

MINUTES OF MIDWAY TOWN COUNCIL REGULAR MEETING HELD ON DECEMBER 6, 2021 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.

Councilor Keith Leonard gave the invocation and led in the Pledge of Allegiance prior to the opening gavel.

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

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

No members of press were in attendance.

APPROVAL OF MINUTES

On motion by Councilor Jackie Edwards, seconded by Mayor Pro Tem Mike McAlpine, Council voted unanimously to approve the minutes of the November 1, 2021 Town Council regular meeting as presented.

PUBLIC ADDRESS

There were none.

ADOPT AGENDA

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

INAUGURAL AND SEATING OF TOWN COUNCIL

Mayor John Byrum administered the oath of office to Town Council members Robin Moon, Keith Leonard, and Jackie Edwards for four-year terms expiring in December 2025.

SEATING OF TOWN COUNCIL

Town Council members were seated according to length of service.

ELECTION OF MAYOR PRO TEM AND OATH OF OFFICE

According to the North Carolina General Statutes (N.C.G.S.) 160A-70, a Mayor Pro Tem shall be elected by the Town Council and shall have all the power of the Mayor during his absence or inability to perform the duties of his office.

Mayor Byrum called for nominations. Nominations do not need a second.

Councilor Keith Leonard nominated Mike McAlpine.

There being no further nominations, Mayor Byrum closed the nominations.

On motion by Councilor Keith Leonard, seconded by Councilor Jackie Edwards, Council voted unanimously to elect Mike McAlpine as Mayor Pro Tem for the Town of Midway.

Mayor John Byrum administered the oath of office to Mayor Pro Tem Mike McAlpine.

REGULAR BUSINESS

PRESENTATION – AUDIT REPORT FOR FISCAL YEAR ENDING JUNE 30, 2021 – EDDIE CARRICK CPA, PC

Auditor Tony Brewer of Eddie Carrick CPA, PC presented the audit report for fiscal year ending June 30, 2021. Mr. Brewer reported the Town received an “unqualified opinion.” An unqualified opinion is an independent auditor’s judgment that the Town’s financial statements are fairly and appropriately presented, without any identified exceptions, and in compliance with generally accepted accounting principles (GAAP).

Mr. Brewer stated the audit report is a public document and pointed out that pages 3-10 provide a narrative overview written and financial analysis of the financial activities of the Town of Midway for the year ending June 30, 2021. Mr. Brewer stated these pages are written in layman’s terms and encouraged readers to read the information presented in conjunction with the additional information that has been furnished in the Town’s financial statements.

Financial Highlights

- The assets and deferred outflows of resources of the Town of Midway exceeded its liabilities and deferred inflows of resources at the close of the fiscal year by \$9,058,743 (*net position*).
- The government’s total net position increased by \$818,791, due to increases in the governmental type activities net position.
- As of the close of the current fiscal year, the Town of Midway’s governmental fund reported an ending fund balance of \$6,211,047 with a net increase of \$772,192 in fund balance. Approximately 26 percent of this total amount, or \$1,620,538, is non spendable, restricted or assigned.
- At the end of the current fiscal year, unassigned fund balance for the General Fund was \$4,590,509, or 417 percent of the total General Fund expenditures for the fiscal year.
- The debt for the Town increased by \$3,783 due to a decrease in accrued vacation of \$114, and an increase in net pension liability of \$3,896.

Mr. Brewer stated that the Town collection rate of 98% remains steady.

Mr. Brewer advised Council of changes and requirements that have been issued by the Local Government Commission (LGC) regarding response to the Independent Auditor’s Findings, Recommendations, and Fiscal Matters. In the past, the LGC has issued unit letters notifying a governing body of deficiencies in an audit. The LGC Staff will no longer issue unit letters. Changes under North Carolina Administrative Code will now require governing bodies to submit responses to the LGC if it has been determined by the auditors that there are areas of concern. The governing body shall develop a “Response to the Auditor’s Findings, Recommendations, and Fiscal Matters (“Response”) pursuant to this Rule, signed by a majority of the governing body, and submit the response to the Secretary within sixty days of the auditor’s presentation.

A complete copy of the Audit Report for Fiscal Year ending June 30, 2021 is on file at Town Hall and on the Town’s website at www.midway-nc.gov for public inspection.

APPROVE CONTRACT – K&V HEATING AND AIR CONDITIONING, INC. – MAINTENANCE AGREEMENT

Town Council was presented with a contract from K & V Heating and Air Conditioning, Inc. for the maintenance of the Town’s HVAC system. The contract is the result of the Town’s Building Committee determining a need for the service. The contract is for one year and includes the following services:

- Includes two visits (2022 Spring and Fall) for:
 - (2) TRANE heat pump systems
 - (3) TRANE mini-split systems (3 heads and 2 outdoor units)
 - (2) 20 x 25 x 1 filters (included, changed at each maintenance visit)
 - (2) 14 x 25 x 1 filters (included, changed at each maintenance visit)

Units	Subtotal	Tax	Total
\$165.00 + \$135.00 each additional unit (4) =	\$705.00	+\$47.58	= \$752.58

On motion by Mayor Pro Tem Mike McAlpine, seconded by Councilor Berkley Alcorn, Council voted unanimously to approve the contract with K & V Heating and Air Conditioning, Inc. for the period December 6, 2021 to December 5, 2022 for one year for maintenance of the Town's HVAC system for a total cost of \$752.58.

TOWN MANAGER'S REPORTS

MONTHLY FINANCIALS

Town Manager Tammy Michael provided Council with monthly financial reports for November 30, 2021.

November 30, 2021		
Total Income	\$ 858,297	60.6 % of overall budget
Total Expenses	\$ 380,740	26.9 % of overall budget

For information only.

SUGGESTED RULES OF PROCEDURE COMPARISON CHART

At the Vision Workshop held on October 11, 2021, Council discussed the adoption of the "Suggested Rules of Procedure for a City Council," Fourth Edition, which is a newer version of the third edition that Council adopted at the June 30, 2008 regular Town Council meeting. The fourth edition of "Suggested Rules of Procedure for a City Council" provides city councils with model procedural rules for their meetings.

"Suggested Rules of Procedure for a City Council," Fourth Edition was placed on the November 1, 2021 Town Council regular meeting schedule for adoption, but Council delayed adoption until they had the opportunity to review their copy of the book.

Town Clerk Linda Hunt provided to Council a comparison chart of fourth edition to third edition of the "Suggested Rules of Procedure for a City Council" to clarify the changes between the two editions. The chart also indicates where a particular item was located in the third edition and where it can be located in the fourth edition, making it much clearer to identify the changes. "Suggested Rules of Procedure for a City Council," Fourth Edition will be added to the January 3, 2022 Town Council agenda for adoption after Council reviews the changes.

STATE CAPITAL INFRASTRUCTURE FUNDS – GRANTS FOR TOWN PARK

During the State of North Carolina budget process, monies was requested for capital improvements to the Town of Midway Park by Senator Steve Jarvis – Davidson County, and Representative Donny Lambeth – Forsyth County. The grants are a part of the State Capital and Infrastructure Fund – North Carolina General Statute 143C-4-3.1 (SCIF).

In early October, Representative Donny Lambeth - Forsyth County called to advise Town Staff he requested a \$100,000 grant for capital improvements for the Town of Midway Park. Mr. Lambeth stated that he and his family use the Town Park regularly and enjoys their time here.

Senator Steve Jarvis – Davidson County also requested a \$250,000 SCIF grant for Town Park improvements.

Both Senator Jarvis and Representative Lambeth were uncertain their requests would survive the budget process and award of the grants would not be official until the budget was signed by Governor Cooper.

Governor Cooper signed the budget with the \$250,000 and \$100,000 SCIF requests intact. This is wonderful news for the Town of Midway. The monies will certainly support Park improvements. Town Council will be advised when further information becomes available for the grants awarded.

For information only.

OSHA’S EMERGENCY TEMPORARY STANDARD – MANDATORY COVID-19 VACCINE OR TESTING

On November 5, 2021, OSHA released an Emergency Temporary Standard (ETS,) requiring large employers – those with 100 or more employees – to implement a vaccination policy mandating that their employees either be vaccinated or submit to weekly testing. The ETS gave employers until December 5, 2021 to comply with the bulk of the ETS’s requirements, and until January 4, 2022 to begin testing employees who have not yet been fully vaccinated. Several legal challenges ensued. On November 12, 2021, just one week after OSHA released its ETS, the U.S. Court of Appeals for the Fifth Circuit issued a staying enforcement and implementation to the ETS pending further judicial review.

According to a Coates’ Canons Blog published by Diane Juffras of the UNC School of Government, “The ETS applies to private employers, *but it will likely apply* to North Carolina local government employers through the State Plan Agreement between OSHA and the State of North Carolina OSHA Plan.”

- Federal OSHA regulations do not apply to state and local governments employees, but federal OSHA has an agreement with the NC Division of Occupational Safety and Health (NC OSH,) whereby NC OSH develops its own “State Plan” that covers both private *and public sector employees*. The State’s Plan must be the same as or “at least as effective as” the federal standard, *it cannot be a weaker plan*.
- If the court order blocking the new OSHA ETS is lifted, NC OSH will either adopt the OSHA mandate in full or tweak it, once the litigation is resolved. The rule NC OSH adopts will apply to local governments. Whether the rule will apply to local governments with 100 or more employees (as it applies to private employers,) or whether NC OSH will extend it to cover all local governments is not yet known.

Mandatory Vaccination or Vaccination and Testing – Option 1

The OSHA ETS gives employers a choice. They may adopt a mandatory COVID-19 vaccination policy under which all employees must be vaccinated, or they may adopt a policy that makes vaccination optional but requires weekly COVID-19 testing and face coverings for unvaccinated employees. The new OSHA ETS does not apply to employees who do not work where other employees or members of the public are present, employees working from home, or employees who work only outdoors.

The Mandatory Vaccination Alternative

The first option is a mandatory vaccination policy. It must be written and require all employees, including new employees, to be vaccinated (exemptions include medical and sincerely-held religious beliefs.)

The Vaccination or Testing Alternative – Option 2

The second option makes vaccination optional but requires testing (at least once every seven (7) days) for unvaccinated employees. Only FDA-approved COVID-19 tests may be used. Unvaccinated employees must also wear face coverings in the workplace. Employees must provide testing results to their employers and employers are required to keep all records in a separate medical records file (not with regular personnel files.)

- ***Costs of testing and Face Coverings.*** The new OSHA ETS does not require employers to pay for the costs of weekly testing of unvaccinated employees or for the cost of their face coverings.

Penalties for Noncompliance with the New OSHA ETS

The new OSHA ETS does not have an independent set of penalties. Employers who violate the ETS will be subject to OSHA's general penalties. For 2021, OSHA's maximum penalty is \$13,653 per violation.

What Should Local Governments Do While Enforcement of the New OSHA ETS is Stayed?

At a minimum, local government employers should decide now which option they will adopt if the new OSHA mandate is upheld: the mandatory testing option or the vaccination or weekly testing alternative. *On another note, whether or not the new OSHA ETS is upheld, employers already have the right to ask employees whether they have been vaccinated.*

For information only.

REMINDER – TOWN HALL WILL BE CLOSED – OBSERVANCE OF HOLIDAYS

Town Hall will be closed on Thursday, December 23, Friday, December 24 and Monday, December 27 for the Christmas holidays and on Friday, December 31, 2021 in observance of New Year's Day holiday.

TOWN PARK UPDATES

Town Manager Tammy Michael gave the following update on the Town Park:

1. SHELTER AND GAZEBO

- Bid opening on Tuesday, December 7, 2021 at 3:00 p.m.
- Below are the anticipated dates from beginning to end of the project. There may be adjustments to some of the later dates.

1. Advertisement for bid	Friday	October 22, 2021	
2. Drawings Release	Tuesday	November 2, 2021	
3. Mandatory Pre-Bid	Tuesday	November 9, 2021	2:00 p.m.
4. Last Day for Questions	Tuesday	November 30, 2021	Noon
5. Bid Opening	Tuesday	December 7, 2021	3:00 p.m.
6. Award by Town	Monday	December 14, 2021	Board Meeting
7. Contract Execution	Monday	February 7, 2022	Board Meeting
8. Pre-Construction Meeting	Tuesday	February 15, 2022	

TOWN COUNCIL
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|----------------------------|---------|-------------------|
| 9. Contract Start | Tuesday | February 15, 2022 |
| 10. Substantial Completion | Tuesday | October 18, 2022 |
| 11. Final Completion | Tuesday | November 15, 2022 |

Matthew Draughn
Designer/Project Manager with Metropolis Architecture

ADJOURNMENT

On motion by Mike McAlpine, seconded by Councilor Keith Leonard, Council voted unanimously to adjourn the meeting at 7:41 p.m.

John E. Byrum, Mayor

Tammy H. Robertson, Deputy Clerk