



City of Roswell

38 Hill Street
Roswell, Georgia 30075

Meeting Minutes Mayor and City Council Zoning

Mayor Jere Wood

Council Member Rich Dippolito

Council Member Lori Henry

Council Member Kent Igleheart

Council Member Jerry Orlans

Council Member Betty Price

Council Member Becky Wynn

Monday, December 14, 2009

7:30 PM

City Hall

WELCOME

Present: 7 - Mayor Jere Wood, Council Member Rich Dippolito, Council Member Lori Henry, Council Member Jerry Orlans, Council Member Kent Igleheart, Council Member Becky Wynn, and Council Member Betty Price

Pledge of Allegiance

Staff Present: City Administrator Kay Love; Deputy City Administrator Michael Fischer; City Attorney David Davidson; Community Development Director Alice Wakefield; Planning & Zoning Director Brad Townsend; City Planner Jackie Deibel; Economic Development Manager Bill Keir; Community Information Coordinator Kimberly Johnson; Mayor's Executive Assistant Robyn Kenner; Building Operations Technician Doug Heieren; and Deputy City Clerk Betsy Branch.

CONSENT AGENDA

1. **Approval of November 9, 2009 Zoning Meeting Minutes (detailed minutes to replace Council Brief Minutes adopted on November 16, 2009) and approval of December 7, 2009 Council Brief Minutes.**
Administration
Approved
2. **Approval for the Mayor and/or City Administrator to sign an Intergovernmental Contract between the City of Sandy Springs and the City of Roswell to supplement the Fire Department Mutual Aid Agreement.**
Public Safety
Approved

Approval of the Consent Agenda

A motion was made by Council Member Orlans, seconded by Council Member Wynn, to Approve the Consent Agenda. The motion carried by the following vote:

In Favor: 6

REGULAR AGENDA

Community Development - Councilmember Richard Dippolito

1. **RZ09-11 Text Amendment to allow for the keeping of poultry in the backyard of single-family residential areas. (Second Reading)**

Presented by Bradford D. Townsend, Planning and Zoning Director

1. *RZ09-11 Text Amendment to allow for the keeping of poultry in the backyard of single-family residential areas. (Second Reading)*
Planning and Zoning Director Brad Townsend explained this is the second reading of a text amendment related to the keeping of backyard poultry in single family districts. This second reading of the proposed text amendment defines poultry; allows for the keeping of roosters; the maximum number of allowed poultry is 25 (twenty-five); a non-conforming clause would allow an additional 15 (fifteen) birds to be kept. Changes from the first reading of the proposed ordinance include the removal of geese and turkeys under the definition of poultry; the addition of language to clearly define that poultry kept in single family districts would be for non-commercial use only; clarification of the language related to enclosure and fence; removal of language regarding motion detectors within the nuisance section. Mr. Townsend stated the proposed text amendment would add the keeping of poultry as a permitted use in most single family residential districts. The language which the judge found ambiguous: "not including poultry and hogs" has been struck from the proposed text amendment. Mr. Townsend noted staff recommended approval of the second reading of this text amendment allowing backyard poultry.

City Attorney David Davidson conducted the second reading of an ORDINANCE TO AMEND THE CITY OF ROSWELL CODE OF ORDINANCES AND THE ZONING ORDINANCE REGARDING KEEPING OF LIVESTOCK AND POULTRY WITHIN THE CITY LIMITS OF ROSWELL stating pursuant to their authority, the Mayor and City Council adopt the following ordinance:

1.

The Zoning Ordinance of the City of Roswell is hereby amended by adding new definitions to Article 3, of the City of Roswell Zoning Ordinance, Section 3.2 Definitions, for "livestock" and "poultry" as follows:

Livestock: Any animals of the equine, swine or bovine class, including goats, sheep, mules, horses, cattle, hogs, pigs and other grazing animals and all ratites, including but not limited to, ostriches, emus and rheas raised in an agricultural setting to produce commodities such as food, fiber, or labor.

Poultry: Any domesticated bird, including but not limited to, chickens (including roosters), ducks, guineas, quail, and pigeons.

2.

The Zoning Ordinance of the City of Roswell is hereby amended by adding a new Chapter 10.41 "Poultry" to Article 10, Specific Use Requirements to read as follows:

Chapter 10.41 Poultry

(a) Purpose

The purpose of this section is to authorize and to provide standards for the keeping of poultry in the rear or side yard of a single-family detached residence. It is intended to enable residents to keep poultry on a non-commercial basis, while limiting the potentially adverse impacts on surrounding neighbors. See Section 3.2 of this Zoning Ordinance for the definition of "poultry."

(b) Number of poultry allowed

The maximum number of poultry allowed is twenty five (25) birds per single-family detached residence located in any residential zoning district.

(c) Housing Types Allowed To Keep Poultry; Adult Residents Deemed Keepers or Owners

Only those residing in single-family detached residences may keep poultry as authorized in this Chapter. Each adult residing at any single-family detached residence at which poultry are kept shall be deemed a keeper or owner of the poultry.

(d) Personal Use Only

The keeping of poultry pursuant to this Chapter is for non-commercial, personal use only. Non-commercial keeping of poultry shall be defined as no sales on the premises.

(e) Poultry enclosed

Each keeper of poultry is required to have an enclosed area to house and control said poultry. Such enclosure shall meet all requirements for accessory structures set out in Chapter 10.4 of this Zoning Ordinance, including those for setbacks and location. Poultry shall be kept only in the rear or side yard and must be within a fenced area.

(f) Nuisance Prohibited

The keeping of poultry authorized under this Chapter shall not create a nuisance as defined by Chapter 8.8 of the Roswell City Code. The keeping of poultry shall be conducted in a manner that does not disturb the use or enjoyment of adjacent properties. Odor generated shall not be perceptible at the property boundaries, and noise generated shall not disturb people of reasonable sensitivity at the property boundaries.

3.

The Zoning Ordinance of the City of Roswell is hereby amended by deleting in Article 5 part of Table 5.1 the words not including poultry and hogs to the permitted use in E-1 and conditional use in E-2 for livestock and adding as a permitted use in residential zoning districts the keeping of Poultry to Table 5.1 to read as follows:

Table 5.1 on following page. (and attached to hard copy of official minutes)

TABLE 5.1

USES PERMITTED IN RESIDENTIAL DISTRICTS

USES

RESIDENTIAL ZONING DISTRICTS

P = Permitted use

C = Conditional use

X = Not

permitted

(*) = Specific use regulations apply

Zoning District	E-1	E-2	R-1	R-2	R-TH	R-THA	R-3	R-3A	R-4	R-4A
R-5 R-PUD R-HIST										
Livestock raising, not including poultry and hogs	P	C	X	X	X	X	X	X	X	X
Poultry	P	P		P		P	X	X		P
P (single family detached residences only; see also Article 10)	X	P		P						P

4.

Non-conforming number of poultry

For the first 90 days following the adoption of this ordinance by Mayor & Council, anyone having more than the maximum 25 poultry allowed may obtain a permit for the excess number of poultry, up to a limit of an additional 15 poultry, so that the total number of poultry kept will not exceed 40. Such permit will allow the permit-holder to keep the excess number of poultry for their lifetime. However, if a keeper of poultry fails to obtain this permit within the 90 days allowed, then he or she shall not have the right to keep more than the maximum 25 poultry allowed. The fee for the permit shall be \$50.00.

Mr. Davidson noted that if approved, this would be the second reading of the ordinance.

Mayor Wood noted this proposed text amendment speaks about allowing keeping of poultry in the rear or side yard of a single family detached residence. The Mayor noted that High Meadows School has had chickens on their campus for a long time. He asked if this text amendment would make it illegal for the school to have chickens there. Mr. Townsend responded the school is probably in an E-2 zoning district. Mayor Wood stated the text amendment refers to the maximum number of poultry per single family detached residence; there are no single family detached residences on

the property at High Meadows School even though it is residential zoning. Mr. Townsend replied that the way the text amendment is drafted the school would be prohibited; in this current draft version there is no exclusion other than single family residential homes for the keeping of poultry.

Mayor Wood noted that on his property which is in E-2 zoning, it is possible to have horses and cows; he asked what the permitted maximum number of horses is. Mr. Townsend replied that is governed by acreage size; it is one horse per acre. Mr. Townsend stated Code Section 10.7, Agricultural Farm and Animal Structures, states the minimum lot size for keeping livestock is two acres; one horse may be boarded for a non-commercial use on a lot which contains one acre or more; an additional one-half acre of area is required for the boarding of each additional horse. Mr. Townsend stated eighteen horses or eighteen cows may be kept on ten acres. Mayor Wood asked if the proposed text amendment would limit him to twenty-five (25) chickens or quail. Mr. Townsend confirmed that was the correct number for keeping of poultry.

Mayor Wood asked if a motion would be made on this ordinance as read or with recommended changes. Councilmember Dippolito replied that staff has had much feedback from the public and questions raised by the Council and therefore, he wanted to continue the dialogue before making a motion. Mayor Wood clarified that if there are any revisions to this ordinance as currently read, he would need to re-open the discussion so that the revisions are understood.

Councilmember Orlans asked if there was a reason as to why the discussion was being done differently tonight than in the past.

Mayor Wood disagreed; he stated that he has not always taken the motion after public comments. City Attorney David Davidson confirmed that as mayor, Mayor Wood could conduct the meeting in the way he wished. Mayor Wood clarified that he wanted to have the motion under consideration in front of the public for discussion.

Councilmember Dippolito stated that in this case, he wished to defer the motion until Council has heard from the public; comments on this ordinance would be heard but if there are changes, then it would be appropriate for the public to have an opportunity to discuss those changes.

Councilmember Orlans said he did not disagree but in the past Council has formulated opinions after listening to discussion, created motions or amended motions, and never gone back for a new public hearing.

Mayor Wood replied this is unusual. He stated that a Councilmember could go ahead and make a motion so that the public would know what is being discussed and then there would be one public hearing.

Councilmember Dippolito asked if a motion is presented and public comments were heard, and then there are amendments made to the motion, would it be necessary to hear from the public again on all the amendments. Mayor Wood replied no, but if the Council was considering putting something forward other than what is in this text amendment it would be fair to the public to let them know what is being brought forward; if the text amendment was going to dramatically change, the public would need to be permitted to comment on the change. Councilmember Dippolito replied he understood; he acknowledged the fact that there would be public comment and Council discussion and most likely amendments.

Motion: Councilmember Dippolito stated his first motion would be the approval of

RZ09-11 Text Amendment to allow for the keeping of poultry in the backyard of single-family residential areas. (Second Reading) with the following changes:

- *Under Poultry: including roosters, change to "including up to one rooster";*
- *Under the Number of poultry allowed: maximum number of poultry allowed is fifteen (15), rather than twenty-five (25);*
- *Under Item (e) Poultry enclosure: the enclosure shall meet the requirements for accessory structures except that the enclosure shall be thirty-five (35) feet from any neighbors dwelling;*
- *Under Purpose: add "and schools" so that schools have the opportunity to have chickens.*

Councilmember Wynn seconded the motion.

Mayor Wood noted that with Councilmember Dippolito's stated proposed changes everyone was informed of the changes for public discussion and only one public hearing would be necessary.

Councilmember Wynn asked for clarification that the "non-conforming number will be kept as fifteen (15)." Mayor Wood stated the text amendment could be amended. Councilmember Dippolito stated Councilmember Wynn was referring to Table 5.1, Item #4, a reduction to a maximum of 15 poultry.

Council comment:

Councilmember Price requested clarification of the wording under Item (e) Poultry enclosure; the language regarding accessory structures was shown as struck through on the proposed text amendment but on the third line of that section, accessory structures are again mentioned.

Mr. Townsend responded that the wording was changed so as to not label it as an accessory structure because an enclosure such as a poultry tractor may be moved because it is not an actual structure which stays in a particular location. An enclosure may also include a pen area in which the chickens are held and are not allowed to roam free. He stated that the accessory structure referenced in section of Chapter 10.4 is in regard to a shed or something put on the back of a property which is treated as an accessory structure; these rules apply to a chicken coop. Mr. Townsend stated that the terms used in this section use current regulations and would require the enclosure to be at least ten (10) feet from a side or a rear property line. The current amendment would require that enclosure be at least thirty-five (35) feet away from a dwelling.

Mayor Wood requested clarification regarding a required fence to surround the area in which poultry is being raised. Mr. Townsend stated that was correct. Mayor Wood stated that as he understands this, the fence may be on the property line but it would have to be at least thirty-five (35) from the nearest house if it is on the property line. Mr. Townsend replied the fence would probably be on the property line, the actual chicken coop would have to be at least 35 feet from a dwelling, if that amendment is included in this proposed text amendment. Mayor Wood asked if the chicken coop itself could be movable or could be permanent. Mr. Townsend stated that was correct but has to meet requirements. Mayor Wood asked if the A-frame chicken tractor which rolls around and located at his law office would meet these standards. Mr. Townsend replied yes.

Council comment:

Councilmember Igleheart noted that previous discussions included enclosures seventy-five (75) feet from a property line. Councilmember Dippolito responded there had been numerous previous discussions and more expected; he also was expecting several amendments.

Councilmember Orlans noted that during discussions regarding the enclosure distance from the nearest residence the distance changed from 35 feet to 50 feet. He asked if public comments would be opened up again. Mayor Wood replied no, but he wanted a firm understanding before public comment began of what was being brought forward by Council regarding this proposed text amendment. That had occurred and there would be one public hearing. Councilmember Orlans stated there have many different conversations about distances and asked if that may be changed this evening. Mayor Wood replied yes.

No further Council comments or discussion.

Public comment:

Christa Maloy, 1190 Old Forge Drive, spoke on the following:

- Her family is raising chickens to teach their children where food comes from and responsibility on how to care for animals. Asked Council what they are trying to accomplish that is not already covered in the current laws.

Keith Badalamente, 355 Alpine Drive, spoke on the following:

- Thanked Council for the changes in the amount of chickens allowed on property. Asked Council to clarify the enclosed structures; what type of housing; and what is the purpose of the enclosure. He stated the biggest issue is the roosters and asked Council to ban roosters from all properties in Roswell. He strongly urged Council to be very specific on the chicken/rooster issue so as to not burden the courts, code enforcement workers, or wasting tax payer's dollars with excessive "noise" complaints. He opposed the grandfather clause. If Council feels they must use the grandfather clause, to use the date when the issue first came into the courts. Urged Council to consider the reality of the chicken coops, chickens running along the fence cackling, chicken "dirt", chickens smell, and chicken noise.

Amanda Burks, 465 Longleaf Drive, spoke on the following:

- Asked Council to ban roosters, they crow all day.

Ted Gum, 610 Boulder Way, spoke on the following:

- He agreed with everything Mr. Badalamente spoke about. Urged Council to limit the amount of chickens per lot size. Concerned about the desirability and value of properties, and feels the chickens/roosters will hurt the overall appeal of Roswell as a desirable community to live.

Judie Raiford, H-Stroup Road, chickens live at W-1169 Canton St., spoke on the following:

- Reminded people Roswell used to be a mill town and filled with farmers. Urged Council to vote for the allowance of chickens.

Fred Broadnax, 280 Alpine Drive, spoke on the following:

- The presentation he sent to Council. Asked Council to clarify the environment around the chickens, do they need to be kept in the backyard only, compiling with other codes, and not to be allowed to deteriorate a neighborhood or community. He opposed the allowance of chickens.

Richard Mays, 285 Alpine Drive, spoke on the following:

- His neighbor has chickens that are allowed to run free on his property; the noise is continuous all day. The neighbor is letting the property deteriorate, and code enforcement has been called numerous times regarding the excessive amount of vehicles and boat on the property.

Jeaneal Enterkin, 12805 Bucksport Drive, spoke on the following:

- *She owns chickens and considers herself to be a good and considerate neighbor, and has never had a complaint. Stated people on small properties should be considerate of their neighbors. Doesn't like chicken owners who are taking advantage of the law and the system and are giving chickens a bad name. Feels everyone should be a considerate neighbor, and should be allowed to own chickens.*

Randall Enterkin, 12805 Bucksport Drive, spoke on the following:

- *Chickens are good for eating bugs and are good for fertilizing the soil.*

Wally Lang, 900 Peachtree Street, spoke on the following:

- *The issue seems to be an encroachment. Asked Council how they decided on the number of chickens. Councilmember Townsend responded because the City of Atlanta allows 25 chickens.*

Brad Thomas, 100 Sunset Court, spoke on the following:

- *Supports people owning chickens, but is opposed to roosters. Has environmental concerns regarding property values. Feels it is the government's responsibility to protect peoples' rights and not allow others to infringe on those rights and bringing property values down. Asked Council to be very specific about the regulations of keeping chickens. He stated the property is in such bad condition, that it isn't fit for chickens.*

Bettye Prescott, 150 Sunset Court, spoke on the following:

- *Supports people having a few chickens. She is concerned about how the feed is kept, and the increase with predators and rodents. Also concerned about the environmental impact, and runoffs into waterways.*

Unidentified speaker, working address 1197 Alpharetta Street, spoke on the following:

- *Feels there are too many rules and regulations in Roswell.*

Susan Yarbrough, 10540 Ash Rill Drive, spoke on the following:

- *The City of Roswell is desirable and growing and Council needs to manage the city. The city has grown and it will never go back to what it was and as a community everyone needs to get along.*

Jodi Smith, 720 Hembree Road, spoke on the following:

- *Asked Council why a person needs a permit for a chicken coop but not a dog house. Mayor Wood stated if there was an existing structure on the property, then a permit would not be needed to continue the structure. Mr. Townsend confirmed.*

Ramona Mays, 295 Alpine Drive, spoke on the following:

- *Wants everyone to see how the chickens are being treated and is concerned for them.*

Carol Wallray, 1515 Old Riverside Road, spoke on the following:

- *Supports people owning chickens; asked Council to make the amount of chickens conducive to the lot size.*

Alan Christian, 415 Autumn Wood Court, spoke on the following:

- *Supports people owning chickens; asked Council to enforce the current rules.*

Carol Costley, 1586 Oakfield Lane, spoke on the following:

- *Supports people owning chickens.*

Christine Hall, 3225 Thorndale Court, spoke on the following:

- *The number of chickens is not the issue, being a responsible pet owner is.*

Andrew Wordes, 355 Alpine Drive, spoke on the following:

- *The problem started with the flood waters going through his property and house, knocking down his fence several times. His chickens have always been in a fenced enclosure until the flood waters knocked it down. All current chicken owners should be grandfathered in before any new rules/regulations are made. Stated chickens have always been allowed in Roswell. This situation started because of the lack of concern from the City regarding the floodwaters running through his property.*

Lee Fleck, Martins Landing, spoke on the following:

- *This situation has been going on too long and costing the taxpayers a lot of money. There has been enough time and discussions that Council should be able to finalize this situation.*

Dorianne Gresher, Hembree Road, spoke on the following:

- *Everyone should have compassion for each other. 30 years ago Roswell was magical and a special place to live, but it is not like that anymore.*

Bill Costley, 1585 Oakfield Lane, spoke on the following:

- *Asked Councilmember Price if Mr. Wordes' house is really unlivable. Mayor Wood stated Councilmember Price may not be qualified to make a professional statement. Councilmember Price stated personally she wouldn't live there, and understood that Fulton County Health Officials and FEMA are looking into the matter.*

Michael Martin, 9400 Coleman Road, spoke on the following:

- *Supports people owning chickens. He stated his concern for Mr. Wordes as a victim of circumstances who was flooded back in September 2009 and still seeking resolution with FEMA. Urged Council to consider not only Mr. Wordes' situation but how the outcome will affect others in this community who are all neighbors.*

Council comment:

Councilmember Dippolito noted there had been public comment from a Roswell property owner with agricultural zoned property, which he assumed is technically zoned FC-A (Fulton County Annexed) agricultural use grandfathered in through Fulton County. Mr. Townsend replied that was correct. Councilmember Dippolito asked for clarification if that zoning designation would still be subject to this ordinance. Mr. Townsend replied yes, they would be subject to the limitations.

Councilmember Dippolito noted an attempt was made during the first reading of the proposed text amendment to make an adjustment so that a permit was not needed for mobile structures or structures that could be wheeled in. Councilmember Dippolito said the question regarding why a permit would be needed for a structure like a dog house, was a reasonable question. Mr. Townsend replied that Section (e), which deals with the enclosure, relates to the enclosure being the pen which is the fence, and the structure which is the coop. He further stated that perhaps clarification of that language is necessary as to the difference between those two and how each is controlled in the limitations for that location. Mr. Townsend confirmed for Mayor Wood that staff would make their best attempt to draft the necessary language for Council during this discussion of the second reading.

Councilmember Igleheart, in reference to the Non-conforming number of poultry paragraph in Table 5.1, requested clarification of that paragraph regarding the obtaining of a permit for the additional 15 poultry so that the total number of kept

poultry did not exceed 40. He said the paragraph does not clearly state what the intention and the actual end result would be; it seems to say that as long as someone bought their chickens in the next 90 days it is possible to have additional chickens up to that point. Mr. Townsend replied "The objective of the non-conforming section was to allow a person to own twenty-five birds, come in with that permit have an additional fifteen originally, for a maximum of forty. As the birds pass away, they would be brought into conformance with the maximum number of twenty-five." Councilmember Igleheart responded that the way he read it, for the first 90 days following the adoption of the ordinance, anyone having more than the maximum 15 poultry allowed may obtain a permit for the excess number. Councilmember Igleheart stated the language needs to be corrected so that it is clear about the date. City Attorney David Davidson agreed with Councilmember Igleheart.

Councilmember Igleheart stated he remained concerned with the required distances from property lines. Thirty-five feet from another dwelling, particularly in small subdivisions is not enough. He noted previous conversation had occurred regarding seventy-five feet from a property line.

Councilmember Henry requested that the language "their lifetime" in the non-conforming number of poultry section be more clearly defined. She asked if the City allows the slaughter of chickens. Mr. Townsend replied that this proposed text amendment did not address slaughter; it had been removed from prior drafts. Councilmember Henry asked if Fulton County or the USDA has regulation addressing the slaughter of chickens. Mr. Townsend replied that he was unaware of the regulations but assumed that there are regulations related to slaughter on property. Councilmember Henry asked whether Fulton County Animal Control deals only with cats and dogs. City Administrator Kay Love replied that with Fulton County's latest changes they typically deal only with cats and dogs and issues with living animals; the contract with Fulton County does not specify all the different animal species which they will deal with, but this has been their practice. Councilmember Henry stated she wanted to confirm that this would clearly be a City of Roswell code issue and not a Fulton County Animal Control issue.

Councilmember Wynn noted that there is a City of Roswell ordinance limiting three dogs per household. Councilmember Wynn stated Council reviewed the City of Atlanta's poultry ordinance when the suggestion was made to change the number of chickens from twenty-five to fifteen but they did not bring into consideration the restrictions that the City of Atlanta places on the chickens, such as a seventy-five foot setback, concrete pads, and numerous other restrictions. She suggested that if Council is going to consider twenty-five as the maximum number of chickens then the entire City of Atlanta chicken ordinance should be considered; in addition, lot sizes should be considered. She noted that she lives on a very small lot size of 6,000 square feet and she would not want 15 chickens next door but she also would not want those who have one to three acres of land be limited to 15 chickens. Councilmember Wynn stated she thought the citizens who spoke tonight in favor of chickens have multiple acreage; two, three, four, five acre size lots. She noted that she had previously suggested to Council that lot sizes be considered with chickens allowed as follows: on one third of an acre to one acre: six (6) chickens be permitted; on one acre or more: twelve (12) chickens per acre permitted, up to thirty-six (36) chickens; no roosters allowed. Councilmember Wynn again requested a Council discussion to limit chickens based on lot sizes.

Councilmember Orlans noted for the record that he had followed through on his appointment to meet Mr. Wordes' on his property at their agreed upon time, but Mr. Wordes did not appear.

Councilmember Orlans noted his concern regarding distance from neighboring homes and that Council had discussed a minimum of fifty feet from the neighboring home. On smaller lots, many of the homes are twenty-five or twenty feet from their property line and therefore, thirty-five feet from the nearest home is not far enough; it should be at least a minimum of fifty feet to seventy-five feet from neighboring homes. He said that when the discussions first occurred it was regarding chickens as pets. At that time, there never was discussion regarding roosters; it was strictly discussion on chickens as pets and people wanted to raise eggs; roosters were not needed to raise eggs or to have pets. Councilmember Orlans stated that in tonight's discussion and also in last month's discussion, he heard that some people who had been rooster owners no longer keep roosters and there is consensus by some chicken owners that roosters can be a real problem. He noted the issue is not just chickens as pets and although there are many responsible owners of pets, Council must consider those people who are not responsible owners of pets and how that affects everyone else in the city. Councilmember Orlans stated that if Council decides to allow one rooster, then he would suggest a requirement that roosters be completely enclosed without sunlight such as in a garage or a coop until at least 8 a.m. to prevent neighbors from being awakened by a rooster crowing at 5, 6, or 7 a.m. Noise from a rooster crowing other times of the day is another factor which Council would have to deal with. Councilmember Orlans stated that in trying to balance the city's small town atmosphere with the fact that we have neighbors that sometimes can be uncontrollable and don't take care of their property or don't take of their animals, requires some parameters going forward; Council members are not "anti-chicken" as some people have tried to say.

Mayor Wood asked Councilmember Dippolito to consider a postponed effective date rather than it being immediately effective to provide a reasonable period of time to come into compliance, should the ordinance pass. Mayor Wood stated that he noticed the proposed ordinance had been revised to state that chickens could be in residentially zoned property where there is a school or a single family residence. He noted that his wife keeps chickens at her art gallery on Canton Street where it adds "character" to Canton Street and he would like to see it stay that way. Mayor Wood stated that the city should be careful not to over regulate; as currently drafted this may be over regulation. He suggested that the proposed ordinance be revised at E-2 zoning, two acres and larger, in which cows, hogs, mules and livestock of that size are allowed. There should be a different number of poultry allowed for E-1 zoning, farms or in that category; farms are a "great tradition." Mayor Wood stated roosters should be addressed by the noise ordinance; he guessed that dogs are higher in decibel; he hoped roosters would be allowed.

Councilmember Price requested clarification regarding Article 10, Chapter 10.4 as related to accessory structure and enclosures, if it is called an enclosure instead of an accessory structure but is required to adhere to the definition of accessory structures. It may not be wise to base the definition on a neighboring dwelling as defining the limits from a property with chickens, such that those chickens would not be infringing on someone else's rights. It may be better to restrict it in terms of distance from the property line as opposed to distance to a neighboring dwelling which may or may not be there.

Councilmember Price noted concern regarding new permitting and the costs of permitting; the proposed ordinance did not define permitting other than the non-conforming fifty dollar permit fee.

Councilmember Price stated that as the city defines residential zoning districts in thirteen different ways, she did not believe there could be a chicken ordinance in a "one size fits all." She said Councilmember Wynn's proposal for a certain number of

chickens per lot size made some sense if defined in terms of zoning designations so that a whole new category is not being created on defining chickens based on chickens, versus defining how the city will address it, perhaps based on zoning categorizations of the zoning districts.

Councilmember Price stated there are several issues to deal with; the ordinance is one thing. She said "Mr. Wordes' situation is totally something else and I feel for him. I have been out there to visit his house and seen the devastation he has had to deal with but I think we have to separate the two. Helping Mr. Wordes' and his problem is one whole thing, and then if and when we need a chicken ordinance I think is something totally different."

Mayor Wood noted staff had been requested to look at how accessory structures would be addressed in the ordinance. Planning and Zoning Director Brad Townsend replied that for clarification of Section (e), language was added; to the title: enclosure and/or fenced area; "permanently affixed to the ground" was added which would put it into the accessory structure requirement; if it is not permanently attached to the ground it would not need a permit. Mayor Wood suggested "if such structure is permanently affixed to the ground it shall meet all requirements of accessory structures" versus a dog house or a chicken tractor which can be relocated.

Mayor Wood asked Councilmember Price asked if that added language made the proposed ordinance any clearer for her. Councilmember Price responded that she still did not see "any wisdom in the thirty-five feet from a neighbor's dwelling." Mayor Wood replied that was a separate issue from the enclosure and accessory structure. Councilmember Price replied that it still did not address the issue of permitting and fees. Mayor Wood replied that if the structure is permanently affixed to the ground another ordinance section would apply to construction and permitting, not this particular section. Councilmember Price asked to be directed to that section of the ordinance.

Councilmember Dippolito asked City Attorney David Davidson to suggest language for clarification. Mr. Davidson replied "It might read like this: Each keeper of poultry is required to have an enclosed area to house and control said poultry. If such enclosure is permanently affixed to the ground, it shall meet all requirements for accessory structures set out in Chapter 10.4 of this Zoning Ordinance, including those for setbacks and location. Any enclosure shall be set back a minimum of thirty-five (35) from a neighbor's dwelling whether it is permanently affixed or a rolling enclosure."

Mayor Wood stated Councilmember Price had asked if someone later came in and built a house, would this be grandfathered in to the extent if it was thirty-five feet and there was no house at the time, would they have to move the enclosure. Mr. Davidson stated that the way it is written, they would have to move the enclosure. Mayor Wood stated it could be cleared up by using "at the time the enclosure was permitted."

Motion: Councilmember Dippolito stated taking into account of all the comments and emails received, there seemed to be much concern regarding the noise issue. He said that may not be solved in a way that will make everyone happy but taking into account Council suggestions, and still wanting to hear Council discussion, he suggested that roosters be excluded; Councilmember Wynn's suggestion seemed to resonate with a lot of folks to have 0 chickens on a third of an acre; 6 chickens on one third to one acre; 12 chickens per acre up to 36 chickens. The changes discussed prior to this motion under section (e), would remain. He suggested a section (g): slaughter of chickens would be prohibited. Correction of language:

non-conforming should be from the adoption of this ordinance but provide people ninety (90) days to come into compliance; A postponed effective date of ninety (90) days. He suggested not including allowing chickens on commercial property due to how to limit which commercial properties chickens would be allowed on. Exclude zoning categories E-1; exclude properties currently zoned FC-A and used for agricultural purposes and not subject to the ordinance. Mayor Wood asked if roosters and poultry would be permitted on E-1 zoning. Councilmember Dippolito replied yes, the thought being that the city already allows livestock there so why limit the number of chickens and roosters. Planning and Zoning Director Brad Townsend asked if Councilmember Dippolito wanted to include poultry in the definition of livestock. Mr. Davidson replied that he thought that would be in a section that excludes E-1 zoning and FC-A zoning from the provisions of this ordinance, completely. Councilmember Dippolito continued with motion: The non-conforming maximum number of poultry would be determined by lot size, plus fifteen (15). Clarify that the excess number of poultry is for the poultry's lifetime.

Councilmember Wynn seconded the motion.

Council comment:

Councilmember Orlans asked how poultry and these issues were covered in E-1 and FC-A before discussion of this ordinance. Mayor Wood stated "Currently the ordinance is thrown out so there are no restrictions on poultry or livestock under any category in the City of Roswell." Mr. Townsend stated that prior to the judge ruling, poultry was prohibited. Councilmember Orlans asked if that included E-1 and Agriculture. Mayor Wood responded that would be a question of interpretation.

Councilmember Igleheart stated this actually is a small issue which requires protecting everyone's interest; Roswell is not the "older city" any longer, it now is second largest city in the metro area. Councilmember Igleheart noted that he had visited Mr. Wordes' property at 3:00 p.m. and could hear the roosters from the street; thirty-five feet away from the roosters probably does not matter to those who live nearby. He agreed that the ordinance needs to deal with roosters. Councilmember Igleheart noted his concern for the subdivisions where suddenly tomorrow someone could possibly have up to eight properties around them with chickens. He noted that communities which have home owner covenants may not be as protected as they think; it often requires winning a lawsuit before home owner association covenants can be enforced. Councilmember Igleheart stated there are positives to having a few chickens but where does that number fall within lot sizes and property lines. He noted that discussions made sense regarding seventy-five (75) feet from any property line does remove the smaller properties. Thirty-five feet from a dwelling did not make sense. He stated that he could agree to four chickens; larger number of chickens for E-1 and more than an acre of land but he would only support the proposed ordinance if Council agreed to at least fifty feet (50) from a property line on either side and a much small number of chickens, particularly on grandfathering. Councilmember Igleheart stated the way he read the proposed ordinance it reads that the city will now give someone 90 days to buy 15 birds, regardless of the property size; it would be possible to have up to thirty (30) birds on any property based on what the proposed ordinance says. Councilmember Igleheart stated he would not support the ordinance the way it is.

Mayor Wood suggested not adding a section regarding slaughter because it would add an entirely new dimension; that should be dealt with this as a separate ordinance, different time.

Amended Motion: Councilmember Dippolito amended his motion to remove the requirement for slaughtering and to accept Councilmember Igleheart's

recommendation for fifty (50) feet from a property line. Mayor Wood asked if this meant the chicken enclosure would be required to be fifty feet from the property line or is it the chicken coop fifty feet from the property line. Councilmember Dippolito replied that it is the enclosure which has been defined as both the fence and the enclosure. Councilmember Wynn stated she accepted those amendments.

Planning and Zoning Director Brad Townsend repeated the motion and the amended motion at the Mayor's request. He stated Section (1) regarding definition: Roosters have not been included within the definition of poultry; the original amendment at the first reading also struck through geese and turkeys. Single family residence or schools have been added as a location where poultry would be permitted. The maximum number of poultry allowed would be as follows: 0 to one third of an acre: 0 chickens; one third to one acre: 6 chickens; one acre or more: 12 chickens per acre / 36 chickens total; E-1 zoning and FC-A agriculture zoning designations are excluded from the number requirement. Mayor Wood asked if someone has a ten acre piece of property could they have two roosters. Mr. Townsend replied no. Councilmember Dippolito stated the intent of his motion was for E-1 and FC-A (Fulton County Annex) zoning designations, which still have a property use as agricultural, to not be subject to this ordinance because they are primarily farms. Mr. Townsend stated the clarification is the exclusion of this complete ordinance applicable to E-1, FC-A, AG-1 designated property.

Mr. Townsend continued: Clarification of the enclosure and/or fenced area making sure it is permanently affixed to the ground; meets the accessory structure section of the code; a minimum of fifty (50) feet from property line (rather than neighbor's dwelling). He stated that the non-conforming section "first 90 days" was struck through and replaced with "the adoption" although he was not certain it applied now because the numbers completely changed regarding maximums and totals per acre; Council discussed changing the effective date of adoption. Mayor Wood suggested that Councilmember Dippolito respond. Councilmember Dippolito uncertain of the terminology stated he thought what they wanted to say was that the ordinance would be effective but the city would allow people 90 days to come into compliance. Mayor Wood suggested the use of a postponed effective date, in essence there would not be an ordinance for the next 90 days but after that 90 days everything goes into effect and requires everyone come into compliance and not necessarily have a grandfather clause. Councilmember Dippolito replied it would be effective tonight with 90 days to comply. Mayor Wood replied no; it would not be effective for the next 90 days. He stated perhaps a stay of enforcement for 90 days could be used. Councilmember Dippolito stated section (4) would be needed. Councilmember Orlans stated there is no maximum number that is over and above what is allowed. Councilmember Dippolito stated it is the maximum number of poultry allowed but there is just no number associated because it will vary from property to property. Councilmember Orlans stated that what the Mayor was stating is that within 90 days, people must be compliant with no extra number of chickens. Councilmember Dippolito stated his motion, based on his discussion was to have an additional fifteen (15) for those who have a non-conforming number currently which would last through the lifetime of the poultry; that had not changed, it would accommodate those that may not conform to the ordinance currently.

Councilmember Wynn, who had seconded the motion, confirmed for Mayor Wood that all the changes were acceptable to her.

Councilmember Wynn stated she was concerned that people with chickens on less than one third of an acre would be required to get rid of all of them. She suggested that "fifteen (15) chickens for the lifetime of the poultry be kept in the ordinance; add 15 to all the maximums; one third to one acre: 21 chickens."

Councilmember Igleheart stated he appreciated all the changes made which covered many of the issues he had. He asked for clarification that if no chickens would be allowed with less than one third of acre unless the chickens are obtained within the next 90 days, and then it would be possible to have 21 chickens. Councilmember Dippolito replied the ordinance would be effective tonight; the 90 day part of the ordinance is to come into compliance if they are above and beyond the additional that we have given. Councilmember Igleheart replied "If you have no chickens today, you cannot have chickens in the future." Councilmember Dippolito replied that applies to those with one third of an acre or less. Councilmember Igleheart stated the fifty feet from the property line is a compromise.

Councilmember Orlans asked if someone already with a chicken coop would be grandfathered for the fifty (50) feet distance. City Attorney David Davidson replied yes and if it is a non-conforming structure at that time. Councilmember Orlans asked how staff would confirm that.

Councilmember Dippolito noted that all the discussion tonight at the dais was a result of listening to everyone's comments, emails, and phone calls.

Amended Motion: Councilmember Henry moved to amend the motion to allow roosters within whatever the total of number of fowl would be; to be part of that total number. Mayor Wood clarified that the amended motion would be to include roosters as chickens and not be treated differently. The motion failed due to lack of a second.

Councilmember Henry stated she remained concerned with the slaughtering of chickens since it is a health, safety, and welfare issue as evidenced before the days of zoning regulations; it should be included in the chicken regulations. Mayor Wood replied that it was not a question of slaughtering or not slaughtering, but it was too late to bring it intelligently into this ordinance tonight.

Councilmember Price asked approximately how many feet there would be between a structure and the property line on a third of an acre parcel. Mr. Townsend replied that would probably be categorized as the R-1 zoning district which would be a ten (10) foot setback between the structures. Mayor Wood asked what the size the lot would be. Mr. Townsend replied a minimum of 12,000 (twelve thousand) square feet which is usually 60' to 75' wide by 125' to 150' deep.

Councilmember Price said if we define setback from the property line do we need to restrict or limit chickens based on some other factor. She said the question is whether chickens are bothering anybody as long as they are far enough away. If you define a setback from your property line, how many acres you have could be irrelevant and any maximum should just be a maximum. She asked at one acre, what makes the difference between six and twelve chickens.

Mayor Wood asked if Councilmember Price was proposing an amendment. He noted that at this time, there was a motion and a second which she could either vote for or against or propose an amendment.

No further discussion.

The motion passed 4:2. Councilmember Orlans, Councilmember Igleheart, Councilmember Wynn, and Councilmember Dippolito voted in favor. Councilmember Price and Councilmember Henry voted in opposition.

A motion was made by Council Member Rich Dippolito, seconded by Council Member Becky Wynn, that this Item be Approved with Changes. The motion

carried by the following vote: Councilmember Orlans, Councilmember Igleheart, Councilmember Wynn, and Councilmember Dippolito voted in favor of the motion. Councilmember Price and Councilmember Henry voted against the motion.

In Favor: 4

Opposed: 2

2.

CU09-03 Pleasant Hill Youth Discovery House, 742 Bush St.

Presented by Bradford D. Townsend, Planning and Zoning Director

2. CU09-03 Pleasant Hill Youth Discover House, 742 Bush St.
Planning and Zoning Director Brad Townsend stated this is a conditional use request of 742 Bush Street to be used as a Youth House by the Pleasant Hill Baptist Church. The location is an existing home being rented by the church to use for small group gatherings and other activities for teenagers. Mr. Townsend stated staff recommends approval with the condition of no overnight functions.

Applicant:

Pastor Sabin P. Strickland, Pleasant Hill Baptist Church, stated the church will use the building for small group meetings and teen assembly.

Councilmember Dippolito asked Pastor Strickland if he has spoken with Ms. Gail Bohannon, a neighbor, who has concerns regarding the use of 742 Bush Street. Pastor Strickland replied no, they haven't spoken in any detail.

Public comment:

Ms. Gail Bohannon resides at 736 Bush Street, stated she opposed the Pleasant Hills Baptist Church using 742 Bush Street as a Youth Center. She stated there has been a lack of communication from the church. Ms. Bohannon stated she would rather see this remain as a residential home. She suggested that if the church uses the home it be a "transitional home." She was concerned about the type of events associated with a youth center; she would like a wooden six foot fence installed if the church is going to use the house.

Mayor Wood noted Council could apply a condition for this variance that Pleasant Hills Baptist Church must install a 6 foot wooden privacy fence installed along the edge of the house down to the property line or halfway back to the property line. Pastor Strickland stated they would have to consider their economic situation and take into consideration the fact that they would be leasing this property from the owner.

Ms. Bohannon confirmed for Councilmember Wynn that she would like use of the youth house to be "in by 9 p.m." included in the condition.

Mayor Wood suggested Council defer a decision until the parties have a chance to meet to work out the issues.

A motion was made by Council Member Rich Dippolito, seconded by Council Member Lori Henry, that this Item be Deferred and placed on the Mayor and City Council agenda for 12/21/2009. The motion carried by the following vote:

In Favor: 6

3. **CU09-04, Hands Of Mercy Extended (H.O.M.E.), 728 Bush St., Land Lot 414**

Presented by Bradford D. Townsend, Planning and Zoning Director

3. CU09-04, Hands of Mercy Extended (H.O.M.E.), 728 Bush St., Land Lot 414. Councilmember Dippolito stated this is companion item with CU09-03 Pleasant Hill Youth Discover House, 742 Bush St. Mayor Wood asked for this to be deferred.

A motion was made by Council Member Rich Dippolito, seconded by Council Member Becky Wynn, that this Item be Deferred and placed on the Mayor and City Council agenda for 12/21/2009. The motion carried by the following vote:

In Favor: 6

4. **RZ09-13 Text Amendment regarding parking requirements in the Historic District. (Second Reading)**

Presented by Bradford D. Townsend, Planning and Zoning Director

4. RZ09-13 Text Amendment regarding parking requirements in the Historic District. (Second Reading)

Planning and Zoning Director Brad Townsend stated this text amendment is regarding the parking requirements in the Historic District. The language that was adopted on the first reading tries to clarify changes in the usage of property that might require additional off-street parking by the owner; owner making the change would be required to provide the incremental increase and that way there would be no net loss in off street parking in the historic district as well as C-1 zoning designation. Councilmember Dippolito wanted to clarify that the city is not requiring a business to come up with parking spaces on-site, the increase in parking can be at another location. Councilmember Orlans asked if the text amendment says structures 50 years old would be that age as of 2009. City Attorney David Davidson replied the document states any structures 50 years in age, so it will continue to go up. Mayor Wood stated when the C-1 Commercial District was enacted everybody was treated the same and there were no requirements for off-street parking. A previous revision to the ordinance now requires on-site parking for businesses without the availability. He stated anyone in the C-1 Commercial District should be treated the same, except if a business adds square footage, not just the use. Councilmember Orlans asked what the actual problem is that Council is trying to solve. Mayor Wood said the problem is recognizing that when the C-1 zoning district was built it was without on-street or on-site parking requirements. When the rules changed to say there needs to be on-site parking, nobody could comply unless they were grandfathered in. Councilmember Orlans suggested more research and thought be given to this item.

Councilmember Wynn stated her understanding of the parking requirements is not the size of the building, but the use of the building.

Councilmember Dippolito stated his concern of not taking the use into account because there is currently a parking problem; it is going to get worse if we increase the intensity of uses. The Community Development Department did a study of the entire district and determined there is currently adequate parking but not a lot to spare. The concern is if the use of a building is changed that it will require more parking spaces.

Councilmember Henry asked City Attorney David Davidson if the city confers rights

on a property for uses under C-1; she was concerned about Council legally restricting uses. Mr. Davidson replied the parking requirements have always been based on use; a C-1 restaurant and a C-1 office would have different size parking requirements. Mayor Wood stated that was not always the case for C-1; it was an exception to the number of parking spaces required by use.

City Attorney David Davidson conducted the second reading of an Ordinance To Amend The City Of Roswell Zoning Ordinance Regarding Parking Requirements For Buildings In The Historic District Of Roswell stating: stating pursuant to their authority, the Mayor and City Council adopt the following ordinance:

1.

The Zoning Ordinance of the City of Roswell is hereby amended by adding to existing Section 17.3.1 as follows:

Section 17.3.1 Off-Street Parking Required

Off-street automobile parking spaces shall be provided on every lot on which any building, structure, or use is hereafter established in all zoning districts, except as otherwise specifically exempted by this article. Required parking spaces shall be available for the parking of operable passenger vehicles for residents, customers, patrons, and employees, as appropriate given the subject use. The reuse of any structure, fifty years in age or older, which is zoned C-1 (Central Commercial District) and located within the Historic District of Roswell, shall be exempt from off-street parking requirements. Provided however, any change in use shall require the addition of off-street parking to meet the incremental increase in parking required for the new use so that there is no net loss of off-street parking spaces.

Council comment:

Councilmember Price asked what happens if sentence 2 is taken out. Mayor Wood responded the Council would be back to there is no exemption from off street parking requirements. Councilmember Price asked if this is regarding only C-1. Mayor replied yes, C-1 was the only district that didn't have on-site parking requirements. Looking back when zoning was introduced in the City of Roswell, in the C-1 District, there were properties that had no possibility of parking because they were built 100 years ago. Originally all C-1 was exempted from parking requirements, then an ordinance change came in and all properties had to have on-site parking, but the C-1 property can never comply. Recognizing this didn't work, Council needs to either go back to the original stating C-1 is exempt from off-street parking requirements or adding additional language saying it is exempt with exceptions. Councilmember Price asked what the effect and the affirmative of this does to somebody who hasn't yet decided to make a restaurant. Mayor Wood stated the example of George Polatty, Canton Street property owner whose father bought the property 50 years ago and it has always been a law office. The neighboring property was converted to a restaurant 10 years ago and does not have any requirements for off-street parking. Now, George Polatty wants to change his business, but he will be required to provide off-street parking even though both properties have been C-1 zoning throughout this process.

Councilmember Igleheart asked if the basis of the city's entire zoning on the new businesses that come in is that things do change and newer businesses are impacted differently as things change.

Public Comment: Rick Clark stated he has a building at 972 Alpharetta Highway. He is required to provide parking even though one business came in immediately before him, and one is currently going in now and they do not have off-street parking and do not need to meet any requirements. He asked Council when things changed. Mr.

Clark asked how a facility with an alcohol license as a special event facility and currently operating as a restaurant did not have to provide any off street parking. He understands that building can not continue without providing parking, but there should be provisions for uses. Mr. Clark stated the importance of having a mixture of professional, retail, and restaurant use in the district to help stagger the parking issue. Mr. Clark asked what type of use is wanted in this zoning designation.

Mayor Wood stated in the long run the merchants are going to have to work together to get parking and create a small business improvement district. Councilmember Orlans asked if this should be researched further. Mayor Wood replied that he did not think research would help solve this quicker. Councilmember Henry stated the burden should not fall on the property owners; she believes Council should allow the businesses to function without the off-street parking; restricting uses in this area is not the way to go about it. Councilmember Henry stated she supported the Mayor's position and requested that Council look in the future at some type of parking authority where the money goes back into the improvements within the district. Councilmember Igleheart stated the reality is dealing with new parking needs; a number of issues have been identified. Councilmember Igleheart stated he supported the Mayor's position but for the longer term there needs to be a solution. Councilmember Orlans asked if this hasn't been passed yet why Mr. Clark, at 972 Alpharetta Highway has to add parking if we haven't said the incremental parking has to be put in now. Planning and Zoning Director Brad Townsend said with the change in use of the business license a determination is made whether they are providing sufficient parking or not; a review showed a substantial change in use that would require additional parking spaces. Councilmember Orlans said it hasn't been required in C-1. Mayor Wood replied that it is there now; under the current ordinance he cannot develop because he does not have any on-site parking and would have to tear down a historic building to develop. Mr. Townsend stated this is the problem every time a retail establishment turns over into a restaurant on Canton Street; they ask: are there more parking spaces required, how are they doing it, how should we be able to issue that license one way or the other. He noted that the way the proposed text amendment is drafted, if the second sentence is removed, it does take the ordinance back to where it was before. The second sentence adds in that if there is a change in use, some incremental parking will be required to be provided in some manner; this could involve shuttles, taxis, parking at Value Village. Mayor Wood stated a parking deck may eventually be necessary. Mr. Townsend agreed.

City Attorney David Davidson responding to a question whether other converted properties have been required to add parking, stated he believed the restaurant Diesel had complied. Councilmember Orlans asked why it did not apply to other businesses. Mayor Wood replied that it is a confusing situation and to try to go back and determine exactly what happened may not solve the problem of moving ahead with the issue. Councilmember Orlans stated this businessman should not be held up because there is a problem in dealing with this issue clearly. Mayor Wood stated the situation needed to be addressed to come up with a resolution and staff is telling Council that it needs to adopt the first sentence or the first and the second sentence of the proposed text amendment to solve this problem until we move ahead. Councilmember Orlans asked if this would resolve the problem in total or helping the situation right now. Mayor Wood replied we have resolved the question of what happens when a business comes to the city but we have not resolved the parking problem. He said whatever law Council passes will not change the need for more parking because the district is very successful.

Motion: Councilmember Dippolito moved to approve RZ09-13 Text Amendment regarding parking requirements in the Historic District (Second Reading) with the removal of the words in the first sentence "50 years in age or older." Councilmember

Wynn seconded the motion. The motion failed 2-4. Councilmember Dippolito and Councilmember Wynn voted in favor of the motion. Councilmember Orlans; Councilmember Price; Councilmember Igleheart; Councilmember Henry were opposed.

2nd Motion: Councilmember Price moved to approve RZ09-13 Text Amendment regarding parking requirements in the Historic District (Second Reading) adopting the first sentence only. Councilmember Orlans seconded the motion.

Council discussion:

Councilmember Henry stated 50 years or older comes from the zoning ordinance which defines historic properties; she suggested the historic property clause remain.

Mr. Townsend stated the Clay Café building is definitely the most recently built; he confirmed for Mayor Wood that has C-1 zoning designation.

Mayor Wood noted that there may be a difference if it is not a historic property and perhaps this should be deferred. Councilmember Orlans stated that was his point earlier and suggested leaving it as property that is 50 years as of 2009. Councilmember Igleheart stated the existing motion is to leave the fifty years but this would be temporary fix. Councilmember Orlans agreed. Councilmember Price suggested stating the year the building was built.

Amended 2nd Motion: Councilmember Price moved to amend her motion to approve RZ09-13 Text Amendment regarding parking requirements in the Historic District (Second Reading) by supporting the first sentence only; delete the language "50 years in age" and add instead "built prior to 1959." Councilmember Orlans seconded the motion. No further discussion. The motion passed 4-2. Councilmember Henry; Councilmember Igleheart; Councilmember Price and Councilmember Orlans voted in favor of the motion. Councilmember Wynn and Councilmember Dippolito were opposed.

A motion was made by Council Member Betty Price, seconded by Council Member Jerry Orlans, that this Item be Approved with Changes. The motion carried by the following vote: Councilmember Henry, Councilmember Igleheart, Councilmember Price and Councilmember Orlans voted in favor of the motion. Councilmember Dippolito and Councilmember Wynn voted against the motion.

In Favor: 4

Opposed: 2

5. **RZ09-12 Text Amendment regarding Animal Hospitals and Veterinary Clinics. (Second Reading)**

Presented by Bradford D. Townsend, Planning and Zoning Director

5. RZ09-12 Text Amendment regarding Animal Hospitals and Veterinary Clinics. (Second Reading).

Planning and Zoning Director Brad Townsend stated this is the second reading that would allow for veterinary clinics and animal hospitals in the O-P Zoning District as conditional use. Staff recommends approval of this reading.

City Attorney David Davidson conducted the second reading of an ORDINANCE TO AMEND THE CITY OF ROSWELL ZONING ORDINANCE TO ALLOW AS A

CONDITIONAL USE IN THE O-P ZONING DISTRICT THE USES OF ANIMAL HOSPITALS AND VETERINARY CLINICS stating pursuant to their authority, the Mayor and City Council adopt the following ordinance: the Zoning Ordinance of the City of Roswell is amended to allow the uses of Animal Hospitals and Veterinary Clinics as a conditional use in the O-P Zoning District by changing tables 6.1 as follows:

TABLE 6.1

PERMITTED USES IN OFFICE AND COMMERCIAL ZONING DISTRICT

USES OFFICE AND COMMERCIAL ZONING DISTRICTS

P = Permitted use C = Conditional use X = Not permitted
 (*) = Specific use regulations apply

Zoning District	O-P	C-1	C-2	C-3	I-1					
Animal hospitals and veterinary clinics (see also Article 10)					C		X	X	C	P

A motion was made by Council Member Rich Dippolito, seconded by Council Member Lori Henry, that this Item be Approved on Second Reading. The motion carried by the following vote:

In Favor: 6

Enactment No: Ord No. 2009-12-17

6.

CU09-05 Veterinary Referral Surgical Practice, 900 Holcomb Bridge Rd., Land Lots 501, 502, 525, 526

Presented by Bradford D. Townsend, Planning and Zoning Director

CU09-05 Veterinary Referral Surgical Practice, 900 Holcomb Bridge Rd., Land Lots 501, 502, 525, 526.

Planning and Zoning Director Brad Townsend stated this is a Veterinary Surgical Center that will use the previous text amendment approved (on this agenda) to be located on 1 ½ acres in an O-P designation at the corner of Holcomb Bridge Road and Warsaw Road. The applicant is requesting a conditional use for an Animal Surgical Center and Emergency Clinic.

RECOMMENDED STAFF CONDITIONS:

- 1. The property shall remain as shown on the survey stamped "Received October 6, 2009 City of Roswell Community Development Department," and consistent with these recommended conditions.*
- 2. The animal surgery clinic and emergency center shall only be allowed if the ordinance is adopted by the Mayor and City Council.*
- 3. All activity is to be located inside of the building.*
- 4. The owner/developer shall provide a striped island at the south driveway on Warsaw Road so that it is only right-in/right-out as required by the Roswell Department of Transportation prior to the issuance of a business license.*

RECOMMENDED PLANNING COMMISSION CONDITIONS:

The Planning Commission recommended approval during their November 17, 2009 hearing with all of the staff conditions.

Mr. Townsend stated this request was reviewed by the Planning Commission and four staff conditions were recommended; the second condition is about adopting the text amendment; the third condition is already covered in the code of requiring everything within the building, so these could be removed; only conditions 1 and 4 would be applicable which the applicant is agreeable to both of the conditions.

Councilmember Price asked if the right-in and right-out is a change since the current occupant. Mr. Townsend replied Transportation recommends this to be a right-in and right-out due to the stacking that happens on Warsaw Road at the signal and conflicts created by cars trying to turn left from Warsaw Road into that location, there is another access further down to make a left turn. Councilmember Price asked if this is a problem identified subsequent to the approval initially to allow this. Mr. Townsend stated that was correct; with this approval transportation movement can be created easier. Councilmember Price asked if the applicant would prefer to block off the entrance entirely or amenable to the right-in and right-out.

Applicant:

Dr. David Filer, DVM, 900 Mansell Road, stated he would prefer to have the right-in and right-out.

Motion: Councilmember Price moved to approve CU09-05 Veterinary Referral Surgical Practice, 900 Holcomb Bridge Rd., Land Lots 501, 502, 525, 526 with the two conditions. Councilmember Dippolito seconded the motion. There was no public comment. The motion passed unanimously.

A motion was made by Council Member Betty Price, seconded by Council Member Rich Dippolito, that this item be Approved. The motion carried by the following vote:

In Favor: 6

7.

Changes to allow Construction Activity hours for residential properties.

Presented by Bradford D. Townsend, Planning and Zoning Director

Changes to allow Construction Activity hours for residential properties. (First Reading)

Planning and Zoning Director Brad Townsend stated this is to add a section to Section 5.1.13 in regard to homeowners performing construction activity on their own home and the construction time. (First Reading)

City Attorney David Davidson conducted the first reading of an Ordinance of the City Council of the City of Roswell Georgia Amending the City of Roswell Code of Ordinances stating: the Mayor and Council, pursuant to their authority, do hereby adopt the following ordinance:

1.

The City Code of the City of Roswell, Georgia is hereby amended by adding one sentence to Section 5.1.13. Chapter 5, Article 5.1, of the Code of Ordinances of the City of Roswell, Georgia is hereby amended by changing Section 5.1.13 which shall read as follows:

It shall be unlawful for any person to engage in or conduct any activity in the construction of any building or structure, the moving of earth, or the laying of any pavement, including, but not limited to, the making of any excavation, clearing or

grading of surface land, and loading or unloading material, equipment, or supplies, except between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday, unless a permit for each work at different hours or days has first been issued by the chief building inspector. Applications for such permits shall be made in writing to the chief building inspector and shall state the name of the applicant, his business address, the location of the proposed work, the reason for seeking a permit to do such work on Sunday or between 7:00 p.m. and 7:00 a.m., and the estimated time of the proposed operation. No such special permit shall be issued except where the public peace, health, or welfare will not be adversely affected by such issuance or will be harmed by failure to perform the work at the times indicated. The foregoing provisions shall not apply to any person performing construction activity at his or her residence, but such persons are subject to the noise restrictions set out in Section 8.8.3 (s) of this Code.

A motion was made by Council Member Rich Dippolito, seconded by Council Member Jerry Orlans, that this Item be Approved on First Reading and placed on the Mayor and City Council agenda for 12/21/2009. The motion carried by the following vote:

In Favor: 6

8. **Initiation of a Text Amendment regarding revisions to the Public Notice requirements for Rezoning and other applications.**

Presented by Bradford D. Townsend, Planning and Zoning Director

8. *Initiation of a Text Amendment regarding revisions to the Public Notice requirements for Rezoning and other applications.*

Planning and Zoning Director Brad Townsend stated this initiation of a text amendment would effect the notification requirements of rezonings and other applications; surrounding property owners within 300 feet of the subject property would receive written notification from the City. Staff recommends approval. Councilmember Dippolito recommended the word "abutting" be changed to "surrounding."

A motion was made by Council Member Rich Dippolito, seconded by Council Member Becky Wynn, that this Item be Approved. The motion carried by the following vote:

In Favor: 6

9. **Approval of an Ordinance to Amend Chapter 5, Building and Construction, of the Code of Ordinances of the City of Roswell. (Second Reading)**

9. *Approval of an Ordinance to Amend Chapter 5, Building and Construction, of the Code of Ordinances of the City of Roswell (Second Reading).*

Planning and Zoning Director Brad Townsend stated this ordinance deals with the hazardous occupancy of billboards in Section 5.4.14. The first reading was on December 7, 2009. Staff recommended approval.

City Attorney David Davidson conducted the second reading of an "ORDINANCE TO AMEND CHAPTER 5, BUILDING AND CONSTRUCTION OF THE CODE OF ORDINANCES OF THE CITY OF ROSWELL stating: pursuant to their authority the Mayor and Council hereby adopt the following ordinance:

1.

Chapter 5, Building and Construction, Article 5.4, Permits and Inspections, Section 5.4.14 Hazardous Occupancies of the Code of Ordinances of the City of Roswell, is amended by deleting Section 5.4.14 in its entirety and substituting a new Section 5.4.14 to read as shown on Exhibit "A" attached hereto and incorporated herein by reference.

EXHIBIT "A"

Section 5.4.14 Hazardous Occupancies.

The following provisions and prohibitions are required when a structure's use is hazardous to the public health, safety and welfare:

(a) GENERAL SITE PLAN. A general site plan drawn at a legible scale which shall include, but not be limited to, the location of all buildings, exterior storage facilities, permanent access ways, evacuation routes, parking lots, internal roads, chemical loading areas, equipment cleaning areas, storm and sanitary sewer accesses, emergency equipment and adjacent property uses. The exterior storage areas shall be identified with the hazard classes and the maximum quantities per hazard class of hazardous materials stored.

(b) BUILDING FLOOR PLAN. A building floor plan drawn to a legible scale which shall include, but not be limited to, all hazardous materials storage facilities within the building and shall indicate rooms, doorways, corridors, exits, fire rated assemblies with their hourly rating, location of liquid tight rooms, and evacuation routes. Each hazardous material storage facility shall be identified on the plan with the hazard classes and quantity range per hazard class or the hazardous materials stored.

(c) CONSTRUCTION NEAR OR ON A LOT CONTAINING A BILLBOARD, PYLON SIGN OR OFF PREMISES SIGN. Construction of any structure, building, or appurtenance adjacent to, or on a lot containing a billboard, pylon sign or off premises sign under the provisions of this section shall require that:

1. No buildings, structures, parking or appurtenances may be constructed within the "Fall Zone" of such sign, except that when the fall zone extends beyond the property line of the parcel on which the billboard, pylon or sign is located, then buildings, structures, parking and appurtenances shall not be restricted on the adjacent property. A "Fall Zone" is defined as an area equal to 100 percent of the height of the sign in every direction.

2. No subdivision of a parcel containing a billboard shall be permitted unless the subdivided lot containing the billboard is large enough to encompass the "Fall Zone" of such billboard.

3. For purposes of this ordinance a billboard shall be defined as any sign greater than 12 feet in height as measured from the ground at the base of the sign. Such billboards shall be considered to be the principal use of such parcel.

4. The provisions of this section shall not apply to a parcel containing a billboard on or before December 7, 2009 or the date of adoption of this ordinance, whichever is later, provided such billboard is a non-conforming use and was established pursuant to a recorded irrevocable permanent ownership interest in a dominant estate (not a lease) and the proposed construction of the structure, building or appurtenance shall occur on the servient estate. The owner of such parcel, prior to issuance of a land disturbance permit, shall file a binding covenant that shall run with the land in the Superior Court of Fulton County declaring that should the occasion or opportunity ever arise in the future to have the billboard use ended or removed, either by law, equity or contract, regardless of cost, the billboard shall be permanently removed from the parcel.

(2003-06-15, Added, 06/16/2003, Subsection (c))

A motion was made by Council Member Rich Dippolito, seconded by Council Member Becky Wynn, that this Item be Approved on Second Reading. The motion carried by the following vote:

In Favor: 6

Enactment No: Ord No. 2009-12-18

10.

Appeal of a Design Review Board decision related to conditions of approval for the Sharpshooters USA application.

(Deferred from December 7, 2009)

Presented by Bradford D. Townsend Planning & Zoning Director

10. Appeal of a Design Review Board decision related to conditions of approval for the Sharpshooters USA application. (Deferred from December 7, 2009)

Planning and Zoning Director Brad Townsend stated that on November 3, 2009 the Design Review Board (DRB) heard and initially approved design plans for a new firing range on Alpharetta Highway and Foe Killer Creek. There were 5 conditions; the applicant specifically requests the removal of condition #2 which requires the owner/developer to remove the existing billboard. The Design Review Board conditions are as follows:

- 1. The owner/developer shall extend a sidewalk from Alpharetta Highway to the building.*
- 2. The owner/developer shall remove the existing billboard.*
- 3. The owner/developer shall install an ornamental fence above proposed retaining wall where it is visible from public right of way.*
- 4. Trail easement agreement with the City of Roswell is negotiable.*
- 5. Comply with departmental comments. (see attached DRB approval letter)*

Mr. Townsend noted that Council packets included the applicant's application for approval and related application documents.

Mayor Wood asked if Council grants this appeal, is there a condition that if the property ceases to be used for billboard then they loose this right. The Mayor clarified that it is in ordinance. Mr. Townsend agreed.

Councilmember Orlans asked if the appeal is strictly on condition #2; he thought there was a question regarding the trail easement. Councilmember Orlans stated he was surprised that it was not more thoroughly explained to the DRB that we are trying to get trail easements along all the creeks for a long term plan and not just one piece of property. Mr. Townsend stated the applicant objected to the trail easement. Councilmember Orlans stated that is not up for appeal. Mr. Townsend agreed.

Applicant:

Mr. David Kirk, law firm Troutman Sanders, 600 Peachtree Street, stated this appeal does not concern the trail easement. His understanding of the objection was that this is a firing range and the company is concerned about safety and security for both the firing range and outside the firing range. Mr. Kirk stated the topography there is steep so it would be difficult to consider having an easement there. Mayor Wood noted the easement was for along the creek. Mr. Kirk replied that he understood. Mayor Wood asked if there was no possibility of a trail along that creek.

Mr. Tom Deets, Vice President of Sharpshooters USA stated the concern was a security issue and that people would have free access to the rear area. He noted the steepness of the topography and questioned the ability for a trail.

Mayor Wood replied that in the long term, the City would like to have a trail along Foe Killer Creek to the Big Creek Greenway. The trail would not be coming up the hill but along the edge of the creek.

Mr. Deets asked if it would originate at the end on the parking lot and facility. Mayor Wood responded that it would originate from the public access at the road where the bridge goes over Foe Killer Creek. Mr. Deets stated their concern was that people would start using their parking lot and walk down to the trail. Mayor Wood replied that it is always possible that the parking lot would be used and someone could leave a car anywhere and walk anywhere. The Mayor clarified that the trail would not come up through the property but stay along the creek.

Mr. Kirk noted that the condition states the trail easement agreement with the city is negotiable and that Sharpshooters was willing to continue discussing this with the city.

Mayor Wood replied this is a long term plan of the City for the trail; the trail would probably be on the other side of the creek since the topography is not as steep on that side. He noted that it has been a practice, within the area of the creek buffer which is required to be undisturbed and undeveloped, to establish a series of easements so that one day those become strung together for the trail system.

Councilmember Orlans stated the negotiable point came from the DRB. He noted that the City has been working for twenty years to acquire easements along our creeks for a trail system. Councilmember Orlans stated "We already have it beyond your property. At this point, if we build it, we would come up to your property and it would end and people would scamper up to your parking lot for sure. It may never be built, but we sure are working hard on it."

Councilmember Wynn stated tonight's vote was only on the appeal of Condition #2 regarding the billboard. She noted the trail has already been decided by the DRB, that it will be negotiable and Council tonight could not change that condition; if the applicant wanted to appeal that, it would require another appeal or they could put the trail in as indicated. Mayor Wood agreed but wanted to take the opportunity to discuss it.

Motion: Councilmember Dippolito moved to approve the Appeal of a Design Review Board decision related to conditions of approval for the Sharpshooters USA application; condition #2 set by the DRB. (Deferred from December 7, 2009) Councilmember Henry seconded the motion. There was no public comment. The motion passed unanimously.

A motion was made by Council Member Rich Dippolito, seconded by Council Member Lori Henry, that this Item be Approved. The motion carried by the following vote:

In Favor: 6

ADDENDUM TO AGENDA**Regular Meeting of the Mayor and City Council, December 14, 2009, 7:30 p.m.,
Mayor Jere Wood presiding****Mayor's Report****1. Approval of a Resolution declaring the City of Roswell's
opposition to the use of Fulton County General Fund Money
on Special Service District Operations and Services.**

1. A Resolution from Roswell asking Fulton County to stop using funds from the General Fund to pay for the services of the Special Service District and is seeking repayment from Fulton County.

Mayor Wood noted the operative language is that Roswell wants Fulton County to stop using funds from the General Fund to pay for services in the Special Service District which we should not be paying for and to repay money paid to the Special Service District in the past. The Mayor noted that all cities in North Fulton are adopting this resolution. Councilmember Wynn stated it was time to stop subsidizing unincorporated Fulton County.

A motion was made by Council Member Becky Wynn, seconded by Council Member Lori Henry, that this Item be Approved. The motion carried by the following vote:

In Favor: 6

**Adjournment - After no further business, the Regular Meeting
adjourned at 11:45 p.m.**