring) a business license tax to be assessed against those components."

Councilman Cromer said he understands a business license tax on income from a nonprofit's rental property, but if a church is given property as a donation, but it doesn't need and sells it, would they have to pay tax on it? Mayor Keyserling said if it was a rental property, yes, but if it's sold, no. Councilman O'Kelley said the ordinance says for "the sale or rental of property."

Mr. Harvey said that after a meeting with **Danny Crowe** to discuss this, Mr. Crowe wrote this part of the ordinance based on that discussion. Councilman Cromer said he sees that as a problem, if the money from the sale of donated property is used for the running of the church. Ms. Todd said there would have to be more than one property sale for the church to be considered a business. Mr. Johnson said, "Repeated sales could be a problem." Ms. Todd said that it seems it would "still retain the donation aspect." The city is not going to go after parts of the 990 that the IRS would see as exempt, she said. There was general agreement among council that the language needed to be amended for clarity.

Councilman O'Kelley said the ordinance states that the sale of religious books, day care, and catering services are exempt if they are to a church's members. Ms. Todd said the distinction is whether a sale or service is restricted to the nonprofit's members or is open to the public. Councilman Murray asked, if a church has a day care, and a percentage of the children that attend belong to members, and a percentage belong to non-members, how does the city differentiate? How do they determine who has church membership? If they have *any* non-members' children in the day care, it's a business, Councilman McFee said. Ms. Todd said the key is the reporting on the 990, which the organization would have to do for income from those non-members. Councilman O'Kelley suggested adding "exclusively for its members."

Ms. Todd said if a nonprofit has a fitness center, and it's open to the public for a monthly fee, it is in competition with for-profit fitness centers, so even though it's under a non-profit's umbrella, if it reports for-profit activity on its 990, it's taxed by the IRS, so it would also be subject to a city business license tax.

Mayor Keyserling asked about the YMCA; Ms. Todd said however income is reported on the organization's 990 is how the city would tax it. Councilman McFee said you have to be a member of the Y, technically. Councilman O'Kelley said it's different from a church, though, because you don't pay a fee to join a church.

Mr. Johnson said a lot of municipalities are enforcing this “other income” type of ordinance. Mayor Keyserling asked, if a lot of cities are doing this, but only a few are doing business license registration for nonprofits, how do they do it? Mr. Johnson said the nonprofits can be audited and asked for their tax returns: “Some of it’s easy to see, and some of it’s not.”

Mayor Keyserling asked about cases where all income goes back into a nonprofit’s programming; Ms. Todd replied that if the 990 shows it all going back into programs, and it’s not taxed by the IRS, it will not be taxed by the city. Mr. Johnson said current 990s can be difficult to obtain.

Councilman Murray asked if there was a guess on the number of entities that would fall under this ordinance; he agrees with the fairness factor, but asked “Is the squeeze worth the juice?” It will take a lot of staff time to ensure that everyone’s in compliance and may only generate half a staff member’s salary. Ms. Todd said “a couple” of the city’s nonprofits have multiple organizational structures under them, and that is where the most revenue will be. Ms. Todd said being able to ask for the 990 from a nonprofit’s most recent filing would be “the tell-all.”

Mr. Prokop said there needs to be some kind of penalty for nonprofits that don’t produce a 990 within 60 days, for example: Should there be a fine? Will the police come and shut the organization down? He told council it needs to determine how strong the penalty should be.

Councilman Cromer asked, if council passes this ordinance, how much of a problem this would create in the state legislature when they hear of it, since they are already looking at municipalities’ business licenses. Mr. Prokop said other South Carolina municipalities are looking at doing this. Ms. Todd asked, if a nonprofit’s activity “is taxed by the IRS . . . should they not also pay a business license tax on that same activity?”

Councilman McFee read what the IRS considers “unrelated business income” (UBI), which necessitates filing Form 990 and the payment of “unrelated business income tax.” Ms. Todd said they might reference that language in the ordinance or adapt some of it for the city’s ordinance.

Councilman Cromer said this is also fairer to the citizens of Beaufort because nonprofits get city services, such as fire and police, but might not be paying fees to the city on UBI. Mr. Prokop said this could be part of the budget process, if they wait until 2017 to implement it.

Mayor Keyserling asked if anyone had spoken to any nonprofit stakeholders – people at the hospital, for example – or had met with them, so this isn't “something that comes out of nowhere.” He thinks they should be spoken to as a first step before council makes a decision or does first reading on this. Councilman Murray said if council schedules a first reading, it “might generate interest.” Mayor Keyserling said that he’s “inclined to get them to take ownership early.” They should figure out who the 10 to 12 “larger, louder stakeholders are and have a conversation with them.” Councilman Cromer agreed.

The third component of the proposed business license changes, Ms. Todd said, is about group events that organizations sponsor. It puts the burden on the sponsor to pay for a group business license for the vendors at the event, so they don't all need to come in and get individual itinerant business licenses. Mr. Harvey said the comments from September's work session on this matter had been synthesized and put into the form that is before council now. It will be a simple fee structure, Ms. Todd said. Mr. Harvey said it is based on the number of vendors because self-reporting income after-the-fact is difficult.

Mr. Prokop said this only applies to those vendors who don't have city business licenses. Ms. Todd said the fee is currently $64 for an itinerant peddler; the fee for a license for events with 1 to 5 vendors, for example, would be somewhat less than 5 x $64. She said it exempts the grandfathered festivals "under their current structure."

Councilman Murray asked the reason for the requirement to get this license 10 days prior to the festival opening. Ms. Todd said "to make it easy for administrative purposes." Councilman Murray asked if they could reduce that, because some businesses won't know that they need a license and could find out 6 or 7 days before the event. Mr. Harvey said this applies to the event *sponsor*, not to individual vendors. Ms. Todd said that this way Mr. Johnson can reach out to the sponsor 10 days prior to the event and tell them that the city doesn't yet have their business license application. Mr. Johnson said the applications typically come in a month or two before the event. Mr. Prokop added that if the city knows that an event is to have 25 vendors, for example, it will need public safety, etc., so they need to know far enough in advance to plan for that.

Mr. Prokop asked how council wants staff to reach out to stakeholders. Councilman Murray suggested that staff come up with a list, and if anyone on council has relationships with people on the list, councilmen could go with staff to talk to them. It was agreed that doing this in 30 days seemed reasonable. Mr. Prokop asked if staff should send something to the stakeholders before meeting with them. Councilman Cromer said he'd want to be reading something, so staff should clean up the language of the ordinance changes, and give the stakeholders a draft first.

Councilman Murray asked how the city would calculate the business license fee on a nonprofit that was found to have UBI. It would be based on their rate classification, Ms. Todd said, just like it is with for-profit businesses. Most won't mind registering when it's free, Councilman Murray said, but they might object to the business license tax, especially if it's a larger organization with substantial UBI. Ms. Todd said such an organization's income tax, at 25%, is going to be much higher than the business license fee will be. Councilman Murray said, maybe, but council and staff should be prepared for the question "How much is it going to cost me?" from nonprofits.

Councilman Cromer asked Mr. Johnson if they currently ask nonprofits about their business activity or ask if they file a 990 at the zoning stage. Mr. Johnson said he doesn't know if they're asked about submitting a 990, but that's a good idea. Councilman McFee and Ms. Todd

discussed the income levels nonprofit organizations must attain to be required to file a 990.

Mayor Keyserling said he thinks that they need to look at a municipality that has done this to "look at what they've been through." Councilman Murray suggested the MASC convention would be a good place to do that. Mr. Prokop said he will be at the city and county managers' state meeting this week, and they would be a good resource.

Paul Thompson, owner of Panini's, said he is a local business stakeholder and feels registration of nonprofits "has a bad appearance" because its purpose is "to get financial data that you're currently not privy to" in order "to get revenue . . . As a revenue source, I think it's a dangerous thing." Councilman O'Kelley asked Mr. Thompson about "folks that get under a nonprofit umbrella, and they don't change a thing." Mr. Thompson said he knows organizations do that "pretty regularly," but that registration of nonprofits could have the "appearance of abuse" by the entity "imposing that registration." Ms. Todd said for-profit businesses are not asked for a tax return when they file for a business license, and nonprofits wouldn't be, either. The city would only ask for the 990 from a nonprofit if there were "suspicion that there is for-profit activity going on."

Councilman Murray asked about other South Carolina municipalities' festival license requirements; Mr. Harvey said there are "various permutations" of it. They tried to make it "less intrusive" based on council's comments in September. Councilman Murray said he's comfortable with what was presented. Ms. Todd said they could move forward on that component and hold the other two. There was general agreement that separating the festival license component and moving it forward to first reading was a good idea.

GENERAL OBLIGATION REFUNDING BOND OPTIONS

Mr. Prokop said bond counsel and financial advisors had told staff that this is the time to do this because of the great rates. Council also needs to consider whether they want to do some additional borrowing. He said the numbers staff gave council are estimates, but they do know there are some expenses they are going to have for upfitting and other building repair. So do they want to take advantage of the discount they would get borrowing money for that now? Mr. Prokop asked.

Councilman McFee asked if they have to identify specific amounts they'll need for specific projects. Ms. Todd said they can have a general capital needs list. Councilman Murray asked what the deadline is for creating a list of projects for that. Ms. Todd said next Tuesday would be first reading. They could make a generic list of projects "on our CIP or some other need" that is brought up.

Councilman McFee said if they don't add on borrowing now, they have to wait two years. He asked what the most prudent fiscal position is. Ms. Todd said from a monetary standpoint, she had indicated the mils it would add to borrow $2 million and $3 million. If there's no new money borrowed, the debt mil goes down, she said.

Mayor Keyserling said if he were running a business and could get cheap, good credit, he'd do it. Councilman McFee said it's in the best interests of the constituents to give them a break on the debt mil. Mayor Keyserling said, "We really aren't doing what we said we'd do, which is pay it off." He's inclined to refinance but not to add money. Mr. Harvey said, if they do that, "You'd be freezing your bonding ability for two years," so they need to look ahead at that. There was general agreement that they *have* to refinance.

Councilman Murray said Boundary Street's funding stream in two years could be an issue. Mayor Keyserling asked what the debt is on the commerce park. Ms. Todd said, "It's all tied together." In regard to Boundary Street, it's one-third funded by TIF 2, which ends at the end of 2017, so the revenue from that increment will go away, and they won't know how much – if any – will be left. There are contingencies on Boundary Street, she said. The next project on TIF 2 is Greenlawn Drive, but that's tied to whether there are TIF 2 resources left. There could be nothing to finish the project or to match the CDBG grant, Ms. Todd said.

Councilman Murray asked what would happen if they borrowed $2 million, but then didn't need it, so they didn't spend it. Ms. Todd said as far as paying income tax, "interest rates would . . . have to climb significantly for us to have a tax implication from that $2 million." She said she doesn't know if they could pay that money back without penalty, so they will ask bond counsel if there could be a prepayment clause. There is one in the commerce park, she said.

Councilman Murray asked the city's current bonding capacity. Ms. Todd said approximately $6.4 million is left in bond debt capacity. Mayor Keyserling asked, if they refinanced, if they could borrow via any other kinds of bonds. Ms. Todd said, "No other debt financing" would be allowed. Mr. Prokop said they could probably get by without borrowing for two years, but if they make that decision, there's a limit to what can be done on capital projects, which have already been deferred for two years. Of the items in the list of ten given to council from staff in an interoffice memo, the most pressing, Mr. Prokop said, are the marina, Waterfront Park, and "facilities, like the armory ([*sic*] *He meant the Arsenal – steno.*), the air conditioning, the roofs," etc. In terms of "real needs," he said, over the next two years, "it would be nice to have between $500,000 to a million to cover what we really need."

Councilman Murray asked if the ten items staff had identified as "projects (that) could be considered in support of adding new debt" were on the CIP. Ms. Todd began reviewing which of those items were among the CIP. Councilman Murray suggested that staff could add the items on that list to the CIP, with the "costs associated," so council could "see the different funding streams" – e.g., on the Greenlawn project – which might "allow (them) to prioritize better."

Ms. Todd said to meet the bond schedule, get the rating agencies in, have 30 days to publicize it "in several publications," etc., first reading on the refunding has to be at next week's council meeting. They can have two separate ordinances, Mr. Prokop said, or they could change it at second reading, Ms. Todd added.

In regard to prioritizing, Councilman Murray said, the marina isn't on the CIP, and the city has

received a significant amount of funding for repairs to it in the last nine months, so it would be good for council to know how much more they might they need to finish the work, or if they could hold where they are and defer further improvements for now. Without knowing priorities, he said, it's impossible to know which needs are great enough that the city should borrow money to pay for them.

Councilman Murray suggested that first reading be for the refunding *without* the new money. Mayor Keyserling agreed. Looking at the CIP for critical issues that aren't known at this moment, but for which they might need money, Councilman McFee said, is a good idea.

CDBG PRIORITY NEEDS

Councilman Cromer said his top 5 project priorities are
1. The Greenlawn Drive streetscape
2. Sidewalks on Salem Road
3. Drainage improvements
4. Duke Street streetscape to Ribaut Road
5. Redevelopment of the old jail area

Mayor Keyserling said he agrees with Councilman Cromer on "Greenlawn because . . . it's tied to Boundary Street," so if there's a "shortfall, it will help us." Ms. Todd said to complete Greenlawn, which is estimated to cost $1.3 million, they will need $750,000 in addition to $500,000 in CDBG money and a $50,000 city match. Councilman Murray said, if they prioritize it, they have to "be prepared to find $750,000 more."

While there is a "healthy contingency in the Boundary Street project," Ms. Todd said, she doesn't want the city to get in a position where they commit TIF 2 funds to another project before knowing what Boundary Street will cost and what (if anything) will remain after Boundary Street is completed. Boundary Street is "a very complex project," she said, and "we're going to have surprises." So will the contingency that is built in be adequate to complete the Boundary Street project? Ms. Todd asked. Therefore, planning on using TIF 2 funds on *another* project, when Boundary Street has "such a big question mark, makes me a little uneasy."

Councilman Murray asked, if they prioritize Greenlawn, and are awarded the CDBG money, if they have to move it forward within a specific time. Ms. Todd said, yes, typically it's an 18-month timeframe. Councilman Murray asked the required city match on other improvements. Ms. Todd said the maximum CDBG award is $500,000, so the largest city match would be $50,000. There was a general discussion about projects, including Salem Road, and whether the county might pay some of the costs, e.g., as part of the Spanish Moss Trail.

Mayor Keyserling said, in terms of priorities, "historically, (council has) taken the staff recommendation." Ms. Anderson said staff's first 5 priorities were 1) Greenlawn, 2) drainage, 3)sidewalks on Salem Road, 4) rehab/reuse of Pruitt's grocery store, and 5) "the housing program."

The Salem Road and Duke Street projects "will be expensive," Ms. Anderson said. All of the projects "will (cost) way over $500,000." A minimum city match of 10% is small; in the past, the city has put in much more than that, she said, which is probably why they have been successful in getting the grants that they gotten, because the projects cost much more than the maximum grant amount. All the projects probably exceed $1 million, so they would have a shortfall even with CDBG money, and would have to come up with other resources, for which, Ms. Todd answered Councilman Murray, they have no plan.

Deborah Johnson said they could pick one priority project, and if they decide they can't do it, and go to priority #2, it won't hurt their chances. They could also apply for two grants. They can "re-rank for a critical reason," she said, but they should choose their top 5, or at least their top two or three.

Councilman Murray said an updated CIP list would help council prioritize better, and on it, staff could indicate the costs of projects and also where money to cover shortfalls might come from. Ms. Todd replied that if fund balance isn't sufficient to cover shortfalls, they "need new money."

Councilman McFee said council can't do a work session, then have a first reading, per council policy. There was a general discussion about scheduling. Mayor Keyserling said CDBG priorities could be held off, but he's still in favor of moving forward on first reading with refinancing but no increased debt. Councilman Murray said that's his "default," too, until he sees the revised CIP.

EXECUTIVE SESSION

Pursuant to Title 30, Chapter 4, and Section 70 (a) (2) of the South Carolina Code of Law, **Councilman O'Kelley made a motion, seconded by Councilman McFee, to enter into Executive Session for receipt of legal advice on the sale of property. The motion passed unanimously.**