

**CITY OF DUNWOODY  
OCTOBER 27, 2008  
COUNCIL MEETING MINUTES**

The Mayor and Council of the City of Dunwoody held a Regularly-scheduled Council Meeting on Monday, October 27, 2008 at 7:04pm. The Council Meeting was held in the Peachtree Middle School located at 4664 N. Peachtree Road, Dunwoody, Georgia 30338. Present for this meeting were the following:

District 1, Post 1	Denis Shortal, Council Member
District 2, Post 2	Adrian Bonser, Council Member
District 3, Post 3	Tom Taylor, Council Member
At Large, Post 4	Robert Wittenstein, Council Member
At Large, Post 5	Danny Ross, Council Member
At Large, Post 6	John Heneghan, Council Member
	Ken Wright, Mayor

Staff Present: Brian Anderson, City Attorney  
Leonid Felgin, Assistant to Acting City Clerk

**PLEDGE OF ALLEGIANCE** led by Council Member Shortal.

**MINUTES:** Council Member Ross motioned to approve the October 12, 2008 Council Work Session Minutes with one comment concerning rephrasing a certain sentence on page 6 of the Minutes. Council Member Shortal seconded. The motion carried unanimously and the Minutes approved as amended.

Council Member Ross motion to approve the October 20, 2008 Council Work Session Minutes as presented. Council Member Shortal seconded. The motion carried unanimously.

**AGENDA APPROVAL:** Mayor Wright made a motion to approve the agenda as presented. Councilman Heneghan seconded. The motion carried unanimously.

**PUBLIC COMMENT:** Mayor Wright stated that there will be a separate public comment period for the alcohol ordinance. The Mayor called several names to determine who would comment for and against the Alcohol Ordinance as presented.

Bob Leavey – owner of Divine Wine Bar and Shop – stated that the Alcohol ordinance is incompatible with Dekalb's. He perceives that in the City's version, he would not be allowed to serve alcohol on Election Day. He also expressed a problem with the 2 a.m. proposed last call time for pouring of alcohol.

Paige Olson – owner of Intermezzo – voiced her understanding of how the Council and due process works. She was concerned with the pace at which the Alcohol ordinance proposal was being discussed. She thinks it is too quick and will ultimately breed resentment. She suggests that if it is possible to slow down until after December 1<sup>st</sup>, it would be better. She thinks the Council should deal only with necessary items at this time.

Brad Sturgeon – owner of Embassy Suites – voiced his agreement that the Council needs to go slow on the substantial changes to the Alcohol ordinance. Hotels in Dunwoody decreased in revenue by 6% over the last year and things need to be done not to hurt the economy.

**CONSENT AGENDA:** No Consent Agenda for tonight's meeting.

**UNFINISHED BUSINESS:**

**Chapter 18, Municipal Court** - The Second Read of Ordinance 2008-10-05 approving Chapter 18: Municipal Court was read by Assistant to Acting City Clerk Felgin. City Attorney Brian Anderson stated that there are edits which have been made to the document since the First Read that will require the Council to substitute the amended document. Council Member Wittenstein made a motion to adopt substituted Ordinance 2008-10-05: Chapter 18: Municipal Court. Council Member Heneghan seconded. Mayor Wright called for any discussion. There being no discussion, the motion carried unanimously. (*Ordinance 2008-10-05*)

**Discussion on Chapter 4, Alcohol Ordinance** – Mayor Wright requested any internal discussion on the proposed Alcohol Ordinance.

Councilmember Wittenstein asked for a digest version of how the amended ordinance is different from Dekalb County's. City Attorney Anderson stated that the City's proposed Alcohol ordinance is more organized than the Dekalb version; comments by Bob Leavey were incorporated into the ordinance; and whereas Dekalb allows renewal, the City will give temporary permits until all background investigations are complete and final permits are issued. Councilmember Ross asked whether the notifications will be mailed by November 15<sup>th</sup> and when the current licenses will expire. City Attorney Anderson stated that the licenses will expire on December 31<sup>st</sup> and that's why it would be advantageous to mail out the notifications soon so business owners can receive their temporary licenses. Councilmember Taylor asked if Dekalb County's version could be accepted for now and changed later. City Attorney Anderson responded that it is best to start fresh so there's less chance of being challenged on the ordinance later. Councilmember Heneghan was concerned that the public has not had time to look at the ordinance and as to how businesses will be affected by certain changing rules. Councilmember Taylor proposed to put a study group together to review this ordinance. Councilmember Shortal expressed his agreement with some of the concerns about the ordinance but has talked to some people and the majority want a 2 a.m. closing time. Councilmember Heneghan agreed with the notion of forming a committee to look into the issues of the business community with the ordinance and partner with them to make some modifications. Councilmember Shortal would prefer to include non-business owner citizens in the committee. The Mayor asked whether there's any knowledge about how Dekalb's proposed future change to 2 a.m. will affect the businesses in the unincorporated portion of the County. City Attorney Anderson stated that Dekalb's ordinance is not yet written so it's hard to tell what the effect will be but there may be a 2:30 a.m. compromise.

Bob Dallas, director for the Governor's Office of Highway Safety, stood up at the request of the Mayor and presented his research that Dekalb has approximately a 33% fatality rate in late-night accidents comparable with the state average, due to the alcohol levels in the blood.

Councilmember Taylor asked if grandfathering was possible. City Attorney Anderson stated that grandfathering could be drafted into the ordinance in different ways if the Council so desires.

The Mayor then called for Public Comment on the Alcohol Ordinance:

**Pro:** Bob Dallas stated that the Council would want to be as efficient as possible administratively. In the City of Atlanta, when the 4:00 a.m. time was rolled back to the 2:00 a.m. time, businesses moved out to Dekalb. Dekalb then wanted to roll back the time as well. He considers the 2:00 a.m. time more reasonable from the standpoint of public safety. Voice his opinion, as resident of the City, that it's a different kind of City we want – more family friendly – and that's more conducive to a 2:00 a.m. closing time. The later in the evening, the more likelihood there is of a fatal crash.

Ms. McCahan, a long-time Dunwoody resident, stated that Dunwoody is proud to be a family-oriented community and not have the kind of problems as Buckhead had where people did not want to go out at night. We want to attract these kinds of people and remain family and community oriented.

Beverly Wingate, a long time Dunwoody resident, stated that people of Dunwoody want to maintain a safe, creative and business-friendly community, which is not mutually exclusive. Bars do not have to lose revenue by closing at 2:00 a.m.; they have to rethink the market and cater to the citizens of Dunwoody. She implored the Council not to create a City that is considered to be a “watering hole.” A change of marketing to appeal to an earlier crowd would help create a client base that may give them even higher revenue in the long run.

**Con:** Brian Olson, owner of Cafe Intermezzo, stated that he serves food and alcohol late. There are many reasons why people go out late and he would want to know how many of the people who get into fatal accidents have been drinking at a bar and how many are coming from private parties. Something like this needs to be studied in committee and analyzed with factual presentations in order to preserve the economic fiber of the City. It's a rush to judgment to speed through this ordinance.

Mr. Crow agreed that a committee should take a good hard look at the ordinance and not rush through it.

Doug McKendrick agreed that the ordinance needs to be studied by committee line by line. He thinks it can be done in a week or ten days to get it fixed properly.

Joe Devita, member of the Dunwoody Chamber of Commerce, stated that the City needed to engage the business community in discourse. The need for business licenses puts some pressure on passing the ordinance which will have consequences. He wants to pass an ordinance that is consistent with the law at the present time in order to get the license renewals going.

Mr. Sims was concerned about the impact the ordinance will have on taxes. The City's revenue is coming from licenses and other business assessments mostly and not property taxes. He would not want to put his lifestyle against businesses whose owners do not reside in the City. The effect on taxes has to be considered – is late drinking producing more revenue?

Mr. Gilmore, small business owner, stated that he never had any legal problems with pouring alcohol late at night. If you cut 2<sup>nd</sup> shift patrons off early, they will have more alcohol quicker. He presented various newspaper articles showing an economic slump that may be increased even more. He invited the Council and other persons to come over to his bar late at night and see what goes on there. He wants a small group to take a look at the ordinance.

There being no more comments, Mayor Wright closed this discussion.

**Chapter 9, Ethics** - The Second Read of Ordinance 2008-10-06 approving Chapter 9: Ethics was read by Assistant to Acting City Clerk Felgin. Councilmember Shortal moved to table the ordinance. Councilmember Taylor seconded. Under discussion, Councilmember Shortal expressed the opinion that there needs to be more time to study this before coming to a vote. Councilmember Wittenstein thinks that the Council has already spent too much time talking about it already and wants to bring it to a vote. Councilmember Heneghan agrees that it should come to a vote. Councilman Taylor stated that the ordinance is still vague on what a conflict is and agrees that this could be used foremost as a political tool. City Attorney Anderson responded that conflict is anything that could be perceived to be a conflict of official's current duties and will be decided by the Ethics Board. Councilmember Ross reminded the Council that the same ethics code exists in several cities and is not a concern.

The Mayor asked for a vote on the motion to table Ordinance to approve Chapter 9: Ethics. The motion failed by a vote of 4-3 (Mayor Wright and Council members Ross, Heneghan and Wittenstein voted not to table the ordinance).

Councilmember Ross then moved to accept the ordinance as written. Councilmember Heneghan seconded. Under discussion, Councilmember Shortal reiterated his belief that the ordinance opens up a Pandora's Box that anything can be an ethical violation. The Council should have a document that everyone can understand and this document can only be used by the opposition and does not produce ethics. He proposes an alternate document that is 15 pages and will produce ethics as well as common sense.

Councilmember Wittenstein proposed an amendment to the ordinance to revise the definition of "benefit" to simple state "\$100" and not the other two subsections currently in the ordinance. Councilmember Ross seconded the motion for amendment. There was no discussion. The Mayor called for a vote. Motion carried unanimously.

Councilmember Wittenstein motioned for another proposed amendment to the ordinance to revise the definition of "gift" to add the phrase "over \$100" to the subsection. Councilmember Ross seconded. There was no discussion. The Mayor called for a vote. The motion carried unanimously.

Councilmember Wittenstein motioned for another proposed amendment to the ordinance to add "preliminary" to the word "hearing" in Article II of the ordinance. Councilmember Ross seconded. There was no discussion. The Mayor called for a vote. The motion carried unanimously.

Motion was made to call the amended ordinance for a vote and passed by a vote of 4-0.

Mayor called for a vote on the ordinance as thrice amended. Motion carried 4-3, with Council members Taylor, Shortal and Bonser opposing. (*Ordinance 2008-10-06*).

**Discussion on City Implementation:** Mayor Wright stated that he is currently in negotiations with Dekalb County for the various intergovernmental agreements, including police, fire, water and sewer. Councilmember Taylor updated on the many bids received for automobile and firearms for the police department. He will meet with Sheriff Tom Brown of Dekalb County on his proposal for providing police services to the City. Mayor Wright stated that at the following meeting, on

November 3<sup>rd</sup>, at Dunwoody United Methodist Church, his candidate for City Manager will be proposed for a vote by the Council. Councilmember Heneghan updated Council on the website, stating that it will be live on November 1<sup>st</sup>, and the city e-mail addresses are functional as of now. Councilmember Wittenstein notified the Council that open positions for clerk, police chief, and finance director, among others, are currently up on glga.org.

**REPORTS AND PRESENTATIONS:** No Reports at this time.

**NEW BUSINESS:**

A discussion was held on Action Item J-1: authorizing and approving the Boyken contract with Boyken International for city implementation. Councilmember Shortal read certain portions of the Scope of Services provisions, marking where changes have been made since the previous draft. Councilmember Wittenstein was concerned that the contract doesn't make clear that Boyken is working for the City Manager; that this is as contract for Boyken to be in "leadership" instead of support to the City and City Manager, who should actually drive the process. He was also concerned that the cost of providing an office (\$700/office) is steep, as well as that the contract is for too long a time. He would prefer that the contract allow the Council to vote on continuing the contract every month versus voting for stopping the contract at any time. Councilman Ross responded that the contract anticipates the future hiring of a City Manager and Boyken knows who he is working for. He also stated that there is a generous termination provision in the contract. It's a clean document and very workable and spends taxpayer money with proper due diligence.

Councilmember Shortal then proceeded to reading of certain cursory changes made in the Boyken contract itself. Following the reading, Councilmember Ross moved to approve and authorize the Boyken contract. Councilmember Shortal seconded. Under discussion, Councilmember Bonser noticed that there are certain typos that can be treated like scrivener errors. Councilmember Taylor stated he was reluctant to accept this contract because of the previous CH2 process that was spoiled by a state senator. In response, Councilmember Heneghan stated that he thinks this contract is just, fair and financially reasonable and promises to vote for it. Mayor Wright clarified that this is not Boyken running the City but is a process to help coordinate and achieve implementation tasks by the end of the year. Mayor moved for a vote on the Boyken contract, and the move was seconded. Motion carried 5-1 (Councilmember Taylor opposed). **(ACTION ITEM)**

**Notification to Dekalb County of takeover of Services:** A discussion was held on Action Item J-2. Mayor Wright proposed to authorize the City Attorney to notify Dekalb County that City will take over collection of taxes, fees, assessments, fines and other monies. The Mayor moved to approve this Action Item and Councilmember Ross seconded. Under discussion, Councilmember Wittenstein was concerned that the City is not taking over zoning. City Attorney Anderson responded that zoning requires following the Zoning Procedures Act and until then Dekalb's ordinance should stay in place until the City's zoning is ready by December 31<sup>st</sup> and while the moratorium will be in place through December. Councilmember Shortal stated his desire to take over zoning as soon as possible as that was the concern of all citizens in voting for the City. Mayor Wright called for a vote on the motion. Motion carried unanimously. **(ACTION ITEM)**

**RESOLUTION FOR REGULAR MEETINGS:** Assistant to Acting City Clerk, Leonid Felgin, read Resolution 2008-10-09 for consideration. City Attorney Anderson stated that the difference in this Resolution versus the previous Regular Meetings Resolution is that meetings are being moved to Dunwoody Methodist Church until a City Hall is opened.

Councilmember Shortal moved to approve the Resolution. Councilmember Taylor seconded. Under discussion, Mayor Wright stated that he prefers the church because it is a more comfortable setting. Councilmember Wittenstein thanked the Middle School for letting them use this location and is concerned for convenience of many citizens who found the middle school a more convenient location. He also asked that he would feel more comfortable in the church if the cross was moved from the meeting room. Councilmember Shortal likes the church location and thinks religion does not get in the way. The Mayor called for a vote on the motion. Motion carried unanimously. (*Resolution 2008-10-09*)

**CHAPTER 24: TAXATION:** The First Read of Ordinance to Adopt and Approve Chapter 24: Taxation, Providing for Inclusion and Identification in the Code of Ordinances for the City of Dunwoody, Georgia to be Referenced in the future as Chapter 24 (Taxation) as Attached Hereto and Incorporated Herein was held.

**OTHER BUSINESS:** None at this time.

**PUBLIC COMMENT:**

Paige Olson was concerned that the “reply all” button on e-mails creates a “cyber meeting” which would require media notification.

Brian Sims stated that the 4 a.m. closing time for bars is not a “change” but a status quo and he didn’t want that to be misrepresented. He does not want the City Council to make decisions based on fear of what surrounding cities do.

Bob Lundsten wanted to urge the Council to follow-up on the suggestion to form committee to investigate the Alcohol ordinance with business owners and citizens. He stated it was bad policy to lump everyone together until all the concerns are addressed.

Mitch Weatherly just wanted to say “thank you” to the Council for all their hard work and dedication. He thinks the Boyken contract is a good agreement and hopefully financially manageable.

Paul Hannah wants to present the City with his and his company’s services to locate office space for the City Council as City Hall. He is prepared to try and meet all of the City’s needs.

George Veil was concerned that the City’s ordinances are not available to be read easily by the citizens prior to a vote.

The Mayor stated that he will probably form a committee to investigate the Alcohol ordinance after ruminating on the suggestion.

There being no further business, Council Member Shortal made a motion to adjourn, seconded by Council Member Ross. The motion carried unanimously and the meeting was adjourned.

Approved by:

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Ken Wright, Mayor

Attest:

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Joan Jones, Acting City Clerk