

**AT A BUDGET WORK SESSION OF THE DUMFRIES TOWN COUNCIL, HELD ON APRIL 23, 2013, AT 6:30 P.M., IN COUNCIL CHAMBERS, 17755 MAIN STREET, DUMFRIES, VIRGINIA:**

**THERE WERE PRESENT:** Mayor Gerald Foreman  
Vice-Mayor Willie Toney  
Charles Brewer  
Kristin Forrester  
Helen Reynolds  
Gwen Washington (arrived after closed session convened)  
Derrick R. Wood  
Daniel Taber, Town Manager  
Christine Sanders, Town Attorney

**THERE WERE ABSENT:** None

**IN RE: CALL TO ORDER AND ROLL CALL**

Mayor Foreman called the meeting to order. Dawn Hobgood, Town Clerk, took roll call.

**IN RE: MOMENT OF SILENT PRAYER AND REFLECTION AND PLEDGE OF ALLEGIANCE**

There was a moment of silent prayer and reflection, then all in attendance recited the Pledge of Allegiance to the Flag of the United States.

There were no amendments to the agenda.

**IN RE: CLOSED SESSION**

**A. VIRGINIA CODE SECTION 2.2-3711(A)(7) – DISCUSSION AND CONSULTATION WITH LEGAL COUNSEL REGARDING PROBABLE LITIGATION**

Mr. Wood made the motion, seconded by Mr. Brewer, to convene into closed session. The motion carried and the following resolution was adopted by the following roll call vote: Mr. Brewer, yes; Mr. Foreman, yes; Ms. Forrester, yes; Ms. Reynolds, yes; Mr. Toney, yes; Ms. Washington, absent; Mr. Wood, yes.

WHEREAS, the Dumfries Town Council desires to discuss particular subjects in Closed Session during the course of its meeting of April 23, 2013; and,

WHEREAS, the nature of the subject is the discussion and consultation with legal counsel regarding probable litigation. The discussion of same in Closed Session is expressly permitted by Section 2.2-3711(A)(7) of the Code of Virginia, 1950, as amended.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of Dumfries does hereby convene in Closed Session for the purpose(s) herein expressed pursuant to the legal authorities herein recited.

Mr. Wood made the motion, seconded by Mr. Toney, to reconvene into open session. The motion carried and the following resolution was adopted by the following roll call vote: Mr. Brewer, absent; Mr. Foreman, yes; Ms. Forrester, yes; Ms. Reynolds, yes; Mr. Toney, yes; Ms. Washington, yes; Mr. Wood, yes.

WHEREAS, the Town Council of Dumfries has completed its discussion in Closed Session, and now desires to continue its meeting in Open Session; and,

WHEREAS, each and every member of this said Council who votes affirmatively for the adoption of this Resolution does thereby certify that, to the best of his/her knowledge, only public business matters lawfully exempted from Open Session were heard, discussed, or considered during the Closed Session, and that the only subjects heard, discussed, or considered in said Closed Session were the matters identified in the Resolution by which it was convened.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of Dumfries does hereby reconvene in Open Session at its meeting of April 23, 2013 and certifies the matters set forth in Section 2.2-3712(D) of the Code of Virginia, 1950, as amended.

**IN RE: CITIZEN COMMENT PERIOD**

There were no citizen comments.

**IN RE: DISCUSSION ITEM(S)**

**A. ROADSIDE FOOD VENDORS – CHRISTINE SANDERS**

Ms. Sanders drafted an ordinance taking into consideration the comments received and discussions held along with a survey of other localities. Paperwork was provided on the dais received from the Prince William Health District (PWHD) about how food establishments are regulated. There are three categories: the stationary food establishment, event food establishment, and mobile food unit. The PWHD is in the process of looking at the permitting process from a health department standpoint for these type of vendors. She was going to provide Council a link to the 171 pages of regulations the health department has promulgated under the administrative code of Virginia. She tried not to do any duplication with the Town's process. The ordinance drafted would be under the peddlers section by including temporary roadside food vendors. She felt this was the most logical place to put the use since it will not be allowed in all zoning districts. In the zoning districts it will be allowed, not all property will be suited for use. The Zoning Administrator will be the one who will look at the site to determine if there is proper ingress/ egress, site distance, etc. She recommended the use be placed in the zoning ordinance later.

Mayor Foreman was in support of this; however, if mobile food vendors are in competition with restaurants, then Section 18-109 is better suited. Section 18-110 specifically mentions delicatessens, which do not have seating available, restaurants, eating-places, retail merchants, and other retail merchants not specifically classified under another section of this article. He asked why this is being placed in the peddlers section.

Ms. Sanders saw Section 18 as the way businesses are categorized within the Town. It could be placed in that Section for a business license; however, the food vendor would operate similar to a peddler or solicitor and be temporary in nature. She explained the ordinance is Council's and she thought Council would permit this for a certain amount of time. This was her thought of a logical place to put the use.

Mayor Foreman asked if Council went the route of peddler how Section 18-73(b), which states this section shall not apply to a peddler at wholesale or to those who sell or offer for sale, in person or by their employees, ice, wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables, fruits or other family supplies of a perishable nature, apply.

Ms. Sanders saw those things as raw ingredients that go into the food being vended.

Ms. Reynolds asked about the PWHD requirement of providing a letter from an owner of a restaurant (commissary) and a letter from a locality where portable water will be obtained and sewage will be disposed of (depot).

Ms. Sanders explained the letter from the owner of a restaurant refers to where the food is prepared.

Ms. Reynolds asked about food being prepared in a home.

Ms. Sanders clarified a home would be defined as a commissary and is required to be inspected by the PWHD. She explained the letter from the locality where potable water will be obtained and sewage will be disposed of deals with events only and not mobile food units. She noted the PWHD does not address restroom facilities with mobile food units, the Town would need to.

Ms. Forrester did not want the decision being made at the discretion of any one person. She felt it is either allowed or not. She did not have a problem with the Zoning Administrator signing off on the application after looking at the ordinance and determining the roadside food vendor meets the regulations.

Ms. Sanders was hearing that Ms. Forrester was looking for an appeal process.

Ms. Forrester indicated that was not what she was saying. She wanted any concerns that may come up with things like ingress/egress, safe passage of pedestrians, etc. to be addressed in the ordinance. She used the example of requiring a five-foot setback and having that clearly stated in the ordinance.

Ms. Sanders was going to work with the Zoning Administrator to come up with administrative procedures since she does not have the expertise in the field. She explained it might have to be a site-by-site decision.

Ms. Forrester asked, since the PWHD does the inspection of the vehicle, if the Town would do an inspection too.

Ms. Sanders indicated the Town would not duplicate anything the PWHD is doing.

Ms. Forrester recalled discussing the fee schedule. She thought it was going to be a set licensing fee and the roadside food vendor would be subject to meals tax. The reporting of the meals tax should be done monthly or at least more often than the brick and mortar business.

It was clarified meals tax is due and payable monthly.

Ms. Forrester wanted the definition of temporary to be a little longer than the 4, 5, or 6 months and suggested the period be from the spring to fall season. She wanted to know if a statement could be added that something was agreed upon between the roadside food vendor and the property owner in regards to restroom facilities. She did not see a roadside food vendor renting a port-a-john for their own personal use since no facilities are to be provided for customers.

Ms. Sanders felt this could be site-specific. She mentioned the business might be closed while the roadside food vendor is open.

Ms. Forrester did not think a roadside food vendor would be using a bedpan and would have enough sense to find an appropriate facility. She did not understand limiting the number of employees to one.

Ms. Sanders asked if it should be more or less.

Ms. Forrester did not think it needed to be discussed.

Mr. Toney noted it should not be regulated.

Ms. Forrester pointed out there would not be 30 employees working out of a small vending truck.

Ms. Sanders mentioned having employees needing to get to the site and park.

Ms. Forrester figured that would regulate itself especially since there is only one roadside food vendor truck, there will not be any tables to sit at, and if you were not generating enough money to pay 30 employees, you would not hire 30 people. She did not understand the need to have a site plan diagram. She did not think this would be necessary if the ordinance covered everything and felt that went back to arbitrary approval.

Ms. Sanders felt that was the best way for people to understand how to set up in a way that is safe and gives the best access to the roadside food vendor.

Ms. Forrester asked if this was going to be easy to accomplish.

Ms. Sanders clarified the requirement is not for an engineered drawing, just a sketch. It is just a way for the vendor and the Town to ensure the safety of the patrons and the business owner.

Ms. Forrester did not see how the \$1,500 cash escrow or bond would work. She suggested having, as part of the fee schedule, a fine for violation of any of the provisions. If a second violation occurs, the permit would be revoked.

Ms. Sanders indicated that could be done. The cash bond could be drafted to be forfeited if there is no compliance. Usually you pay about ten percent of the bond, so a \$1,500 bond would cost \$150.

Ms. Forrester asked if that bond would carry throughout the season.

Ms. Sanders noted it could depending on what Council decides.

Ms. Forrester asked what the advantage is over having a bond instead of a fee schedule for violations.

Ms. Sanders noted it keeps the Town from having to go after the roadside food vendor to collect the fee or take them to court. There is a larger incentive for compliance and the enforcement mechanism is much more efficient.

Ms. Forrester noted the bond is ten percent.

Ms. Sanders explained that is usually what is paid out of pocket. A letter of credit, bond, or surety would pay the bond and the holder of the bond would go after the individual.

Ms. Forrester asked for an explanation to no permit shall be issued less than 30 days from the date of expiration of a previous permit for a parcel.

Ms. Sanders explained that is to get your arms around establishing an on-going permanent roadside food vendor. For example, a permit is issued for 4, 5, or 6 months. When that permit expires, you have to wait 30 days before you can apply again.

Ms. Forrester envisioned the 4, 5, or 6 months being a set season.

Ms. Sanders noted Council might want to state that only one permit will be issued in a calendar year or fiscal year.

Ms. Forrester stated the season would only be April through September. She explained that after 30 days you would just be renewing for the next season.

Ms. Sanders noted that would not be needed then.

Ms. Washington was concerned with restroom facilities. She felt with the number of employees the Council could put in the wording of no more than and decide on a number. She liked the idea of the bond or cash escrow and saw that as a rental security deposit. Being a landlord she knows that you can set all the fees that you want; however, when the tenant leaves it can cost a lot of money to try to recoup the fines.

Mr. Brewer agreed with having the bond or cash escrow. He was not necessarily concerned with the number of employees, but he was about the number of trucks a particular vendor can have. He felt the number of trucks should be limited to one. He felt the timeframe needed to be limited at a particular spot.

Ms. Sanders asked if that was a 24-hour period or so many months.

Mr. Brewer noted during a 24-hour period. He explained that in D.C. there are areas where the vendors are allowed two hours. Roadside food vendors should not be allowed to set up within a certain amount of feet to an existing restaurant.

Mayor Foreman mentioned if a business wants a freestanding sign they have to come to the Town and apply for one. He felt roadside food vendors should have to apply for freestanding signs as well. He noted there is nothing in the ordinance that states the roadside food vendor needs to be self-contained as far as power requirements.

Ms. Sanders understood the PWHD would require a generator. She would clarify that was correct, but believed the vendor has to have its own power source for refrigeration and cooking.

Mayor Foreman asked about a smoker being hauled behind a mobile food unit.

Ms. Sanders noted the PWHD regulates that aspect of the mobile food unit and does the inspection. If that is part of what is approved by the PWHD that would be part of the roadside food vendor's mobile unit.

Mayor Foreman was concerned with inspections being done and that things are cleaned. He mentioned wood was left in the parking lot across from the furniture store where a mobile food

vendor set up. There are also remnants, charcoal and ashes, that are being dumped at the shopping center.

Ms. Reynolds asked if a mobile food unit was inspected and equipment was added later whether the unit would have to be re-inspected.

Ms. Sanders would think so; however, she will ask that question too.

Ms. Washington wanted to know who was going to be accountable. She used the scenario of getting a permit to cook all of her food on site in the mobile food unit; however, in actuality most of her food is being prepared at home. She wanted to know who was going to decide that she was not following what the PWHD permitted her to do.

Mr. Taber noted there was a mechanism within the PWHD to do inspections of the mobile food units. He was not sure if the inspections were random or done every time.

Mayor Foreman thought the Town would have to coordinate with the PWHD.

Ms. Sanders noted the Town has no authority to regulate or enforce the state health codes.

Mr. Brewer clarified the Town has the ability to check and report to the PWHD.

Mr. Wood asked if random checks were done on the brick and mortar establishments.

Ms. Sanders clarified the Town would have no role in enforcing the health code and does not do any inspections.

Ms. Forrester noted that in the past the Police Department has enforced things in regards to food vendors. She wanted to know if it was going to rely on a staff member or whether the Police Department will be able to enforce things.

Ms. Sanders noted that under enabling legislation civil penalties could be applied in certain situations; however, Newport News states if convicted you are guilty of a Class IV misdemeanor for violation of your permit. The Police Department would have a role to play as far as public safety.

Ms. Washington asked what vehicle meant under the definition of roadside food vendor.

Ms. Sanders noted the definition was taken from another section of the Town's code. Vehicle is implied to mean anything with wheels. The PWHD, if the food is prepared on site, requires four sinks. She explained the PWHD would not permit someone selling crabs on ice out of the trunk of a car and would not be able to get a permit to vend.

Ms. Washington felt the Council was going into new territory and the ordinance needs to be constructed well since there will be vendors coming in from out of the area who may not have the Town's best interest at heart.

Mayor Foreman pointed out that the Prince William County Police Department (PWCPD) issues the peddlers permit. The applicant pays a fee of \$20, must provide a \$5,000 bond, a health department permit, and a zoning temporary activity permit. The PWCPD knows who is supposed to be where and on what days. He noted the ice cream trucks and crab vendors are seasonal and zoned. These vendors are not issued a permit. Chuck wagons are only permitted at construction sites. He mentioned the ice cream trucks in Dumfries are operating illegally.

Council discussed in depth whether roadside food vendors should be required to have restroom facilities available to them and their employees.

It was the consensus of Council to make the following changes to the temporary roadside food vendor regulations.

- ✓ Remove the sentence - Adequate sanitary facilities shall be provided at the site, and shall be approved by the Prince William Health Department.
- ✓ The number of employees are limited to no more than five.
- ✓ The definition of temporary will not include any reference to calendar year or number of months; however, will include the number of hours and days.

Mr. Brewer asked if the liability insurance included an umbrella policy.

Ms. Sanders indicated there is an endorsement naming the Town as an additional insured.

Mr. Brewer asked what the amount was on the umbrella. He explained there is always an amount for the aggregate umbrella.

Ms. Sanders asked for suggestions.

Mr. Brewer pointed out the possibility of a structure catching on fire next to where food is being cooked on a grill. He asked what the brick and mortar business pays.

Ms. Sanders noted that was a private issue.

Mr. Brewer asked for an example of what Public Works would require a contractor have.

Ms. Sanders was going to look into that and language would be included for the umbrella.

Ms. Forrester wanted to stay on the side of reasonable since the cost is passed down to the consumer. She wanted to know why a vendor cannot just set up and put a sign out and the consumer purchase the food at their own risk.

Mr. Brewer pointed out the Town needs protection just in case the Town is sued in conjunction with the roadside food vendor.

Council discussed the enforcement of a roadside food vendor being in violation. It was the consensus of Council to use a Class IV misdemeanor and to include language for a ticket to be issued with a cease and desist order issued.

Ms. Sanders was going to do further research on whether a civil penalty could be applied since it is not a zoning issue.

**B. FY14 PROPOSED BUDGET – DAN TABER**

Mayor Foreman noted the budget discussion would be held on Tuesday, April 30 at 7:00 p.m.

**IN RE: ADJOURNMENT**

Ms. Washington moved, seconded by Ms. Forrester, to adjourn the meeting. The motion carried by the following voice vote: Mr. Brewer, no; Mr. Foreman, yes; Ms. Forrester, yes; Mr. Ms. Reynolds, yes; Mr. Toney, yes; Ms. Washington, yes; Mr. Wood, yes.

Minutes submitted by

Approved by

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Dawn Hobgood  
Town Clerk

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Gerald M. Foreman  
Mayor