

**TOWN OF DAVIS
COUNCIL MEETING AGENDA**

MEETING: REGULAR COUNCIL MEETING
DATE: JANUARY 12TH, 2022
PLACE: DAVIS TOWN HALL

MAYOR CALL TO ORDER @ 6:30 P.M.

ROLL CALL BY RECORDER JENNIE HELMICK

ATTENDING: MAYOR ALAN TOMSON, COUNCILPERSONS; JOHN FELTON, CHARLOTTE WALES, JEANNETTE TEKAVEC WARE, KEVIN FLANAGAN, RON HOLLIS AND RECORDER JENNIE HELMICK

ABSENT:

PLEDGE OF ALLEGIANCE

GUESTS: AJ RAPP, IKE KAHLER, ANDY SNYDER-MON FOREST,

***MOTION TO APPROVE THE MINUTES OF REGULAR MEETING OF DECEMBER 8TH, 2021**

***MOTION TO DISPENSE WITH THE REGULAR ORDER OF BUSINESS TO HEAR FROM GUESTS**

HEAR FROM GUESTS ON AGENDA

GUESTS NOT ON AGENDA WILL HAVE ONLY 5 MINUTES IF THEY WISH TO SPEAK

***MOTION TO RETURN TO THE REGULAR ORDER OF BUSINESS**

COMMITTEE REPORTS

FINANCE: *MAYOR PRESENTS ACCOUNTS PAYABLE
*SEWER PROJECT
***MOTION TO PAY THE BILLS**

STREETS, ALLEYS, WATER WORKS: *JOBS PERFORMED BY EMPLOYEES
*UPDATE FROM WATER/SEWER OPERATOR

PERSONNEL: *2022 HOLIDAYS (MAYOR TOMSON)
*VACATION USAGE (MAYOR TOMSON)
*EMPLOYEE HANDBOOK (COUNCILMAN FELTON)

ORDINANCE/RESOLUTIONS: RENTAL EXISTING WITHIN MUNICIPAL BOUNDARIES OF DAVIS- FIRST READING

CEMETERY: *SPLIT RAIL FENCE (COUNCILMAN FLANAGAN)

PARKS & RECREATION:

PLANNING COMMISSION: *COMPREHENSIVE PLAN (COUNCILWOMAN WALES)

OLD BUSINESS: *MAYORS UPDATES TO COUNCIL
*LAW ENFORCEMENT CONTRACT (MAYOR TOMSON)
*SKID STEER PLOW (MAYOR TOMSON)
*STR BUSINESS IN VIOLATION OF TEMPORARY MORATORIUM (MAYOR TOMSON)
*HOME INSPECTOR FOR SHORT TERM RENTALS (MAYOR TOMSON)
*WORK ORDERS (COUNCILMAN FELTON)
*INVENTORY OF VALVES & 2" VALVES ORDERED (COUNCILMAN FELTON)
*BACKHOE & OTHER ITEMS TO BE SOLD (COUNCILMAN FELTON)
*WHITE TRUCK & GARBAGE TRUCK (COUNCILMAN FELTON)

NEW BUSINESS: *REQUEST FOR DONATION FOR TCHS WEIGHT ROOM (COUNCILMAN FLANAGAN)
*AFTER HOURS EMERGENCY NUMBER/ON CALL/\$ RATE (MAYOR TOMSON)
*WILLIAM AVENUE SIDEWALKS (COUNCILMAN FELTON)
*ANNEX (COUNCILMAN FELTON)

BUILDING PERMITS: *RONDALD WHITEHAIR, WILLIAM AVENUE, NEW BUILD

BUSINESS LICENSE: *ALPINE LODGE & SAWMILL RESTAURANT (GREG DOWNING-NEW OWNER)
*MOUNTANTOP DENTAL CENTER (PRESTON-TAYLOR HEALTH CENTERS, INC.)
*SKI COYA-CRAIG O'CONNOR, 276 THOMAS AVENUE (SHORT-TERM RENTAL)

CORRESPONDENCE:

MOTION TO ADJOURN:

Town of Davis Council Meeting Minutes

Meeting: Regular Council Meeting

Date: January 12th, 2022

Place: Davis Town Hall

Mayor Tomson called the meeting to order at 6:30 p.m.

Roll Call by Recorder Jennie Helmick; Mayor Al Tomson, Council John Felton, Charlotte Wales, Jeannette Ware, Kevin Flanagan, Ron Hollis and Recorder Jennie Helmick.

Pledge of Allegiance

Guests: Ike Kahler, Roger Lilly, Gary Luzier, Karen & Bill Peterson, Daniele & Nancy Luscombe, Effie & Flora McCauley, Joshua Saville, Kurt Litzau and Cameron Dunlop.

Motion to dispense with the Regular Order of Business to hear from guests was made by Councilwoman Jeannette Ware, Second by Councilman Kevin Flanagan, all in favor, Motion carried.

Guest Nancy Luscombe stated that she felt she was being labeled and her concerns were not being heard due to comments made by members of council. **Mayor Al Tomson** apologized for **Town Officials** and himself. **Councilman John Felton** stated that the **Mayor** didn't need to apologize for him as he means what he says.

***Motion to return to Regular Order of Business was made by Councilman Ron Hollis, Second by Councilwoman Charlotte Wales, all in favor, Motion carried.**

***Motion to approve the December 8th, 2021 minutes was made by Councilman Kevin Flanagan, Second by Councilman John Felton, all in favor, Motion carried.**

Committee Reports:

Finance: **Mayor Tomson** presented the accounts payable. He included a page showing the most recent transactions for the 1% sales tax, including deposits and expenditures with the totals at the bottom. Documents were presented to approve the payment of the costs for the initial testing and pre-engineering work for the sewer system project. Two invoices were submitted for payment, one in the amount of \$30,660 and one for \$8,000, totaling \$38,660.

***Motion to certify payment for these invoices by Region VII made by Councilwoman Jeannette Ware, Second by Councilman Kevin Flanagan, all in favor, Motion carried.**

***Motion to pay the bills presented made by Councilman Kevin Flanagan, Second by Councilman John Felton, all in favor, Motion carried.**

Streets and Alleys: List of jobs performed by Shop Staff and Water/Sewer report of work done at the water and sewer plants. Outside contractor work has all been switched over by Mark in November.

Personnel: Holidays- list of current holidays that the Town employees have off. **Mayor Tomson** wishes to add **Martin Luther King Day**, as recognizing the African American community, to display that the **Town** is accepting of all people. It will be a paid day off.

***Motion to add Martin Luther King Day to list of paid holidays made by Councilman Kevin Flanagan, Second by Councilman John Felton, all in favor, Motion carried.**

Vacation usage- **Mayor Tomson** spoke with Employees about taking off, not calling in, becoming problematic. Have to give notice, whether it's sick leave or personal day, if becoming sick suddenly, still need to call in and get permission.

Employee Handbook- In checking into the employee's handbook, it was found that 3 days are allowed for bereavement but employees have to use their sick leave time, **Mayor Tomson** asks for consideration in paying employees for 3 days bereavement (immediate family) without charging their sick or personal days. **Councilwoman Jeannette Ware** asked about changes to handbook and whether it would apply to current employees. **Mayor Tomson** stated that he would contact the **Town's** attorney about updating handbook with new OSHA rules and amendments and would ask about the legality of changes. Mayor & Council agree to forward the employee handbook to the Town Attorney and present discussed issues and amendments to be added.

***Motion to approve paying employees for three days bereavement, immediate family as stated in handbook, without charging employees sick /personal days, made by Councilman Ron Hollis, Second Councilwoman Charlotte Wales, all in favor, Motion carried.**

Discussion on 1% tax- misinformation as to what generates it; businesses, stores, charged on everyone.
Discussion on hotel/motel tax- how much the **Town** receives and who pays; hotel-motels 2/3%, short-term rentals 1/3%, around \$70,000 total received.

Ordinances: Short-term Rental Ordinance Reading moved to end of meeting since whole document has to be read first time and it is lengthy.

Cemetery: *Councilwoman Jeannette Ware* discussed proposal by **Councilman Kevin Flanagan** about replacing chain link fence facing Blackwater Road with a split rail fence. Fears of vehicles sliding off the road doing damage to grave stones. Councilman Flanagan stated the damage should be the same with a split rail fence. Guest Doug Martin stated that a metal fence is better for keeping snow out., Councilman Flanagan felt a split rail would look better. For future discussion.

Parks & Recreation: **P & R President Doug Martin** stated that **MAA** basketball games would be starting up next week at the Community Center. Community Center now open to public. The doors have been ordered. Originally \$3,800 per door times 2. New reduced price is \$2,700, per door times two, savings of \$2,200. Men's bathroom has been finished.

Planning Commission: *Councilwoman Charlotte Wales* stated that the first draft of the **Comprehensive Plan** has been prepared by the **Planning Commission**. Document is ready to make available to the public. Hope to have an electronic copy available on the **Town's** website early this week or next. A hard copy will also be available at Davis Town Hall. A Public Meeting will be held at the **DVFD Hall on Saturday, February 12th, 2022 at 10 a.m.** to discuss the Plan and answer any questions the public has. *Recorder Helmick* will check on the availability of the Fire Hall for that date. The Plan covers topics including transportation, infrastructure, housing, and land use. The Plan provides the **Town Council** with a current state of the **Town**, anticipated future state, and recommendations for actions to take to prepare for the future. The **Town Council** can use the final Plan to prepare new ordinances for the **Town**. This Plan has been in development since 2017.

Old Business:

Mayor Updates: ***Discussion on zoom meetings:** Current status, **Council** wishes to keep meetings at **Davis Town Hall** instead of total virtual meetings. **Guest Effie McCauley** stated that outside input should be considered. *Mayor Tomson* stated that we keep in contact with the Health Department concerning **COVID**. Easier to have everyone attend virtually than to have only outside people attend virtually. Preference from the guests in attendances seemed to be for at least a hybrid live/virtual option. *Mayor Tomson* stated he would try to hook up computer at next meeting.

***Safety harnesses:** Ordered, received, employees have been instructed to use them when working off the ground.

***Chlorine alarm at the water plant** has been replaced. It's working and now a safer working environment.

***Vacuum truck:** payment on truck on hold until the necessary repairs are made.

***New Town Vehicle:** Ford Explorer that is being paid for out of **ARF** from the **Tucker County Commission**, will be picked up tomorrow. It replaces the 1996 blazer that has a number of issues.

***Sewer Feasibility Study:** that was contracted for by the **Tucker County Development Authority** to develop a plan for the waste water treatment for the Towns of **Davis and Thomas** as well as the **Tucker County Solid Waste Authority** (leachate disposal). The report was supposed to be released last September. A meeting was held on Monday, with representatives from the **State Department of Commerce, DEP, Clean Water**, all parties were very supportive of the proposed plan. **Davis** currently has a threshold of 120,000 gpd effluent. Our average discharge is 240,000 gpd, with heavy rains increasing the amount over 300,000 gpd. DEP proposed 300,000 gpd would be more realistic, not problematic for Blackwater River. Feasibility study said **Davis** needed to focus on rainwater infiltration. The ongoing sewer project the **Town** is working on will develop a plan for separating the sewer and storm water. This project is estimated to cost 6 million dollars to correct the problem. For the larger project to address the issues of all entities on the mountain, the study recommended the creation of a Public Service District (PSD) which would build a centralized sewer plant for all customers on the mountain to utilize. This larger project is estimated to cost from \$33M to \$41M. A lot of federal monies are currently being or soon to be distributed throughout the country, through the **Infrastructure Bill, the American Rescue Plan** and the normal sources of money for these kinds of efforts. The **Town** will be pursuing grants, principle forgiveness loans, rate increases and other sources of funding for all the current \$6M sewer/storm water separation project. These same sources will likely be pursued by the proposed PSD for the larger project. Sewer has been problematic for some time now; the **DEP** has fined the **Town** and the **EPA** is sure to get involved if the problem isn't resolved.

The separate Downstream Strategy Study is not available to the public yet. This was contracted for by **City of Thomas**, and **Mayor Tomson** has obtained an unofficial copy. Meeting to be planned in the future, but no definite date has been set yet.

***Unofficial Minutes:** *Mayor Tomson* stated that unofficial minutes cannot be posted to the public. The concern is if they are posted and there is an error that needs correction, possible misinformation could be spread. The **Town of Davis** follows the **Open Governmental Meetings Act-set by the WV State Code**.

***Mon Forest Town Program:** The **Mon Forest Town** program held their quarterly meeting here today at **Davis Town Hall** and appreciated the use of our facility. We need to appoint a new Council Rep for the **Mon Forest Town** program. The only commitment the **Mayor** sees is 3 or 4 meetings a year, usually quarterly. Sometimes virtual meetings, sometimes in person and occur during the workday. No decisions today but the **Mayor** asked **Council** to think about it and let him know. We need someone to represent the **Town**.

***Law Enforcement Contract:** **Tucker County Sheriff Office** to perform law enforcement exclusively for **Davis**. Hours will vary depending on officer availability. Rate is \$35.00 hourly. Will measure as we go along regarding benefits/cost to what we will spend. Money for this will come from the **1% Municipal Sales Tax** the **Town** receives, not residents/ businesses. Any tickets written would go to Magistrate or Circuit Court. A **Municipal Judge** has been hired but would only be for **Ordinances** enforced by **Code Enforcer**. **Mayor Tomson** asked for permission from **Council** to sign a contract with **Tucker County Sheriff's Office** once drafted if it comes structured as discussed. If not, he will hold it for another meeting.

***Motion to give Mayor Tomson approval to sign contract if drafted as discussed made by Councilwoman Jeannette Ware, Second by Councilman Ron Hollis, all in favor, Motion carried.**

***Skid Steer Plow:** 3 brands available, Boss, Western and Paleton. Price range from \$2,500 to \$4,200. The **Town's** current plows are Boss which are dependable and capable. After discussion, felt Boss would be better as parts could be interchangeable. Felt 8 ft.V blade would be more useful. More versatile. Wings would be needed if a straight plow was purchased. Must be hydraulic.

***Short-term rental business in violation of temporary Moratorium:** A certified letter was sent out to a resident violating the short-term rental Moratorium; a return receipt hasn't been received yet. **Mayor Tomson** will call the lawyer to see what the next step is. **Guest Effie McCauley** asked if the discussion was about her. **Mayor Tomson** answered yes. **Ms. McCauley** stated that she has done everything she can to make it right since she has learned she needed a business license. She applied for state license, but couldn't obtain a license backdated prior to the start of the **Town's** moratorium which she was told she needed when she came to the September 22, 2021 Council meeting. She provided proof that she had paid State Taxes since May 2021 (one of the requirements of those doing business prior to **Moratorium**). Following the September meeting she found the proper paperwork to submit taxes to **Town**, updated them, and submitted them, along with the money due for taxes, proof of state license, and proof of state taxes being paid since May 2021, to **Town** with a highlighted copy of **Moratorium** which she felt reflected grounds that she would be grandfathered in based on the information she provided. She said she gave everything that was required of her, has done everything she can do, and meets all requirements to be grandfathered in. She is not sure what the issue is but feels that she is being discriminated against. Stated that there were local people who were given licenses without having State licenses, some still might not have their State licenses. According to last meeting minutes, **Paul Koontz Insurance Company** was operating without a license and the **Town** approved to give him one, once he became aware that a license was needed and came and applied for one at **Town Hall**. Feels that she is being discriminated by **Town** and doesn't understand why the **Town** won't go ahead and issue her a license. **Mayor Tomson** explained that most of what **Ms. McCauley** said was correct about the things that she did but there is one distinction; what the qualifications are under the **Moratorium** to be grandfathered in as a Short-Term Rental. It's that you have a **Town** license, a state business license. **Ms. McCauley** stated that it doesn't say that but the **Mayor** informed her that it does. The **Moratorium** was passed on August 25th, **Ms. McCauley's** State business license is dated August 28th, 2021. **Guest Cameron Dunlop** asked if the **Town** was arguing about three days. **Mayor Tomson** stated we were. **Mr. Dunlop** asked if we felt that **Ms. McCauley** was acting in bad faith. **Mayor Tomson** stated she was because she was renting without the proper licenses. **Recorder Helmick** stated that **Ms. McCauley** was aware she needed both licenses because **Jodie Dix**, another Short-Term Rental Owner and **Davis** Resident had told her months ago. **Mr. Dunlop** continued asking why we would argue about three days. **Mayor Tomson** told him that these are the rules and if dates apply to the rules, that those apply also. Where do you start drawing the line to the exception? If three days is the exception, then what about a month. **Mr. Dunlop** said that if someone is representing the **Town** in good faith but you're just going to say, no, no matter what you do, you're out the door, we don't care whether you depend on this money for your income or what. **Mayor Tomson** stated then you're not acting thoughtful of the **Town**. Sorry. **Ms. McCauley** was thanked for doing what she needed to gather the necessary information required. **Councilwoman Jeannette Ware** asked **Ms. McCauley** if she is currently renting and if she has been renting since we had this discussion in August, September, October, etc.? **Ms. McCauley** stated that wasn't true, only since she got her **State** license and gave the **Town** the paperwork as evidence, updated forms and paid tax. **Mayor Tomson** stated that she had been renting May, June, July and August as well. **Ms. McCauley** stated that what was passed doesn't match the permission to pass the **Moratorium** to allow the **Town** to invest in. **Mr. Dunlop** asked if we really wanted to spend the **Town's** money on lawyers to fight over three days to make an example, or if we should try to work things out so as not to slap someone down for a mistake. After much discussion and input, including a possible fine for violating a **Town Ordinance** (no business license), **Mayor Tomson & Council** were ready to move on from this issue but doing so in a way that it doesn't set a precedent that anybody in the **Town of Davis** can just break an Ordinance, come in later and expect to be

forgiven. **Councilman Kevin Flanagan** stated his solution would be to take a vote to approve the business license, and if approved, **Ms. McCauley** would be allowed to continue to operate, the **Town** would recuperate any taxes due from all prior rentals, and when the **Short-Term Rental Ordinance** is passed, she would have a first violation on her rental. So, if another violation occurs it would be her second and would come with the fine for a second violation. No fine would be imposed for this first violation. **Mayor Tomson** stated that it wasn't a matter of money but to get her moving forward in a way we all agree to.

***Motion by Councilman Kevin Flanagan, to approve Ms. McCauley's business license, under the condition that once the Short-term Rentals Ordinance is passed and implemented, that her short-term rental would have its first violation against it, Second by Mayor Al Tomson, all in favor- Councilman Kevin Flanagan, Councilman Ron Hollis, Councilwoman Charlotte Wales, and Mayor Tomson. All opposed- Councilman John Felton, Councilwoman Jeannette Ware and Recorder Jennie Helmick, Motion carried.**

***STR Safety procedures** that have to be implemented. The proposed **Ordinance** states that the home inspections must be done by a building code inspector or a licensed home inspector will perform those inspections on behalf of the **Town**. The **Town** is hoping that once the **Ordinance** is passed that most of the owners will be able to complete these inspections within sixty days. The **Town** has the licensed inspector they wish to use which is **Guest Mr. Ike Kahler**. He can be reached at **Blackwater Residential Inspections**. Mr. Kahler introduced himself and stated he was happy to answer any questions. The cost for the initial inspection is \$75.00 which is paid by the **Town**. If a second inspection is required because the building did not pass the first one, the cost is \$50.00 and is paid by owner. Inspections can be scheduled evenings, weekends, etc. Basic items detailed in the **Ordinance** are to be checked. If the owner is unable to correct issues within sixty days of original inspection but can demonstrate to **Council** that they are actively trying to have the issue corrected, Council will be willing to consider an extension. **Guest Roger Lilly** asked if this safety regulations/inspection applied to long-term rentals also. **Mayor Tomson** stated that not at this time. First chapter is short-term rentals, then we will start on regulations for long-term rentals and then hotel/motel rentals. Looking at same guidelines for safety for all. Question as to how many inspections the **Town** is looking at. No idea at this time. In the event of the property sale, does it have to be inspected again. How long would contract be with **Mr. Kahler**? **Mayor Tomson** stated a year. If a property with a short-term rental permit is sold, that permit does not transfer with the property. If 30 STR limit is met, any new permit applications would go on a chronological wait list. Wouldn't be an issue with long-term rentals. **Guest Kurt Litzau** feels we are opening ourselves up to a lot of policing and more government by imposing these inspections, not saying it's a bad idea. **Mayor Tomson** stated that we are trying to make it safe for all renters. We have some landlords who could use some reminding. Most landlords are good but we have to be fair and consistent with everybody. This would only be for rental properties.

***Work Orders: Councilmen Flanagan and Felton** are working on an implementation plan.

***Inventory of Valves: Mayor Tomson** asked the Employees to make sure they inventory the valves, things that are there and we will order whenever we need to make sure we are stocked with the necessary parts to have stock on hand.

***Items to be sold:** The **Town** has a number of items to be sold including an old blazer. We will be putting ads in the paper for a bidding process. Sealed bids.

***White truck and Garbage Truck were discussed at Work Session:** White truck waiting in Oakland for parts. Garbage truck is used depending on availability of Mark. Using dump truck mostly for Garbage pickup.

New Business: Request for donation for TCHS Weight Room: TCHS Coach AJ Rapp couldn't attend Council Meeting, but **Councilman Kevin Flanagan** spoke on his behalf. Goal is to raise \$15,000 purchase the equipment needed to update the school's weight room. They have already raised \$6,000 and received a \$5,000 donation from the Tucker County Commission. Balance of \$4,000 still needed. They will be requesting money from **Davis, Thomas, Parsons** and businesses for this equipment.

***Motion Made by Mayor Tomson to approve a donation in the amount of \$2,000 to be paid from the 1% Municipal Sales Tax Account, Second by Councilman Ron Hollis, all in favor, Motion carried. Councilman Kevin Flanagan abstained due to being a coach at TCHS.**

Emergency/After Hours Number: The **Town** is considering an emergency contact number so that when residents or visitors to the **Town** have a Water/Sewer emergency there is someone to call after normal working hours. The **Town** wants to establish an on-call system with the employees where one of them carries a phone which has a number that will be on the **Town** Website, Facebook, etc. That employee would be available if someone had an emergency and the office was closed. The phone will be passed weekly between the full-time employees only. Need to research a little further on how to go about reimbursing employees or how to justify economically for people to do that.

William Avenue Sidewalks: *Councilman John Felton* stated that the businesses contribute to a fund maintained by the **Town**. The **Town** uses the money from the fund to pay for snow removal from the sidewalks in front of businesses on William Avenue. **Guest Karen Peterson** asked that since the money collected for the 1% sales tax comes in part from the local businesses, would the **Town** consider using money from there to pay for the snow removal. *Mayor Tomson* responded no and explained that everyone pays the 1% Municipal sales tax when they make purchases from any business and we would have to do the same for the resident's sidewalks to be fair.

Annex: The **Town** is looking to annex some additional land and will need to go to the **Tucker County Assessor's Office** to see what the procedures are to see if we can implement that, as well as have more discussions with landowners who we've been talking about doing this with. This is something that is underway.

Building permits: Ronald Whitehair-William Avenue: *Mayor Tomson* has been communicating with him, Mr. Whitehair has been ill and couldn't make it to the meeting tonight and he doesn't want to be talking about this without him being here. Mr. Whitehair was asked if we could table this and he said yes.

Business Licenses: Alpine Lodge/ Sawmill Restaurant has been sold and the new owners wish to apply for a business license.

***Motion to approve business license made by Councilman Kevin Flanagan, Second by Councilman John Felton, all in favor, Motion carried.**

***Mt. Top Dental Center (Preston-Taylor Center- Merging with Davis Dental), new business license. Motion to approve business license made by Councilwoman Charlotte Wales, Second by Councilman Ron Hollis, all in favor. Motion carried.**

***Ski Coya (Craig O'Connor) Short term rental. Motion to deny business license due to Moratorium in place on short-term rental licenses. If the new Ordinance is adopted with the current language, then and the fact that being a non-resident, Mr. O'Connor would only be allowed one short term rental property, which he already has, so this license would still be denied. Motion made by Councilman John Felton, Second by Councilwoman Charlotte Wales, all in favor, Motion carried.**

***First Reading of the Ordinance of the Town of Davis Enacting and Implementing Regulations for Housing Rentals Existing Within the Municipal Boundaries of The Town in its entirety.**

****Correction to Section 4: #2 Submit copies of all of the following to the Town of Davis. **Change to Section 4 paragraph 5 subparagraph i. suggested: changed to 2 ½ pound minimum, Type K fire extinguisher in kitchen ** Clarification in Section 5 paragraph 2 subparagraph b: incorporate language about being "grandfathered in".**

***Motion to adjourn at 9:50pm made by Councilwoman Jeannette Ware, Second Councilman Kevin Flanagan all in favor, Motion carried.**

Date of approval January 26, 2023
As read _____
As corrected _____



Alan Tomson, Mayor



Jennie Helmick, Recorder