

**City Council Minutes
May 18, 2021**

Orangeburg City Council held its regularly scheduled meeting on Facebook Live via Zoom on Tuesday, May 18, 2021 at 6:00 PM with Mayor Michael C. Butler presiding.

PRESENT:

**Michael C. Butler, Mayor
Dr. Kalu Kalu**

PRESENT BY TELEPHONE:

**Bernard Haire
Jerry Hannah
L. Zimmerman Keitt
Sandra P. Knotts
Richard F. Stroman**

Mayor Butler called the meeting to order by roll call of Councilmembers.

A motion was made by Councilmember Keitt, seconded by Councilmember Stroman to approve the May 4, 2021 City Council minutes. The motion was unanimously approved by roll call vote.

A virtual appearance was made by Ms. Sonyia C. Turner, Project Manager and Mr. Rory Dowling with University of North Carolina/Development Finance Initiative (UNC/DFI) to update Council on the Railroad Corner Project and introduce the Architect Firm.

The DFI partners with local governments to help them attract private investors for transformative projects by providing specialized finance and real estate development expertise. The DFI Pre-development Process which includes site analysis, market analysis, financial analysis, and public interests. They have examined the current conditions and looked at the market analysis. The site analysis is just beginning, and the public engagement will be ongoing through the fall. The financial analysis will be finished this fall with a private development partner brought on in the winter of 2022. Several trends identified during their site visit show the City has been active on the edges of the downtown and identified vacancies where the City has focused investment which shows the commitment to revitalization. DFI believes there is a case for investment due to a few factors. There are surrounding investments, the potential for university collaboration, interest at local and state levels, case studies of similar projects done successfully, and positive public engagement.

According to the 358 responses to their online survey and the public input meetings held virtually, 77% of respondents said the Railroad Corner site was important and 65% said the history of the site was important. Respondents want to see college-friendly activities, dining, entertainment/recreation, a museum, and a theater. This group also saw the history as important with a common theme of restoring the existing buildings, specifically the State Theater. The challenges that were noted are the railroad tracks, pedestrian safety, and parking.

Councilmember Haire asked, "There must be a certain number in an area before movie theaters will consider locations. In your discussions with the public, did you explain what attracts a theater to a community?"

Ms. Turner responded, "At this phase of our analysis, we prioritized hearing the interests of the residents. We did not get into the specifics of how that would work or look."

Mr. Dowling added, "Part of our financial analysis going forward is looking at the adaptive or potential use of that structure and what that entails from the standpoint of attracting a tenant. If that facility becomes a theater again, it would more than likely be a smaller community theater potentially with an education component tied to it."

Councilmember Keitt asked for the timeline of seeing something happening on the site.

Ms. Turner responded, "Our goal is to have some site plans and conceptual designs by the end of this summer or the beginning of the fall to share with Council and the community. It will be 2022-2023 before the public starts to see buildings materialize."

Mr. Dowling added, "We want it to reflect what the community wants. Part of the reason we cannot do demolition immediately is there is money in each of those buildings through the abandoned building tax credit in South Carolina. If the buildings are demolished that tax credit goes away unless it is passed on to the next property owner. We want to preserve those tax credits."

Ms. Turner stated, "The guiding public interests help ensure the project meets the community's designated goals and values. They also serve as input for criteria to select the development partner."

The Railroad Corner Redevelopment should have the following guiding public interests:

- Provide a catalytic mixed-use development that connects downtown to the universities and serve as a gateway to downtown.
- Respect the historical significance and context of the site and integrate this history into the development.
- Consider options for preserving the State Theater building.
- Incorporate engaging street level uses attractive for students and the community.
- Enhance walkability to increase pedestrian activity from the universities to the Railroad Corner and along Russell Street.
- Optimize public investment and maximize private investment."

A motion was made by Councilmember Kalu, seconded by Councilmember Hannah to accept the guiding public interests for the Railroad Corner Redevelopment as presented by UNC/DFI. The motion was unanimously approved.

Ms. Turner introduced Mr. Malcolm Davis of the architecture firm Perkins and Will that will be performing the predevelopment site planning and conceptual design services for the Railroad Redevelopment.

Mr. Davis addressed Council, he stated, "We are in North Carolina, but also a part of a national organization. We are the original stewards of the legacy of African American architect Phil Freelon. We have a keen interest in the cultural landscape and creating place around important cultural and historic stories. We have established a firm-wide reputation for doing this in the Carolinas region and throughout the nation. At the root of all the projects is the story and we are very interested in the story that informs this important history in Orangeburg."

Mr. Grant Davis of Mauldin and Jenkins, CPAs & Advisors addressed Council regarding the audits for the City of Orangeburg and the Department of Public Utilities. He stated, "The purpose of today's meeting is to overview the annual financial report, give an audit opinion, go over the financial statement highlights and any other required communications and answer any questions you may have.

Our firm spent over 103,000 hours annually to governments which make up 30% of our business with 550 state and local governments. We have 138 cities of which 20 are in South Carolina and 123 Water and Sewer Districts. I am happy to say that Mauldin and Jenkins are now a partner with GASB Chairman.

The City and DPU are responsible for the financial statements and we are to express an opinion. We use the auditing standards of GAAS and GAS. The audit has a clean opinion or unmodified which is the best you can get.

The MD&A which is the Management Discussion and Analysis on pages 4-12 of the City and 4-11 of DPU; if you read anything, please read these sections. It covers financial highlights, overview of the structure of the financials, comparative analysis, debt and capital asset analysis and economic factors which may impact next year's budget.

The Financial Statements or Balance sheet are shown on page 13 including DPU since DPU is a fund of the entire City. The entire City as a whole has:
\$431 million in total assets

\$67 million in cash
 \$35.6 million in investments
 \$11.6 million in receivables
 \$305 million in capital assets
 Overall total capital assets are up \$27.7 million from 2019
 \$128 million in total liabilities; up \$22 million from 2019
 \$303 million for the City's net position, increase in equity from 2019 up 3%

The General Fund Financial Statements are on page 15 and includes \$11.6 million in assets, \$3.1 million in liabilities and has an \$8.5 million fund balance which is a decrease from 2019 in the amount of approximately \$600,000. Revenues totaled \$10.9 million which was down \$175,000 from 2019. There were \$18.5 million in expenditures up \$1.2 million from 2019. There was a \$600,000 decrease in the Fund Balance which equates that the City used \$600,000 of their fund balance in this FY.

The General Fund Budget which is listed on pages 67 and 72-77 shows budgeted revenues of \$10.8 million, actual revenues of \$10.8 million and a revenue variance of \$23,000 which is very good.

The Budgeted Expenditures were \$17.9 million, and the actual expenditures were \$18.5 million showing a budgeted variance of \$600,000.00 which is mostly personnel and insurance.

There were budgeted other items of \$7.1 million and actual other items were \$7.0 million leaving a variance of \$100,000.

On page 10 there is a revenue graph showing what makes up the revenues ending on 9/30/2020. As you can see the majority are Property Taxes and Other Taxes. On page 11, there is an expenditure graph showing the expenditures as of 9/30/2020. As you can see the majority is made up of Public Safety, Public Works and Parks & Recreation. Page 12 shows the net change in Fund Balance since 2016.

On page 19 of the audit are the financial statements of the Business Type funds. DPU is showing \$371 million and \$57.7 million is cash and \$32.5 is investments. There are \$94 million in liabilities of which \$68 million are long term and DPU has a net position of \$274 million.

In Other Business Type Funds, the Airport, Hillcrest, and the Pro Shop; they have \$5.6 million in assets and no cash. There are \$1.9 million in liabilities and \$3.7 million net position which is a \$430,000 decrease from 2019.

DPU's operating revenues are down from 2019 \$2.5 million or 2% and operating expenses are down from 2019 \$1.5 million or 2%. In the Business Type Funds, operating revenues are down \$150,000 or 17.5% and operating expenses are down \$448,000 or 23%

In the DPU Financial Statements on pages 21-22 of the audit, DPU's operating cash flows are up \$4.6 million or 17% and cash used for non-capital are up \$166,000 or 3%. Cash used for capital is down \$10 million. DPU is committed to spend \$20 million in projects in the upcoming years. The Compliance Report is listed on page 91-92. This contains one compliance report and is called a yellow book report. No material weaknesses or significant deficiencies or noncompliance. The Internal Control items are not worth mentioning because the City has already handled that and have plans in place for this issue and we have met with staff involved and feel this is a moot issue at this point.

There are other required communications that we are required to present during the audit process and their results. There are significant areas addressed in our reports such as judgements and estimated, audit adjustments and independence. This is a clean opinion. We have no difficulties whatsoever; no uncorrected misstatements and we are independent of the City as required by Government Auditing Standards. There are new Financial Reporting GASB Standards coming up and they are as follows:

- #87 Lease Accounting (2022)
- #90 Majority Equity Interests (2020)
- #91 Accounting for Conduit Debt (2022)
- #93 Replacement of Interbank Offered Rates (2022)

#94 Public-Private and Public-Public Partnerships (2023)

#96 Subscription Based IT Arrangements (2023)

#97 Component Unit Criteria (2022)

I would be happy to answer any questions you may have at this time.”

Councilmember Hannah asked, “In the past has the City and DPU’s audit been together?”

Mr. Grant replied, “We have always had those separate. DPU is just a fund of the City. We still did issue separate reports for both and we also issued some that are combined. There was no change in procedures.”

Councilmember Hannah asked, “How did our town compare to others in similar size?”

Mr. Grant replied, “I get that question a lot. It is hard to say. If you are comparing apples to apples, it is hard to find another apple. If you look specifically at the General Fund, it is very liquid. There is 4 ½ months of fund balance which is a good place to be. It is very healthy and DPU is very healthy. The only concern of the overall operations is the Golf Course. Most communities that have golf courses have a problem financing operation. It is not unique to Orangeburg. You must decide if taxing the residents is beneficial in keeping a golf course. Green fees and carts do not cover your operations. Very few municipal golf courses have sustainable operating cash flows. If you look at the chart, I gave you, in 2017 the prior auditors left a huge balance on the books of what the golf course owed the General Fund. It was our opinion that this was not collectible. We ended up having to write it off the General Fund balance. Each year we must look at this. There are some difficult decisions that need to be made in the future on this item.”

Administrative Director Josh Nexsen of DPU addressed Council regarding Councilmember Hannah’s question on separate audits. He stated, “DPU issues revenue bonds and the City’s General Fund Issues Government Obligation Bonds and that is the primary reason why there are two different sets.”

Mayor Pro Tem Kalu asked, “Thank you for your presentation, you stated that this is following GAAP and there is no opinion on the financial statements?”

Mr. Davis stated, “There are recommendations on Cyber Security and those have been addressed. The City has spent money in this area, and it is resolved.”

A motion was made by Mayor Pro Tem Kalu, seconded by Councilmember Keitt to approve the City of Orangeburg and the Department of Utilities audit for FY ending 9/30/2020. The motion was unanimously approved by roll call vote.

City Administrator Evering addressed Council concerning the first reading of Ordinance repealing Sections 4, 5, 6, 7, 8, 9, 10, and 11 of City Ordinance Number 2021-02 and amending the definition of “Gathering” of Section 1. (4) and Section 12, titled “Gathering Civil Infraction”. He stated, “As you all know the Governor issued an Executive Order last week that essentially killed portions of our current face covering ordinance. We asked Mr. Walsh to draft an ordinance that would put our face covering ordinance in compliance with the Governor’s Executive Order. Just for context, there has been a great deal of confusion not just unique to Orangeburg but around the country in general about what authority controls. We have had some issues concerning enforcing this ordinance.”

City Attorney Walsh addressed Council, he stated, “As you may recall in our previous discussions, we were trying to determine how we could permit the City to authorize various events that DORA was planning and the use of our ball fields. The initial discussion was that we would authorize it and the City Administrator would set guidelines to approve different events. A few days after that, the governor issued an Executive Order which plainly stated that it preempted and declared invalid any local regulation or ordinance that would require the use of face coverings. I have communicated with the Municipal Association general council and have done my own research on the Attorney General opinions which all indicate that the Governor’s Executive Orders which he issues under authority under the legislature would preempt any local regulation under the present circumstance that would require face coverings. That is because with vaccines and other

precautionary measures, the numbers of COVID-19 positive tests and hospitalizations have substantially been reduced. The City Administrator, the Manager of DPU and I met after the Executive Order and developed some suggestions. Then after that, the Center for Disease Control (CDC) released more regulations stating that persons that have been vaccinated do not have to use face coverings. We are presenting to Council tonight for consideration an ordinance and a resolution which go hand in hand. The ordinance repeals all the sections of our present ordinance that would require face coverings. The Governor's Executive Order did not change his authority that was granted to local government to enforce any large gathering. I will read the change we are proposing on the gathering section. "Subject to the below occupancy and numerical limitations and exceptions, a "gathering" shall not include activities or property or facility of the City of Orangeburg or properties or facilities of any organization receiving funds from the City of Orangeburg at which persons in attendance are wearing a protective mask or similar protective face covering and exercising social distancing by maintaining six feet of separation. That includes the facilities of the City, any of our agencies, the Departments and would also include DORA. This is the second part, a gathering shall include any planned indoor or outdoor events in which the number of employees, customers, patrons, suppliers, vendors, businesses, or other persons present or in attendance at the gathering shall exceed 50% of the location's occupancy as determined by the City of Orangeburg Fire Code Official or 250 persons whichever is less unless the event receives the prior approval of City Council. That means that even DORA or if the City has an event exceeding 250 or 50% of the location's occupancy, they will have to seek approval from City Council. This is a resolution under the pending ordinance which states that pending the first, second and third reading of the ordinance, that you direct law enforcement not to enforce the use of face coverings and grants the Administrator, Assistant Administrator and Department Heads the authority to require wearing of face coverings in City facilities."

Councilmember Haire asked, "Currently in South Carolina, 38% of the population has one dose of the vaccine and 31% are fully vaccinated. I hear what has been ordered by the Governor, but I am afraid that we will get into a predicament with the variants of the virus spreading. Does home rule have any authority for a City?"

Attorney Walsh stated, "Home rule has one little section that says a local authority is limited and subject to the state law. It is limited by other state laws that would be a statewide application. The Attorney General's opinion stated the Governor's Executive Order under his emergency authority which is statewide and preempts the local ordinance or regulation. That has not been decided by any court. It is simply the Attorney General's opinion. It is the opinion of the general counsel of the Municipal Association. In the Governor's Executive Order, he refers to a recent study published by the Medical University of South Carolina that approximately 60% of South Carolinians are immune from COVID19 whether by virtue of having received a vaccine or because of natural immunity."

Councilmember Haire stated, "In South Carolina, we are 67-68% vaccinated and we say we have immunity; I have problems with that."

Councilmember Hannah stated, "At last night's Orangeburg County meeting they stated that Orangeburg County is under 40% vaccinated."

Attorney Walsh stated, "It is my understanding that Orangeburg County will let their mask ordinance expire."

Mayor Pro Tem Kalu stated, "The CDC has stated if you received the full vaccination dose, you are not required to wear a mask. Based on the law, the Governor supersedes local government."

Councilmember Keitt stated, "We need to be a committee of one. Everyone we meet we need to announce about the vaccine. Some of them will take it and others will not. If we do not know if someone has been vaccinated, we need to wear our mask. This is about all we can do."

Mayor Butler asked, "If the Home rule does not give us authority, I do not know how we would be able to enforce wearing face coverings. We can only stress precautionary measures. What does the CDC say about wearing a mask outside?"

Mayor Pro Tem Kalu stated, "The CDC states if you are fully vaccinated and you are with others that are fully vaccinated, you do not have to wear a face covering outside."

Attorney Walsh stated, "A problem you may have at Parks & Recreation ball fields is if an individual is not wearing a mask and you tell them they have to wear a mask. They can tell you they are vaccinated."

Mayor Butler stated, "We have had a few issues with this already. It can lead to altercations for our employees."

Councilmember Knotts asked, "When does our current ordinance expire?"

Attorney Walsh stated, "It does not expire, we did a permanent ordinance."

Mayor Butler asked, "If we adopt this tonight, it goes into effect and eliminates, the old ordinance?"

Attorney Walsh stated, "It would be the first reading. Under the pending ordinance document, we will direct law enforcement not to enforce our face covering ordinance. But in our facilities, we can require face coverings."

A motion was made by Mayor Pro Tem Kalu, seconded by Councilmember Keitt to accept first reading of Ordinance repealing Sections 4, 5, 6, 7, 8, 9, 10 and 11 of City Ordinance Number Sections 2021-02 and amending the definition of "Gathering" of Section 1. (4) and Section 12, titled "Gathering Civil Infraction". The motion failed 3-3-0. Councilmembers Haire, Stroman and Hannah voted against the motion. Councilmember Knotts abstained.

The Resolution authorizing the City Administrator, Manager of the Department of Public Utilities and the Department Head or Director of all Departments and Divisions of the City of Orangeburg and the Department of Public Utilities to require persons entering the buildings and facilities of the City to wear a protective mask or similar face covering before entry and directing that the law enforcement agencies of the City of Orangeburg cease the enforcement of Sections 4, 5, 6, 7, 8, 9, 10 and 11 of Ordinance Number 2021-02 was not voted on since the Ordinance did not pass.

Administrative Director Josh Nexsen addressed Council concerning an introduction to the Department of Public Utilities Prepaid Billing Guidelines. He stated, "The Department of Public Utilities intends to offer prepaid billing to all residential customers in the next few months and would like City Council's consideration of this program. Key benefits for customers include 1.) fewer service fees with frequent interruption for non-payment, 2.) reduction or elimination in the need for utility deposits for customers who choose to prepay and 3.) empowerment of the customer to manage their utility usage and possibly incentivize conservation. We are currently piloting the prepaid billing program with a group of employees who all have multiple services. To date, the pilot program has gone well with very few issues. We have a target date in the next 3-6 months. We will bring it back to Council before implementing it. The last thing I wanted to note is that we have put in a payment kiosk in the lobby that accepts credit cards, bank accounts or cash."

DPU Manager Harley stated, "I want to point out that we wanted to offer this as an option for customers to elect to have it. It will not be forced on anyone. This is something that is starting to become more popular across the country. As Mr. Nexsen said this will allow customers to be more conservative, if they wish on how they use resources."

Councilmember Hannah asked, "Does the kiosk accept Cash App?"

Administrative Director Nexsen stated, "I do not know, but will check on it and let you know."

Councilmember Keitt asked, "Have customer payments due to COVID-19 on delinquent account improved?"

Administrative Director Nexsen stated, "The payments on delinquent accounts have improved a great deal. I do not know if it is because the economy is opening, people are getting back to work

or if its relief that is provided through some of the federal grants. I will give you an update on that as well.”

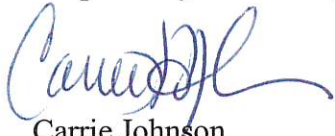
Mayor Pro Tem Kalu asked, “With the Prepaid program, do customers receive alerts?”

Administrative Director Nexsen stated, “Alerts are sent out by emails.”

A motion was made by Mayor Pro Tem Kalu, seconded by Councilmember Keitt to go into Executive Session concerning Contractual Matters, a. Purchase of property for rehabilitation S.C. Code Sec. 30-7-70 (a) (2) and b. Synergy Utilities. Economic Development and Contractual Matter S.C. Code Sec. 30-4-70 (a) (2) & (5) a. Proposed Contract Negotiations – Project House Gas Line Extension and Legal Matter: S.C. Code Sec. 30-7-70 (a) (2) a. Covid-19 and employee leave time. The motion was unanimously approved by roll call vote.

There being no other business, the meeting was adjourned.

Respectfully submitted,


Carrie Johnson
City Clerk

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