

City of Montgomery
City Council Business Session Minutes
March 2, 2005

Present

Cheryl Hilvert, City Manager
Terry Donnellon, Law Director
Susan Hamm, Clerk of Council
Wayne Davis, Finance Director
Bob Nikula, Public Works Director
Kirk Nordbloom, Police Chief
Paul Wright, Fire Chief

Council Members Present

Gary Blomberg, Mayor
Ed Daniel
Gerri Harbison
William Niehaus
Lynda Roesch
Todd Steinbrink
Ken Suer

Council convened in Council Chambers at 7:00 p.m., with Mayor Blomberg presiding.

ROLL CALL

Mayor Blomberg asked that the roll be called.

The roll was called and showed the following Council Members present:

PRESENT: Blomberg, Daniel, Harbison, Niehaus, Roesch, Steinbrink, Suer
ABSENT:

ADMINISTRATION REPORT

Ms. Hilvert reported on the following items:

- Tony Gardner of the Commonwealth Center for High Performance Organizations and the University of Virginia will be joining our Montgomery staff for two (2) presentations on high performance organizations on Thursday, March 10, 2005 from 1:00-4:30 and on Friday, March 11, 2005 from 8:30 until noon. Tony and our staff will discuss high performance organization theory and Montgomery's implementation of the theory through the TARGET program. Any interested City Council member is welcome to attend one or both of these sessions.
- The Finance and Planning, Zoning and Landmarks Committees have cancelled their meetings for the month of March.
- Staff met with Brenda Wehmer of Peck, Schaeffer and Williams to discuss necessary steps to proceed with the development of the Tax Increment Financing District for the Triangle site. Once all private and public development costs have been verified, staff will be meeting with the Sycamore Schools to discuss their interests with respect to the TIF district.
- The Landmarks Commission will be reviewing the Montgomery Gateway Partners proposal for the Triangle property on Thursday, March 9, 2005. It is anticipated that the Commission will grant preliminary approval of the design elements at that meeting, which will allow the application to move forward to Planning Commission.
- Mr. Donnellon will be holding a training session with the Landmarks Commission on Thursday, March 9, 2005 at 6:00 p.m.

- The Police Department will begin its first Citizens Police Academy beginning Thursday, March 3, 2005. Fifteen residents and three individuals employed within the City of Montgomery will be attending the academy. If employees or City Council Members are interested in visiting a session, please contact Sergeant Greg VondenBenken. The academy will be conducted every Thursday evening from 6:30 p.m. until 9:30 p.m. from March 3, 2005 through May 5, 2005.

GUESTS AND RESIDENTS

There were no guests or residents present.

COMMUNICATIONS

There were no communications.

MINUTES

Mr. Steinbrink moved to approve the minutes from the January 19, 2005 Work Session, February 2, 2005 Business Session. Mr. Daniel seconded. City Council unanimously approved the minutes.

LEGISLATION FOR CONSIDERATION TONIGHT

Pending Legislation

An Ordinance Levying Assessments For The Improvement In The Area Known As Swaim Field Subdivision By Installing Decorative Electric Streetlights

Ms. Roesch read the ordinance by title only moved passage to the 3rd reading. Mrs. Harbison seconded.

Ms. Roesch explained that if approved, this ordinance will levy the assessments for the installation of the decorative electric streetlights in the Swaim Field subdivision. She further explained that the installation of the streetlights has been completed and costs have been calculated to be equally divided among all individual property owners in this improvement area. She also explained that once this ordinance is approved, each property owner will be notified and given the option to pay the total amount of his/her share of the assessment or have his/her share placed on their semi-annual property tax bills for a period of five (5) years.

The roll was called and showed the following vote:

AYE:	Blomberg, Daniel, Harbison, Niehaus, Roesch, Steinbrink, Suer	(7)
NAY:		(0)
ABSENT:		(0)

An Ordinance Allowing The Establishment Of Interim Development Control Districts

Mr. Steinbrink read the ordinance by title only and moved passage to the 3rd reading. Mrs. Harbison seconded.

Mr. Steinbrink explained that this ordinance would authorize an amendment to the Land Usage Code to permit the designation of Interim Development Control Districts. This planning tool will enable the Planning Commission and City Council to designate areas or districts within the community where interim controls

should be put in place while changes are being considered to the Land Usage Code, which could affect the uses permitted or development standards within the district.

Mr. Donnellon explained that, as proposed at the last meeting, there are three (3) amendments to the text from the first reading. The first change deals with the elimination of the requirement that interior alterations are subject to the review process, the second change allows City Council to permit administrative approval of minor modifications. Minor modifications may not be appropriate in all Interim Development Districts, so the text of this ordinance allows City Council, when creating a district and setting the review criteria, to set the standard for minor alterations. The third change amended Community Development Director to Zoning Administrator.

Mr. Niehaus moved that the ordinance be amended to include the following language. Mrs. Harbison seconded.

“Section 4. 1. Permits for new construction, demolition of existing structures, exterior alterations or additions to existing structures and changes in use.”

“Section 4. C. Council may also provide a standard for review and approval of minor alterations within the proposed district, which minor alterations shall not be subject to the Planning Commission review process outlined herein”

“Section 5. The Zoning Administrator has the duty to give notice of the establishment of the district within fourteen (14) days of the establishment of an IDC Overlay District, by placing an advertisement in a newspaper of general circulation and sending ordinary mail notices to the owners of record of all parcels of property within the overlay district as such ownership is listed in the tax records of the Hamilton County Auditor. Failure of delivery of such notice shall not invalidate any action taken by Council.”

The roll was called and showed the following vote on the amendment:

AYE: Blomberg, Daniel, Harbison, Niehaus, Roesch, Steinbrink, Suer (7)
NAY: (0)
ABSENT: (0)

The roll was called and showed the following vote on the passage to 3rd reading.

AYE: Blomberg, Daniel, Harbison, Niehaus, Roesch, Steinbrink, Suer (7)
NAY: (0)
ABSENT: (0)

An Ordinance Creating Gateway Interim Development Control Overlay District

Mr. Niehaus read the ordinance by title only and moved passage to the 3rd reading. Ms. Roesch seconded.

Mr. Niehaus explained that this ordinance would create a Gateway Overlay District to protect the Heritage District and the Old Montgomery District by restricting development in the proposed Gateway area on an interim basis while the City completes its planning study for the area.

Mr. Donnellon noted that there are two (2) amendments to consider with this ordinance. He further noted that the two (2) amendments recognize that interior alterations are not subject to the review process, and a new section allows for administrative approval of minor alterations.

Mrs. Harbison moved that the ordinance be amended to include the following language. Mr. Suer seconded.

*“**Section 5.** A. Permits for new construction, demolition of existing structures, exterior alterations or additions to existing structures and changes in use.”*

*“**Section 11.** When a minor alteration is proposed to an existing building or structure within the Gateway Interim Development Control Overlay District, the Community Development Director may make a determination that such proposed alteration is not subject to the Planning Commission review process outlined herein, and the Community Development Director may directly issue a zoning certificate and development plan approval for such alteration. An alteration is a minor alteration if it does not increase the building footprint by more than ten percent (10%) up to a maximum of five hundred (500) square feet.*

In approving an application as a minor alteration, the Community Development Director must determine that the proposed alteration meets the following criteria:

- A. It is a permitted use within the District;*
- B. The site plan otherwise conforms with all standards and performance criteria of the Land Usage Code;*
- C. The proposed alteration does not conflict with any proposed amendment to the Land Usage Code then under consideration by the City Planning Commission or Council;*
- D. The proposed alteration is not detrimental to the public peace, health, safety or welfare;*
- E. The proposed alteration has no adverse affect on adjoining properties and such adjoining properties’ access to the property for fire and police protection, public facilities and services, light and air, public roadways and transportation requirements; and*
- F. The proposed alteration will not impede the development and use of adjacent land, structures or building.”*

The roll was called and showed the following vote on the amendment:

AYE: Blomberg, Daniel, Harbison, Niehaus, Roesch, Steinbrink, Suer (7)
NAY: (0)
ABSENT: (0)

The roll was called and showed the following vote on the passage to 3rd reading.

AYE: Blomberg, Daniel, Harbison, Niehaus, Roesch, Steinbrink, Suer (7)
NAY: (0)
ABSENT: (0)

An Ordinance Amending The Land Usage Code To Permit Planned Unit Developments

Mr. Suer read the ordinance by title only and moved passage to the 3rd reading. Mr. Niehaus seconded.

Mr. Suer explained that this ordinance would provide an amendment to the Land Usage Code to allow the establishment of a Planned Unit Development District within the City and establishing guidelines and procedures for the approval of such districts.

Mr. Donnellon indicated that there is one (1) amendment to the proposed ordinance which was requested by Great Traditions. It concerns acceptance of the final plat of record. He further explained that the text, as previously reviewed, allowed only six (6) months to submit the record plat after approval of the final plan. Great Traditions pointed out that oftentimes it takes longer than six (6) months to complete the infrastructure improvements and to layout the recorded surveys for interior lots. He also explained that staff agreed and is proposing that the timeline be extended to 18 months.

Mr. Niehaus moved that the ordinance be amended to include the following language. Mr. Steinbrink seconded.

“Section 151.1309 SIGNIFICANCE OF AN APPROVED PUD FINAL DEVELOPMENT PLAN An approved PUD final development plan shall become for the proposed development a binding commitment of the specific elements approved for the development. If the PUD includes the subdivision of land, a final plat must be prepared and submitted to Planning Commission for signature in accordance with the platting provisions for subdivisions in Chapter 156.02. A final record plat must be submitted for at least the first section of the development within eighteen (18) months of the approval of the final development plan.”

The roll was called and showed the following vote on the amendment:

AYE: Blomberg, Daniel, Harbison, Niehaus, Roesch, Steinbrink, Suer (7)
NAY: (0)
ABSENT: (0)

The roll was called and showed the following vote on the passage to 3rd reading.

AYE: Blomberg, Daniel, Harbison, Niehaus, Roesch, Steinbrink, Suer (7)
NAY: (0)
ABSENT: (0)

An Ordinance Adopting Revision To The Land Usage Code For The City Of Montgomery

Mr. Steinbrink read the ordinance by title only and moved passage to the 3rd reading. Mr. Suer seconded.

Mr. Steinbrink stated that this ordinance would adopt comprehensive amendments to the Zoning Code.

Mr. Donnellon explained that there are a number of amendments that have been incorporated into the ordinance. He further explained that these amendments recognize the changes to the Code discussed at the workshop meeting. The amendments deal with the definition of a “lot” for zoning purposes, updating the penalty for demolition of a landmark without prior approval, better defining the term surface for parking calculations, recognizing institutions in the residential district for temporary sign limits, and clarifying some of the process language for appeals to City Council.

Rev. Douglas Johns, Senior Pastor, Church of the Saviour, asked that City Council consider a specific amendment as it relates to Temporary Signage. He explained that it is his proposal that the City Council amend

the Montgomery Zoning Code, by adding to Chapter 151.3, Section 151.3015(b), creating a 151.3015(b)(3), which states:

- “(3) Special Event Signs for Government Agencies, Schools, Churches and Synagogues. Such signs shall comply with the following:
- a. A temporary yard sign or banner attached to the building shall be permitted for the purpose of announcing a community event, program or festival, not more than 21 days for each occurrence. Such signs shall be removed within two days of the completion of the event or project.
 - b. All temporary ground mounted signs shall be located no closer than 10 feet from public right-of-way or a side lot line.”

Rev. Johns further explained that what Government Agencies, Schools, Churches and Synagogues offer and provide the community is unique, and therefore, should be exempt from the 49-day restriction of zoning code 151.3015(b)(2).

Mr. Daniel asked if the City was able to make a difference between the Government Agencies, Schools, Churches, Synagogues, the general business community and residential.

Mr. Donnellon explained that when it comes down to regulating signs, the standards start with commercial and non-commercial and it is very clear that the City has a lot of rights when it comes to regulating commercial speech. He further explained that when it gets into non-commercial, it gets into the first amendment “freedom”. When you get into what is reasonable everyone has to be treated the same. The issue is if there is enough in that sign package to meet the needs of the residents who want put up the sign to vote for Bush and is there enough in there to let the church say come to vacation bible school. You put them all in that same area because they are all non-commercial.

Mr. Daniel asked about the square footage.

Mr. Donnellon noted that the Courts have stated that the location and size limitations can be regulated. He further noted that time is the sensitive issue and when you get into regulating time, what the Courts are now saying is a time restriction can be placed on when the sign needs to be replaced, or a time restriction can be placed on when the sign must be replaced, if it becomes damaged or becomes trash. He also noted that there has been one case where the Courts have said 90 days is a reasonable limit and a lot of communities are following this case.

Mr. Daniel stated that the current codes allows 45 consecutive days, which means that a person could have a back to back 45 day period for a temporary sign in both the business district and the residential district.

Mr. Donnellon explained that Section B (1) (a) allows for 135 days of a temporary sign. He further explained that Section B (2) (a) allows for an additional 49 days, exercisable in 14 day intervals. He also explained that a solution to the problem may be changing the definition from political expression to just non-commercial and giving a total time limit.

Rev. Johns noted that the church would not have a problem with the 135 day limitation.

Mr. Donnellon stated that the temporary sign must be tied to a specific event and must be removed two (2) days after the event.

Ms. Hilvert asked if a community event needed to be clearly defined, since a fundraising event is not community event.

Mr. Daniel recommended keeping the special event category, which would cover the commercial special event or fundraiser.

Mr. Donnellon suggested that he draft an amendment for review at the next meeting.

Mr. Daniel noted that he is concerned with the language in the sign code that refers to "visual clutter". He further noted that he felt that this language is subjective.

Mr. Donnellon explained that there are three (3) choices; the first choice would be to make no change, the second choice would be to better define "visual clutter", and the third choice would be to take it out of the code.

City Council agreed to not change the reference to "visual clutter".

Mr. Niehaus moved that the ordinance be amended to include the following language. Ms. Roesch seconded.

"§ 150.0302 DEFINITIONS. LOT. A combination of complete lots of record, a combination of complete lots of record and portions of lots of record, or a combination of portions of lots of record. If more than one lot or a portion of a lot is used collectively to meet the minimum lots requirements, the lots must be contiguous and allow for either the construction with appropriate setbacks for any proposed building on the site, or the safe movement within the site of motor vehicle traffic between the lots over a surface drive of appropriate width and meeting all Code requirements for setbacks and two way travel."

"§ 150.1415 ACTION BY COUNCIL (2) If Council fails to approve the development plan by five (5) concurring votes, the proposed plan is then denied, unless Council by the affirmative vote of four (4) or more members refers the appeal back to the Planning Commission as provided in subsection (1) above."

"§ 150.1608 ACTION BY COUNCIL. (4) If there are fewer than five(5) votes to approve the application as appealed, the application shall be considered denied unless Council by the affirmative vote of four (4) or more members elects to remand the appeal back to the Planning Commission as provided in subsection(2) above."

"§ 150.3009 REMEDIES (c) In addition to any criminal penalties provided under Section 150.3010, any person who violates Section 150.1804(C) or any similar section of the Code governing the moving, demolition, or partial demolition of a city designated landmark property without appropriate permit shall be required to repair or restore any such property to return it to its former location and/or conditions, or such person shall forfeit and pay to the city civil penalties equal to the greater of the fair market value of any such landmark property or portion of a landmark property which was demolished, partially demolished, destroyed, or moved in violation of Section 150.1804, or similar section, or \$10,000.00. These civil penalties shall represent compensation to the Montgomery community for the loss of the landmark treasures the community has worked to preserve and protect. The monies shall be deposited to the Montgomery Historic Trust Fund and the monies shall be used for the purposes of that fund which include preservation of historic landmarks and community education. This section may be enforced in a civil action initiated by the Law Director at the request of City Council."

“§ 151.3015 SUPPLEMENTAL REGULATIONS FOR TEMPORARY SIGNS. (1) Temporary Signs for Individual Lots in Residential Districts. A. Each residential unit or institutional use shall be permitted to erect one(1) temporary sign in a window and/or as a ground mounted sign in the front yard for the purpose of either political expression or advertising the sale, rental or lease of real estate on the property on which the sign is located. Such temporary sign shall be displayed for a duration not to exceed 45 days, after which time the sign shall be inspected, and if necessary, removed or replaced. In addition to subsection (b)(1)A, each residential unit or institutional use shall be permitted to erect additional temporary signs in a window or ground mounted for the purpose of political expression for a period not to exceed 45 consecutive days on two(2) separate occasions in any calendar year.

“§ 151.3408 SCREENING AND LANDSCAPING OF PARKING LOTS. Landscaping on the Interior of Parking Lots: (1) When any parking area is designed to accommodate 20 or more vehicles, a minimum of 5 percent of the parking surface area shall be planted as landscaped island areas, developed and reasonably distributed throughout the parking surface area so as to provide visual and climatic relief from broad expanses of pavement. The total parking surface area for such calculation shall not include parking area in a parking garage other than the top level which is open and exposed for parking whether at ground surface or the root level of an above ground parking structure. The total parking surface area shall also include any impervious surface area intended for stopping, standing, traveling, display or inventory of motor vehicles.”

The roll was called and showed the following vote on the amendment:

AYE: Blomberg, Daniel, Harbison, Niehaus, Roesch, Steinbrink, Suer (7)
NAY: (0)
ABSENT: (0)

The roll was called and showed the following vote on the passage to 3rd reading.

AYE: Blomberg, Daniel, Harbison, Niehaus, Roesch, Steinbrink, Suer (7)
NAY: (0)
ABSENT: (0)

New Legislation

A Resolution Authorizing A Contract Extension With KMB Lawn And Landscaping For The Mowing Of Various Parcels Throughout The City Of Montgomery During 2005

Ms Roesch moved to read the resolution by title only. Mr. Steinbrink seconded. City Council unanimously agreed.

Ms. Roesch read the resolution by title only and moved passage. Mrs. Harbison seconded.

Ms. Roesch explained that this resolution would authorize the extension of the contract granted in 2004 to KMB Lawn and Landscaping for the mowing of various parcels throughout the City. She further explained that during the bidding process in 2004, the City requested proposals for 2005 pricing. As a result of this process, staff is recommending that this contract be extended for the next year.

The roll was called and showed the following vote:

AYE: Blomberg, Daniel, Harbison, Niehaus, Roesch, Steinbrink, Suer (7)
NAY: (0)
ABSENT: (0)

A Resolution Authorizing The City Manager To Enter Into A Contract With Management Partners, Inc. For Professional Services Related To The Community Survey And Strategic Planning

Mr. Niehaus moved to read the resolution by title only. Mr. Steinbrink seconded. City Council unanimously agreed.

Mr. Niehaus read the resolution by title only and moved passage. Mrs. Harbison seconded.

Mr. Niehaus explained that this resolution would authorize the City Manager to enter into a contract with Management Partners, Inc. for professional services related to the City's community survey and planning for the strategic planning process in 2006. He further explained that it is anticipated that the City will spend more than \$25,000 with management Partners, Inc. for the community survey and preparation for the strategic planning process in 2006.

The roll was called and showed the following vote:

AYE: Blomberg, Daniel, Harbison, Niehaus, Roesch, Steinbrink, Suer (7)
NAY: (0)
ABSENT: (0)

COUNCIL COMMITTEE REPORTS

Mayor's Court

Mayor Blomberg reported that the total Mayor's Court collections for the month of January, 2005 were \$11,550.73.

Mrs. Harbison moved to accept the Mayor's Court collections for the month of January, 2005. Mr. Steinbrink seconded. City Council unanimously accepted the collections.

Parks & Recreation

Mr. Daniel had nothing to report at this time.

Financial Planning

Mr. Suer had nothing to report at this time.

Law & Safety

Mr. Niehaus had nothing to report at this time.

Governmental Affairs

Mrs. Harbison had nothing to report at this time.

Public Works

Ms. Roesch had nothing to report at this time.

Planning, Zoning & Landmarks

Mr. Steinbrink had nothing to report at this time.

OTHER BUSINESS

Mr. Suer explained that the Environmental Advisory Group received a resignation letter on Monday, February 28, 2005 from Mr. Joel Ivers. He further explained that the Environmental Advisory Group would like to recommend the appointment of Mr. Dan McNeal, since he has been participating as an ad hoc member of the Group.

Mr. Suer moved to appoint Mr. Dan McNeal to the Environmental Advisory Group for a term expiring May 31, 2006. Mr. Niehaus seconded. City Council unanimously agreed with the appointment.

Mrs. Harbison moved to place the following pieces of legislation on the March 23, 2005 work session agenda for third reading that night:

An Ordinance Creating Gateway Interim Development Control Overlay District (3rd Reading, Mr. Steinbrink)

An Ordinance Allowing The Establishment Of Interim Development Control Districts (3rd Reading, Mr. Niehaus)

An Ordinance Amending The Land Use Code To Permit Planned Unit Developments (3rd Reading, Mr. Suer)

An Ordinance Adopting A Revised and Recodified Land Usage Code For The City Of Montgomery (3rd Reading, Mr. Steinbrink)

Mr. Suer seconded. City Council unanimously agreed.

Mayor Blomberg asked if there was any further business to discuss in public session. There being none, he asked for a motion to adjourn.

Mrs. Harbison moved to adjourn. Ms. Roesch seconded.

Council unanimously agreed.

Council adjourned at 8:37 p.m.

Clerk of Council