

**CITY OF PIKEVILLE  
BOARD OF COMMISSIONERS  
REGULAR MEETING MINUTES  
April 25, 2011 AT 6:00 P.M.**

The Board of Commissioners for the City of Pikeville met in a regular called session on Monday, April 25, 2011. The meeting was held in the City Hall Conference Meeting Room located at 118 College Street, Pikeville, Kentucky.

There being a quorum present, Mayor Frank Justice called the meeting to order at 6:00 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**

**MINUTES**

The minutes for the previous regular meeting held on April 11, 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 Frank Justice called for discussion, there being none the motion carried unanimously. 5-0.

**PAYMENT OF CITY BILLS**

The City Manager Donovan Blackburn requested the approval to pay city bills in the amount of \$117,171.56. Commissioner Davis made the motion to approve. Commissioner Chaney seconded the motion. Mayor Justice called for further discussion, there being none, motion passed unanimously. 5-0.

**CITY ENGINEER**

Jack Sykes and Jody Hunt were present with Summit Engineering, Inc. and submitted several requests to the commission for approval.

**April 25, 2011 Regular Meeting**

1. Consider a request to authorize payment and approve the submitted pay request #3 with R.L. Caudill Construction Inc. for \$191,064.75 for the Texas Roadhouse Site work. Commissioner Chaney made a motion to approve. Commissioner Carter seconded the motion. Mayor Justice called for comments, there being none the motion passed unanimously. 5-0.
2. Consider request to authorize payment and approve the submitted invoice #42011 with 1572 DMA DIV OF ADMIN SERVICES for \$10,000.00 for the Levee Certification Project. Commissioner Chaney made the motion to approve. Commissioner Carter seconded the motion. Mayor Justice called for comments, there being none the motion passed unanimously. 5-0.
3. Consider a request to authorize payment and approve the submitted pay request #9 with Mountain Enterprises for \$21,348.00 for the Thompson Road widening project and authorize the Mayor to sign said change order. Commissioner Carter made a motion to approve. Commissioner Layne seconded the motion. Mayor Justice called for comments, there being none the motion passed unanimously. 5-0.

### **BUSINESS FROM THE FLOOR**

**Sandy Johnson was present and wants to know if the city has a viscous dog law. She says that when she walks her dog that there is one particular house that has a dog that sits on the porch and attacks people and their animals as they walk by. She says that she and her dog have been attacked on two different occasions. City Manager Donovan Blackburn addresses Ms. Johnson by saying that we are aware of the situation and that we have been working on this for a couple of weeks now. The police department has gone down and delivered the animal ordinance to them. There has been several attacks by this pit bull so it is now a concern for us. Ms. Johnson says that her concerns remains that even if the pit bull is put on a leash, the leash is really long and even if kids are walking on the streets it could get to them. Chief Adkins responds that we did go down and talk to them and let them know that there has been complaints. If we catch it loose again, we are going to pick the dog up. Chief speaks to Ms. Sandy and says that if she sees it loose to let them know and they would go down and take a look at the situation. Mayor adds that anytime you have a pit bull or Rottweiler they have the potential to be mean. Any breed of dog has the potential, but these bigger breeds are scarier. People just need to be respectful to other people.**

**Reed Potter addressed the commission in regards to an apartment complaint located at 110 5<sup>th</sup> Street. There are a bunch of complaints with this property.**

The grass has not been cut this year. Every time there is a drug bust it happens right there in front of his house. This particular unit always has problems. I don't remember there ever being a drug bust when the city police wasn't right in front of my house. Commissioner Carter comments, "Trust me, I feel your pain. I am dealing with some of the same issues in my neighborhood." City Manager Donovan Blackburn responds that the city commissioners had recently enacted a nuisance ordinance. When one tenant moves out and another is getting ready to move in, the place has to meet certain standards. With the new ordinance in place, it forces them to fix their property up in order to be in compliance with federal, state and local regulations and standards. City Attorney Russell Davis comments that when there is a landlord that we deal with a lot, then it is fairly difficult to get them to fix their place up. Mr. Blackburn says this particular property is under that process. Until they fix the property up they are still going to fall under the environmental nuisance along with the landlord compliance process. Mr. Davis says that if you look at the criminal background also on this address you can see what has been going on there. Multiple disturbance on a property is also considered a nuisance and will also be addressed on this particular property. Mayor Justice ask the question, "If we go down and site them for their grass being high one day, can we site them the very next day for the same thing?" City Attorney Rusty Davis says that it has to be seven days according to our ordinance, to provide time for progress. Mayor Justice says that he is conferring with the commissioners and that they think that we need to go up there and check it out. Robby Lindsey is our city inspector and has had all the training; he is federal and state certified. Mr. Davis talks about the older houses in the city that have windows that do not open and if that is the case then you are not compliant. Landlords may then think that we are picking on them but we might be saving a life. Mr. Blackburn says that Mr. Lindsey is more thorough than anyone in the past ensuring compliance and safety is top priority. He inspects the place and makes note of the changes that need to be made. Then the landlord calls him back when the changes have been made and he returns to the site. If the changes have not been made, the landlord is fined. The state of Kentucky is under the same concerns. The league came down and took a look at our ordinance that we passed and they adopted what we did. Mayor Justice says, "So, you have R1, R2, R3, educate me on these?" Robert Smith answered, "Where they are now, I think they are R1A." Mayor says your neighborhood will never have this situation, is that correct? Commissioner Carter says renting a house out as apartments. City Attorney says you can rent a house out in any of the R zones. Some of these were grandfathered in. Robert Smith says that a lot of Scott Ave. is zoned R1A which does allow for apartments. Mr. Blackburn explained to Mr. Reed it was being addressed. Mr. Reed thanked the commission for his time to speak and for the situation being addressed. Mr. Blackburn explained to Mr. Reed it will just take time but it will be addressed per the current regulations.

**CITY ATTORNEY**

**Russell Davis was present and had several items to present to the commission.**

- 1. Mr. Davis read aloud a 1<sup>st</sup> reading of ordinance #0-2011-011 attempting to annex property on Island Creek, listed as tract 1 consisting of approximately 346.53 acres. No further action is required at this time. Second reading will take place at next scheduled meeting.**
- 2. Mr. Davis read aloud a 1<sup>st</sup> reading of ordinance #0-2011-012 attempting to annex property on Island Creek, listed as tract 2 consisting of approximately 685.38 acres. No further action is required at this time. Second reading will take place at next scheduled meeting.**
- 3. Mr. Davis read aloud a 1<sup>st</sup> reading of ordinance #0-2011-013 attempting to annex property on Island Creek, listed as tract 3 consisting of approximately 1,373.31 acres. No further action is required at this time. Second reading will take place at next scheduled meeting.**
- 4. Mr. Davis read aloud the 2<sup>nd</sup> reading and asked for the commission to consider the passage of ordinance #0-2011-010 relating to Chapter 111 Alcohol Sales for the City of Pikeville. Commissioner made the motion to approve. Commissioner seconded the motion. Mayor Justice called for comments, there being none Mayor called roll call. Ordinance passed unanimously. 5-0.**

**AN ORDINANCE RELATED TO THE AMENDMENT OF  
CHAPTER 111 ESTABLISHING UNIFORM REGULATION AND  
REQUIREMENTS FOR THE LICENSING AND REGULATION  
OF THE SALE OF ALCOHOLIC BEVERAGES, DECLARING  
THAT AN ECONOMIC HARDSHIP EXISTS WITHOUT THE  
CONTINUED SALE OF ALCOHOLIC BEVERAGE BY THE  
DRINK.**

WHEREAS, the City of Pikeville has requested and received legislative reclassification of the City of Pikeville from a Third Class City to a Forth Class City which reclassification will take effect July 15, 2011.

WHEREAS, ABC regulation and statutes adopted by the Commonwealth only allow the Sale of alcoholic beverage by the drink in Cities of the Fourth Class upon a determination by the legislative body that an economic hardship exists within the City and that the sale of alcoholic beverage by the drink could aid economic growth; and

WHEREAS, the Commission for the City of Pikeville has determined that an economic hardship exists within the City and that the sale of alcoholic beverage by the drink could aid economic growth within the City and that the suspension of the sale of alcoholic beverage by the drink as the result of reclassification would result in an economic hardship for the business already located within the City that currently have alcoholic beverage by the drink licenses and further

would result in a drop in license fee collections for alcoholic beverage by the drink sales in a particular difficult economy.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF PIKEVILLE AS FOLLOWS:

**CHAPTER 111: ALCOHOLIC BEVERAGES**

**GENERAL PROVISIONS**

**§ 111.01 SHORT TITLE.**

This chapter shall be known and may be cited as the “Pikeville Alcoholic Beverage Control Chapter”.

**§ 111.02 DEFINITIONS.**

Words used throughout this chapter, unless the context requires otherwise, and unless specifically defined herein, shall have the same definitions as those set forth in the Kentucky Alcoholic Beverage Control Law, as contained in KRS Chapters 241 through 244.

**§ 111.03 SCOPE.**

(A) Irrespective of title or headings, the sections of this chapter shall be construed to apply to the traffic in both malt beverages and distilled spirits and wine where the context permits such application.

(B) Nothing in this chapter shall excuse or relieve a licensee or the agent or employee of any licensee in the city from the restrictions, requirements, and penalties of any other regulation of the city or of the state.

**§ 111.04 ADOPTION OF STATE ALCOHOLIC BEVERAGE CONTROL LAW.**

The provisions of the alcoholic beverage control law of the Commonwealth of Kentucky, as contained in KRS Chapters 241 through 244, and all amendments and supplements thereto, are adopted so far as applicable to this chapter, except as otherwise lawfully provided herein.

**LICENSES**

**§ 111.15 TYPES OF LICENSES; FEES.**

The following kinds of distilled spirits and malt beverage licenses may be issued by the city and the annual fees for each license shall be as indicated:

	Type of License	Fee
(A)	Wholesaler (Distilled Spirits and Wine)	\$3,000.00
(B)	Retail Distilled Spirits and Wine (Package)	600.00
(C)	Distributor (Malt Beverage)	400.00
(D)	Retail (Malt Beverage)	
	(1) New Applicants	200.00
	(2) Renewals	150.00

(E)	<u>Restaurant wine</u>	
	(1) new applicants	\$600
	(2) renewals	\$400

(F) Restaurant and Hotel distilled spirits and wine drink \$600.00

**§ 111.16 ISSUANCE OF LICENSE.**

(A) Initially, there shall be no more than thirteen (13) retail distilled spirits and wine licenses issued in the city.

(B) The City ABC Administrator, in his sound discretion, shall issue the types of licenses authorized under this subchapter. In exercising his discretion, the City ABC Administrator may consider, in addition to other factors, the location of the proposed premises, the availability of parking facilities to serve the proposed premises, the financial benefit to the city, and the financial stability of the applicant and the applicant or renewal applicant compliance with the law. He shall have full police powers of a peace officer in his/her jurisdiction. An person making application for and holding a license under this ordinance is deemed to have irrevocability consented to the City ABC Administrator, City Building Inspector, City Fire Inspector and the City of Pikeville Police Department to come upon and inspect and search the licensed premises at any reasonable time to ascertain the licensee compliance with the laws of the Commonwealth and City of Pikeville related to the sale of alcoholic beverages.

(C) No license shall be issued to any person, firm, or corporation who is ineligible for a state license; and no licenses shall be issued to any city law enforcement official.

(D) No license shall be issued or renewed to any person or company which has outstanding an taxes, interest or penalties to the City of Pikeville.

(E) All licenses shall expire on June 30 of each year.

**§ 111.17 REGULATORY LICENSE FEE IMPOSED.**

(A) There is imposed a regulatory license fee upon the gross receipts from sale of alcoholic beverages of each establishment within the city licensed to sell alcoholic beverages in the sum of three percent (3%) of the gross receipts of such establishments. The regulatory license fee is assessed at three percent (3%) based upon the city’s estimate as to the cost of reimbursing the city for additional policing and regulatory or administrative expenses related to the sale of alcoholic beverages in the city. The regulatory license fee shall be in addition to any other taxes, fees, or licenses lawfully imposed upon such establishment.

(B) The regulatory license fee described in division (A) of this section shall be collected by the Administrator according to the existing framework of the occupational tax and license fee regulations of the city. Such regulatory license fee shall be payable and collectable quarterly.

**SALE OF ALCOHOLIC BEVERAGES**

**§ 111.30 HOURS WHEN SALE PERMITTED.**

(A) (1) It shall be unlawful to sell or offer for sale, at retail, or to give away, in or upon any licensee’s premises, any alcoholic beverage between the following hours:

<u>Day</u>	<u>Prohibited Hours of Sale</u>
Monday	12:00 a.m. and 8:00 a.m.
Tuesday	1:00 a.m. and 8:00 a.m.
Wednesday	1:00 a.m. and 8:00 a.m.
Thursday	1:00 a.m. and 8:00 a.m.

Friday 1:00 a.m. and 8:00 a.m.  
Saturday 2:00 a.m. and 8:00 a.m.  
Sunday 2:00 a.m. and 12:00 a.m.

(2) In the event that January 1 falls on Monday through Thursday, it shall not be unlawful to sell or offer for sale, at retail or to give away, in or upon any licensee’s premises, any alcoholic beverage between 1:00 a.m. and 2:00 a.m.

(B) It shall be unlawful to keep open for business or to admit the public to, or permit the public to remain within, or to permit the consumption of alcoholic beverages in or upon any premises in which alcoholic beverages are sold at retail during the hours within which the sale of such alcoholic beverages is prohibited; provided, that in case of bona fide restaurants, such establishments may be kept open for business during such hours, but no alcoholic beverages may be sold to, or consumed by the public during such hours.

(C) It shall be unlawful to sell or offer for sale, at retail, or to give away, in or upon any licensed premises, any alcoholic beverages on the day of any national, state, county, municipal, or school election, including primary elections, during the hours the polls are open, within the political area in which such election is being held.

§ 111.31 APPROVAL OF PREMISES.

(A) For the purpose of this section the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BONA FIDE RESTAURANT.** Any premises which are kept, used, maintained, advertised, and held out to the general public as premises where meals are prepared and served, for consumption on the premises, on a regular basis and which derives seventy percent (70%) or more of its gross annual income from the sale of food which is prepared, served, and consumed on the premises and which has a minimum seating capacity of one hundred (100) people at tables.

**LICENSE.** Any premises licensed by the city to sell alcoholic beverages on a wholesale or retail basis.

**BONA FIDA HOTEL.** Any hotel, motel or sleeping inn containing not less than Fifty (50) sleeping units and having dining facilities for not less than one hundred (100) persons.

(B) No holder of a retail malt beverage license shall permit the consumption of alcoholic beverages on the licensed premises unless it is a bona fide restaurant or hotel.

(C) The City Administrator shall not grant any alcoholic beverage license or approve a renewal of a license until such time as the applicant shall have had its place of business approved by the County Health Department, the State Fire Health Department, the City Building Inspector, and State Fire Marshal; and, no license shall be issued to any person, firm, or corporation for the selling at retail or wholesale of alcoholic beverages at any premises or location which is in violation of any of the city’s ordinances and regulations.  
(Ord. 0-83-008, passed 5-23-83; Am. Ord. 0-88-003, passed 4-11-88) Penalty, see § 111.99

The ordinance shall be in full force and effect after it is passed and published as required by law and no sooner than July 15, 2011. The above ordinance was given first reading this \_\_\_\_ day of \_\_\_\_\_, 2011, the ordinance was given a second reading on the \_\_\_\_ 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:

\_\_\_\_\_  
CHRISTY BILLITER, CITY CLERK

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**CITY MANAGER**

**City Manager Donovan Blackburn presented the commission with the following items for approval:**

- 1. Consider a request to approve the submitted contract between the Commonwealth of Kentucky and City of Pikeville and all terms set forth therein for the FEMA-DR1818 KY Hazard Mitigation Grant Program for the purchase of a generator for City Hall and to authorize the mayor to sign and execute said contract on behalf of the City of Pikeville. Commissioner Carter made the motion to approve. Commissioner Layne seconded the motion. Mayor Justice called for comments, there being none, the motion passed unanimously. 5-0.**
- 2. Consider a request to approve the use agreement between the City of Pikeville and Community Trust Bank as submitted for the purpose of authorizing the use of Hambley Complex for the Pike County Bowl to be held on August 27<sup>th</sup> 2011 and authorize the City Manager to sign the use agreement on behalf of the City of Pikeville. Commissioner Davis made the motion to approve. Commissioner Chaney seconded the motion. Mayor Justice called for further comments, there being none the motion passed. 5-0.**

3. Consider request to reclassify Ross Shurtleff from Part Time Dispatch to Full Time Dispatcher. Commissioner Carter made the motion to adopt. Commissioner Davis seconded the motion. Mayor called for comments. City Manager Blackburn commented that one dispatcher resigned so the part timer Mr. Shurtleff had to be moved to full time. Mayor called for further comments, there being none the motion passed unanimously. Mayor abstained. 5-0.
4. Consider a request for authorization to request an extension with DLG on the following projects:

HB410 Bob Amos Park Improvements	\$7080.25
HB410 North Mayo Trail Fire Station	\$213,087.69
HB410 Pikeville/Pike County Artisan Center	\$2606.20

Commissioner Layne made the motion to approve. Commissioner Chaney seconded the motion. Mayor Justice called for comments, there being none the motion passed unanimously. 5-0.

City Manager Donovan Blackburn announced the consent items for the Commissioners and the Mayor to hear.

5. Pursuant to KRS 61.810, consider request for closed session for discussion of economic development, legal and personnel issues. Commissioner Carter made the motion. Commissioner Layne seconded the motion. Mayor Justice called for discussion, there being none the motion passed unanimously. 5-0.
6. Commissioner Carter made the motion to re convene. Commissioner Chaney seconded the motion. Mayor Justice called for discussion, there being none the motion passed unanimously. 5-0. Mayor called the session back into order.
7. Consider a request to approve the contract between SMG and the City of Pikeville as submitted for the purpose of the operations of the East Kentucky Expo Center and adopt to all terms set forth there in and to authorize the mayor to sign and execute said agreement on behalf of the City of Pikeville. Commissioner Carter made the motion to approve. Commissioner Chaney seconded the motion. Mayor Justice called for comments, there being none the motion passed unanimously. 5-0.
8. Consider a request to approve the sales agreement between the City of Pikeville and RealtyLink as submitted and all terms set forth therein. Said agreement would authorize the sale of the city property located behind the Post Office on Thompson Road for the price of \$150,000 per usable acre based on economic advantage to the City and residents of our area. This will create over 100,000 square feet of retail sales development with an estimated new job base for this phase of over 300 new jobs and will therefore create new occupational tax, net profit tax and property tax. For this reason this motion request is to authorize the mayor to sign and execute said agreement on behalf of the City of Pikeville. Commissioner Chaney made the motion to

approve. Commissioner Davis seconded the motion. Mayor Justice called for comments, there being none the motion passed unanimously. 5-0.

9. There being no further business to come before the Commission, Commissioner Davis has made the motion to adjourn the meeting. Commissioner Carter seconded the motion. Mayor Justice called for discussion, there being none the meeting was adjourned. 5-0

**CONSENT ITEMS:**

1. Autism Awareness Walk will be April 30<sup>th</sup> on the plaza of the EXPO center, 10am-1pm.
2. PRIDE Clean Up at Bob Amos with Pikeville Daisy Troops April 25<sup>th</sup> @6pm.
3. East Leadership Ky Conference April 28<sup>th</sup> & 29<sup>th</sup> 2011
4. Town Hall Forum, East Ky Expo Center on April 26<sup>th</sup>, 2011 to discuss the Marion Branch Project & Expo Center. Donovan Blackburn, Mayor Frank Justice and Commissioner Barry Chaney will be guest speakers.
5. Budget meetings to be set for later date.
6. Pike County Chamber Press Conference 5-4-11 @ 9:30 am at the East KY Expo Center.
7. Hillbilly Days & Sister City Update.

The next scheduled Regular Meeting of the City of Pikeville Board of Commissioners is May 9, 2011 at 6:00 p.m.

**APPROVED:**

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

**ATTESTED:**

\_\_\_\_\_  
**CHRISTY BILLITER, CITY CLERK**