

Vice Mayor J. Paul Kilgore, Jr. called a regular monthly meeting of the Amherst Town Council to order on August 8, 2012 at 7:00 P.M. in the Council Chambers of the Town Hall at 186 S. Main Street. Other council members Kenneth Bumgarner, Mike Mozingo and Richard Wydner were present. Mayor Jacob P. Bailey and Councilor Haney Mottley were absent. Town Manager Jack Hobbs, Sergeant Greg Harler, Director of Public Utilities Tom Fore, Office Manager Colan Davis, and Town Attorney Tom Berry were present.

Pastor George "Bubba" Rose from Oasis Church gave an invocation.

A duly advertised public hearing on a tall grass ordinance was opened at 7:05 P.M. Ms. Joyce Rumburg, 250 Garland Ave., came forward to encourage the Council to pass the ordinance. Mr. L. C. Patton, 140 Loch Lane, and Ms. Marceline Lotman, 117 Woodland Drive, also expressed their support for the ordinance.

There being no one else present who wished to speak, the public hearing was closed at 7:13 P.M.

Mr. Mozingo made a motion that was seconded by Mr. Bumgarner and carried 4-0 to adopt the proposed tall grass ordinance. Messrs. Bumgarner, Kilgore, Mozingo, and Wydner voted "Aye"; Mr. Mottley was absent. A copy of the ordinance is attached and made a part of these minutes.

Tim Ware, the tenant of the lower level of the Goodwin Building, came forward to request support for a proposed second Amherst Cruise-In car show event that would be held downtown on the evening of September 29. The following specific items were requested:

- General Town Council endorsement of the event
- Acquisition of the required VDOT permit by the Town
- Loan of available Town traffic barricades, cones and trash cans
- Non-financial promotional assistance (word of mouth, e-blast, etc.)
- Coordination with the chamber of commerce for promotion and event organization assistance
- Monitoring of the site by Town police

Mr. Bumgarner made a motion that was seconded by Mr. Mozingo and approved 4-0 to approve the request. Messrs. Bumgarner, Kilgore, Mozingo, and Wydner voted "Aye"; Mr. Mottley was absent.

Amherst Fire Department Chief Tom Shrader came forward to give a report on staffing issues at the Amherst Fire Department.

Mr. Bumgarner made a motion that was seconded by Mr. Wydner and approved 4-0 to approve the minutes from the July 11, 2012 meeting. Messrs. Bumgarner, Kilgore, Mozingo, and Wydner voted "Aye"; Mr. Mottley was absent.

Messrs. Kilgore and Mozingo agreed to work with the Planning Commission on adjusting ordinances that regulate the downtown area.

Charles Brown's request to reconsider his on-street golf cart proposal was referred to the Public Safety Committee.

Councilors discussed a proposed amended memorandum of understanding between the Town, County and Robert E. Lee Soil and Water Conservation District and asked the Town Manager to relay comments to the District and to work with the County as the contract is further developed.

The Town Council reviewed the matter of the Beverly House at 201 Washington Street. On January 11, 2012 it declared the Beverly House a public health and safety risk and gave the owner until July 31, 2012 to have the building torn down. A letter asking for an additional time extension from property owner Mary Ann Beverly was received. Mr. Bumgarner made a motion that was seconded by Mr. Mozingo and approved 4-0 to grant Ms. Beverly the requested extension to September 30, 2012 with the understanding that no additional extensions will be approved. Messrs. Bumgarner, Kilgore, Mozingo, and Wydner voted "Aye"; Mr. Mottley was absent.

The Town Manager reported that there has been no recent significant progress to improve the streets in the Mill Race Subdivision so that they can become part of the VDOT maintenance system and that those roads are beginning to deteriorate. However, the Town still has a letter of credit against the completion of the infrastructure in the first phase of the Mill Race subdivision. The Councilors agreed that the Town Manager should officially ask the developer to state his intentions toward moving the Mill Race streets into the state maintenance system.

A proposal from Beacon Towers to rent a portion of the Union Hill water tank site for a cell phone tower location was received. By consensus, Mr. Bumgarner was asked to lead negotiations and make a recommendation on this issue.

The Town Manager gave a report on the 1990-vintage sludge drying bed cover at the Rutledge Creek Wastewater Treatment Plant that was destroyed by the June 30 derecho. After some study, a process that would result in demolition and proper disposal of what has been destroyed and replacement with a structure similar to the one that was installed during the 2005 plant upgrade via the request for proposals "competitive negotiation" procurement method was proposed. It was understood that insurance has paid \$37,443.02 to cover the damages and that the Town Council would probably be able to review replacement proposals at the September meeting.

The Town Manager reported that final approvals to go to bid on the 60 West water line replacement project are pending but that everything is still on track for the Town Council's September bond hearing.

The Councilors discussed the proposed study on whether a cemetery actually exists at the rear of the Brockman Park property. It was understood that the study would be managed by the IDA and paid for within that agency's funding, but additional monies may be required in the future to defray the cost of actual grave relocation and legal processes.

The Council discussed current vacancies on the Board of Zoning Appeals and Planning Commission.

There being no further business, Mr. Bumgarner made a motion that was seconded by Mr. Mozingo and approved 4-0 to adjourn the meeting at 9:45 P.M. Messrs. Bumgarner, Kilgore, Mozingo and Wydner voted "Aye"; Mr. Mottley was absent.

J. Paul Kilgore, Jr.
Vice Mayor

Attest: _____
Clerk of Council

AN ORDINANCE TO AMEND THE CODE OF THE TOWN OF AMHERST BY REPEALING SECTION 7-2 AND ADOPTING A NEW SECTION 7-2.1, THE REPEALED AND NEW SECTIONS REFERRING TO MAINTENANCE OF PREMISES.

Be it Ordained by the Council of the Town of Amherst:

1. *That the Code of the Town of Amherst is hereby amended by repealing Sec. 7-2 of the Town Code in its entirety.*
2. *That the Code of the Town of Amherst is hereby amended by the adoption of a new Sec. 7-2.1 of the Town Code to read as follows:*

Sec. 7- 2.1. Maintenance of premises.

In order to promote the general welfare of the town and the safety, health, peace, good order, comfort, convenience and morale of its inhabitants, all owners, occupants and persons in charge of real property, including vacant lots, shall at all times maintain such premises in a clean and sanitary condition, free from stagnant water, weeds, filth, trash, garbage, refuse, litter, unsightly objects and other substances which might endanger the health or safety of other residents of the town.

A. Weeds

1. *Definitions.* The following definitions shall apply to these words when used in this section:
 - a. *Neglected property* shall include any property which contains weeds that violate the provisions of this section and whose owner/occupant has failed to cut the weeds after receiving notice from the town.
 - b. *Nuisance* shall mean the doing of any act or the omission to perform any duty, or the permitting of any condition or thing to exist that endangers life or health, obstructs or interferes with the reasonable or comfortable use of public or private property, tends to depreciate the value of the property of others, or in any way renders other persons insecure in the life or the use of property. Wherever the term nuisance is used in this section, it shall be deemed to mean a public nuisance.
 - c. *Owner* shall mean and include the owner or occupant of any parcel of real estate, including but not limited to any person in possession thereof having charge thereof as an executor, administrator, trustee, guardian or agent, and the beneficiary of any easement or right of use thereof.
 - d. *Person* shall include individuals, corporations, partnerships and all other legal entities which may hold title to real or personal property.
 - e. *Premises* shall mean a tract of real property with a building or buildings thereon and shall include its grounds and other appurtenances.
 - f. *Property* shall mean both real property and personally.
 - g. *Public nuisance* shall mean a nuisance which is common to the public generally and which injures those citizens generally who may be so circumstanced as to come within its influence. A nuisance shall be deemed to be public if it is committed in such a place and in such a manner that the aggregation of private persons injured thereby is sufficiently great so as to constitute a public annoyance and inconvenience.

- a. Whenever any Town of Amherst resident or property owner believes that the provisions of this section are being violated, such person shall notify the Town Manager in writing and the Town Manager shall examine the condition of the property described in such notice. If the Town Manager determines that the provisions of this section are being violated, the owner/occupant of the offending property shall be given notice as provided in this section and shall be requested to remove the weeds from the property within fifteen (15) calendar days of the delivery or mailing of the notice.
- b. If the owner of the property cannot be found within the town after a reasonable search, notice shall be sent by registered mail, return receipt requested, to the last known address of the owner as provided in this section and a copy of the notice shall be posted on the property in a conspicuous place and such procedures shall be deemed the equivalent of personal service.
- c. If the owner/occupant of the property does not cut the weeds within fifteen (15) calendar days of the delivery or mailing of the notice or within fifteen (15) calendar days of the posting of the notice, whichever period is greater, the Town Manager shall declare the property to be "neglected property," and such designation shall remain in full force and effect until the owner gives the Town Manager adequate assurances that the property will be properly maintained in regard to weeds in the future.
- d. Once the Town Manager designates a parcel of property to be "neglected property," the person or organization that is contracted by the town to abate such nuisances shall be authorized to go onto the property as an agent of the town at the owner's sole cost and expense to cut, remove and restrict the future growth of the offending weeds. The agent shall be responsible for taking all precautions necessary to cut, remove and restrict the growth of offending weeds in a safe and proper manner.
- e. Neither the town, or its employees and officials, shall be liable for any damages or injuries caused by cutting, removing or restricting the future growth of weeds from a "neglected property" and shall not be liable for any damages, injuries or expenses incurred by any agent or any other person in cutting, removing or restricting the future growth of weeds.
- f. The provisions of this section shall not authorize an agent to enter onto property to remove trees or shrubbery unless the branches, limbs, or other parts of the trees or shrubbery extend or protrude onto private property in a manner which constitutes a danger to citizens or property or where the limbs or branches are likely to fall in such a manner as to endanger private citizens or property. If the Town Manager determines that the trees or shrubbery constitute a danger to private citizens or property, the agent may be authorized to cut and remove such trees and shrubbery that have been designated for removal by the Town Manager in accordance with the provisions of this section.

8. *Costs of expenses chargeable to owner.*

- a. Cost and expenses incurred for abatement of nuisances shall be assessed upon the owner of the property. The assessment shall be collected by the town as taxes and levies are collected. Every charge authorized by this section with which the owner of any property shall have been assessed and which remains unpaid shall constitute a lien against such property. Included in every charge to the property owner in the abatement cost shall be an administrative service charge of twenty

(20) percent of the abatement cost and interest on any unpaid balance of the abatement cost accruing at a rate of ten (10) percent per annum from date of the assessment until paid.

- b. With respect to all such accounts remaining unpaid fourteen (14) days after being assessed, a notice of the lien of the special assessment shall be prepared by the treasurer and recorded in the clerk's office of the circuit court. The treasurer may take any appropriate steps, including initiating court action, to enforce the lien to satisfy the special assessment.

B. Safety

Under a finding by the Town Council that a health or fire hazard exists on any premises, the Town Manager shall give written notice to the owner, occupant or person in charge of such premises to take such action as may be necessary to abate such violation within ten days or within such lesser period as may be provided in such notice, which may be served in any manner authorized by law for the service of process.

If any owner, occupant or person in charge of any premises to whom such notice is given as above provided fails to comply with such notice within the time therein specified, the Town Manager shall proceed to have done that which was directed in such notice to be done, and the expense so incurred shall be chargeable to and paid by the owner or occupant of the premises involved and may be collected by suit or motion or by distress sale, or by any other means by which taxes and levies are collected.

3. That this Ordinance shall be effective on August 8, 2012.

This ordinance was adopted on August 8, 2012.

Vice Mayor

ATTEST:

Clerk of Council