

MINUTES OF CLOSED SESSION
City Council Meeting
225 E. Weatherspoon Street, Sanford, NC
City of Sanford – May 3, 2022

Upon a motion duly made, seconded, and carried in the May 3, 2022, open session of the City Council meeting, the Council went into closed session in accordance with N.C.G.S. 143.318(11)(a) (3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege.

The following people were present:

Mayor Pro Tem Byron Buckels	Council Member James Williams
Council Member Sam Gaskins	Council Member Jimmy Haire
Council Member Charles Taylor	Deputy City Clerk Vicki Cannady
City Clerk Bonnie Davis	Council Member Rebecca Wyhof Salmon
Management Analyst Holly Marosites	City Attorney Susan Patterson
City Manager Hal Hegwer	
Community Development Director Marshall Downey	

Absent:

Council Member Norman “Chas” Post, III

Item #1

City Manager Hal Hegwer explained that the first item is something that has been discussed for many years and that is on churches being located in specific areas in our Downtowns. Council Member Jimmy Haire brought him a spreadsheet of churches in operation in Downtown areas and there are concerns about it; it may be time to make a change to our ordinance. We need to be clear with the public on what we are saying. If churches are not allowed, we need to be clear. He recommends to move away from that because we cannot enforce it. Even if we did, he felt the City would lose in public opinion and monetarily.

City Attorney Susan Patterson stated that in 1997, Council had a big issue in regards to Downtown churches and the proliferation. It was in Downtown Sanford and Jonesboro. It was very heated and people marched around City Hall. They chanted in the hallways while the Council meeting was going on. She said the outcome of it was Council had to rule that the churches which existed in the Central Business District (CBD) could continue but no further ones could go in. Then, the court cases happened in other places and Congress passed, around the year 2000, the Religious Land Use Institutionalized Persons Act (RLUIPA). The RLUIPA is a law that says you cannot put any additional burden on religious land uses through land use law. Basically, you would have to treat the use like any other use. For example, if you had a law that said you cannot have assembly or civic clubs here, then you can also include religious uses with it. But many cases have been brought to challenge these laws. The Town of Coats won their case but they had very few uses that were like a religious use and they had a very small Downtown. About every other town that had a challenge lost. The court is saying you cannot put a more

substantial burden on the exercise of religion because people have a constitutional right to practice the free expression of religion.

Attorney Patterson stated that we have a rule on the books that we might have difficulty enforcing. The question is, do you want to enforce the rule and take your chances and see what happens, which would be prohibiting more churches in the area and going after those that have expanded into the area. Or, do you want to repeal the rule so that you would not have an enforcement mechanism against churches in the Downtown area; or do you want to continue to ignore the rule. In other words, many places have rules on the books they cannot enforce, but it is not a good practice and it places staff in an awkward position. Staff needs direction on how to proceed.

Community Development Director Marshall Downey added that staff has been dealing with this issue for a long time. It was more prevalent in the mid-2000s to the early 2010s when Jonesboro was struggling with one. To some degree, the markets helped as we do not get as much demand for storefront churches. However, we know there are some in Jonesboro and some in Downtown Sanford that are in violation of the ordinance. Staff has had numerous conversations internally, but have not acted on them because we know we will probably lose, because our ordinance allows other types of uses that are similar to a church. Based on RLUIPA, unless we amend our ordinance and get very restrictive on what we allow in Downtown, it has unintended consequences because you may be not be discriminating against the churches, but you may eliminate other uses that you want in Downtown; it is a "Catch 22." Staff's recommendation would be to go ahead and allow the churches in Downtown understanding that it may not be popular, because you will have individuals who are going to be concerned because you are going to allow churches, because by ordinance, you are not supposed to.

Mr. Downey stated that in our Unified Development Ordinance (UDO), and from staff's perspective, when someone tries to say I want to do X; a lot of times staff does not know what that is, as it is hard to classify. There is a system throughout the United States, North America and Europe, the American Planning Association has adopted where it takes every land use and classifies them into groups. There is a 6,000 category for all education, public administration, health care and other institutional. In researching this and working with Attorney Patterson, he found that the challenging part with this is, if we want to treat churches the same way, we will have to amend our Central Business District; take everything out of it and the question becomes what does that mean? You might identify one use similar to that, but you might not get all of them. In one case, for example, it was a private club; a community had a lot of private clubs in their Downtown, so they lost the RLUIPA challenge. The court felt that a private club was similar enough, was an assembly use and was similar enough to a church and the ordinance would not stand up to that challenge. To him, that is a completely different land use category; not even the 6,000 category. For a private club, what uses you would need to take out of the ordinance, it would be a guess.

Attorney Patterson stated that there is the Republican party headquarters on one end of Steele Street, which is one assembly type use and in the same building, there may be a church meeting upstairs which is an assembly type use; and a private club at Wild Dogs is just a few feet away. Mr. Downey added that he would be really concerned about microbreweries and places like that. Attorney Patterson noted that you might have at the other end of the street – a wedding venue event at the Lamb place at the corner of Wicker and Carthage Streets. If you are trying to treat all your land uses the same or similar, do

you say those cannot be there, along with churches; or do you say they can be there and the churches can, as well.

Council Member Salmon asked if parking is a concern; if you have an event at the Temple Theatre and a church having a Wednesday night service at the same time as the Temple event. Attorney Patterson replied that parking is one of the issues that came up. We currently have ordinances that say churches have to have a certain number of parking spaces. If you are a storefront church, you do not have dedicated parking spaces; the argument counter to that is the church only meets on Sunday when other businesses are closed or Sunday and Wednesday night and they do not need that parking for other people; they meet at alternative times. Parking is a major driver for why you put the rules in place in the first place.

Mr. Downey explained that parking is a defensible matter. They actually have in the UDO now; large churches are only allowed in certain districts where smaller churches are allowed in other districts because of parking. The problem you have in the CBD, there is not enough off-street parking. If you are treating everyone the same way, you cannot say the church has to meet that standard and another type of assembly does not.

Mr. Hegwer added that we have churches and he is not aware of any problems. He rode around Jonesboro on Saturday night with Valenti's opening and there is a lot of vibrancy in Jonesboro.

Council Member Taylor stated that if property values are what they say they are, how can he tell a brewery they can be there but a church cannot; you will lose on a religious right.

Council Member Salmon added that she was not sure what the difference is between the Temple Theatre having a large congregation coming together and another congregation coming together; she did not think you can make that argument.

Mayor Mann felt the market demand is what is going to dictate it. He thinks you will get a lot more rent from a different type of assembly than a church. He added that if Council does their job and keeps Downtown revitalized, you will not want to rent your place to a church because they cannot afford to pay what a microbrewery can.

Mr. Taylor stated that there are churches going in breweries now on Sunday because there is no other place to meet. Bubba Subs has a church there on Sundays. Bubba's is closed on Sunday and they rent it out. Churches are going into old Walmart's, old big box retailers. He commented that who is going to look at Jim Goodnight, who just bought five to six properties in Sanford and tell him you cannot use the old JC Penney building (for example) to have a church in it. A church should be a good neighbor.

Mr. Hegwer stated that staff needs to know if Council Members are good with removing it and leaving the churches to locate Downtown?

Council Member Haire stated that what brought it to light was as long as everything was on a Sunday, but as soon as they started having funerals during the week, that is when the problem arose. Samuel Thomas, opened a church at the former Pope's Dimestore and L.P. Cox Construction used to be

next to the Landmark. As a church grows, there are more people and some are going to pass away and they cannot schedule every funeral on Sunday.

Council Member Gaskins added that having a church Downtown goes back to the market pressure; those prices of rent are going up. Churches are going to be less likely to be willing to pay the higher rents and typically move farther out. We did not have the problem when the storefront buildings were empty and the second thing is parking was why it was done. We could wind up charging for parking. If it becomes a problem, we can put in the kiosks in Downtown, where you pay for parking every day of the week; that would keep the churches out of the CBD. If you going to church, then you will wind up paying for parking and we could extend it to 6 or 7 o'clock at night and that might keep them out on Wednesday.

Council Member Taylor stated how can you say a church is not as important as a patron at Hugger Mugger. You cannot discriminate it and that is the same thing we had the other night when Council took up the backlit sign with the changeable text on copy; he failed to mention it. He said Attorney Patterson's point is you have to treat everyone the same. Mr. Gaskins stated that is his point with the parking; everybody pays for parking. Mayor Mann added that parking is not a problem now. Mr. Gaskins stated that Council has discussed before putting in kiosks to force people to use the parking lots and that is equal to all parties. Mr. Taylor added that he personally does not like having ordinances we cannot enforce and won't enforce; it sends the wrong message. He added you cannot put pressure on one group; you have to apply it across the board.

Mayor Mann asked Council Member Haire if he was receiving a lot of complaints from Downtown Jonesboro? Mr. Haire replied that he did for a period; it is the section on Main Street to the east where there was a service station, which was bought by Mike Stone, and also other buildings where Western Auto was located, old Pope's Dimestore; Electrolux building and one building has LAMBCO on the front of it, but the windows are blocked. Mr. Haire did not believe David Lamb has a LAMBCO on Steele Street and one on Main Street. He felt one of churches has expanded and the only business in that section is a barbershop where the Habitat for Birds used to be.

Mr. Gaskins commented that we do not want big groups gathering that aren't spending any money in the Downtown area; they are taking up parking. Mr. Taylor stated, that as a landowner, you cannot dictate that.

Mr. Gaskins added that if you do not want people parking for hours on in, we can put in timed-parking and parking meters; it would affect everyone and it would not be specific to any particular group.

Mayor Mann added that he did not want to tell Jim Goodnight you cannot take this building and turn it into a church; until it becomes a chronic issue, he did not feel we should touch this and he would just leave it.

Council Member Taylor stated how can you ignore it and it only takes us to get roped into one lawsuit. He brought this issue up at the Joint Planning Commission the other night.

Mr. Gaskins stated that if you do not want people parking from hours on in, we put in timed-parking, parking meters and it affects everybody; it is not specific to any group.

Mayor Pro Tem Buckels stated that he does not want to be a part of the same story of over 2,000 years ago whom we serve on Sunday morning called Jesus Christ, who was born in a manger. He did not have no room in the inn and we are basically talking about the same thing 2,000 years later about having no room in the inn. He personally will have not have any part of it and let it work itself out, as opposed to setting rules and regulations.

Mr. Taylor stated that it will not work itself out and it will only take one group to get mad because they are targeted by a Downtown Sanford group or something and we will end up in a lawsuit.

City Manager Hegwer stated that we are not providing any clarity and the government's role is to be clear to the public. If we are not going to enforce it and do not believe we can win, then his perspective is why even have it. Mr. Taylor added that it would stop staff from asking questions.

Council Member Taylor made the motion to do away with the church provision in the Central Business District and let the market rates dictate it, if it is financially feasible. He does not want to stop Wild Dogs if they want to rent their facility out on Sunday morning for a small group or The Temple Theatre.

Attorney Patterson clarified the motion was to do away with the church prohibition and deal with parking issues later. Mayor Pro Tem Buckels seconded the motion. Attorney Patterson stated that if this is the direction of Council when you take the vote, we will have to bring back an ordinance to repeal it to Council. Council Member Taylor asked if this has to go to the Joint Planning Commission first and then come back to Council? Attorney Patterson replied yes.

Mayor Mann added that he is not too worried about the matter because the market is not going to let every building Downtown become a church and if they want to meet in a brewery, that is fine.

Community Development Director Marshall Downey added that staff's hands are tied on this and we have to treat them the same way. Mayor Mann stated if it becomes chronic, we will figure out a way to charge for parking; then the church can figure out how to accommodate their congregation. The vote to repeal the ordinance was unanimous. Attorney Patterson added that Council will have to vote in open session, so the consensus is to go after it and vote will have to be in the public.



T. Chet Mann, Mayor



Bonnie Davis, City Clerk

Council Member Taylor made the motion to approve and release these minutes. Seconded by Mayor Pro Tem Buckels, the motion carried unanimously. Minutes approved on July 12, 2022.

Council Member Gaskins made the motion to approve minutes on Consent Agenda dated July 19, 2022. Seconded by Council Member Rebecca Salmon, the motion carried unanimously