

TOWN OF MOUNT PLEASANT, SOUTH CAROLINA
POLICE, JUDICIAL & LEGAL COMMITTEE
Tuesday, January 2, 2018

Municipal Complex, Committee Meeting Room, 3rd Floor

Minutes

Members Present: Mayor Will Haynie, Chair, Gary Santos, GM Whitley, Joe Bustos

Staff Present: Eric DeMoura, Levisa Kirvin, Chief Ritchie

Also Present: David Pagliarini, Corporation Counsel

Mayor Haynie called the meeting to order at 12:07 pm.

1. Approval of Minutes from the December 4, 2017 meeting

Mayor Haynie asked that the minutes from December 4, 2017 meeting be approved. Mr. Bustos made the motion for approval; seconded by Ms. Whitley. Motion carried unanimously.

2. Public Comments

None

3. Police matters

No agenda items

Mayor Haynie stated that although there were no items on the agenda for the Police Department he would like to thank the Department for a great year in 2017 and he is looking forward to great things in 2018.

Mayor Haynie stated that at the last meeting there was a news flash about a wreck on the bridge which closed 3 of the 4 lanes into Charleston and he appreciates those kinds of things the Department deals with and for protecting the Town every day.

4. Judicial matters

No agenda items

5. Legal matters

a. Discuss of proposed ordinance related to the registration of lobbyists

Mayor Haynie stated that Councilman Santos had beat him to the email in reference to an article seen in a nearby Municipality and we all agreed that the Town of Mount Pleasant needed to look into this. He added that everyone should have received correspondence on this and gave the floor to Mr. Santos.

Mr. Santos stated after reading the article on lobbyists and how there in only one Municipality in the State of South Carolina that had any kind of ordinance or anything addressing lobbyists that he thought immediately especially after this las election after there were some questionable things that were being sent out where the Town did not know where they were coming from and things like that he thought it was important for the Town to have an ordinance that addresses lobbyists and so he has met with the Town's legal staff and asked them to put together an ordinance for the committee to look at and he believes everyone received a copy.

Mr. Santos stated he believes it is a pretty good ordinance and it was amended to raise the penalties from \$500 to \$1,000 and he feels it is important that the Town knows who is doing business in the Town especially when it comes to some of the things that are going on. He added when he was writing the "no smoking" ordinance that he was contacted by various groups that he did not know who they were and they were not required to be registered with the Town. He added that some pushed for the ordinance and some pushed against it.

Mr. Santos stated that in that mix somewhere there were probably some lobbyists but that he had no way of knowing and no way of finding out.

Mr. Santos stated that he thinks that it is important, not that lobbyist are bad people, that lobbyist register with the Town just like other businesses do and feels the Town needs to know what they are talking about and who they are talking to.

Mr. Santos stated that the Town basically borrowed the ordinance from Columbia and then customized it a little especially with the penalties and he feels the committee needs to put some teeth in it and so he puts it before the committee today in hopes to give its approval to send to Council so they can look at it at the next meeting and perhaps get a first reading and then look at massaging it or not massaging it until the second reading of it.

Mr. Santos stated he feels that it is very important that the Town addresses it and this is a great opportunity to do it.

Mayor Haynie stated that for discussion sake and for the record he asked what the legal threshold when someone is actually a lobbyist.

Mr. Pagliarini stated that the State code addresses it in two contexts, first with the General Assembly and what interaction can be with the General Assembly and then from an ethical standpoint which is very minimal.

Mr. Pagliarini stated that there are two places in the State code where it is addressed and it is very limited and there really is no carry-over to Municipalities in those general requirements so what he has done is look at what Columbia had, and that is what everyone is seeing in front of them. He adds that this is not a full-fledged format for ordinances but bullet points and general ideas which can be added or subtracted to.

Mr. Pagliarini stated that as Mr. Santos pointed out there are some penalty aspects but that this basically covers three things; 1) defining a lobbyist,

what is and is not which he feels is important as well as employees of the Town would not be categorized as lobbyists; 2) registration is an element and 3) limitations prohibited acts which are facilitating monetary items through elected officials which is really what is prohibited by this.

Mayor Haynie stated that Item C, a person who is a full time, permanent employee of a Government Agency, a not-for-profit corporation or a company and is lobbying as a result of his/her employment with such agency not-for-profit corporation or company so that person is a lobbyist.

Mr. Pagliarini stated that person would be considered not a lobbyist.

Mayor Haynie stated that he does see that does “not” include. He added this was one reason he brought this up so if someone pays somebody and says go influence Mount Pleasant Town Council to vote this way than that person in a lobbyist by legal definition.

Mr. Pagliarini stated that according to the draft ordinance yes, they would.

Mayor Haynie stated that if they work for a non-profit or community group and are on the payroll and are told to go get Mount Pleasant Town Council to vote this or that way then technically they are not a lobbyist.

Mr. Pagliarini stated that was the grey area and that is what “if” one of these organizations, governments or non-profits hire a lobbyist on the payroll and he believes that is the Mayor’s point and that could be done and they could therefore be categorized as not a lobbyist even though that is exactly what they are doing.

Mayor Haynie stated that another question would be because they have heard especially when talking growth issues that he hears from people who represent organizations and he knows they are on their payroll and they come to speak with Town Council. He added that if that person is a full-time employee than under this ordinance they are not considered a lobbyist but

if they were a contracted 10-99 or working under a different arrangement or not full time then technically they might be a lobbyist if their job description is to influence public policy.

Mr. Pagliarini stated that was right and the distinction is this limits that exemption to government agencies and not-for-profit companies so if it is a for profit company then they would be classified under this ordinance as a lobbyist.

Ms. Whitley stated that there is a comma in there that makes her read it as a not-for-profit corporation – stop- or a company so there should not be a comma there so it should be a not-for-profit corporation or company.

Mr. Pagliarini stated that is correct as it is under “C” where she is looking.

Ms. Whitley stated that she was looking under “C” where there is a comma where it says not-for-profit corporation, comma, or a company which indicates a for profit company.

Mr. Pagliarini stated that he was looking at the second part and that she was right and that can be adjusted.

Ms. Whitley stated she wanted to make it clear that if it was a for profit corporation or company that hired someone to speak to Council than that would be considered a lobbyist.

Mayor Haynie asked what if a for profit industry uses a non-profit to do their lobbying as there are regional organizations that their missions are to effect public policy and they are technically non-profits. He added would that exempt them from this interpretation of being a lobbyist because they are not-for-profit.

Mr. Pagliarini stated that he believes the language there that needs worked on is in that same provision C because of his/her employment with the

agency and he would take the position that it has be directly related to that non-profit's business in order for them to be exempt from this ordinance but that certainly that can be made more specific if that is a concern.

Mr. Bustos stated that if that creates a grey area, and he feels a lobbyist is a lobbyist weather it is a non-profit for for-profit, why not just remove section C and that would remove the grey area.

Mayor Haynie asked how would that read then, just take all of C out.

Mr. Bustos stated to just take all of C out. He added that you are either a lobbyist or you are not and that removes the temptation for for-profit companies to hire a non-profit to lobby and if they have nothing to "fear" or they are above board then they can register weather they are non-profit or for-profit.

Mr. Pagliarini asked they Mr. Bustos was talking about the non-profit part as there was also the Government Agency part in there and he wanted to clarify if he was advocating leaving that part in or not.

Mr. Bustos stated that yes if the City of Charleston hires a lobbyist to come lobby of the Town Council of Mount Pleasant he cannot imagine they would but that would be a governmental agency and they should say up front that they are lobbyists so he feels all of C should be removed and therefore remove the grey area.

Mayor Haynie stated that technically Mr. Santos still had the floor as it was his proposal and asked if some of this could be clarified.

Mr. Santos stated that is why he put it on the agenda so that it could be cleared up and then sent to Council as soon as everyone is clear and if the Committee has no problem with that as he does not but he wants to make sure everyone is covered if the Town has a lobbyist, and he does not care who they represent, he did say this does not take responsibility away from

the elected official as at the end of the day they will make the decisions the lobbyist just tries to educate on their way of thinking and it is up to the elected official to do due diligence, research things and make their own decision on how they will vote.

Mr. Santos stated that he was not trying to take this responsibility away from the elected official as it will always be up to them but the Town should always know who the lobbyist is, who they are working for so the Town knows which way they are pushing and also know why people are coming and talking to us.

Mr. Santos stated that if taking Section C addresses that than he is okay with it but wants to make sure that legally it is okay as well and we can still make sure that anyone working as a lobbyist that the Town knows who they are and what they are talking about and doing as this ordinance basically describes.

Ms. Whitley stated that she would also want to make clear that in the first line "A person employed by another person to lobby a member of Town Council" that it is made clear the definition of "person" or add Corporation or Company there as right now it seems like an individual employed or retained by another individual to lobby and it seems Corporations are exempted which needs to be added.

Mr. Haynie stated that the question he poses to the Committee, Mount Pleasant Waterworks which Councilman Bustos and he are on the Board, if they come in any capacity, paid, staff or their appointee to one of the Committees and strongly advocate an action by the Council is that technically under the definition the act of lobbying.

Mr. Pagliarini stated if Section C is removed and the Government Agency exemption for full time employees and not paid lobbyist of Government Agencies than that is the problem that the Town will run into.

Mayor Haynie asked what if it was their Government relations person promoting their interests, does that make them a lobbyist. H added that Councilman Bustos pointed out that the County when they are doing bond referendums, etc. will ask for endorsement and would that fall under this. He added he feels these are questions the Committee has and would like an answer to.

Mayor Haynie stated that likewise if the local water keeper comes and says something, that is a non-profit, is that an act of lobbying as he feels the Town is not trying to shut down public input but wants to know what is lobbying and what is just citizens banding together and speaking.

Mr. Santos stated that he thinks that in the ordinance verbiage says they have to be paid. He added that the water keeper who is not paid to come before the Committee would not be considered a lobbyist as according to the ordinance they have to be paid and just like a Government they would not be paid to come and speak as they are elected like he is and he would not consider them as lobbyist either as according to the ordinance they have to be paid by someone.

Mr. Santos stated that this keep going and going so he feels that is where the line can be drawn, if they are being paid.

Ms. Whitley stated that leaving in the first line of Section C to exempt people in Governmental Agency and removing the non-profit corporation company than that would cover, as we know there are non-profits funded for-profits that has a government relations person that has reached out to Councilmembers.

Mayor Haynie asked if that was a suggestion for the revision of this.

Ms. Whitley stated that it was.

Mayor Haynie asked if the Committee needed motions or can they as a Committee just massage this and then what he is thinking is that next month bring it back to the Committee because he does not know if this will be ready in one week's time for final action by a vote of Council.

Mr. Santos stated that he thought notes were taken and the along with the minutes that Mr. Pagliarini could prepare what is being done and bring it to Council for at least first reading then there is all the way until second reading to be able to do this.

Mayor Haynie stated the Committee should go through it as it is a two-page document.

Mr. Pagliarini stated he would like to bring to the Committee's attention to Section 44.02 – 3 and not to get out of order but causes some concern for Legal in potentially restraining for example if the Town hires a lobbyist then this provision says that Council/Town has to approve working for anyone else. He added the Committee may be okay with that and it is just an extra level of requirements that the Committee wants to include and if they do then will it mean approval for every time that the Town hires a lobbyist to represent someone else or just a general approval that they will be able to take on other lobbying contracts.

Mr. Santos stated that they would have to keep the Town updated on all of them if they are approved. He added that approved lobbyist will register with the Town so the Town knows they are here and he would think that anytime they are hired for something the Town should know who they are working for each time.

Mayor Haynie asked if this also manifests itself in a way that if they are here speaking in a Committee Meeting they would have to disclose that they speak on behalf of their organization because if they give their name and address they are not speaking as a private citizen they are being paid to

represent a view point so registering is not enough the point is full disclosure and who is influencing Mount Pleasant Government.

Mayor Haynie stated that he is asking if someone comes in and gives their name and address, they give the impression that they are an individual when in fact they are a paid lobbyist.

Mr. Santos stated they should be registered in order to do that.

Mayor Haynie stated and to also disclose when they speak for the minutes, etc. as they are not just speaking as citizens. He asked Mr. Pagliarini if that impedes free speech or anything like that and would the Town run into any greater legal difficulties with that.

Mr. Pagliarini stated that disclosure is not restricting what is said and the opportunity to speak in accordance with our ordinances and the constitution. He added that he would make that distinction and agree that if that is a requirement the Committee would like to have that could certainly be placed in there.

Mayor Haynie stated that he wonders if the Town should or could think about putting in the ordinance that when you are a paid representative of any interest and you are addressing Council that you must fully disclose that.

Mr. Pagliarini stated that yes absolutely that could be added.

Mayor Haynie stated that not only register but then also stand up and say, "I speak as a registered lobbyist for this interest".

Mr. Santos stated he believed so because it is possible to have citizens that even though Committee knows they are lobbyist the citizens do not. He added that he feels full disclosure is great and the Committee and Council should always be transparent.

Mayor Haynie stated that Councilmembers may not know that either and it would be nice to know who they represent.

Mr. DeMoura stated that Section 44-02-3 concerning the lobbyist that the Town has had for several years and represents our interest in Columbia also represents other cities in Columbia and the issues are usually the same such as crime laws and annexation and things like that. He asked if it should be considered to amend item 3 to say for any clients that are not governmental because right now they would have to come in and say we also represent the City or Charleston or Charleston County and 4 or 5 others and he is not sure if that would be a conflict or contradiction. He added that if they represented a private interest that it would be nice know that or even a not-for profit interest.

Ms. Whitley stated that she would be concerned a little about the potential to have it viewed as a non-compete agreement to where they have to come to the Town for approval for future clients and there is also nothing in there about existing clients.

Ms. Whitley stated that instead of approval she thinks disclosure may be a better word to use in Section 3 as they add clients to their roster they should disclose their existing clients to us and then as they add clients to their roster to disclose that as well because that would then provide the Town with the information it needs to know as to whether or not to continue with them as a lobbyist for the Town rather than create an extra layer of bureaucracy that we have formally approve every single time a lobbyist has a new client.

Mr. Pagliarini stated that Ms. Whitley is correct and the Town has discretion to retain them or not or to continue.

Mr. Pagliarini stated that was some of the concern that Legal had was that it could be perceived as that.

Mr. Haynie stated they the Committee would take public comments and then he stated the Committee should get a motion to make the amendments discussed and present that to Council for first reading.

Mr. Cunane or 3032 River Vista Way stated that this started out saying there were mailings that went out during the election which this does not cover this but what covers that is expanding on the ethics laws of the State.

Mr. Cunane stated that when you file to run for office in South Carolina they want to know who did you make money from last year and then every quarter they want to know where you spent the contributions that came in and make sure there is not too much coming from one person. He added that those types of mailings that can go out under a random, anonymous name or from a P.O. Box is not really covered by a lobbyist and is either called a political consultant or a communications consultant. He added that we cannot regulate thousands of people and what they do but we can regulate the 9 people who could potentially be influenced by it or the 9 on Council and the 10 candidates. He feels that is the smaller, easier way is to force the people running for office to disclose quicker that what the State requires because then the public will know as that is disclosure and that benefits the public. He added that if he spends money to hire somebody to smear his opponent you will not know about it until after the election.

Mr. Cunane stated that on January 10th the reports go in the quarter so he had someone following him around the Farmer's Market taking his picture when he was running for office and he was a political consultant that someone probably paid and he will not know until after they file on January 10th so if that time frame could be shortened and require that if you are a candidate for office for this Town and you hire a political consultant or communications consultant, disclose it, know who they are and this will prevent you from hiring the dirty people and the liars and cheats. He added that obviously the State Law has a lot to be desired and if you want to improve upon that it would be a great thing. He added he is all for

hammering the lobbyist too but the issue that started the conversation with is not addressed in this.

Mayor Haney thanked Mr. Cunane and asked Mr. Santos if he wanted to reply.

Mr. Santos stated that he is not hammering lobbyist or anybody. He added that a lot of the lobbyist are very nice people as he knows some of them and has met a lot during his 18 years on Council but thinks they need to register and the Town needs to know who they are and who they represent and when they are working in the Town of Mount Pleasant.

Ms. Whitley stated that according to the State Ethics Commission any sort of mailing or publication that relates to a political campaign has to disclosed and if not disclosed then they are in violation of the law. She added that there is already existing law that covers the disclosure of that.

Mayor Haynie stated that they were getting off track as this is not an election law this is lobbying.

Mr. John Mahony of 407 McCants Drive, stated that to the Mayor's point of inclusion he wanted to remind everyone that just a couple of years ago the State Legislator came very close to slipping in a law requiring anybody who addressed the State Legislator to register as a lobbyist. He added that it also brought criminal ramifications as well if you violated that.

Mr. Mahony stated that he did not see any threat to that in this language but he did want to bring attention to that almost happening.

Mr. Bob Brimmer or 2380 Parsonage Woods Lane, stated this was good conversation and said that one comment the Mayor made raised a question for him which is the freedom of expression which if someone registers as a lobbyist do they then not have the opportunity to speak as a private citizen.

Mr. Brimmer stated that he just wanted to make sure they still had that right speak as a private citizen even if they are registered as a lobbyist that they still have the right to express a personal opinion.

Mr. Brimmer stated that the other question he had was to do with applicants for development projects. He stated that every month there are people from other companies that come in and pitch their project and many times they will speak to council members to talk about the details of these projects and under this language it seems that all of those folks would have to register as lobbyist if they are trying to talk about zoning changes or getting approval for projects even if they are full time employees of a development company or construction company.

Mr. Santos stated that he did not see that and if they are working for a developer and they come to speak to them and they are working for that developer if they are paid on the side by that developer to come out just to talk to the Town about that than to him if they are not working for them on the payroll for them and are paid to come out to him that is a lobbyist. He added that if they are already of the payroll, he just got called from a developer that wants to do something in Mount Pleasant but he works for the company that is actually doing the work so he does not consider him a lobbyist.

Mr. Brimmer stated that as he reads the language those folks would be considered lobbyist. He added that he mentioned that only because a modification may need to be made to the language to address this issue as many of the people who come in front of Council with projects or proposals are working for companies involved in that.

Mr. Brimmer stated that there needs to be some language that allows, if it is the Committee's intent, to allow those folks to not be considered lobbyist if it is their project.

Mr. Pagliarini stated that he believes that Ms. Whitley's proposed change in 44.01 that the second A- the individual receives no compensation from another person. He added they talked about individual companies and things like that the expansion would potentially cover that.

Mayor Haynie stated he would like to ask as he had in mind is that he knows this came from Columbia but at the State level they do not deal with zoning and they do not deal with applications for land use and there is by nature of that the need to have a professional engineer/architect stand there and give the details of the project. He added they are helping the Committee make an informed decision and he does not know if that person is lobbying for increasing density over all or restricting building in Mount Pleasant but are giving details of a specific land use request.

Mayor Haynie stated that maybe this is something if the Committee is going to do this at Tuesday's meeting for first reading that it needs to be clear that anybody employed to give details of a land use is not lobbying because they are only talking to a project and not talking about the comprehensive plan in general or densities, roads or funding. He added the Committee would want to be clear because so as not to get to the point where those individuals are not explaining drainage and curb cuts, etc.

Mr. Brimmer stated that folks will come forward with planning projects more times than not will hire an engineer or transportation consultant to come in and convince Council that this is a good project. He added that they are hiring people involved in the development of that project to advocate for their position.

Mr. Brimmer stated that another one that comes to mind is recently Council looked at a proposal for a cell tower. He added that was a company who had an interest in that and had someone hired to come in and explain the technicalities of cell phone towers and coverage and trying to convince Council that this was a good idea.

Mr. Brimmer stated that there is a fine line and he is not sure that the Town wants to have every engineer and every company in town that does this kind of technical work have to register as a lobbyist even though they are being hired to come in front of Council and to make a case for those projects. He added that any wording should have the distinction made in those situations.

Mayor Haynie stated that he agreed with that.

Mayor Haynie asked if anyone wanted to proceed with a motion.

Mr. Bustos stated that he would like to say one thing in regard to what Mr. Brimmer was saying. He stated that people who come here in an open forum and are trying to explain the merits of a project he is okay with and does not consider them lobbying but it is the guy that calls him at 8pm at night who is a friend of a friend and says, "You know my friend has a project going and I know you..." that is lobbying.

Mr. Bustos stated that people who are coming to explain the merits of something or how it works that he does not consider that a lobbyist.

Mr. Santos moved that Committee approve the draft ordinance Chapter 44/Lobbyist with the amendments discussed be sent to Council for first reading on Tuesday. Ms. Whitley seconded the motion. All present were in favor.

b. Executive session to receive legal advice on any issue related to proposed ordinance related to the registration of lobbyist, if needed.

None

c. Post Executive Session

None

6. Adjourn

There being no further business, the meeting was adjourned at 12:40pm.

Minutes submitted by:

Lori Gaskin

01/02/2018