

MINUTES
Town of Lexington
REGULAR COUNCIL MEETING
July 21, 2014

Town Council held a Regular Council Meeting in the Council Chambers preceded by an Executive Session and Work Session on July 21, 2014. The meetings were attended by Mayor Steve MacDougall, Council Members Kathy Maness, Ted Stambolitis, Todd Shevchik and Ron Williams. Mayor Pro-Tem Hazel Livingston and Council Member Todd Carnes were not present.

Staff members present were: Town Administrator Britt Poole, Assistant Town Administrator Stuart Ford, Municipal Attorney Brad Cunningham, Town Prosecutor Cliff Koon, Police Chief Terrence Green, Utilities and Engineering Director Allen Lutz, Finance Director Kathy Roberts, Director of Parks Streets and Sanitation Dan Walker, Planning Building and Technology Director John Hanson, Events and Media Coordinator Jennifer Dowden and Assistant Municipal Clerk Karen Hanner.

There were eighteen citizens and one member of the news media present.

INVOCATION, PLEDGE OF ALLEGIANCE AND CALL TO ORDER: Mayor Steve MacDougall welcomed everyone to the meeting and introduced the Council Members. Pastor Jane Mitcham of Zion Lutheran Church, Lexington, gave the invocation. Councilmember Stambolitis led in the Pledge of Allegiance. Mayor MacDougall called the meeting to order at 7:10 p.m.

DELETIONS: None.

PRESENTATIONS: None. (*Councilmember Gifford from South Congaree was not present.*)

VISON PLAN UPDATE

Mayor MacDougall stated the Farmer's Market is open every Saturday from 9 a.m. to 12 noon until September 27 at Lexington Square Park, 205 East Main Street. There are 25 to 30 vendors participating each week. The rain location is in the parking garage. For information about the Farmer's Market, contact Jennifer Dowden at 356-8238. The 14 Mile Creek Trail is currently under construction with a grand opening planned for September. Work is continuing with the Police Department and SCE&G to install emergency call boxes. Park benches and dog waste stations will be added to the park. The 3500 foot long trail features an outdoor learning center and educational kiosk. It is located at the intersection of Old Cherokee Road and North Lake Drive.

TRAFFIC UPDATE

Mayor MacDougall reported that the Phase 1 Project improving the intersections at Main Street, Columbia Avenue, Park Road and Old Chapin Road is complete. The project took eight years from funding to construction. Traffic is flowing much better through some of the busiest intersections in the Town. The Adaptive Signalization Project is in the design phase and is expected to go to bid by the end of this year. All four of the Town submitted transportation projects made it onto the Penny for Progress ballot. The relocation of Mineral Springs at US 378 and Hope Ferry Road is the number one project for the county and the first project listed on the ballot. The next Traffic Committee meeting is scheduled for Tuesday, July 22, at 8 a.m. in the Third Floor Conference Room at Town Hall. Anyone wishing to report a traffic problem in the Town should call 359-1027.

PUBLIC HEARINGS

Mayor MacDougall called the Public Hearing to order and requested that those wishing to speak limit their comments to five minutes.

1. **Final Reading** of an Ordinance Annexing 5449 Sunset Boulevard, Lexington County Tax Map #4300-03-015 and a portion of 4300-03-031.
2. **Final Reading** of an Ordinance Annexing Property Located Near the Intersection of Sunset Boulevard and Hope Ferry Road, Portions of Lexington County Tax Map #4496-01-003 and 4496-01-021.

There being no comments, Mayor MacDougall declared the Public Hearings closed.

OLD BUSINESS

1. A motion was made by Councilmember Maness and seconded by Councilmember Williams for **Final Reading of an Ordinance Annexing 5449 Sunset Boulevard, Lexington County Tax Map #4300-03-015 and a portion of 4300-03-031.** The motion was unanimously carried.
2. A motion was made by Councilmember Stambolitis and seconded by Councilmember Williams for **Final Reading of an Ordinance Annexing Property Located Near the Intersection of Sunset Boulevard and Hope Ferry Road, Lexington County Tax Map #4496-01-003 and 4496-01-021.** The motion was unanimously carried.

NEW BUSINESS CONSENT AGENDA: *(All matters listed within the Consent Agenda were distributed to members of Council and are considered routine. Consent Agenda items will be approved by one motion of the Council with no separate discussion. If separate discussion is desired on any item, that item may be removed from the Consent Agenda at the request of a Councilmember for action later in the agenda.)*

A motion was made by Councilmember Shevchik and seconded by Councilmember Maness to approve First Reading of the following items under Consent Agenda:

- C1. **First Reading** of an Ordinance Annexing 4801 and 4901 Sunset Boulevard, Lexington County Tax Map #3500-04-022 and 023.
- C2. **First Reading** of an Ordinance Annexing 561 Whiteford Way, Lexington County Tax Map #4300-01-022.
- C3. **First Reading** of an Ordinance Annexing 264 Bruner Road, Lexington County Tax Map # 5497-04-008.
- C4. **First Reading** of an Ordinance Annexing 216 Backman Street, Lexington County Tax Map # 5418-07-003

The motion to approve New Business Consent Agenda Items C1 through C4 was unanimously carried.

NEW BUSINESS

1. **Appeal of Business License Denial, Alibaba's Pipe Emporium, LLC – Town Administrator Britt Poole:** Alibaba's Pipe Emporium, LLC, is located at 4884 Sunset Boulevard, within the corporate limits of the Town of Lexington. On May 27, 2014, the business applied for a Town of Lexington Business License to engage in retail sales of “smoke accessories, clothing, pipe tobacco, novelties, soaps, posters and jewelry.”

The application was denied on May 30, 2014, pursuant to §111.14(D) of the Town of Lexington Business License Ordinance.

The applicant has appealed pursuant to §111.16. The Town of Lexington appeals process in this issue requires an appeal to Town Council within ten days of notice of the denial. Notice of the denial took place on May 31, 2014, and the applicant filed his appeal by letter dated June 6, 2014. During the appeal hearing, all parties have the right to be represented by Counsel, to present testimony and evidence, and to cross-examine witnesses. A final decision of the Town as to the Business License denial is to be made by Town

Council in writing following a majority vote, and it must be served upon all parties or their representatives.

Mayor MacDougall asked if anyone wished to speak for Alibaba's Pipe Emporium.

Mr. Joseph M McCulloch introduced himself as being present on behalf of Mr. Rafael Salas, Jr. and Alibaba's. He asked members of Council to be open minded because otherwise they would be embarking on an expensive trip to the Supreme Court. Mr. McCulloch alluded to the old Poltergeist movie and the old burial ground or "cursed earth". He said he thought that the decision to deny a business license to Mr. Salas would be tantamount to declaring him a cursed individual and denying him the right to that which any other member of the community has, which is to apply to renew a business license.

Mr. McCulloch stated he understood from a letter he received from Mr. Cunningham and Mr. Koon that the denial was based upon activities about which Mr. Koon will present several witnesses and they involve the purchases of substances that either are or are not substances outlawed by Town Ordinance or by state and/or federal law. He stated they have proposed in a Business License Application that Mr. Salas be allowed to re-open his business with the sale of very specific items that are legal and are being sold in drug stores, convenience stores and other businesses in the community. There would not be any sales of anything even close to the substances about which this Council is concerned. He said he believed that the proposal is not so much a compromise but as a reasonable solution, because they believe he is entitled to that, lawfully and legally entitled to operate a business selling things about which there is no controversy.

Mr. McCullough said he would present exhibits which include:

- a copy of the new application for a business license or renewal of a business license at the same location with the same name but selling specified items excluding what people would refer to as "spices",
- a letter from his office with a list of the items that mirrors the application and that does not include any of the controversial items,
- a copy of the Ordinances for the Denial of Business License Appeal process, Nuisance and Synthetic Marijuana,
- cases that deal with pre-emption.

Mr. McCulloch stated that they believe the problem here is there is no conviction. The issue of nuisance is a relative term but if there were a nuisance in the form of the sale of anything improper, that nuisance has long since been abated. He said Mr. Salas reverts to the position of a person who is as law abiding a citizen in the eyes of the law as the next person, presumed innocent of any charge against him and they believe permitted, therefore, to

apply for a business license selling things that are clearly stated, clearly articulated and would be subject to much attention from your Police Department and every other Department.

He noted that they had this same discussion with the Irmo Town Council about two or three weeks ago and ultimately they determined that it made better sense to permit the business to reopen under the specifications that are being proposed tonight to avoid the possibility of protracted legal debate.

Mr. McCulloch said that the pre-emption law which states that if the State regulates an area, it may impinge and prohibit this jurisdiction from doing so. At one point the law of synthetic marijuana was not regulated by the State of South Carolina and these substances that are at issue were not against the law by any term. The State of South Carolina began to regulate synthetic cannabinoid in April of 2012 and that statute will be part of the Exhibit. He said they believe that statute pre-empts the Town's synthetic marijuana statute. He added they believe the same is true of the nuisance statute because it seeks to do what the State has already done under §15-43-10. He added that they believe if the nuisance or synthetic marijuana Ordinances were found not to be pre-emptive, he felt they are void by being vague or overly broad.

Mr. Cliff Koon complimented Mr. McCulloch for stating his position in way that helps his case. Mr. Koon wished to talk about a few of Mr. McCulloch's statements beginning with several references to possible litigation going forward which reminded him of Sammy George who served on this Council many years ago. One of the other Councilmembers had asked if they could get sued for doing this and Sammy George responded that they could get sued for anything they do. He urged Council to take that part of Mr. McCulloch's presentation with a grain of salt.

Regarding the pre-emption law, Mr. Koon stated that he was not concerned that a circuit court judge would overrule on that. The doctrine of pre-emption is a valid legal doctrine in this state and there is a great deal of case law that tells us what pre-emption is and what it isn't. He said basically there is a two prong test that the SC Supreme Court has promulgated to see whether a county or a city action is pre-empted or not. Mr. Koon explained that the first prong is rather simple and he didn't think it was an issue here; does the Council have the authority, the legislative authority, to do it? Mr. Koon said he didn't think Mr. McCulloch would argue that Council has the legislative authority to pass a nuisance statute. He said the second prong asks if the statute is in conjunction with the Constitution and state law. He provided an example of a case where the City of Myrtle Beach tried to force motorcycle riders to wear a helmet that was over-ruled by the Supreme Court and declared pre-empted by the State because their helmet law went farther than

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the State law. Mr. Koon clarified that if a county or municipality tries to do more than the state law does, that is pre-emption. He stated that it would not be a problem in this instance because this is about the very same substance that federal government, state government, counties and municipalities are talking about, artificial marijuana and the Town Ordinance does not go farther than the State does.

Mr. Koon stated this is not a criminal case and he was not seeking to prove that the owners of Alibaba's were guilty of crimes. He said that he will show, that what he is required to show, is that the decision maker, the Town Administrator and the staff, made a proper decision. He will show the information they had before them when they made their decision.

Mr. McCulloch stated he didn't have any witnesses to present but he did wish to present Exhibits. Mr. Koon stated he did not have any objection. Mr. Koon stated he had mailed Mr. McCulloch a package and he would like to present that as his Exhibits. He noted some of the documents were the same. Mr. McCulloch handed his Exhibits to Mayor MacDougall. Mr. McCulloch listed the items as a copy of the handwritten application for a business license by Mr. Salas following the denial, a copy of his letter to Mr. Koon and Mr. Cunningham with the attached list of the items that would be sold which excludes the items of merchandise recognized tonight. Also there is a copy of the Town Ordinances, a copy of the materials that Town officials reviewed in order to make their decision to deny the business license and the case that was referred to with copies of the State nuisance statute and synthetic marijuana statute.

Mr. Koon requested the Clerk to mark that package as Exhibit #1 and the package given to Council by Mr. Cunningham as Exhibit # 2.

Mr. Koon called his first witness, Mr. Britt Poole, who was sworn in by Mr. Cunningham. Mr. Koon confirmed that Mr. Poole is the Town Administrator and that he answers to Town Council. Mr. Poole stated that was correct. Mr. Koon showed him a copy of the business license application from Mr. Salas at Alibaba's which he said was included in Exhibit #2 and asked if he had seen that before. Mr. Poole confirmed that he had. Mr. Koon asked if Mr. Poole was involved in the denial of the application dated May 27, 2014. Mr. Poole confirmed that he had. Mr. Koon asked if he had made the final decision. Mr. Poole confirmed that he had. Mr. Koon asked Mr. Poole to tell the Mayor and Council what information he had to make that decision. Mr. Poole stated it went back a number of years. He said a few years ago Council met and debated enacting an Ordinance about synthetic marijuana that was driven by information obtained from the Police Chief and others in the Police Department regarding an increase in issues involving synthetic marijuana, bath salts and other look-alike pharmaceuticals. At that time, Council enacted

an Ordinance because of numerous incidents including an accident where someone lost their life related to these things. Council took a firm stance to enact this Ordinance to cause this to be a nuisance and to cause a fine to be enacted for selling this kind of stuff. Mr. Poole said as the property was coming into Town and a business license was being sought, he was approached by the Police Chief who was aware of another ongoing investigation on a federal level. The officers involved in that case asked the Town to not get involved in order to avoid hindering their investigation which was the first time he was directly aware of an issue with this particular business. He stated he also learned about the time he received the business license application that officers with the multijurisdictional drug enforcement team had made purchases of synthetic marijuana from this business location which had been tested and did not meet the federal guidelines to own. This was significant in that some of the synthetic marijuana does not rise to that level and this substance did. Mr. Poole added that one of the undercover Town officers purchased the substance from this location.

Mr. McCulloch objected to this as this information was not provided to him in advance of the hearing. Mr. Koon asked if he had copies of the incident reports. Mr. McCulloch confirmed that he did. Mr. Koon stated it was included in that. Mr. Poole stated he had a discussion with the Chief of Police, the Business License Official, the Town Attorney and the Assistant Town Administrator. They felt there were numerous incidents at the one location and it clearly rose to the level of a nuisance according to the Ordinance so his decision was to deny a business license. Mr. Koon asked, knowing about the federal and Town investigations, if Mr. Poole knew about the county investigation. Mr. Poole responded that he knew the county was involved but didn't know if it was part of the larger investigation.

Mr. McCulloch asked if Mr. Poole was an expert on synthetic cannabinoids. Mr. Poole responded no. Mr. McCulloch asked if his decision was based upon those two instances outlined in the materials made available in Exhibit 1. Mr. Poole said that was certainly the preponderance of his decision but there was additional information. Mr. McCulloch asked if one was in March 2014, the purchase of something referred to as "spice" and another purchase in April 2014. Mr. Poole said he couldn't speak to the dates without looking at it. Mr. McCulloch asked if Mr. Poole had any information as to whether those items were illegal at the time of the purchase of them. Mr. Poole said it was based on the report he had from the county officers that actually showed positive as being an illegal substance, so his knowledge is based on a lab report. Mr. McCulloch asked Mr. Poole to show where on the lab report it showed they were illegal substances. Mr. Poole said it was under Item 1.1, the results show the synthetic cannabinoid found in sample 1 tested. Mr. McCulloch asked if Mr. Salas was not involved in that sale. Mr. Poole said he didn't know who was involved, his decision was not based on an individual; it was based on a

function of the business. Mr. McCulloch clarified that this was not about Mr. Salas. Mr. Poole stated he didn't even know Mr. Salas. Mr. McCulloch restated that the denial of this license was against the business and not Mr. Salas. Mr. McCulloch referred to the second page of the Exhibit which shows a list of items that they propose that Mr. Salas be allowed to sell under a business license application that is different than the previous one. He asked if there were any items on the list which are illegal. Mr. Poole stated there were items on the list which are restricted and can only be sold under certain circumstances. Mr. McCulloch asked if there was anything on the list not currently being sold in some establishment in the community. Mr. Poole said he didn't have any idea of the inventory of every single business. Mr. McCulloch asked about clothing, candles, smoking tobacco, and hookah pipes. Mr. Poole said he didn't know who might be selling hookah pipes but they would be restricted to a very small display case. Pipes and smoking accessories would be restricted like the hookah pipes. Mr. McCulloch asked about jewelry, lighters, posters, tapestries, home decorations, novelties, paintings, stickers, buttons, lotions and oils; were there restrictions on those items? Mr. Poole responded that there were restrictions on a number of those items. Mr. McCulloch asked in terms of their ability to be sold in the community. Mr. Poole responded yes under certain conditions. Mr. McCulloch asked if he was aware of a business license application with this list of items had been submitted to his department. Mr. Poole stated he was aware of the application in the Exhibit. Mr. McCulloch asked if an application was submitted with the list of items just reviewed, would there be a problem about that. Mr. Poole responded yes, it would fall under the same scenario. Mr. McCulloch asked under what theory would he deny the application. Mr. Poole responded that the business has shown itself to be a nuisance to the community.

Mr. Koon objected and said that we are not here to argue about what may be done in the future but to determine if Mr. Poole had sufficient information when he made his decision to support that decision. What goes on in the future is not germane to what is being decided today. Mayor MacDougall stated he agreed with Mr. Koon.

Mr. McCulloch said he would refer to the application submitted. Regarding smoking accessories, not a problem as long as they are legal accessories. Mr. Poole said there would be restrictions as he previously stated. Mr. McCulloch read clothing, pipe tobacco, novelties, soaps, posters and jewelry. Mr. McCulloch asked what the determination to deny a business license was based on. Mr. Poole responded that it was based on information he had that Mr. Koon presented. For instance, the word novelties could in someone's mind mean fake marijuana. He stated he was aware of the track record of selling it. Mr. McCulloch asked if he had asked for further detail or information before tonight. Mr. Poole said no, he made the decision based on the information he

had. Mr. McCulloch asked if they had accepted an application bearing a description of “novelties”. Mr. Poole said he did not know the answer to that.

Mayor MacDougall asked if there were any questions from Council.

Mr. Koon called Chief Green who was sworn in by Mr. Cunningham. Mr. Koon confirmed that Chief Green is the Chief of Police in Lexington. Chief Green said yes. Mr. Koon asked if he belonged to any other organizations that coordinate efforts with other agencies in drug fighting. Chief Green responded several; the SC Police Chiefs Association, Lexington County Narcotics Enforcement Team and various other organizations that look at what is hurting the community. Mr. Koon showed Chief Green the application from Alibaba’s Pipe Emporium, LLC, dated May 27, 2014 and asked if when the application was making its way through Town administration, was he contacted or given information regarding its existence. Chief Green said he talked to Town Administrator Britt Poole and Building Director John Hanson knowing that it was coming into the Town and would make an application. Mr. Koon asked if that caused concern. Chief Green said yes, before the business was considered for coming into Town, numerous complaints were received asking what the Town was doing about Alibaba’s selling synthetic marijuana to our kids and he had to refer them to the County. The Lexington County Narcotics Enforcement Team learned of a federal investigation.

Mr. McCulloch objected to this as hearsay and said they have not seen any of the complaints.

Mr. Koon asked Chief Green, if during the process of obtaining information from agencies such as NET, he began his own investigation. Chief Green said yes. Mr. Koon asked if, as a result of that investigation, he determined that there was synthetic marijuana being sold at Alibaba’s that was causing a problem in our community. Chief Green said yes, he instructed the Vice Squad to go Alibaba’s and see if they could purchase synthetic marijuana. Mr. Koon asked if in the course of the investigation, he became aware of an investigation by the federal government and Lexington County. Chief Green said yes, in addition to SC Law Enforcement Division. Mr. Koon asked if those three investigations played into his thinking about the business license request from Alibaba’s. Chief Green said yes. Mr. Koon asked Chief Green if during the investigations, he made this known to Mr. Poole or other people working on the application. Chief Green said yes, to Mr. Poole.

Mr. McCulloch asked Chief Green if his concern about Alibaba’s was about the sale of the substance that has been called “spice”. Chief Green stated he was concerned about them selling the spice to our kids. Mr. McCulloch asked if they weren’t selling spice, what would be his concern. Chief Green responded it would still be a concern because they did it before and

they could do it again. Mr. McCulloch asked if they aren't selling it, what are they doing wrong. Chief Green said that is to be determined. Council must make a decision first. Mr. McCulloch asked if Chief Green had information that Mr. Salas knew of this purchase or did he participate in this purchase. Chief Green said no, he did not know Mr. Salas, this is the first time he has seen him.

Mr. Koon called Detective Matt Simmons who was sworn in by Mr. Cunningham. Mr. Koon asked if Detective Simmons was with the Lexington Police Department. Detective Simmons said yes. Mr. Koon asked if on March 17, 2014, he was the case agent on the synthetic marijuana buy at Alibaba's. Detective Simmons said he was. Mr. Koon asked who was with him. Detective Simmons said Corporal Earron Sturges. Mr. Koon asked as a case agent, what was his responsibility. Detective Simmons stated he was directed to make a purchase there and he transported Corporal Sturges to Alibaba's where he attempted to make a purchase of the spice. Corporal Sturges left the business and told Detective Simmons he had made a purchase of the synthetic marijuana and some rolling papers. They were placed in evidence and sent to SLED. Mr. Koon asked if they had received a toxicology report from SLED. Detective Simmons said he did and the results were positive for AB-Pubinaca which is a synthetic cannabinoid. Mr. Koon asked if that was illegal. Detective Simmons said it is.

Mr. McCulloch said he had no questions for Detective Simmons.

Mr. Koon called Corporal Earron Sturges who was sworn in by Mr. Cunningham. Mr. Koon asked if he was the undercover officer who make the buy on March 17, 2014. Corporal Sturges said yes. Mr. Koon asked if he went there with Detective Simmons to accomplish that. Corporal Sturges said yes. Mr. Koon asked when he went into Alibaba's, what did he ask for. Corporal Sturges said he entered the store and looked around. He noticed someone that appeared to be an employee. Mr. Koon asked if that was Mr. Salas and pointed to him. Corporal Sturges said no, he had never seen Mr. Salas before. Corporal Sturges said the individual asked what he was looking for and he told them "Mad Hatter", a term he had heard about being synthetic marijuana. Corporal Sturges said the individual told him they didn't carry that brand and showed him to the counter. He stood in line and asked for the "Black Diamond" brand. The individual at the counter took it from underneath the counter and handed it to him. He asked for some rolling papers and got those. Mr. Koon asked if the rolling papers were the kind that cowboys used to roll cigarettes with. Corporal Sturges said yes. Mr. Koon asked why he would ask for that during a drug purchase. Corporal Sturges said it showed that type of drug would be used with rolling papers to smoke it. Mr. Koon asked if when he received the Black Diamond package, did he read anything on the package about human consumption. Corporal Sturges stated the package read "Not for

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Human Consumption.” Mr. Koon asked if Corporal Sturges had any idea why Alibaba’s would sell rolling papers and Black Diamond together. Corporal Sturges said that is just the use.

Mr. McCulloch referred to the question from Mr. Koon about buying Black Diamond and rolling papers together. He stated they were both asked for together. Corporal Sturges confirmed that he asked for both. Mr. McCulloch said Corporal Sturges did not ask this unknown clerk for synthetic cannabinoids or synthetic marijuana. Corporal Sturges said he did not.

Mr. Koon asked Corporal Sturges if he asked for Black Diamond and rolling papers together because he knew that the kids smoked that stuff. Corporal Sturges said yes.

Mr. Koon called Deputy Charles Holloway who was sworn in by Mr. Cunningham. Mr. Koon asked if he was employed by the Lexington County Sheriff’s Department. Deputy Holloway said he was employed by the Batesburg-Leesville Police Department and attached to the Lexington County Narcotics Enforcement Team. Mr. Koon asked Officer Holloway if he was working with the Sheriff’s Department as undercover on the buy at Alibaba’s on April 5, 2014. Officer Holloway said yes, it was April 15. Mr. Koon asked if he also made a buy there on February 27, 2014. Officer Holloway said yes. Mr. Koon asked if he also made a purchase at Alibaba’s on February 28, 2014. Officer Holloway said yes. Mr. Koon asked if all of these were part of the Sheriff’s Department investigation of Alibaba’s. Officer Holloway said yes.

Mr. McCulloch said he didn’t have any notice of the February dates. Mr. Koon said he just tonight found out about them. Mr. McCulloch asked that those be stricken as much as possible. Mayor MacDougall said they would deal with the two dates already mentioned.

Mr. Koon verified that the two dates were April 15 and March 17, 2014. Mr. Koon asked when he went into Alibaba’s what did he ask for. Officer Holloway said when he went on April 15, he asked the young lady for Black Diamond. She told him they did not have any Black Diamond but had a new product in called The Bee’s Knees and that is what he purchased. He said she reached under the counter and gave him a 10 gram packet of the Bee’s Knees. Mr. Koon asked what he did with that. Officer Holloway said he turned it over to the case agent and it was admitted into evidence. Mr. Koon asked if the Sheriff’s Department has its own toxicology lab. Officer Holloway said yes. Mr. Koon asked what the Sheriff’s chemist said the Bee’s Knees was. Officer Holloway stated it was AB-Pubinaca, synthetic cannabinoid. Mr. Koon asked if that was illegal under state and federal law. Officer Holloway said yes. Mr. Koon asked if he purchased anything with the Bee’s Knees at the Lexington

store. Officer Holloway said he asked the young lady for filters commonly used with smoking devices. Mr. Koon asked if there was any other reason for buying the Bee's Knees and filters together other than to ingest it into the human body. Officer Holloway said no. Mr. Koon asked if during his work with the Sheriff's Department he also worked with federal agencies in the investigation of Alibaba's. Officer Holloway said that was correct. Mr. Koon asked if he was with the federal officers when they made a buy at Alibaba's. Mr. McCulloch objected and said he had no notice of the federal investigation. Mr. Koon responded that he did have knowledge of a federal investigation and the question was to determine if Officer Holloway was present when the federal agent made a buy. Mr. McCulloch objected because he didn't have notice that this would be part of the proceeding but only two specific transactions. Mr. Koon said he sent notice of a federal indictment. Mayor MacDougall asked them to stick to that. Mr. Koon asked if the buy that resulted in the federal indictment, was he present for that. Officer Holloway said not for the buy but for the execution of the search warrants. Mr. Koon confirmed that he was aware during their investigation that there was also a parallel federal investigation. Officer Holloway said yes.

Mr. McCulloch asked if he was involved in a purchase. Officer Holloway said yes. Mr. McCulloch asked if Mr. Salas was involved in that purchase. Officer Holloway said no. Mr. McCulloch asked if he knew Mr. Salas. Officer Holloway said no. Mr. McCulloch asked if rolling papers could be bought at any convenience store in Town. Officer Holloway said yes.

Mr. Koon said he had nothing further.

Mr. McCulloch said he would like to make a point regarding pre-emption. He said the Town synthetic cannabinoid Ordinance says that a person violating is creating a nuisance. He stated the Nuisance statute says the commission of a nuisance is punishable by a misdemeanor thereby making it a criminal offense. If the State of South Carolina has entered into the same arena, as the State of South Carolina did in terms of creating misdemeanor offenses for the sale of synthetic marijuana, after the Town enacted their Ordinances, it will be their position that those actions constitute the pre-emption that they believe is problematic here. That is a legal issue. Mr. McCulloch said Mr. Salas, no one here has said he is guilty of anything and he certainly isn't until proven guilty, so does he have the right, like any of you, to make an application for a business license and be allowed to have a business license to sell things that other people in the community are allowed to sell? He said they believe that a mistake is made by denying him the same right available to every other citizen of the community and that is the basis that they ask for reconsideration.

Mr. Koon said it is not enough to say that the Town Ordinances enter into an area that is regulated by the State law. That is not pre-emption. He said the

Town has gun law ordinances, traffic ordinances and all kinds of ordinances that deal with the some of the same things that the State deals with. The Supreme Court has set out a very specific test, do you have the authority to do this? The answer is yes. Does it go farther than the State statute, the answer is no. It is actually in lock step with the State statute. He said that is the only way that you can have pre-emption is if the local law goes farther than the state law. Mr. Koon said the Town has an Ordinance against firing a pistol in the Town. The state has all sorts of gun laws. Discharging a pistol in the Town doesn't try to circumvent any state law, it doesn't go farther than any state law, so it hasn't been pre-empted by any state or federal law.

Councilmember Maness asked Mr. McCulloch about the two times Mr. Salas was trying to renew a business license. Mr. McCulloch said he understood that at the time of the annexation there was an ongoing business license but he could be mistaken. He was notified by the Town that he needed to have a business license. Mr. McCulloch said it wasn't really important whether it was a renewal or a new business license. Mr. Britt Poole added that it was a new business license application. Councilmember Manes commented that in the County, a business license would not be needed. Mr. Poole said that was correct.

Mayor MacDougall asked Mr. Poole if he felt the same way. Mr. Poole responded that he would not make a different decision.

Councilmember Maness asked Mr. McCulloch about the business in Irmo and if they had a business license in Irmo, was it denied or pulled by the Town of Irmo. Mr. McCulloch stated he had a business license that was suspended or revoked but he didn't think that made a difference here. He asked the question about a business being annexed in and if they are grandfathered and what annexation requires. He stated there is a constitutional right to commerce, to do business as long as it is a legal business. At the time the business was annexed in and today, the business license is for things that witnesses have testified are perfectly legal though subject to some legal limitation.

Councilmember Stambolitis asked Mr. McCulloch what Black Diamond was used for, what is its purpose. Mr. McCulloch responded that he didn't know. Councilmember Stambolitis asked if he sells it at the business. Mr. McCulloch answered not now and would not if permitted a business license. He said based on his research, it was a substance that was legal until 2014 when it was rendered unlawful. He stated he was aware that it was sold as potpourri to put in bowls around the house, it's scented with lemon and blackberry. People abuse it, people abuse everything. Councilmember Stambolitis stated there is artificial cannabinoid in that product and asked if that was legal or illegal. Mr. McCulloch said yes and under State and federal law it likely would be illegal. Councilmember Stambolitis stated if Mr. Salas was selling an artificial

cannabinoid he would be breaking the law. Mr. McCulloch stated there was no testimony that he was selling it. Councilmember Stambolitis asked if it was sold on his premises. Mr. McCulloch said yes. Councilmember Stambolitis said therefore if it is on his premises and he is the owner of that business, he had no knowledge that these products are being sold. Mr. McCulloch said he was not able to testify to that. Councilmember Stambolitis asked if they were to grant a business license, how they would know that this wouldn't continue again in the future. Mr. McCulloch stated with the same expectations you would have any time you issue any business license, with the supposition and the belief that they will abide by the law. He said that he would sell only those things that are on the proposed list and they would all be legal. Councilmember Stambolitis asked if artificial cannabinoids are illegal. Mr. McCulloch stated that is correct.

Councilmember Shevchik stated that based upon the testimony given and the evidence presented he makes a motion that this appeal be denied based upon the following findings of fact:

1. Alibaba's Pipe Emporium, LLC, does not have a Town of Lexington Business License but has applied for one;
 2. The proposed location is 4884 Sunset Boulevard, which is located within the corporate limits of the Town of Lexington, thus requiring a business operating on the premises to comply with the Town of Lexington Business License Ordinance;
 3. The Town of Lexington Business License Ordinance requires that the proposed business have a Town of Lexington Business License before beginning operations;
 4. §111.14(D) of the Town of Lexington Code of Ordinances requires that the License Official shall deny a license to an applicant when the License Official determines the applicant, licensee or prior licensee or the person in control of the business has engaged in an unlawful activity or nuisance related to the business or to a similar business in the Town or in another jurisdiction;
 5. On at least one, if not more occasions, either the applicant, licensee, prior licensee or the person in control of the business has engaged in activity which constitutes a nuisance under the Town of Lexington Code of Ordinances and that said activity is related to the business or a similar business in the Town or in another jurisdiction;
 6. That these activities constitute a violation of the provisions in §111.14(D); and
 7. The License Official was acting in accordance with the Town of Lexington Code of Ordinances by issuing a denial of the Business License application submitted by Alibaba's Pipe Emporium, LLC.
- Councilmember Stambolitis seconded the motion. The motion was unanimously carried.

2. **Misrepresentation or False Statements on Town Applications – Councilmember Kathy Maness:** The Town recently issued a building permit to an individual who did not have the authority to obtain the permit on behalf of the business named on the application. Fortunately, this was discovered before the work began and a stop work order was issued. Consequently the landowner was not harmed or injured financially. The innocent business owner may choose to address the issue privately. However, Town Council may wish to pass an Ordinance to discourage this practice. Such an Ordinance could provide a penalty for intention misrepresentations of material facts on any application for a Town permit, license or other document.

The penalty for a violation of this Ordinance would fall under the Town's General Penalty Clause, subjecting violators to a fine of up to \$500 or up to thirty days in jail. A complete Ordinance will be available for Final Reading.

Councilmember Maness made a motion to approve First Reading of an Ordinance addressing intentional misrepresentation of material facts on a Town application. Councilmember Shevchik seconded the motion. The motion was unanimously carried.

3. **Proposal for a Special Event Permit – Councilmember Ron Williams:** Over the last few months Council has discussed developing a Special Event Permit to be used for activities that occur in Town throughout the year. These discussions led to defining a Special Event and a proposal to require activities falling under this definition to obtain a Special Event zoning permit. A Special Event is defined as any event held within the Town of Lexington that is opened to the public, will impact any Town easements, or could affect public safety, and is not to exceed three (3) consecutive days. Potential events include but are not limited to: Carnivals, Fairs, Markets, Concerts, Festivals, Parades, Displays, Grand Openings or Tent Sales. The proposal also limits the number of Special Events permitted on a property to not more than two per quarter.

Councilmember Williams made a motion to adopt the Special Event Policy. Councilmember Stambolitis seconded the motion. The motion was unanimously carried.

4. **Amendment to Section 110.06(3)(a), Peddlers and Solicitors Ordinance – Councilmember Ron Williams:** Council is being asked to consider amending the Town's Peddlers and Solicitors Ordinance to allow peddling such as food trucks to occur during events that have obtained a Special Event Permit.

Councilmember Williams made a motion for First Reading approval. Councilmember Maness seconded the motion. The motion was unanimously carried.

- 5. Modification of Facility Rental Fee Rates to Include a Non-Profit Status – Councilmember Kathy Maness:** At the June 2, 2014 Work Session, Town Council discussed modification of the Facility Rental Fee Rates to include a Non-Profit status. The rates for Non-Profits who provide proper documentation will be HALF of the In-Town rate for rental of the Conference Center, Palmetto Collegiate Institute, Eli Mack Room, Board Rooms, Virginia Hylton Park Shelter and Gibson Pond Park Shelter.

Council also agreed that there will be no appeals from organizations regarding rental rates and that only the Town Administrator can waive fees as pertaining to other jurisdictions using the facility for training or other purposes benefiting the Town of Lexington.

Since this item is a policy change regarding fees, it must be placed before Council for a vote.

Councilmember Maness made a motion to approve the policy change. Councilmember Williams seconded the motion. The motion was unanimously carried.

ANNOUNCEMENTS

Councilmember Shevchik wished a happy birthday to Town Administrator Britt Poole on August 12 and to Mayor Steve MacDougall on August 13. He gave get well wishes to Municipal Clerk Becky Hildebrand after she fell and badly hurt her ankle at the Municipal Conference. He announced that the Farmers Market is open on Saturdays from 9:00 to noon at Lexington Square. On August 8-14, the 2014 Dixie Youth World Series will be held at the Lexington Sports Complex at 501 Ball Park Road featuring thirteen teams from around the Southeast. He wanted everyone to treat these visitors as friends and show some Lexington hospitality. He reminded everyone that school starts on August 18 and watch for little ones in the mornings.

QUESTIONS FROM THE NEWS MEDIA: None.

PUBLIC COMMENTS: A member of the public approached the podium and said “Thank you all.”

ADJOURNMENT

MINUTES
REGULAR COUNCIL MEETING
JULY 21, 2014

A motion was made by Councilmember Kathy Maness and seconded by Councilmember Williams to adjourn the Council Meeting. The motion was unanimously carried.

The Regular Council Meeting was adjourned at 8:29 p.m.

Mayor MacDougall thanked the Councilmembers and citizens for attending the Council meeting. He thanked those at home for viewing the Council meeting on Channel 2 and said it will be replayed several times during the week. He wished everyone a good evening.

Respectfully submitted,

Karen Hanner
Assistant Municipal Clerk

APPROVED:

Steve MacDougall
Mayor

FOIA COMPLIANCE – Public notification of this meeting was published, posted and mailed in compliance with the Freedom of Information Act and the Town of Lexington requirements.