

October 9, 1972
Minute Book 57 - Page 478

A regular meeting of the City Council of the City of Charlotte, North Carolina, was held on Monday, October 9, 1972, at 3:00 o'clock p.m., in the Council Chamber, with Mayor pro tem Fred D. Alexander presiding, and Councilmembers Ruth M. Easterling, Sandy R. Jordan, James D. McDuffie, Milton Short, James B. Whittington and Joe D. Withrow present.

ABSENT: Mayor John M. Belk.

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INVOCATION.

The invocation was given by Reverend Preston Pendergrass, Minister of Antioch Baptist Church.

MINUTES APPROVED.

Motion was made by Councilman Jordan, seconded by Councilman Short, and unanimously carried, approving the minutes of the last meeting, on Monday, October 2, 1972.

PETITION NO. 72-44 BY ASHLEY PARK, WESTERLY HILLS IMPROVEMENT COMMITTEE FOR A CHANGE IN ZONING FROM R-9MF TO I-1 AND R-15MF OF PROPERTY ON THE EAST SIDE OF ASHLEY ROAD AND NORTH OF THE REAR OF LOTS ON KEMPTON PLACE, MANTEO COURT, MARLBOROUGH ROAD AND ROYSTON ROAD, DEFERRED.

Councilman Withrow moved to defer the subject petition until further notice, with no time limit, until some agreement can be reached by all parties concerned. The motion was seconded by Councilman Short, and carried unanimously.

LEAA GRANT AWARD CONTRACTS WITH NORTH CAROLINA DEPARTMENT OF NATURAL AND ECONOMIC RESOURCES DIVISION OF LAW AND ORDER, APPROVED.

Councilman Short moved approval of the following LEAA Grant Award Contracts which motion was seconded by Councilman Jordan, and carried unanimously:

- (1) Training Needs for Charlotte - \$26,400.00
- (2) Public Relations Film - \$15,750.00

ORDINANCE NO. 628-X AMENDING ORDINANCE NO. 520-X, THE 1972-73 BUDGET ORDINANCE AUTHORIZING AN APPROPRIATION TO OPERATE THE TWO LEAA PROJECTS.

Motion was made by Councilman Short, seconded by Councilman Jordan, and unanimously carried, adopting subject ordinance authorizing an appropriation of \$42,150 to operate the two above LEAA Projects.

The ordinance is recorded in full in Ordinance Book 19, at Page 309.

CONTRACTS BETWEEN MODEL CITIES DEPARTMENT AND VARIOUS AGENCIES, APPROVED.

Upon motion of Councilman Whittington, seconded by Councilman Jordan, and unanimously carried, the following contracts were approved for the Model Cities Department:

- (a) Amendment to contract for technical or professional services with Mecklenburg County Health Department for the operation of the Neighborhood Based Health Support Unit increasing the budget for the contract from \$149,000 to \$151,513. The increase is necessary for rebudgeting process and a vote by the State to pay salary increments, and to clarify certain points of confusion and ambiguity which exists in the list of general provisions.

October 9, 1972
Minute Book 57 - Page 479

- (b) Amendment to contract for technical or professional services with the Mecklenburg County Sheriff's Department for the operation of the Work Release Building Maintenance, decreasing the budget from \$65,655 to \$16,939.00. The amendment is necessary due to the defunding of the project which was never operational due to City-County contractual constraints, and to cover expenses incurred during the time the project was preparing for operation.

ORDINANCE NO. 629 AMENDING CHAPTER 13 REGULATING THE LOCATION OF NIGHT CLUBS, CABARETS, TAVERNS AND OTHER SIMILAR ESTABLISHMENTS.

Councilman Short stated that no one knows 100% about the proposed ordinance as to whether it will work and no one knows what businesses might get caught in the snares of the law. That he would agree it would be real good in passing laws such as this, if you could know exactly everything that we would need to know and to prophesy as to what would occur. That he does not feel this will ever be possible in this particular area and Council will have to move into something that is a little uncertain, but he feels it is in the public's interest because we do not want Charlotte to get involved in something like San Francisco where you have a bar, and then a church, and then an office building, and then a home, and then a bar, etc., running down any given street. To the extent possible, he would like to prevent that kind of development in our city.

He stated from reading the City Attorney's brief, Council can get tripped up in this situation and the courts by going too far, in terms of the distance between the bar and the residential structure. We can also get tripped up in terms of trying to classify bars of one type of another, or lounges. That in the only recent case, in 1965, the Court declared that both the enabling act of the legislature, as well as the local ordinance that was passed in Winston Salem, invalid for various reasons, but the Court did attempt to state how this sort of thing might be done and what would be a reasonable use of the misdemeanor power. From studying this brief, he feels the safest and most reasonable action would be to make it a misdemeanor to operate any nightclub within 200 feet of an occupied residential structure located in a residential zone and he would suggest that the effective date begin November 15, 1972.

Councilman Short stated the feature about the residential zone will minimize the possibility that someone could construct a Jim Walter home over in the backyard, behind a building or business somewhere, just for the purpose of moving against some lounge. The feature about November 15th simply gives an opportunity for those businesses who feel that they will be affected to see what is ahead and they might possibly want to contact Council before the effective date begins.

That the feature about making this applicable to any nightclub eliminates the necessity of classifying as the Courts have already said that we could not classify waitresses according to the way that they are dressed and he would feel that courts would not allow us to classify nightclubs according to the way that the waitresses and dancers dress.

Councilman Short moved that the subject ordinance be adopted, which motion was seconded by Councilman Whittington.

Councilman McDuffie asked if restaurants would be excluded in the subject ordinance and Mr. Underhill, City Attorney, replied we define nightclubs, cocktail lounges, beer halls, taverns, bars, cabarets, or other similar establishments as being a commercial establishment whose revenues are primarily derived from or related to the sale, dispensing or consumption of beer or alcoholic beverages. That definition covers only those establishments who derive their principal source of income from the sale, or permitting the consumption of alcoholic beverages. He stated a restaurant is normally in the business of preparing and selling food; if they have permitted the dispensing or consumption of beer, or alcoholic beverages, on their premises, it is incidental to rather than being primary to their business. That most restaurants would be exempted from this ordinance.

October 9, 1972
Minute Book 57 - Page 480

Councilman Short stated the suggested distance of 200 feet is purely in relation to what seems to be the public's welfare and how far you need to be away from something to keep it from being too much of a nuisance. This would mean that a nightclub would have to be on down the street so there would have to be two or three houses between to have that much distance and this is the only reason for the 200 feet.

Councilman Jordan stated there are certain things about this ordinance he cannot approve. That he is afraid Council is going to meet itself coming back again just as we have in the past. He stated we have clubs out in the County and if we do not get the County to do the same thing, we are going to be having clubs in the County and those out of the city and that we have not given enough thought to what we are doing here. That possibly we should have a statewide ordinance instead of doing what we are today.

Mayor pro tem Alexander asked what the proposed ordinance would do with a show that is being held in Ovens Auditorium, similar to African Dancers, and Mr. Underhill, City Attorney, replied this ordinance does not mention the word topless and it would have absolutely no effect on the presentation of any legitimate stage production, regardless of the costumes of the performers.

Councilman Jordan asked what effect this ordinance would have on the new club under construction on Independence Boulevard if they employ topless dancers and Mr. Underhill replied this ordinance makes no distinction between the costume, or dress, of the waitresses and entertainers and this affects all places that sell beer or permit brown-bagging as a primary source of income.

Councilman Short stated it would be possible under this ordinance to mix topless activities with the selling of Coca-Cola, but he does not think this is likely to occur.

Mayor pro tem Alexander asked if we are saying that no cocktail lounge, night club or tavern, etc., will be permitted within 200 feet of any residence providing it is located on property zoned for residential use by the city zoning office and Mr. Underhill replied that is correct, but the residence has to be occupied as a permanent residence, and the 200 feet is the distance measured from the nearest external wall of the residential structure housing the regulated activity. That the ordinance differs somewhat from the one discussed last week as suggested by Mr. Helms, giving the definition of measurement as being from property line to property line and this one measures from the two structures to determine whether or not it meets the requirements.

Mayor pro tem Alexander asked if this means that anything beyond 200 feet is permissible and Mr. Underhill replied that is correct.

Councilman Jordan stated on Fourth Street we have business all up and down on the right side and we have a club, and then on the other side we have residential property and the street is maybe only 80 feet across. He asked if this means that if someone is living in the house directly across the street from this club within 200 feet, that this club cannot operate, and Mr. Underhill replied that is correct, as long as the residence is located on property zoned for residential use and is occupied.

Mayor pro tem Alexander asked if we did not have an ordinance already on the books to take care of this problem and Mr. Underhill replied we have three ordinances on the books; one prohibiting indecent exposure, another prohibiting any type of dissemination of obscene material, be it printed, filmed, entertainment, dancing or any type of obscene activities, and then a privilege license tax on topless waitresses and dancers. There are three city ordinances, that are in addition to the state laws on the books concerning topless entertainment and other obscene productions, plays, etc. Mayor pro tem Alexander asked why the state law does not control this situation and Mr. Underhill replied because up until this time there has been no judge in North Carolina that has held topless dancing to be obscene entertainment.

October 9, 1972
Minute Book 57 - Page 481

Mayor pro tem Alexander asked if the other two ordinances on the books cannot stop this and Mr. Underhill replied to his knowledge topless dancing and exposure of the female breast has not been held to be an obscene activity within the meaning of the exposure ordinance or the meaning of the obscenity ordinance.

Myaor pro tem Alexander stated if we want to stop this, Council must come up with a legal document, or if we cannot legally stop this, Council needs to tell the citizens of Charlotte that we cannot legally stop this activity. That Council ought to determine whether it wants to put another ordinance on the books that is just another ordinance which perhaps pacifies somebody until somebody else sues us and then we do not have anything but another ordinance which is not enforceable.

Councilman Short stated he is convinced there is no way that has been thought of thus far to stop toplessness. That toplessness is merely another form of dress as far as the courts are concerned. You might as well prohibit people from wearing hats, or force them to wear hats. All this ordinance is aiming at doing is to prevent something like San Francisco where you have bars intermingled with houses and Council should at least go that far. That he does not claim this will stop toplessness.

Mayor pro tem Alexander asked why limit it to 200 feet and Councilman Short replied like many other lines which must be drawn, such as a zoning line in a certain place, you have to draw a line somewhere. Mayor pro tem Alexander stated he just does not want to adopt a regulation today and then tomorrow, one foot across the 200 feet measurement line, citizens still have the same problem they are disturbed about right now.

Councilman McDuffie asked what effect this ordinance would have on the businesses already there; what recourse they would have against the city if it stops their operations and Mr. Underhill replied it will either put them out of business or Council will be swamped with rezoning petitions to rezone adjoining properties, if it is located within 200 feet of a residential structure, zoned for residential use, they cannot operate. He stated this also applies to existing establishments.

Councilman Withrow asked if there could be zoning ordinances drawn up at a later date that would take into consideration the specific case we are talking about, and Mr. Underhill replied the zoning law recognizes existing uses and those existing uses become non-conforming uses, but they are permitted to remain as non-conforming uses. In other words, you do not do away with them after the adoption of the zoning ordinance; they are allowed to continue as a non-conforming uses.

Mayor pro tem Alexander stated we could produce a zoning ordinance but it would not stop the clubs that are already in operation. Councilman Jordan stated this would allow the clubs already in operation to remain under the "grandfather clause" but would eliminate any future clubs from coming in.

Councilman McDuffie stated he would have serious doubts about the desirability of this kind of half-way action with a 200 foot limitation when the State ABC Code is 300 feet; that he would personally prefer Mr. Helms's ordinance, with 300 feet, limiting topless in a residential area which would eliminate a good bit of traffic in business and keep the neighborhoods less traveled because, according to the memorandum presented by the City Attorney, that the lady in the State Attorney General's Office states that she thinks local governments have the right to outlaw topless entertainment, in the case of the State versus Tenore, which has not been to the Supreme Court and may not hold up when it gets there but until it does, that is the position we are in, with a half-way proposition and we do not know what will stand up. He stated until the Court throws out an ordinance that Council has put on, he is not willing to give up on trying to eliminate topless. That the State ABC Law only refers to schools and churches and that he feels the home is just as important as a school or church as most of us are in the home more than we are in church. He stated he personally feels the home is more important because we spend more time there.

October 9, 1972
Minute Book 57 - Page 482

Councilman Short stated the case Councilman McDuffie refers to was based on a case which was decided in 1921, and the country, and the whole of society, was certainly much more moralistic at that time and Councilman McDuffie stated if this is the case, then Council must get this updated and throw it out of Court so the public will know. That the people do not know this can be outlawed.

Councilman Short stated in this particular case, the Court was not ruling on toplessness but merely ruling on dance halls and he believes what is being suggested here will accomplish it, and has a much greater chance of standing up in court. Councilman McDuffie stated you are talking about beer joints being 200 feet from a residence and they can still have topless if they are 201 feet away and be legal.

Councilman Short stated the case that counts is this 1965 case and it says there must be a reasonable relationship to the maintenance of peace and quiet. That 200 feet is probably better and safer in this regard than 300 feet.

Councilman Withrow stated he talked to one of the County Commissioners last night and he stated they are interested in this ordinance and thought the City and County might be able to coordinate its adoption and suggested a possible breakfast meeting to discuss this and a number of other items. That he personally thinks we should coordinate with the County more as the City and County someday will be one and he would like to see us have this meeting.

Councilman Short stated he will be glad to go to this meeting which we need for several reasons but he feels Council should proceed with this ordinance today just as Council proceeded with the massage parlor ordinance and then, later on, the County came along, after seeing whether it would work. That we could help them now by giving them something they could go by to see whether it would work.

Mr. Arthur Goodman, attorney, stated he would like to urge that Council go along with Councilman Withrow on this item and hold off on voting today because he does not think anyone has any idea how many existing businesses this will affect; that he does not know whether it is 50 or 500 in the City of Charlotte which it will affect. He stated when you are taking a large group of people who have their money invested in a place of business, that he feels they are at least entitled to be heard before Council adopts an ordinance putting them out of business and making it unlawful overnight.

He stated if Council will hold off on this vote today, he feels sure they can get a better idea of what overall effect it would have because, as Councilman Short has said, this is a matter which he feels should be a zoning proposition so we do not end up with a hodge-podge and that would be the proper way to handle it. While it is true it would not be retroactive, it would solve things for future growth and he would ask Council to hold off so everybody could know because this is entirely different than anyone in the City of Charlotte has heard about.

Mr. Goodman stated this whole thing came up once again over one particular place of business where people legitimately invested their money, signed a long term lease, and this will knock it out by about 24 feet. That it suspiciously appears to be aimed at one particular place of business but this may indirectly affect several hundred business places. He stated Councilman Short made some reference to some places selling Coca-Cola in topless; that it occurred to him very quickly that there were other ways that you could have topless and serve beer and get by with it. If you wanted to charge \$6.00 admission to see a topless dancer and give away beer, you could do this within 200 feet under this ordinance. That this is exactly the way one club operated here which burned on Central Avenue; there was an admission charge which covered all the beer you could drink and all the set-ups you wanted, but the charge was for the show. He stated he would ask that this be coordinated with the County for another reason - there are clubs within the city limits and clubs outside the city limits, then the clubs outside the city gain a tremendous advantage over the ones within the city limits when Council takes this action independently.

October 9, 1972
Minute Book 57 - Page 483

Mr. Goodman stated if Council desires, he would undertake to find out how many are involved by asking people to voluntarily call him. Councilman Short stated Council is sure they will find out between now and November 15 when this ordinance will prevail. That the possibility of loopholes is no reason to avoid attempting something in the public interest; any law is subject to the possibility of some smart lawyer finding some way around it. He stated you just cannot back off always on that account. Mr. Goodman stated he felt it would be a more orderly way to proceed if people had a chance of being heard before a vote was taken rather than having them coming in and changing the ordinance or getting a restraining order and he is hopeful that Council might consider postponing this ordinance until everyone who would have a business interest can be heard.

Councilman Withrow stated Mr. Goodman brought up the subject of giving the beer away and then the source of income would be from operating the show; he asked if this would mean they could by-pass this ordinance and Mr. Parks Helms, attorney representing the Amity Garden area, replied rewording the ordinance to read "whose revenues are primarily derived either directly, or indirectly, from or related to the sale, dispensing or consumption of beer or alcoholic beverages", would be satisfactory for the courts to enforce this ordinance.

Mr. Helms stated he talked with the City Attorney earlier in the week and agreed to change the distance from 1,000 to 500 feet, and by measuring from the external wall of the residential structure to the external wall of the structure in which the activity was being regulated. That his first impression of this ordinance today is that it would be acceptable to the people he represents in the Amity Garden area and it does do one thing that possibly the ordinance he presented last week does not do, and that is it removes any doubt of any discrimination whatsoever between a lounge or night club which permits topless entertainment on the one hand and those lounges and cocktail lounges, etc. which do not allow topless entertainment. This is one thing that he discussed with Mr. Goodman as to whether or not it was constitutional and if there were any loopholes in it, then that is where the major loophole would have been.

Mr. Helms stated the proposed ordinance is very effective, and in a manner in which our Supreme Court, and the United States Supreme Court, has said is lawful and proper; that we are not discriminating against topless; we do not refer to topless; we are talking about nightclubs and lounges. To that extent, he feels this is a valid ordinance and would solve the kind of problem that is prevalent in many of our residential communities.

He stated he would like to go on record, as far as the people he represents are concerned, as saying they will support this ordinance; he would suggest that the 200 feet be changed to 300 feet, which is not a big matter, but 300 feet is in accordance with what the ABC regulation provides to schools and churches and there is a reasonable relationship between the distance from the residential structure and the active operation we are trying to separate.

Councilman Withrow asked if this could be coordinated with the County and talk it over in a meeting this coming Friday and Mr. Helms replied he feels it would be wise to have a countywide ordinance but he would not want any delay to affect the rights, not only of the people who live in the Amity Garden area, but all the citizens, and we ought to make it clear that this ordinance will be retroactive - that is, that it will apply to every operation of this kind. Mr. Helms stated if this is understood, and the City Attorney can tell him that Council can do that, then he would not strenuously object to its being held over until next week. That he would like to know the City Attorney's feeling in this connection.

Mr. Helms stated he would like to suggest that at the same time this is adopted that Council ask the City Attorney to begin preparation of a zoning ordinance which would also cover this particular situation and which would prevent any spread of this kind of activity in a residential neighborhood. But a zoning ordinance would not affect those lounges already in operation; it would give an opportunity to zone them out of business for future purposes, and he would recommend this action by Council.

October 9, 1972
Minute Book 57 - Page 484

After further discussion, Councilman Short stated he feels Council should proceed on this today and he would hope the County will come along in time and, with Councilman Whittington's permission, he would like to revise the wording along with the suggestion made which concerns the definition of the night club and cocktail lounge, which would read as follows: "any commercial establishment whose revenues are primarily derived, either directly or indirectly from, or related to the sale, dispensing or consumption of beer or alcoholic beverages." Councilman Whittington agreed to the revision.

A vote was taken on the motion and carried by the following vote:

YEAS: Councilmembers Short, Whittington, Easterling, McDuffie and Withrow.
NAYS: Councilman Jordan.

The ordinance is recorded in full in Ordinance Book 19, at Page 310.

MEETING RECESSED.

Mr. David Burkhalter, City Manager, advised Councilmembers and the audience he has just received notification of a bomb threat to City Hall.

Mayor pro tem Alexander advised Council will recess at this time for 30 minutes.

COUNCIL MEETING RECONVENED.

Council reconvened its meeting at 4:30 o'clock p.m., in the Training Room of the City Hall Annex Building, with all members of Council present.

MAYOR PRO TEM ALEXANDER REQUESTS A RECOUNT OF VOTES ON THE LAST MOTION.

Mayor pro tem Alexander requested the Clerk to give him a recount on the votes cast on the last motion, before the recess, and he was advised the vote was three affirmative, two abstentions and one no vote.

Mayor pro tem Alexander stated under our Charter Provisions, abstentions are not permitted and those Councilmembers who abstained are now recorded as affirmative votes; this would mean five yeas and one nay.

Councilman Withrow moved to reconsider the above vote due to the confusion of the bomb threat. The motion died for lack of a second.

STATEMENT BY COUNCILWOMAN EASTERLING REGARDING ABOVE ORDINANCE.

Councilwoman Easterling stated she was trying to get Mayor pro tem Alexander's attention when he called for the vote on the last motion. That she did not vote either way. She did not say she abstained or voted for or voted against it. She stated she thinks there has been a viewpoint that has not been expressed in all our talks this afternoon.

She stated she has a file of 66 communications from citizens - letters written and signed and so many telephone calls that she just quit counting. That she is distressed about the moral implications of this whole matter but knows that you cannot legislate morality. People have to be good because they believe it is right to be good and not because it is against the law. She stated she feels strongly that this type of entertainment is not in good taste and, in fact, is sinful and wrong. But we have gone beyond the point in this country where we put people in jail or turn them out of the church because their social behavior offends the sensibilities of others.

October 9, 1972
Minute Book 57 - Page 485

That she feels just as strongly about freedom and individual liberties and the censorship involved in this type of situation. The girl who exposes herself in this fashion and the citizen who patronizes such a place have both made their individual choice, just as a person who stays away from this type of entertainment has made a choice.

Councilwoman Easterling stated in trying to reconcile these two points of view in her own mind, she has come to the conclusion that there is validity in the argument that if these kinds of things are to go on, they should be in the class of luxuries, just as alcohol, tobacco and other such things are taxes. Then, if people want to participate, they can pay extra to do so.

The other aspect is the protection of the rights of those persons who do not want an establishment of this kind in their neighborhood, on their street, across the street, or in the same block. That this Council has just as much responsibility, or right, to protect the rights of these people as they do to protect the rights of the people who are in business in this type of establishment.

She stated she would be in favor of the strongest type of control this Council can adopt that will be legally defensible, whatever those controls are. We have encouraged the citizens of this city everywhere to form neighborhood associations, councils and groups to try to protect their own neighborhoods, to make them what they ought to be. This is what has happened, it has happened in a number of instances all over the city and that Council has a responsibility to these people to listen to their point of view and, as Mr. Goodman stated himself, he would not want an establishment like this next door to his own home, whether it is legal or not.

That this is the statement she wanted to make before the vote was taken earlier during the confusion. She stated her vote was recorded as affirmative simply because she did not vote one way or the other.

STATEMENT BY COUNCILMAN WITHROW REGARDING HIS VOTE ON THE LAST MOTION.

Mayor pro tem Alexander stated before Councilman Withrow makes his statement, he would like to say this matter has been decided now, and he will have to rule that any further statements will be out of order.

Councilman Withrow stated his vote has been recorded as affirmative also, but he would like to say he would have voted against it because he feels the ordinance, as adopted, will not stand up in court.

He stated he would vote for anything that would stop topless and if we can prove to the people that our laws on topless are valid, then we can tell the police to go ahead and arrest these people and test it all the way through Supreme Court, but he does not think the ordinance even mentions topless anywhere in it at all. They can have topless at other places that are within 300 or 500 feet all over the city.

Then, too, this Council, along with previous Councils, has always zoned places throughout the city business and they have allowed beer parlors to move into these places and a lot of them have their worldly possessions at stake in what Council has voted on today. Council has voted against these people, who might have from \$10,000 to \$40,000 of their money invested, and now Council is saying to them, you will lose your earthly belongings in what you own.

That if there could be a grandfather clause inserted to allow these people who have been in business for 10, 15 or 20 years to remain, he would vote for it, but this is not fair to the people who have been doing it. Council has an obligation to protect these people and nothing has ever been said about whether the grandfather clause could be added.

Councilman Short stated no grandfather clause is possible in the misdemeanor situation.

October 9, 1972
Minute Book 57 - Page 486

ORDINANCE NO. 630 AMENDING CHAPTER 11, ARTICLE II, SECTION 11-18, BY REPEALING CLASSIFICATION NUMBER 305.1 IN ITS ENTIRETY.

Councilman Whittington moved adoption of subject ordinance, which motion was seconded by Councilman Short, and carried unanimously.

The ordinance is recorded in full in Ordinance Book 19, at Page 311.

ORDINANCE NO. 631 AMENDING CHAPTER 11, ARTICLE II, SECTION 11-18 BY INCREASING THE ANNUAL PRIVILEGE LICENSE TAX OF CLASSIFICATION NUMBER 265.1.

Councilman Whittington stated it is a matter of record that on April 23, 1971, he made motion relating to topless, nudity, obscenity, etc. concerning waitresses, entertainers, dancers and employees, and that we write into our ordinances the one which Council has just repealed, to put a tax on topless dancers of \$500.00. That he believed then, and still believes, that Council did the best thing they could do with the laws and ordinances which they had after careful study and after recommendations of the City Attorney and other attorneys in this community.

He stated we all know what happened to that ordinance. That he feels just as strong today as he did then that Council cannot continue to overlook this problem in Charlotte. That he feels today Council should pass another ordinance, based upon what the City Attorney has recommended.

Councilman Whittington moved adoption of subject ordinance, increasing the annual privilege license tax of Classification Number 265.1 from \$100.00 to \$300.00, which motion was seconded by Councilman Withrow.

Councilman Short stated he is going to vote for this ordinance but feels it is imperative to put into the record for the public to understand that, like the first one that was proposed today, this will not stop topless. That he would not like for the public to be misinformed or have unreasonable expectations here.

He stated this ordinance is considerably different from what was previously enacted in the way of a tax. The previous tax, which was just abolished, was aimed at the girl, the individual performer; it might cause some establishment several thousand dollars to pay this tax, depending on the number of girls. If an establishment had five girls, the tax would be \$2,500.00.

He stated this tax is aimed at the establishment itself, just one tax per establishment, in the amount of \$300.00, no matter how many girls. This will not have a great effect on topless. That he is going to vote on this, but wants the public not to be deceived.

After further discussion, a vote was taken on the motion to increase the privilege license tax from \$100 to \$300, and carried by the following vote:

YEAS: Councilmembers Whittington, Withrow, Easterling, McDuffie and Short.
NAYS: Councilman Jordan.

The ordinance is recorded in full in Ordinance Book 19, at Page 312.

BREAKFAST MEETING WITH COUNTY COMMISSIONERS TO BE SCHEDULED FOR A LATER DATE.

Councilman Withrow advised Councilmembers that the County Commissioners had suggested a joint breakfast meeting for Friday, October 13, to coordinate efforts regarding the zoning ordinances and the building code that concern both the city and the county.

October 9, 1972
Minute Book 57 - Page 487

Councilman McDuffie moved to have the breakfast meeting with the County Commissioners at 7:00 o'clock a.m., at the Ramada Inn on East Boulevard, on October 13, 1972. The motion was seconded by Councilman Short.

After discussion, Councilman Withrow made a substitute motion to reschedule the breakfast meeting for a later date, which motion was seconded by Councilman Whittington, and carried unanimously.

CITY ATTORNEY REQUESTED TO DRAFT AN ORDINANCE BANNING TOPLESS FOR CONSIDERATION NEXT WEEK.

Councilman McDuffie requested the City Attorney to draft an ordinance banning topless dancing in the City of Charlotte so that Council can find out if it can be upheld in the courts.

PUBLIC HEARING SET FOR MONDAY, DECEMBER 4, TO CONSIDER AMENDMENTS TO THE ZONING LAW PROHIBITING TOPLESS ESTABLISHMENTS FROM OPERATING WITHIN 400 FEET OF A RESIDENTIAL STRUCTURE.

Councilman Short moved that Council set a hearing for Monday, December 4, to consider adoption of an ordinance relative to the operation of a topless establishment in any zone within 400 feet of an occupied residential structure in a residential zone. The motion was seconded by Councilman Whittington.

After discussion, a vote was taken on the motion and carried unanimously.

EXTENSION PERIOD GRANTED DEVELOPER FOR DOWNTOWN GARAGE TO ARRANGE PLANS AND FINANCING.

Mr. William E. Little stated four weeks ago he requested more time to finalize plans for the proposed parking facility on College Street. He stated they now have indications of the availability of financing which can be finalized in a very short time.

That a complete feasibility study has been made by the firm of Richard C. Rich of Detroit and he has a bottom line figure from them and arrangements have been made for the financing.

He stated he has options on eight of the ten pieces of property, with the other two pieces of property owned by either the Mayor's company or his family, and in view of the fact that the Mayor has been out of town, he has been unable to do anything further on the other two parcels.

That he is now requesting an additional four weeks to finalize the entire financing of the project.

Councilman Jordan moved that Mr. Little be granted an additional thirty (30) days to finalize his plans for this parking facility. The motion was seconded by Councilwoman Easterling, and carried unanimously.

LETTER RELATIVE TO TOPLESS ESTABLISHMENTS PRESENTED TO CLERK FOR COUNCIL.

Mrs. Clara Skurla, 737 Lockridge Road, stated she has written her views regarding topless dancing and a few other relative issues in a letter which she presented to the Clerk. Mayor pro tem Alexander requested that copies be made for each Councilmembers.

DIRECTOR OF MODEL CITIES CONSUMER EDUCATION PROJECT REQUESTS COUNCIL TO CONSIDER FUNDING OF PROJECT IN THE MODEL CITIES 1973 BUDGET.

Mrs. Juanita Oates, Director of the Consumer Education Program, stated that the Home and Family Life Support Program has been in function for three years and is funded by Model Cities. That she recently learned, to her regret, that the program is not included in the Fourth Year Plan for Model Cities. She stated she is not the only person who is disappointed.

Mrs. Oates stated she feels strongly that the Model Cities advisers were not fully aware of the program's significance and impact when evaluating the project several weeks ago. That consumer education is becoming of growing importance to everyone in this country and that they are the only agency set up to inform Model Neighborhood residents about consumer affairs.

Mrs. Oates reviewed some of the services which the Home and Family Life Program provide to residents. She stated she has not been given any clear cut reason as to why this program was not included in the Fourth Year Plan for Model Cities.

Also speaking in favor of continuing the program were Mrs. Viola Hewey, Mrs. Pearl Hunter and Mrs. Mattie Jones.

Mayor pro tem Alexander thanked Mrs. Oates for bringing this to Council's attention and stated Council will take this information under advisement and will review it when the matter is considered for action later this month.

CITY MANAGER REQUESTED TO BRING REPORT TO COUNCIL REGARDING RETIREMENT STATEMENTS FOR CITY OF CHARLOTTE EMPLOYEES.

Mayor pro tem Alexander stated several months ago he raised the question of city employees receiving a statement on their retirement from our state system. That he was told it would be some time around October before this information could be forwarded to them. He asked the City Manager if it will be forthcoming and Mr. Burkhalter replied the reason for the delay is in the computerization of the information; that they were supposed to have it ready in about nine months to a year.

Mayor pro tem Alexander requested the City Manager to bring a report back to Council regarding the statements.

BIDS ON OIL SPACE HEATERS TO BE REJECTED AND RE-ADVERTISED.

Mr. Burkhalter, City Manager, advised the purchasing department has recommended that all bids on the oil space heaters be rejected and the project to be readvertised.

Councilman Short moved approval of the recommendation that all bids on the oil space heaters be rejected and readvertised, which motion was seconded by Councilman Jordan, and unanimously carried.

MUNICIPAL AGREEMENT WITH N. C. STATE HIGHWAY COMMISSION FOR PAVEMENT MARKING PROGRAM, APPROVED.

Mr. Burkhalter, City Manager, presented a Municipal Agreement with the N. C. State Highway Commission for a cost sharing program for hot spray plastic pavement markings on sections of South Boulevard, South Tryon and Beatties Ford Road.

After discussion, Councilman Short moved adoption of a resolution authorizing execution of the subject Municipal Agreement, which motion was seconded by Councilman Jordan, and unanimously carried.

The resolution is recorded in full in Resolutions Book 8, at Page 412.

CITY MANAGER REQUESTED TO BRING REPORT TO COUNCIL RELATIVE TO USE OF DUMPSTERS IN CERTAIN AREAS.

Councilman Whittington requested the City Manager to bring a report back to Council relative to the use of dumpsters in areas where litter is prevelant. Mr. Burkhalter, City Manager, stated his staff is working on this and Council will be furnished this information shortly.

October 9, 1972
Minute Book 57 - Page 489

CONTRACT WITH ABRAMS AERIAL SURVEY CORPORATION FOR MAPPING SERVICES FOR ANNEXATION PURPOSES.

Councilman Short moved approval of a contract with Abrams Aerial Survey Corporation, in the amount of \$42,220, for certain mapping services which include necessary survey work for the topographic mapping program and all necessary work to provide a new Official City Map required for annexation purposes. The motion was seconded by Councilman Whittington, and unanimously carried.

CHANGE ORDER NO. 1 IN CONTRACT WITH CROWDER CONSTRUCTION COMPANY FOR THE CENTRAL AVENUE WIDENING PROJECT, BETWEEN NORLAND ROAD AND THE CITY LIMITS, APPROVED.

Upon motion of Councilman Whittington, seconded by Councilman Jordan, and unanimously carried, subject Change Order No. 1 was approved in contract with Crowder Construction Company for the Central Avenue Widening Project, between Norland Road and the City Limits for storm drainage improvements in Central Avenue, changing the contract price from \$361,187.65 to \$364,808.35.

AGREEMENT WITH SEABOARD COASTLINE RAILROAD FOR WIDENING AND IMPROVING WEST THIRD STREET, BETWEEN MINT STREET AND GRAHAM STREET, APPROVED.

Motion was made by Councilman Whittington, seconded by Councilman Jordan, and unanimously carried, approving subject agreement with Seaboard Coastline Railroad for the widening and improving of West Third Street, between Mint Street and Graham Street.

The agreement calls for:

- (1) The city to purchase the necessary right of way from Seaboard Coastline at a cost of \$45,000, which figure is within the limits of the appraisals.
- (2) It allows the city to award contracts and enter upon Seaboard Coastline's property to modify their buildings to conform to the street widening plans.
- (3) It requires Seaboard Coastline to remove three of their existing five tracks covering West Third Street and to reconstruct the crossings for the other two. The City and Seaboard Coastline will share these costs on a 50-50 basis as required by State law. The total estimated cost of this work is \$5,570 with the city's share being \$2,785.00.
- (4) It requires Seaboard Coastline to reconstruct the sixth track crossing West Third Street and owned by Virginia Paper Company with the city to pay all costs for this reconstruction estimated at \$3,950.00.

CONTRACTS FOR THE CONSTRUCTION OF SANITARY SEWER TRUNKS AND INSTALLATION OF WATER MAINS, APPROVED.

Councilman Jordan moved approval of the following contracts for the construction of sanitary sewer trunks and installation of water mains, which motion was seconded by Councilman Short, and carried unanimously:

- (a) Contract with Lone Star Builders for the construction of 975 linear feet of 8 inch sanitary sewer trunk to serve Sharon Lakes Apartments off Sharon Road West, outside the city, at an estimated cost of \$9,000.00. The applicant will construct the line at his own cost and the city will own and maintain same at no cost to the city. The applicant has deposited \$1,962.75, the proportional cost to a previous contract, which is non-refundable.

October 9, 1972
Minute Book 57 - Page 490

- (b) Contract with Arrowood Southern Executive Park, Inc. for the installation of 1700 feet of 12-inch C. I. water main and three fire hydrants in a portion of Arrowood Southern Complex, outside the city, at an estimated cost of \$21,000.00. Funds will be advanced by the applicant and refunded all under the terms of the existing city policies.

RIGHT OF WAY AGREEMENT WITH N. C. STATE HIGHWAY COMMISSION FOR THE INSTALLATION OF A WATER MAIN ACROSS CHESAPEAKE DRIVE, APPROVED.

Upon motion of Councilman Whittington, seconded by Councilman Withrow, and unanimously carried, the subject right of way agreement with the North Carolina State Highway Commission was approved for the installation of a 12-inch diameter water main across Chesapeake Drive (SR 2054), at Black Satchel Road.

RESOLUTIONS AUTHORIZING CONDEMNATION PROCEEDINGS, ADOPTED.

Motion was made by Councilman Whittington, seconded by Councilman Short, and unanimously carried, adopting the following resolutions authorizing condemnation proceedings.

- (a) Resolution authorizing condemnation proceedings for the acquisition of property belonging to Robert Franklin Grubb, Jr. and wife, Pauline M. Grubb, located on Byrum Drive in Berryhill Township in connection with the Airport Expansion Program.
- (b) Resolution authorizing condemnation proceedings for the acquisition of property belonging to Robert Franklin Grubb, Jr. and wife, Pauline M. Grubb, located on Byrum Drive in Berryhill Township in connection with the Airport Expansion Program.

The resolutions are recorded in full in Resolutions Book 8, beginning on Page 409.

COUNCILMAN JORDAN LEFT MEETING.

Councilman Jordan left the Council Meeting at this time and was absent for the remainder of the session.

PROPERTY TRANSACTIONS, AUTHORIZED.

Councilman Withrow moved approval of the following property transactions, which motion was seconded by Councilman Whittington, and carried unanimously:

- (a) Acquisition of 100' x 383' x 106' x 419', containing a one story single family residence, on Byrum Drive, from Ruben Sneed and wife, Jeannette B., at \$28,000 for Airport Master Plan, land acquisition.
- (b) Acquisition of 18.35' x 18.35' x 29.70' at 1626 Central Avenue, from Craver Realty Corporation, at \$100.00, for Central Avenue-The Plaza construction.
- (c) Acquisition of 15' x 1834.85' of easement at 1000 Uster Lane (Near Hoskins Road), from Spangler Construction Company, at \$2,000.00 for sanitary sewer to serve Chesapeake Drive.
- (d) Acquisition of 15' x 598.58' of easement at 500 Melynda Road, from the Atlantic Land Improvement Company, at \$600.00, for sanitary sewer to serve 500 Melynda Road, Cenco, Inc.

October 9 1972
Minute Book 57 - Page 491

- (e) Acquisition of 15' x 274.55' of easement at 8410 Albemarle Road, from James B. Jamison and wife, Louise Y. Jamison, at \$300.00 for sanitary sewer to serve Olde Savannah.
- (f) Acquisition of 15' x 322.14' of easement at 8700 Albemarle Road, from Ralph Squires Construction Company, Inc., at \$1.00 for sanitary sewer to serve Olde Savannah.
- (g) Acquisition of 15' x 1814.79' of easement at 101 Arrowhead Drive, from John Crosland Company, at \$1.00 for sanitary sewer to serve Wellington Hall Apartments.

LEASE WITH ERVIN COMPANY, COMMERCIAL DIVISION FOR SPACE IN THE EXECUTIVE BUILDING, APPROVED.

Upon motion of Councilman Whittington, seconded by Councilman McDuffie, and unanimously carried, the subject lease with Ervin Company was approved for 7,684 square feet of space in the Executive Building at \$4.75 per square foot for a period of one year.

ORDINANCES ORDERING THE REMOVAL OF WEEDS AND GRASS PURSUANT TO SECTION 6.103 AND 6.104 OF THE CITY CHARTER, CHAPTER 10, ARTICLE I, SECTION 10-9 OF THE CITY CODE AND CHAPTER 160-200 OF THE GENERAL STATUTES OF NORTH CAROLINA.

Motion was made by Councilman Short, seconded by Councilman Whittington, and unanimously carried, adopting the following ordinances ordering the removal of weeds and grass:

- (a) Ordinance No. 632-X ordering the removal of weeds and grass at 3514 Warp Street
- (b) Ordinance No. 633-X ordering the removal of weeds and grass adjacent to 2500 Booker Avenue.
- (c) Ordinance No. 634-X ordering the removal of weeds and grass at 1244 Badger Court.

The ordinances are recorded in full in Ordinance Book 19, beginning at Page 313.

RESOLUTION AUTHORIZING REFUND OF CERTAIN TAXES LEVIED AND COLLECTED THROUGH CLERICAL ERROR AGAINST FOUR TAX ACCOUNTS.

Councilman Withrow moved adoption of subject resolution authorizing the refund of certain taxes in the amount of \$559.00 which were levied and collected through clerical error against four tax accounts. The motion was seconded by Councilman Whittington, and carried unanimously.

The resolution is recorded in full in Resolutions Book 8, at Page 411.

CLAIM OF ROBERT L. LINDSEY, JR. ATTORNEY ON BEHALF OF MR. AND MRS. EZRA V. MOSS, JR. FOR PROPERTY DAMAGE AT 400 INGLE STREET, DEFERRED.

Councilman Short asked if any compromise figure at all was discussed with Mr. and Mrs. Moss, or their attorney; that apparently the city went in there and destroyed something on their property and, through failure to search the title, did not give them any warning at all. Mr. Underhill, City Attorney, replied no.

Councilman Short stated he understands Mr. and Mrs. Moss received no notice of this action because it was not even known that they were the owners. That the City made a mistake in sizing up the ownership in this case.

October 9, 1972
Minute Book 57 - Page 492

Councilman Short stated this claim should be deferred and that some conversation be held between our staff and Mr. Lindsey as to whether or not some type of compromise ought to be considered regarding this. That he does not feel they are entitled to a great deal of money but the fact remains that the City went in without legal notification.

Mr. Underhill, City Attorney, stated the subject property is owned jointly by Mr. and Mrs. Ezra Moss and Mr. and Mrs. Gary H. Watts and the property is listed, for tax purposes, in the name of Mr. and Mrs. Watts and from that source the Building Inspection Department picked up the name of the owner. That he thinks Mr. and Mrs. Moss and Mr. and Mrs. Watts have an arrangement whereby the Watts's pay the taxes.

Councilman Short stated the law is the notice should be given to the owner of the property before demolition and we failed to do it. That the Moss's deserve more courteous treatment than to just deny this claim.

Councilman McDuffie made a motion to deny subject claim as recommended by the City Attorney. The motion died for lack of a second.

Councilman Short moved that subject claim be deferred and that some conversation be held to see if some compromise can be made with these people. The motion was seconded by Councilman Whittington, and carried by the following vote:

YEAS: Councilmembers Short, Whittington, Easterling, Jordan and Withrow.
NAYS: Councilman McDuffie.

CLAIM OF MR. AND MRS. GARY H. WATTS FOR PROPERTY DAMAGE AT 400 INGLE STREET, DENIED.

Motion was made by Councilman Short, seconded by Councilman Whittington, and unanimously carried, to deny subject claim, in the amount of \$7,500.00 for property damage at 400 Ingle Street, as recommended by the City Attorney.

SPECIAL OFFICER PERMITS AUTHORIZED.

Councilman Whittington moved approval of the following Special Officer Permits for a period of one year, which motion was seconded by Councilman Withrow, and unanimously carried:

- (a) Renewal of permit to Murray Lee Blackwell for use on the premises of Southern Railway Company.
- (b) Issuance of permit to John Melton Maness for use on the premises of Charlotte Park and Recreation Commission.
- (c) Issuance of permit to Theodore Melvin Foster for use on the premises of Charlotte Park and Recreation Commission.
- (d) Issuance of permit to Barry Wayne Worley for use on the premises of Charlotte Park and Recreation Commission.

ORDINANCE NO. 635 AMENDING CHAPTER 8 OF THE CODE OF THE CITY OF CHARLOTTE RELATIVE TO COIN OPERATED DRY CLEANING ESTABLISHMENTS.

Motion was made by Councilman McDuffie, and seconded by Councilman Whittington, to adopt subject ordinance amending Chapter 8 of the Code of the City of Charlotte relative to coin-operated dry cleaning establishments by adding a new sub-section, Section 8-14, entitled: "Warning signs required in coin-operated dry cleaning establishments."

October 9, 1972
Minute Book 57 - Page 493

Councilman Withrow asked if the Health Department ever checks to see what type of cleaning fluids are being used in these machines to see if they meet the requirement, or if there is a code requirement? Mr. Underhill, City Attorney, replied this is covered under the National Fire Prevention Ordinance. Councilman Withrow asked who enforces this ordinance and the City Attorney replied the Fire Prevention Division of the Fire Department.

Councilman Withrow asked how often the operations are checked and Mr. Underhill replied he did not know but the operation of these machines is extensively covered in the ten volume edition ordinance which was approved by Council recently. That the only thing the new ordinance does not cover is the warning sign to be attached.

Councilman Withrow stated he has received a lot of calls since this was mentioned at the last Council Meeting. That you can go to one dry cleaning machine and the odor is very bad, then another one might have very little odor at all. That he questions the fact of whether there is any control of the fluids used and wonders if possibly the people who were killed might have used a machine where the wrong amount of fluid was used or more of one kind of fluid than the other.

Councilman Whittington stated the Medical Examiner would be able to explain that these deaths can be caused by the fumes penetrating the skin; that there are three different ways the fumes can be fatal.

Mayor pro tem Alexander suggested that the City Manager check with the Fire Chief and bring back a report to Council.

Councilman Short stated three dry cleaning executives came to see him regarding this matter and it is obvious that the industry does not agree with this ordinance. That the industry would like to have their local President, Mr. Ken Hill, come before Council to be heard. He stated he does not intend to vote on this until Council gives Mr. Hill, or some spokesman from the industry a chance to be heard. Mr. Underhill stated he has already talked with Mr. Hill.

Councilman McDuffie stated Mr. Hill is the President of the local industry and he is very much in favor of this ordinance; that the people who operate the dry cleaning establishments are not in favor of the ordinance. He stated this ordinance is needed in Charlotte, in the state, and in the whole country. That, hopefully, if enough people know the possibility of dying from these fumes, it would be a simple matter for the label to be affixed to the machines. That the label has already been printed and is available to any operator who requests one; these labels are already on the machines in the back rooms where the professionals work but the operators do not have the courtesy to put them on the machines for public use. He stated if we have the interest of the public at heart, then we should vote on this ordinance today.

Councilman Short stated last week he seconded Councilman McDuffie's motion to put this matter on the agenda but these people are entitled to be heard by Council. Councilman McDuffie stated that is why Council did not vote on it last week - to allow these people to come to Council today and talk about it.

Mayor pro tem Alexander asked the City Attorney if he has talked with Mr. Hill and Mr. Underhill replied he has conferred with him on this ordinance and other ordinances were considered.

Councilman Short stated Mr. Hill did not come to see him personally but three other operators did and he feels honor bound to ask that Council defer action today because these people were not asked to come down today. That their President did not come along with them when they came to talk with him. Councilman McDuffie stated their President is in favor of this ordinance.

October 9, 1972
Minute Book 57 - Page 494

Councilman Whittington stated he appreciates the position Councilman Short is in but feels Council should take action on this today since it has been on the table for a week and we already know of one fatality, with no warning of an unsafe machine, and to wait another week may allow other fatalities.

Councilman Short made a substitute motion that this item be deferred until next week. The motion died for lack of a second.

A vote was taken on the original motion to adopt subject ordinance and carried unanimously.

The ordinance is recorded in full in Ordinance Book 19, at Page 316.

CONTRACT AWARDED SANDERS BROTHERS, INC. FOR SANITARY SEWER LINE TO SERVE HAPPY VALLEY APARTMENTS.

Motion was made by Councilman Whittington, seconded by Councilman Short, and unanimously carried, awarding contract to the low bidder, Sanders Brothers, Inc., on a unit price basis, in the amount of \$78,928.00, for the construction of an 8-inch sanitary sewer line to serve Happy Valley Apartments.

The following bids were received:

Sanders Brothers, Inc.	\$78,928.00
Thomas Structure Company	83,261.00
Dellinger Construction Company	133,206.00

ADJOURNMENT.

Upon motion of Councilman Short, seconded by Councilman Whittington, and unanimously carried, the meeting was adjourned.



Louise Comfort, Deputy City Clerk