



**CITY OF COLONIAL HEIGHTS, VIRGINIA
MEETING OF THE PLANNING COMMISSION
City Council Chambers, 201 James Avenue, Colonial Heights, VA 23834
Tuesday, May 4, 2021
7:00 p.m.**

MINUTES

- I. Call to Order**
The meeting was called to order at 7:00 p.m.
- II. Roll Call**

Present:
Mr. Hartson
Mrs. Schiff
Mrs. Hamilton
Mr. Kohan
Mr. Kwiek
Mrs. Levenson-Melvin
Mr. Wade
Absent: none.
- III. Determination of Quorum**
A quorum was determined.
- IV. Approval of Agenda**
Mrs. Levenson-Melvin made a motion to approve the agenda and Mrs. Schiff seconded the motion.
- V. Approval of Minutes for April 6, 2021 meeting**
Mrs. Schiff made a motion to approve the April minutes and Mr. Wade seconded the motion, with all commissioners in favor.
- VI. Hearing of Citizens Generally**
No citizens spoke.

VII. Public Hearing

A. PC RESOLUTION NO. 21-7 AND AN ORDINANCE NO. 21-11

To amend § 286-410.62 of Chapter 286, Zoning, of the Colonial Heights City Code to authorize the operation of mobile food units on a less restrictive basis.

Ms. Hall reviewed previous actions in regards to mobile food units. In November 2017, the initial mobile food unit and farmer's market permit ordinance was adopted. In 2019, City Council approved mobile food units for "special events" in which a property owner may host mobile food units up to four times a year, each for three consecutive days.

City Council has expressed interest in allowing food trucks on a more permanent basis for regular operation. Ms. Hall pointed out the proposed changes to the existing ordinance. This new ordinance would expand the permitted locations from certain zoning districts to all use types with the exception of residential use types. The second major change is the amount of time permitted on the property.

Rather than four events per year, this new ordinance would allow property owners to host mobile food units more permanently. Ms. Hall explained that because this permit began as a special event permit, it will continue to be regulated in a similar manner rather than how most localities regulate mobile food units. She proposed permits that would be valid for three months. As the department has limited code enforcement staff, Ms. Hall determined that issuing three-month permits would make regulation more plausible than an annual permit.

Most localities issue annual permits directly to the mobile food unit through the Commissioner of Revenue's office, after receiving their approval from the health and fire departments, and receiving their business license. In order for the permit to be regulated by the zoning department effectively, Ms. Hall is also putting responsibility on the property owner or tenant by requiring them, as the applicant, to ensure other regulations have been met before getting a mobile food unit permit. If said host does not ensure the food trucks meet regulations, their permit will be revoked. There is no limit to the number of permits the property owner may be issued for different events. If it is for a food truck that is more permanently located, the host may apply with the same site plan every three months to renew. Ms. Hall stated that because the permits would be issued every three months, the department could refuse renewal if the food truck was in violation during the previous three months.

The current permit fee is \$50. She proposed a fee of \$100 for the three month permit, which she believes is fair, as the property owner may host as many food trucks that are approved. Ms. Hall explained that because mobile food units have commonly had to ask the property owners to apply for a temporary sign permit in addition to the mobile food unit permit so that they may put up a menu board, the proposed new ordinance would allow the mobile food units one freestanding sign during operation. The mobile food units would only be permitted on site during

operation, including set up time. This prevents the trucks from remaining on site overnight. The mobile food units operation hours may be no later than 10:00 p.m.

Mr. Hartson asked about alcohol sales from the food trucks, and whether that should be mentioned in the ordinance. Ms. Hall explained that because of the nature of the permit through zoning, the applicant is the property owner where food trucks are parked, and the regulations refer to the zoning restrictions and not restrictions in regards to the food trucks themselves. Matters with ABC licenses would be monitored through the state. The only reason to include anything about alcohol in the ordinance would be to prohibit it.

Mrs. Levenson-Melvin asked if special events differed. Ms. Hall explained that special events with alcohol have only occurred on public property which is managed by the Department of Recreation and Parks.

Mr. Fisher explained that there is a City Code provision that requires the ABC agent to notify the City Attorney's office when applications are submitted to the ABC Board for alcohol sales in the City. His office then notifies City Council, and Council has a right to object.

Mrs. Hamilton asked about health inspections of the food trucks. Ms. Hall explained that in the definition of Mobile Food Unit, the City Code requires that they pass inspection. Mrs. Hamilton asked if the signage would be allowed on the public right-of-way. Ms. Hall stated that no signage is permitted in the public right-of-way.

Mrs. Schiff asked if an ABC license is approved, is it up to their board to monitor it? Mr. Fisher stated that the City puts restrictions on it and there is a committee that goes over the applications and conditions.

Mr. Wade proposed creating two other options for the Mobile Food Unit Permit to allow exceptions in the ordinance for non-profits and existing Colonial Heights businesses. This exception would allow them to purchase annual permits at a reduced rate rather than every three months. He suggested \$300 for the year for non-profits, rather than \$100 every three months, which totals \$400. He stated that non-profits could be required to supply tax documents with their application to prove their non-profit status. For existing Colonial Heights businesses, the ability to apply for an annual permit would provide incentive for brick and mortar as well as food trucks. He suggested that a Colonial Heights restaurant could apply for an annual permit to park their food truck throughout the city for additional business beyond their brick and mortar.

Ms. Hall addressed existing Colonial Heights businesses first. She stated that existing restaurants are already permitted to park their own food truck on the side and rear of their property, such as if they have a catering vehicle. If another site were to host them in the City, they would be permitted to do so, but it would be the host applying for the permit, and not the restaurant with the food truck. The

fact that the business resides in the City does not make a difference. Allowing existing Colonial Heights businesses to apply for an annual permit would be considered favoritism which cannot be enforced.

Ms. Hall explained that in order to accommodate an annual permit, it would need to be regulated through the Commissioner of Revenue's Office rather than Zoning, and the permanent permits would be issued to the mobile food units themselves rather than the property owner hosting them. Additionally, special event permits would need to be regulated separately by the City Manager's Office or Planning Department as this is how it is regulated in other localities. As a small locality, Ms. Hall has created a hybrid of these two permits with the proposed ordinance.

Mr. Hartson stated that he didn't think the City could defend preferential treatment to brick and mortar restaurants. Ms. Hall asked what it would accomplish, as the perceived goal of this ordinance is to diversify the restaurant scene and incubate new restaurants that might grow into brick and mortars later. She stated that she did not believe Mr. Wade's suggestion would economically benefit the City.

Mr. Wade asked about his previous suggestion for a reduced rate annual permit for charity events such as the car show hosted at the Rent-E-Quip as they donate their funds to charities. Ms. Hall reiterated that there is nothing in the Zoning Code to give preferential treatment non-profits. The City itself is waived and exempt, including the Schools because they share the same budget. However, all businesses are businesses, and they take the same amount of time to review. Churches do not get their fees waived for Zoning or Building Permits. Mr. Wade agreed there would still be a fee, it would just be an annual reduced fee rather than the three-month permit fee. Ms. Hall reiterated that in order to accomplish that successfully it would need to be regulated through the Commissioner of Revenue's Office and permits would be issued to the mobile food units themselves rather than the site owners hosting them. The Zoning Department regulates the land, and private property, which is why the proposed permit is designed the way that it is. The permits would need to be renewed every quarter, but Ms. Hall assured Mr. Wade that it is an easy process of renewal, and the applicant would submit for a permit and fill in "renewal" on the application, if there are no changes.

Mr. Fisher stated the initial draft suggested six-month permits, but that Ms. Hall expressed concerns that, despite a provision allowing her the ability to revoke the permit if a mobile food unit is not in compliance, because of the messy process of revoking a permit, being able to review every three months would allow her to withhold renewal instead. This also provides her absolute discretion in determining whether or not to allow renewal. Ms. Hall added that because they are also accommodating special events with this permit, having it valid for three months prevents a "special event" from occurring year-round.

Mr. Hartson stated that he likes the proposed ordinance because he believes it will encourage more special events throughout the City which is needed.

Mrs. Levenson-Melvin expressed concerns about the hardship that the fees would create for a non-profit such as Old Brick House Foundation to host food trucks for other organizations. She advocated for Mr. Wade's suggestion to allow non-profit properties such as Old Brick House, the Moose Lodge, and the American Legion a reduced rate through an annual permit. She stated that she would like to see the City partner with non-profits and see them considered in the ordinance as they ultimately contribute money to the community and the City with their work.

Mr. Fisher stated that he questioned the legality of such a preferential treatment. He echoed Ms. Hall's previous statement that there is no such preferential treatment anywhere else in the Zoning Code. He believed it would also create a lot of administrative problems in determining what is considered a "non-profit."

Ms. Hall asked Mrs. Levenson-Melvin to consider that the fee comes out to about \$33 per month, the cost of renting a campsite at a state park for one evening. Mrs. Levenson-Melvin didn't believe that Old Brick House would be taking any profits from the food trucks as they would be hosting community events for Conjuror's Neck and that it was more about charitable giving and community for them.

Mr. Hartson stated that while he agreed with the sentiment, Mr. Fisher had stated that the legality of preferential treatment is questionable, and until they have confirmation that such an action would be legal, a discussion on these points is moot.

Ms. Hall stated that if the concern is the fee being a hardship, they could reduce the fee for everyone. She stated that the permit could be free, or as low or high as commissioners wanted to recommend. She had settled on \$100 for three months because she considered it to be fair, but she was open to making it lower or free for all applicants.

Mr. Fisher recommended that Commissioners act on the ordinance as is, and that it could always be changed later. He stated that Council had already agreed on this draft, and the ordinance was being fast-tracked into action. Council would be reviewing it at their meeting the following week. The ordinance has already been advertised as is, and that it would need to be re-advertised to consider such proposed changes. Mr. Hartson asked if Commissioners could approve this ordinance as is and make changes later for non-profits. Mr. Fisher stated that they could approve the ordinance as is and ask that in the future, Council consider making special provisions for non-profits. Mr. Fisher stated this is his suggestion as a result of timing.

Mr. Smith also recommended approving the ordinance as is, because of the additional administrative burden a non-profit provision would create. He agreed with Ms. Hall and suggested that if the fee is believed to be a hardship to consider

lowering the fee to \$50 instead of \$100, so it would only be \$200 for the year. He stated that it is just a number and that would be perfectly acceptable.

Mr. Wade and Mrs. Levenson-Melvin stated that they had no issue with the proposed fee for regular businesses, but that they would still prefer a lower fee for non-profits as they partner with the City. He stated that non-profits could submit current tax documentation to prove their charitable status. Mr. Fisher stated that determining whether an entity is tax exempt can be much more complicated than it seems.

Mr. Kohan asked how the ordinance would be enforced in regards to the provision about waste and sewage (A.1). Ms. Hall explained that it is the standard language used for mobile food units across the state. It is enforced in the same manner as it would be if anyone were dumping sewage into the street.

Mr. Kohan asked if the food trucks are allowed set up and clean up time in addition to operating hours. Ms. Hall stated that was up to her discretion, but that they are allowed adequate time to set up on property and clean up. The provision in regards to remaining on the premises during operating hours is largely to prevent mobile food units from remaining parked on-site overnight.

Mr. Kohan asked for clarification on the exception for homeowners. Ms. Hall stated that she agreed the language is confusing and is unnecessary to be written out. She explained that it is simply stating that a homeowner may allow a food truck on their property for non-commercial purposes, such as a wedding or private event where food is catered and served out of a food truck to guests.

Mr. Kwiek asked if there was any forecast of how many businesses may be interested in operating in the city upon approval. Ms. Hall stated that she could not be sure, but that she had received calls from residents of the City who own and operate food trucks in other localities.

Mr. Hartson spoke about the consistent success of mobile food units at St. Ann's Church in Chesterfield, and believed that could spread into Colonial Heights with the new ordinance.

Mr. Kwiek asked who would be monitoring and policing the food trucks. Ms. Hall stated that if she were to receive complaints that she would go out and enforce the ordinance.

Mrs. Schiff made a motion to approve Resolution 21-7 and Ordinance 21-11 and Mr. Kwiek seconded the motion.

Vote: 7-0

Yes:

Mr. Harston

Mrs. Schiff

Mrs. Hamilton
Mr. Kohan
Mr. Kwiek
Mrs. Levenson-Melvin
Mr. Wade
No: none
Motion: Unanimous Pass

VIII. Old Business

IX. New Business/Reports

Reports

1. Chairman-No report.

2. Director of Planning and Community Development – Ms. Hall

Ms. Hall stated that she had received a Special Use Permit application from the property owner of 1217 Boulevard requesting to host a mobile business permanently which would likely be on the agenda for the June meeting. The Board of Zoning Appeals was scheduled to meet on May 17.

3. City Engineer or Designee – Asst. Director of Public Works – Mr. Chisolm
No Report.

4. Others, as necessary or appropriate

a. City Manager – Mr. Smith

Mr. Smith stated that the Capital Improvements Plan had been adopted, and the second reading for the FY2022 budget would be on May 11. He continued that Dunkin' Donuts would be leasing the former Wells Fargo and would be opening up across the street from City Hall. Mr. Smith stated that a number of change orders had come in for the Violet Bank renovations. The change orders combined totaled to \$38,500. This included a larger power supply back-up for the sump pump, additional woodwork on the water table, structural repair on the porch, and repairs to damaged brick masonry. Staff and Council have approved the change orders. He did not have an updated completion date, but funding was available to address all change orders. The Chili Peppers season is kicking off at the end of May. Recreation and Parks stated that the Chili Peppers were looking to add additional concrete in the right field area and around the concession stand area for merchandise sales and box seating. He stated that single game tickets are now available. Mr. Smith stated that on the City website news section, there was a notice about the Richmond Crater Multi-Regional Hazard Mitigation Plan review going on. He let Commissioners know that there was a public survey available if they were interested.

Mrs. Hamilton asked if a clean-up day would be held this year. Mr. Smith replied that it was scheduled for May 15. Mr. Smith also reminded Commissioners that the Fort Clifton Craft event was being held May 8th and 9th and that 75 booths would be present.

b. City Attorney – Mr. Fisher

Mr. Fisher stated that on May 18, Council would discuss the Comprehensive Plan

draft, and the public hearing on the Plan, was scheduled for June 8th.

X. Adjournment

Mr. Wade made a motion to adjourn, and Mrs. Levenson-Melvin seconded the motion with all commissioners in favor.

The meeting was adjourned at 8:07 p.m.

X *Mitchell Hartson*

Mitchell Hartson
Chairman

X *Kelly Hall*

Kelly Hall
Secretary