



# City of Roswell

38 Hill Street  
Roswell, Georgia 30075

## Meeting Minutes Mayor and City Council

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Monday, March 9, 2009

7:30 PM

City Hall

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### **Mayor Wood called the meeting to order and welcomed everyone present.**

**Present:** 5 - Mayor Jere Wood, Council Member Rich Dippolito, Council Member Jerry Orlans, Council Member David Tolleson, and Council Member Becky Wynn

**Absent:** 2 - Council Member Lori Henry, and Council Member Kent Igleheart

**Staff Present:** City Administrator Kay Love; City Attorney David Davidson; Community Development Director Kathleen Field; Planning and Zoning Director Brad Townsend; Planner Jackie Deibel; Community Information Coordinator Kimberly Johnson; Building Operations Technician Doug Heiren; City Clerk Sue Creel; Deputy City Clerk Betsy Branch.

### **PLEDGE OF ALLEGIANCE - Students from Queen of Angels School**

### **CONSENT AGENDA**

1. Approval of February 9, 2009 Zoning Meeting Minutes (detailed minutes to replace Council Brief Minutes adopted on February 18, 2009) and approval of March 2, 2009 Council Brief Minutes.

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

**In Favor: 4**

### **REGULAR AGENDA**

#### **Community Development - Councilmember Richard Dippolito**

#### **Rezoning, Concurrent Variance**

1. RZ08-17, CV08-03, Crossville Hardscrabble, LLC, corner of Hardscrabble Rd. & Highway 92, Land Lots 188, 294, E-2 (Applicant requesting a deferral)

1. RZ08-17, CV08-03, Crossville Hardscrabble, LLC, corner of Hardscrabble Rd. & Highway 92, Land Lots 188, 294, (Applicant requesting a deferral).

Planning and Zoning Director Brad Townsend noted this is a rezoning as well as a conditional variance. The rezoning is at Hardscrabble Road and Woodstock/Highway 92. Mr. Townsend stated the applicant requested a deferral to the April 13, 2009 Mayor and Council Zoning meeting.

Mayor Wood invited public comment; none was heard.

**A motion was made by Council Member Rich Dippolito, seconded by Council Member David Tolleson, that this Item be Deferred and placed on the Mayor and City Council agenda for 4/13/2009. The motion carried by the following vote:**

**In Favor: 4**

### **Text Amendment**

2. RZ08-16 Text Amendment regarding Sidewalk Cafes. (2nd Reading)  
Resolution to adopt a fee schedule for Sidewalk Cafes.

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Resolution to adopt a fee schedule for Sidewalk Cafes.

Planning and Zoning Director Brad Townsend noted this would be the second reading of this ordinance which if approved would allow the restaurants along Canton Street who have met the requirements, to request a sidewalk café license allowing the service of food and alcoholic beverages on the public sidewalks. Mr. Townsend stated this ordinance will require conformance with the American Disabilities Act (ADA). The ordinance includes definitions, requirements, administrative fees, and annual renewal fees. The ordinance requires submittal of drawings, sketches, approval by the Historic Preservation Commission (HPC), and liability insurance. The City Administrator or his/her designee, may revoke the license or require corrections for ordinance violations. The HPC completed a preliminary review and provided minimum specifications for types of furniture, barriers, and umbrellas. Mr. Townsend noted the ordinance will be accompanied by a resolution establishing the following administrative and processing charges: Application for sidewalk café license registration fee: \$300; Change or additions to the original license fee: \$100; Annual renewal with no changes fee: \$50. Mr. Townsend noted that staff recommended approval of the ordinance and the resolution.

Mayor Wood asked what would be the effective date of compliance. Mr. Townsend stated that staff has contacted all the current licensees at this location and hoped to have compliance within sixty (60) to ninety (90) days. Mayor Wood asked if these restaurants would be immediately out of compliance if Council chose to pass this ordinance tonight. Mr. Townsend replied yes. Mayor Wood asked what a reasonable period of time would be to allow these restaurants to come into compliance. Mr. Townsend replied it would be ninety (90) days. Mayor Wood suggested a deferred effective date in order provide a reasonable period of time to come into compliance; he explained that he fully supports this ordinance but suggested that Council consider deferring the effective date not to provide the restaurant additional time, but to provide a reasonable period of time from the passage of the ordinance.

*Council comment:*

*Councilwoman Wynn noted this ordinance had been being worked on for six months with a moratorium on citations and therefore, she did not see why this ordinance could not go into effect immediately with violation warnings given. Mr. Townsend confirmed for Councilwoman Wynn that if a business is going through the HPC approval process that would provide immunity to any type of citation, it would be more of a warning.*

*Mayor Wood stated he did not want to see folks cited tomorrow; these restaurants should have a reasonable period of time now that the HPC has established the guidelines. He asked if they have applied to the HPC, even though they do not have a license, would they be immune from being cited. Mr. Townsend replied that effective, upon adopted of the ordinance, staff will make the restaurants aware of what they need to sign, with it to be returned to the City within two (2) weeks to get the process started, bringing them forward for approval by Mayor and Council, and approval of the license. Mayor Wood said installing the posts and transitioning the furniture would take the most time in the process.*

*Mr. Townsend confirmed for Councilman Orlans that the pre-approved HPC specifications are part of the ordinance; this would adopt the use of plain umbrellas with no logos, businesses would go to the HPC for any requests of something different; the text amendment references a catalogue of historic or heritage paint colors utilized for the historic district. Councilman Orlans noted the Red Salt restaurant will have the most problem creating a wide enough sidewalk area; he asked if any communication had occurred with this restaurant about possibly extending those sidewalks. Mr. Townsend stated there had been discussion with the Transportation department regarding the intersection of Webb Street and how it interacts with the two parking spaces located in front of Red Salt restaurant. The final design has not yet been determined because of the ongoing discussion related to increasing the sidewalk along the Webb Street side of the building.*

*Councilman Orlans noted that if this text amendment was adopted and in effect today, with approximately sixty (60) days allowed for compliance, he would still have to assume that this would not be set and would require a cleared sidewalk. He asked if the record tonight would reflect that compliance must be within sixty (60) days. Mr. Townsend agreed and stated ADA compliance would still be required; staff would be reasonable in making sure that the businesses come into compliance.*

*City Attorney David Davidson conducted the second reading of AN ORDINANCE TO AMEND ARTICLE 10, SPECIFIC USE REQUIREMENTS OF THE ZONING ORDINANCE OF THE CITY OF ROSWELL stating the Mayor and Council have determined that Article 10, Specific Requirements, of the Zoning Ordinance should be amended to clarify and define "Sidewalk Cafes" as an accessory use permitted in certain zoning districts; to accomplish the foregoing, the Mayor and Council of the City of Roswell, pursuant to their authority, do hereby adopt the following Ordinance:*

*1. Article 10, Specific Use Requirements, is amended by adding thereto a new Chapter 10.39, Sidewalk Cafes, as shown on EXHIBIT "A" attached hereto and incorporated here and by reference.*

*EXHIBIT "A"*

**ARTICLE 10**  
**SPECIFIC USE REQUIREMENTS**

CHAPTER 10.39  
SIDEWALK CAFES

Section 10.39.1 Purpose

*To establish conditions and requirements under which a sidewalk cafe license will be issued for sidewalk cafes.*

Section 10.39.2 Definitions

(a) "Sidewalk cafe" is a portion of a restaurant located outside of the principal building (unenclosed) on a public sidewalk which provides a sit down area for food and/or beverage consumption purposes or a sit-down outdoor waiting area.

(b) "Sidewalk cafe license" is a license issued after approval has been granted by the City based on the criteria outlined below.

Section 10.39.3 Uses Permitted / Application for License

(a) Sidewalk cafes are permitted for restaurants located on the east and west side of Canton Street north of Magnolia Street and south of Norcross Street. Application for a sidewalk cafe license shall be made to the Community Development Department. If approved by Mayor and Council, a license for a sidewalk cafe will be issued for one (1) year and shall be automatically renewed if the use remains in compliance with all conditions stated herein. Such license will not be transferable in any manner.

(b) The fee for a Sidewalk Café License shall be set by Mayor and Council by Resolution.

Section 10.39.4 Submittal Requirements

All site plans (including architectural plans) for sidewalk cafes shall include a sketch to scale showing existing interior floor plans if appropriate; exterior floor plans if applicable; building elevations; setbacks; types of landscaping/ground covering; signs; lighting; location of tables, chairs and other furniture; pedestrian ingress and egress (clear path) and other information that is deemed necessary for review. In addition, photographs, drawings, or manufacturers' brochures describing the appearance of the proposed tables, chairs, umbrellas, fencing/barrier design or other objects related to the sidewalk cafe shall be provided. Staff shall have the authority to waive any or all of the submittal requirements if the applicant provides adequate information to determine compliance with the Development Standards and Criteria in this Section.

Section 10.39.5 Development Standards and Criteria

In order to protect the public health, safety, convenience and general welfare of the surrounding uses, sidewalk cafes shall be subject to the following criteria:

(a) The operation of such sidewalk cafe seating area shall be conducted in such a way as to not interfere with the circulation of pedestrian or vehicular traffic on the adjoining streets or sidewalks. There shall be a minimum of three (3) feet of clear distance. The minimum three (3) foot requirement will be measured and maintained when chairs and tables are occupied. The sidewalk cafe dining area shall be located adjacent to the building facade, with the three (3) foot clear pedestrian passage provided between the dining area and the edge of the pavement. The sidewalk café area shall be enclosed by a permanent or temporary fencing or other acceptable method such method shall be approved by the Historic Preservation Commission;

(b) All kitchen equipment and refuse containers used to service the sidewalk cafe shall be located inside the primary restaurant;

(c) The restaurant owner/operator shall be responsible for maintaining the sidewalk cafe in a clean, neat, orderly and safe condition. All debris and litter shall be removed daily. Private trash containers in the sidewalk cafe dining area are prohibited. Public sidewalk trash containers shall not be used as a means of

disposing of table waste generated by restaurant consumers;

(d) Sidewalk cafe furniture shall be approved by Historic Preservation Commission and must be kept in a clean, orderly and safe condition.

(e) Restaurants may serve alcoholic beverages in the sidewalk cafe dining area provided the restaurant complies with State law and Chapter 3 of the Roswell Code of Ordinances which provide that any area outside of the licensed premises used for serving alcoholic beverages be defined by permanent or temporary fencing or other acceptable method;

(f) There shall be no signage or logos displayed on umbrellas or awnings that can be seen from the public right-of-way. Historic Preservation Commission shall approve all umbrella and/or awning colors;

(g) The hours of operation for the sidewalk cafe shall be no greater than that of the principal restaurant and may be less as determined in the review process; and

(h) Should a severe storm warning be issued, all outdoor furniture shall be removed from the sidewalk cafe dining area.

(i) There shall be no extension cords allowed across sidewalks and no televisions allowed in any licensed sidewalk café area.

#### *Section 10.39.6 Liability and insurance for Sidewalk Café Dining*

(a) Prior to the issuance of a license, the applicant shall provide the City with certified copies of all insurance policies providing coverage as required.

(b) Prior to the issuance of a license, the applicant shall furnish the City with a signed statement from an authorized officer, or legal representative, of the restaurant that the licensee shall hold harmless the City, its officers and employees and shall indemnify the City, its officers and employees for any claims for damages to property or injury to persons arising out of or in any way contributed by the use, maintenance, or operations of the restaurant. Proof of worker's compensation coverage shall also be provided.

(c) The applicant shall furnish and maintain such public liability, food products liability, and property damage insurance from all claims and damage to property or bodily injury, including death, which may arise from the use, maintenance or operations of the sidewalk cafe dining area. Coverage shall specifically include policies of not less than one million dollars (\$1,000,000.00) for bodily injury, and property damage respectively per occurrence. Such insurance shall name as additional insured, the City, its officers and employees, and shall further provide that that policy shall not terminate or be canceled prior to the completion of the license period without thirty (30) days written notice to the City. Such insurance will be primary to any insurance or self-insurance whether collectible or not which may be available to the City, its officers or employees.

(d) For restaurants with sidewalk cafes that serve alcoholic beverages, liquor liability insurance in the amount of one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage is required. The applicant shall furnish and maintain such public liability, liquor products liability, and property damage insurance from all claims and damage to property or bodily injury, including death, which may arise from operations under the license or in connection therewith. Coverage shall not be less than one million dollars (\$1,000,000.00) for bodily injury, and property damage respectively per occurrence. Such insurance shall be without prejudice to coverage otherwise existing therein and shall name as additional insured, the City, its officers and employees, and shall further provide that that policy shall not terminate or be canceled prior to the completion of the license period without thirty (30) days written notice to the City. Such insurance will be primary to any insurance or self-insurance whether collectible or not which may be available to the City, its officers or employees.

(e) An endorsement must be issued as part of the policy reflecting compliance with these requirements.

(f) All of the policies of insurance so required to be purchased and maintained

shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to the City by certified mail.

(g) The required insurance coverage shall be issued by an insurance company duly authorized and licensed to do business in the State of Georgia with the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide: Financial Stability: B+ to A+. (h) Licenses shall not be transferred from the original owner.

(i) A copy of such license shall be displayed on the premises at all times.

#### Section 10.39.7 Revocation, Suspension of License; Emergencies

(a) A sidewalk cafe license may be revoked or suspended by the City Administrator or his/her designee upon a finding that a violation of the provisions of this section occurred, or the sidewalk cafe is being operated in a manner which constitutes a nuisance, that unduly impedes or restricts the movement of pedestrians or in any way contributes an undue liability. The revocation or suspension shall be in writing, setting forth specific reasons and providing an effective date. Such license shall be automatically revoked for two (2) ordinance violations in a twelve (12) month period.

(b) A sidewalk café license may be suspended by the City Administrator or his/her designee for community or special events, utility, sidewalk or road repairs, or emergency situations or violations of provisions contained herein. The length of the suspension shall be for a duration as determined by the City Administrator or his/her designee. Removal of all tables, chairs and related obstructions shall be the responsibility of the restaurant owner/operator.

Motion: Councilman Dippolito moved to approve RZ08-16 Text Amendment regarding Sidewalk Cafes. (2nd Reading). Councilman Orlans seconded. No public comment. The motion passed unanimously.

Motion: Councilman Dippolito moved to approve the RESOLUTION TO ESTABLISH CHARGES RELATED TO PROCESSING AN APPLICATION FOR A LICENSE TO USE THE PUBLIC SIDEWALKS FOR OUTDOOR CAFÉ.

Mayor Wood requested a summation of the resolution. Mr. Townsend replied the Resolution to adopt a fee schedule for Sidewalk Cafes included the following:

Application for Sidewalk Café License Registration fee:	\$ 300.00
Change or additions to original license fee:	\$ 100.00
Annual renewal with no changes fee:	\$ 50.00

Mayor Wood inquired how the situation will be resolved if a restaurant wishes to have tables and not serve alcohol, when they have permission from the adjacent store owner. Mr. Townsend replied that the determination dealt with the beverage section of the code which requires control of the premise; the control by the state statute extends out from their wall instead of to the adjoining property. Mr. Townsend said they could have tables or chairs but not serve alcohol, if they chose to license that area. Mayor Wood noted that the Ceviche Restaurant apparently has the adjacent owner's permission to spill over onto the adjacent sidewalk. He asked if in a case such as that would a separate license be required if they received a signature from their neighbor who granted permission, his preference would be one license. City Attorney David Davidson replied that he preferred it to be a sublet. Mayor Wood stated a sublet would mean two licenses; each storefront would have a license which could then be sublet. Mr. Davidson noted that it would apply to the front of the

*building with that address applied to that license. No further discussion. No public comment.*

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

**In Favor: 4**

Enactment No: Ord. 2009-03-04

### **Other**

#### **3. Initiation of a Text Amendment regarding tree pruning.**

*3. Initiation of a Text Amendment regarding tree pruning. Planning and Zoning Director Brad Townsend stated this text amendment was reviewed at Committee and recommended for initiation. It would amend Section 15.2.8 of the Roswell Zoning Ordinance regarding tree pruning adding clarifying language and include reference to the American Nation Standards for tree pruning. Staff recommended the initiation of the text amendment. Mr. Townsend noted that there had been a code enforcement case in which the municipal court declared the City's language regarding tree pruning was ambiguous. The Legal department redrafted language to included standards.*

*Motion: Councilman Dippolito moved to approve the Initiation of a Text Amendment regarding tree pruning. Councilman Tolleson seconded the motion.*

*Council comment:*

*Councilman Orlans inquired if adopted, would this text amendment apply to every single tree in the City whether it is private property, back yard or front yard. Mr. Townsend replied yes, as related to the pruning of trees. He requested that this text amendment be brought to the attention of the Planning Commission for discussion. Councilman Orlans stated professional tree service companies should be aware of the need for City permits but a homeowner trimming his tree may not be aware of that.*

*Mayor Wood asked if in essence, this text amendment would extend the tree ordinance to all trees regardless of where. Councilman Orlans replied yes, as it relates to pruning and further stated that a tree on less than an acre could be cut down without the City's involvement, but a tree on less than an acre could not be pruned unless the City is involved. Mr. Townsend confirmed for Mayor Wood and Councilman Orlans that he would check into this.*

*Councilman Orlans asked if the old ordinance regarding pruning applied to all trees in the City. City Attorney David Davidson stated yes, it would apply; he noted that the definition of pruning and "topping" was changed and the actual standards are now included as an attachment to the ordinance. No further discussion. No public comment.*

*Mayor Wood noted his reservation regarding the consistency of the ordinance related to pruning and cutting down a tree; his preference was to stay out of the small tracks.*

**A motion was made by Council Member Rich Dippolito, seconded by Council**

**Member David Tolleson, that this Item be Approved. The motion carried by the following vote:**

**In Favor: 4**

**4. Initiation of a Text Amendment regarding changeable copyboard signage and LED's.**

*4. Initiation of a Text Amendment regarding changeable copyboard signage and LED's.*

*Planning and Zoning Director Brad Townsend stated the issue had been previously brought before Mayor and Council at Committee and to Work Session. The City of Roswell currently has a moratorium related to LED signage. Mr. Townsend stated this text amendment "Controls signage in the manner that these current signs would not be permitted to have changeable copy. The gas station sign, the temperature and time sign would be exempt and be allowed. These signs would be also allowed because they use the LED as a light source, that it is behind and is controlled by a dimmer or a photo cell." Mr. Townsend stated the initiation of this text amendment is recommended by staff.*

*Council comment:*

*Councilman Orlans noted there had been Committee discussion regarding determining the brightness of these signs. Mr. Townsend confirmed he had researched photo cells and determined that they can be attached to any sign for a nominal cost of approximately \$50 when installed with the new sign; the photo cell can be adjusted to increase or decrease the brightness. Councilman Orlans asked about measurements or calibration. Mr. Townsend replied that he would further research the operation and control of the photo cell. Councilman Orlans suggested that it be a requirement for dimming purposes and later on it could be determined how the dimming should be done.*

*Mayor Wood stated the focus is on the brightness of LED signs. Mr. Townsend replied it was correct that this discussion was on the brightness; the City's current code deals with illumination and glare to surrounding properties. Mayor Wood asked if brightness is a legitimate concern whether it is LED, halogen, incandescent, florescent, or sodium lighting and added that it is really a factor of how much energy is applied. The Mayor said he did not understand why the focus is on LED signage if Council is particularly concerned about brightness; he asked if brightness applies across the board. Mr. Townsend replied that text amendment language could be drafted so that the brightness of a sign applied across the board and not applied specifically for LED.*

*Councilman Orlans noted the City code includes limitations on other types of lights and their candle power. He stated the concern was that these lights have the ability to produce a much brighter light which can be infringing; the suggestion was that Council should look at the brightness of that type of light and determine if this is a way to control that.*

*Mayor Wood stated that what he understood from staff is that we currently govern brightness not by candle power, lumens, or watts but by its disturbance. He noted that the City does not limit candle power or watts on our current signage. The Mayor questioned the logic of saying LED lights are not inherently brighter than any other lights; halogen lights are much brighter than LED lights. Mr. Townsend confirmed for Mayor Wood that he would conduct further research on why this is being limited to LED lights. No further discussion.*

**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: 4

**After no further business, the Zoning Meeting adjourned at 8:02 p.m.**