

**MINUTES  
ORANGEBURG COUNTY COUNCIL  
JANUARY 6, 2014  
5:30 P.M.**

**Pursuant to the Freedom of Information Act, the news media was notified and notice was posted on the bulletin board 24 hours prior to the meeting.**

**MEMBERS PRESENT:**

**Johnnie Wright, Sr.  
Janie Cooper-Smith, Vice Chairman  
Heyward H. Livingston  
Willie B. Owens  
Johnny Ravenell  
Harry F. Wimberly  
Clyde B. Livingston**

**MEMBERS ABSENT:**

**OTHERS PRESENT:**

**Harold M. Young, County Administrator  
Megan Dangerfield, Clerk to Council  
D'Anne Haydel, County Attorney**

**CALL TO ORDER**

**Johnnie Wright, Sr., Chairman**

**MOMENT OF SILENCE**

**Moment of silence observed**

**APPROVAL OF MINUTES**

**December 16, 2013**

**Chairman Wright asked for a motion to approve the minutes. Councilman Ravenell made a motion, seconded by Mr. Owens. Motion carried.**

**PUBLIC COMMENTS:**

**AGENDA ITEMS**

**None**

**PUBLIC COMMENTS:**

**OTHER MATTERS**

**Mr. Willie Brown came forward to express concern about his road that is in disrepair. He lives on Stacey Bridge Road between Providence Road and County Road. He stated the road is in terrible need of something to be done. He said the maintenance department was aware of the problem and they had tried everything to fix it. The residents have tried to petition to have it paved but there is one property owner who does not want to give up the right of way to pave it. The area of the road in disrepair is 0.60 mile. He stated they would**

scrape the road one day and the next it would look like they hadn't done it. He has had to align his car twice. He stated there are about 50-60 homes on the road. He asked Council to take a look at the road and work on a solution. Councilwoman Cooper-Smith asked that he speak with her regarding the matter.

## 1. PROCLAMATION IN OBSERVANCE OF NATIONAL MENTORING MONTH

Chairman Wright recognized representatives from School District Five to include Superintendent Cynthia Wilson, several Board Members and Bill Clark. Ms. Wilson thanked Council for recognizing National Mentoring Month. She stated that mentoring is a critical component to ensure students succeed while in school. She invited anyone willing to become a mentor to participate in one of their many programs. She recognized their nationally known Bootstraps Mentoring program which is a collaboration with the faith based community. She stated they encouraged our churches to provide mentors for their students and they have increased the number of mentors. She also stated they were excited about the Race to the Top Grant the district was just awarded of 3.2 million dollars. Superintendent Wilson thanked the Council again for recognizing National Mentoring month and for their service to OCSD5.

Chairman Wright read the Proclamation in its entirety.

Councilman Clyde Livingston made a motion to pass the Proclamation, seconded by Councilwoman Cooper-Smith. Motion carried.

## 2. ORDINANCE – PUBLIC HEARING AND SECOND READING

**AN ORDINANCE AMENDING CHAPTER 9 OF THE ORANGEBURG COUNTY CODE OF ORDINANCES TO PROVIDE FOR ENFORCEMENT AND ADMINISTRATIVE PROCEDURES OF THE COMMUNITY DEVELOPMENT CODE, AMENDING ALL PARTS OF CHAPTER NINE IN CONFLICT, PROVIDING FOR A PENALTY, PROVIDING FOR SEVERABILITY.**

Chairman Wright asked Mr. Young for a brief summary. Mr. Young stated that this Ordinance change request was to give the Community Development Code Enforcement Officers an Ordinance that allows them to have better cohesiveness in code sections for working with the Magistrates office on community cleanup. Councilman Clyde Livingston asked what was being addressed working with the Magistrates office on community clean ups. Mr. Young stated there were areas of the code that were put into place when the County did the Community Development Ordinance and those statutes needed to be aligned together so that the different code sections more clearly defined what the Code Enforcement processes and ticketing processes could be for. Council had a committee meeting to discuss having "dangerous conditions" more clearly defined so a person would have a better understanding of what they would be cited and ticketed for should there be a violation.

Chairman Wright opened the floor for the Public Hearing.

Anne Sutcliffe expressed concern regarding the use of selective enforcement. Councilman Owens said that he hoped it would not be selective and that it should be used across the board by all Magistrates in Orangeburg County. Councilman Clyde Livingston stated that the process starts with the County's Code Enforcement Officers. County Attorney Lakeisha Jeffries stated that the investigations are complaint driven and that property owners would be given the opportunity to correct the problem before going before the Magistrate's Court. Councilman Clyde Livingston stated that it does become selective when you have a parcel in violation but no one complains, the law never comes into play. Harold Young stated that the County is 1100 square miles and we only have so many officers. We do not have the ability to look at every parcel so that's why we take the complaint driven system. We accept complaints as they come in and then move on to other areas from there to better the community and like Mrs. Jeffries stated, the responsible party is given the opportunity to correct the situation before any ticket or summons is issued. Councilman Clyde Livingston stated that he understood what Mr. Young was saying but it seems to him that starting at one end of the County and working our way across to the other end would be more efficient. Ms. Sutcliffe stated that she was concerned about the trash around Orangeburg and that the reports called in are based on whether or not the complainant likes the property owner. She then showed Council several photos of her various properties. She stated she was charged because she was told to cut one parcel that was two acres. She also presented several photos of adjacent properties that have garbage on it. She stated that the County people picked it up after the photo was shown in court. She stated that she was being harassed by Litter Control. Councilman Owens asked Ms. Sutcliff if she reported those properties. She stated that she reported it to Litter Control when they met her on site at her property and that nothing had been done since. Councilman Owens stated that something should be done if it hadn't already. Ms. Sutcliffe stated that the couch and chair shown in the picture had since been removed. Councilwoman Cooper-Smith stated that if a property has never been reported, it seemingly is not a problem. She stated that Orangeburg is the second largest county in the State so if it's not reported, it won't be seen as a problem. If it's reported, and it's neglected, that's another thing. She told Ms. Sutcliff her property was reported. Ms. Sutcliff stated that the complaints should come in writing. She doesn't need to know who reported it but would like the reports to be on record. Councilwoman Cooper-Smith stated that if someone calls in a complaint, it will be written by staff, it's documented. Councilman Heyward Livingston stated that the current system is a good system because Orangeburg is a big county. If we started at one end and went to the other end, we would never get it all done. If a complaint comes in, Litter Control gives you an opportunity to correct the problem before they take further action. Councilman Clyde Livingston asked County Attorney D'Anne Haydel for a definition of selective enforcement. Ms. Haydel stated that the term refers to when two identical situations occur, both are reported, one is not looked into, for whatever reason, and one is looked into. That would be selecting from something that you think there is probable cause for. She stated that another component on selective also has to do with sensitive groups. If you show that when those exact same things happen, only Group 1 is prosecuted and Group 2 is not, then you've got an argument that that's selective enforcement against Group 1. But the idea that a system begins with a complaint, oral or written, has never been defined as selective enforcement. That system is used by Animal Control and the Sheriff's Office. In a situation where there isn't a big brother enforcement crew, there's always has to be somebody who willing to step forward and say I have a complaint. Selective enforcement comes through with refusing to prosecute those

things that are clearly in violation but prosecuting others. Councilman Clyde Livingston asked if the County goes down the road and they see a problem are they not supposed to go ahead and write it up? If they see a pile of trash in one spot and they've been called to go two blocks down the street about another pile, how can they drive past one pile and write up the next pile of trash? Attorney Haydel stated that she didn't know if that's what happens. Ms. Sutcliff showed Council pictures of concerns on Highway 61. Councilman Wimberly and Councilwoman Cooper Smith stated they were familiar with that area and that Council has talked about that area. Councilman Owens stated that he hoped Ms. Sutcliff had not taken all these photos to report the entire County since she was reported. He stated that if he was reported, he would clean up his trash and he hoped she would do the same. Ms. Sutcliff stated that she did clean her trash up but she's had trouble with Litter Control. She explained that she got a letter that they wanted this house torn down and the property cleaned up. She told them that she thought the property was sold and they said fine, just to let them know. It was sold and she made the new property owner very aware that it had to be cleaned up immediately. He bought the property, he closed and he cleaned up the property immediately and they still wrote Ms. Sutcliff a ticket. She went to court and was charged even though it was cleaned. She stated that when she went to court there was still a little bit at the back that was to be removed Thursday (after court date) because the truck had to wait and come back. Then, Litter Control asked for a notarized signature from the new property owner that Ms. Sutcliff had made him aware that the property had to be cleaned up after it was already cleaned up. So the man has to come from out of town, Litter Control wants his phone number, he tells Ms. Sutcliff not to give them his phone number but that it's ok to pass along his address. She gives Litter Control the notarized signature, the property has been cleaned, and already charged and that still didn't suit Litter Control. After checking the deed, his daughter is listed as the property owner, not Mr. Brown. She said she never saw the daughter and only dealt with Mr. Brown during the sale of the property but he must have put the property in her name. She stated that that was harassment. Chairman Wright asked if this was in court. Ms. Sutcliff stated that this was Litter Control. She stated that they asked for a Bill of Sale for the property. She found the Bill of Sale and at the top it said Mr. Willie Brown for Rosalind Brown (she thinks that was the daughter's name) and at the bottom, there was her signature, Mr. Brown's signature and the attorney's signature. She refused to give it to them because she didn't think it was any of their business. Chairman Wright stated that if this was an issue with the County, Council could not resolve this issue that evening. Councilman Wimberly stated that every story has two sides but that if what Ms. Sutcliff was saying is true, the County needs to resolve it and get out of the way. Ms. Sutcliff stated that the only way she got them to stop was after talking to Marion Lloyd. Mr. Lloyd told Litter Control to leave her alone. She stated that it's over but that she still gets harassment. Chairman Wright asked that Ms. Sutcliff talk to Mr. Lloyd if there was still a problem and that Council could not resolve the issue that evening.

Ms. Sutcliff referenced Section 302.4 and stated that she was told to cut fifteen feet in and that they wouldn't make you cut the whole parcel. But she has been told different things and doesn't know what's accurate. Chairman Wright stated that if Litter Control was not following the rules, she had a right to come back to the County but that if they were following the rules and doing their jobs, she will need to comply.

Councilman Clyde Livingston expressed concerns about the twelve inches requirement. Councilman Owens stated that Council had already had that discussion a couple of weeks

ago. Councilman Wimberly stated that at that time he thought it was too short and he still thinks it's too short. Councilman Owens stated he thought it was too long. Ms. Sutcliff asked if it was an undeveloped property if it had to be cut. Councilman Owens said no but Councilman Wimberly said according to the Ordinance, you would have to cut it. Attorney Jeffries stated that the Ordinance allows for guidance but the Litter Control office will develop policies and procedures according to what's in the Ordinance. So, undeveloped lots could be handled by a policy. Councilman Heyward Livingston stated that when it was discussed it was talking about residential yards. Councilman Wimberly stated that the Ordinance said all premises. Councilman Clyde Livingston stated that twelve inches seemed way out of line. Councilman Owens stated that it depended on where the property was located. Councilman Livingston said he may have a point but that's not how the Ordinance was written. Councilman Owens stated the Ms. Sutcliff's concern would be referred to Mr. Young and that he would use common sense to resolve the matter. Ms. Sutcliff again asked for complaints to be in writing. Chairman Wright stated that people have a right to call in a complaint. Attorney Haydel asked if Ms. Sutcliff's issue was regarding anonymous complaints. Ms. Sutcliff said no, she was more concerned that they were telling her the truth, that the complaint really came in.

Councilman Wimberly made a motion to carry forward the Ordinance and send it back to committee. Seconded by Council Ravenell. Motion carried.

### **3. PROCUREMENT FY14-1230 TELECOMMUNICATIONS OUTSIDE PLANT PROJECT – CANAAN**

Chairman Wright asked Mr. Young for a brief summary. Mr. Young stated that the project was for continuation fiber construction in the Canaan remote area. It would include sixty-one miles of mainline fiber and thirty-one miles of customer drop fiber. The construction will be to approximately 360 customers, and will include construction in the highway right of way and private party right of way. After opening procurement FY14-1230, it is his recommendation that the procurement be awarded to Edwards Communications out of Columbia, SC under the RUS contract in the amount of \$1,103,792.85.

Councilman Wimberly made a motion to approve the procurement as read. Motion was seconded by Councilman Clyde Livingston. Motion carried.

### **4. REPORT FROM THE ADMINISTRATIVE COMMITTEE**

Councilman Wimberly, Chairman of the Administrative Committee, stated that the committee met 12/16/13 to fill two vacancies on the Employee Grievance Committee. The administrative committee would like to appoint Lakisa Walker and Lorene Dennis to the Employee Grievance Committee and to appoint Henry Summers to the alternate list.

Councilman Wimberly made a motion, seconded by Councilman Owens. Motion carried.

### **5. SANTEE MODULAR PROTEST OF DEBRIS REMOVAL CONTRACT**

Charlie Williams came forward and stated that upon evaluation, Santee Modular noticed that there were a few items in the proposal that were completely not necessary for Orangeburg County since it's a rural county. The proposal was based on a metropolitan area. Mr. Shuler with Santee Modular handed out a spreadsheet listing only the items the company felt would be used during a disaster in Orangeburg County. He stated that Santee Modular's bid would save the county one million dollars on one bid and one and a half million on the other bid and that Santee Modular is an Orangeburg County company. Mr. Williams pointed out that the procurement code is aimed at keeping business in the County. Larry Shuler came forward to explain the line items listed on the spreadsheet, including the savings Santee Modular would create for the County. He stated that there were some items from the Proposal that weren't included in Santee Modular's line items because those items would not be relevant for rural areas such as Orangeburg County and would not be used to dispose of the debris. Councilman Wimberly acknowledged that the sheet that Santee Modular handed out did not match the line items from the procurement proposal. Mr. Shuler stated that the bid line items were a generic form from FEMA. For example, air curtain burning would be a more logical reducing method in Orangeburg County rather than grinding because it creates a greater reduction of debris. Councilman Wimberly stated the County put out a list of items for the proposal and the sheet that Mr. Shuler just handed out did not match that list. It did not include all the line items that were requested. Mr. Shuler stated that was correct, you would not air curtain burn, grind and open burn for material reduction. You would choose one method. Councilman Owens asked Mr. Shuler if he was going to choose the method or if the County was going to choose the method. Mr. Shuler stated that it was up to the County to choose the method. Harold Young stated that the procurement was put together after a training session with FEMA held in Santee for emergency services from across the entire State of South Carolina. All the scenarios presented were based upon FEMA guidelines and regulations. If there is an event, the County would have to get reimbursed based upon those regulations. Mr. Shuler agreed and said the regulations were statewide but Orangeburg County is very rural. It would be a waste of money to grind debris rather than air curtain incineration. Air Curtain Incineration is cheaper for the county and only five percent of the material remains. Councilman Owens stated that Santee Modular was not the lowest on many of the line items and that for most of the line items, they were higher. He also stated that there were several line items that were left off the list they presented that evening. Mr. Shuler stated that the only items left off were the items that would not be utilized. Councilman Owens stated that Mr. Shuler could not determine they would not be utilized. Councilman Wimberly stated that County could not change the proposal to only include those items that Santee Modular thought would be utilized. He stated that Santee Modular should have voiced their concerns during the Prebid Conference. He also stated that the county went by FEMA's guidelines so every bidder had to put a price by every item on the proposal. Mr. Young stated that he had a copy of the exact bid Santee Modular originally submitted with every line item included. When they put a figure to the line items listed, it did not come up as the lowest bid. However, he stated, price was not the only factor. There were several other criterias. Chairman Wright asked that the list of criteria be read. Councilwoman Cooper-Smith read the list in order of importance which included experience, past performance, available resources, sub contractor participation, managerial and operations plan, references, and price. Chairman Wright stated that it was important to note that there were several factors for evaluation other than price. But, when you do look at the numbers there was a big difference in every category. Councilman Wimberly stated that he

would like to see Mr. Shuler win the bid since he was an Orangeburg County resident. He asked Mr. Shuler if he knew those items weren't going to be used why didn't he put one dollar on the price instead of twenty-five dollars and he would have won the bid. Mr. Shuler stated that he does not slant a bid, he bids honest. That would be an illegal bid and it could be thrown out for that. Councilman Wimberly stated they were trying to make the County use an illegal bid since the list provided that evening wasn't the same as the original proposal. Councilman Clyde Livingston clarified that it was not a bid, it was a proposal. The County put out a request for proposals and then attempted to evaluate the various proposals. Councilman Owens stated that Santee Modular's proposal would not mean a million dollar savings for the County.

Mr. Shuler stated there were several ways to handle construction and debris (C&D) material. One of the items listed would be to pick it up off the right of way, carry it to a reduction site, run it over with a bulldozer, take it to the landfill and they'll run over it with a bulldozer. This method is used in a metropolitan area with dense traffic to clear roadways quickly. Mr. Shuler proposed that Santee Modular would take the C&D material off the right of way and go straight to the landfill where it would be burned in an air curtain incinerator. He stated that it would cost three million dollars to grind plus forty-three dollars a ton tipping fee at the landfill. He asked Council if they could justify spending that much. Councilman Wimberly stated that if the winning contractor doesn't grind, the County wouldn't spend that money. Mr. Shuler asked why the County would even consider grinding the C&D if it doesn't make sense for Orangeburg County. He stated that when FEMA issues those guidelines, most places eliminate a majority of them. In North Carolina, Santee Modular bid on five proposals. They are primary on three and secondary on two bidding against the same people. He stated that's how he knew they could not have beat them on price. He stated that they were the cheapest, responsible party sitting in Orangeburg County, pay taxes in Orangeburg County on their equipment. He stated that they have the ability with their equipment alone (no subcontractors) to remove thirty-five thousand cubic yards per week. They can provide a list of over seventy subcontractors that have worked for them in the past and are committed to coming to work in the County. He stated that for the line items that would be used, they are the cheapest and most efficient for the County. Councilman Wimberly stated that they had to evaluate and accept bids on what we asked on the proposal. Mr. Shuler pointed out a statement in the bid invitation that read "award one line item or several line items". Councilman Wimberly stated that was something he needed to see and that it made a whole different ball game for him. But, it still didn't make Santee Modular's new list right. Councilman Owens stated that he thought the County had been honest and fair in what they have done and he was ready to move on. Councilman Wimberly stated that the Council had made a final decision. They looked at the strength of the bond, strength of insurance, strength of support and then we looked at price. They looked at price based on every item that was listed on the Proposal. That's how they came up with the final decision. Councilman Clyde Livingston stated that the procurement code has a section that basically says Council should try to use local folks. He also stated that he thinks this situation really didn't work out and that maybe they should reevaluate. He said he wasn't saying they were totally right but they definitely aren't totally wrong. Councilman Wimberly stated that it made a difference if you could break it down by line item but when you are accepting a proposal as written in total, then that's the way he accepts it, in total. Councilman Wimberly stated that the proposal was weighted to look out for local business and that they

need to be fair to all businesses. He also stated that we don't know what to expect in the event of a storm and that the line items were listed as recommended by FEMA. He has concerns about removing certain items from the proposal and then needed to use them in a future storm event. Charlie Williams requested that Council note a legitimate issue has been raised that would put money back in Orangeburg County, using an Orangeburg County company and Orangeburg County subcontractors, not sending money elsewhere. He also asked that Council look at the line items that would be used around rural Orangeburg County. Councilman Heyward Livingston asked how you could get a true contract if, for example, ten contractors bid on different line items. To get a true contract, everyone would have to bid on the same line items even if we didn't need it. Councilwoman Cooper-Smith asked Mr. Young if all the bidding contractors knew the aspects of rural Orangeburg County. Mr. Young stated yes, they should have. The County issued the Proposals for bids based on what would get the County reimbursed by FEMA because if we put the money out there and we don't do it based on their regulations whether we think they're right, good, stupid or whatever, the County cannot get reimbursed if we don't do it the way FEMA says.

Councilman Clyde Livingston stated that they had established that price was the least important and asked what were the other evaluation points that knocked down this local company. Mr. Young stated that Mrs. Cooper read that list earlier.

Councilman Ravenell asked the County Administrator Harold Young how they should proceed. Mr. Young, stated that he would defer to D'Anne Haydel, Attorney for the County but it needed to be noted that the companies that were awarded the contract had rights as well. Regarding how to proceed D'Anne Haydel stated that Council should go in Executive Session and ask for a legal briefing which she was prepared to give. Councilman Wimberly stated that for the record, he did not know that there was a line item delete if you wanted to. That's why he based his assumption on every line. D'Anne Haydel pointed out that Councilman Wimberly, during the Committee Meeting, compared the pricing for each and every vendor and that he found that Santee Modular was low only on one point. She stated that even though this was not a price thing, they were higher on all the other items. She also stated that even though the Committee tried very hard to keep this within the County and keep all the dollars here, they had to work into the equation that FEMA is the one to reimburse the County or else it would be local tax payer's money. She then listed a timeline according to her notes:

9/11/13 – Mandatory Pre-bid in which anyone who wanted to bid on this project could come and complain and say throw this entire project out and start over again. She doesn't believe anyone voiced concerns.

9/25/13 – Proposal Deadline

10/21/13 – Orangeburg County Council had a meeting and during that meeting Councilman Wimberly and Sinkler Boone both said that the numbers don't really mean anything, it's not price, it's the other factors we need to look at and in order to do that we are going to go into a committee meeting and look at the evaluation factors to see if they are any good.

11/18/13 – Committee Meeting and Council Meeting, both publicized in accordance with FOIA. No one came to that meeting to discuss the proposal having the wrong criteria. Council actually discussed the other criteria (not price) and came to the conclusion that



once they balanced the entire thing out, they were awarding Companies X and Y the Debris Contract. Then it was voted on that night.

Ms. Haydel states that the Protest states over and over again that Santee Modular is the low bidder. The Administrator's decision on the protest was this was a proposal that was not based solely on pricing. In fact, pricing was the last on the list of factors. She told Council that it may be that you wish to throw out the sample disaster and start all over again but there was plenty of opportunity for this to come up and to be discussed prior to now. She stated at this point, you may throw out this entire process, it's listed in the procurement code. Then every time someone comes up with an argument, you can start over again. Or you can go according to what the published evaluation factors were, have open meetings, invite everyone to come and if they choose to remain silent and complain later then you can make your decision based on that. She stated that this was not a hasty proposal or a hasty decision by Council. This is the third time Council has looked at it.

Councilman Wimberly stated that the Council's decision was based on the entire contents of the proposal. If it had been line by line, it might have been a different decision but based on the complete package, the County choose to award the contract to Phillips and Jordon and Ceres.

Councilman Clyde Livingston stated that after listening to the previous conversation, he didn't think they had a good decision and that they should start over.

Councilman Owens stated that Council had done what was just and fair and should move on.

Councilman Wimberly made a motion to go into executive session for approximately 15 minutes for a legal briefing. Seconded by Councilman Ravenell. Motion carried.

## **EXECUTIVE SESSION**

Chairman Wright called the meeting back into regular session. Councilwoman Cooper-Smith made a motion to deny Santee Modular's protest and award the Debris Contract to the successful bidders for one year. Seconded by Councilman Owens. Councilman Clyde Livingston and Councilman Ravenell voted nay. All others voted in favor of the motion. Motion carried 5-2.

### **6. VOTE FOR EXECUTIVE SESSION**

Chairman Wright asked for a motion to move to Executive Session. Councilwoman Cooper-Smith made the motion, seconded by Councilman Ravenell. Motion carried.

### **7. EXECUTIVE SESSION**

#### **1) CONTRACTUAL MATTER**

### **8. VOTE FOR ADJOURNMENT**

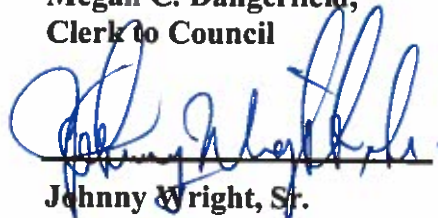
**Councilwoman Cooper-Smith made the motion, seconded by Councilman Heyward Livingston. Motion carried.**

**Before adjourning, Councilman Ravenell stated that he felt Litter Control was doing a great job. He stated they have been on the streets in different areas and he encouraged citizens to contact Litter Control if they have any litter concerns.**

**9. ADJOURNMENT**



**Megan C. Dangerfield,  
Clerk to Council**



**Johnny Wright, Sr.  
Chairman, County Council**