

A work session of Beaufort City Council was held on September 20, 2016 at 5:00 p.m. in the City Hall Planning Conference Room, 1911 Boundary Street. In attendance were Mayor Billy Keyserling and Councilmen Mike McFee, George O'Kelley, Stephen Murray, and Phil Cromer, and Bill Prokop, city manager.

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 Keyserling called the work session to order at 5:00 p.m.

**PRESENTATION: BOUNDARY STREET UPDATE AS OF JUNE 30, 2016**

**Rob McFee** showed a map of the parameters of the Boundary Street project. He shared the project's objectives. There have been 5 change orders totaling \$46,319, so the revised contract amount is \$18.8 million. He explained the change order process and said none are pending at this time.

Mr. McFee showed the project's funding sources (e.g., federal TIGER grant, county 2006 sales tax, TIF 2, etc.) The financial accounting update as of June 30, 2016, he said, accounts separately for the expenditures and encumbered amounts for the county and the City of Beaufort. As of June 30, 2016, the project was 28% complete, and it was 4% ahead of schedule, he said.

Mr. McFee showed photos of the project, including the coordination meetings of the utilities. He said the city manager and he are making sure "E&G is reporting their actual costs," and that they "have good financial controls up front" on E&G, so they know "what they're charging us."

Mr. McFee said the duct bank on the marsh side of Boundary Street is complete, and the utilities are populating it, and it's going "very, very well." The contractor anticipates shifting traffic in the next few weeks so they can work on the duct bank on the other side of Boundary Street. Mr. McFee also showed images of efforts to control erosion at Battery Saxton.

Councilman O'Kelley asked Mr. McFee to "guesstimate" how complete the project is to-date, and Mr. McFee said it is about 36% complete, and expenditures are at 32% "and change."

Councilman Murray asked where the duct banking would start on the north side of the road. Mr. McFee said on the north it will end near Neil Road, and on the south, it runs all the way to Ribaut Road. Mr. Prokop said it will start at City Hall.

The scheduled completion date is late 2017 or early 2018, Mr. McFee said. Councilman Murray asked about the wooden boardwalk and where it would go. Mr. McFee said a big component of the project was the pedestrian component. There's a wide multi-use path poured now. To minimize impact on saltwater wetlands, they put two boardwalk sections on the right side of Boundary Street. Mr. McFee showed the signal at Enmark, which will be similar to a "hawk" signal, so pedestrians can press a button to cross Boundary Street. A smaller multi-use path

continues on the cemetery side, he said.

Mr. McFee showed which streets are city streets now, and which will be city streets when the project is finished. Mayor Keyserling asked him how this project compares to other projects Mr. McFee has worked on. Mr. McFee said, "It's going very, very well." It's "as complex a project as Beaufort County has ever built," he said. The commitments of the city and county councils have made this project work, he said, because projects like this are disruptive and unpopular with the public while they are going on. Every time he does a project of this sort, initially, the public is "bristling," he said, but when the work is done, "everyone . . . sings its praises." The left side duct bank will be "tough," Mr. McFee said, and there will be a new traffic pattern, but the signals are "handling the traffic fairly well."

Mayor Keyserling asked about the 2-lane left turn onto Highway 170. Mr. McFee said once they're past the Highway 170 intersection, they can "turn the pavement back over to the traffic," which will "allow the dual left." He is hoping that within 3 months they will be able to do that. He said he would come back to council in about 4 months.

Mayor Keyserling asked about "any surprises." Mr. McFee said the biggest ones were associated with the location of in-ground utilities that the authority thought were elsewhere than where they were. The right-of-way acquisition brought several surprises, but that's now "water under the bridge."

Mr. Prokop thanked Mr. McFee and said the city and the county's cooperation is making it "work the way it's supposed to work" on all levels. The utilities have also been cooperating well; they have "shown up" and are getting their work done on time, Mr. Prokop said.

#### **HORSE CARRIAGE ROTATION SLOTS MINIMUM BID**

**Ivette Burgess** said next month the process would start for bids on the carriage rotation slots, which expire in January. By ordinance, council sets the minimum bid, she said. The bids are for 5 years. Two slots are available, and the city's two current carriage companies were represented at the meeting. Last time, the minimum bid for the slots was \$25,000, Ms. Burgess said; one company's bid came in at almost \$40,000, and the other was almost \$30,000.

Councilman Murray asked those who were on council in 2012 about their thinking when they made the minimum bid \$25,000. Councilman O'Kelley said 3 companies bid and a couple of them bid that high. **Rose White** said the minimum bid had been \$10,000 before that.

Councilman Cromer asked if the city is doing inspections. Sgt. **Hope Able** said she gives the tour guide tests for certification and ensures that information about the horses is up-to-date. That's all the enforcement they do now, she said, unlike in the past. Sgt. Able said in the last months, she's had just six complaints about the carriage companies, and most of those were because of the heat this summer. The operators no longer report on each other.

**Peter White** said his company, Southurn Rose Buggy Tours, is going into its seventeenth year of

operation. He said he wanted to discuss the bid and the length of the contract. They are not a franchise, Mr. White said, so they would be most comfortable with a 10-year contract, rather than the current 5-year contract. Ten years would allow operators to “work in the positive,” which can be difficult, especially for new operators, in 5 years. He said 10 years would be fairer, and the two carriage companies are getting along, so both would like to “reap the benefits” of their work.

Mr. White said he and his wife are “very restricted in their income” from Southurn Rose, even if they filled every carriage for every tour, which they don’t, because there are slow periods. They get shut down because of heat, he said, are slow in January and February, and their business is interrupted by festivals. They aren’t always able to capitalize on the busy times because of the restrictions on the numbers of carriages that are allowed. They could “use the extra money that goes into the slot fee,” Mr. White said. Bus tours and walking tours have an impact on the Waterfront Park that is comparable to theirs, he said, but buses’ fees are \$1,500 a year. Mr. White asked that council give \$10,000 as the minimum “a try.” Bids will be higher than that, and the carriage operators feel that they don’t put more of a burden on the city to justify their minimum fee being greater than that.

Ms. White said if the bid minimum were set at \$10,000, it would give them a chance to bid without going to the maximum at the start. Caring for horses and paying their employees costs a lot, she said. They can’t bring more employees in during the busy season and then cut them in the slow season; they have to have a set number of employees every day “just to capitalize on our license.”

Ms. White said she and Mr. White are talking to the other carriage operator and “working things out together.” Their communication is “great,” she said, but they might get outbid and not be able to enjoy the fifth year of their contracts.

Ms. White added that she appreciates the “heat machine,” which they don’t have in Charleston, and the police department checking the horses in the heat.

**Nichole Myers** bought out Sea Island Carriage Company in April 2014. Because of the reputation of the previous owner of the company, she said it “has been a struggle,” especially because she needs to pay the \$40,000 fee, which is the amount the previous owner had bid. For Ms. Myers to meet the ordinance requirements, she said the slot fee has to be lower. She agreed with Ms. White that a 10-year contract would be “amazing,” so she could take on a loan, for example, and know she’ll still have a business in 10 years.

Mayor Keyserling said, “Things are great today,” but if they make these requested changes, and these two companies are not the bid winners, that creates issues for the city. Councilman McFee asked if Mayor Keyserling was saying that increasing the minimum bid to \$25,000 was to spur competition. Mayor Keyserling said no, it was because of the time and energy the city spent managing the carriage companies.

Councilman Murray said the city rarely chooses the “lowest responsible bidder” on price alone. They look at various criteria for other contractors, but here, the choice of who gets the two slots is solely based on price. He suggested there should be other considerations, such as experience and references, for example. Councilman O’Kelley said the lowest responsible bidder for a contract at City Hall is different than these carriage companies’ bids, because the carriage companies “present no benefit” to the city after it receives the bid amount. He said the minimum bid “gives them 5 years, and they don’t pay another bid” during that time, while the bus tour companies pay every year. Councilman O’Kelley was told that bid amount (e.g., \$25,000) was paid every year, and he said, “Then I think it’s too high.”

Councilman Murray said the carriage companies “are more than a franchise,” because “tourism is an important part of who we are as a city,” and it’s “one of our #1 economic drivers.” Customer service to visitors is essential, he said, “when they’re on a carriage,” so he wants visitors to have “a five –star experience.” Just because someone can pay the highest slot fee, whether they have experience in this field or not, they can get the carriage contract. Councilman Murray feels “we should be careful who we grant a bid to.” Also, just because the minimum bid amount is lowered, it doesn’t mean someone won’t come in and bid higher than the minimum, he said. Carriage companies won’t necessarily pay only \$10,000 if the minimum is lowered to that.

Mayor Keyserling said this is about “quality and peace of mind.” Councilman McFee said any business has additional requirements that cost money and has to pay “additional fees.” The carriage companies are different than other licensed businesses in the city, but their “cash flow is not different than any other business,” except for having a minimum slot fee that they have to bid on.

**Evelene Stephenson** said when Beaufort went to having only two carriage companies, there was a “federal issue,” because of the limit on the number of licenses, which meant that they had to have a minimum bid system. Mayor Keyserling said he recalled that **Bill Harvey**, the city attorney, had “raised an anti-trust issue.” Councilman McFee said that there can only be so many carriages on the street at any one time because of the size of the City of Beaufort, so the number of companies has to be limited, and the city has “to have the ability for people to bid for (slots) on an open market, which is the reason we did this.” Councilman McFee told Ms. Stephenson this is according to “the South Carolina attorney general, not the federal government.”

Mr. Prokop said he understands the companies’ desire to have 10-year contract, but the city has no contracts that are for more than 5 years, so a 10-year contract would go against the city’s purchasing policies. There are also no restrictions on these companies “setting their prices,” he said, so they could raise them to meet their expenses. If the minimum bid amount is reduced from \$25,000 to \$10,000, “then you’ve just cut the city’s operating budget by \$15,000.” The costs to maintain Waterfront Park and the city’s streets, and the cost of police officers “are not going to go down,” Mr. Prokop said.

Councilman Murray asked if the bid “money go(es) into the General Fund,” and Mr. Prokop and **Kathy Todd** said, “Yes.” The carriage ordinance could be changed to allow a 10-year contract, Mr. Prokop said, but “we need to look at this.” Mayor Keyserling said council passes ordinances, and they can amend them.

Ms. Myers said the first bid is to be placed October 1. Mayor Keyserling said this matter would be on council’s agenda next week. Ms. Burgess said it has not been advertised, but there’s nothing in the ordinance that says she has to advertise it.

Councilman Murray said as a small business owner, he sympathizes “with the short window” of the contract, but “you know what you're getting into,” he told the carriage operators, so he would not support 10-year contracts. On the \$25,000 minimum bid, Councilman Murray said he’d like more homework done on what percentage of Sgt. Able’s time goes into managing the carriage operations. Mr. Prokop said staff would put some numbers together.

Ms. Myers said she doesn’t feel that the carriages have a greater impact on the streets than the buses do. Mr. White said that Mr. Prokop had said the city would lose money if the minimum bid amount was lowered; he doesn’t understand why the carriage operators have to pay so much more than any other business in the city, given that their impact is no different than, for example, the buses’. When there were problems in the past between the carriage companies, the police force was used more, but that’s not the case now. Mayor Keyserling said the carriage companies are “buying a limited right” with their slot bids. There can only be two carriage companies operating.

Ms. White said they are asking for a minimum \$10,000 bid, but “that’s not to say that’s all” that they or other bidders will bid. Mayor Keyserling said, “We’ve had peace treaties before,” so his “biggest concern is . . . the unexpected,” which the city “needs to somehow budget for.” One of the carriage companies could sell their business to another company, for example, he said, “and I’m not sure how we handle that.” Mayor Keyserling said he would like the city manager to “look back” with Sgt. Able’s help, “at what the median would be of when it was terrible and when it’s good” to determine “a cushion as we look at the fee.”

Councilman O’Kelley told the carriage operators that he’s on the streets downtown, and “there are plenty of violations going on now,” such as carriages “going over the line,” and stopping on their routes to talk about certain sites, which they are not supposed to do. The carriages are not like tour buses, he said. Unlike the buses, for example, the carriages go slowly, which backs up traffic, and the horses leave droppings. With their slot fees, the carriage companies “are buying a franchise right,” Councilman O’Kelley said, which has special requirements, because they have special circumstances in their business.

Mayor Keyserling said he feels, pending the information from the city manager, “the fee might not be as high as \$25,000,” but the 5-year contract would remain. He’s willing to wait on the city manager’s information to set the minimum slot fee. Councilman McFee said he has no problem with reducing the fee from a pro-business standpoint, but as Councilman O’Kelley said,

there are different circumstances with carriages, so 5 years is the most he “would be comfortable doing.” The city wants to have the opportunity to make changes if they have to, and “10 years is a long time,” Councilman McFee said.

Councilman Murray said he sincerely hopes the peace between the companies continues. Councilman Cromer said he agreed with Councilman Murray that he doesn’t “want the city to be subsidizing these companies.”

Ms. Myers explained to Councilman O’Kelley that the carriages have to go over the line occasionally because on Craven Street, for example, there are “huge potholes.” Councilman O’Kelley said he understands, but the carriages having to drive around those potholes causes traffic to back up. Ms. Myers added that the carriage companies don’t have “an office on wheels,” as had been stated, because they are required by the city’s ordinance to have a “fixed office,” so they have to pay rent, in addition to their other expenses.

### **FINAL DRAFT OF PROPOSED FOOD VENDOR ORDINANCE**

Mayor Keyserling described the background of the effort to make “it less difficult for people to operate food trucks in the city.” No one on council is opposed to food trucks, he said, and no one wants to discourage entrepreneurship, but the need to regulate locations is in the interest of public health and safety. What is in the ordinance now for where they can operate food trucks is “arbitrary,” he said.

Mr. Prokop said this ordinance piggybacks with the revision of the zoning ordinance. There is still some technical cleanup to be done, but the city is promoting food trucks operating in certain areas. They have heard no public opinions opposed to food trucks. The ordinance tracks with the business licenses now, and covers “proper safety per the fire marshal.”

**Eugene Goddard** said council appears to be in favor of this. He told them that no food trucks want “to be in the same place every day.” There are two spots – on Bladen and Carteret Streets – that are pointed out in this draft, he said, but there are also “4 other spots that could be,” but no addresses have been given for those. Mr. Prokop said the public spaces could be in Southside Park and Pigeon Point Park, for example. Mr. Goddard said the food truck operators just want direction as to where they can go, and they won’t “violate that.” If they’re told where they can be, there will be someone in those designated spots every day, he said, but food trucks move around to other municipalities. They want the ordinance to be clear, he said, so they do not violate it.

Mr. Goddard asked about the \$200 fee, which is separate from the business license fee. Mr. Prokop said the base for the business license is around \$65, and then food trucks pay an additional \$200 fee. Mr. Goddard asked if the license fee would be prorated if the ordinance goes into effect before January 1. Mr. Prokop said it would be.

Mr. Goddard said he sells boiled peanuts, and “**Charles (Francis)** does cupcakes”; neither of them cooks food, but there will be food trucks that do. They advertise on Facebook, and he said people will come to wherever they have said they will be the following day.

Councilman O’Kelley said this ordinance seems to be more for a pushcart-sized vendor. Councilman McFee said those are allowed in this ordinance, as well. There was a general discussion of what a “mobile food unit” is.

Ms. Stephenson asked where the food trucks are allowed currently, and Mr. Prokop told her that they are only allowed in a restricted private space that has 4 or more businesses that agree to have a food truck there, and food trucks are not currently allowed in public spaces at all. Under the new ordinance, food trucks only need the property owner’s permission to be on private property, and “public spaces are being opened up.” Ms. Stephenson asked if food trucks could be at the Depot building; Councilman McFee said that spot is limited by provisions of the city’s lease of the building, which can’t generate income.

Ms. Stephenson said this ordinance is for food vending, but she asked if there was anything in the ordinance for pushcart vending of “tour tickets.” Several people told her that’s “in the business license.”

Councilman McFee told Mr. Goddard that if he makes arrangements to have his food truck in a private business’s parking lot, he has to get the business’s authorization to be there, but then it’s allowed.

Councilman O’Kelley recommended a change to the definitions section, which is the last thing in the draft; he thinks it should be first. Ms. Burgess and Ms. Todd said they agreed. Councilman Cromer said they should add that “the term ‘vendor’ shall mean ‘mobile food vendor’.”

Councilman McFee asked about the matter of the size of the space for food trucks, which council had discussed eliminating. Mr. Prokop said staff had removed the number of feet. Councilman McFee said the current draft says the food trucks must be sized to fit into parking spaces; he thought it would be changed to “trucks and trailers need to fit into a space safely.”

Councilman Cromer said on page 1, section 3(C), “the language is confusing,” and he recommended a clearer way to phrase it. He said that he didn’t see anything about a distance from brick and mortar restaurants. Mr. Prokop said the distance is 10’, and food trucks are not allowed on Bay, Scott, or West Streets.

Councilman Cromer said on page 3, in section (E), “permitted” should be spelled with two t’s. On page 4, in section (K), the figure for \$1 million “for property damage” is missing a zero. He asked if it was correct that food trucks could operate until midnight, and he was told it was. Councilman O’Kelley said he’s “never seen a million dollar(s for) property damage on something like this” before. Councilman Cromer said up to a million dollars would not be unusual, but “this is an automobile policy, basically,” so he was unsure about it, too. Councilman O’Kelley asked

the food truck operators if they carry coverage of “a million dollars for property damage,” and Mr. Goddard replied, “We carry an umbrella.”

Councilman Murray said council had discussed food trucks on private property at private events, and he asked if that should be included in the ordinance. Councilman McFee said he doesn’t think that needs to be regulated, as it falls under catering, not food vending.

Mr. Francis said that Savannah limits the number of trucks that can be on a location at a given time. If he wants to have an event, he asked if there were “a certain number” of food trucks that could come to it. Councilman McFee said council had discussed “not regulating the numbers . . . but if there is a special event,” Mr. Francis could establish that, and it would go through the city “separately.” Ordinarily, though, council expects the operators “will be self-regulating” about the number of trucks in a given area, Councilman McFee said.

Mayor Keyserling said one public place where the food trucks are permitted is on land that the city doesn’t own: the Santa Elena parking lot, where the farmers’ market is. Santa Elena has given its permission for the trucks to use “the Dowlings’ two lots.” He asked if the farmers’ market would charge the food trucks an additional fee. Councilman Murray said he believes it’s \$20 to be in the farmers’ market. Councilman McFee said the food truck operators would have to negotiate fees with the farmers’ market.

Mayor Keyserling asked if this conflicts with the vendor ordinance in Waterfront Park. Councilman Murray said those are two separate ordinances. Councilman McFee said the two spots at Waterfront Park have to be petitioned for and a fee has to be paid. Mayor Keyserling added, “And it’s for pushcarts.”

Mr. Goddard said they have events scheduled into April, so when they get these opportunities, they want to take them.

There being no further business to come before council, the work session was adjourned at 6:38 p.m.