

**CITY OF PIKEVILLE  
BOARD OF COMMISSIONERS  
SPECIAL MEETING MINUTES  
January 26, 2011 AT 4:00 P.M.**

The Board of Commissioners for the City of Pikeville met in a special called session on Wednesday, January 26, 2010. The meeting was held in the City Hall Conference Meeting Room located at 118 College Street, Pikeville, Kentucky.

(1) There being a quorum present, Mayor Pro-Tem Jimmy Carter called the meeting to order at 4:00 p.m. Commission Members present at roll call were as follows:

COMMISSIONER:            GENE DAVIS  
                                     BARRY CHANEY  
                                     DALLAS LAYNE  
                                     JIMMY CARTER

MAYOR:                      FRANKLIN D. JUSTICE, II            Absent

(2) The minutes for the previous regular meeting held on January 10, 2011 were in each Commission Member's agenda package. There being no additions or corrections, Commissioner Chaney made the motion to approve the minutes as prepared. Commissioner Davis seconded the motion. Mayor Pro-Tem Jimmy Carter called for discussion. There being none, the motion carried unanimously. 4-0.

(3) The City Manager Donovan Blackburn requested the approval to pay city bills lists in the total amount of \$81,301.90. Commissioner Davis made the motion to approve. Commissioner Chaney seconded the motion. Mayor Pro-Tem Carter called for further discussion. There being none, motion passed unanimously. 4-0.

(4) Consider a request for authorization to submit a funding application and for the Mayor to execute all document related to the Department of Homeland Security (DHS) Federal Emergency Management Agency's (FEMA) Fiscal Year 2010 Fire Prevention and Safety Grants program. The funding request includes training for fire and arson investigation with no match necessary. Commissioner Chaney made the motion to approve. Commissioner Layne seconded the motion.

Mayor Pro-Tem Carter called for comments. There being none, the motion passed unanimously. 4-0.

(5) City Manager Donovan Blackburn made the request to review, discuss and award the submitted bid for the construction contract in the amount presented for construction work that shall be completed for the Texas Roadhouse site development and Item #6 development for Justice Way. The Texas Roadhouse site will include everything leading up to having the area ready including the parking lot, the lights, the blacktop, etc. **Consider** authorizing the mayor to sign and execute said construction contract as presented and issue the Notice to Proceed for said work. City Engineer Jack Sykes was present and recommended the bid be awarded to RL Construction. RL Construction was the overall low bidder coming in at \$821,830.00. The bid consist of two projects. Project one, Justice Way, was bid at \$287,700.00 and project two, Texas Roadhouse, was bid at \$534,130.00. Item #5 Texas Roadhouse at \$534,130.00 is the motion we are requesting first. Commissioner Chaney made the motion to approve. Commissioner Davis seconded the motion. Mayor Pro-Tem Carter called for comments. Mayor Pro-Tem Carter asked if **each** of these were bid out separately. City Manager Donovan Blackburn explains that they **were** bid out separately. “The request of item #5 on your agenda is the award of \$534,130.00. Again, the total bid price \$821,830.00. There were two separate items and there were two separate prices. We had to bid them separately because one is taxable and the other is non-taxable. The request being to award RL Construction the overall contract of \$821,830.00.” Mayor Pro-Tem Carter called for further comments. There being none, the motion passed unanimously. 4-0.

(6) City Manager Blackburn made the request to review, discuss and award the submitted bid for the construction contract to RL Construction in the amount of \$287,700.00, with the understanding that the overall bid price of \$821,830.00 was the lowest bid price with both projects combined, presented for construction work that shall be completed for the Justice Way street development and to authorize the mayor to sign and execute said construction contract as presented and to issue the Notice to Proceed for said work. Commissioner Layne made the motion to approve. Commissioner Chaney seconded the motion. Mayor Pro-Tem Carter called for comments. There being none, the motion passed unanimously. 4-0.

(7) Consider a request for the reading and passage of an emergency ordinance #0-2011-004 amending Chapters 115.07 and 115.12 of the Occupational License Fee Ordinance related to penalties for underestimating tax when an extension to file is granted. City Attorney Rusty Davis was present and read the ordinance aloud. He explains that all this ordinance does is change the way people estimate their taxes, they estimate their taxes 75 **percent** of what they are. Commissioner Chaney made the motion to approve. Commissioner Layne seconded the motion. Mayor Pro-Tem

**Carter called for comments. There being none Mayor Pro-Tem called for roll call. The motion passed unanimously. 4-0.**

**AN ORDINANCE AMENDING CHAPTERS  
115.07 AND 115.12 OF THE OCCUPATIONAL LICENSE  
FEES ORDINANCE RELATING TO PENALTIES FOR  
UNDERESTIMATING TAX WHEN AN  
EXTENSION TO FILE IS GRANTED**

**ORDINANCE NO. 0-2011-004**

**WHEREAS**, the Commission desires to further define/explain the taxpayers that are subject to penalty for failing to properly estimate tax due while filing a Application for Extension of Time to file net profits license tax returns.

**NOW, THEREFORE, BE IT ORDAINED THAT** Chapter 115.07 "EXTENSIONS" is amended to read as follows:

**§ 115.07 EXTENSIONS.**

(A) The city, or its authorized agent, may grant any business entity an extension of not more than six (6) months, unless a longer extension has been granted by the Internal Revenue Service or is agreed to by the city and the business entity, for filing its return, if the business entity, on or before the date prescribed for payment of the occupational license tax, requests the extension and pays the amount properly estimated as its tax.

(B) If the time for filing a return is extended, the business shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due on the return, but not been previously paid, from the time the tax was due until the return is actually filed and the tax paid to the city. A fraction of a month is counted as an entire month.

(Ord. 0-2008-002, passed 1-14-08) Penalty, see § 115.12 and 115.99

(C) The Penalty assessed a taxpayer under § **115.12** shall not be assessed on the difference between the tax due and ~~properly estimated tax paid by the taxpayer upon granting of an Extension~~ payment made with a properly filed "Application for Extension of Time to File Net Profits License Tax Return" under paragraph (A) **if the properly estimated tax is 75% or greater than the tax due.**

**§ 115.12 - Penalties**

(1) A business entity subject to tax on net profits may be subject to a penalty equal to five percent (5%) of the tax due for each calendar month or fraction thereof if the business entity:

(a) Fails to file any return or report on or before the due date prescribed for filing or as extended by the city; or

(b) Fails to pay the tax computed on the return or report on or before the due date prescribed for payment or fails to pay 75% or greater of the tax due on the return as a estimated tax pursuant to § 115.07(A). For underestimated taxes paid for an Extension, the penalty will be accessed upon the difference of the estimated tax paid and the tax computed on the return. .

(c) The total penalty levied pursuant to this subsection shall not exceed twenty- five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).

(2) Every employer who fails to file a return or pay the tax on or before the time prescribed under Section (5) of this ordinance may be subject to a penalty in amount equal to five percent (5%) of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).

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(3) In addition to the penalties prescribed in this section, any business entity or employer shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due, but not previously paid, from the time the tax was due until the tax is paid to the city. A fraction of a month is counted as an entire month.

(4) Every tax imposed by this ordinance, and all increases, interest, and penalties thereon, shall become, from the time the tax is due and payable, a personal debt of the taxpayer to the city.

(5) The city may enforce the collection of the occupational tax due under section (3) of this ordinance and any fees, penalties, and interest as provided in subsections (1), (2), (3), and (4) of this section by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the city shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this ordinance.

(6) In addition to the penalties prescribed in this section, any business entity or employer who willfully fails to make a return or willfully makes a false return, or who willfully fails to pay taxes owing or collected, with the intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.

(7) Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with, any matter arising under this ordinance of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, shall be guilty of a Class A misdemeanor.

(8) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by the city and required to be filed with the city by the provisions of this ordinance, or by the rules of the city or by written request for information to the business entity by the city.

(9) Any person violating the provisions of section (11) of this ordinance by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than five hundred dollars (\$500) or imprisoned for not longer than six (6) months, or both.

(10) Any person violating the provisions of section (11) of this ordinance by divulging confidential taxpayer information shall be fined not more than one thousand dollars (\$1000) or imprisoned for not more than one (1) year, or both. This ordinance shall be effective for the 2010 tax year for those taxpayer filing requests for extensions for the 2010 tax year and thereafter.

The ordinance shall be in full force and effect after it is passed and published as required by law. The above ordinance

was given a first reading this \_\_\_ day of \_\_\_\_\_, 2011.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Commissioner \_\_\_\_\_ moved for the adoption of the forgoing ordinance.

Commissioner \_\_\_\_\_ seconded the motion.

Upon roll call, the votes were as follows:

	Yes	No
FRANK JUSTICE, MAYOR	_____	_____
GENE DAVIS, COMMISSIONER	_____	_____
DALLAS LAYNE, COMMISSIONER	_____	_____
JIMMY CARTER, COMMISSIONER	_____	_____
BARRY CHANEY, COMMISSIONER	_____	_____

The Mayor declared the within ordinance adopted.

FRANKLIN D. JUSTICE, II MAYOR

ATTEST:

CITY CLERK

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(8) Consider a request for a 1<sup>st</sup> reading of an ordinance #0-2011-003 naming various un-named streets located off of Fife Fork as “Red Barn Road”, “West Doc’s Way”, and “East Doc’s Way”. No further action was required at this time. The second reading will take place at next scheduled meeting.

(9) Consider request for a 2<sup>nd</sup> reading and adoption of ordinance # 0-2011-001 naming an un-named street located off Thompson Road as “Justice Way”. Commissioner Layne made the motion to approve. Commissioner Chaney seconded the motion. Mayor Pro-Tem Carter called for comments. There being none, the motion passed unanimously. 4-0.

AN ORDINANCE NAMING UNAMED STREETS  
OFF THOMPSON ROAD RUNNING THROUGH THE CITY DEVELOPMENT  
BESIDE THE UNITED STATES POST OFFICE & BEHIND FIRE STATON #3  
BY THE NAME OF “JUSTICE WAY”

ORDINANCE NO. 0-2011-001

**BE IT ORDAINED BY THE CITY OF PIKEVILLE** that the unnamed street leading off of Thompson Road running through the city development starting at 37o - 51N by 82o - 54W to be named “JUSTICE WAY”.

That this ordinance shall be in full force after it is passed and published as required by law.

The above ordinance was given first reading this 10<sup>th</sup> day of January 2011. At Pikeville, Kentucky, this ordinance was given a second reading on the 26<sup>th</sup>, day January of 2011.

Passed this 26<sup>th</sup> day of January, 2011.

Commissioner \_\_\_\_\_ moved the adoption of the foregoing Ordinance.

Commissioner \_\_\_\_\_ seconded the motion.

Upon call of the roll, the votes were as follows;

	YES	NO
FRANKLIN D. JUSTICE, II MAYOR	_____	_____
JAMES A. CARTER, COMMISSIONER	_____	_____
EUGENE W. DAVIS, COMMISSIONER	_____	_____
DALLAS LAYNE, COMMISSIONER	_____	_____
BARRY CHANEY, COMMISSIONER	_____	_____

The Mayor declared the within Ordinance adopted.

\_\_\_\_\_  
**FRANKLIN D. JUSTICE, II, MAYOR**

**ATTEST:**

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**MELANIE STEVENS, CITY CLERK**

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**(10) Consider a request for a 2<sup>nd</sup> reading and adoption of ordinance #0-2011-002 amending the City of Pikeville’s 2010-2011 operating budget. Commissioner Chaney made the motion to approve. Commissioner Layne seconded the motion. Mayor Pro-Tem Carter called for comments. There being none, the motion passed unanimously. 4-0.**

**ORDINANCE AMENDING THE FISCAL BUDGET  
FOR THE 2010-2011 FISCAL YEAR**

**ORDINANCE NO. 0-2011-002**

**WHEREAS**, certain additional information has come to the attention of the Finance Department which necessitates the amendment of the 2010-2011 fiscal year budget to reflect certain increases and decreases to revenues and expenditures.

**NOW, THEREFORE** be it ordained by the City of Pikeville that the fiscal budget for the 2010-2011 fiscal year is hereby amended to reflect an increase and or decrease of revenues and /or expenditures as reflected in the attached exhibit entitled “Budget Amendments”.

The above ordinance was give first reading on January 10<sup>th</sup>, 2011.

The ordinance was given second reading on \_\_\_\_\_. The ordinance shall be in full force and effect immediately after it is passed and published as required by law.

**Passed**, this \_\_\_\_ day of \_\_\_\_\_, 2011.

Commissioner \_\_\_\_\_ moved the adoption of the foregoing ordinance. Commissioner \_\_\_\_\_ seconded the motion.

Upon roll call, the votes were as follows:

	<u>YES</u>	<u>NO</u>
FRANKLIN D. JUSTICE, II MAYOR	_____	_____
JAMES A. CARTER, COMMISSIONER	_____	_____
EUGENE W. DAVIS, COMMISSIONER	_____	_____
DALLAS LAYNE, COMMISSIONER	_____	_____
BARRY N. CHANEY, COMMISSIONER	_____	_____

The Mayor declared the within Ordinance adopted.

\_\_\_\_\_  
**FRANKLIN D. JUSTICE, II, MAYOR**

**ATTEST:**

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**MELANIE STEVENS, CITY CLERK**

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**(11) Consider a request for the adoption of a resolution adopting by-laws for the Marion Branch Development Advisory Board and to authorize the mayor to sign and execute said resolution. Commissioner Chaney made the motion to approve. Commissioner Davis seconded the motion. Mayor Pro-Tem Carter called for comments. City Manager Donovan Blackburn adds that there is also an advisory board to advise the commission for Marions Branch. The advisory board has the Mayor of Pikeville, the city manager, one member of the commission selected by the Mayor, one city resident at large, and one county resident at large. Their first discussion is to be set at the end of April. Mayor Pro-Tem called for further comment. There being none, the motion passed unanimously. 4-0.**

A RESOLUTION ADOPTING BYLAWS FOR THE MARION BRANCH  
DEVELOPMENT ADVISORY BOARD

WHEREAS, the Pikeville City Commission has a significant interest and investment in the development of Marion Branch; and

WHEREAS, the 2005 City of Pikeville Comprehensive Plan did outline the need for the city to annex and develop the Marion Branch property for industrial and middle income residential development; and

WHEREAS, the City of Pikeville has purchased the Marion Branch property from the Airport Board with the intent to develop the site in accordance with the City Comprehensive plan; and

WHEREAS, the City of Pikeville has reviewed the proposed bylaws for the creation of a Marion Branch Development Advisory Board;

NOW THEREFORE, Be IT RESOLVED, that the Pikeville City Commission does hereby accept and approve the proposed By-laws for the Marion Branch Development Advisory as submitted and orders the immediate enactment of said board as outlined in the by-laws.

Passed this 26<sup>th</sup> day of January 2011.

Commissioner \_\_\_\_\_ moved to adoption of the foregoing resolution.

Commissioner \_\_\_\_\_ seconded the motion.

Upon roll call, the votes were as follows:

	<u>YES</u>	<u>NO</u>
DALLAS LAYNE, COMISSIONER	___	___
EUGENE W. DAVIS, COMMISSIONER	___	___
JAMES A. CARTER, COMMISSIONER	___	___
BARRY CHANEY, COMMISSIONER	___	___
FRANKLIN D. JUSTICE, II, MAYOR	___	___

The Mayor declared the within Resolution adopted.

\_\_\_\_\_  
FRANKLIN D. JUSTICE, II, MAYOR

ATTEST:

\_\_\_\_\_  
MELANIE STEVENS, CITY CLERK

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**(12) Consider a request for the adoption of a resolution allowing Pikeville Medical Center to locate temporary office trailers on their property. Commissioner Davis made the motion to approve. Commissioner Layne seconded the motion. Mayor Pro- Tem Carter called for comments. There being none the motion passed unanimously. 4-0.**

RESOLUTION AUTHORIZING THE ISSUANCE OF A PERMIT



TO LOCATE TEMPORARY MOBILE OFFICE TRAILERS UPON THE PIKEVILLE MEDICAL CENTER PROPERTY FOR A PERIOD OF TIME NOT TO EXCEED TWO YEARS.

WHEREAS, the Pikeville Medical Center is in the process of constructing additional office space and a parking garage upon its property;

WHEREAS, until its office space and parking garage are completed, the hospital will be in desperate need of office space to conduct essential medical services for the community;

WHEREAS, the Commission has determined that the public’s need for quality medical care justifies the need of the Pikeville Medical Center for temporary permission to locate mobile office buildings upon its property to conduct essential medical services for the community.

NOW, THEREFORE, be it resolved by the Commission for the City of Pikeville that the Building Inspector is authorized to issue a temporary permit to the Pikeville Medical Center allowing the location of mobile office buildings upon its Riverfill and Harold Branch properties for the purpose of providing medical services, said permits to expire no later than 2 years from the date hereof.

Adopted this \_\_\_ day of \_\_\_\_\_, 2011.

Commissioner \_\_\_\_\_ moved for the adoption of the foregoing resolution.

Commissioner \_\_\_\_\_ seconded the motion.

Upon roll call, the votes were as follows:

	<u>YES</u>	<u>NO</u>
FRANK JUSTICE, II MAYOR	_____	_____
GENE DAVIS, COMMISSIONER	_____	_____
DALLAS LAYNE, COMMISSIONER	_____	_____
JIMMY CARTER, COMMISSIONER	_____	_____
BARRY CHANEY, COMMISSIONER	_____	_____

The Mayor declared the within resolution adopted.

\_\_\_\_\_  
FRANK JUSTICE, II, MAYOR

ATTESTED:

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City Manager Donovan Blackburn announced that tonight on the local radio station there will be a broadcast from 6 p.m. til 8 p.m. that **he** will be attending. Also, **the city manager** made **an** introduction of Al Greenefield with Pike TV.

(13) There being no further business to come before the commission, Commissioner Davis made the motion to adjourn the meeting. Commissioner Chaney seconded the motion. Mayor Pro-Tem Carter called for discussion. **There** being none, the meeting was adjourned. 4-0.

The next scheduled Regular Meeting of the City of Pikeville Board of Commissioners is February 14, 2011 at 6:00 p.m.

**APPROVED:**

\_\_\_\_\_  
**FRANKLIN D. JUSTICE, II, MAYOR**

**ATTESTED:**

\_\_\_\_\_  
**MELANIE STEVENS, CITY CLERK**