

**MINUTES OF MIDWAY TOWN COUNCIL REGULAR MEETING HELD ON JULY 15, 2019 AT 7:00 P.M. IN THE COUNCIL CHAMBER AT MIDWAY TOWN HALL, 426 GUMTREE ROAD, MIDWAY, NORTH CAROLINA**

**CALL TO ORDER**

Mayor John Byrum called the meeting to order and welcomed everyone present.

Mayor John Byrum gave the invocation and led in the Pledge of Allegiance prior to the opening gavel.

Councilors present were: John Byrum, Mike McAlpine, Todd Nifong, Robin Moon, Keith Leonard and Jackie Edwards. Absent: None. Town Manager Tammy Michael, Town Clerk Linda Hunt, Deputy Clerk Tammy Robertson and Attorney John Van Swearingen were present. Absent: Town Attorney Jim Lanik

Each Councilor had been furnished an agenda prior to the meeting.

No members of press were in attendance.

**APPROVAL OF MINUTES**

On motion by Mayor Pro Tem Mike McAlpine, seconded by Councilor Todd Nifong, Council voted unanimously to approve the minutes of the June 3, 2019 Town Council Regular meeting as presented.

**PUBLIC ADDRESS**

There were none.

**ADOPT AGENDA**

On motion by Councilor Robin Moon, seconded by Councilor Jackie Edwards, Council voted unanimously to adopt the agenda as presented.

**PUBLIC HEARING**

**PUBLIC HEARING – ADOPT ORDINANCE TO EXTEND A TEMPORARY MORATORIUM ON DEVELOPMENT APPROVALS FOR INTERNET SWEEPSTAKES BUSINESSES – ORDINANCE NO. 20-01**

At a Special meeting held on July 1, 2019, Council called for a public hearing to be held on Monday, July 15, 2019 at 7:00 pm at Town Hall to receive citizen input on the adoption of Ordinance No. 20-01 to extend a temporary moratorium on development approvals for Internet Sweepstakes Businesses until October 13, 2019.

The public hearing was advertised in *The Dispatch* on July 5, 2019 and July 12, 2019 as required by law.

Mayor Byrum opened the public hearing.

There being no comments, Mayor Byrum closed the public hearing.

On motion by Councilor Robin Moon, seconded by Councilor Keith Leonard, Council voted unanimously to adopt Ordinance No. 20-01 to extend a temporary moratorium on development approvals for Internet Sweepstakes Businesses.

ORDINANCE NO. 20-01

AN ORDINANCE IMPOSING A TEMPORARY MORATORIUM ON DEVELOPMENT  
APPROVALS FOR INTERNET SWEEPSTAKES BUSINESSES

WHEREAS, North Carolina General Statute 160A-38l(e) authorizes cities to adopt and extend a temporary moratorium on development approvals of reasonable duration; and

WHEREAS, the Town Council of the Town of Midway adopted Ordinance No. 20-01 on July 15, 2019 (the "Ordinance"), which Ordinance is hereby incorporated by reference, imposing a moratorium on the approval of special use permits pursuant to the Zoning Ordinance for Midway, North Carolina which allow the use relating to Internet Sweepstakes Businesses; and

WHEREAS, the Planning & Zoning Board of the Town of Midway, at the request of the Town Council of the Town of Midway, has considered certain actions as stated in the Ordinance to address the problems or conditions set forth therein and continues to find them inadequate;

WHEREAS, the Town of Midway has taken all reasonable and feasible steps proposed to be taken in the Ordinance to address the problems or conditions leading to imposition of the moratorium, and has found new facts and conditions that warrant the extension, and has determined that further study is necessary in order to address the concerns and factors identified during the current moratorium period; and

WHEREAS, the Town Council, based on the research and information provided Planning and Zoning Board, the research and information provided by the Planning and Zoning staff of Davidson County on behalf of the Town, and the views expressed at the public meetings held during the original moratorium, has determined that more information and study is needed with respect to the problems and conditions set out in the Ordinance necessitating a moratorium and particularly with respect to the following issues, among others, raised by new facts and conditions:

- The socioeconomic impact of such businesses on the Town of Midway; and
- The impact any such proposed ordinance regulating such businesses may have on the businesses themselves, the owners, operators, and employees of such businesses, other businesses in the Town of Midway, and the citizens of the Town of Midway.

WHEREAS, the Planning and Zoning Board has presented a proposed ordinance to the Town Council to address the issues as set out in the Ordinance; and

WHEREAS, the Town Council has determined that a 90 day extension of the moratorium in the Ordinance will provide the Town an opportunity to study the proposal from the Planning and Zoning Board and to more effectively update the Town's current land use ordinances without being required to approve such development under its current, inadequate ordinances; and

WHEREAS, the Town Council has determined that the extension of the moratorium imposed by the Ordinance shall terminate on October 13, 2019 and that the duration of the extension imposed is reasonable because that is the minimum period of time that it will take to address the issues set out in the Ordinance. The only reasonable alternatives to imposing this moratorium are (i) adopting a hastily prepared ordinance that may exceed the Town's regulatory

authority and/or which may not adequately address the issues as set out in the Ordinance, or (ii) such Internet Sweepstakes activities without providing the Town and the citizens of the Town the necessary land development guidance and review tools required to protect the public health and safety; and

WHEREAS, it is the expressed intent of the Town Council to lift the moratorium as soon as possible and to that end it will instruct all consultants, boards, and committees working on the problems and conditions necessitating the moratorium to complete their work as soon as reasonably possible so that the required ordinance or ordinances will be in place and Internet Sweepstakes Business development can resume at the earliest possible time, but with the proper safeguards in place to protect the citizens, residents, and property owners of the Town of Midway.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Midway, North Carolina as follows:

Section 1. The above and foregoing recitals are incorporated in this Ordinance by reference. The temporary moratorium imposed by the Ordinance shall hereby be extended to October 13, 2019, such moratorium being on the approval of special use permits pursuant to the Zoning Ordinance for Midway, North Carolina which allow the use relating to Internet Sweepstakes Businesses. Internet Sweepstakes Businesses generally include, but are not limited to, business enterprises, whether as a principal or an accessory use, where persons utilize electronic machines, including but not limited to computers and gaming terminals, to conduct games, including but not limited to sweepstakes and video poker, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played, by predetermined odds, by games requiring skill, or otherwise. This use does not include any lottery approved by the State of North Carolina.

Section 2. In compliance with the requirements of North Carolina General Statute 160A-381(e), the following statements are included in this ordinance:

(1) The problems or conditions necessitating the moratorium are that the use relating to Internet Sweepstakes Businesses is likely to be established at additional locations within the Town of Midway planning and zoning jurisdiction prior to the development of appropriate zoning regulations applicable to this specific use. This use has an impact on the area in which it is located due to the number of persons frequenting this use throughout the time the use is operated, both day and night. The Zoning Ordinance for Midway, North Carolina does not define or provide specific regulations regarding the appropriate location or operation of Internet Sweepstakes Businesses. Because of this, said use may be located adjacent to residences, schools, parks or daycares, and multiple establishments may be located in one building, shopping center or neighborhood, which could have an adverse impact on adjacent or nearby properties. As an alternative to a moratorium, allowing new Internet Sweepstakes Businesses to receive special use permits while the Town of Midway develops appropriate zoning regulations applicable to the specific use of Internet Sweepstakes Businesses was considered but, since this process will take at a minimum several months to complete, this is deemed to not be adequate to address the impact caused by additional locations of Internet Sweepstakes Businesses thereby posing a risk to the health, safety and general welfare of the community.

(2) The development approvals subject to the moratorium are the approval of special use permits pursuant to the Zoning Ordinance for Midway, North Carolina which allow the use relating to Internet Sweepstakes Businesses. The moratorium will allow the Town of Midway to develop and implement appropriate zoning regulations relating to Internet Sweepstakes Businesses which will have the purpose of ensuring their appropriate location and compatibility with adjacent or nearby properties. The moratorium will eliminate the impact caused by additional locations of the use relating to Internet Sweepstakes Businesses thereby eliminating a risk to the health, safety and general welfare of the community.

(3) The moratorium, as extended, will terminate on October 13, 2019. The duration of the moratorium is reasonably necessary in order to allow the Town of Midway sufficient time to review the proposed ordinance from the Planning and Zoning Board, to solicit additional public comment on the proposed ordinance, develop and implement appropriate regulations relating to Internet Sweepstakes Businesses including evaluating best practices from other communities, preparing proposed regulations, engaging public participation, allowing the Planning and Zoning Board to review and recommend regulations, and allowing Town Council to deliberate and act upon the regulations.

(4) During the duration of the moratorium, the following actions and proposed schedule for the actions are proposed to be taken: (a) review by the Town Council of the Planning and Zoning Board's proposed ordinance through October 13, 2019; (b) engaging public participation through October 13, 2019; and (c) allowing the Town Council to deliberate and act upon the recommended regulations through October 13, 2019.

Section 3. The moratorium will terminate sooner than October 13, 2019, upon the adoption of an ordinance, after the effective date of this ordinance, which establishes zoning regulations relating to the establishment of the use of Internet Sweepstakes Businesses.

Section 4. The moratorium may be subsequently renewed or extended in accordance with the provisions of North Carolina General Statute 160A-381(e).

Section 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 6. Any part or provision of this ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States or North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the ordinance.

Section 7. This ordinance shall become effective upon its adoption.

This the 15<sup>th</sup> day of July, 2019.

**REGULAR BUSINESS**

**CALL FOR PUBLIC HEARING –AMENDMENTS TO THE MIDWAY ZONING ORDINANCE NO. 17-03- INTERNET SWEEPSTAKES BUSINESSES**

At the May 28 and June 25, 2019 Planning Board meetings, the Planning Board discussed proposed regulations for Internet Sweepstakes Businesses in the Town. After discussion, the Planning Board voted unanimously to recommend to Town Council amending the text of the Midway Zoning Ordinance No. 17-03 as follows:

- Amend Article III, Section 3.07, Core Commercial Overlay District (CCOD) by adding *“Electronic Gaming Operations”* to Section (14) Use Restrictions, (B) Prohibited Uses;
- Amend Article III, Section 3.08, Table of Permitted Uses, by adding *“Electronic Gaming Operations”* to the Table of Permitted Uses as a *Class B Special Use (SB) under the Zoning District of Highway Commercial (HC)*;
- Amend Article V, Special Uses, Section 5.08, Requirements for Individual Special Uses, by adding *“Electronic Gaming Operations” as a new letter (J) with subsequent Special Use requirements under the new use*;
- Amend Article IX., Definitions, Section 9.02, Definitions, by adding a definition for *“Electronic Gaming Operations”*

On motion by Mayor Pro Tem Mike McAlpine, seconded by Councilor Todd Nifong, Council voted unanimously to call for a public hearing to be held on Monday, August 5, 2019 at 7:00 p.m. at Town Hall to receive citizen input on the proposed text amendments to the Town of Midway Zoning Ordinance No. 17-03.

**APPROVE TOWN PARK LIGHTING – DUKE ENERGY**

Mayor Pro Tem and Park Committee Chairman Mike McAlpine presented to Council preliminary costs for lighting of the Town Park based on estimates provided by Seth Kesler with Duke Energy for pole lights and decorative lights. The contract with Duke Energy would be for ten years. The estimated monthly costs would be \$1200 which includes the following:

- Thirteen 35’ Security Shoe Box Directional LED lights would be positioned along the perimeter section of the park around Country Lane. These lights cast light 80-100’ to the left or right and 130’ in front.
- Twenty-two Decorative Open Deluxe Acorn LED lights would be positioned around the two upper trail loops.

Additional light poles could be added in the center section of the park at a later time if needed.

The light poles have attachments that allow for the installation of security cameras to be mounted on them without having to purchase additional poles. However, a security contractor would have to run their own cable to the poles instead of using Duke Energy’s cable. Brad Coe with Coe Forestry and Surveying will locate all of the extra underground utilities.

The Park Committee will have a recommendation to Council either at the August 5, 2019 or September 3, 2019 Town Council meeting regarding park hours, video surveillance and lighting after park closing. The Park Committee has recommended that lights be left on from dusk till dawn for security measures.



Councilor Keith Leonard thanked the Park Committee for all of their hard work.

Mayor Byrum suggested that a disc golf course be considered as an addition to the park. He said several people have spoken to him about their desire to see this in the park whether it be a nine or eighteen hole course.

Mayor Pro Tem Mike McAlpine stated that once the trails are completed, the next phase would be to build the park structures and then the playground.

On motion by Councilor Jackie Edwards, seconded by Councilor Keith Leonard, Council voted unanimously to approve the Town Park lighting and design proposal with Duke Energy and to authorize the Town Manager, Town Clerk and Town Attorney to execute the contract.

**ADDENDUM TO CONTRACT WITH WARREN D. HILL FOR ROADSIDE TRASH PICKUP SERVICES**

At the Town Council Regular meeting held on June 3, 2019, Council voted unanimously to approve a contract with Warren D. Hill for roadside trash pickup services four times per year (one time per quarter) at a cost of \$2,000 per cleanup to include:

1. Old US Hwy 52 from Home Trust Bank to Midway School Road
2. Midway School Road from Old US Hwy 52 to Norman Shoaf Road
3. Hickory Tree Road from Old US Hwy 52 to North Payne Road
4. Gumtree Road from Old US Hwy 52 to Norman Shoaf Road

At that time, Councilor Robin Moon requested that roadside cleanup be extended from Home Trust Bank to County Line Road.

It was the consensus of Council to request an additional proposal from Mr. Hill for cleaning the roadside area from Home Trust Bank to County Line Road.

A proposed addendum to the Independent Contractor Agreement between the Town of Midway and Warren D. Hill to add for roadside trash pickup services from Home Trust Bank to County Line Road for \$700 per cleanup was presented to Council for consideration.

On motion by Councilor Robin Moon, seconded by Mayor Pro Tem Mike McAlpine, Council voted unanimously to approve the addendum to the contract with Warren D. Hill for roadside trash pickup services to include the area from Home Trust Bank to County Line Road for an additional cost of \$700 per removal bringing the total cost to \$2,700 per cleanup with cleanup being done four times per year (one time per quarter).

**TOWN MANAGER'S REPORTS**

**MONTHLY FINANCIAL REPORT**

Town Manager Tammy Michael provided Council with monthly financial reports for June 30, 2019 as follows:

**JUNE 30, 2019**

Total Income	\$1,625,720	123.6 % of overall budget
Total Expenses	\$ 905,059	41.1 % of overall budget

For information only.

Town Manager Tammy Michael acknowledged Deputy Clerk Tammy Robertson for obtaining the Certified Municipal Clerk designation from the International Institute of Municipal Clerks.

For information only.

**ADJOURNMENT**

On motion by Councilor Todd Nifong, seconded by Mayor Pro Tem Mike McAlpine, Council voted unanimously to adjourn the meeting at 7:32 p.m.

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John E. Byrum, Mayor

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Tammy H. Robertson, Deputy Clerk

