City Council Meeting
10 N. Public Square
April 5, 2012
6:00 P.M. – Work Session 7:00 P.M.

I. Opening Meeting

Invocation by Council Member Tonsmeire

Pledge of Allegiance led by Council Member Pruitt

The City Council met in Regular Session with Matt Santini, Mayor presiding and the following present: Louis Tonsmeire, Sr., Council Member Ward Three; Dianne Tate, Council Member Ward Five; Lori Pruitt, Council Member Ward Six; Sam Grove, City Manager; Connie Keeling, City Clerk and David Archer, City Attorney. Kari Hodge, Council Member Ward One; Jayce Stepp, Council Member Ward Two; and Lindsey McDaniel Council Member Ward Four were absent.

II. Regular Agenda

Mayor Santini stated that the City Charter required a quorum of four to approve items on the agenda and that it would be necessary for him to vote on all items.

A. Council Meeting Minutes

1. March 15, 2012

A motion to approve the March 15, 2012 City Council Minutes as presented was made by Council Member Pruitt and seconded by Council Member Tonsmeire. Motion carried unanimously. Vote 4-0

B. Public Hearing – 2nd Reading of Zoning/Annexation Requests

1. File Z12-01: Rezoning application by Steve Cowart (Lee Perkins, representative) for property located at 1120 West Avenue (approximately 2.7 acres) from G-C (General Commercial) to L-I (Light Industrial)

Randy Mannino, Planning and Development Director, stated that the Public Official Forms have been received and there are no conflicts of interest. All adjacent property owners have been notified and the required legal notices have been advertised. Mr. Mannino requested that the application and zoning ordinance be made part of the official record. Copies of the adopted procedures and zoning standards are available upon request. Mr. Mannino stated that this tract is located at 1120 West Avenue. This property includes a structure originally built for an industrial operation in approximately 1986, when the property was zoned industrial. After a zoning map change in the mid 1990s the property was designated at L-I (Light Industrial) and remained so until 2006 when the property was rezoned to G-C (General Commercial). The applicant seeks to rezone the property back to L-I to allow for the structure to be used by Steel Materials Inc for steel and metal fabrication and for the sale of steel fabricated items. Mr. Mannino stated that there have been no changes since the first reading and the Planning Commission recommended approval with the condition that the relocation of the FDC connection must meet the Fire Department requirements.

Mayor Santini opened the floor for a public hearing for zoning. Lee Perkins, representative for the applicant came forward. With no further comments Mayor Santini closed the public hearing.

A motion to approve Ordinance No. 21-12 with the conditions set forth by the Fire Department was made by Council Member Tonsmeire and seconded by Council Member Tate. Motion carried unanimously. Vote 4-0

Ordinance

of the

City of Cartersville, Georgia

Ordinance No. 21-12

Petition No. Z12-01

NOW BE IT AND IT IS HEREBY ORDAINED by the Mayor and City Council of the City of Cartersville, Georgia, that all that certain tract of land owned by CRM Central Properties LLC. Property is located at 1120 West Avenue. Said property contains 2.7 acres located in the 4th District, 3rd Section, Land Lot(s) 592, 593, and 632 as shown on the attached plat Exhibit "A". Property is hereby rezoned from G-C (General Commercial) to L-I (Light Industrial) with the following conditions. Zoning will be duly noted on the official zoning map of the City of Cartersville, Georgia.

1. **The relocation of the FDC Connection must meet Fire Department requirements.**

BE IT AND IT IS HEREBY ORDAINED.

First Reading this the 15th day of March 2012.
ADOPTED this the 5th day of April 2012. Second Reading.

/s/ Matthew J. Santini
Matthew J. Santini
Mayor

ATTEST:

/s/ Connie Keeling

Connie Keeling
City Clerk

C. Second Reading of Ordinances

1. Amendment to Motor Vehicle and Traffic Ordinance

Tommy Culpepper, Police Chief stated that this is a housekeeping measure. While reviewing the recent draft of the Municipal Code it was discovered that Section 12-1004 pertaining to the "No Left Turn at the U. S. Post Office on Church Street" was still included. As the post office is no longer located on Church Street and the volume of traffic is subsequently reduced Chief Culpepper recommended this section be removed. Chief Culpepper stated that there have been no changes since the first reading and recommended approval.

A motion to approve Ordinance No. 22-12 was made by Council Member Pruitt and seconded by Council Member Tate. Motion carried unanimously. Vote 4-0

Ordinance

of the

City of Cartersville, Georgia

Ordinance No. 22-12

Now be it and it is hereby ORDAINED by the Mayor and City Council of the City of Cartersville, that the CITY OF CARTERSVILLE CODE OF ORDINANCES. CHAPTER 12. MOTOR VEHICLES AND TRAFFIC. ARTICLE XI. TRAFFIC SCHEDULES. CODE SECTION 12-1004. NO LEFT TURNS is hereby amended by deleting said section it in its entirety and replacing it as follows:

1.

Section 12-1004. Reserved.

2.

It is the intention of the City Council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances, City of Cartersville, Georgia.

BE IT AND IT IS HEREBY ORDAINED.

First Reading this the 15th day of March 2012.
Second Reading and Adoption this the 5th day of April, 2012.

/s/ Matthew J. Santini
Matthew J. Santini
Mayor

ATTEST:

/s/ Connie Keeling
Connie Keeling
City Clerk

D. Contracts/Agreements

1. Satisfaction of Subordination Deeds

Randy Mannino, Planning and Development Director stated that two of the first time home buyers have completed their obligations for down payment assistance by maintaining residence in these homes for five years and the forgivable loan on these properties is satisfied. Mr. Mannino stated that the Satisfaction of Subordination Deeds need to be approved in order for the owners to clear the title to their homes and recommended approval.

A motion to approve the Satisfaction of Subordination Deeds was made by Mayor Santini and seconded by Council Member Pruitt. Motion carried unanimously. Vote 4-0

2. Transfer of Properties to Habitat

Sam Grove, City Manager stated that the City recently purchased two properties for the Habitat project. Now that the structures have been demolished, the city needs to transfer the ownership of the properties to Habitat. In addition to transferring the properties, the issuance of two construction loans to build the new homes in the amount of $75,712.00 each. Mr. Grove stated that this is part of the 2009 CDBG money and recommended the approval of the transfer, along with the issuance of a construction loan for these two properties.

A motion to approve the transfer of properties and the issuance of construction loans was made by Council Member Tonsmeire and seconded by Council Member Tate. Motion carried unanimously. Vote 4-0

3. Bartow County Regarding Joint Fire and Emergency Training Facilities

Scott Carter, Fire Chief stated that this is an agreement between the City of Cartersville and Bartow County concerning the operations and maintenance of the Fire Training facility located at 180 Paga Mine Road. This was a jointly constructed project between the two governments that was funded from the 2003 SPLOST and is utilized by both departments. This agreement was approved by Bartow County Commissioner Clarence Brown on March 7, 2012 and Chief Carter recommended approval.

A motion to approve Joint Fire and Emergency Training Facility Agreement was made by Council Member Tate and seconded by Council Member Tonsmeire. Motion carried unanimously. Vote 4-0

E. Bid Award/Purchases

1. Firehouse Web Software Upgrade

Scott Carter, Fire Chief stated that this is a web based software upgrade that will allow staff to enter and receive data in the field for incidents, inspections, hydrants and equipment; in addition to staff and scheduling. Chief Carter stated that this is a single source product and recommended approval for Visionary Firehouse Software in the amount of $45,359.89.

A motion to approve the purchase of Visionary Firehouse Software was made by Council Member Pruitt and seconded by Mayor Santini. Motion carried unanimously. Vote 4-0

2. Protective Fire Gear Washer Extractor

Scott Carter, Fire Chief stated that this is a protective gear washer that will be placed in the new Fire Department Headquarters. The purpose of the washer is to clean contaminated protective equipment that is worn by firefighters and maintain compliance with NFPA health and safety standards. Chief Carter recommended the low bid from Tri-State in the amount of $9,895.00.

A motion to approve the purchase from Tri-State was made by Council Member Tonsmeire and seconded by Council Member Tate. Motion carried unanimously. Vote 4-0

3. Puckett Street Sewer Connections

Ed Mullinax, Assistant Water Superintendent stated that staff has designed a project for transferring sewer services from an existing deteriorated sewer line on Puckett Street onto a newer line to allow the older line to be abandoned. Mr. Mullinax recommended the low bid from Hill City Onsite, Inc. in the amount of $22,400.00.

A motion to approve the bid from Hill City Onsite was made by Council Member Pruitt and seconded by Council Member Tonsmeire. Motion carried unanimously. Vote 4-0

4. Transformer at Water Treatment Plant

Ed Mullinax, Assistant Water Superintendent stated that the transformer on the #2 High Service Pump was recently destroyed by lightening. After testing it was found that a vacuum tube on the electrical breaker had failed allowing lightening to come in to the transformer. Bids were solicited and Mr. Mullinax recommended approval of the low bid from the CES in the amount of $12,675.82.

A motion to approve the purchase from CES was made by Council Member Tonsmeire and seconded by Council Member Pruitt. Motion carried unanimously. Vote 4-0

5. Goodyear Avenue Sewer Tie-in Project

Ed Mullinax, Assistant Water Superintendent stated that the sewer line service ATCO Village was recently replaced from Pettit Creek to Goodyear Avenue. This project has been designed to complete the tie-in at Goodyear Avenue and eliminate sections of sewer with flow constrictions. Mr. Mullinax stated that bids were received from four contractors and recommended approval of the low bid from Hill City Onsite, Inc. in the amount of $24,950.00.

A motion to approve the bid from Hill City Onsite was made by Council Member Pruitt and seconded by Council Member Tonsmeire. Motion carried unanimously. Vote 4-0

6. Martin Luther King, Jr. Drive Sewer Replacement

Ed Mullinax, Assistant Water Superintendent stated that this section of sewer on Martin Luther King Jr. Drive between Tennessee Street and Ford Street is in deteriorated condition and in need of replacement. Mr. Mullinax stated that bids were received from three contractors for this pipe bursting project and recommended the low bid from T. J. Lyle & Co. in the amount of $35,664.80.

A motion to approve the bid from T. J. Lyle & Co. was made by Council Member Pruitt and seconded by Council Member Tate. Motion carried unanimously. Vote 4-0

F. Resolutions

1. Partial Settlement of the Class Action Lawsuit Against Online Travel Companies

David Archer, City Attorney stated that this is a partial settlement agreement in the Georgia cities class action law suit against the on-line travel agencies for underpayment of hotel taxes. This agreement provides that from May 16, 2011 going forward, hotel motel taxes shall be paid on the retail instead of the wholesale rate. The issues relating to back taxes prior to May 16, 2011 have not been settled and are still being litigated. Mr. Archer stated that as a named party to the law suit, the City must approve this Agreement and recommended approval.

A motion to approve the agreement and Resolution No. 06-12 was made by Council Member Tonsmeire and seconded by Council Member Tate. Motion carried unanimously. Vote 4-0

Resolution No. 06-12

RESOLUTION AUTHORIZING THE PARTIAL SETTLEMENT OF THE CLASS ACTION LAWSUIT AGAINST ONLINE TRAVEL COMPANIES IN *CITY OF ROME, ET. AL, V. HOTELS.COM, ET. AL*

WHEREAS, on November 18, 2005, Plaintiffs City of Rome, Hart County and City of Cartersville, individually and on behalf of a statewide putative class of all cities and counties in the State of Georgia which had enacted hotel excise tax ordinances pursuant to O.C.G.A. § 48-13-50, *et. seq.* (the "Enabling Act"), filed a Complaint captioned *City of Rome, et. al. v. Hotels.com, et. al,* Civil Action No. 4 05-CV-249-HLM, Northern District of Georgia, Rome Division (the "Lawsuit") against the Defendants; and

WHEREAS, on June 8, 2006, Plaintiffs filed an Amended Complaint, *inter alia*, adding additional named representatives, to-wit: City of Hartwell, Georgia; Cobb County, Georgia; City of Cedartown, Georgia; City of Dalton, Georgia; Gwinnett County, Georgia; Fulton County, Georgia; City of Rockmart, Georgia; City of East Point, Georgia; City of Warner Robins, Georgia; City of Tybee Island, Georgia; DeKalb County, Georgia; City of College Park, Georgia; City of Alpharetta, Georgia; City of Macon, Georgia; Augusta-Richmond County, Georgia; Clayton County, Georgia (collectively, including City of Rome, Hart County and City of Cartersville, "Plaintiffs" and together with Defendants, the "Parties"); and

WHEREAS, the local governments alleged in the Lawsuit that certain online sellers of hotel rooms, such as Hotels.com, Hotwire, Priceline, Orbitz, Travelocity and Expedia(Online Travel Companies "OTCs") are, and have been, negotiating discount rates with local hotels, and then selling rooms at marked up rates to consumers but paying excise taxes to local governments based on the discounted rates; and

WHEREAS, the Parties in the Lawsuit desire to compromise and settle certain issues and claims relating to the allegations made in the Lawsuit concerning certain prospective injunctive relief and Defendants' alleged obligations, rights and duties concerning the payment of Hotel Tax to the Class after May 16, 2011 and going forward as set forth herein, while continuing to litigate all issues regarding: (i) Defendants' alleged obligation to pay Hotel Tax, damages, interest, penalties, and attorneys' fees to the Class for hotel room transactions that were booked through a Defendant for occupancy of hotel rooms within the Class jurisdictions prior to and including May 16, 2011; (ii) whether the Plaintiffs are entitled to additional recoveries based on Breakage as defined below, cancellation fees and extra person fees; and (iii) whether the Plaintiffs are entitled to additional recoveries based on the taxable amount(s) being different than the Room Rate (as defined herein) after May 16, 2011;

WHEREAS, the City of Cartersville, as one of the lead Plaintiffs and Class Representatives in the Lawsuit believe that the terms of the partial settlement set forth in the attached Class Partial Settlement Agreement are fair, reasonable and adequate; and

NOW, THEREFORE, BE IT RESOLVED, that the City of Cartersville agrees and approves the attached Class Partial Settlement Agreement, and hereby authorizes that the Mayor and City Clerk be authorized to execute the Class Partial Settlement Agreement.

ADOPTED this the 5th day of April 2012.

/s/ <u>Matthew J. Santini</u>
Matthew J. Santini
Mayor

ATTEST:

/s/ <u>Connie Keeling</u>
Connie Keeling
City Clerk

Mayor Santini stated that there were two items to be added to the agenda. A motion to add the items to the agenda was made by Council Member Pruitt and seconded by Council Member Tonsmeire. Motion carried unanimously. Vote 4-0

G. Added Item

1. Interconnection and Power Exchange Agreement with Aquafil USA

Don Hassebrock, Assistant Electric Superintendent stated that this Interconnection and Power Exchange Agreement between the City of Cartersville and Aquafil USA is to authorize and outline conditions to which Aquafil may connect a solar generation system. Mr. Hassebrock stated that the customer wishes to make this system active the week of April 9, 2012 to meet certain filing deadlines attached to government rebates and recommended approval.

A motion to approve the agreement with Aquafil USA was made by Council Member Pruitt and seconded by Council Member Tate. Motion carried unanimously. Vote 4-0

2. 2012 Application for Emergency Solutions Grants (ESG)

Sam Grove, City Manager stated that this is an application by the Homeless Shelter Action Committee for the 2012 Application for Emergency Solutions Grant. Mr. Grove recommended approval.

A motion to approve the 2012 Application for Emergency Solutions Grants was made by Council Member Tate and seconded by Council Member Tonsmeire. Motion carried unanimously. Vote 4-0

A motion to adjourn the meeting was made by Council Member Pruitt and needing no second. Motion carried unanimously. Vote 4-0

Meeting Adjourned

/s/ ____________________________
Matthew J. Santini
Mayor

ATTEST:

/s/ ______________________________
Connie Keeling
City Clerk