WINCHESTER COMMON COUNCIL
MARCH 12, 2013
AGENDA
7:00 P.M.

CALL TO ORDER AND ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – January 22, 2013 Work Session, February 12, 2012 Regular Meeting

REPORT OF THE MAYOR

REPORT OF THE CITY MANAGER

REPORT OF THE CITY ATTORNEY

1.0 PUBLIC HEARINGS

1.1 O-2013-02: Second Reading – AN ORDINANCE TO INCREASE THE SALARIES OF THE MAYOR OF THE CITY OF WINCHESTER AND THE MEMBERS OF THE COMMON COUNCIL FOR THE CITY OF WINCHESTER **(REQUIRES ROLL-CALL VOTE)(pages 5-9)**

1.2 CU-13-15: Conditional Use Permit **–** Request of Benjamin Pelletier on behalf of Shenandoah Personal Communications, LLC for a conditional use permit to upgrade existing telecommunications facilities with additional antennas and a microwave dish at 799 Fairmont Avenue *(Map Number 153-01- -2)* zoned Limited Industrial (M-1) District. **(REQUIRES ROLL-CALL VOTE)(pages 10-18)**

2.0 PUBLIC COMMENTS

3.0 CONSENT AGENDA

3.1 O-2013-06: First Reading – AN ORDINANCE TO AUTHORIZE THE MANAGER TO EXECUTE A LETTER OF AGREEMENT WITH SHENANDOAH PERSONAL COMMUNICATIONS COMPANY (“SHENTEL”) FOR THE TEMPORARY USE OF CITY PROPERTY FOR THE PURPOSE OF ERECTING A MOBILE TELECOMMUNICATIONS FACILITY – CELL ON WHEELS (“COW”) ON PROPERTY OWNED BY THE CITY OF WINCHESTER AT THE SOUTH END OF THE TIMBROOK ANNEX DURING THE 2013 APPLE BLOSSOM FESTIVAL (pages 19-33)

3.2 O-2013-08: First Reading – AN ORDINANCE TO AMEND SECTIONS 14-5, 18-7, 18-15, 21-3, AND 23-8 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO ADMINISTRATIVE REVIEW, SPECIAL REGULATIONS PERTAINING TO THE PRIMARY & SECONDARY DOWNTOWN ASSESSMENT DISTRICTS, OBSTRUCTION OF RIGHT-OF-WAY, CIVIL PENALTIES AND FEES **TA-13-35** (pages 34-47)

3.3 O-2013-09: First Reading – AN ORDINANCE TO REPEAL CHAPTER 26, ARTICLE III, DIVISION 2 OF THE WINCHESTER CITY CODE PERTAINING TO SIDEWALK CAFES (pages 48-55)

3.4 O-2013-05: First Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTIONS 2-4, 2-28, AND 2-29 OF THE WINCHESTER CITY CODE PERTAINING TO ELECTION AND REMOVAL OF COUNCIL-ELECT OFFICERS (pages 56-59)

3.5 R-2013-05: Resolution – Authorization to apply for a Virginia Department of Criminal Justice Services grant to support the purchase of equipment and services (pages 60-62)

3.6 R-2013-06: Resolution – Approval of the nomination of Lorrie Rhoton to be appointed to the Local Emergency Planning Committee representing the American Red Cross (pages 63-66)

3.7 R-2013-09: Resolution – Express appreciation to Hanover County Emergency Communications and Fire & Rescue Departments personnel for assistance in reviewing an 800 Mhz trunked radio system (pages 67-69)

3.8 R-2013-07: Resolution – Approval of a refund in the amount of $3125.31 to Sky White LLC for overpayment of Business Tangible Personal Property Taxes (pages 70-73)

3.9 R-2013-08: Resolution – Authorization to develop a detailed proposal for a Stormwater Utility for City Council's consideration and possible action (pages 74-108)

3.10 R-2013-10: Resolution – Approval to amend the Frederick-Winchester Service Authority Articles of Incorporation Regarding Compensation (pages 109-115)

3.11 R-2013-13: Resolution – Approval to rename Frontage Road to Mall Boulevard (pages 116-118)

3.12 R-2013-11: Resolution – Approval to execute the Clinical Affiliation Agreement and necessary documents between Lord Fairfax Community College and the Winchester Fire & Rescue Department (pages 119-135)

3.13 R-2013-12: Resolution – Authorization to apply for a Local Government Challenge Grant to the Virginia Commission for the Arts (pages 136-146)

3.14 Motion to provide a preliminary approval of the proposed FY14 operating budget for the Opequon Water Reclamation Facility (pages 147-152)

3.15 Announce the resignation of Benjamin "Bob" Pinner as a member of the Board of Architectural Review effective February 28, 2013 and direct the Clerk of Council to advertise the vacancy.

3.16 Motion to direct the Clerk of Council to prepare a Certification of Appreciation for Benjamin "Bob" Pinner for his service as a member of the Board of Architectural Review.

3.17 Motion to direct the Clerk of Council to prepare a Certificate of Appreciation for Catherine Mattens for her service as a member of the Parks & Recreation Board.

3.18 Motion to direct the Clerk of Council to prepare a Certificate of Appreciation for Brian Hester for his service on the Board of Zoning Appeals.

3.19 Motion to direct the Clerk of Council to prepare a Certificate of Appreciation for Art Major for his service on the Regional Jail Authority.

4.0 AGENDA

4.1 O-2013-03: First Reading – AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-66 OF THE WINCHESTER CITY CODE PERTAINING TO INSTALLATION; REQUIRED LEGEND AND SIGNALS (pages 153-156)

4.2 O-2013-04: First Reading – AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-68 OF THE WINCHESTER CITY CODE PERTAINING TO WHEN METERS SHALL BE OPERATED (pages 157-160)

4.3 O-2013-07: First Reading – AN ORDINANCE TO CONDITIONALLY REZONE 7.74 ACRES OF LAND AT 940 CEDAR CREEK GRADE FROM RESIDENTIAL OFFICE (RO-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO HIGH DENSITY RESIDENTIAL (HR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) & CE DISTRICT OVERLAY RZ-12-405 (pages 161-189)

4.4 Motion to remove the recommendations outlined in the December 21, 2012 memorandum regarding Council appointed Boards and Commissions from the table. (Tabled at the February 12, 2013 Council Meeting)

4.5 Motion to implement the recommendations outlined in the December 21, 2012 memorandum regarding Council Appointed Boards and Commissions (pages 190-197)

5.0 EXECUTIVE SESSION

5.1 MOTION TO CONVENE IN EXECUTIVE SESSION PURSUANT §2.2-3711(A)(3) AND (6) FOR THE PURPOSE OF DISCUSSION OR CONSIDERATION OF THE SUBJECT OF the ACQUISITION OF AN INTEREST IN REAL PROPERTY FOR A PUBLIC PURPOSE AND FOR THE PURPOSE OF DISCUSSION OF THE SUBJECT OF INVESTMENT OF PUBLIC FUNDS WHERE BARGAINING IS INVOLVED, AND WHERE IF MADE PUBLIC, THE BARGAINING POSITION OR FINANCIAL INTEREST OF THE CITY WOULD BE ADVERSELY AFFECTED.

6.0 ADJOURNMENT

O-2013-02

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 2/12/13 **CUT OFF DATE:** _____

RESOLUTION ___ **ORDINANCE** x **PUBLIC HEARING** x

ITEM TITLE: An Ordinance to Increase the Salaries of the Mayor and Members of the Common Council.

STAFF RECOMMENDATION: Adoption of the Ordinance

PUBLIC NOTICE AND HEARING: Required

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: Salary Increases will be funded through the General Fund

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Finance Director	TB		1-25-13
2.			
3.			
4.			
5. City Attorney			1/29/2013
6. City Manager			2-5-13
7. Clerk of Council			

Initiating Department Director's Signature: _____ 1/25/13 Date

CITY ATTORNEY'S OFFICE Received JAN 25 2013 WINCHESTER, VA

APPROVED AS TO FORM:

1/29/2013

CITY ATTORNEY

Revised: October 23, 2009

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Joel Davis, Human Resources Director

Date: December 18, 2012

REVISED ON JANUARY 25, 2013 FOR FEBRUARY 12, 2013 CITY COUNCIL MEETING

Re: Council Pay Increase Discussion

THE ISSUE: Is it appropriate to increase compensation for members of Council.

RELATIONSHIP TO STRATEGIC PLAN: Compensation/Benefits for Council

BACKGROUND: Upon reviewing the Committee on Council Reorganization, hereafter referred to as (COCO) report dated April 2000, and taking into consideration the recommendation of that committee in regards to Council's pay, and after reviewing salary survey information, I offer the following for your consideration.

As you know Section 15.2-1414.6 of the Virginia Code has established maximums in regards to the salary that can be paid to members of council as well as the mayor or president of the council based upon the population of the jurisdiction. Winchester falls within the range of 20,000-34,999 with a maximum salary for the Mayor being $13,000 and $12,000 for the other councilors. It is important to note that per the aforementioned Code, no increase in the salary of a member of council shall take effect until July 1 after the next regularly scheduled general election of council members, which in this case will be July 1, 2015 (see attached).

The (COCO) recommended in its report that the Mayor be paid $6,500 and other council members $6,000 (see attached). The Committee felt that half of the statutory maximum was appropriate after reviewing compensation paid in other jurisdictions comparable to Winchester.

After reviewing the attached salary survey completed in August of 2012, which is based upon the 2010 population census of jurisdictions comparable to Winchester, I offer the following options for your consideration.

BUDGET IMPACT: This will be dependent upon the option that is adopted by Council. They are summarized below.

Current Compensation: $33,600 ($3,600 for Council Members and $4,800 for the Mayor)
Option 1: $54,500 ($6,000 for Council members and 6,500 for the Mayor)
Option 2: $77,287 ($8,457 for Council members and $9,631 for the Mayor)
Option 3: $109,000 ($12,000 for Council members and $13,000 for the Mayor)

COUNCIL'S DECIDED OPTION: $84,600 ($9,000 FOR COUNCIL MEMBERS AND $10,800 FOR THE MAYOR AND COUNCIL PRESIDENT)

OPTIONS:

1. Set the salaries at the levels recommended in the 2000 COCO report, which are $6,500 for the Mayor and $6,000 for the other members of Council.

2. Set the salaries at the average rate of the jurisdictions that are close in population to Winchester as identified in the attached salary survey, which would be $9,631 for the Mayor and $8,457 for the other members of Council.

3. Set the salaries at the statutory maximum for the Mayor, which would be $13,000 and $12,000 for the other members of Council.

RECOMMENDATION: My recommendation is to set the salaries as per Option 2. This provides the members of Council with a moderate increase in salary and brings them closer to the jurisdictions similar in population to Winchester's. This coupled with the extension of health and dental benefits to members of Council greatly enhances the overall compensatory package, which will more appropriately compensate existing members, as is the case in other comparable jurisdictions, as well as be helpful in attracting citizens to run for positions on the Common Council.

WHILE THE AFORMEMENTIONED THREE (3) OPTIONS WERE RECOMMENDED BY STAFF FOR CONSIDERATION BY THE COMMON COUNCIL, AT ITS WORK SESSION ON DECEMBER 18TH, 2012 THE COMMON COUNCIL VOTED TO MOVE THIS ITEM FORWARD AND TO SET THE SALARIES FOR MEMBERS OF THE COMMON COUNCIL TO BE THE SAME AS THE FREDRICK COUNTY BOARD OF SUPERVISORS, WITH THE MAYOR AND COUNCIL PRESIDENT TO RECEIVE THE SAME SALARY AS THE CHAIRPERSON OF THE BOARD OF SUPERVISORS.

THE COMMON COUNCIL

Rouss City Hall
15 North Cameron Street
Winchester, VA 22601
540-667-1815
TDD 540-722-0782
www.winchesterva.gov

I, Kari J. Van Diest, Deputy Clerk of the Common Council, hereby certify on this 12th day of February 2013 that the following Resolution is a true and exact copy of one and the same adopted by the Common Council of the City of Winchester, assembled in regular session on the 12th day of February 2013.

AN ORDINANCE TO INCREASE THE SALARIES OF THE MAYOR OF THE CITY OF WINCHESTER AND THE MEMBERS OF THE COMMON COUNCIL FOR THE CITY OF WINCHESTER

WHEREAS, Virginia Code Section 15.2-1414.6 authorizes the Common Council for the City of Winchester to set the annual salaries for its members and the Mayor of the City of Winchester; and

WHEREAS, members of the Common Council for the City of Winchester are currently paid Three Hundred Dollars ($300) per month, and the Mayor of the City of Winchester is currently paid Four Hundred Dollars ($400) per month; and

WHEREAS, Virginia Code Section 15.2-1414.6 permits a city Winchester size to pay it Common Council members up to Twelve Thousand Dollars ($12,000) per year and its Mayor up to Thirteen Thousand Dollars ($13,000) per year; and

WHEREAS, an increase in the salary of the members of the Common Council to Seven Hundred and Fifty Dollars ($750) per month, and the Mayor and Council President to Nine Hundred Dollars ($900) per month, would help to offset the financial burden incurred by members of the Common Council and the Mayor as a result of the time they spend on City matters; and

WHEREAS, such increases, which result in a total annual salary of Nine Thousand Dollars ($9,000) for members of the Common Council, and Ten Thousand Eight Hundred Dollars for the Mayor and Council President ($10,800), are still less than the maximum permitted by Section 15.2-1414.6 of the Code of Virginia; and

WHEREAS, Virginia Code Section 15.2-1414.6 requires that every proposed increase in the salary of a member of council shall be adopted at least four months prior to the date of the next municipal election; and

WHEREAS, the date of the next municipal election is November 2014, thus enactment of this ordinance in 2013 will be in compliance with Virginia Code Section 15.2-1414.6; and

WHEREAS, Virginia Code Section 15.2-1414.6 requires that increases in council salaries shall not take effect until July 1 after the next regularly scheduled general election of council members; and

WHEREAS, the date of the next regularly scheduled general election of council members is currently November 2014, thus July 1, 2015 as the effective date of the salary increases will be in compliance with Virginia Code Section 15.2-1414.6; and

WHEREAS, Section 4 of the Charter of the City of Winchester requires that no change (shall be) made in the compensation of salaried and fee officials during their present term of office; and

WHEREAS, on January 1, 2015, none of the members of the Common Council voting for this ordinance will be in their present term of office, thus enactment of this ordinance will be in compliance with Section 4 of the Charter of the City of Winchester; and

WHEREAS, the Common Council has determined that it is appropriate and proper to provide for salary increases.

NOW, THEREFORE, BE IT ORDAINED that:

1. The salary of the members of the Common Council shall be increased to Seven Hundred and Fifty Dollars ($750) per month, and the salary of the Mayor and Council President shall be increased to Nine Hundred Dollars ($900) per month.
2. Such increases shall take effect July 1, 2015.

State Law Reference-Virginia Code – 15.2-1414.6.

Resolution No. 2013-

ADOPTED by the Common Council of the City of Winchester on the 12th day of February 2013.

Witness my hand and the seal of the City of Winchester, Virginia.

Kari J. Van Diest
Deputy Clerk of the Common Council

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 2/26/13 (work session), 3/12/13 (regular mtg) **CUT OFF DATE:** 2/20/13

RESOLUTION ___ **ORDINANCE** ___ **PUBLIC HEARING** X

ITEM TITLE:
CU-13-15 Request of Benjamin Pelletier on behalf of Shenandoah Personal Communications, LLC for a conditional use permit to upgrade existing telecommunications facilities with additional antennas and a microwave dish at 799 Fairmont Avenue *(Map Number 153-01- -2)* zoned Limited Industrial (M-1) District.

STAFF RECOMMENDATION:
Approval with conditions

PUBLIC NOTICE AND HEARING:
Public hearing for 3/12/13 Council mtg

ADVISORY BOARD RECOMMENDATION:
Planning Commission recommended approval with conditions

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Planning			2/20/13
2. City Attorney			2/20/2013
3. City Manager			2-21-13
4. Clerk of Council			

Initiating Department Director's Signature: _____ 2/20/13
(Zoning and Inspections)

CITY ATTORNEY'S OFFICE Received FEB 20 2013 WINCHESTER, VA

APPROVED AS TO FORM:
2/20/2013
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Aaron Grisdale, Director of Zoning and Inspections

Date: February 20, 2013

Re: Conditional Use Permit (CU-13-15) – Telecommunications Facility Upgrade

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THE ISSUE:
Request for CUP for removal of six antennas and installation of nine antennas to the existing 182-foot tower located on the National Fruit property at 799 Fairmont Avenue.

RELATIONSHIP TO STRATEGIC PLAN:
N/A

BACKGROUND:
City Staff has received a request for a conditional use permit for a modification of an existing telecommunications facility. This request includes the removal of six existing antennas, and the installation of nine antennas along with modification of the existing ground equipment. (See staff report for additional information).

BUDGET IMPACT:
No funding is required.

OPTIONS:
- Approve with conditions recommended by the Planning Commission
- Approve with revised conditions
- Deny the application

RECOMMENDATIONS:
Planning Commission and staff recommend approval with conditions as noted within the staff report.

Council Work Session
February 26, 2013

CU-13-15 Request of Benjamin Pelletier on behalf of Shenandoah Personal Communications, LLC for a conditional use permit to upgrade existing telecommunications facilities with an additional antennas and a microwave dish at 799 Fairmont Avenue *(Map Number 153-01- -2)* zoned Limited Industrial (M-1) District.

REQUEST DESCRIPTION
The applicant is proposing to remove six existing antennas and replace with nine new antennas as well add a microwave antenna as part of an upgrade of existing telecommunications facilities at the tower located on the National Fruit property at 799 Fairmont Avenue.

AREA DESCRIPTION
The existing tower is located in a wooded area in the northwest portion of the ±68 acre, M-1 zoned National Fruit Product Company industrial property. Land to the east is also zoned M-1 and includes the migrant worker camp and some single family residences along the west side of Fairmont Ave. Land to the west is zoned LR and is vacant. Land further to the southwest includes an M-1 zoned City water tank and an LR zoned single family residence. Land directly to the north is located in Frederick County and includes vacant land in the Rural Area (RA) and Residential Performance (RP) Districts.

STAFF COMMENTS
The applicant's proposal involves the removal of six existing antennas and the installation of nine new antennas along with a microwave dish on behalf of Shentel Communications on the existing 182' lattice tower located on the National Fruit parcel. The equipment will be installed at an elevation of 164'.

Collocation of antennas on existing structures as proposed is encouraged within the Zoning Ordinance. The three existing equipment cabinets at the base of the tower would be retrofitted, and a new fiber distribution box and cables will also be installed. Shentel's engineer has submitted a preliminary certification that the proposed new antennas will not exceed the radio frequency emission standards established by the Federal Government.

RECOMMENDATION
The Director of Zoning and Inspections recommends approval of the request with conditions.

For a conditional use permit to be approved, a finding must be made that the proposal as submitted or modified will not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood.

At its February 19, 2013 meeting, the Planning Commission forwarded **CU-13-15** to Council recommending approval because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The recommended approval is subject to the following conditions:

1. Submit an as-built emissions certification after the facility is in operation;
2. The applicant, tower owner, or property owner shall remove equipment within ninety (90) days once the equipment is no longer in active use;
3. Submit a bond guaranteeing removal of facilities should the use cease.

NETWORK BUILDING
& CONSULTING, LLC

January 10, 2013

City of Winchester
Department of Zoning and Inspections
15 N. Cameron St
Winchester, Virginia 22601

RECEIVED
JAN 11 2013

RE: Conditional Use Permit
799 Fairmont Ave
Winchester, VA 22601

Site Name: 021 – Winchester

Applicant:
Shenandoah Personal Communications, LLC (Hereafter referred to as "Shentel.")
500 Shentel Way, PO Box 459
Edinburg, Virginia 22824

Applicant's Agent:
Benjamin Pelletier
7380 Coca Cola Drive, Suite 106
Hanover, 21076

Description of Intent
Shentel is requesting to amend existing conditions, per Section 18-2-1 of the Zoning Ordinance, on an existing telecommunications site located within an M1, or Limited Industrial District. Shentel is in the process of upgrading its core network, including all cell sites, in preparation for its 4G long term evolution (LTE) service launch. These upgrades will allow Shentel to provide 4G LTE wireless data services as well as help to improve its current 3G data and voice coverage. As this is a complete change in antennas and equipment at this location, a new conditional use permit would be required.

Proposed Scope of Work

The six existing panel antennas mounted to the pre-existing lattice tower shall be removed and replaced with nine new panel antennas of similar size. One new microwave dish antenna will also be installed. The new antennas are shown at an elevation of 164 feet; the same height as the existing Shentel antennas. The three existing equipment cabinets located at the base of the tower would be retrofitted, and a new fiber distribution box and cables would be installed.

7380 Coca Cola Dr., Suite 106 Hanover, MD 21076 (410) 712-7092 FAX (410)712-4056

NETWORK BUILDING
& CONSULTING, LLC

18-2-1 CONDITIONAL USE PERMIT

18-2-1. Conditional use permits may be granted by the City Council for any of the uses for which a permit is required by the provisions of this Ordinance. In granting any such use permit, the City Council may impose any such conditions in connection therewith as will assure that it will conform with the requirements contained herein and will continue to do so, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. A conditional use permit shall not be issued unless the City Council shall find that:

a. The proposal as submitted or as modified will not affect adversely the health, safety, or welfare of persons residing or working in the neighborhood of the proposed use; and will not be detrimental to public welfare or injurious to the property or improvements in the neighborhood. Among matters to be considered in this connection are traffic congestion, noise, lights, dust, odor, fumes, and vibration, with due regard for timing of operation, screening, and other matters which might be regulated to mitigate adverse impact.

Proposal is consistent.

b. The proposal as submitted or modified will conform to the Comprehensive Plan, or to specific elements of such plan, and the official policies adopted in relation thereto, including the purposes and the expressed intent of this Ordinance.

Proposal is consistent.

18-2-1.2 Proposals for transmitting and receiving facilities and towers for cellular communications systems and similar communications systems shall demonstrate the following:

a. All possible means for sharing space on existing towers or on existing buildings or other structures have been exhausted and no alternative other than constructing a new tower exists, and if a new tower is proposed, the applicant has executed a Letter of Intent to share space on their tower and negotiate in good faith with other interested parties.

Existing site is located on an existing tower.

7380 Coca Cola Dr., Suite 106 Hanover, MD 21076 (410) 712-7092 FAX (410)712-4056

b. The height of any tower is no more than the minimum to accomplish required coverage and any new tower is separated from property lines in a residential district by not less than the height of the tower. In no case shall any tower exceed 75 feet in height in a LR, MR, HR, RO-1, RB-1 or HS Districts, nor 100 feet in the B-1, B-2, CM-1, PC, MC or HE-1 Districts, nor 200 feet in the M-1 or M-2 Districts.

Existing tower is at 182'.

c. The tower construction is of a design which minimizes the visual impact and the tower and other facilities have been camouflaged and/or screened from adjacent properties and rights of way to the maximum extent practicable. To this end, the proposal must provide for retention of existing stands of trees and the installation of screening where existing trees do not mitigate the visual impact of the facility. Such screening must, at a minimum, meet the requirements of Section 19-5-6.4d of this Ordinance. The Planning Commission may recommend and the City Council may require additional trees and screening when the minimum provisions do not mitigate adverse visual impacts of the facility.

N/A – Existing site; base station screened by existing fence

d. The electromagnetic fields do not exceed the radio frequency emission standards established by the American National Standards Institute or issued by the Federal Government subsequent to the adoption of this Ordinance.

Proposal is consistent.

18-2-3 PROCEDURES.

18-2-3.1 The procedures governing the application for and the granting of conditional use permit where required by this Ordinance shall be as follows:

18-2-3.2 The applicant, who shall be a record owner, or contract owner with written approval of the owner, of the land involved (if a contract owner, copy of said contract shall be filed with and made a part of application), shall make application for the use permit to the Administrator on the form provided for that purpose, giving all information required by such form, including such other information which the Administrator may deem necessary for an intelligent consideration of the project for which a permit is desired. The application shall be accompanied by the fee as per Section 23-8, evidence of delinquent tax payment per Section 23-9, and disclosure of real party

interest per Section 23-10 of this Ordinance and seven (7) copies of the following:

18-2-3.3 A site plan in accordance with Article 19 of this Ordinance.

See attached Site Plan, included in drawings, dated 1/10/13.

18-2-3.4 The front, side, and rear elevations and floor plans of the proposed buildings.

See attached drawings dated 01/10/13, showing existing tower elevation.

18-2-3.5 Public Notice and Hearing. The Administrator shall submit the conditional use permit application and copies of the site plan to the Commission, which shall make a recommendation to City Council which shall approve, approve with conditions, or deny the application. No such use permits shall be considered by the Commission or the Council except after notice and hearing as per Section 23-7-1 of this Ordinance. Written notice shall be provided per Section 23-7-2 of this Ordinance for both the Commission and City Council hearings.

Shentel will comply.

18-2-3.6 Notification Signs. For the hearing by both the Commission and City Council, the applicant shall place notification signage as per Section 23-7-3 of this Ordinance.

Shentel will comply.

18-2-3.7 Upon the granting of a use permit, one (1) copy of the site plan, upon which has been indicated the changes or restrictions, if any, required by the City Council or the Board of Zoning Appeals, shall be returned to the applicant, who may thereafter conduct the operations for which permits has been granted only in such manner and for such a time as the permit and the certified drawing shall specify. A use permit shall be valid for only the specific use it covers in the specific location designated.

Shentel understands and agrees to conditions.

18-2-3.8 **Expiration.** Notwithstanding any specific provision of any condition imposed by City Council in conjunction with the granting of a Conditional Use Permit which may conflict with this general provision, a Conditional Use Permit shall expire immediately upon any of the following

occurrences: a) the use does not commence within one year of approval; b) the use ceases for more than one year; or, c) the use changes to another use allowed in the district. In cases where government action impedes reasonable operation of the use, these provisions shall not include the duration of such restrictions. Where permits are granted for portions of a site and/or structure, the expiration shall apply to just that portion of the site and/or structure.

Shentel understands and agrees to conditions.

18-2-3.9 **Revocation By City Council.** If the applicant or successor fails to comply with any conditions imposed by City Council per Section 18-2-1.1, City Council may, in accordance with §15.2-2286, Code of Virginia, et seq., either amend or revoke the Conditional Use Permit upon notification from the Administrator of such failure to comply. No such amendment or revocation shall be considered by City Council until a public hearing has been held per Section 23-7-1 of this Ordinance.

Shentel understands and agrees to conditions.

If you have any questions or need further information, please contact me at (757) 784-3671 or bpelletier@nbcllc.com

Most Respectfully,

Benjamin Pelletier
Consultant for Shentel Communications
Network Building & Consulting, LLC

O-2013-06

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 2.19.2013 **CUT OFF DATE:** 2.12.2013

RESOLUTION ___ **ORDINANCE** X **PUBLIC HEARING** ___

ITEM TITLE: Shenandoah Personal Communications establishment of a Cell on Wheels (COW) as a temporary facility on city property located at 107 N. East Lane, Timbrook Annex to support cellular service in the downtown area during the 2013 Apple Blossom Festival.

STAFF RECOMMENDATION: Recommend Shenandoah Personal Communications be permitted to install the COW

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: City will receive $500.00 for use of the property with no expenditure to the city.

INSURANCE: Shenandoah Personal Communications to provide coverage.

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1.			
2.			
3.			
4.			
5. City Attorney			2/13/2013
6. City Manager			
7. Clerk of Council			

Initiating Department Director's Signature: _____ 2-6-2013
Date

CITY ATTORNEY'S OFFICE Received FEB 13 2013 WINCHESTER, VA

APPROVED AS TO FORM:

2/13/2013
CITY ATTORNEY

Revised: October 23, 2

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: L. A. Miller

Date: February 5, 2013

Re: Cell Service – Downtown Area During Apple Blossom Festival

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THE ISSUE: Temporary Placement of a Telecommunications Facility on or about April 16, 2013 – May 10, 2013

RELATIONSHIP TO STRATEGIC PLAN: Temporary placement of the Cell on Wheels (COW) unit will assist in maintaining cell service in the historic down town area of the city during the 2013 Shenandoah Apple Blossom Festival. In relationship to the Strategic Plan the placement of the COW supports each of the four (4) goals sited in the strategic plan. Cell service will assist in growing the economy, assist public safety agencies to perform as high performance organizations, show case the historic old town revitalization and provide a service making the city more livable.

BACKGROUND: During the 2011 Apple Blossom Festival cell service was lost due to the overloading of cell circuits. The loss of service not only impacted the public at large but many of the public safety and services agencies of the city. Shenandoah Personal Communications initiated discussions relating to establishing a COW during the 2012 festival to avert the loss of cell service. Shenandoah Personal Communications submitted a request to establish a COW on city property located on the southwest corner of 107 N. East Lane (Timbrook Annex). City Council through an ordinance authorized Shenandoah Personal Communications to utilize the location for the establishment of a COW. The establishment of the COW during the festival resulted in a positive outcome. No reports of loss of cell service from city agencies, festival officials or others were reported.
Shenandoah Personal Communications is requesting authorization to utilize the site during the 2013 festival to supplement cellular service in the downtown area. The COW would be established on or about April 26, 2013 and dismantled on or about May 10, 2013.

BUDGET IMPACT: In return for utilization of the site for a period beginning on or about April 26, 2013 and extending to on or about May 10, 2013 the city will receive a payment of five hundred dollars. Staff review has not revealed a negative impact either from a policy or fiscal perspective.

OPTIONS: Options Council may consider:

Council may authorize the establishment of the COW as requested

Council may act unfavorably with regard to the request and deny the request

Council may enter into further negotiations with Shenandoah Personal Communications for different terms.

RECOMMENDATIONS: Based on historical data from the 2012 Apple Blossom Festival the establishment of the COW created a positive impact as related to cellular services in the downtown area. No negative impacts have been identified. Staff recommends that City Council authorize the establishment of the COW for the 2013 Shenandoah Apple Blossom Festival.

SHENTEL®
Always connected to you

February 6, 2013

LETTER OF AGREEMENT

Mr. Steve Corbit, Risk Manager
City of Winchester
15 N. Cameron Street - Suite 106
Winchester, VA 22601

Re: Temporary Location of Tower and Cell on Wheels (COW) for Sprint Wireless Coverage for 2013 Apple Blossom Festival
Tax Parcel 173-1-Q-1 107 North East Lane, Winchester
Shentel Site #885 – Winchester Apple Blossom COW #2

Dear Mr. Corbit:

This letter will serve as the agreement between Shenandoah Personal Communications Company ("Shentel") and City of Winchester ("Owner"), for the temporary placement of a telecommunications facility (consisting of a mobile trailer and tower), commonly referred to as a cell on wheels ("COW"), to provide additional Sprint wireless service during the 2013 Apple Blossom Festival. The COW will be placed at a mutually agreed upon location on the property of Owner ("Premises") for a period to cover a set up period prior to and a demobilization period following the Apple Blossom Festival. Shentel hereby agrees to pay the Owner the sum of Five Hundred Dollars ($500.00) for this period.

Owner hereby grants to Shentel the right and license to locate the COW on the Premises for a period commencing April 22, 2013 and terminating no later than May 9, 2013. Shentel agrees to decommission the COW as expediently as possible. Owner further agrees that Shentel shall have access to the Premises during the term of this agreement 24/7, and the right to run conduit above the ground from the nearest available electrical and telephone supply and install temporary fencing around the COW to secure access thereto.

Shentel agrees that it shall repair any damage to the Premises or surrounding areas of the Owner's property which may be damaged by the use of Shentel's COW, or the placement thereof. An inspection of the access and Premises will be conducted by Shentel and Owner prior to placement of the COW. Shentel indemnifies and holds the Owner harmless from any and all costs (including reasonable attorneys' fees) and claims of liability or loss which arise out of its use and/or occupancy of the Premises. This indemnity does not apply to any claims which may arise from the negligence or intentional misconduct of the Owner. This indemnity obligation will survive termination/expiration of this Agreement. Shentel shall also deliver to Owner a Certificate of Liability Insurance naming Owner as an additional insured for the period of its use of Premises.

As applicable, this Agreement incorporates the City of Winchester's Required General Terms and Conditions (copy attached hereto).

Your assistance in this temporary placement of the COW to support Sprint wireless coverage of the Apple Blossom Festival is sincerely appreciated.

Sincerely yours,

William L. Pirtle
Vice President – Sales and Marketing

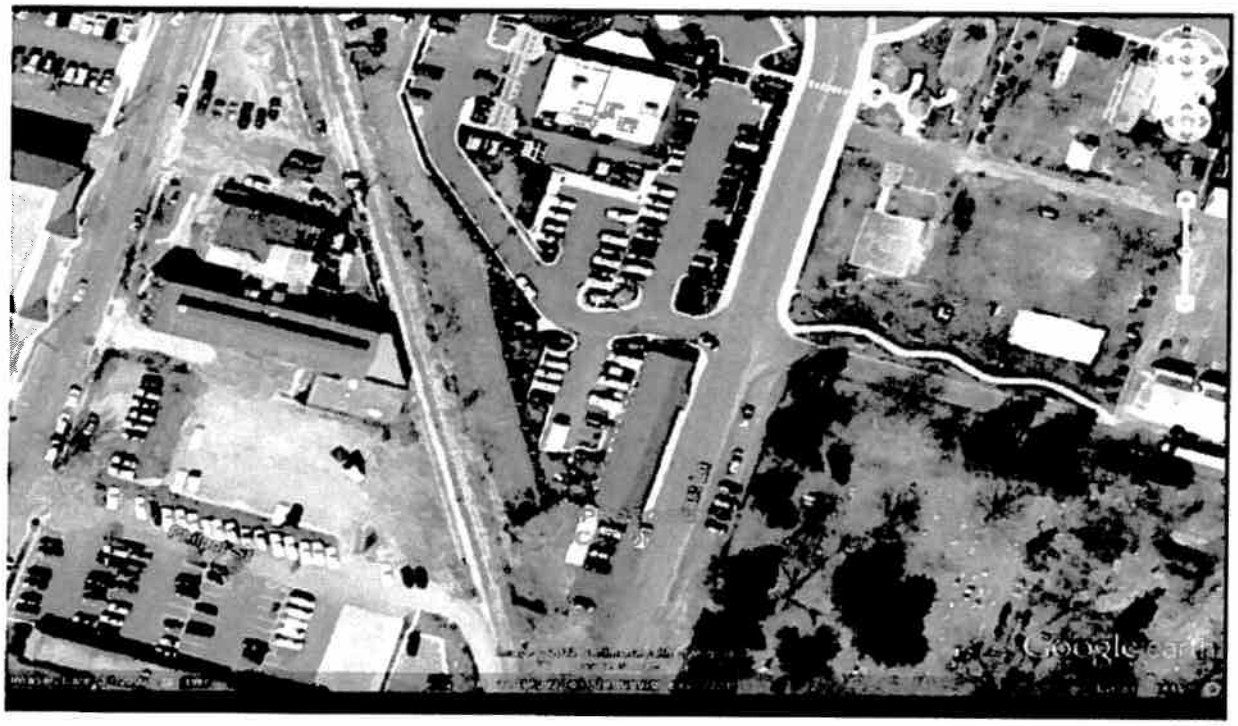
SEEN AND AGREED:

CITY OF WINCHESTER

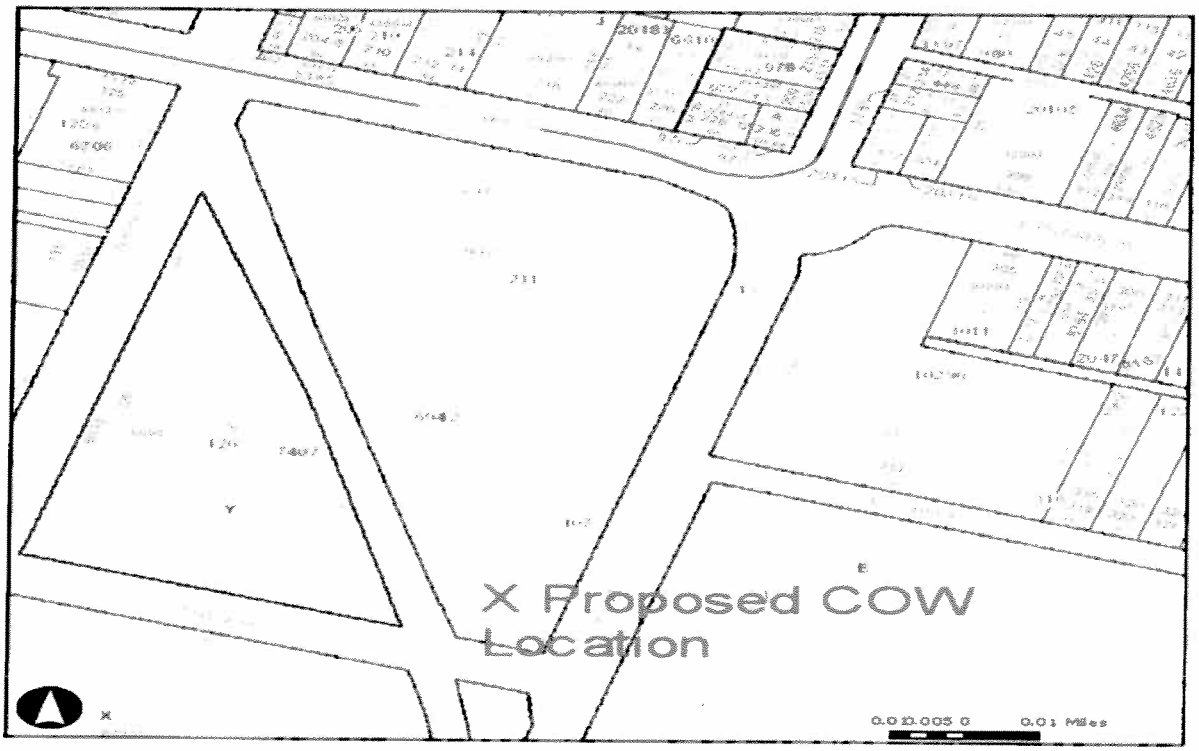
By: _____

By: _____

EXHIBIT A



Parcel 173-1-Q-1



Authorized Agent must initial for Acceptance: _____ Date: _____

CITY OF WINCHESTER

REQUIRED GENERAL TERMS AND CONDITIONS

A. APPLICABLE LAWS AND COURTS
B. ANTI-DISCRIMINATION
C. ETHICS IN PUBLIC CONTRACTING
E. IMMIGRATION REFORM AND CONTROL ACT OF 1986
F. DEBARMENT STATUS
G. ANTITRUST
H. MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS
I. CLARIFICATION OF TERMS
J. PAYMENT
K. PRECEDENCE OF TERMS
L. QUALIFICATIONS OF BIDDERS OR OFFERORS
M. TESTING AND INSPECTION
N. ASSIGNMENT OF CONTRACT
O. SEVERABILITY
P. CHANGES TO THE CONTRACT
Q. DEFAULT
R. TAXES
S. USE OF BRAND NAMES
T. TRANSPORTATION AND PACKAGING
U. INSURANCE
V. ANNOUNCEMENT OF AWARD
W. DRUG-FREE WORKPLACE
X. NONDISCRIMINATION OF CONTRACTORS
Y. AVAILABILITY OF FUNDS
Z. LICENSES AND PERMITS
AZ. TERMINATION
BZ. HOLD HARMLESS

These General Terms and Conditions are required for all sealed and unsealed written solicitations issued by the City of Winchester for procurements that are subject to the Winchester City Code unless changed, deleted or revised by the City Attorney.

A. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed by the laws of the Commonwealth of Virginia. Any dispute arising from the performance or non-performance of this Agreement shall be resolved or otherwise litigated in the Circuit Court for the City of Winchester, Virginia or the Fourth Circuit Federal District Court in Harrisonburg, Virginia. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute following the Winchester City Code, Chapter 21-61. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

B. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to the City of Winchester that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA).* If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over $10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:

Authorized Agent must initial for Acceptance: _____ Date: _____

a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

2. The contractor will include the provisions of 1. above in every subcontract or purchase order over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

C. **ETHICS IN PUBLIC CONTRACTING:** By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

D. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their (bids/proposals), (bidders/offerors) certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

E. **DEBARMENT STATUS:** By submitting their (bids/proposals), (bidders/offerors) certify that they are not currently debarred by the Federal Government, Commonwealth of Virginia, or by any City, Town or County from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

F. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the City of Winchester all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the City of Winchester under said contract.

H. **MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS:** Failure to submit a bid/proposal on the official City form provided for that purpose may be a cause for rejection of the bid/proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the bid/proposal; however, the City of Winchester reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid/proposal.

I. **CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the Purchasing Agent, or designee.

J. **PAYMENT:**

1. To Prime Contractor:

a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

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c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which department is being billed.

d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail.

e. **Unreasonable Charges**. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the City of Winchester shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

a. A contractor awarded a contract under this solicitation is hereby obligated:

(1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the City of Winchester for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

(2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the City of Winchester, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the City of Winchester.

K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. **QUALIFICATIONS OF (BIDDERS/OFFERORS):** The City of Winchester may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) shall furnish to the City of Winchester all such information and data for this purpose as may be requested. The City of Winchester reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The City of Winchester further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the City of Winchester that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

M. **TESTING AND INSPECTION:** The City of Winchester reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the City of Winchester.

O. **SEVERABILITY OF CONTRACT:** In the event that any provision shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

Authorized Agent must initial for Acceptance: _____ Date: _____

P. **CHANGES TO THE CONTRACT:**

1. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or ten thousand dollars ($10,000), whichever is greater, without the advance written approval of the City Council. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer (Winchester City Code 21-44).

2. Changes can be made to the contract in any of the following ways:

   a. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

   b. The City of Winchester may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the City of Winchester a credit for any savings. Said compensation shall be determined by one of the following methods:

      1. By mutual agreement between the parties in writing; or
      2. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the City of Winchester's right to audit the contractor's records and/or to determine the correct number of units independently; or
      3. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the City of Winchester with all vouchers and records of expenses incurred and savings realized. The City of Winchester shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the City of Winchester within thirty (30) days from the date of receipt of the written order from the City of Winchester. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the City of Winchester Code. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the City of Winchester or with the performance of the contract generally.

Q. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the City of Winchester, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the City of Winchester may have.

R. **TAXES:** Sales to the City of Winchester are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request.

S. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offerors) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the City of Winchester to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the

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product offered is an equal product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.

T. **TRANSPORTATION AND PACKAGING:** By submitting their (bids/proposals), all (bidders/offerors) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

U. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the City of Winchester of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.

2. Employer's Liability - $100,000.

3. Commercial General Liability - $1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The City of Winchester must be named as an additional insured and so endorsed on the policy.

4. Automobile Liability - $1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

NOTE: In addition, various Professional Liability/Errors and Omissions coverages are required when soliciting those services as follows:

Profession/Service	Limits
Accounting	$1,000,000 per occurrence, $3,000,000 aggregate
Architecture	$2,000,000 per occurrence, $6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	$1,000,000 per occurrence, $3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	$1,925,000 per occurrence, $3,000,000 aggregate
(Limits increase each July 1 through fiscal year 2008, as follows: July 1, 2008 - $2,000,000. This complies with §8.01-581.15 of the *Code of Virginia*.	
Insurance/Risk Management	$1,000,000 per occurrence, $3,000,000 aggregate
Landscape/Architecture	$1,000,000 per occurrence, $1,000,000 aggregate
Legal	$1,000,000 per occurrence, $5,000,000 aggregate
Professional Engineer	$2,000,000 per occurrence, $6,000,000 aggregate
Surveying	$1,000,000 per occurrence, $1,000,000 aggregate

V. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over $50,000, as a result of this solicitation, the Purchasing Agent will publicly post such notice on the City of Winchester's web site (www.winchesterva.gov/purchasing) for a minimum of 10 days.

Authorized Agent must initial for Acceptance: _____ Date: _____

W. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

X. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

Y. **AVAILABILITY OF FUNDS:** In the event that funds are not appropriated for this Contract for any City fiscal year, following the City's current year, the Contract shall terminate automatically as of the last day for which funds were appropriated without the City providing written notice to the Contractor prior to the date of termination. The City shall not consider termination of the Contract pursuant to this section default. Upon such termination, the City shall be released from any obligation to make future payments and shall not be liable for cancellation or termination charges.

Z. **LICENSES AND PERMITS:** Contractors will be responsible for all licenses and permits, if required. Any person, firm, or corporation responding to this invitation to bid which is required to have a current and valid City of Winchester business license and, in fact, does not, will not be considered a "responsive bidder" as such term is defined by the Code of Virginia §2.2-4301, as amended. Any bid received from such an entity may be rejected, at the City's sole option, for that reason alone. In addition, the successful bidder or offeror will be required to produce affirmative evidence, satisfactory to the Purchasing Agent, or designee that it has such a license, or is not required to have such a license, prior to approval and execution of any contract to perform the work herein described.

AZ **TERMINATION:**

a. Termination for Convenience: The City of Winchester may terminate a contract, in whole or in part, whenever the City OF Winchester determines that such termination is in the best interest of the City of Winchester, without showing cause, upon giving ten (10) days written notice to the vendor.
b. Termination for Default: When the vendor has not performed or has unsatisfactorily performed the contract, the City of Winchester may terminate the contract for default. Upon termination for default, payment may be withheld at the discretion of the City of Winchester. The Vendor will be paid for work satisfactorily performed prior to termination.

BZ **HOLD HARMLESS:** Bids/Proposal shall provide that during the term of the contract, including warranty period, for the successful bidder/offeror indemnifying, defending, and holding harmless the City, its officers, employees, agent and representatives thereof from all suits, actions, claims of any kind, including attorney's fees, brought on account of any personal injuries, damages, or violation of rights sustained by any person or property in consequence of any neglect in safeguarding contract work, or on account of any act or omission by the contractor or his employees, or from any claims or amounts arising from violation of any law, bylaw, ordinance, regulation or decree. The vendor agrees that this clause shall include claims involving infringement of patent or copyrights.

AN ORDINANCE TO AUTHORIZE THE MANAGER TO EXECUTE A LETTER OF AGREEMENT WITH SHENANDOAH PERSONAL COMMUNICATIONS COMPANY ("SHENTEL") FOR THE TEMPORARY USE OF CITY PROPERTY FOR THE PURPOSE OF ERECTING A MOBILE TELECOMMUNICATIONS FACILITY – CELL ON WHEELS ("COW") ON PROPERTY OWNED BY THE CITY OF WINCHESTER AT THE SOUTH END OF THE TIMBROOK ANNEX DURING THE 2013 APPLE BLOSSOM FESTIVAL

WHEREAS, the Emergency Management Coordinator has expressed the importance of maintaining adequate wireless communications during the Shenandoah Apple Blossom Festival particularly during critical hours; and

WHEREAS, the City currently receives much of its wireless communications services from Shenandoah Personal Communications Company ("SHENTEL"); and

WHEREAS, it is believed that many of the problems with wireless communications during critical hours of the Shenandoah Apple Blossom Festival may be alleviated through the erection of temporary Mobile Telecommunications Facility – Cell on Wheels ("COW"); and

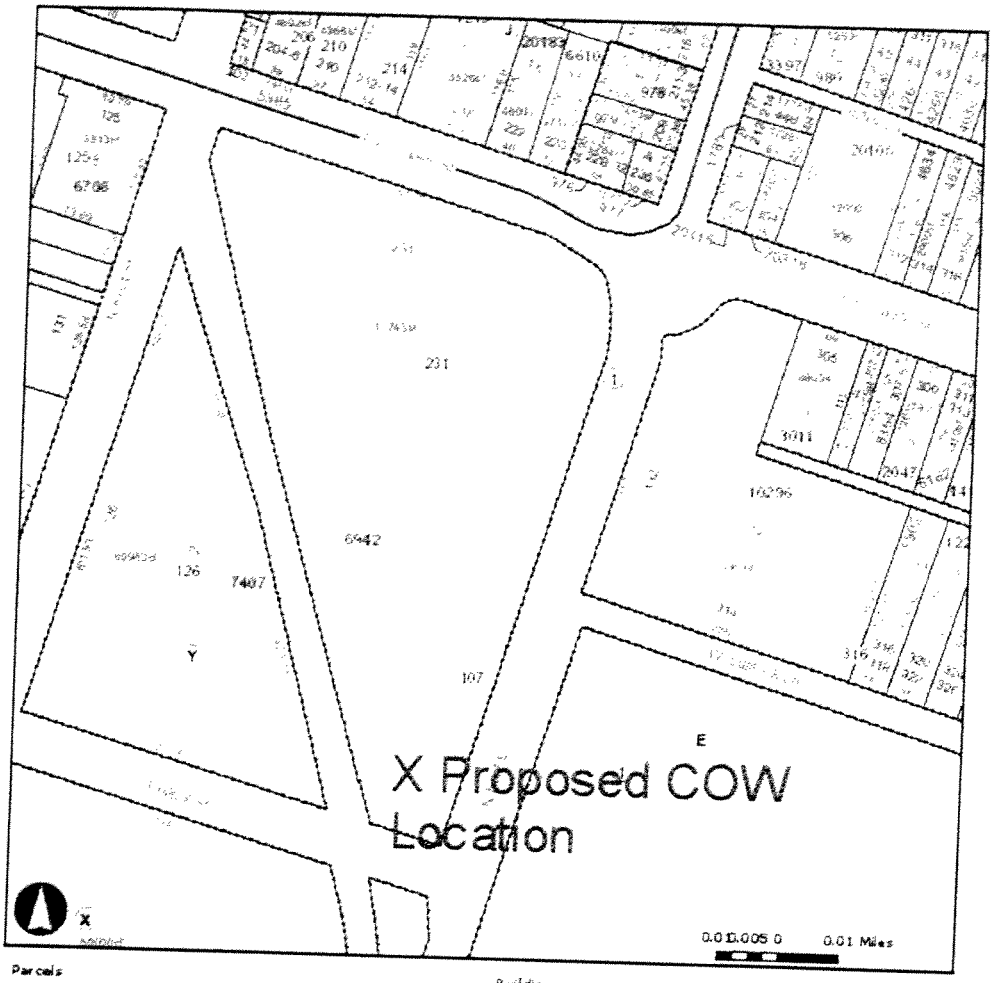
WHEREAS, it has been proposed that such a COW could be erected and utilized during the 2013 Apple Blossom Festival on property owned by the City of Winchester at the South End of the Timbrook Annex on the attached diagram provided with this Ordinance by the Emergency Management Coordinator; and

WHEREAS, it has been proposed that SHENTEL will reimburse the City in the total amount of five hundred and 00/100 dollars ($500.00) for the temporary use of the property from April 16, 2013 through May 10, 2013; and

WHEREAS, the Risk Manager for the City of Winchester has represented that SHENTEL has satisfied all necessary insurance requirements and has presented a Letter of Agreement that has been reviewed and deemed acceptable by the City Attorney.

NOW THEREFORE be it ORDAINED, that Common Council for the City of Winchester hereby authorizes the property at the South End of the Timbrook Annex to be used during the 2013 Apple Blossom Festival as described in the Letter of Agreement proposed by SHENTEL; and BE IT FURTHER ORDAINED that the City Manager is hereby authorized to execute said Letter of Agreement and take all necessary actions to ensure the execution of all terms described in said Agreement.

Parcel 173-1-Q-1



Parcels

Double Circle

Buildings

Corporate Limits

Google earth

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 2/26/13 (work session), 3/12/13 (1st reading); 4/9/13 (2nd reading) **CUT OFF DATE:** 2/20/13

RESOLUTION ___ **ORDINANCE** X **PUBLIC HEARING** X

ITEM TITLE:
TA-13-35 AN ORDINANCE TO AMEND SECTIONS 14-5, 18-7, 18-15, 21-3, AND 23-8 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO ADMINISTRATIVE REVIEW, SPECIAL REGULATIONS PERTAINING TO THE PRIMARY & SECONDARY DOWNTOWN ASSESSMENT DISTRICTS, OBSTRUCTION OF RIGHT-OF-WAY, CIVIL PENALTIES AND FEES

STAFF RECOMMENDATION:
Approval

PUBLIC NOTICE AND HEARING:
Public hearing for 4/9/13 Council mtg

ADVISORY BOARD RECOMMENDATION:
OTDB and Planning Commission recommended approval.

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Zoning	AMG		2/19/13
2. Downtown Manager	[illegible]		2/20/13
3. City Attorney		[illegible] *	2/21/2013
4. City Manager	[illegible]		2-22-13
5. Clerk of Council			

Initiating Signature: (Planning) [illegible] 2/19/13

CITY ATTORNEY'S OFFICE Received FEB 20 2013 WINCHESTER, VA

CITY OF WINCHESTER VIRGINIA

[illegible] 2/21/2013 *
CITY ATTORNEY

* See Attached Memorandum

CITY COUNCIL ACTION MEMO

To: Mayor and Members of City Council

From: Will Moore, Planner

Date: February 19, 2013

Re: **TA-13-35** AN ORDINANCE TO AMEND SECTIONS 14-5, 18-7, 18-15, 21-3, AND 23-8 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO ADMINISTRATIVE REVIEW, SPECIAL REGULATIONS PERTAINING TO THE PRIMARY & SECONDARY DOWNTOWN ASSESSMENT DISTRICTS, OBSTRUCTION OF RIGHT-OF-WAY, CIVIL PENALTIES AND FEES

THE ISSUE:
The desire is to clarify and centralize the regulations for use of public space in the Downtown Assessment Districts within the Zoning Ordinance and provide for consistent regulation and enforcement of such use.

RELATIONSHIP TO STRATEGIC PLAN:
Goal 3 – Continue the Revitalization of Historic Old Town

BACKGROUND:
Currently, regulations pertaining to use of sidewalks Downtown are located both in the Zoning Ordinance (various uses, inc. cafes, both on the Loudoun St Mall and in Secondary District) and City Code (only cafes, only on Loudoun St Mall). The two sets of regulations contain conflicting requirements for cafes, and the requirements in the Zoning Ordinance, in general, do not provide for protection from liability for the City, do not outline associated fees for such use of public space, and generally lack sufficient detail to provide for consistent regulation and enforcement.

BUDGET IMPACT:
The enhanced ability to track and enforce permits should result in a minimal increase in revenue from the issuance of such permits.

OPTIONS:
- Approve in conjunction with Ordinance to repeal Ch 26, Art III, Div 2 of City Code
- Approve with revisions and in conjunction with Ordinance to repeal Ch 26, Art III, Div 2 of City Code
- Deny

RECOMMENDATIONS:
Old Town Development Board, Planning Commission and staff recommend approval as noted in staff report.

Council Work Session
February 26, 2013

TA-13-35 AN ORDINANCE TO AMEND SECTIONS 14-5, 18-7, 18-15, 21-3, AND 23-8 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO ADMINISTRATIVE REVIEW, SPECIAL REGULATIONS PERTAINING TO THE PRIMARY & SECONDARY DOWNTOWN ASSESSMENT DISTRICTS, OBSTRUCTION OF RIGHT-OF-WAY, CIVIL PENALTIES AND FEES

REQUEST DESCRIPTION
This publicly sponsored zoning text amendment is proposed to amend and clarify regulations pertaining to the use of sidewalks/public-right-of-way in the Primary and Secondary Downtown Assessment Districts and associated processes and fees for applying for such use.

STAFF COMMENTS
Currently, Section 18-7 of the Zoning Ordinance addresses use of sidewalks for outdoor cafes, signs, vendors, etc. in the Downtown Assessment Districts. Separately, Chapter 26, Article III, Division 2 of Winchester City Code addresses use of sidewalks for cafes on the Loudoun St Mall (the Primary Assessment District). As such, there are two different sets of regulations and processes outlined for outdoor cafes. Additionally, the existing regulations for use of public space in Section 18-7 of the Zoning Ordinance do not provide for protection from liability for the City via insurance requirements, do not outline associated fees for such use of public space, and generally lack sufficient detail to provide for consistent regulation and enforcement.

This proposed Ordinance, in conjunction with a separate Ordinance to repeal the existing language in Chapter 26, Article III, Division 2 of Winchester City Code, is intended to accomplish the following:

- Centralize regulations for use of public space in special assessment districts in 18-7 of the Zoning Ordinance.
- Establish an administrative permitting process through the Zoning Administrator, who will consult with others as necessary.
- Exempt cafes that comply with design guidelines recently adopted by the OTDB from separately applying for a Certificate of Appropriateness from the BAR. Those that do not comply with the adopted guidelines may still apply to the BAR for consideration.
- Clarify that nothing permitted for placement in public space can be attached to the Mall, sidewalks, or adjoining buildings.
- Clarify that Insurance and Hold Harmless Agreements apply to all uses in public space, not just cafes.
- Keeps all fees the same as current (evaluation and possible adjustment at some future point), with the exception of outside vendors who will be charged a fee of $25 per day, rather than an annual fee of $150.

RECOMMENDATION
The Old Town Development Board endorsed the revision to an administrative approval process at its January 3, 2013 meeting. The Downtown Manager recommended the migration to a "per day" fee for outside vendors.

At its February 19, 2013 meeting, the Planning Commission forwarded **TA-13-35** as identified in "Draft 3 – 2/18/13" to City Council recommending approval because the amendments will clarify regulations and processes for use of public space in the Downtown Assessment Districts and provide for consistent regulation and enforcement of such use.
*(*Some members of the Planning Commission requested that Council consider offering non-profits/charitable organizations a waiver of the outside vendor fee.)*

TRACK CHANGES IN **RED REPRESENT RECOMMENDED REVISIONS FROM CITY ATTORNEY PER PREVIOUS COUNCIL WORK SESSION DISCUSSIONS OF THIS ITEM AS WELL AS ADDITIONAL RECOMMENDATIONS FROM THE RISK MANAGER.

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AN ORDINANCE TO AMEND SECTIONS 14-5, 18-7, 18-15, 21-3, AND 23-8 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO ADMINISTRATIVE REVIEW, SPECIAL REGULATIONS PERTAINING TO THE PRIMARY & SECONDARY DOWNTOWN ASSESSMENT DISTRICTS, OBSTRUCTION OF RIGHT-OF-WAY, CIVIL PENALTIES AND FEES

TA-13-35

Draft 3 – 2/18/13

Ed. Note: The following text represents excerpts of Sections 14-5, 18-15, 21-3 and 23-8 of the Zoning Ordinance that are subject to change. Words with strikethrough are proposed for repeal. Words that are boldfaced and underlined are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.

ARTICLE 14

HISTORIC WINCHESTER DISTRICT - HW

SECTION 14-5. ADMINISTRATIVE REVIEW.

14-5-1 Notwithstanding any contrary provision of this article, the Zoning Administrator may review, and may approve or deny, applications for Certificates of Appropriateness, in the following situations:

14-5-1.6 Furniture, fixtures, planters, umbrellas, fencing, and any other ~~appurtenant~~ elements of outdoor dining areas that comply with the *Old Town Winchester Outdoor Dining Guidelines* as adopted by the Old Town Development Board.

14-5-1.7 Vending apparatuses permitted for outside vendors permitted in accordance with Section 18-7-5.

ARTICLE 18

GENERAL PROVISIONS

SECTION 18-15. OBSTRUCTION OF PUBLIC RIGHT-OF-WAY.

Unless explicitly permitted elsewhere in this Ordinance, no ~~No~~ building, structure, sign, merchandise, or other obstruction shall be located or conducted on any public right-of-way.

ARTICLE 21

VIOLATION AND PENALTY

21-3 Civil Penalties

A. Any violation of the following provisions of this Ordinance shall be subject to a civil penalty of two hundred dollars ($200.00) for the first violation, and a civil penalty of five hundred dollars ($500.00) for each subsequent violation arising from the same set of operative facts. Any person, firm, or corporation, whether as principal, agent, employed or otherwise who receives more than three civil penalties of the same nature but with different operative facts, the violation may be criminally prosecuted under Section 21-2 of this Ordinance.

5) The operation of a business and special regulations pertaining to the ~~Loudoun Street Mall and the~~ **Primary and** Secondary Downtown Assessment District**s**, in violation of Section 18-7, specifically Subsections 18-7-1, 18-7-1.1, ~~18-7-1.2, 18-7-1.3, 18-7-1.4, 18-7-1.5, 18-7-3, 18-7-4, or 18-7-5~~ **or 18-7-1.6**.

ARTICLE 23

ADMINISTRATION AND INTERPRETATION

SECTION 23-8. FEES.

23-8-18	**Use of sidewalk in Primary/Secondary Assessment Districts per Section 18-7 (annual fees, unless otherwise specified)**	
	Dining Area – up to 500sf	**$85**
	Dining Area – 501 to 650sf	**$160**
	Dining Area – 651sf and greater	**$210**
	Portable sign	**$10**
	Display of Merchandise	**$25**
	Outside vendor	**$25/day**

Ed. Note: The following text represents a complete rewrite of Article 18-7 of the Zoning Ordinance. All existing language in Section 18-7 is hereby repealed and replaced with the following text:

ARTICLE 18

GENERAL PROVISIONS

SECTION 18-7 SPECIAL REGULATIONS PERTAINING TO THE PRIMARY AND SECONDARY DOWNTOWN ASSESSMENT DISTRICTS.

18-7-1 **USE OF SIDEWALKS**. The sidewalks in the Primary and Secondary Downtown Assessment Districts, as defined in Section 25-1 of the Winchester City Code, may be used by proprietors, owners, or tenants of businesses abutting the sidewalks, or outside vendors, subject to the provisions within this Section.

The permitted use of such sidewalks pursuant to this Section shall be considered a license and privilege that is authorized at the discretion of the City and shall not in any way be deemed to constitute a transfer of any property rights whatsoever from the City. The City reserves the right to reject or rescind any permit authorized in accordance with the provisions of this Article.

18-7-1.1 Permit Required. Any person or business using the sidewalks in the Primary and Secondary Downtown Assessment Districts must first obtain a permit from the Administrator. The Administrator may consult with the Downtown Manager, Old Town Development Board, Board of Architectural Review, the Commissioner of the Revenue, Health Department, or any other such agencies deemed necessary prior to approving or denying the issuance of such permit, and may impose conditions upon the applicant which are deemed necessary to protect the Mall surface, sidewalks, street furniture, and appurtenances.

18-7-1.2 Insurance/Damages. The applicant for any such permit shall provide a Certificate of Insurance, which shall be currently maintained throughout the term of the permit, indicating that the City is an additional insured on a policy of liability insurance issued to the applicant by an insurance company licensed to do business in Virginia with a single limit of not less than $1,000,000.

Property Damages: Any person or entity that has been issued a permit pursuant to this Article (hereinafter "Permittee") shall immediately notify the City of Winchester Facility Maintenance Director and Risk Manager of all damage to property for which a permit has been issued pursuant to this Article, including but not limited to: damages to utilities, finished surfaces, and trees.

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Deliveries and Storage: It shall be the responsibility of the Permittee to make all arrangements for delivery, unloading, receiving and storing of materials to be placed inside the lessor's building. No shipments, goods, or products shall be stored in the areas for which a permit has been issued pursuant to this Article. The City of Winchester will not assume any responsibility.

Notification and Handling of an Insurance Claim:
The Permittee shall be responsible for ensuring that all matters concerning insurance claims by third parties arising as a result of the acts and omissions of the lessor's operations or his subcontractors, are handled in a professional manner. To this end, the City expects the lessor to act responsibly with regard to prompt payment of valid insurance claims and upon notice of a claim, the lessor shall immediately notify the City's Risk Manager, investigate and document the claim, and make a liability determination within ten (10) business days. Pending subrogation between the lessor and/or sub-contractor and/or any insurance carrier will not be cause for delay in payment of a valid claim. Default of this provision may result in default this agreement and jeopardize the lessor's future lease with the City of Winchester.

18-7-1.3 Indemnification and Hold Harmless Agreement. The applicant for such permit shall provide a signed indemnification and hold harmless agreement, on a form approved by the City Attorney, in which the applicant agrees to indemnify and hold the City, its officers, agents, and employees, harmless from any claims for damages to person or property growing out of any activity with the applicant's activities conducted in connection with the permit herein described or caused by the operation or location of the activity on the City's property.

18-7-1.4 Fee. A fee per Section 23-8-18 is required upon issuance of any such permit.

18-7-1.5 Duration. Any such permit issued shall be non-transferable and, shall be valid from January 1 through December 31 of each year, or for any part thereof except as otherwise revoked, rescinded or limited by the provisions of this Article. The application fee will remain the same regardless of the date received, and the fee will not be refunded or prorated based on the date of the application. Upon

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expiration or revocation of any such permit, the applicant must apply for a new permit to continue using the sidewalk.

18-7-1.6 Certificate of Appropriateness. All furniture, signs and other ~~appurtenant~~ elements to be used on the sidewalks must receive a Certificate of Appropriateness per Article 14. For items subject to Administrative Review per Section 14-5, the permit application shall concurrently serve as application for the Certificate of Appropriateness.

18-7-1.7 Area Available for Use.

a. Width. For businesses abutting the sidewalk, use of the sidewalk shall not exceed the width of the individual store front.
b. Depth.
   1) Primary Downtown Assessment District. No sidewalk area extending more than fifteen (15) from the abutting storefront toward the center line of Mall shall be used. However, in all cases, no use of area within a designated fire lane shall be permitted.
   2) Secondary Downtown Assessment District. No sidewalk area closer than five (5) feet to the curb shall be used. However, in all cases, a minimum clear path of travel of three (3) feet must be provided.
c. Outside Vendors. Availability of space to be determined in consultation with the Downtown Manager and in consideration of, but not limited to, the following factors: proximity to existing storefronts or doors; proximity to businesses trading in similar goods/services; ability to provide safe and convenient passage for passersby; and scheduled events.

18-7-1.8 Revocation of Permits. The Administrator may immediately revoke any permit specified in this Section if it is determined at the discretion of the Zoning Administrator that the conditions therein have not been met by the applicant. A permit may also be immediately revoked or suspended if it is determined at the discretion of the Administrator that the continued use of the space poses a threat to public health, safety, or welfare, or if such use is determined to be inconsistent with the best interests of the City of Winchester.

The Administrator may immediately revoke any permit specified in this Section if it is determined that the permit holder is not maintaining compliance with all applicable laws and regulations related to the use of the permitted space or if the permit holder fails to promptly respond to lawful requests by the Administrator related to the use of the permitted space.

The use of the space described under this Chapter may also be temporarily suspended for Special Events. The City will make reasonable efforts to notify permit holders in advance so that all privately owned items including but not limited to tables, chairs, and barricades may be removed by the permit holder

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prior to such Special Events. Upon a permit holder's failure to timely remove the items, such items may be removed in accordance with 18-7-2.2(b).

18-7-2 **OUTDOOR DINING AREA**. As used herein, "outdoor dining area" shall mean any group of tables, chairs, benches, and suitable devices maintained for the purpose of sale and/or consumption of food, refreshments, and beverages of all kinds as an extension of a restaurant licensed under the Regulations of the Virginia Department of Health. Applicants for outdoor dining areas are encouraged to review the *Old Town Winchester Outdoor Dining Guidelines* as adopted by the Old Town Development Board.

18-7-2.1 In addition to the requirements in Section 18-7-1, applicants for an outdoor dining area must also submit:

a. Health License. Evidence showing that the applicant has obtained a license to operate as a restaurant from the Virginia Department of Health. Such license shall be currently maintained throughout the term of the permit.

b. ABC License. If alcoholic beverages are to be sold by the applicant, evidence that the applicant has a valid license for same issued by the Virginia Alcoholic Beverage Control Board, and that it specifically meets that Board's requirements for "outside terraces or patio dining area". Such license shall be currently maintained throughout the term of the permit.

c. Site Sketch. A scaled plan indicating the location of the proposed dining area, the layout of tables, chairs, enclosure, etc. and all existing obstructions (fire hydrants, tree wells, planters, lamp posts, and public egress) in the area.

d. Details. Details clearly indicating the materials, color, and construction of the enclosure, furniture, and all ~~appurtenant~~ elements. Such details must include the methods in which the enclosure shall be supported. No enclosure or other elements shall be fastened to the sidewalk or adjoining buildings.

18-7-2.2 As a condition of obtaining and keeping a permit for an outdoor dining area, the applicant is deemed to have agreed to the following terms and conditions:

a. All outdoor dining areas will be of such design so as to be easily removed for special events, snow removal, emergency access, or other circumstances which require that the sidewalks be cleared of all such dining areas, as determined by City Council or by the Chief of Police. A directive from the Chief of Police or the City Council to clear the area of all furniture, fixtures, decorations, etc., connected with the café operation shall be promptly complied with by the restaurant without question and without unnecessary delay, and the area shall remain cleared of such material until directed otherwise by City Council or the Chief of Police.

~~a.~~b. Upon failure of the permit holder to remove such items upon reasonable Notice, the City is authorized to remove the items and require the permit holder to reimburse the City for the expense of such removal.

~~b.~~c. The entire area delineated for the outdoor dining area must be maintained in a neat and orderly fashion, whether or not the area is actually in use. When in use, the area shall be periodically cleaned throughout the business day, and, especially, at the end of each business day. All food shall be provided by waiter or waitress service, unless self-service operations are approved as a part of the permit. Extensions or enlargements of the area delineated beyond those described in the restaurant's application are expressly prohibited.

~~c.~~d. All furniture, fixtures, enclosures, and all ~~appurtenant~~ elements shall be periodically maintained so that they retain full function as well as present a neat, attractive appearance.

~~d.~~e. The outdoor dining area shall operate only when the restaurant to which a permit has been issued is allowed to operate. In addition, the restaurant shall be responsible to see to it that patrons violate no laws of the Commonwealth or Ordinances of the City, to expressly include the City's Noise Ordinance. A business holding a permit shall have the right to limit access and occupancy to only bona fide

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paying customers, and shall have the same right to deny access or service in the outdoor dining area as it enjoys in its own premises,

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i. provided, however, that no person shall be denied access or service purely on the basis of race, religion, national origin, sex, age or physical disability.

18-7-3 **PORTABLE SIGN**. Portable signs shall not exceed six (6) square feet in area. Applicants for portable signs are encouraged to review the *Winchester Historic District Design Guidelines* as published by the Board of Architectural Review.

18-7-3.1 In addition to the requirements in Section 18-7-1, applicants for portable signs must also submit:

a. Site Sketch. A scaled plan indicating the location of the proposed sign and all existing obstructions (fire hydrants, tree wells, planters, lamp posts, and public egress) in the area. Such sign generally shall not impede pedestrian traffic. In all cases, a minimum clear path of travel of three (3) feet must be provided.
b. Details. Details clearly indicating the dimensions, materials, color, construction, etc. of the sign. Such details must include the method in which the sign shall be supported. No portable sign shall be fastened to the sidewalk or adjoining buildings.

18-7-4 **DISPLAY OF MERCHANDISE**. Businesses abutting sidewalks may apply to use such areas for the display of merchandise for the purpose of attracting customers into such businesses, and not expressly for the sale of such items on display. Such displays shall incorporate, or be representative of, merchandise that is regularly sold as part of the business.

18-7-4.1 In addition to the requirements in Section 18-7-1, applicants for display of merchandise must also submit:

a. Site Sketch. A scaled plan indicating the location of the proposed display and all existing obstructions (fire hydrants, tree wells, planters, lamp posts, and public egress) in the area. Such display generally shall not impede pedestrian traffic. In all cases, a minimum clear path of travel of three (3) feet must be provided.
b. Details. Details clearly indicating the materials, color, construction, etc. of any racks, tables, or other ~~appurtenant~~ elements which shall be used to display merchandise. Such details must include the methods in which the display elements shall be supported. No elements shall be fastened to the sidewalk or adjoining buildings.
c. Schedule for display. A description of the days, hours, and frequency of outdoor display.

18-7-5 **OUTSIDE VENDORS**. Vendors without an adjoining storefront and operating from carts or other portable vending apparatuses may apply for a permit to use sidewalk area in the Primary and Secondary Downtown Assessment Districts. As there are limited areas for such vendors to locate without conflicting with existing storefrons, all such vendors shall schedule a pre-application meeting with the Administrator to discuss the pending application. No such permit shall be issued unless it is determined that the design of the vending apparatus and its proposed use is compatible with the design and character of the District and shall be issued only for the vending of food and beverages, flowers, arts and crafts, handicrafts, and similar products and services.

18-7-5.1 In addition to the requirements in Section 18-7-1, applicants for permits as outside vendors must also submit:

a. Health License. For food and beverage vendors, evidence showing that the applicant has obtained a license to operate as such from the Virginia Department of Health. Such license shall be currently maintained throughout the term of the permit.
b. Site Sketch. A scaled plan indicating the location of the proposed vending apparatus and all existing obstructions (fire hydrants, tree wells, planters, lamp posts, and public egress) in the area. Such apparatus generally shall not impede pedestrian traffic. In all cases, a minimum clear path of travel of three (3) feet must be provided.
c. Details. Details clearly indicating the materials, color, construction, etc. of the vending apparatus and any other ~~appurtenant~~ elements which shall be used. Such details must include the methods in which the apparatus shall be supported. No apparatus or ~~appurtenant~~ elements shall be fastened to the sidewalk or adjoining buildings.
d. Schedule for vending. A detailed description of the specific dates and hours of vending proposed. Outside vendor fees will be determined based on the proposed schedule and shall not be refunded due to non-use of approved dates for any reason.

18-7-5.2 As a condition of obtaining and keeping a permit as an outside vendor, the applicant is deemed to have agreed to the following terms and conditions:

a. The entire area delineated for the vending must be maintained in a neat and orderly fashion. When in use, the area shall be periodically cleaned throughout the business day, and, especially, at the end of each business day. Extensions or enlargements of the area delineated beyond those described in the application are expressly prohibited.

b. The vending apparatus and all ~~appurtenant~~ elements shall be periodically maintained so that they retain full function as well as present a neat, attractive appearance.
c. The vendor may be moved from time to time or use prohibited at the discretion of the Administrator or Downtown Manager due to scheduled promotions or other special events being held in the District.

18-7-6 **SPECIAL EVENTS**. Special Events in the Primary and Secondary Downtown Assessment Districts shall be governed by the provisions of Chapter 14, Article IX of Winchester City Code.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 2/26/13 (work session), 3/12/13 (1st reading); 4/9/13 (2nd reading) **CUT OFF DATE:** 2/20/13

RESOLUTION ___ **ORDINANCE** X **PUBLIC HEARING** X

ITEM TITLE:
AN ORDINANCE TO REPEAL CHAPTER 26, ARTICLE III, DIVISION 2 OF THE WINCHESTER CITY CODE PERTAINING TO SIDEWALK CAFES

STAFF RECOMMENDATION:
Approval

PUBLIC NOTICE AND HEARING:
Public hearing for 4/9/13 Council mtg

ADVISORY BOARD RECOMMENDATION:
OTDB recommended approval.

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Zoning	AMG		2/19/13
2. Downtown Manager	JEB		2/20/13
3. City Attorney		AW*	2/21/2013
4. City Manager	D		
5. Clerk of Council			

Initiating Signature: (Planning) 2/19/13

CITY ATTORNEY'S OFFICE Received FEB 20 2013 WINCHESTER, VA

2/21/2013 *
CITY ATTORNEY

* See Attached Memorandum

CITY COUNCIL ACTION MEMO

To: Mayor and Members of City Council

From: Will Moore, Planner

Date: February 19, 2013

Re: AN ORDINANCE TO REPEAL CHAPTER 26, ARTICLE III, DIVISION 2 OF THE WINCHESTER CITY CODE PERTAINING TO SIDEWALK CAFES

THE ISSUE:
The purpose is to repeal this Division of City Code and centralize the regulations for use of public space in the Downtown Assessment Districts within the Zoning Ordinance.

RELATIONSHIP TO STRATEGIC PLAN:
Goal 3 – Continue the Revitalization of Historic Old Town

BACKGROUND:
Currently, regulations pertaining to use of sidewalks Downtown are located both in the Zoning Ordinance (various uses, inc. cafes, both on the Loudoun St Mall and in Secondary District) and in the subject Division of City Code (only cafes, only on Loudoun St Mall). The two sets of regulations contain conflicting requirements for cafes.

BUDGET IMPACT:
The enhanced ability to track and enforce permits should result in a minimal increase in revenue from the issuance of such permits.

OPTIONS:
- Approve in conjunction with Zoning Text amendment TA-13-35.
- Deny

RECOMMENDATIONS:
The Old Town Development Board and staff recommend approval.

AN ORDINANCE TO REPEAL CHAPTER 26, ARTICLE III, DIVISION 2 OF THE WINCHESTER CITY CODE PERTAINING TO SIDEWALK CAFES

WHEREAS, sidewalk cafes on the Loudoun Street Mall are regulated in Chapter 26, Article III, Division 2 of the Winchester City Code; and

WHEREAS, such cafes are also regulated in Section 18-7 of the Winchester Zoning Ordinance, along with other uses of sidewalks in both the Primary and Secondary Downtown Assessment Districts; and

WHEREAS, these two separate sets of regulations contain conflicting requirements; and

WHEREAS, there is a separate Ordinance under consideration to amend Section 18-7 of the Winchester Zoning Ordinance to clarify and centralize such regulations within the Zoning Ordinance; and

WHEREAS, the separate Ordinance to clarify and centralize such regulations within the Zoning Ordinance has been recommended for approval by the Old Town Development Board at its January 3, 2013 meeting and the Planning Commission at its February 19, 2013 meeting.

NOW THEREFORE BE IT ORDAINED by the Common Council of the City of Winchester, Virginia, that Chapter 26, Article III, Division 2 of the Winchester City Code is hereby repealed.

WINCHESTER CODE

CHAPTER 26

STREETS AND SIDEWALKS

Art. I. In General, §§26-1 - 26-27
Art. II. Street Excavations, §§26-28 - 26-32
Art. III. Loudoun Street Mall, §§26-33 - 26-37
Division1. Generally, §26-33
~~Division 2. Sidewalk Cafes, §26-34 - 26-37~~

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ARTICLE III. LOUDOUN STREET MALL

DIVISION 1. GENERALLY

SECTION 26-33. SPECIAL PROVISIONS RELATING TO LOUDOUN STREET MALL.

(a) The Loudoun Street Mall shall extend one-way south, between Piccadilly Street and Boscawen Street and Boscawen Street and Cork Street, and it shall be unlawful for any person to operate, drive, ride, push, or park any vehicle thereon. The operation and use of bicycles, skateboards, scooters, and roller skates, to include in-line skates, is prohibited. This subsection shall not apply to:

1. Motor vehicles, other than tractor-trailers, having a gross weight of less than twenty-four thousand (24,000) pounds and using the Mall between the hours of 6:00 A.M. and 11:00 A.M. and 4:00 P.M. and 6:00 P.M. of any day for commercial pickup, commercial delivery, and utility or maintenance services.

2. Passenger vehicles crossing the mall in a westerly direction between the alley on the north side of the Presbyterian Church and Winchester Parking Authority Lot No. 8 for the purpose of discharging and receiving passengers from the Presbyterian Church pre-school.

(b) The chief of police or his designee may issue a special use permit for vehicles using the Loudoun Street Mall for funerals, Sunday morning church services, weddings, other special events, construction, city maintenance and repair work.

(c) No vehicles permitted to use the Loudoun Street Mall shall be driven or operated at a speed in excess of ten (10) miles per hour, and all such vehicles shall be driven or operated one-way south, except as provided in (a)(2), above.

(d) A violation of this section through the use of a motor vehicle shall constitute a Class 4 misdemeanor. A violation of this section through the use of a bicycle, a skateboard, a scooter, or roller skates (to include in-line skates) shall be punishable as a civil penalty in an amount not to exceed $50. (Ord. No. 2011-09, 5-10-11)

State Law Reference-- Code of Virginia, §46.2-904

DIVISION 2. ~~SIDEWALK CAFES~~ REPEALED

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~~SECTION 26-34. PERMIT REQUIRED.~~

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~~No person, firm, association, partnership, or corporation shall operate a sidewalk café on Loudoun Street Mall without benefit of a written permit issued by the City, and any such person, firm, association, partnership, or corporation who violates this Section shall be guilty of a violation of Section 15.2-2107 of the Code of Virginia, 1950, as amended, as is in effect on September 14, 1999, and punished as therein provided, said Virginia Code Section being incorporated herein by reference. As used herein, the phrase "sidewalk café" shall mean any group of tables, chairs, benches, and suitable decorative devices maintained upon the surface of Loudoun Street Mall for the purpose of selling food, refreshments, and beverages of all kinds to the general public as an extension of a restaurant licensed under the Regulations of the State Health Department and operating contiguous to the Loudoun Street Mall. (Ord. No. 036-99, 12-14-99)~~

~~SECTION 26-35. APPLICATION FOR SIDEWALK CAFÉ PERMIT.~~

~~Any restaurant licensed under the Regulations of the State Health Department and operating contiguous to the Loudoun Street Mall may apply to the Director, Old Town Development Board, for the permit described in Section 26-34 on forms provided for the purpose. In addition to the completed form, the applicant shall also provide the following items in order to file a complete application:~~

~~1. A fee in the amount of Ten Dollars ($10.00) is required for all annual café permit applications.~~

~~2. Cafes will be assessed an annual operating fee based on occupancy limits as follows:~~

~~(a) The amount of Two Hundred Dollars ($200.00) is required for all cafés with an occupancy limit of 45 or more persons.~~

~~(b) The amount of One Hundred Fifty Dollars ($150.00) is required for cafés with an occupancy limit between 35-44 persons.~~

~~(c) The amount of Seventy-Five Dollars ($75.00) is required for cafés with an occupancy limit of 34 or less persons.~~

~~3. A Certificate of Appropriateness from the Winchester Board of Architectural Review certifying that the applicant's design for café structures, furnishings, signage and placement of same meet the requirements enforced by that Board. The applicant must submit to the said Board a site plan indicating the location of the proposed café, a sealed sketch depicting the layout of tables, chairs, signage, etc. The area of the café must be delineated by an approved enclosure, may extend no wider than the applicant's storefront, and may not extend into the Loudoun Street Mall area from the storefront more than fifteen (15) feet, or less if necessary to maintain an emergency lane at least sixteen (16) feet wide down the center of the Mall.~~

~~4. Evidence showing that the applicant has obtained a license to operate as a restaurant from the State Health Department and the City of Winchester, and that all of the applicant's tax obligations to the City, to expressly include real or personal property tax, business license tax, and meals tax, have been satisfied and are current.~~

~~5. A signed agreement, on a form approved by the City Attorney, in which the applicant agrees to hold the City, its officers, agents, and employees, harmless from any claims for damages to person or property growing out of any activity with the applicant's activities conducted in connection with the permit herein described or caused by the operation or location of the café on the City's property. The applicant shall also provide a Certificate of Insurance, which shall be currently maintained throughout the term of the permit, indicating that the City is an additional insured on a policy of liability insurance issued to the applicant by an insurance company licensed to do business in Virginia with a single limit of not less than $1,000,000.00.~~

~~6. If alcoholic beverages are to be sold by the applicant, the applicant must also provide evidence that it has a valid license for same issued by the Virginia Alcoholic Beverage Control Board, and that it specifically meets that Board's requirements for "outside terraces or patio dining area". As a continuing condition of the permit herein described, the applicant must post a sign stating that "the drinking of alcoholic beverages or carrying of an open container that contains alcoholic beverages is unlawful and prohibited outside the delineated area of the Sidewalk Café". (Ord. No. 036-99, 12-14-99; Ord. No. 2009-40, 01-12-10)~~

~~SECTION 26-36. SAME—PERMIT TERM; CONDITIONS.~~

~~Any permit issued pursuant to this Division shall be non-transferable and shall be valid from January 1st through December 31st of each year, or for any part thereof. The application fee will remain the same regardless of the date received, and the fee will not~~

~~be refunded or pro-rated based on the date of the application. Upon expiration or revocation of any such permit, the restaurant must apply for a new permit to continue operation of a sidewalk café, and must complete all of requirements listed in Section 26-35 of this Code in order to do so. (Ord. No. 036-99, 12-14-99)~~

~~As a condition of obtaining and keeping such a permit for the full one-year term specified above, the restaurant is deemed to have agreed to the following terms and conditions:~~

1. ~~All cafes will be of such design so as to be easily removed for special events, snow removal, emergency access, or other circumstances which require that Loudoun Street Mall be cleared of all such cafes, as determined by City Council or by the Chief of Police. A directive from the Chief of Police or the City Council to clear the area of all furniture, fixtures, decorations, etc., connected with the café operation shall be promptly complied with by the restaurant without question and without unnecessary delay, and the area shall remain cleared of such material until directed otherwise by City Council or the Chief of Police.~~

2. ~~The use of concrete furniture, chairs, benches, planters, or any other such items is expressly prohibited.~~

3. ~~The entire area delineated for the sidewalk café must be maintained in a neat and orderly fashion, whether or not the area is actually in use. When in use, the area shall be periodically cleaned throughout the business day, and, especially, at the end of each business day. All food shall be provided by waiter or waitress service, unless self-service operations are approved as a part of the permit. Extensions or enlargements of the area delineated for the café beyond those described in the restaurant's application are expressly prohibited.~~

4. ~~All furniture, fixtures, decorations, etc. connected with the operation of the café shall be periodically maintained so that they retain full function as well as present a neat, attractive appearance to patrons.~~

5. ~~The café shall operate only when the restaurant to which a permit has been issued is allowed to operate. In addition, the restaurant shall be responsible to see to it that patrons of both the café and the restaurant violate no laws of the State or Ordinances of the City, to expressly include the City's Noise Ordinance, during such hours of operation. A business holding a permit shall have the right to limit access and occupancy to only bona fide paying customers, and shall have the same right to deny access or service in the café area as it enjoys in its own premises; Provided, However, that no person shall be denied access or service in a sidewalk café purely on the basis of race, religion, national origin, sex, age or physical disability. (Ord. No. 036-99, 12-14-99)~~

~~**SECTION 26-37. SAME; REVOCATION AND APPEAL.**~~

~~The permit issued under this Division shall be revoked by the City Manager, by letter to the restaurant sent ordinary first-class mail or hand delivered to the address shown on the permit, upon receipt of competent evidence of the following:~~

1. ~~Evidence that any of the requirements for application described in Section 26-35 of this Code are not being maintained during the term of the permit, including , but not limited to, withdrawal of the Certificate of Appropriateness or evidence that the café is being operated outside its terms; revocation or suspension of the restaurant's Health Department license or its ABC Board license (where applicable); lapse or cancellation of the restaurant's liability insurance; and failure to remain current as to all City tax obligations, especially the Meals Tax;~~

2. ~~Evidence that any of the conditions of the permit as listed in Section 26-36 of this Code are being violated, especially including, but not limited to, evidence that the behavior of café patrons or other aspects of the café operation are generating violations of either State or City Code, particularly the Noise Ordinance.~~

~~The restaurant may appeal the decision of the City Manager to the City Council by noting such an appeal to the City Manager, in writing, within ten (10) calendar days, but the permit shall remain revoked while such appeal is pending. Upon receipt of the written notice that such an appeal has been lodged, the City Manager shall cause the matter to appear on the Agenda for the next scheduled meeting of the Common Council, whether regular or special, and the Council shall either affirm the City Manager's decision or restore the permit at that time. The determination of Council shall be final and unappealable. (Ord. No. 036-99, 12-14-99; Ord. No. 2011-21, 10-11-11)~~

O-2013-05

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 02/26/2013(WS) **CUT OFF DATE:** _____

RESOLUTION ___ **ORDINANCE** _x__ **PUBLIC HEARING** __x_

ITEM TITLE: AN ORDINANCE TO AMEND AND RE-ADOPT SECTIONS 2-4, 2-28, AND 2-29 OF THE WINCHESTE RCITY CODE PERTAINING TO ELECTION AND REMOVAL OF COUNCIL-ELECTED OFFICERS

STAFF RECOMMENDATION: N/A

PUBLIC NOTICE AND HEARING: Public Hearing Required

ADVISORY BOARD RECOMMENDATION: Amendments requested by Council for clarification and consistency of existing ordinances.

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1.			
2.			
3.			
4.			
5. City Attorney			2/6/2013
6. City Manager			2-6-13
7. Clerk of Council			

Initiating Department Director's Signature: _____ 2/6/2013
Date

APPROVED AS TO FORM:
2/6/2013
CITY ATTORNEY

Revised: October 23, 2009

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Anthony C. Williams, City Attorney

Date: February 6, 2013

Re: Amendments to Sections 2-4, 2-26, 2-27, 2-28, and 2-29 of the City Code Relating to Election and Removal of Council-Elected Officers

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THE ISSUE:

Council has requested amendments to the City Code for clarification and consistency of existing ordinances related to the election and removal of Council-Elected Officers.

RELATIONSHIP TO STRATEGIC PLAN:

Develop a high performing City organization

BACKGROUND:

Amendments to these provisions of the City Code were requested by Common Council upon determination that the provisions, as amended over the years, have become inconsistent with one another. Additional amendments have been requested to revise and clarify the current practice and procedure for election of the President, Vice President, and Vice Mayor. To the extent that the Vice Mayor term is specified in City Charter as "annual", two options have been presented for consideration –annual or biennial for election of President and Vice President.

BUDGET IMPACT:

None

OPTIONS:

Adopt or reject the proposed Code Amendments.

RECOMMENDATIONS:

While this item has been requested by Common Council, with regard to consistency of the existing ordinance provisions, the City Attorney recommends adoption of the revisions.

OPTION 2 – BIENNIAL ELECTIONS OF COUNCIL APPOINTED OFFICERS DOES NOT COINCIDE WITH ANNUAL TERM OF VICE MAYOR (ANNUAL TERM) AS SET BY CITY CHARTER SECTION 3.01

AN ORDINANCE TO AMEND AND RE-ADOPT SECTIONS 2-4, 2-26, 2-27, 2-28, AND 2-29 OF THE WINCHESTER CITY CODE PERTAINING TO ELECTION AND REMOVAL OF COUNCIL-ELECTED OFFICERS

WHEREAS, the Vice Mayor is appointed for a one year term in accordance with Section 3.01 of the City Charter; and

WHEREAS, the President and Vice President of Common Council are elected by the members of Common Council in accordance with Sections 2-4, 2-28, and 2-29 of the City Code; and

WHEREAS, these sections of the Code have been individually amended over the years to facilitate certain procedural changes desired by Common Council; and

WHEREAS, the following amendments have been proposed to ensure that these provisions are consistent with one another and properly reflect the will of the governing body with regard to the process for election and removal of Council-Elected Officers.

NOW, therefore be it ORDAINED that Sections 2-4, 2-28, and 2-29 of the Winchester City Code are hereby amended and re-adopted as follows:

SECTION 2-4. ELECTION, TERM AND REMOVAL OF COUNCIL-ELECTED OFFICERS.

(a) Unless otherwise especially provided~~, beginning in 2007, every municipal officer elected by the Council~~ the President and Vice President of Common Council shall be elected by the members of Common Council biennially at the first regular meeting of the Council in the month of January, or as soon thereafter as practicable.

(b) Except as otherwise provided, the term of each officer elected as provided in subsection (a) above shall be ~~one year~~two years and shall commence ~~on the first day of February next succeeding the date of election~~immediately upon election as provided in subsection (a). Every officer so elected shall hold his office until his successor is appointed and has qualified.

(c) Unless otherwise provided, ~~T~~the City Council may, at its pleasure, remove any officer elected by the Council, including the President, Vice President, and Vice Mayor by motion and vote of "no confidence" by a majority of members present at any regular or special meeting of Council.

(d) Any vacancy occurring in any municipal office, to which the holder is elected by the Council, shall be filled by the Council at a regular or ~~adjourned~~ special meeting; provided~~,~~ that no vacancy shall be filled ~~at an adjourned meeting~~ unless previous notice thereof shall have been given to all members of the Council. All persons appointed to fill an unexpired term vacancy shall hold office only during the unexpired term of the office in which such vacancy occurs.

(Code 1959, §§2-22--2-26; Ord. of 9-20-76; Ord. No. 034-2004, 08-10-2004)

Cross Reference: City Charter Section 3.01 – Office of Vice Mayor

SECTION 2-26. ELECTION AND GENERAL DUTIES OF PRESIDENT.

(a) Biennially, at its first meeting in January~~ beginning in 2007~~, the council shall elect one of its members ~~p~~President, who shall be the presiding officer of the ~~c~~Council.

(b) The ~~p~~President of the ~~c~~Council shall enforce the rules of the ~~c~~Council, preserve order, decide all questions of order, and may give his reasons therefor without vacating the chair.

(Code 1959, §§2-4, 2-5; Ord. of 9-20-76; Ord. No. 033-2004, 8-10-04; Ord. No. 2009-34, 10-27-09)
Charter references--Vesting of administration and government of city, §3; creation and members of council. §4; powers and duties of council generally, §5; investigations by council §7; buying from councilmen, §15; vacancies in council, §23.
Cross reference--Disrupting council meetings, §16-6.1.
State Law Reference--Presiding officer of council, Code of Virginia, §§15.1-809 and 15.2-1423.

SECTION 2-27. ELECTION AND DUTIES OF VICE-PRESIDENT.

Biennially, at the first meeting in January~~ beginning in 2007~~, the Council shall elect one of its members to be vice-president, who shall preside at Council meetings in the absence of the president.

(Code 1959, §2-6; Ord. of 9-20-76; Ord. No. 033-2004, 8-10-04).
~~Note: The effective date of this ordinance shall be January 1, 2007.~~
State Law Reference--Vice-President of Council, Code of Virginia, §15.1-809.

SECTION 2-28. PRESIDENT PRO TEMPORE.

Except as otherwise provided in Section 2-27 and 2-29, ~~I~~in case of the absence of both the ~~P~~president of Council ~~and~~and ~~the~~ ~~v~~Vice- ~~p~~President, the Mayor shall preside; and in the absence of the President, Vice President, and Mayor, the Vice Mayor shall preside. Where the President, Vice President, Mayor, and Vice Mayor are all absent, ~~,~~the Council shall elect a ~~p~~President ~~p~~Pro ~~t~~Tempore to preside.~~.~~

State Law Reference--Code of Virginia, §15.1-809.

SECTION 2-29. ~~CLERK~~ MAYOR TO PRESIDE UNTIL PRESIDENT OR VICE-PRESIDENT ELECTED.

Biennially, at the first meeting in ~~July~~January, and until either a ~~p~~President or a ~~v~~Vice-~~p~~ President has been elected, the ~~Clerk of Council~~Mayor shall preside; provided that, if the ~~Clerk of Council~~Mayor is absent, the members of the Council may elect a ~~temporary president~~President Pro Tempore in accordance with Section 2-28 who shall preside until a ~~p~~President or ~~v~~Vice-~~p~~ President has been chosen.

R-2013-05

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 2/12/13 **CUT OFF DATE:** 1/21/13

RESOLUTION XX **ORDINANCE** ___ **PUBLIC HEARING** ___

ITEM TITLE: Resolution allow the WPD to seek grant funding for a new SWAT van

STAFF RECOMMENDATION: The Chief of Police requests approval

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: N/A

INSURANCE:N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Director of Finance	B		1-18-13
2.			
3.			
4.			
5. City Attorney			1/23/2013
6. City Manager			1-23-13
7. Clerk of Council			

Initiating Department Director's Signature: _____ 1/18/13 Date

CITY ATTORNEY'S OFFICE Received JAN 18 2013 WINCHESTER, VA

APPROVED AS TO FORM: _____ 1/23/2013 CITY ATTORNEY

Revised: September 28, 2009

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Chief Kevin L. Sanzenbacher

Date: January 18, 2013

Re: Grant opportunity

THE ISSUE:

The Winchester Police Department currently has a 1995 SWAT van that was purchased, used, in 2005 and has over 115,000 miles on it. This van was originally a delivery truck and was never modified for full police service as a SWAT vehicle. It has no secure storage for equipment or other officer safety devices. This van also has numerous mechanical issues due to age. The WPD would like to replace this van with one specifically designed for SWAT operations. The Virginia Department of Criminal Justice Services has a grant that may be used to purchase a replacement vehicle. The WPD is seeking permission from the Council to apply for this grant

BACKGROUND:

The WPD has a 14 member SWAT team that must be available immediately for calls for barricaded subjects and high risk warrant services. The SWAT team is called out to assist in the City and surrounding jurisdictions. The van is used to transport the team to the scene as a group and to store their various weapons and protection systems. On high risk warrant situations the van is frequently used to pull directly in front of a target location to deliver officers and maintain the element of surprise. Due to brake issues the current van requires two officers to chock the tires before they can deploy. The team needs a reliable vehicle.

The City has been unable to replace this van through operating funds due to the economic downturn. All current funds allocated for vehicles must go to replenish the regular fleet. To purchase a SWAT van new would absorb almost 30% of our annual budget for vehicles.

BUDGET IMPACT:

The grant being offered is for $35,000 and requires a 10% ($3,500) local match. If the grant were approved by DCJS the Department would allocate the matching City portion of the grant from FY 14 operating funds for vehicle purchases to meet this match.

OPTIONS:

This grant will not become available until July 1, 2013. If the match funding cannot be found in the FY 14 budget the City can turn down the grant if offered. Alternatively the department can continue to seek additional funding from the City operating budget to provide the entire amount of the purchase.

RECOMMENDATIONS:

The WPD recommends that the Common Council allow us to pursue this grant.

A RESOLUTION TO AUTHORIZE THE WINCHESTER POLICE DEPARTMENT TO APPLY FOR A VIRGINIA DEPARTMENT OF CRIMINAL JUSTICE SERVICES GRANT

WHEREAS, the Winchester Police Department is striving to be one of the best police agencies in the country; and

WHEREAS, the City recognizes the importance of having a well equipped police force; and

WHEREAS, the Virginia Department of Criminal Justice Systems has grant funding available in the amount of $35,000 that may be available to the City; and

WHEREAS, the City of Winchester's primary concern is the protection of life and property for the citizens.

NOW THEREFORE BE IT RESOLVED, that the Common Council of the City of Winchester, Virginia hereby authorizes the Winchester Police Department to apply for a Virginia Department of Criminal Justice Services grant to support the Department's purchase of equipment and services and authorizes the City Manager to execute these transactions.

R-2013-06

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: ~~1.22~~ 2.19.2013 **CUT OFF DATE:** _____

RESOLUTION __x_ **ORDINANCE** ___ **PUBLIC HEARING** ___

ITEM TITLE: Local Emergency Planning Committee (LEPC) Nomination

STAFF RECOMMENDATION: Approve the nomination of Lorrie Rhoton representing the American Red Cross to the Virginia Emergency Response Council (VERC) for appointment to the LEPC

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: No Impact

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1.			
2.			
3.			
4.			
5. City Attorney			1/24/2013
6. City Manager			
7. Clerk of Council			

Initiating Department Director's Signature: _____ 1-7-2013
Date

CITY ATTORNEY'S OFFICE Received JAN 23 2013 WINCHESTER, VA

APPROVED AS TO FORM: _____ 1/24/2013
CITY ATTORNEY

Revised: October 23, 2009

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: L. A. Miller

Date: January 7, 2013

Re: Nomination to Local Emergency Planning Committee

THE ISSUE: Nomination Local Emergency Planning Committee (LEPC)

RELATIONSHIP TO STRATEGIC PLAN: Public Safety Issue with regard to compliance with Superfund Amendment and Re-Authorization Act, Title III (SARA-Title III)

BACKGROUND: As prescribed by the SARA-Title III program each jurisdiction shall have a LEPC to address the storage and use of Hazardous and Extremely Hazardous Materials in the jurisdiction which meet the threshold planning quantities. The LEPC is responsible for the receipt and Tier II information pertaining to the materials and the distribution of the information as prescribed through public information. The jurisdiction recommends/nominates individuals to serve on the LEPC to the Virginia Emergency Response Council (VERC). The VERC actually appoints the individuals to the LEPC. There is no term length for service on the LEPC.

BUDGET IMPACT: N/A

OPTIONS: Approve or Disapprove the Nomination

RECOMMENDATIONS: Approve the nomination

American Red Cross

Top of Virginia Chapter
Shenandoah Chapter
561 Fortress Drive
Winchester, Virginia 22603
(540) 662-5412

Board of Directors

Edison McDaniels
Chapter Chairman

Marci Carter
Vice-Chairman

Shonda Lewis
Secretary

Board Members

Michelle Harris
Edison McDaniels III
Courtlin Pifer
Scott Shoemaker
Morgan Templar
Marci Carter
Justin Ritenour
Shonda Lewis

Staff

Chris Scott
Executive Director

Lorrie Rhoton
Program Manager

Kathy Trenum
Development
Coordinator

September 17, 2012

Winchester/Frederick County LEPC
Attn: Tim Ray, Chairman
231 E. Piccadilly St., #330
Winchester, VA 22601

Dear Tim Ray:

The American Red Cross Top of Virginia Chapter is committed to working with all of the LEPCs in our area. The Red Cross is here to serve the community and involvement with the LEPC is a natural outgrowth of our work here and we are honored to be a part.

Our position on the LEPC has been filled by several people in the past, as you may know. Lorrie Rhoton is our Disaster Services Program Manager and is intimately familiar with what the Red Cross response would be in an emergency.

We would request that Ms. Lorrie Rhoton be nominated to the Winchester/Frederick County LEPC to represent The American Red Cross Top of Virginia Chapter.

Thank you very much and bless you in your work.

Sincerely,

Chris Scott
Executive Director

Tax ID No 53-0196605
This letter serves as your receipt. Please note in accordance with IRS regulations no goods or services were provided donor by the American Red Cross in exchange for this contribution.

RECEIVED SEP 2 0 2012

A RESOLUTION TO APPROVE NOMINATE LORRIE RHOTON TO THE LOCAL EMERGENCY PLANNING COMMITTEE REPRESENTING THE AMERICAN RED CROSS

WHEREAS, the City of Winchester supports Public Safety efforts throughout the community; and

WHEREAS, an element of this program is the establishment and maintain the Local Emergency Planning Committee, (LEPC) as prescribed by the Superfund Amendment and Re-Authorization Act, Title III (SARA-Title III); and

WHEREAS, the City has the responsibility to nominate representatives to the Virginia Emergency Response Council, (VERC); and

WHEREAS, VERC has the responsibility to appoint the representatives to the LEPC; and

WHEREAS, the American Red Cross desires to have Ms. Lorrie Rhoton nominated and appointed to the LEPC.

NOW THEREFORE, BE IT RESOLVED that the Common Council of the City of Winchester, Virginia hereby nominates Mr. Lorrie Rhoton for appointment to the Local Emergency Planning Committee.

R-2013-09

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 2.19.2013 **CUT OFF DATE:** 2.12.2013

RESOLUTION X **ORDINANCE** ___ **PUBLIC HEARING** ___

ITEM TITLE: Resolutions of Appreciation to Hanover County Emergency Communication Center and Hanover County Fire & Rescue Department

STAFF RECOMMENDATION: Recommend City Council authorize the clerk to prepare certified resolutions for Hanover County Emergency Communications Center and the Hanover County Fire & Rescue Department

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1.			
2.			
3.			
4.			
5. City Attorney			2/6/2013
6. City Manager			2-9-13
7. Clerk of Council			

Initiating Department Director's Signature: _____ 2-6-13
Date

CITY ATTORNEY'S OFFICE Received FEB 6 2013 WINCHESTER, VA

APPROVED AS TO FORM:

CITY ATTORNEY 2/6/2013

Revised: October 23, 2009

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: L A Miller, Emergency Management Coordinator

Date: February 6, 2013

Re: Resolution of Appreciation

CITY ATTORNEY'S OFFICE
Received
FEB 6 2013
WINCHESTER, VA

THE ISSUE: Issue resolutions of appreciation to Hanover County Emergency Communications Center and Hanover County Fire & Rescue Department for assisting the city in the review of an 800 Mhz trunked radio system

RELATIONSHIP TO STRATEGIC PLAN: Development of a High Performing Organization

BACKGROUND: Hanover County Emergency Communications and Fire & Rescue Departments aided personnel of the City of Winchester in the evaluation of an 800 Mhz trunked radio system similar in nature to that designed and subsequently authorized by City Council for purchase and installation within the City. Hanover County personnel provided insight into the system through practical hands on testing and display within the Emergency Communications Center and facilities located at the Fire & Rescue Training Center. Hands on utilization and testing of the 800 Mhz coupled with comparison testing of VHF spectrum equipment assured city personnel of the viability of the 800 Mhz trunked system and applicability for the city.

BUDGET IMPACT: N/A

OPTIONS: Endorse resolution and authorize clerk to prepare a certified resolution

Disapprove issuance of resolution

Defer action

RECOMMENDATIONS: Staff recommendation is to approve resolution and authorize clerk to prepare a certified resolutions for Hanover County Emergency Communication and Hanover County Fire & Rescue Department.

RESOLUTION

WHEREAS, the City of Winchester had embarked on a comprehensive project to improve Emergency Communications within the city; and

WHEREAS, the City of Winchester determined that the availability of sufficient VHF radio spectrum frequencies were not available for licensing through the Federal Communications Commission: and

WHEREAS, the findings of the city identified that a transition to the 800 Mhz spectrum utilizing a trunked radio system was in the best interest of the communications project; and

WHEREAS, the City personnel were not familiar with the operations of an 800 Mhz trunked radio system; and

WHEREAS, Hanover County, Virginia is utilizing a trunked 800 Mhz system with great success a request for assistance in the form of a visitation and review of the system was initiated; and

WHEREAS, Hanover County's Emergency Communications initiated an invitation to visit the center and offered assistance in reviewing the system and its functionality to City staff; and

WHEREAS, City staff visited Hanover County and had the opportunity to review the system in full operation; and

WHEREAS, Hanover County's staff was professional, knowledgeable and cordial during the visit assisting City staff to gain and understanding of the trunked radio system.

NOW THEREFORE BE IT RESOLVED, that the members of the Common Council join with members of City staff to express our sincere appreciation for the assistance provided by Hanover County's Emergency Communications Center personnel, and

BE IT FURTHER RESOLVED, that the City of Winchester stands prepared to reciprocate to Hanover County should the opportunity present.

R-2013-07

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 03/13/2013 **CUT OFF DATE:** _____

RESOLUTION _X__ **ORDINANCE** ___ **PUBLIC HEARING** ___

ITEM TITLE: Refund Sky White LLC for Overpaid Business Personal Property Taxes

STAFF RECOMMENDATION: Approve

PUBLIC NOTICE AND HEARING:

ADVISORY BOARD RECOMMENDATION:

FUNDING DATA:

INSURANCE:

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. __Finance			1-7-13
2. __Treasurer			1-8-13
3.			
4.			
5. City Attorney			1/29/2013
6. City Manager			2-5-13
7. Clerk of Council			

Initiating Department Director's Signature: _____ 01/07/13
Date

CITY ATTORNEY'S OFFICE Received JAN 8 2013 WINCHESTER, VIRGINIA

APPROVED AS TO FORM:

1/29/2013
CITY ATT

Revised: October 23, 2009

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Ann T. Burkholder, Commissioner of the Revenue

Date: 01/07/2013

Re: Refund for Overpayment of Business Personal Property Taxes

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THE ISSUE: Sky White LLC properly filed its business personal property taxes for 2012, but due to a typographical data entry error in the office of the Commissioner of the Revenue, was overbilled and then overpaid for such taxes. A representative of the company then noticed the issue and requested a refund.

RELATIONSHIP TO STRATEGIC PLAN: This is a matter of fair and equitable taxation, which relates to Goal 2: Create a high-performing City organization.

BACKGROUND: City Code §27-8, in accordance with Code of Virginia §58.1-3981 requires City Council approval of any refunds in excess of $2,500.00

Due to its unique method of taxing vehicles for personal property, the City uses a custom in-house software application for personal property taxation. This software is not only outdated but contains no features to aid in business personal property taxation. Staff must manually calculate with pen and paper the taxable assessment for approximately 4500 local businesses. The final figure is entered into the software, but with no edit or comparative reports, it is virtually impossible to identify simple typographical errors such as this one.
IT has ceased development work on this software and is now conducting a Request for Information for replacement software to better fit our needs.

BUDGET IMPACT: Minimal.

OPTIONS: When appropriate, the office of the Commissioner of the Revenue offers the option of either a credit on the account towards future taxes or a refund.

RECOMMENDATIONS: Pursuant to City Code §27-8, the Commissioner of the Revenue respectfully requests that the City Council, with the consent of the City Attorney, authorize the Treasurer to issue a refund in the amount of $3,125.31 to Sky White LLC.

RESOLUTION

WHEREAS, Sky White LLC has requested a refund of Business Tangible Personal Property Taxes for tax year 2012; and

WHEREAS, Whereas the office of the Commissioner of the Revenue has certified that Sky White LLC submitted proper filings for tax 2012, but received a much larger tax bill due to a typographical error by the Office of the Commissioner of the Revenue ; and

WHEREAS, Sky White LLC paid the erroneous bill prior to noticing the error; and

WHEREAS, the office of the Commissioner of the Revenue wishes to maintain accurate and equitable tax records.

NOW therefore be it RESOLVED, that Common Council hereby approves the refund of $3125.31 to Sky White LLC for overpayment of Business Tangible Personal Property Taxes and directs the City Treasurer to refund said amount together with any penalties and interest paid thereon.

Winchester Virginia
commissioner of the revenue

Ann T. Burkholder, Commissioner of the Revenue
15 North Cameron Street
Winchester, VA 22601
Email: commrevenue@ci.winchester.va.us

Telephone: (540) 667-1815
FAX: (540) 667-8937
TDD: (540) 722-0782
Website: www.winchesterva.gov

Certificate of the Commissioner of the Revenue

Sky White LLC properly filed its business personal property taxes for 2012, but due to a typographical data entry error in the office of the Commissioner of the Revenue, was overbilled and then overpaid for such taxes. A representative of the company then noticed the issue and requested a refund. in the amount of $3125.31 to Sky White LLC for overpayment of Business Tangible Personal Property Taxes

Pursuant to Code of the City of Winchester §27-2 and §58.1-3981 of the Code of Virginia, I verify that Sky White LLC is due a refund of $3125.31 to for overpayment of Business Tangible Personal Property Taxes.

Verified by Commissioner of the Revenue: _____

Ann T. Burkholder

Date: 01/18/2013

Consent by City Attorney: _____

Anthony C. Williams

Date: 01/19/2013

R-2013-08

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: February 19, 2013 **CUT OFF DATE:** _____

RESOLUTION _XX_ **ORDINANCE** __ **PUBLIC HEARING** __

ITEM TITLE: Development of a Citywide Stormwater Management Policy
STAFF RECOMMENDATION: See attached.
PUBLIC NOTICE AND HEARING: NA
ADVISORY BOARD RECOMMENDATION: NA
FUNDING DATA: See attached.

INSURANCE: NA

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Finance			2-6-13
2. City Attorney			2/6/2013
3. City Manager			2-10-13
4. Clerk of Council			

Initiating Department Director's Signature: _____ 2/5/13
Date

CITY ATTORNEY'S OFFICE Received FEB 6 2013 WINCHESTER, VA

APPROVED AS TO FORM:
CITY ATTORNEY

Revised: September 28, 2009

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Perry Eisenach, Public Services Director

Date: February 8, 2013

Re: Development of a Citywide Stormwater Management Policy

THE ISSUE: Developing a Citywide Stormwater Management Policy.

RELATIONSHIP TO STRATEGIC PLAN: **Goal 4:** Create a More Livable City for All. Specifically, **Policy Agenda Item #6**: Develop a stormwater management policy with policy directions, project priority and funding mechanisms, which could include the establishment of a stormwater utility.

BACKGROUND: The City of Winchester is facing some significant stormwater related challenges that are only expected to increase in the coming years. These challenges include both infrastructure improvements that are necessary to remedy flooding issues and increasing regulatory compliance associated with Phase 2 stormwater regulations and the newly created Chesapeake Bay initiatives, both of which are federal mandates regulating stormwater discharges. In order to successfully meet these challenges, the City needs to develop and implement a comprehensive stormwater management policy and program.

BUDGET IMPACT: The City currently spends over $500,000 per year in operational costs, engineering, and administration of the current stormwater program. The majority of the current revenue for these expenditures comes from state funds (Highway Maintenance) and utilities. This operational expenditure is expected to increase by approximately $250,000 or more per year as the new stormwater regulations (Chesapeake Bay initiatives) in Virginia take effect within the next two years. The City is also facing well more than $30 million in capital projects related to stormwater during the next 20 years to replace aging infrastructure and also construct new infrastructure where the existing stormwater infrastructure in inadequate. All together, the City will need to find a revenue source to generate a minimum of approximately $1.8 million in new revenues per year to meet the needs (operational and capital) of the City's proposed stormwater program. The total annual expenditure for stormwater (operational and capital costs) beginning in FY2015 is estimated to be a minimum of $2.3 million per year.

OPTIONS: The attached report was prepared by the City's stormwater consultant that describes the primary alternatives available to the City for funding a stormwater program. The three primary alternatives for generating the additional revenue sufficient to meet the City's needs are:

1. General Fund
2. Special Tax Assessment District (Fairfax County and Arlington County)
3. Stormwater Utility

There are advantages and disadvantages to each of these options that are described in more detail in the report. However, the first two options would most likely involve an increase in property taxes. A stormwater utility would involve a monthly rate charged to all properties within the City that is typically based on the area of impervious surface on that property. There are currently 11 localities in Virginia that have implemented a stormwater utility and several others are considering implementing one.

RECOMMENDATIONS: Based on review of the alternatives, staff believes that implementing a stormwater utility is the most feasible and equitable method available to generate the revenue that will be required to meet the City's stormwater related needs in the future. As such, staff is recommending that City Council adopt the attached resolution which directs staff to develop a detailed proposal for a stormwater utility during the next year for City Council's consideration and action. This proposal will include the following:

1. Ordinances for establishing a stormwater utility.
2. Detailed operation and maintenance plan for the City's stormwater system and program.
3. Detailed long-term capital improvement plan for stormwater improvements.
4. Rate structure and plan for billing and collecting the revenue. Realistically, the soonest that billing could begin would be in July 2014.

IMMEDIATE POTENTIAL BENEFITS OF A STORMWATER UTILITY: If a stormwater utility would be implemented, the following are two of the benefits that could be realized immediately:

1. Would provide a funding source for the City's match for the following Revenue Sharing Projects:
    a. Valley Avenue/Tevis Drainage Improvements ($2.5 million) – Need to start construction by the end of 2015 or possibly lose $2.5 million of state funds.
    b. Valley Avenue/Whitlock Drainage Improvements ($400,000) – Need to start construction by the end of 2016 or possibly lose $400,000 of state funds (pending final approval by CTB in June).

2. Provide revenue to pay for approximately $250,000 per year of expenditures currently paid for using Highway Maintenance Funds (including street sweeping). These funds could then in turn be used for paving and sidewalks, both of which are a high priority for City Council and residents.

There are certainly many other capital improvement projects and operational costs that a stormwater utility would be able to fund in the future, if implemented.

R E S O L U T I O N

DEVELOPMENT OF A DETAILED PROPOSAL FOR THE IMPLEMENTATION OF A STORMWATER UTILITY

WHEREAS, the City's strategic plan calls for developing a Stormwater Management Policy and Plan; and

WHEREAS, the implementation of a Stormwater Utility has been identified as a possible and feasible alternative for funding the City's stormwater-related operational and capital improvement needs; and

WHEREAS, City Council supports examining and considering the concept of a Stormwater Utility in detail.

NOW, THEREFORE, BE IT RESOLVED THAT: The City of Winchester Common Council hereby authorizes and directs City staff, with assistance from the City's stormwater engineering consultant, to develop a detailed proposal within the next year for a Stormwater Utility for City Council's consideration and possible action. This proposal will include the following components:

1. Ordinances required for establishing a stormwater utility.
2. Detailed operation and maintenance plan for the City's stormwater system and program.
3. Detailed capital improvement plan for stormwater improvements.
4. Rate structure and plan for billing and collecting the revenue.

Resolution No.

ADOPTED by the Common Council of the City of Winchester on the ___th day of _____, 2013.

Witness my hand and the seal of the City of Winchester, Virginia.

New Initiative/New Program Form
Fiscal Year 2014

Department: _____

Program Name: _____

Initiative Name: _____

Budget Code: _____

Cost: _____ Source of Funds: _____

Start Date: _____ End Date: _____

Revenue generated: _____

Justification for Program/Initiative:
Explain why the Program/Initiative is needed:

Council Goal(s) supported:

City of Winchester, Virginia
Stormwater Engineering Services

Stormwater Funding in Virginia: Overview, Background, and Alternatives for Funding Municipal Stormwater Programs

February 2013

Prepared for

City of Winchester, Virginia
Department of Public Services
Office of the City Engineer
Rouss City Hall
15 North Cameron Street
Winchester, Virginia 22601

Prepared by

4229 Lafayette Center Drive
Suite 1850
Chantilly, Virginia 20151

Note: This report was prepared as a part of the City's efforts to achieve the goals within the Strategic Plan. This report relates to the following Strategic Plan Goal: Goal 4: Create a More Livable City for All. Specifically, Policy Agenda Item #6: Develop a stormwater management policy with policy directions, project priority and funding mechanisms, which could include the establishment of a stormwater utility.

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Executive Summary

Like many urbanized jurisdictions in Virginia and around the nation, the City of Winchester is subject to a number of challenges in the delivery of its municipal stormwater management program. Regulatory requirements, such as the Phase II MS4 permitting program, the development and implementation of TMDLs for impaired waterways, and a changing state landscape of stormwater regulation, while presenting opportunities, similarly present mounting challenges – both technical and financial – for regulatory compliance. Alongside the regulatory issues Winchester faces, the City has identified a number of stormwater infrastructure needs that offer opportunities to improve stormwater service for City residents and businesses, which come at significant expense. As the City examines this backdrop for stormwater management program development and delivery, a clear need to evaluate potential funding alternatives has emerged.

There are a number of primary and secondary funding options available to finance the development and delivery of a holistic stormwater management program at the municipal level. Indeed, of the alternatives available, almost all municipal stormwater programs are funded by a blend of these sources. Primary funding sources may include general fund revenues, special service or tax districts, stormwater utility fees, or municipal bonding. Secondary funding sources typically include development fees (e.g. plan review, inspection fees); pro-rata share program fees, VDOT highway maintenance fees, and federal and state grants and loans.

A growing number of localities in Virginia have developed and implemented dedicated funding sources for stormwater management programming to address the same challenges that Winchester faces, including the development of stormwater utilities. While a variety of stormwater utility rate methodologies are available (including an impervious cover methodology, gross area and intensity of development of the parcel, or gross area alone, as examples) the key to the successful development and implementation of a stormwater utility is the establishment of a ***fair and reasonable service fee that bears a substantial relationship to the cost of providing the specific services and facilities.*** The program to be delivered should be the ultimate driver of the rate established.

Review of the stormwater utility rate base involves answering the primary question of "who should pay" into the stormwater utility. From an equity standpoint, the initial premise of any enterprise funded entity like a stormwater utility is that everyone receiving the service provided by the utility pays. Policy decisions regarding the community rate base must be addressed and identification of the rate base may also be impacted by the rate methodology chosen to establish the base billing unit.

An initial examination of the City's GIS planimetric date demonstrates that the City's potential rate base includes a roughly two-third/one-third split between residential and non-residential land area and a quick look at readily identifiable impervious cover data identifies the City's likely top rate payers, should a stormwater utility be implemented. Further data evaluation will be needed to refine the analysis included herein, as well as completion of additional analysis to actually develop a stormwater utility for the City of Winchester.

Background and Purpose

The City of Winchester is located in the northern end of Virginia's Shenandoah Valley. The City's nine square miles are home to a population of 26,203, which grew approximately 11 percent between 2000 and 2010. The City is designated as a Phase II community for purposes of the federal Clean Water Act's National Pollutant Discharge Elimination System (NPDES) stormwater discharge permitting protocol, operating a small, municipal separate storm sewer system (MS4). Operating under a series of Virginia small MS4 general permits since 2003, the City has developed and implemented a stormwater management plan including best management practices (BMPs) designed to comply with the six minimum control measures outlined in the small MS4 general permit. These control measures include:

- Public Education and Outreach
- Public Involvement and Participation
- Illicit Discharge Detection and Elimination
- Construction Site Stormwater Runoff Control
- Post-Construction Stormwater Control for New and Re-Development
- Good Housekeeping/Pollution Prevention

In addition to the City's need to remain compliant with the terms of the Virginia small MS4 general permit for stormwater discharge, the City's stormwater management program also includes a number of other key components. The City operates a floodplain management program, which includes proactive management of floodplain regulations in return for the availability of federally backed flood insurance. The City also designs, constructs, and manages an inventory of stormwater infrastructure, consisting of everything from curb and gutter installation to management of flood control and stormwater quality BMPs.

The City's stormwater management program generates significant funding needs, and that need is only projected to grow in the coming years. In addition to addressing the six minimum control measures of the MS4 general permit, that permit also includes special conditions for MS4s discharging to impaired waterways for which a Total Maximum Daily Load (TMDL) has been established and for which an Implementation Plan (IP) for that TMDL has been completed. TMDLs have been established, and an IP developed, to address benthic and bacterial impairments on Opequon Creek and Abrams Creek in the Opequon watershed. The City's MS4 permit will be reevaluated in early 2013, and the nexus between MS4 permitting and the requirements for water quality improvements set out in the recently released Chesapeake Bay TMDL will likely increase the City's level of service provision for regulatory compliance. In addition, the City has identified a series of capital investment needs in the stormwater management infrastructure inventory that far exceeds the City's current ability to fund on a timely, pay-as-you-go basis.

With these challenges as the backdrop, the City has initiated the process of investigating the feasibility of developing a dedicated funding mechanism for its stormwater management program, with specific interest in the potential development and

implementation of an enterprise funding entity, commonly referred to as a stormwater utility (SWU). This document will address the following background questions, designed to prepare the City's leadership with the answers that will facilitate a decision on how to proceed to the next step of dedicated stormwater program funding:

- What are the programmatic challenges the City faces in delivering stormwater management services and what infrastructure and regulatory obligations and mandates will the City be required to address now and in the future? What are the estimated costs associated with these obligations and mandates?
- What are the primary and secondary stormwater program funding options available to the City under Virginia law?
- How is a SWU traditionally structured and how are the SWUs currently active in Virginia structured? What types of programming are facilitated and revenues generated by these existing Virginia SWUs?
- What are the key factors that determine a SWU's revenue generation potential and how does the City's rate base influence that potential?

The analysis included in the following pages seeks to provide answers to these questions and aid in the City's decision-making process. The answers hold the key to the City's ability to continue to address its stormwater management needs proactively into the future.

1. Programmatic Stormwater Challenges, Resources, Identified Needs

The City of Winchester operates a stormwater quantity and quality management program which includes several significant elements designed to meet the City's regulatory obligations and provide the level of stormwater services the City's constituents have come to expect. The City recognizes several significant challenges in the delivery of stormwater management services. The following paragraphs discuss these elements and offer some insights into the financial requirements and implications of each. In addition, this section also offers an overview of the City's current stormwater service capability and resources, as well as the City's identified, unmet stormwater programming needs.

1.1 Programmatic Stormwater Challenges

1.1.1 MS4 Program Development and Implementation

Based on the City's designation as a U.S. Census defined Urbanized Area, Winchester is subject to the terms of the Virginia Stormwater Management Permit (VSMP) for small MS4 Stormwater Discharges (small MS4 general permit). Beginning in 2003, Winchester developed and implemented a program to address the six minimum control measures of the small MS4 permit. The City's program includes public education and outreach on stormwater management concerns; an illicit discharge detection and elimination program; a construction site management program; a post-construction management component; and a "good housekeeping" component, as mandated by the Phase II regulations.

The City has developed, and is executing, a program plan that includes a series of best management practices (BMPs) designed to address each of the minimum control measures listed above. Each BMP includes a schedule for implementation, responsible parties, and measureable goals from which to evaluate the BMPs implementation and effectiveness to the degree feasible. The small MS4 general permit period in Virginia covers a five year permit cycle. The current general permit was initiated in July 2008, and is set to expire in June 2013. The City is currently implementing MS4 programming in year four of the current small MS4 general permit in Virginia. Permit years run from July 1 to June 30 each year, with annual reporting requirements by October 1 of each permit year. Along with ordinance implementation and capital projects, outlined below, implementation of the City's MS4 program constitutes a significant portion of the City's stormwater management effort on an ongoing basis.

Of note, recent EPA evaluation of the Commonwealth of Virginia's administration of the MS4 program has led to EPA scheduling MS4 program audits for multiple MS4 Phase I and Phase II communities in Virginia in 2011 and 2012. As such, local MS4 programs in Virginia are likely to receive increased scrutiny as EPA evaluates the state's administration of the program and local compliance with permit terms and conditions.

1.1.2 City Water Protection Ordinance

Tracking along with the MS4 permit's minimum control measures, and among the more significant elements of the City's program to date, Winchester has adopted a water protection ordinance (City Code Chapter 9, as amended). The ordinance covers a number

of the City's water quantity and quality management protocols for new and re-development projects, including the development and implementation of erosion and sediment control plans, stormwater management plans, and the implementation of post-construction water quality and quantity management best management practices (BMPs). The ordinance was also designed to address some additional, mandated MS4 program authorities, such as illicit discharge detection and elimination administration and execution. Ordinance administration constitutes a significant investment of City resources, including plan review, inspections, and bond administration for stormwater and erosion and sediment control related practices.

Of note where the ordinance is concerned, Virginia's recently amended Stormwater Management Law and attendant Regulations will necessitate a review of the City's water protection ordinance and stormwater management program execution over time. Updates to the ordinance and the City's program will need to be approved by the Virginia Soil and Water Conservation Board in time to take effect once the new regulations come online. The new state regulations were adopted in September 2011 and take full effect on July 1, 2014.

1.1.3 Total Maximum Daily Loads (TMDLs)

For waterways and water bodies not currently meeting Virginia water quality standards, defined as impaired waterways, the Clean Water Act (CWA) requires that each state with primacy over CWA programming, including Virginia, develop a Total Maximum Daily Load (TMDL) for that waterway. The TMDL is designed to define the maximum amount of the pollutant/constituent of concern that a waterway can receive while still meeting water quality standards. A TMDL is typically calculated by adding the Wasteload Allocation (WLA), comprised of the discharge of the pollutant/constituent of concern from "point sources," with the Load Allocation (LA), comprised of the discharge of the pollutant/constituent of concern from "non-point sources." A margin of safety is typically included in the calculation as well. Once a TMDL has been developed, the next step in addressing the TMDL's water quality concerns is the development of an implementation plan (IP). The IP typically outlines the steps and timelines necessary to address the concerns and improve the water quality to the point of being able to remove the subject waterway from the impaired waters list, commonly referred to as the section 303(d) list (in reference to the specific section of the CWA).

Virginia's current small MS4 general permit requires that "the operator…shall incorporate applicable best management practices identified in the TMDL implementation plan in their MS4 program. The operator may choose to implement BMPs of equivalent design and efficiency instead of those identified in the TMDL implementation plan, provided the rationale for any substituted BMP is provided and the substituted BMP is consistent with the TMDL and the WLA." (Permit, section I B 4).

The City of Winchester is directly impacted by multiple, current TMDLs, including TMDLs for benthic impairments (sediment based) and bacterial impairments on Opequon Creek and Abrams Creek in the City limits. These TMDLs were developed and approved in 2004, with an Implementation Plan for these TMDLs developed and approved in 2007. As such, the need for consistency in BMP approach with the City's MS4 program is now required though the permit nexus quoted above.

In addition to these TMDLs, the City of Winchester, due to its location in the Chesapeake Bay watershed, will also eventually need to ensure its MS4 BMP implementation consistency with the Chesapeake Bay TMDL and the associated Watershed Implementation Plans (WIPs) currently under development. The Chesapeake Bay TMDL was developed and approved in December 2010, and the series of WIPs scheduled for development during the Bay TMDL's implementation period are now under construction. The final WIP II document was submitted to EPA by Virginia in March 2012. The Bay TMDL includes necessary reductions of Nitrogen, Phosphorus, and Sediment to meet the water quality standards established for the lower portion of the Bay. While the Bay TMDL and associated WIPs were not completed at the time of the implementation of the current small MS4 general permit in Virginia, the same nexus that triggered the inclusion of the Opequon watershed TMDLs into the current MS4 permit cycle will likely force the inclusion of the Bay TMDL WIPs in the next small MS4 permitting cycle, scheduled to kick off in July 2013. Cost impacts of the Bay TMDL on the City, while difficult to assess, are nonetheless likely to be significant as there appears to be a great deal of emphasis placed on infiltration of stormwater, which may require significant retrofitting of existing infrastructure.

In addition, as noted earlier, Virginia amended the Commonwealth's Stormwater Management Law and Regulations. Part of that amendment process included a review and change to the Phosphorus water quality standard for new and re-development projects, so as to be consistent with the Phosphorus reductions called for in the Chesapeake Bay TMDL. As City programming and ordinances are reviewed as part of the state law amendment process, it is important to note that those changes will also be helping to address local stormwater management programming in relation to the Phosphorus reductions called for the in the Bay TMDL.

1.1.4 Stormwater Management/Drainage Capital Projects

Like many municipalities in Virginia and around the nation, the City of Winchester has also identified a number of capital projects to enhance drainage capability, mitigate flooding potential, and address additional stormwater management priorities. The projects identified include various storm drainage improvements at locations throughout the City. The CIP Plan also notes that funding the CIP in future years (beyond FY13) would possibly be generated by a stormwater utility.

1.2 Current City Stormwater Program Resources

To address the programmatic priorities and challenges for stormwater management highlighted above, the City of Winchester administers a local stormwater management program. Focusing in large part on local development review and MS4 permit compliance, the City's estimated annual program budget for stormwater management including both operating expenses and capital expenses is detailed below and provides narrative on the City's current level of stormwater service. The current program is divided into functional service centers for purposes of this analysis, and includes Administration, Operations and Maintenance, Planning and Engineering, and Capital Projects. At the end of each categorical description, a rough dollar calculation has been included to indicate the order of magnitude resources allocated to each activity annually.

The City has three primary sources of funding for stormwater management activities. Much of the City's current stormwater management programming is funded through the City's VDOT Highway Maintenance Fund allocation and through the Department of Public Utilities. In addition to these budget outlays, the City also recoups some revenue through development review fees, some of which are directed at erosion and sediment control, grading plans, and inspections.

1.2.1 Administration

Administrative functions for stormwater management include the management and administration of the City's departments and divisions responsible for the execution of all aspects of the City's stormwater management program. Administrative costs related to stormwater management are funded primarily through the VDOT Highway Maintenance Fund and review fees. Of the City's funding designated in the Highway Maintenance Fund budget for administrative expenses, approximately 20% is spent on stormwater-related activities.

Functional Service Center for SWM	Approximate Annual Allocation
Administration	$65,000
Administration Total	**$65,000**

1.2.2 Operations and Maintenance

The annual allocation in the Highway Maintenance Fund budget for street maintenance is approximately $2.3 million, with the vast majority of these dollars designated for street and sidewalk repair. Operation and maintenance expenses for stormwater activities include street sweeping, mowing drainage ways and cleaning stormwater inlets within public street rights-of-way. The City also includes a small allocation annually for small pipe repair and replacement and related infrastructure repairs. The City's budget includes materials and equipment, such as two street sweepers and associated operators (2 FTEs).

Functional Service Center for SWM	Approximate Annual Allocation
Operations and Maintenance	
Street Sweeping (2 FTEs)	$90,000
Street Sweepers, Maintenance, Depreciation	$65,000
Mowing/Channel Clearing	$50,000
Small Infrastructure Repair	$28,000
Operations and Maintenance Total	**$233,000 Total**

1.2.3 Planning and Engineering

Planning and engineering services in the City of Winchester include stormwater design, erosion and sediment control plan review and inspection, and funding for consultant engineering services. These services are funded by Utilities and the General Fund. The total amount allocated for engineering services in the departmental budget includes staff who are involved primarily with stormwater issues including one full-time erosion and sediment control inspector and two full-time engineering professionals who devote at least half of their time to stormwater. Time devoted by the director of the department to

stormwater issues is also included in this functional service center. In addition, this functional service center includes funding for professional consulting services related to policy development and regulatory compliance, as well as funding to cover additional, miscellaneous stormwater services.

Functional Service Center for SWM	Approximate Annual Allocation
Planning and Engineering	
E&S Inspector/Engineering Staff (2 FTEs)	$100,000
Department Leadership (.2 FTEs)	$25,000
Professional Engineering/Consulting	$60,000
Miscellaneous Stormwater Services	$35,000
Operations and Maintenance Total	**$220,000 Total**

1.2.4 Capital Projects

Stormwater capital projects in the past have typically been funded using General Funds, local enterprise capital and state highway construction funds. The City has also issued approximately $60 million in revenue bonds during the last five years to finance major water and sewer system upgrades. Annual revenues generated by water and sewer fees have been pledged for repayment of this debt. The vast majority of capital projects funded in this way have focused on replacing and upgrading decades-old water and sewer lines located throughout the City. The implementation of stormwater capital projects in recent years has largely been driven by opportunities recognized as part of these water and sanitary sewer line rehabilitation and replacement projects. Approximately $2 million of $60 million in revenue bond funding mentioned above was spent on making drainage improvements and replacing aging stormwater infrastructure as part of the process of upgrading all utilities located beneath streets during construction. Other stormwater capital improvement projects are funded on a pay-as-you-go basis and are only available for implementation as funding allows. The City does not have a sinking fund for stormwater capital improvement projects, and as such, no consistent funding mechanism for the planning, design, and construction of stormwater management capital improvements.

1.3 Identified Stormwater Programming Needs/Priorities

The City of Winchester has identified a number of stormwater management programming needs and priorities, in addition to those currently met with the resources and staff available, which remain unmet at present. These priorities address the full spectrum of stormwater management service in the City, including regulatory compliance and capital investment for stormwater, as well as additional, beneficial floodplain management activities. Where applicable, the current funding resource shortfall is highlighted in each category to demonstrate the level of effort, in “order of magnitude” dollars, that each identified priority represents.

1.3.1 Private BMP Inspections

Currently, post-construction inspections of BMP facilities located on private property are the responsibility of property owners, who are required to provide City staff with verification that regular required inspections and corrective actions are being conducted.

Local compliance with this requirement can be difficult to ensure and enforce as this protocol places the initial, actionable burden on property owners, who oftentimes will have to engage the services of a licensed professional (engineer, landscape architect, etc.) to inspect the facility in question. Once inspected, the property owner then potentially incurs additional expense to remedy whatever deficiencies may be found. To improve compliance with private maintenance agreements and the success rate of ensuring the proper operation and maintenance of post-construction stormwater management BMPs (as is required in the City's MS4 permit), the City recognizes the value of turning this dynamic by starting the inspection process using trained City personnel. City staff conducting the initial inspection of privately owned and maintained stormwater facilities relieves the property owner of the initial burden of inspection expense, and also provides the City with more direct evidence of facility condition. With that knowledge, the City will be better positioned to enforce maintenance agreements and ensure that these facilities are maintained and operating as designed. In addition, City inspection of privately maintained facilities offers more equity in program delivery, as City staff currently inspect publicly-maintained facilities.

Identified Need/Priority	Annual Funding Needed
Stormwater Management Facility/BMP Inspection	$50,000

1.3.2 Virginia Stormwater Management Permit Local Program Implementation

The recently-adopted Virginia Stormwater Management Regulations state that any locality required to obtain coverage under an MS4 permit must adopt a local stormwater management program for land disturbing activities. In addition, the Regulations also require municipal implementation of the VSMP General Permit for the Discharge of Stormwater from Construction Activities, which applies to all land disturbances of one acre or more. Under the new requirements, City staff will be required to review plans for proposed BMP facilities and inspect facilities during construction to ensure compliance with locally-adopted stormwater management standards modeled after the new regulations. Additional staff time will be needed to ensure construction sites comply with approved SWPPPs and Stormwater General Permit conditions. As such, the City anticipates the impact of local implementation of the revised Stormwater Management Regulations to include the addition of one full time inspector to accommodate the added inspection needs for compliance. In addition, the City will need to update the Water Protection Ordinance to ensure compliance with the new state standards.

Identified Need/Priority	Annual Funding Needed
Construction GP/SWPPP Site Inspections	$70,000

1.3.3 Chesapeake Bay TMDL

The Draft Chesapeake Bay TMDL Phase II WIP establishes aggregate waste load allocations for all Virginia MS4s in the Chesapeake Bay Watershed and corresponding reductions in nutrients and sediment pollution on existing developed lands (both pervious and impervious) by 2025.

The Senate Finance Committee of the Virginia General Assembly released a study in November 2011 discussing the costs to meet Virginia's goals through the Chesapeake Bay TMDL Watershed Implementation Plan. For urban/suburban stormwater, the report notes that retrofitting of existing stormwater systems will be costly and will likely be borne by local governments and that local government-imposed stormwater utility fees will likely become the main source for supporting future costs[1]. Utilizing the Runoff Reduction methodology included in the recently amended Virginia Stormwater Management Law & Regulations, and assuming the application of the most effective structural stormwater BMPs to meet pollution reductions required, the Senate study provides large, order of magnitude cost estimate ranges for the state as a whole, as well as estimates for select cities and counties in Virginia.

The City of Winchester developed an internal assessment of the City BMPs needed to approximate compliance with the nutrient and sediment goals of the Chesapeake Bay TMDL. In so doing, the City identified a number of practices and retrofits designed to meet the allocations as currently modeled. Among the items identified were more frequent street sweeping (increase of 50%), development and implementation of nutrient management plans, and the retrofitting of existing stormwater detention facilities to "extended detention" facilities – allowing for a longer draw down period and thus improving water quality. The estimated need for retrofitting these facilities is based on the average area treated by constructed ponds in the City and the number of facilities that would need retrofitting to achieve the treated area calculation developed for the City's implementation scenario. Estimates include design and construction costs for retrofits and are annual costs through the Chesapeake Bay TMDL implementation date of 2025.

[1]"Chesapeake Bay TMDL Watershed Improvement Plan: What Will It Cost to Meet Virginia's Goals" Senate of Virginia, Senate Finance Committee, November 18, 2011, p.11.

Identified Need/Priority	Annual Funding Needed
Additional Street Sweeping	$35,000
Nutrient Management Planning and Implementation	$15,000
Retrofits for extended detention (design & const.)	$195,000[2]

Of note, the Implementation Plan for the Opequon watershed estimates the costs associated with the achievement of the required load reductions in the Opequon watershed at between $41 million and $63 million. While the entire, projected cost burden will not fall on the City, a significant portion of the implementation plan does include infiltration practices/retrofits in the Abrams Creek watershed and the Upper Opequon watershed, which largely fall inside the City limits, and are estimated at $33.2 million to over $55 million of the total estimate[3].

1.3.4 National Flood Insurance Program (NFIP) Community Rating System (CRS) Crediting

The National Flood Insurance Program's Community Rating System (CRS) is a voluntary program that rewards floodplain management activities exceeding the NFIP's minimum requirements. Communities are rated Class 10 through Class 1 with flood insurance premium rates discounted in increments of 5% for each class up to a 45% premium discount for a Class 1 community. Communities that participate in the CRS program can earn points in the CRS manual for a variety of proactive stormwater management and floodplain management activities. For every 500 points earned, a community qualifies for a class rating reduction (10 to 9, 9 to 8, etc.). The City has recognized that with the insertion of additional staff time and resources, many of the City's floodplain management activities could be documented, thus improving the City's rating and lowering the flood insurance premiums that the City's property owners pay. The City currently has 156 flood insurance policies in effect insuring almost $42 million in property. Total premiums paid on those policies are approximately $261,000. A 5% reduction in premiums would save those policy holders over $13,000 in annual premiums while a 10% reduction would save over $26,000 in annual premiums.

Identified Need/Priority	Annual Funding Needed
NFIP/CRS Program Implementation and Admin	$15,000

1.3.5 Stormwater Capital Projects

The City has identified numerous drainage projects that could be undertaken if additional funding were available. Two of these considered to be the highest priorities are listed in the current Five-Year Capital Improvement Plan: Valley Avenue Drainage & Sidewalks Improvements estimated to cost $5 million ($2.5 million in state funds with 100% local

[2]Assumes the need to retrofit 3 ponds every two years through 2025 based on average treated area of constructed ponds in the City as of this draft. Assumption includes design and construction costs for each retrofit project.

[3]Opequon Creek Watershed TMDL Implementation Plan, Opequon Creek IP Steering Committee et al., July 5, 2006, Table 1.3, p.6.

match), and South Loudoun/Abrams Drainage Improvements estimated to cost $2.3 million (all funding from state funds). The City's general obligation bonding capacity is likely to be limited for the next ten years based on prior borrowing for other projects. A dedicated stormwater funding mechanism, such as a stormwater utility, would provide a revenue stream capable of supporting revenue bonds for capital projects. The City estimates the total amount of capital project backlog for stormwater and drainage projects at $30 million. At a twenty year buy down rate, an additional capital budget for stormwater projects of $1.5 million per year is needed.

Identified Need/Priority	Annual Funding Needed
Stormwater Management/Drainage CIP	$1,500,000

In summary, based on the identified, unfunded stormwater management needs and priorities the City has identified to date, approximately $1.8 million in additional, annual revenue will be needed. It should be noted that these dollar estimates are "order of magnitude" estimates and will need refinement in a more detailed cost of service analysis should the City choose to move forward with the development of a stormwater utility feasibility study.

2. Stormwater Program Funding Options

Local governments in Virginia utilize funding from a variety of local, state and federal sources to implement local stormwater management programs. In general, these funding mechanisms can be classified either as primary or secondary sources based on the source's capacity to cover the costs of implementing a local stormwater program. Examples of primary sources include general fund revenues, special tax assessment districts, stormwater utilities, and local government bonds. In addition, secondary funding opportunities such as development fees, pro-rata share programs, Virginia Department of Transportation (VDOT) road maintenance funds, and state/federal grants typically constitute a smaller, albeit significant, share of a locality's overall stormwater funding. Given the anticipated costs of the City's future stormwater infrastructure needs and regulatory obligations, the following sections assess the feasibility and relative advantages/disadvantages of each of these funding mechanisms.

2.1 Primary Funding Sources

Primary funding sources are designated as such based on their ability to fund the vast majority of a municipal stormwater management program.

2.1.1 General Fund

Most localities in Virginia that lack a dedicated source of funding for stormwater management fund the majority of their stormwater program activities using general fund revenues. The City's budget projects $70.8 million in general fund revenue in FY2012, approximately $58.7 million of which will come from real estate, personal property, meals, machinery and tools, state sales and other local taxes. These tax revenues currently fund: a variety of stormwater-related programs and services provided by departmental staff; capital improvement fund projects to address drainage issues and/or control flooding; and contractual work for outside professional engineering or other consulting services related to stormwater design or regulatory compliance. Although local tax revenue has traditionally been considered a stable revenue stream, the recent downtown in the real estate market has led to a dramatic decline in property values in many local and regional markets. This decline has reduced the taxable value of real estate at a time of rising governmental costs for providing public services and growing opposition to increased government taxation and spending. In addition, the fact that stormwater must compete with schools, police, emergency services, general administration, and myriad other public services vying for taxpayer dollars during annual budget cycles presents additional challenges to adequately funding identified needs through this source.

2.1.2 Tax Assessment/Service Districts

Virginia law includes several provisions authorizing the creation of special tax assessment and service districts similar to the City's current Downtown Special Assessment District. In general, both service and special assessment districts enable local governments to tax property located within a pre-defined area at a higher rate in order to recover the costs associated with constructing a public facility from which these same properties obtain a unique or "special" benefit. Fairfax County is one of a handful of local governments which have created a County-wide stormwater service district pursuant to the authority granted in the Code of Virginia (§15.2-2400) in order to help

defray the County's costs to build, operate, and maintain its stormwater system. Property owners within the district pay an additional one and one-half cents ($0.015) per $100 of assessed real estate value, which has yielded roughly $20 million per year in dedicated funding to the County since 2006. The additional tax has the advantage of being relatively invisible to property owners, who pay an additional $65 per year on average. Ad valorem (i.e. real estate) taxes are typically paid by banks out of a property owner's mortgage escrow account. Nevertheless, this revenue source has been affected by the recent decline in real estate values.

Arlington County utilizes a local sanitary sewer district created in 1930 pursuant to the Sanitary District Act in order to raise revenue for operating and capital expenses necessary to maintain, expand and upgrade the County's storm sewer system. The Sanitary District Act[4] confers the authority to "construct, reconstruct, maintain, alter, improve, add to and operate…drainage…systems, for the use and benefit of the public in such sanitary district."[5] The County imposes an additional tax of $0.013 per $100 of assessed real property value for property located within the Arlington Sanitary District, which will raise an estimated $8-$10 million annually in FY 2009-FY 2014, the bulk of which will be directed to capital projects. The average Arlington homeowner pays approximately $75 in new taxes per year under the levy. The tax does not apply to existing tax-exempt properties.

Rather than implementing a service district, the City of Alexandria adopted an ordinance in 2010 establishing a dedicated stormwater account so that funds cannot be easily diverted from stormwater management to other purposes during annual budget cycles. The City dedicates $0.005 cents of the real estate tax rate to a specially-created Stormwater Management Fund in order to finance stormwater maintenance and infrastructure improvements. Annual revenue raised by the tax (approximately $1.7 million in FY 2013) is combined with an annual transfer of funds from the Capital Projects Fund and General Fund, which will yield approximately $3.6 million in FY 2013 increasing to approximately $4.6 million by FY 2021.

In addition to service districts, the Code of Virginia (§15.2-2404) authorizes local governments to levy a special tax assessment or rate on property abutting a stormwater management system in order to pay for the construction and maintenance of stormwater facilities. The amount collected from property owners by way of the additional assessment or rate may not exceed the benefits resulting from the improvements. The governing body of a town or city may impose the additional tax only after an agreement has been entered with abutting landowners or three-fourths of the affected landowners have executed a petition agreeing to the levy. Realistically, this requirement for overwhelming public support of additional taxation presents a major hurdle for municipalities contemplating the use this authority within their jurisdiction.

2.1.3 Stormwater Utility

The development and implementation of a stormwater utility in Virginia is governed by *Code of Virginia* §15.2-2114, which outlines the applicable uses of revenue generated by

[4] §21-112.22 et seq., Code of Virginia
[5] §21-118.4(a), Code of Virginia

a stormwater utility, which properties may be charged, and local requirements and flexibility in the establishment of fee credits and waivers. Revenue generated by a stormwater utility in Virginia may be used to pay for, or recover costs for, the following:

1. The acquisition, as permitted by §15.2-1800, of real and personal property, and interest therein, necessary to construct, operate and maintain stormwater control facilities;
2. The cost of administration of such programs;
3. Engineering and design, debt retirement, construction costs for new facilities and enlargement or improvement of existing facilities, including the enlargement or improvement of dams, whether publicly or privately owned, that serve to control stormwater; however, prior to adoption of any ordinance pursuant to this section related to the enlargement or improvement of privately owned dams, a locality shall comply with the notice provisions of §15.2-1427 and hold a public hearing;
4. Facility maintenance, including the maintenance of dams, whether publicly or privately owned, that serve to control the stormwater; however, prior to adoption of any ordinance pursuant to this section related to the maintenance of privately owned dams, a locality shall comply with the notice provisions of §15.2-1427 and hold a public hearing;
5. Monitoring of stormwater control devices;
6. Pollution control and abatement, consistent with state and federal regulations for water pollution control and abatement; and
7. Planning, design, land acquisition, construction, operation and maintenance activities.

The Code of Virginia also provides instruction as to how the charges may be assessed, noting that owners or occupants may be charged depending on the billing mechanism chosen, and that charges are to be calculated based on a property's contribution to stormwater runoff. A locality adopting a stormwater utility in Virginia must provide for full waivers of charges to federal, state, or local government agencies when the agency owns and provides for maintenance of storm drainage and stormwater control facilities or is a unit of the locality administering the program. A locality shall also provide full waivers of charges for roads and public street rights-of-way that are owned and maintained by state or local agencies.

Localities may grant waivers to any person who develops, redevelops or retrofits outfalls, discharges or property so that there is a permanent reduction in post-development stormwater flow and pollutant loading. The locality shall base the amount of the waiver in part on the percentage reduction in both stormwater flow and pollutant loading, from pre-development to post-development. No locality shall provide a waiver to any person who does not obtain a stormwater permit from the Department of Environmental Quality when such permit is required by statute or regulation. In addition, localities have the option to provide for full waiver of charges to cemeteries.

Income derived from service charges may not exceed the actual costs incurred by a locality operating under the state's enabling provisions. In addition, localities adopting a stormwater utility must hold a public hearing after the publication of public notices in a newspaper with general circulation in the locality once a week for two weeks with the second publication not sooner than one week after the first.

In Virginia, stormwater utility income may also be used for the financing of bonds. Localities may issue general obligation bonds or revenue bonds in order to finance the cost of infrastructure and equipment for a stormwater control program. For bonding purposes, infrastructure and equipment includes structural and natural stormwater control systems of all types, including retention basins, sewers, conduits, pipelines, pumping and ventilating stations, and other plants, structures, and real and personal property used for support of the system. The procedure for the issuance of any such general obligation bonds or revenue bonds must comply with the procedure for issuance of such bonds as set forth in the Public Finance Act (§15.2-2600 et seq.).

For delinquent or un-paid accounts, localities have the authority to charge interest, not to exceed the maximum amount allowed by law, until such time as the overdue payment and interest are paid. Charges and interest may be recovered by the locality by a process comparable to a lien for unpaid taxes.

For billing purposes, Virginia's enabling authority allows communities to combine the billings for stormwater charges with billings for water or sewer charges, real property tax assessments, or other billings. The locality may establish the order in which payments will be applied to the different charges.

Finally, Virginia's current authority allows for any two or more localities to enter into cooperative agreements concerning the management of stormwater. However, no locality shall combine its billings with those of another locality or political subdivision, including an authority, unless such locality or political subdivision has given its consent by duly adopted resolution or ordinance.

2.1.4 Municipal Bonds

Municipal bonds are frequently used by local governments to provide a significant amount of upfront funding to facilitate the completion of large projects, including stormwater infrastructure, in a shorter time than could be accomplished with "pay-as-you-go" funding. Municipal bonds also have the advantage of spreading out payment for these facilities over extended periods of time (usually up to twenty years). However, bond funds are borrowed funds, and as such, come with a debt service/interest cost attached. State laws and the City Charter provide the Council with the legal authority to issue general obligation bonds to support jumpstarting capital improvement projects. A simple majority vote of the Council is needed to issue general obligation bonds unless the Council elects to submit the question of bond issuance to the public via a referendum.

By implementing a stormwater utility, special assessment or other dedicated revenue source to pay for stormwater management functions, the City would have available the alternative to issue revenue bonds. With an established track record of revenue generation, enterprise fund revenue generated by stormwater utility fees can legally support the issuance of revenue bonds for stormwater capital improvement projects. Although revenue bonds typically come with a higher interest rate (depending on the community's bond rating), these bonds would not be competing with other City general obligation bond fund priorities, do not require a vote of the public and may not count against the community's statutory debt ceiling.

2.2 Secondary Funding Sources

Secondary funding methods that augment primary sources should be dictated by the needs of the City's program and are applicable only in certain situations. These secondary funding sources enable local areas of the City to pay extra to obtain a higher level of service than the basic program would normally provide; apply special charges to newly-developed/developing property in order to equalize financial participation in capital costs between new and existing landowners; or otherwise allow the City to fund unique stormwater initiatives and/or projects.

2.2.1 Development, Inspection & Plan Review Fees

Like many local governments, the City charges a variety of fees to developers as part of the land development review and approval process. These fees are required to be paid when the landowner or his agent submits an application to develop property including applications for subdivisions, site plans, conditional use permits, re-zonings, variances/exceptions, building permits and inspections, and land disturbance permits. The funding provided by application fees for on-going construction and maintenance needs is quite limited; fees for City planning/zoning, building, and engineering services are only projected to generate about $200,000 in revenue in FY2012. Nevertheless, development fees provide an important source of revenue for the City's stormwater program at the time construction occurs by helping the City recoup its initial costs to review and inspect facilities in order to ensure that stormwater infrastructure is constructed correctly and in accordance with local and state requirements. By using this revenue source wisely, the City can ensure that stormwater infrastructure is selected and constructed so as to minimize costly public maintenance and/or replacement in future years.

Rezoning proffers represent another potential source of revenue to fund capital improvements in cases where proffered conditions are necessitated by the rezoning and benefit the rezoned property. City Code Section 22-1-2 enables the City to accept proffered conditions from developers consisting of a cash payment for, or construction of, stormwater improvements included in the City's Capital Improvement Program. Frequently, these costs are added to the price of the developed property and thus passed on to private property buyers once the property is sold.

2.2.2 Pro-Rata Share Programs

State law enables localities to charge landowners or developers a share of the cost of providing new stormwater control facilities when, as is frequently the case, such facilities benefit multiple properties. Specifically, a locality may provide in its subdivision ordinance that a sub-divider pay the pro rata share of the cost of providing "reasonable and necessary" drainage facilities located outside the property limits of the land owned/controlled by the sub-divider but necessitated or required (at least in part) by the construction of the subdivision or development (§15.2-2243). The City currently has a pro rata share policy for drainage improvements in Section 18-13 of the Zoning Ordinance which permits a developer to either contribute his share of the cost of the needed facilities or construct a portion of the improvements needed to serve his development. Where a general drainage improvement program has been established, a developer's pro rata share is based on the ratio of the volume of stormwater runoff caused

by the development to the estimated total volume of stormwater runoff for the drainage shed at build-out. Although the City's pro rata share program may not be able to fully fund all elements of it stormwater management program, the ordinance as written is an important tool for funding the capital costs necessitated by new development at presently-allowed (i.e. by-right) development densities, that is, without the need to rezone property to allow more intensive (or higher-density) usage.

2.2.3 VDOT Highway Maintenance Funds

The City anticipates approximately $2.5 million in VDOT highway maintenance funding in FY 2013; however, only a small percentage of these funds are specifically designated for stormwater system maintenance. Nevertheless, since public streets constitute a significant part of the City's stormwater network, remaining highway funds can be used to repair or replace gutters, catch basins, pipes, and other stormwater infrastructure as part of general road repair and maintenance. Although state funding to the City has increased modestly in each of the last three years and is projected to increase in FY 2012, the potential for even larger increases in future costs due to fluctuations in the price of asphalt and other materials presents an on-going concern. Indeed, a report produced by the Joint Legislative Audit and Review Commission of the General Assembly in 2002 found that 76% of recipients felt these funds were insufficient to meet locality-identified maintenance needs. In addition, road maintenance funds address only one aspect (i.e. public streets) of the stormwater system, are primarily used for maintenance of existing facilities rather than construction of new infrastructure, and must compete with other highway maintenance needs such as re-paving, sidewalk repair, signage replacement, and water/wastewater system maintenance.

2.2.4 State & Federal Grants/Loans

A number of state/federal government agencies administer grants to localities that fund stormwater program activities including project planning and design, construction, education/outreach and similar activities. Although the allure of so-called "free money" is especially tempting to local governments, competition for limited funding is intense and grants typically require a local cash or in-kind match equal to a certain percentage of the grant funds received.

Grant/Loan Program	Type	Agency/Entity	Activities Funded	Maximum Award
Virginia Water Quality Improvement Fund (WQIF)	Grant	VDCR	BMP retrofits and installation, education/outreach, water quality monitoring	$250,000 ($40,000 for Category 2 or 3 projects)
Virginia Clean Water Revolving Loan Fund	Loan	VDEQ	Land acquisition, brownfield remediation, installation of agricultural BMPs	None (approx. $40 million available annually)
Chesapeake Bay	Grant	NFWS, EPA	BMP demonstration	$1 million

Innovative Nutrient and Sediment Reduction Program		Chesapeake Bay Program	projects	
Chesapeake Bay Small Watershed Grants	Grant	NFWS, EPA Chesapeake Bay Program	Education/outreach, IDDE, BMP retrofits and installation, BMP demonstration projects, stream restoration projects	$200,000
Chesapeake Bay Restoration Fund (CBRF)	Grant	CBRF Advisory Committee (General Assembly)	Education/outreach	None ($307,971 available FY 2012)

In addition, grant funding also typically comes with additional administrative costs for grant management and administration. While that effort may be considered as part of a locality's in-kind match on a case by case basis, it nevertheless produces a real need in resource allocation to perform the services required to comply with the grant terms.

Several of the above-listed, secondary stormwater funding sources are already providing resources for stormwater management programming in the City. Any or all of these secondary funding sources could be applied to a blended funding approach for the City's stormwater management program moving forward. It should be noted that most municipal stormwater programs, including those funded by a stormwater utility, typically include some or all of the secondary funding mechanisms mentioned here.

3. Stormwater Utilities in Virginia & Rate Methodology

In deciding whether to proceed with the creation of a stormwater utility, the City has an opportunity to examine the experience of other localities in Virginia and consider the various methodologies available for arriving at an equitable and effective rate structure for a stormwater utility. This evaluation should answer several fundamental questions:

- Does the City have the data and information technology resources to effectively and accurately implement the preferred methodology?
- Should residential and non-residential properties pay the same rate and, if not, what is the justification for imposing different rates?
- What methodologies are used by other jurisdictions and what are the relative revenue impacts of the various methodologies?

3.1 Stormwater Utilities in Virginia

Virginia is home to a number of communities that utilize a stormwater utility enterprise fund to support the majority of their respective communities' stormwater management activities. The following list documents those communities with stormwater utilities, including their most recent charges per billing unit:

Municipality	NPDES MS4 Phase	ERU (Billing Unit) Calculation	Monthly billing rate per ERU	Annual Revenue (FY12)	Equivalent Winchester Annual Revenue Potential[6]
City of Portsmouth	Phase I	1,877 sq. ft.	$7.00	$6,685,600	$661,248 (res.) $1,968,708 (non-res.) **$2,629,956 (tot.)**
City of Norfolk	Phase I	2,000 sq. ft.	$8.82 (res.) $6.08 (non-res.)	$12,500,000	$833,172 (res.) $1,604,828 (non-res.) **$2,438,000 (tot.)**
City of Chesapeake	Phase I	2,112 sq. ft.	$7.35	$14,800,178	$694,308 (res.) $1,837,116 (non-res.) **$2,531,424 (tot.)**

[6] This column represents the potential annual revenue that would be generated if Winchester were to adopt the ERU and billing rate established by each of the municipalities listed in the table, provided: (1) property owned by any local, regional, state or federal government entity is exempted from the fee, (2) each residential parcel is assigned impervious land cover equivalent to one ERU, (3) each non-residential parcel is assigned a proportional value based on the amount of impervious land cover located on the parcel relative to one ERU, and (4) the effect of additional waivers and credits on potential revenue generation is not considered. The actual amount of revenue generated may differ considerably due to variations in these variables and other factors not considered in this analysis.

City of Virginia Beach	Phase I	2,269 sq. ft.	$9.61	$29,872,023	$907,788 (res.) $2,235,828 (non-res.) **$3,143,616 (tot.)**
City of Hampton	Phase I	2,429 sq. ft.	$4.60	$5,404,000	$434,532 (res.) $999,732 (non-res.) **$1,434,264 (tot.)**
City of Lynchburg	Phase II	2,672 sq. ft.	$4.00	$2,550,000	
City of Newport News	Phase I	1,777 sq. ft.	$5.45	$10,855,000	$514,824 (res.) $1,619,040 (non-res.) **$2,133,864 (tot.)**
City of Richmond	Phase II	1,425 sq. ft.	$2.08 (Tier 1) $3.75 (Tier 2) $5.83 (Tier 3)	$7,042,110	$354,250 (res.) $1,389,192 (non-res.) **$1,743,442 (tot.)**
City of Staunton	N/A	3,400 sq. ft.	$6.40	$705,000	$604,570 (res.) $993,715 (non-res.) **$1,538,285 (tot.)**
Prince William County	Phase I	1,000 sq. ft.	$2.20 (single family) $1.65 (condos) $6.40 (non-res.)	$5,175,669	$207,816 (res.) $3,378,588 (non-res.) **$3,586,404 (tot.)**
City of Suffolk	Phase II	3,200 sq. ft.	$5.24	$5,288,671	$494,988 (res.) $864,411 (non-res.) **$1,359,399 (tot.)**

Each of these communities (with the exception of Staunton) elected to develop and implement a stormwater utility, at least in part, to generate dedicated revenue for the stormwater management services necessary to comply with the terms of each locality's respective VSMP MS4 stormwater discharge permit. The Phase I permits were negotiated with the Virginia Department of Environmental Quality in the early 1990's for large MS4s established under the Clean Water Act. As Clean Water Act mandates and local stormwater responsibilities have grown in the interim, several other communities throughout the Commonwealth have completed initial stormwater utility feasibility studies. Several of these communities are subject to the terms of Virginia's small MS4

general permit (Phase II). The City of Lynchburg is the latest community in Virginia to develop and implement the framework of a stormwater utility.

Several other Virginia communities have undertaken feasibility studies but not yet implemented a stormwater utility, including the Cities of Falls Church and Roanoke, as well as Stafford County.

3.2 Rate Methodology Considerations

Utility funding is based on an independent revenue stream that is dedicated to a specific purpose, whether for water supply, wastewater treatment, solid waste management, or stormwater management. In order to generate that independent revenue stream a methodology for calculating service fees must be identified. The selection of the most appropriate methodology is a key decision in the potential establishment of a stormwater utility for the City of Winchester. Although similarities exist among the service fee methodologies used by stormwater utilities, virtually every rate methodology is slightly different due to varying local circumstances (i.e. available data, land use patterns, etc.). Thus, the City should expect that the preferred rate methodology in Winchester may differ somewhat from those used in other communities that have established stormwater utilities.

The most appropriate methodology to fit a particular local program is dependent on a locality's specific circumstances since stormwater management program costs vary from place to place. Most stormwater user-fee supported programs require water quality protection, water quantity controls, regulatory oversight and programming, capital investment in facilities and equipment, administration, and operation and maintenance of the systems. Most also incur non-operating expenses such as provisions for delinquencies of payments and bad debt (uncollected fees). These costs should be considered in selecting the preferred billing methodology.

Although managing stormwater issues is becoming increasingly complicated, a suitable rate methodology does not have to be overly complex. A simple yet technically-sound rate methodology that can be easily explained to the community is preferential to one that poses intensive data requirements, is expensive to implement and maintain, and can be understood only by experts. Selection of a preferred option should be based on factors such as the availability of data to support various methodologies, the extent to which the fee can and should be assessed proportionally to different land uses based on their relative impacts to water quality and/or ability to pay, and local economic factors. The legal standards which apply to service fees are different in several respects than those applicable to general taxes, special assessments, impact fees, and other funding mechanisms. ***A service fee rate methodology must be fair and reasonable and, most importantly, must bear a substantial relationship to the cost of providing the specific services and facilities.*** Thus, in the case of stormwater management, a service fee methodology needs to reflect the demands imposed by residential and non-residential development on the local government's stormwater system and management programs. The preferred methodology must also pass legal muster; it cannot be considered arbitrary, capricious or discriminatory by design (or effect). Given these considerations, a detailed analysis of the various methodologies and rate structures is needed to select one that reflects these standards and the City's preferences. Once a preferred rate structure has

been identified, a detailed rate study can be prepared to provide the level of detail necessary for City Council action.

The rate methodologies examined below include impervious area, gross area and imperviousness, and gross area and intensity of development. The correlation between these variables and the need for drainage and other stormwater management services is supported by a significant body of engineering research. In general, impervious ground cover increases the rate and volume of runoff, while degrading the quality of that runoff, and is therefore a major element in each method. Variations in the simple impervious area method utilize gross property area as a key parameter while incorporating "coefficient of runoff" or "intensity of development" factors in the service fee calculation. The results are different service fees among similarly-sized properties that are developed to different densities. The impact as to who pays under the different rate methodologies also varies. As a general rule, methodologies which emphasize impervious area shift the cost of service allocation toward non-residential properties. Those that are based on gross property area usually shift costs toward more lightly (i.e. less densely or intensely) developed properties.

3.2.1 Impervious Area

Many stormwater utilities in Virginia use a simplified measurement of the total amount of impervious area on a parcel to determine the billing unit, regardless of the total area of the parcel. A representative sample of single-family residential units (SFRs) is reviewed to determine the impervious area of a typical single-family parcel. This average area represents one Equivalent Residential Unit (ERU). A locality may establish a flat rate for all single-family dwelling lots up to a defined maximum total area or establish several tiers of rates on the basis of an analysis of single-family parcels within defined impervious area categories. Having such a tiered approach often improves the equitability of the bills sent to homeowners and is more appropriate where identifiable groupings are evident in the sample. At the same time, however, the tiered approach can also increase the administrative resources needed to implement and maintain the billing database.

For non-residential parcels, the impervious area is usually individually measured. Each non-SFR impervious area is divided by the impervious area of the typical SFR parcel (referred to as the Equivalent Residential Unit or ERU) to determine the number of ERUs to be billed to the parcel. The total monthly or annual costs of providing stormwater services divided by the total number of ERUs (i.e. the total impervious area) yields the locality's cost per ERU. Once this average cost is determined, the locality can establish the rate per ERU necessary to recover some or all of its overall program costs. This method requires accurate data on each parcel, especially parcel boundaries and the total amount of impervious land cover on the parcel (planimetrics).

The advantages to this approach involve its relative simplicity. The relationship (or nexus) between impervious area and stormwater impact is relatively easy to explain to the public on the basis of "you pave/build, you pay." Because an analysis of the pervious area or parcel size is not required, this approach requires the least amount of time to determine the total number of billing units. However, since the total imperviousness is not compared to the total area of the lot, this method is sometimes considered less equitable to property owners that have sufficient pervious area on their parcel to attenuate

at least some of the impact of their impervious area. However, the equity of this method can still be seen when evaluating the need to cover expenses not related to area, such as administration and regulatory compliance.

3.2.2 Gross Area and Intensity of Development

This stormwater cost allocation system is based on the percentage of impervious area relative to an entire parcel's size as well as the parcel's overall size. All parcels (including vacant/undeveloped) are charged a fee on the basis of their intensity of development, which is defined as the percentage of impervious area of the parcel. Rates are calculated for several categories which are billed at a sliding scale. This methodology can be based on an estimate or measurement of development intensity on a given parcel. This methodology works effectively where a locality has vastly different development intensity throughout the jurisdiction (rural versus urban areas). In addition, this approach is often used when the intensity of development must be estimated due to insufficient data (i.e. when aerial photography is available but no GIS planimetric data has been established) or when available data is too coarse to accurately determine a parcel's impervious area. A flat rate for residential properties can also be used with this approach.

This method allows for modest changes in land use since minor increases in a parcel's impervious area are unlikely to change its category. This reduces the time required for staff to maintain the billable unit database. Unlike other methods, however, parcels are grouped into broader categories and billing may not reflect a parcel's proportions to its relative stormwater discharges. Furthermore, this method can be more difficult to implement than the Impervious Area method because parcel pervious areas and impervious areas need to be reviewed and updated. It is also more complicated to explain to customers than the Impervious Area method.

3.2.3 Gross Area

In this scenario, calculation is made simply on the basis of parcel size. Typically a base residential parcel size is developed and multiples of that size are applied to non-residential parcels. This type of methodology is typically only used when the community lacks sufficient GIS data for an impervious cover methodology and cannot make any accurate estimates of development intensity. This methodology is also easiest to challenge, as the nexus between parcel size and stormwater runoff impact is hardest to defend.

3.2.4 Data Issues

A preliminary analysis of the City's GIS planimetric data suggests that the quality and accuracy of the data is sufficient for the purposes of determining the total amount of impervious area present on a given parcel. The City possesses GIS polygon data layers for buildings, sidewalks, and parking lots which can be merged into a single data layer representing impervious land cover. When intersected with the parcel layer, the total amount of impervious area on each parcel can be calculated. Nevertheless, several issues were noted that will need to be addressed before a preferred rate methodology can be implemented:

1) The parcel data contains topological errors at the boundaries of certain polygons, creating overlap between adjacent parcels. When the parcel layer is intersected with the impervious land cover data, new polygons are created that correspond to the area of overlap between these adjacent parcels. These non-existent parcels tend to exhibit high imperviousness since they are often completely covered by a parking area, sidewalk or building footprint.
2) The parcel data layer contains attribute table errors involving the land use classification of certain parcels. For instance, certain parcels classified as residential (parcels assigned a CAMRA land use code value of either 1 or 3) appear to contain non-residential land uses. These parcels will need to be identified and corrected prior to calculation of the ERU so that these anomalies do not skew the average impervious area measured for single-family residential parcels.

4. Stormwater Utility Rate Base and Rate Methodology

Examination of the stormwater utility rate base involves answering the primary question of "who should pay" into the stormwater utility, as well as additional, ancillary questions about the need to provide any special considerations to certain designated rate payers. From an equity standpoint, the initial premise of any enterprise funded entity is that everyone receiving the service provided by the utility pays. For example, as an enterprise fund, a stormwater utility may charge properties that may have a significant impact on stormwater, such as places of worship, for which real estate taxes are not collected. Large church buildings and parking lots may generate significant amounts of stormwater runoff. Programs funded through real estate tax-sponsored revenue collect no real estate taxes from a church, but do have to provide a certain level of stormwater management service. Under a stormwater utility, the church would be charged just as any other parcel, thus providing revenue to the stormwater utility in return for service provision comparable to the impact the church property has on the stormwater management system. To offset potential challenges, communities can also elect to assist churches and other non-residential properties with an offset of stormwater utility expenses through crediting.

Additional policy decisions regarding the community rate base must be addressed as well. For example, the community needs to identify whether or not there is any compelling evidence as to why one constituency should shoulder a greater burden than another (i.e. residential, non-residential, commercial, industrial, etc.). Rate base decisions can shift a greater proportional burden to residential or non-residential rate payers depending on the size of the billing unit. As such, communities need to think about the revenue burden of each group, and plan accordingly.

Identification of the rate base may also be impacted by the rate methodology chosen to establish the base billing unit. As described in more detail above, the establishment of the residential billing unit, which is typically the base unit against which non-residential bills are calculated, is the key component of the rate structure. The simplest formula is to develop and utilize a single residential billing unit (ERU) and simply apply multiples of the ERU to non-residential property. In some jurisdictions, because of the wide variety of residential housing stock and the size of parcels, a tiered residential rate is developed. However, the residential unit is the typical base measuring unit for non-residential

parcels. Typically, the ERU is developed through the completion of a survey of a variety of different residential properties, including condominiums and townhouses, to establish an average amount of impervious cover on the parcel. That average is then the basis of the residential billing unit. Alternatives for the development of the non-residential calculation of stormwater utility fees typically depend on the quality of the community's geographic information system (GIS) data.

4.1 Potential Rate Base in the City of Winchester

In order to assist in framing the rate base discussion as it pertains to Winchester, a preliminary, two-part analysis of the City's GIS planimetric data was conducted to 1) identify the City's current ratio of single family residential (SFR) and non-single family residential (NSFR) parcels and evaluate the impact that this ratio may have on the predicate question of "who pays?" as outlined above, and 2) to evaluate which parcels may constitute the City's largest rate payers in a stormwater utility assuming an impervious cover methodology.

4.1.1 SFR and NSFR Parcels in Winchester

Utilizing the City's CAMRA Land Use Codes provided by the Commissioner of the Revenue's office to establish residential and non-residential land uses in the City, this preliminary analysis demonstrated that approximately 80% of the City's parcels are some form of residential use. In land area, these parcels only account for approximately 37% of the City's overall acreage. As a general rule of thumb, in a stormwater utility, usually about two-thirds of a community's parcel inventory consists of residential parcels, but those residential parcels usually generate only about one third of the potential revenue of a stormwater utility in general. The non-residential parcels, while perhaps only a third of the communities' parcel inventory, will typically generate roughly two thirds of the communities' stormwater utility fee revenue. In testing this rule of thumb, Winchester's calculations appear fairly close to average for communities with a similar makeup, age, and development history.

This analysis also informs another key policy decision that warrants further study in Winchester should the City choose to proceed with the development of a stormwater utility, namely: is there a compelling argument as to why a particular parcel class (SFR or NSFR) should bear more of the burden for funding the City's stormwater management needs than the other classification? The size of the eventual ERU can influence the funding relationship to a degree. The smaller the ERU, the greater the burden on NSFR parcels as they will likely be responsible for more ERUs in the equation. A larger ERU reduces the NSFR obligation and places a bit more of the burden for funding on SFR parcels.

4.1.2 Identification of Potential Top Rate Payers

To further evaluate the potential rate base, using an impervious cover rate methodology, a simple impervious cover analysis of the City's parcel data was developed to identify some of the City's biggest potential rate payers. The City maintains GIS polygon layers for the following types of impervious areas:

- Buildings

- Parking Lots
- Sidewalks

These GIS layers were first merged in ArcGIS to obtain a single shapefile representing all impervious areas in the City. This resulting shapefile contained a separate polygon for each contiguous impervious area. Once merged, the shapefile was intersected with the parcel layer in order to compare the parcel area to the impervious area and subsequently dissolved on a parcel-by-parcel basis to determine the impervious area on each parcel.

An analysis of the results yields the ten largest parcels in terms of impervious area, as well as how may ERUs each property would generate based on two hypothetical ERU calculations of 1,500 square feet impervious and 2,000 square feet impervious. This analysis is simply intended to demonstrate the impact that the ERU calculation itself can have on the community rate base.

IMPERVIOUS AREA (ft²)	PARCEL AREA (ft²)	PERCENT IMP	MLNAM	MDESC2	# OF ERUs (ERU = 1500 sq ft)	# OF ERUs (ERU = 2000 sq ft)
1,836,860	6,697,855	27.42	WINCHESTER MEDICAL CENTER INC	N S 1830-1890 AMHERST ST	1,225	918
1,277,860	2,323,492	54.99	MAYFLOWER APPLE BLOSSOM LP	1850 APPLE BLOSSOM DRIVE	852	639
1,262,320	1,872,695	67.41	RUBBERMAID COMMERCIAL PROD INC	E S 3124 VALLEY AVENUE	842	632
868,911	1,139,320	76.27	DDRM APPLE BLOSSOM CORNERS LLC	E S 1950-2198 S PLEASANT VALLEY RD	579	434
742,945	1,957,408	37.96	SHENANDOAH UNIVERSITY	E S 1460 UNIVERSITY DRIVE	495	371
728,441	2,924,954	24.90	NATIONAL FRUIT PROD CO INC	W S 551-799 FAIRMONT AVENUE	486	364
704,577	1,069,121	65.90	WAL-MART REALTY COMPANY	E S 2350 SOUTH PLEASANT VALLEY ROAD	470	352
684,767	836,234	81.89	WALTER ENTERPRISES LC	E S 2200-2290 VALLEY AVENUE	457	342
638,370	1,737,937	36.73	FEDERAL MOGUL CORP	E S 2410 PAPERMILL ROAD	426	319
615,024	812,418	75.70	P D K WINCHESTER LC	S S 2290-2340 LEGGE BLVD	410	308

The list above shows NSFR parcels in Winchester that contain the most impervious cover, including the Winchester Medical Center, a Rubbermaid facility, Apple Blossom Mall, Shenandoah University, and a Wal-Mart store, among the parcels identified.

Should the City choose to develop and implement a stormwater utility, a more detailed data analysis will be required to ensure that policy decisions related to included impervious cover have been addressed. In addition, in order to evaluate potential rate structures, a sample of SFR parcels will need to be evaluated to better gage the potential ERU using an impervious cover methodology, should such a rate methodology be chosen. Also, it should be noted that in the event the City develops a stormwater utility, the City will likely evaluate a number of potential stormwater utility fee credits that may be available to City rate payers that could offset their stormwater utility fee burden to some degree. Analysis of policy decisions related to impervious cover, SFR evaluations, and credit policy development is beyond the scope of this preliminary analysis.

R-2013-10

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: February 19, 2013 **CUT OFF DATE:** _____

RESOLUTION _XX_ **ORDINANCE** __ **PUBLIC HEARING** __

ITEM TITLE: Modification of Frederick-Winchester Service Authority Articles of Incorporation regarding compensation.

STAFF RECOMMENDATION: See attached.

PUBLIC NOTICE AND HEARING: NA

ADVISORY BOARD RECOMMENDATION: NA

FUNDING DATA: See attached.

INSURANCE: NA

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Finance			2-12-13
2. City Attorney			2/13/2013
3. City Manager			2-13-13
4. Clerk of Council			

Initiating Department Director's Signature: _____ 2/6/13
Date

CITY ATTORNEY'S OFFICE Received FEB 12 2013 WINCHESTER, VA

APPROVED AS TO FORM: 2/13/2013
CITY ATTORNEY

Revised: September 28, 2009

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Perry Eisenach, Public Services Director

Date: February 6, 2013

Re: Modification of Frederick-Winchester Service Authority (FWSA) Articles of Incorporation Regarding Compensation

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THE ISSUE: Modification of Frederick-Winchester Service Authority (FWSA) Articles of Incorporation Regarding Compensation

RELATIONSHIP TO STRATEGIC PLAN: NA

BACKGROUND: At the request of the FWSA Board, City Council approved a concurrent resolution in 2010 to modify the Articles of Incorporation of the Service Authority so that instead of the joint City-County appointee to the Board being paid $1,800 per year for their service, the Chairman of the Board will receive $2,400 per year as compensation for their service. The County did not take action on this resolution at that time. The County did make some very minor revisions to the concurrent resolution and they approved it in December 2012. The FWSA is requesting that City Council now approve the revised concurrent resolution.

BUDGET IMPACT: This will have no impact on the City's budget.

OPTIONS: Either approve or not approve the revised concurrent resolution.

RECOMMENDATIONS: Approve the revised concurrent resolution.

ARTICLES OF AMENDMENT
OF FREDERICK-WINCHESTER SERVICE AUTHORITY

CONCURRENT RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF WINCHESTER, VIRGINIA AND THE BOARD OF SUPERVISORS OF FREDERICK COUNTY, VIRGINIA TO AMEND THE ARTICLES OF INCORPORATION OF THE FREDERICK-WINCHESTER SERVICE AUTHORITY

WHEREAS, by Concurrent Resolution of the City of Winchester (the **"City"**) and the Board of Supervisors of Frederick County (the **"County"**) and a Certificate of Incorporation issued by the State Corporation Commission pursuant to the Virginia Water and Waste Authorities Act (the **"Act"**), the Frederick-Winchester Service Authority (the **"Authority"**) was incorporated as a public body politic and corporate in 1974; and,

WHEREAS, by a Concurrent Resolution of the Common Council of the City and the Board of Supervisors of the County and a Certificate of Articles of Amendment issued by the Virginia State Corporation Commission, the Articles of Incorporation of the Authority were amended in 1983, 1985, 1987, 1995 and 2008; and,

WHEREAS, the City and the County desire to amend the amended and restated Articles of Incorporation dated August 26, 1987, as amended by Articles of Amendment dated April 13, 1995 as set forth hereinafter.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Winchester, Virginia and the Board of Supervisors of Frederick County, Virginia, in separate meetings assembled, that the Articles of Incorporation of the Frederick-Winchester Service Authority be amended in the following manner:

The following sentence in Paragraph (f) of the Amended Articles of Incorporation dated April 13, 1995 is deleted:

"Each member shall serve without compensation, except that the member appointed by concurrent action may be compensated not more than One Thousand Eight Hundred Dollars ($1,800.00) per annum."

The following sentence is substituted in the place and stead of the sentence deleted above:

"Each member of the Authority Board shall serve without compensation, except that the Chairman elected by the members of Authority Board may be compensated not more than Two Thousand, Four Hundred Dollars ($2,400.00) per annum, or such greater amount as may be determined by Resolution of the governing body or bodies which are Members of the Authority."

This Amendment does not effect a restatement of the Articles of Incorporation.

NOW, THEREFORE, BE IT RESOLVED that the Articles of Incorporation, as amended in 1983, 1985, 1987, 1995 and 2008, shall in all other respects remain unchanged.

These Articles of Amendment were approved by a Concurrent Resolution of the Common Council of the City of Winchester, Virginia, and the Board of Supervisors of Frederick County, Virginia, in separate meetings assembled, adopted by the City of Winchester, Virginia on _____, 20____, following a public hearing held

_____, 20____, and adopted by the County of Frederick, Virginia on Dec. 12,

20 12, following a public hearing held on Dec. 12, 2012.

IN WITNESS WHEREOF, the Common Council of the City of Winchester, Virginia, and the Board of Supervisors of Frederick County, Virginia, have caused these Articles of Amendment to be executed this _____ day of _____, 20____.

CITY OF WINCHESTER, VIRGINIA

By _____
John Willingham, President of Common Council

(SEAL)
Attest:

By: _____
Kari VanDiest, Deputy Clerk
of Common Council

FREDERICK COUNTY, VIRGINIA

By _____
Richard C. Shickle, Chairman
Board of Supervisors

(SEAL)
Attest:

By: _____
John R. Riley, Jr., Clerk
Board of Supervisors

MLB/smb
Forms\Service Authority Resolution #3
11/1/12

BOS Resolution #030-12

ARTICLES OF AMENDMENT
OF
FREDERICK-WINCHESTER SERVICE AUTHORITY

The following sentence in Paragraph (f) of the amended and restated Articles of Incorporation dated August 26, 1987, as amended by Articles of Amendment dated April 13, 1995 is deleted:

"Each member shall serve without compensation, except that the member appointed by concurrent action may be compensated not more than One Thousand Eight Hundred Dollars ($1,800.00) per annum."

The following sentence is substituted in the place and stead of the sentence deleted above:

"Each member of the Authority Board shall serve without compensation, except that the Chairman elected by the members of Authority Board may be compensated not more than Two Thousand, Four Hundred Dollars ($2,400.00) per annum, or such greater amount as may be determined by Resolution of the governing body or bodies which are Members of the Authority."

This Amendment does not effect a restatement of the Articles of Incorporation.

BE IT FURTHER RESOLVED that the Articles of Incorporation, as amended in 1983, 1985, 1987, 1995 and 2008 shall in all other respects remain unchanged.

IN WITNESS WHEREOF, the Common Council of the City of Winchester, Virginia, and the Board of Supervisors of Frederick County, Virginia, have caused these

Articles of Incorporated to be executed this ____ day of _____, 20____.

ATTEST:

John R. Riley, Jr., Clerk
Board of Supervisors

Richard C. Shickle, Chairman
Board of Supervisors

ATTEST:

Kari VanDiest, Deputy Clerk
of Common Council

John Willingham, President
President of Common Council

MLB/smb
Forms\Service Authority Articles of Amendment #2
11/1/12

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 2/26/13 (work session), 3/12/13 (regular mtg) **CUT OFF DATE:** 2/20/13

RESOLUTION _X_ **ORDINANCE** ___ **PUBLIC HEARING**

ITEM TITLE:
RESOLUTION RENAMING FRONTAGE ROAD TO MALL BOULEVARD

STAFF RECOMMENDATION:
Approval

PUBLIC NOTICE AND HEARING:
N/A

ADVISORY BOARD RECOMMENDATION:
None

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Public Services	PE		2/20/13
2. City Attorney	AV		2/21/2013
3. City Manager	DI		2-22-13
4. Clerk of Council			

Initiating Department Director's Signature: _____ 2/20/13
(Planning)

CITY COUNCIL OFFICE
Received
FEB 20 2013

APPROVED AS TO FORM:
2/21/2013
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Mayor and Members of City Council

From: Tim Youmans, Planning Director

Date: February 20, 2013

Re: Renaming Frontage Rd to Mall Boulevard

THE ISSUE:
Simon, as owners/managers of Apple Blossom Mall, requests that Frontage Rd (a public street from Millwood Ave to a southern terminus at the mall ring road) be renamed to Mall Boulevard.

RELATIONSHIP TO STRATEGIC PLAN:
High Priority: City Gateway Beautification Project (landscaping & signage)

BACKGROUND:
The City received a request from representatives at the National Office of Simon to work with them on solutions that would facilitate the removal of the grandfathered pylon sign situated in the triangle along the north side of Jubal Early Dr. This is where S.U. is working with the City to close off Millwood Ave and enhance the Rte 50 gateway into the City from Exit 313 of I-81. After discussing numerous alternatives, City staff agreed to ask Council to consider a renaming of Frontage Rd to a name that would provide better identification of what is at the terminus of that public street while also resulting in Simon removing the large existing sign that is situated on the Simon property affected by the proposed continuous westbound right-turn lane. There is only one property that currently has a Frontage Rd address.

BUDGET IMPACT:
None other than some costs associated with replacing existing City street signage.

OPTIONS:
1) Approve Renaming Resolution.
2) Disapprove Renaming Resolution.
3) Defer further action at this time.

RECOMMENDATIONS:
Staff recommends Option #1.

RESOLUTION RENAMING FRONTAGE ROAD TO MALL BOULEVARD

WHEREAS, Frontage Road is an existing public street extending from Millwood Avenue south to a point where it connects to the privately owned road ringing Apple Blossom Mall; and,

WHEREAS, 'Frontage Road' is a generic street name that was assigned to the remnant roadway originally part of the alignment of Front Royal Turnpike prior to the rerouting of U.S. Route 522 caused by the construction of Interstate 81 in the 1960's; and,

WHEREAS, Simon Property Group, Inc., as owner of Apple Blossom Mall, has requested that Frontage Road be renamed Mall Boulevard; and,

WHEREAS, Apple Blossom Mall, is a major regional destination for motorists accessing the site via Frontage Road from I-81 and US Routes 17, 50 and 522 and, with over 800 linear feet of property adjoining Frontage Road represents the largest property owner on the subject City street; and,

WHEREAS, there is only one parcel having a Frontage Road address which has less than 60 feet of frontage on the street and contains a structure that is residentially utilized; and,

WHEREAS, the Common Council may rename streets in accordance with the provisions of §15.2-2019 of the Code of Virginia, as amended;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Winchester, Virginia, that Frontage Road is hereby named **Mall Boulevard**.

BE IT FURTHER RESOLVED that Simon Property Group, Inc. shall cover all expenses associated with the street renaming including costs associated with altering the affected existing signage along Millwood Avenue.

BE IT FURTHER RESOLVED that the Clerk of Council is directed to forward a certified copy of this action to the Clerk of the Circuit Court who shall record the certified copy in accordance with the provisions of §15.2-2019 of the Code of Virginia, as amended.

R-2013-11

City of Winchester, Virginia

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: _____ **CUT OFF DATE:** _____

RESOLUTION X **ORDINANCE** ____ **PUBLIC HEARING** ____

ITEM TITLE:
Lord Fairfax Community College Clinical Affiliation Agreement

STAFF RECOMMENDATION:
We recommend that City Council approve the resolution to allow the Fire and Rescue Chief to execute the Clinical Affiliation Agreement and other document.

PUBLIC NOTICE AND HEARING:

ADVISORY BOARD RECOMMENDATION:

FUNDING DATA:
None

INSURANCE:
City Insurance coverage for City personnel. Other students must have their own insurance that lists the city as an additional insured.

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Finance	B		2-14-13
2. Risk Manager	J.C.		2-14-13
3.			
4.			
5. City Attorney			2/15/2013
6. City Manager			2-15-13
7. Clerk of Council			

CITY ATTORNEY'S OFFICE Received FEB 14 2013 WINCHESTER, VA

Initiating Department Director's Signature: C. E. McCullough Jr. 2-14-13 Date

APPROVED AS TO FORM:

2/15/2013
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Eddie McClellan, Deputy Chief
Winchester Fire and Rescue

Date: February 13, 2013

Re: Lord Fairfax Community College Clinical Affiliation Agreement

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THE ISSUE:
Lord Fairfax Community College has an accredited EMS education program that requires students to obtain clinical experience under the supervision of qualified pre-hospital EMS providers. A Clinical Affiliation Agreement is required between the college and any clinical facility. Without a signed Clinical Affiliation Agreement between the college and the fire and rescue department our personnel that are enrolled in the program must go elsewhere to obtain their clinical experiences.

RELATIONSHIP TO STRATEGIC PLAN:
Goal 1: Grow the Economy. Career training and education related to health professions. The Clinical Affiliation Agreement would be supporting the Lord Fairfax Community College's undergraduate program for Emergency Medical Services.

BACKGROUND:
Lord Fairfax Community College is the lone entity in the Northern Shenandoah Valley accredited by the Virginia Office of Emergency Medical Services to conduct initial Advanced Life Support certification courses. Both career and volunteer personnel from the fire and rescue department continue to enroll in the Lord Fairfax Community College EMS Program to obtain certification as either an EMT-Intermediate or EMT-Paramedic. In the past our personnel as well as others were able to complete their clinical experience under the supervision of our own Advanced Life Support preceptors. Upon review of the Clinical Affiliation Agreement by the City Attorney and Risk Manager in 2012 it was determined that the Clinical Affiliation Agreement did not provide sufficient insurance coverage and indemnification to the City of Winchester. The college is unable to amend the agreement to address the City Attorney and Risk Manager's concerns because it is a standard state contract approved by the Commonwealth's Attorney General.

In order to encourage higher EMS skill levels and facilitate our own personnel to continue to enroll in the program the fire and rescue department created a Standard Operating Procedure for "EMS Student and ALS Preceptee Ride Along Program." The Standard Operating Procedure addressed the insurance and indemnification concerns of the City Attorney and Risk Manager. The Standard Operating Procedure has been reviewed and approved by both. In addition, both have now recommended that the fire and rescue department forward this to City Council for approval through a signed/adopted resolution.

BUDGET IMPACT:
None

OPTIONS:
Is to have personnel seek field clinical experience with other fire and rescue departments.

RECOMMENDATIONS:
The Winchester Fire and Rescue Department recommends that City Council approve the Resolution to allow the Fire and Rescue Chief to execute the Clinical Affiliation Agreement and other document.

I, Kari J. Van Diest, Deputy Clerk of the Common Council, hereby certify on this __ day of _____, 2013 that the following Resolution is a true and exact copy of one and the same adopted by the Common Council of the City of Winchester, assembled in regular session on the ____ day of _____, 2013.

RESOLUTION

WHEREAS, The City of Winchester Fire and Rescue Department unquestionably supports the Lord Fairfax Community College's Emergency Medical Services "Field Clinical Program;" and

WHEREAS, The Lord Fairfax Community College is an educational institution with a Virginia Office of Emergency Medical Services accredited EMS program which requires clinical experience for students; and

WHEREAS, The City of Winchester Fire and Rescue Department has the resources in equipment and staff to provide the clinical experience required by the Emergency Medical Services Program of the college; and

WHEREAS, it is mutually beneficial to the college and the Fire and Rescue Department that resources of the Fire and Rescue Department be made available to students for the required clinical experience; and

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Winchester encourages and endorses a Clinical Affiliation Agreement between the City of Winchester Fire and Rescue Department and the Lord Fairfax Community College; and

BE IT FURTHER RESOLVED the Common Council of the City of Winchester, Virginia does hereby endorse the Clinical Affiliation Agreement and authorizes the Fire and Rescue Chief to sign and execute the Clinical Affiliation Agreement, and necessary documents.

Resolution No. 20013-XX

ADOPTED by the Common Council of the City of Winchester on the ___day of _____, 2013.

Witness my hand and the seal of the City of Winchester, Virginia

Kari J. Van Diest
Deputy Clerk of the Common Council

CLINICAL AFFILIATION AGREEMENT

This AGREEMENT is made this 13th day of March 2013 between Winchester Fire and Rescue (hereinafter "the Clinical Facility") and Lord Fairfax Community College, an institution or agency of the Commonwealth of Virginia (hereinafter "the College").

WHEREAS, the College is an educational institution with an approved program in EMS (Nursing/Dental Assisting/Other Clinical Program), (hereinafter "the Program") which requires clinical experiences of students enrolled therein ("Students"); and

WHEREAS, the Clinical Facility is a health care facility which has the resources in equipment and staff to provide the clinical experiences required by the EMS, Paramedic Program of the College; and

WHEREAS, it is to the benefit of the College that the resources of the Clinical Facility be made available to Students for the required clinical experiences; and

WHEREAS, it is to the benefit of both the College and the Clinical Facility to cooperate in the educational preparation of Students so as to promote excellence in patient care, to ensure professional competence, and to provide maximum utilization of community resources;

NOW THEREFORE, in consideration of the promises herein contained and other good and valuable consideration the parties agree as follows:

1. Purpose

   The purpose of this AGREEMENT is to establish procedures and guidelines for the provision of clinical experiences within the Clinical Facility for Students.

2. The College's Responsibilities

   The College agrees to:

   a. Present Students for clinical experiences who have adequate preclinical instruction and who, in the discretion of the faculty of the College, have adequately fulfilled the preclinical requirements of the curriculum;

   b. Provide evidence demonstrating that Students meet the Clinical Facility's physical examination requirements;

   c. Inform Students that they will be required to submit to, and pay for, a criminal background check performed by a third party clearinghouse or the Clinical Facility, containing such search parameters as the Clinical Facility indicates, to determine whether they are at a minimum listed on the "List of Excluded Individuals and Entities" maintained by the Office of the Inspector General for the Department of Health & Human Services,

or otherwise have a criminal record. Upon the Clinical Facility's request, the College will have Students provide, as a condition of their participation in the Program, the release of evidence directly to the Clinical Facility showing that a background check was performed and its results. In no event, however, will the College disseminate Students' background check results of which it might become aware, including the fact that no record exists, in derogation of § 19.2-389(C) of the *Code of Virginia*. If a student does not have a satisfactory background check, the Clinical Facility may prevent him/her from participating in the Program.

d. Obtain, or provide evidence of herein, comprehensive insurance coverage for Students and faculty in accordance with Virginia law. In particular, malpractice coverage shall be determined by § 8.01-581.15 of the *Code of Virginia*, as amended, which provides that coverage will not exceed two million dollars ($2,000,000);

e. Inform Students of the rules, regulations, policies and procedures of the Clinical Facility and require their conformance to such rules, regulations, policies and procedures as a condition of their participation in the clinical experience;

f. Advise the Clinical Facility no less than two (2) weeks prior to the commencement of the clinical experiences of the number of Students who are scheduled to participate and the dates and hour each such student will be assigned to clinical experiences as determined by the Program curriculum and students' class schedules;

g. Provide the services of a faculty member of the Program, or other College liaison, who will:

   (1) Plan, in conjunction with staff member(s) of the Clinical Facility the clinical experiences and patient care assignments which will fulfill the clinical requirements of the Program curriculum; and

   (2) Meet with staff member(s) of the Clinical Facility to discuss the quality of the clinical experiences and any problems which may have arisen in the provision of those experiences.

h. Retain responsibility for the education of Students in and for the curriculum of the Program, its design, delivery, and quality; and

i. Maintain all educational records and reports relating to Student experiences.

3. <u>The Clinical Facility's Responsibilities</u>

The Clinical Facility agrees to:

a. Provide supervised clinical experiences for Students which fulfill the curriculum requirements of the Program and meet the objectives agreed upon by the College and the Clinical Facility;

b. Provide the College with a minimum of 90 days written notice in the event it is unable to place Students;

c. Provide Students and faculty with an orientation to the Clinical Facility, or orientation packets about the Clinical Facility, which will include training about the Health Insurance Portability and Accountability Act of 1996 (HIPAA), especially as it relates to the Clinical Facility's confidentiality requirements;

d. Provide Students with instruction regarding blood-borne pathogens, and how, when and why to report incidents;

e. Require Students to sign confidentiality statements regarding the protection and confidentiality of patient medical records;

f. Provide facilities for clinical experiences which include reasonable library, classroom, conference room and locker room space, and whenever possible, office and storage space;

g. Provide the services of unit staff members who will:

(1) Assist the College's coordinating faculty members with the planning of clinical experiences and patient care assignments; and

(2) Meet with the College's coordination faculty members to discuss the quality of the clinical experiences and any problems which may have arisen in the provision of those experiences; and

h. Plan, administer and retain responsibility for all aspects of the patient care program and provide for qualified supervision of all patient activities; and

i. Allow faculty members of the College access to the facilities of the Clinical Facility for the purposes of coordinating, observing and instructing Students;

j. Provide, on forms furnished by the College or as otherwise approved by the College, an evaluation and report on the performance of each Student.

4. Responsibility of the College and the Clinical Facility

The College and the Clinical Facility agree that:

a. The maximum number of Students participate in clinical experiences will be determined by the parties;

b. The parties will advise one another of changes in supervision and instructing personnel, changes in applicable policies, changes in student enrollment, and changes in the availability of resources;

c. Emergency treatment of Students for any injuries incurred during clinical activities must be covered through the Students' personal health insurance plan, or through their own resources. Personal health insurance coverage for the College's faculty and/or Students will not be the responsibility of the College and/or Clinical Facility;

d. The Clinical Facility may at any time summarily relieve a student from a specific assignment, or request that a student or faculty member leave a patient care area for causes related to the quality of patient care;

e. The Clinical Facility may require that any student be withdrawn from participation in the clinical experience provided that the Clinical Facility first consults with the College and gives specific reasons for the withdrawal, which reasons shall not be among those prohibited under "f" below;

f. Neither party shall unlawfully discriminate against any student on the basis of race, religion, sex, creed, age, national origin or disability;

g. Students are volunteers at the Clinical Facility and not employees of either party during their clinical experience; and

h. The parties are independent contractors in relation to one another and neither party is authorized or permitted to act as an agent or employee of the other;

5. Governing Law

This agreement is made in Middletown , Virginia, and shall be governed by the laws of the Commonwealth of Virginia.

6. Length of Agreement

This Agreement commences on March 13, 2013 and is in effect for one (1) year with automatically renewals for subsequent one (1) year terms. It shall be reviewed each year by the parties, and it may be terminated by either party in writing and delivered by certified mail at least ninety (90) days prior to the date of termination for that year.

Should notice of termination be given by either party to this Agreement, Students currently assigned to the Clinical Facility by the College shall be permitted to complete any clinical internship assignment which is in progress at the Clinical Facility.

Termination of this Agreement may be affected by either party at the addresses of correspondence given below:

Notice of termination to the Clinical Facility shall be directed to:

Winchester Fire & Rescue Department Attn: Eddie McClellan, Deputy Chief 231 East Piccadilly Street, Suite 330 Winchester, VA 22601

Notice of termination to the College shall be directed to:

Tammy Wagner Associate Dean of Science and Health Professions Lord Fairfax Community College Middletown, VA. 22645

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed on the day, month, and year as written above:

_____ Clinical Facility Name	_____ Community College
By:_____ Authorized Officer	By: _____
_____ Authorized Officer's Printed Name	Title: _____
Date: _____	Date: _____

	City of Winchester **Fire & Rescue Department** **STANDARD OPERATING PROCEDURE**		
Section:	EMS Operations	**SOP:**	9.4
Subject:	EMS Student and ALS Preceptee Ride Along Program	**Executed:**	11/14/2012
		Revised:	
Approved: C. E. McClellan Jr., Deputy Chief		**Approved:** Christopher Turnbull, MD, OMD	
Legal Review: Anthony Williams, City Attorney			

Purpose

To establish a standard procedure for EMS students and ALS Preceptees to participate in a Ride-Along program with the Winchester Fire and Rescue Department. The program is designed to provide the EMS student and ALS Preceptee the opportunity to observe field operations and perform EMS skills to meet/obtain competency requirements as authorized by their level of instruction/certification.

Introduction

Policy

An EMS student or ALS Preceptee may participate in the Ride-Along program if they are enrolled in and pursuing a professional certificate, associate's degree or higher program in EMS from a college, university or other program that is accredited by the Commonwealth of Virginia Office of Emergency Medical Services to provide EMS education or if they are affiliated with a licensed EMS agency within the Lord Fairfax EMS Council region. All Ride-Along personnel are referenced as "students" in this SOP. Individuals under the age of 18 years old are ineligible to Ride-Along as students.

It is the responsibility of the fire and rescue chief or his designee, to approve all applications prior to students riding on apparatus. It is the responsibility of the EMS preceptor to ensure that students comply with the provisions of this SOP.

Students may only participate in EMS calls to the extent trained and permitted under this SOP.

Exemptions: Winchester Fire and Rescue Department career personnel and volunteer members of any City of Winchester volunteer fire and rescue station are exempt from this policy.

Procedure

- To be considered for the Ride-Along program, a student must submit a request to the fire and rescue chief or his designee on the Student Ride-Along application (Attachment A). Any requests received less than five business days prior to the first requested Ride-Along date will not be considered.

- The Student or their agency will maintain a general liability policy with $1,000,000 combined single limits. Coverage is to be on an occurrence basis with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. The insurer must list the City of Winchester as an additional insured. The endorsement must be issued by the insurance company. A notation on the certificate of insurance is not sufficient. A copy must be submitted with the Student Ride-Along application

- No student may ride along on City apparatus if he or she has a conviction or pending indictment that would prohibit him or her from obtaining certification by the Virginia Office of Emergency Medical Services as identified in 12VAC5-31-910. Criminal or enforcement history.

- If the fire and rescue chief or his designee approves the application, the student must read and sign the Ride-Along Participation, Notice of Privacy Laws, Release of All Claims and Assumption of The Risk Agreement.

- The original signed forms shall be maintained on file at the fire and rescue administrative office. A copy of the forms will be forwarded to the appropriate station and preceptor.

- The student will also submit a copy of their immunization record and verification that a criminal background check has been completed and there are no disqualifiers as outlined in this SOP.

- Copies of the Student Ride-Along application are available at all stations, the department's internal web page http://fire.winchesterva.gov/ and with the director

of an accredited EMS program with a signed affiliation agreement with the Winchester Fire and Rescue Department.

Authority and Responsibility

A. Ride-Along hours and standards.
   A. Student Ride-Alongs must be scheduled through the EMS Deputy Chief (540-662-2298 or emcclellan@ci.winchester.va.us).
   B. Scheduling shall be done at a minimum of three (3) days prior to the Ride-Along date requested.
   C. Students may only perform skills which their instructor(s), class administrator or certification level authorizes them to perform, after appropriate instruction as part of on-going certification training.
   D. Failure of the student to follow directions/instructions of the assigned preceptor or any department officer will result in the Student's loss of privilege to participate in the Student Ride-Along program.
B. Dress and Appearance.
   A. Students shall be neat and clean in appearance. Their personnel hygiene and grooming must be acceptable to the shift battalion officer.
   B. Students shall wear suitable attire. Dark pants and light colored collared shirt are recommended (no jeans, short pants, or tee shirts). No writing or artwork is allowed on clothing, except small brand logos and student patches associated with their program are allowed. Shoes must be flat and closed toe (steel-toe shoes are strongly recommended). Ride-Alongs from agencies outside of Winchester may wear their agency uniform with prior approval.
   A. Students shall display a name badge or other appropriate identification issued by their school, program or agency at all times.
   B. Students shall wear safety vests provided by the department when in or near moving traffic.
   C. Students shall wear no jewelry, except a ring and a watch are permitted. No piercings are permitted other than ear piercings.
   D. Any tattoo that could be considered offensive should be covered with a long sleeve shirt at all times.
C. Conduct.
   A. Health and Safety
      i. Student shall wear a seat belt as per State Law and Winchester Fire and Rescue Department SOP 7.6 "Apparatus Driving Procedures" section "Other Safety Rules."
      ii. No firearms or other weapons may be brought onto department property or carried during the ride along.

iii. Students may not be under the influence of alcoholic beverages or drugs during the Ride-Along. If the assigned preceptor has reason to suspect the student is under the influence the student will not be allowed to Ride-Along.

iv. The use of all tobacco products is prohibited in any station or department vehicle.

B. Patient Privacy

i. At no time will observers be permitted to take pictures, use a video camera or any other audio-visual recording device while on the scene of an incident.

ii. All Student Ride-Along participants will treat PHI (private health information) as strictly confidential. The disclosure of PHI outside of the organizations who are working with the patient is strictly forbidden.

iii. Students may not take or copy response documents with individually identifiable information such as name, address, SSN, medical history, or other information from which identity can be inferred.

C. Other

i. Student Ride-Alongs will be responsible for bringing her/his own meals or can make arrangements to buy-in for meals with the working shift.

ii. Student Ride-Alongs are expected to assist and participate with daily station duties.

Winchester Fire and Rescue Department

Student Ride-Along Application

Applicant Information	
The completed application must be returned to the fire and rescue administrative office at least five business days prior to your first requested Ride-Along date. Any false information or omissions on this application may result in disqualification for Ride-Along privileges. The department reserves the right to deny Ride-Along privileges for any reason, without prior notice.	
Full Name	Date of Birth
Home Address	Primary Contact Number
Emergency Contact Name	Emergency Contact Number
Place of Employment or School/Program	Gender (circle) Male Female
Position/Title	Major/Course
Place of Employment/School Address	Employer/School Phone
Agency Representing	
Date(s) you are requesting to Ride-Along?	Time period you wish to Ride-Along?

Please answer the following by placing a 'Y' for yes or an 'N' for no, in the box to the right of the question.

Are you subject to a court order restraining you from harassing, stalking, or threatening an intimate partner or child of such a partner?		Are you under indictment or do you have charges pending in any court for any crime?	
Are you currently taking any medications that could impair your judgment?		Have you ever participated in the Ride-Along program before? If yes, when did you last participate?	

I have read and understand the procedure for the Student Ride-Along program of the Winchester Fire and Rescue Department. The above information is true and accurate to the best of my knowledge.

Signature of Applicant:_____ Printed Name:_____

FOR DEPARTMENT USE ONLY	
Approved: ☐ Yes ☐ No Signature:_____ Printed Name:_____ Comments:_____	Return completed form to: Winchester Fire and Rescue Department 231 East Piccadilly Street, Suite 330 Winchester, VA 22601 If you have any questions contact 540-662-2298

Winchester Fire and Rescue Department

Ride-Along Participation Notice of Privacy Laws, Release of All Claims and Assumption of the Risk Agreement

WHEREAS, I, the undersigned, for my own personal education and benefit, request that the Winchester Fire and Rescue Department (WFRD) grant me permission to ride in Emergency Medical Service (EMS) vehicles, participate in EMS training exercises and participate in other fire and rescue related activities, and WFRD is willing to permit my participation because it serves important government functions such as education and recruitment, I agree as follows:

I have been instructed in federal, state, and local laws and regulations concerning emergency medical services, including the Health Insurance Portability and Accountability Act (HIPAA) relating to patient confidentiality, and I agree to abide by such laws and regulations. As a participant in the WFRD Student Ride-Along program, I agree to safeguard the privacy and confidentiality of all patients and participants encountered during the Ride-Along. I agree not to share or confirm any information regarding individual patients or their treatment, except with WFRD personnel. This includes any information that could be used to identify these patients, such as by address, description, or otherwise. I understand that any disclosure of patient information in violation of HIPAA may subject me to civil and/or criminal penalties as prescribed by 42 USC §§ 1320d-5 and 1320d-6 or other law. Such penalties may include up to ten years in federal prison and up to $50,000 per violation.

I acknowledge that at all times I will remain under the direct supervision of my WFRD preceptor. At all times I display my identification and participant/student status. I agree to immediately notify my WFRD preceptor of any accident or injury to me, or any incident that causes me concern, and cooperate in providing information concerning the same.

During and after these training exercises and while in or around WFRD premises and vehicles, I will remain under the instruction of my WFRD preceptor, and I will abide by all instructions and restrictions imposed by WFRD and/or my WFRD preceptor including but not limited to instructions as to how I should act and the use of equipment. I acknowledge that I may be asked to discontinue the exercise or required to leave the premises at any time for any reason and I agree to abide by such decisions and the reason therefore need not be disclosed to me. I authorize WFRD to seek emergency

medical treatment for me and to arrange for my transportation to a medical facility in the event of a medical emergency.

I have been instructed as to the nature of an EMS Ride-Along and my participation in these exercises. I understand that each exercise requires a substantial degree of physical and psychological involvement and danger. I acknowledge that WFRD has taken all reasonable steps to prepare and properly equip me for these exercises. However, I have been warned that despite reasonable efforts made to protect me, I could suffer emotional and psychological trauma, serious bodily injuries, death and/or property damage as a result of the exercises. Notwithstanding such warning, and with full and complete understanding of the risks and dangers the exercises involve, I voluntarily assume full responsibility and risk for any and all personal and bodily injuries, death and property damage that may result to me from my participation in the exercises, and the risk that such injuries and damage may become permanent or more extensive than is known, anticipated or expected, and I assume all risks inherent to these exercises.

I certify that I am physically capable of safely participating in the program, and I have taken all action that I consider necessary to make this determination, including seeking the advice of and appropriate examinations by a qualified physician, and seeking any recommended vaccinations and health care. I agree to advise WFRD of any disability that may require accommodations and agree to cooperate with WFRD to determine whether an accommodation of such disability is reasonable.

In consideration of being allowed to participate in these exercises, I hereby waive, release and forever discharge the City of Winchester, Winchester Fire and Rescue Department and its volunteer stations, their officers, directors, employees, and agents from any and all claims, liabilities, losses, damages, expenses, actions and causes of actions of every nature and kind arising out of or relating in any way to the exercises. I agree to indemnify and hold harmless the City from any and all personal and bodily injuries, death and property damage, including cost of investigation, reasonable attorney's fees and cost of appeals, arising out of any such claims or suits because of any acts or omission b me. I understand that any insurance or reinsurance related to my risks is solely my responsibility.

I acknowledge that, although I will be assigned duties as a Ride-Along, these duties and my participation in the Ride-Along program does not constitute employment by the City of Winchester or the Winchester Fire and Rescue Department. No worker's compensation, insurance, reimbursement or other benefits are available to me in the event of injury, death, property damage or other loss. No promise or inducement has been made to me for my agreement.

I certify that I am over eighteen (18) years of age and am mentally competent. This Ride-Along Participation Notice of Privacy Laws, Release of All Claims and Assumption of the Risk Agreement is binding on all my heirs, executors, administrators, next of kin and assigns, and all persons who may claim by or through me.

CAUTION: READ THE FOREGOING RIDE-ALONG PARTICIPATION NOTICE OF PRIVACY LAWS, RELEASE OF ALL CLAIMS AND ASSUMPTIONS AGREEMENT BEFORE SIGNING.

Participant Signature:_____ Date_____/_____/_____

Printed Name:_____ Phone _____

Full Address:

_____

_____

In emergency, you may contact _____ Phone _____

Witness Signature: _____ Date_____/_____/_____

Printed Name:_____

Fire and Rescue Chief Signature _____ Date_____/_____/_____

Printed Name:_____

R-2013-12

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: February 26, 2013 **CUT OFF DATE:** __

RESOLUTION _X__ **ORDINANCE** ___ **PUBLIC HEARING** ___

ITEM TITLE: Resolution authorizing the Downtown Manager to sign and submit an application for a Local Government Challenge Grant to the Virginia Commission for the Arts

STAFF RECOMMENDATION: Approval

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: $5,000 match requirements will be paid by the Old Town Development Budget

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Finance	B		2/18/13
2.			
3.			
4. City Attorney			2/20/2013
5. City Manager			2-21-13
6. Clerk of Council			

Initiating Department Director's Signature: Jennifer Bell 2/14/13
Downtown Manager Date

CITY ATTORNEY'S OFFICE Received FEB 18 2013 WINCHESTER, VA

APPROVED AS TO FORM: 2/20/2013
ATTORNEY

Revised: September 28, 2009

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Jennifer Bell, Downtown Manager

Date: February 26, 2013

Re: Authorization for the Submittal of a 2013-2014 Local Government Challenge Grant to the Virginia Commission for the Arts

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THE ISSUE: The City uses funds received through the Local Government Challenge Grant to fund three separate organizations dedicated to the arts that perform periodic events in the community.

RELATIONSHIP TO STRATEGIC PLAN: Supports the City's efforts in creating a more livable community for all.

BACKGROUND: The City has provided funding in the past to separate organizations that have sponsored the *Courthouse Concerts in Winchester, First Night in Winchester*, and *First Friday Celebration of the Arts in Old Town*. These events have been highly popular in the community and will benefit from receiving this grant.

BUDGET IMPACT: The match requirement of the requested $5,000 will be paid by the Old Town Development Budget.

OPTIONS: Council can either approve or reject the City's pursuance of this grant.

RECOMMENDATIONS: It is the staff's recommendation that the City submits this grant application.

RESOLUTION

WHEREAS, the City of Winchester has a desire to obtain a 2013-2014 Local Government Challenge Grant, and

WHEREAS, the Virginia Commission for the Arts is accepting applications for the grant, and

WHEREAS, the City of Winchester strongly supports the need for the funds awarded by the grant and decrees to apply for assistance

THEREFORE BE IT RESOLVED that the City of Winchester is applying for the 2013-2014 Local Government Challenge Grant, and

BE IT FURTHER RESOLVED that the City of Winchester authorizes the Downtown Manager or a designee acting as program administrator to submit all information needed to apply for the grant, and

BE IT FURTHER RESOLVED that the City of Winchester authorizes the Downtown Manager or a designee acting as program administrator to carry out all program administrative and reporting requirements on its behalf.

1. **2013-2014 Local Government Challenge Grant**

2. **Applicant**: City of Winchester
15 North Cameron Street
Winchester, VA 22601

3. **Telephone**: (540) 667-1815
Fax: (540) 722-3618
E-mail: wincmainst@ci.winchester.va.us
URL: www.winchesterva.gov

4. **Federal ID Number**: 54-6001683

5. **Contact**: Jennifer Bell, Downtown Manager
Old Town Development Board
(540) 722-7576
jbell@ci.winchester.va.us

6. **Amount of VCA Assistance Requested**: $5,000

7. **Proposed local government arts appropriation**: $5,000

8. **Local Independent Arts Organizations Selected to Receive Sub-Grant**:

Organization	Mailing Address/Contact Person	Proposed VCA Share
A. Bluemont Concert Series	P. O. Box 208 Leesburg, VA 20178 Peter Dunning	$1,666.67
B. First Night	P. O. Box 1392 Winchester, VA 22604 Felicia Hart	$1,666.67
C. Shenandoah Arts Council	P. O. Box 375 Winchester, VA 22604 Tracy Marlott	$1,666.66

9. **Process for awarding grants**:
Requests are received and reviewed by the Old Town Development Board and the City Council. Criteria for selection are that the applicant must be a Virginia based arts organization offering a variety of quality, suitable entertainment that includes local and area non-profits, arts organizations, and businesses in preparation or assistance with the performance or activity, and who is accountable for the performers and activities.

10. **A copy of the Old Town Development Board members and Winchester City Council members is attached**. (Attachment A)

11. **A brief description of each arts organization is attached** (Attachment B)

2013-2014 Local Government Challenge Grant: City of Winchester

City Council Members

Jeffrey B. Buettner, President
John Willingham, Vice-President
Evan Clark
John Hill
Milt McInturff
Elizabeth A. Minor, Mayor
John Tagnesi
Ben Weber
Les Veach

Old Town Development Board Members

Lauri Bridgeforth, Chairman
Stan Corneal, Vice-Chairman
Brenda Adams
Kim Burke
Scott Dawson
Marilyn Finnemore
Cory Garmin
Melinda Kramer
Rick McClendon

2013-2014 Local Government Challenge Grant: City of Winchester

Description of each Arts Organization

Bluemont Concert Series: Founded in 1976, the Bluemont Concert Series is a regional non-profit arts organization whose purpose is to present high-quality cultural events in a community setting. The Friday evening ***Courthouse Concerts in Winchester*** are presented by the Bluemont Concert Series in conjunction with the Old Town Development Board and the City of Winchester. Annually, ten (10) family concerts are held at the 1840 Frederick County Courthouse on the Old Town Pedestrian Mall in historic downtown Winchester. The concert series included performances in June, July and August by local favorites such as The Carters, Joann Shenandoah, Jambulay, Idle Time Band, Bill Wellington, Hillbilly IDOL, and Trapezoid. During the 10 performances, more than 3,500 people brought out lawn chairs to enjoy the summer evening concerts. These have become a family tradition in historic Old Town Winchester, attendance notably increased the past two summers with families spending more leisure time in their own communities, i.e. "stay-vacations".

First Night Winchester: Founded in 1987, ***First Night Winchester*** is affiliated with the National First Night Organization and was created as an annual family-oriented visual and performing arts festival created by and for the Winchester/Frederick County community to welcome in the New Year. Center stage for this event is Old Town Winchester. The program has grown from 12 venues/sites featuring a variety of entertainment to more than 30 entertainers and activities providing a variety of fun and entertainment between the hours of 6:00 p.m. and midnight on New Year's Eve. In addition to great entertainment, other activities include mask making, a model train layout, Artist in the Window, teen dance, face painting, magic shows, an Ecumenical Service, Magic Lantern Theatre film showing, and a fabulous ball drop and fireworks show at midnight. Annually thousands of people of all ages enjoy the diverse offerings of First Night Winchester. Each year First Night makes the event attractive to new and returning audiences of all ages by creating new programs, introducing new performers and retaining popular performers. December 31, 2012 First Night Winchester will celebrate its 26th anniversary.

The Shenandoah Arts Council: The Shenandoah Arts Council coordinates and promotes the ***First Friday Celebration of the Arts in Old Town***, which began in 1998. "Catch the spirit and experience the flavor of Old Town." This event is a celebration of art and culture that takes place on the first Friday of every month in Old Town Winchester. Old Town galleries and merchants host art exhibits and events which include gallery openings, receptions, and live music. This arts celebration, intended to enhance cultural life in downtown areas and acquaint the community with regional artists, showcases local and regional artistic talents. In 2009, the Shenandoah Arts Council collaborated with the Old Town Development Board to establish a new out-door gallery exhibiting works created by local artists, "**ArtScape in Old Town Winchester**". Now in its fourth year – and still the only one of its kind in the Commonwealth, the acclaimed project enhances the downtown commercial district with colorful displays of art and introduces new and regional favorite artists to the many people who live, work and visit in the Old Town district. ArtScape expanded with an Art Fair last year presenting the participating artists works of art for sale to the public with festivities. In November 2010, the Shenandoah Arts Council organizes an annual **Winchester Studio Artists Tour** as an event inviting the public to tour artists' galleries, offering demonstrations and art for sale. Both the ArtScape Art Fair and Studio Artists Tour were open and free to the public.

VIRGINIA COMMISSION FOR THE ARTS

2013-2014 Local Government Challenge Grant

Description

The Commission will match, up to $5,000, subject to funds available, tax monies given by independent town, city, and county governments to arts organizations in their jurisdictions. The money, which does not include school arts budgets or arts programming by parks and recreation departments, may be granted either by a local arts commission/council or directly by the governing board.

Deadline

All applications must be received in the Commission office no later than 5:00 p.m., **April 1, 2013 (receipt deadline, not a postmark deadline).** The Commission does not accept application materials via fax or email.

Eligibility & Criteria

Independent city, town, or county governments in Virginia are eligible to apply. Eligible activities are grants to independent arts organizations for arts activities in the locality.

Applications are evaluated on the basis of:

- Artistic quality of the organizations supported by the city/county/town
- Clearly defined policies and procedures for awarding local funds to arts organizations
- Degree of involvement of artists and arts organizations in the local process of awarding grants
- Responsiveness to community needs
- Evidence of local government support of the arts

Application Review & Payment Procedure

Completed applications must be received by the Commission on or before April 1, 2013. The Commission staff reviews each application for completeness and eligibility and makes recommendations on the levels of funding. The Commission reviews the staff recommendations and takes final action on the applications.

After the Commission has awarded the grants, each local government must confirm in writing to the Commission that its governing board has appropriated the matching funds. The Commission will pay the grant in full after receiving this confirmation.

Application Submission Checklist

A complete application must contain ONE (1) collated set of the following items:

- A completed Local Government Challenge Grant on 8.5" x 11" pages typed on one side.
- Signed Certification of Assurances Form (one page, both sides, sign on back).

Applicants should read the 2013-2014 Online Guidelines for Funding, Certification of Assurance and Grant Conditions to ensure compliance with all of the conditions. **The grant deadline is April 1, 2013.** The Virginia Commission will not accept any application materials via fax or email. For assistance or more information, contact the Commission office. The Commission staff is available for consultation on applications and to review drafts of applications.

Mail application to:

Virginia Commission for the Arts
1001 East Broad Street, Suite 330
Richmond, VA 23219
804.225.3132 (Voice/TDD)
www.arts.virginia.gov

Please Note New Address

DIRECTIONS

Provide all the information requested below in the order listed and send it to the Commission at the mailing address above.

1. Type **"2013-2014 Local Government Challenge Grant"** at the head of the page. Provide the information requested below on no more than TWO (2) 8.5" x 11" white pages and the attachments. (Use 12 point type or larger)

2. Applicant local government name, address, zip code.

3. Telephone, email, URL.

4. Federal Employer ID Number. The Federal Employer ID number is assigned to your city / county by the federal government as your Federal Employers' Identification number. This number must be included in your application. Payments cannot be made without this number.

5. Contact Person. The name, telephone number and e-mail address of the person to be contacted for more information about this application.

6. Amount of Virginia Commission for the Arts assistance requested for fiscal year 2013-2014.

7. Proposed local government arts appropriation for fiscal year 2013-2014. Applicant governments must match the amount requested from the Commission on at least a dollar-for-dollar basis with local government funds; federal funds may not be included. A local government that has not approved its budget by the grant deadline may apply conditionally. After the grant has been approved, any change in the allocation of funds subgranted to local arts organizations must be approved by the Commission.

8. Sub-grants (grants made by the local government) of any Commission funds from the Local Government Challenge grant program may only go to independent Virginia arts organizations for arts activities in the locality. Virginia arts organizations are defined as those organizations whose primary purpose is the arts (production, presentation or support of dance, literary arts, media arts, music, theater, or visual or related arts), that are incorporated in Virginia, and have their headquarters and home seasons, or activities equivalent to a home season, in the state. Units of government and educational institutions cannot be considered arts organizations.

Using the following format, list which local independent arts organizations will receive the Commission grant money subgrant. (After the Commission grant has been approved, any changes in the allocation of sub-grants to local arts organizations must be approved by the Commission.)

Organization	Mailing Address/Contact Person	Proposed VCA Grant Share

9. What is the process for awarding the above grants? Who is involved in making these decisions? What criteria are sought in evaluating applicants?

10. Attach a copy of the list of your current board/council members, if a board/council is involved in making funding decisions.

11. Attach a brief description of the arts organization(s) proposed to receive Commission assistance through the Local Government Challenge Grant in 2013-2014.

CERTIFICATION OF ASSURANCES AND GRANT CONDITIONS 2013-2014 FOR LOCAL GOVERNMENT GRANTEES OF THE VIRGINIA COMMISSION FOR THE ARTS (COMMISSION)

Virginia Commission for the Arts grantees are required to be non-profit Virginia organizations and exempt from federal income tax under Section 501(a), which includes the 501(c)3 designation of the Internal Revenue code, or are units of government, educational institutions, or local chapters of tax exempt national organizations.

No part of any Commission grant shall be used for any activity intended or designed to influence a member of Congress or the General Assembly to favor or oppose any legislation.

Each Commission grantee will:

- provide accurate, current and complete financial records of each grant.
- maintain accounting records which are supported by source documentation.
- maintain effective control over and accountability for all funds, property, and other assets ensuring that assets are used solely for authorized purposes.
- maintain procedures ensuring timely disbursement of funds.
- provide the Commission, or its authorized representatives, access to the grant-related financial records.

The grantee will expend any and all grant funds only for purposes described in the application form and attachments. The grantee must request permission in writing to make substantial changes in budget, schedule, program, personnel. The requested changes must be approved in advance by the Commission. **NOTE:** If any project receiving grant support from the Commission has actual income in excess of expenses, the grantee must use these funds for other arts activities and the Commission must approve the organization's use of any of these excess funds up to the amount of the grant.

Each Commission grantee will comply with these federal statutes and regulations:

- Title VI, Section 601, of the Civil Rights Act of 1964, which provides that no person, on the ground of race, color or national origin, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- Title IX, Section 1681, of the Education Amendments of 1972, which provides that, with certain exceptions, no person, on the basis of sex or age, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.
- Americans With Disabilities Act and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with physical or mental disabilities in federally assisted programs. Compliance with this Act includes the following: notifying employees and beneficiaries of the organization that it does not discriminate on the basis of handicap and operation of programs and activities which, when viewed in their entirety, are accessible to persons with disabilities. Compliance also includes maintenance of an evaluation plan developed with the assistance of persons with disabilities or organizations representing disabled persons which contains: policies and practices for making programs and activities accessible; plans for making any structural modifications to facilities necessary for accessibility; a list of the persons with disabilities and/or organizations consulted; and the name and signature of the person responsible for the organization's compliance efforts. ("ADA Coordinator")

No final report is required for the Local Government Challenge Grant. Each local government will confirm in writing to the Commission that its governing board has appropriated the matching funds. The Commission will pay the grant in full after receiving this confirmation.

In **all** published material (printed programs, news releases, web news, email alerts, advertisements, flyers, etc.) and announcements regarding the particular activity or activities supported, acknowledgment of the Commission must be made. A suggested phrase is "(organization or activity) is partially supported by funding from the Virginia Commission for the Arts and the National Endowment for the Arts."

This form must be signed by an individual duly authorized by the governing body of the locality to act on its behalf and submitted with every grant application made to the Commission. The signature of the individual indicates the locality's compliance with all of the grant conditions listed above.

The undersigned certifies to the best of his/her knowledge that:

- the information in this application and its attachments is true and correct;
- the filing of this application has been duly authorized by the governing body of the applicant organization;
- the applicant organization agrees to comply with all grant conditions cited above.

The undersigned further certifies that he or she has the legal authority to obligate the applicant locality.

Typed Name of Authorizing Official Jennifer Bell Title Downtown Manager

Signature of Authorizing Official Jennifer Bell Date 2/14/13

Applicant Locality Name City of Winchester

Applicant/Organization Name: City of Winchester

FORM BCKFDR\8891
(Updated 12/20/01)

NATIONAL STANDARD FOR ARTS INFORMATION EXCHANGE
RACIAL/ETHNICITY DATA COLLECTION FORM

Individual Applicants:

Individuals should circle **any combination** of the characteristics listed below that apply:

A: Asian
B: Black/African American
H: Hispanic/Latino
N: American Indian/Alaskan Native
P: Native Hawaiian/Pacific Islander
W: White

Organizational/Institutional Applicants
(e.g. school, arts group):

Using the characteristics listed below, circle the predominant group of which the staff or board or membership (not audience) is composed. Organizations should choose the **one** code that best represents 50 percent or more of its staff or board or membership. If none of these conditions apply to the organization, classify the organization "99."

A: 50% or more **Asian**
B: 50% or more **Black/African American**
H: 50% or more **Hispanic/Latino**
N: 50% or more **American Indian/Alaskan Native**
P: 50% or more **Native Hawaiian/Pacific Islander**
W: 50% or more **White**
99: No single group listed above represents 50% or more of staff or board or membership

For Both Individual & Organizational Applicants:

Using the characteristics listed below, indicate if the majority of the grant activities are intended to involve or act as a clear expression or representation of the cultural traditions of one particular group, or deliver services to a designated population listed below, choose that group's code from the list. If the project or activity does not emphasize the culture or traditions of one group, please circle "99." If you seek or receive general operating support or support for administrative or artistic expenses for many projects and activities and cannot select one group, please circle "99".

A: Asian individuals
B: Black/African American individuals
H: Hispanic/Latino individuals
N: American Indian/Alaskan Native individuals
P: Native Hawaiian/Pacific Islander individuals
W: White individuals
99: No single group

NOTE: Generally, an activity can be considered "a clear expression or representation of the cultural traditions of one particular group" if it is:

(1) A project in which the intent is to communicate the culture or traditions of a particular race. For example, performances by an African dance company would be coded as "Black/African American."

and/or

(2) Projects which are usually understood to be reflective of the culture or traditions of a particular race. For example, Kabuki theatre is performed in many localities, and by many Asian and non-Asian groups. All of these performances would be coded as "Asian" because regardless of who produces the work, the type of theatre itself is widely understood to be an expression of Japanese culture.

This information will be used as part of a data collection project which documents state arts agency grant-making activities nationwide. This information will be used to determine national trends in grant-making and will not be considered during the grant-making process.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: February 19, 2013 **CUT OFF DATE:** _____

RESOLUTION __ **ORDINANCE** __ **PUBLIC HEARING** __

ITEM TITLE: Proposed FY14 Operating Budget for OWRF

STAFF RECOMMENDATION: Approve a motion providing preliminary approval of the proposed FY14 operating budget for the OWRF, subject to adopting the FY14 Appropriations Ordinance.

PUBLIC NOTICE AND HEARING: NA

ADVISORY BOARD RECOMMENDATION: NA

FUNDING DATA: See attached.

INSURANCE: NA

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Finance	TB		2-12-13
2. City Attorney			2/13/2013
3. City Manager			2-13-13
4. Clerk of Council			

Initiating Department Director's Signature: _____ 2/11/13
Date

CITY ATTORNEY'S OFFICE Received FEB 12 2013 WINCHESTER, VA

APPROVED AS TO FORM: 2/13/2013
CITY ATTORNEY

Revised: September 28, 2009

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Perry Eisenach, Public Services Director

Date: February 11, 2013

Re: Proposed FY14 Operating Budget for Opequon Water Reclamation Facility

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THE ISSUE: Approval of the proposed FY14 operating budget for the Opequon Water Reclamation Facility (wastewater treatment plant).

RELATIONSHIP TO STRATEGIC PLAN: NA

BACKGROUND: The City of Winchester is responsible for operating the Opequon Water Reclamation Facility (OWRF) as per the 1987 Operations Agreement between the City and the Frederick-Winchester Service Authority (FWSA). This agreement stipulates that FWSA reimburses the City for the actual operating costs.

The proposed FY14 budget is being presented to City Council now and in advance of the remaining City budget so that it can be forwarded to the FWSA at their request to allow them adequate time to adopt their budget and user rates for FY14. Formal approval of the proposed OWRF budget is not being requested at this time. Formal approval of this budget will be part of the entire City FY14 Appropriations Ordinance that will be adopted by Council before the end of June.

BUDGET IMPACT: The proposed operating budget for FY14, as detailed on the attachment, is $4,068,000. This is a 1.5% increase over the current year budget of $4,008,000 and is due solely to the estimated 16.7% increase in the sludge tipping fee at the landfill.

The other major change in this proposed budget is staff's recommendation to eliminate the part-time salaries in the budget ($40,000) and add one additional full-time operator. This additional position will also allow the amount of budgeted overtime at the facility to drop from $70,000 to $50,000 (see attached justification sheet). The net annual savings of this proposal is approximately $7,500.

OPTIONS: Either approve the proposed budget as presented, or make modifications to the proposed budget.

RECOMMENDATIONS: Approve, by motion, the proposed FY14 budget as presented, subject to adopting the Citywide FY14 Appropriations Ordinance later this spring.

CITY OF WINCHESTER
REQUEST FOR CLASSIFICATION ACTION

DEPARTMENT: FWSA (Public Services) DATE OF REQUEST: 2/11/13

REQUEST MADE BY: Perry Eisenach and John Merriner

PERSONNEL ACTION REQUESTED: (Check one)

- ❑ Establish new position: Operator III
- ❑ Reclassify existing position from:_____
- ❑ to:_____
- ❑ Delete position:_____(title)

JOB STATUS: (check all that apply)

- ❑ Classified
- ❑ Temporary/seasonal
- ❑ Full time
- ❑ Part time (number of hours worked per week):_____

JUSTIFICATION: (complete all)

- ❑ State the reason for classification action and the years to be budgeted: (attach additional documentation if needed) The Opequon Water Reclamation Facility is a 24-hour per day, 365 days per year operation. We utilize three, 8-hour shifts every day. For safety purposes, it is necessary to have a minimum of 2 operators present during every shift. Over the past three years, the facility has averaged over 4,000 hours per year of overtime due to the necessity to maintain the minimum of 2 employees per shift when the scheduled employees are on vacation or sick, and also due to holidays.

  We are proposing the addition of an Operator position at the facility that would be used as necessary on all three shifts to cover for employees that are on vacation or sick. We believe the addition of this position will cut the overtime of the facility approximately in half. The addition of this position will also allow the existing part-time salaries at the facility ($40,000) to be eliminated and allow for a net budget savings of approximately $7,500 per year. In addition, this position will greatly assist in staffing the facility and reducing the need for employees to be required to work overtime which will help improve employee morale.

- ❑ State the absolute minimum qualifications that an applicant should bring with him/her to satisfactorily perform this job. Please see attached Operator III Job Description

- ❑ Sketch an organizational chart that includes this position.
- ❑
- ❑ Projected salary cost: $35,630 Projected benefit cost: $12,500

RETURN TO THE ADMINISTRATION DEPARTMENT

City of Winchester
Proposed Operating Budget for Opequon Water Reclamation Facility (OWRF)
FY 2014

Draft: 2/11/13

		FY 2011 Actual	FY 2012 Actual	Current FY 2013 Budget	Proposed FY 2014 Budget	Changes from FY 2013	Comments
	Personnel						
11-01	Regular Salaries	$ 648,214	$ 746,306	$ 787,140	$ 833,690	$ 46,550	Add one full time operator in lieu of eliminating part-time positions
12-01	Overtime	$ 86,496	$ 99,027	$ 70,000	$ 50,000	$ (20,000)	Decrease due to adding one additional full-time operator
13-01	Classified - Regular	$ -	$ -	$ -	$ -	$ -	
17-01	Non-Classified Regular (Part-time)	$ 2,922	$ -	$ 40,000	$ -	$ (40,000)	Eliminate Part-time positions
19-01	College Incentive	$ -	$ -	$ -	$ -	$ -	
	Subtotal - Personnel	**$ 737,632**	**$ 845,333**	**$ 897,140**	**$ 883,690**	$ (13,450)	
						$ -	
	Benefits					$ -	
21-10	FICA	$ 54,971	$ 62,917	$ 65,916	$ 67,232	$ 1,316	
22-20	VRS-Employer	$ 84,851	$ 92,930	$ 97,577	$ 103,485	$ 5,908	
23-11	Retirees	$ -	$ -	$ 8,000	$ -	$ (8,000)	
24-20	Insurance-Employer	$ 1,716	$ 2,270	$ 10,370	$ 9,915	$ (455)	
26-10	SUTA	$ -	$ -	$ -	$ -	$ -	
27-20	Worker's Compensation	$ 15,490	$ 17,728	$ 19,846	$ 22,809	$ 2,963	
28-50	Flex Benefits - Admin Fee	$ 892	$ 978	$ 979	$ 1,541	$ 562	
28-51	Flex Benefits - Employees	$ 116,370	$ 144,112	$ 138,373	$ 150,862	$ 12,489	
29-10	VRS Health Insurance Credit	$ 920	$ 1,061	$ 1,099	$ 1,166	$ 67	
	Subtotal - Benefits	**$ 275,210**	**$ 321,996**	**$ 342,160**	**$ 357,010**	$ 14,850	
						$ -	
	Contractual Services					$ -	
31-10	Medical, Dental, Hospital	$ 600	$ 4,079	$ 1,200	$ 5,000	$ 3,800	Based on actual expenditures
31-70	Other Professional Services	$ -	$ 1,125	$ -	$ -	$ -	
31-77	Training/Education	$ 4,368	$ 6,782	$ 5,000	$ 5,000	$ -	
32-15	Employment Agencies	$ 66,063	$ 60,338	$ -	$ -	$ -	
33-10	Facility Repairs and Maintenance	$ 236,041	$ 293,630	$ 255,000	$ 258,000	$ 3,000	Continued high maintenance costs for sludge pumps and HVAC system.
33-11	Outside Property Maintenance		$ 15,360	$ 5,000	$ 5,000	$ -	
33-15	Vehicle Repairs and Maintenance	$ 31,868	$ 30,703	$ 30,000	$ 30,000	$ -	
33-20	Contracts	$ 16,542	$ 20,784	$ 43,700	$ 43,700	$ -	
33-23	Mowing and Trimming	$ 17,724	$ 17,088	$ 15,000	$ 15,000	$ -	
33-25	Computer Hardware/Software	$ 32,570	$ 31,292	$ 13,000	$ 15,000	$ 2,000	

35-01	Printing & Binding	$ 672	$ -	$ 500	$ 500	$ -	
36-01	Local Media	$ 2,249	$ 1,636	$ 2,000	$ 2,000	$ -	
37-01	Laundry and Dry Cleaning	$ 17,005	$ 13,454	$ 14,000	$ 4,000	$ (10,000)	Decrease due to purchasing uniforms instead of renting.
38-10	Tuition Paid	$ -	$ -	$ -		$ -	
38-44	Sanitary Landfill - Disposal Fees	$ 338,399	$ 334,388	$ 350,000	$ 410,000	$ 60,000	Projected 16.7% increase in landfall disposal rate (from $24 to $28/ton), plus an additional $10k due to Kraft.
39-20	Refuse Service	$ 14,628	$ 16,741	$ 15,000	$ 15,000	$ -	
39-22	Lab Services	$ 19,977	$ 21,264	$ 20,000	$ 20,000	$ -	
	Subtotal - Contractual Services	**$ 798,706**	**$ 868,664**	**$ 769,400**	**$ 828,200**	$ 58,800	
						$ -	
	Other Operational					$ -	
42-03	Equipment Maintenance/Fuel	$ 20,010	$ 26,793	$ 20,000	$ 24,000	$ 4,000	Higher cost of fuel
42-04	Equipment - Parts	$ 921	$ 2,195	$ 1,000	$ 1,000	$ -	
42-05	Equipment - Labor	$ 907	$ 2,765	$ 2,000	$ 2,000	$ -	
51-10	Electrical	$ 568,787	$ 524,123	$ 610,000	$ 610,000	$ -	
51-20	Heating	$ 62,457	$ 43,935	$ 50,000	$ 50,000	$ -	
52-10	Postal Services	$ 1,946	$ 1,916	$ 3,200	$ 3,200	$ -	
52-30	Telecommunications	$ 13,874	$ 16,448	$ 15,500	$ 15,500	$ -	
53-05	Motor Vehicle Insurance	$ 2,537	$ 2,596	$ 3,500	$ 3,500	$ -	
53-08	General Liability	$ 7,112	$ 6,175	$ 8,000	$ 8,000	$ -	
54-10	Equipment	$ 417	$ 1,965	$ 1,500	$ 1,500	$ -	
54-11	Office Equipment	$ 1,312	$ 1,700	$ 2,000	$ 2,000	$ -	
55-10	Mileage/Transportation	$ 200	$ 240	$ 500	$ 500	$ -	
55-40	Conferences/Education	$ 1,434	$ 6,557	$ 10,000	$ 10,000	$ -	
58-10	Dues/Memberships	$ 5,175	$ 9,796	$ 7,000	$ 7,000	$ -	
58-72	Misc. Charges	$ 983	$ 4,384	$ -	$ -	$ -	
58-74	Background Checks		$ 345		$ -	$ -	
60-01	Office Supplies	$ 1,399	$ 1,421	$ 3,200	$ 2,000	$ (1,200)	Decrease based on actual expenditures
60-02	Food & Food Service	$ 2,444	$ 3,276	$ 2,600	$ 2,600	$ -	
60-03	Landscaping Supplies	$ 87	$ 323	$ 500	$ 500	$ -	
60-04	Lab Supplies	$ 43,529	$ 45,441	$ 43,000	$ 45,000	$ 2,000	Increase based on actual expenditures
60-05	Laundry and Janitorial	$ 10,388	$ 16,239	$ 13,000	$ 15,000	$ 2,000	Increase based on actual expenditures
60-07	Supplies for Facility Maintenance	$ 247,434	$ 289,665	$ 281,000	$ 266,000	$ (15,000)	
60-08	Vehicle and Equipment Fuels	$ 5,492	$ 3,782	$ 5,000	$ 5,000	$ -	
60-09	Vehicle and Equipment Supplies	$ 3,150	$ 1,128	$ 3,000	$ 3,000	$ -	
60-11	Uniforms & Apparel	$ 7,142	$ 6,268	$ 7,000	$ 7,000	$ -	
60-12	Books/Subscriptions	$ 825	$ 151	$ 300	$ 300	$ -	
60-14	Other Operating Supplies	$ 4,462	$ 2,388	$ 4,000	$ 4,000	$ -	
60-23	Chemicals	$ 772,742	$ 708,360	$ 900,000	$ 900,000	$ -	
60-26	Computer Hardware/Software	$ 430	$ 9,675	$ 2,000	$ 10,000	$ 8,000	Replace four computers.
60-39	Awards	$ 80	$ -	$ 500	$ 500	$ -	
81-01	Machinery & Equipment		$ 66,865	$ -	$ -	$ -	
	Subtotal - Other Operational	**$ 1,787,676**	**$ 1,806,915**	**$ 1,999,300**	**$ 1,999,100**	$ (200)	

						$ -	
						$ -	
TOTAL OPERATIONAL EXPENDITURES		$ 3,599,224	$ 3,842,908	$ 4,008,000	$ 4,068,000	$ 60,000	Increase of 1.50 %

O-2013-03

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 2/19/13 **CUT OFF DATE:** 2/12/13

RESOLUTION ___ **ORDINANCE** X **PUBLIC HEARING** ___

ITEM TITLE: Section 14-66 Installation; Required Legend and Signals, Section B

STAFF RECOMMENDATION: Staff recommends that Council amend and re-enact Section 14-66 Installation; Required Legend and Signals, Section B

PUBLIC NOTICE AND HEARING: 1st Reading March 5, 2013
Public Hearing/2nd Reading April 9, 2013

ADVISORY BOARD RECOMMENDATION: Winchester Parking Authority unanimously approved the recommendation

FUNDING DATA: The cost to convert the rate change on the digital meters is $2,012.50 which the Authority will fund.

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. OTDB			1/30/13
2. Police			2/1/12
3. Finance			1/31/13
4. Economic Redevelopment	SW		2/4/13
5. City Attorney			2/4/2013
6. City Manager			2-5-13
7. Clerk of Council			

Initiating Department Director's Signature: Samantha Anderson 2/11/13
Date

Received FEB 1 2013 CITY AUDITOR'S OFFICE WINCHESTER, VA

APPROVED AS TO FORM:

2/4/2013
CITY ATTORNEY

Revised: October 23, 2009

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Winchester Parking Authority

Date: January 24, 2013

Re: Section 14-66 Installation; Required Legend and Signals, Section B

THE ISSUE:

Change City Code Section 14-66 Installation; Required Legend and Signals by permitting parking at a charge not to exceed seventy-five cents ($0.75) per hour.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 3 – Continue revitalization of historic Old Town

This code change would allow the Authority a vehicle to maintain the financial projections for bond conformity. The only other option is to continue raising monthly rates in the garages and hope to stay at or above 900 spaces rented (900 spaces rented is used in the projections calculations). Current capacity is at 937 spaces rented.

BACKGROUND:

City Code Section 14-65, *Responsibilities of Finance and Administration Committee and Winchester Parking Authority* stipulates City Council is responsible for the regulation, control, rates up to the maximums set forth in 14-66 below, and use of parking meter installed as provided in this division. The City Manager is responsible for the location of meters within the meter zones. The Winchester Parking Authority is responsible for the operation and maintenance of such parking meters. (Code 1959, 15-115; Ord. No. 036-90, 11-13-90; Ord. No. 041-93, 11-09-93; Ord No. 2011-21, 10-11-11).

Per City Code Section 14-66, Section B, each parking meter installed as provided in this section shall indicate, by proper legend, the legal parking time established by the City for the particular parking meter. Each such meter shall be set so as to display a signal showing legal parking upon the deposit of the appropriate coin or coins, lawful money of the United States, for the period of time prescribed, which parking meters shall require the deposit of coin(s) of the denominations of nickels, dimes or quarters permitting parking at a charge not to exceed twenty-five cents ($0.25) per one half hour. Each such meter shall be so arranged that, upon the expiration of the lawful time limit, it will indicate by a proper visible signal that the lawful parking period has expired. (Code 1959, 15-113, 15-118, 15-119; Ord. No. 036-90, 11-13-90; Ord. No. 23-2006, 6-13-06; Ord. No. 2011-21, 10-11-11)

BUDGET IMPACT:

The Authority will capture additional parking meter revenue, Monday – Friday when meters are enforced. This will assist the Authority in funding the debt service payments of the George Washington Autopark while maintaining the garages which are open 24/7. Approximate additional revenue on the digital meters is expected to be approximately $2,188 a month/ $26,250 a year.

The estimated cost to convert the rate change on the 250 digital meters is $2,012.50. New parking meter stickers will be purchased notifying customers of the new meter rate and displayed on each parking meter as necessary. The Authority will update its website with the new parking rate at a charge not to exceed seventy-five cents ($0.75) per hour and an article will be included in Winchester CitE-NEWS.

OPTIONS:

The Authority would like the flexibility to implement meter rates not to exceed seventy-five cents ($0.75). The Authority would like to implement a higher rate at the digital meters since all the digital meters are located in prime locations including the primary and secondary district.

RECOMMENDATIONS:

The Winchester Parking Authority recommends that Council **AMEND AND RE-ENACT SECTION 14-66 OF THE WINCHESTER CITY CODE PERTAINING TO INSTALLATION; REQUIRED LEGEND AND SIGNALS** at a charge not to exceed seventy-five cents ($0.75) per hour effective July 1, 2013.

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-66 OF THE WINCHESTER CITY CODE PERTAINING TO INSTALLATION; REQUIRED LEGEND AND SIGNALS

WHEREAS, the Common Council of the City of Winchester, Virginia, has determined that it is necessary to provide flexibility of meter rates at a charge not to exceed seventy-five cents ($0.75) per hour from Monday through Friday when meters are enforced.

NOW, THEREFORE, BE IT ORDAINED that Section 14-66 of the Winchester City Code is hereby amended and re-enacted to read as follows:

SECTION 14-66. INSTALLATION; REQUIRED LEGEND AND SIGNALS.

(B) Each parking meter installed as provided in this section shall indicate, by proper legend, the legal parking time established by the City for the particular parking meter. Each such meter shall be set so as to display a signal showing legal parking upon the deposit of the appropriate coin or coins, lawful money of the United States, for the period of time prescribed, which parking meters shall require the deposit of coin(s) of the denominations of nickels, dimes or quarters permitting parking at a charge ~~not to exceed twenty-five cents ($0.25) per one half hour~~ not to exceed seventy-five cents ($0.75) per hour. Each such meter shall be so arranged that, upon the expiration of the lawful time limit, it will indicate by a proper visible signal that the lawful parking period has expired. (Code 1959, 15-113, 15-118, 15-119; Ord. No. 036-90, 11-13-90; Ord. No. 23-2006, 6-13-06; Ord. No. 2011-21, 10-11-11)

O-2013-04

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 2/19/13 **CUT OFF DATE:** 2/12/13

RESOLUTION ___ **ORDINANCE** X **PUBLIC HEARING** ___

ITEM TITLE: City Code Section 14-68 When Meters Shall be Operated

STAFF RECOMMENDATION: Staff recommends that Council amend and re-enact Section 14-68 When Meters Shall be Operated

PUBLIC NOTICE AND HEARING: 1st Reading March 5, 2013
Public Hearing/2nd Reading April 9, 2013

ADVISORY BOARD RECOMMENDATION: Winchester Parking Authority unanimously approved the recommendation

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. OTDB	KB		1/30/13
2. Police	[illegible]		2/1/13
3. Finance	JB		1/31/13
4. Economic Redevelopment	[illegible]		2/4/13
5. City Attorney	[illegible]		2/4/2013
6. City Manager	[illegible]		2-5-13
7. Clerk of Council			

Initiating Department Director's Signature: Samantha Anderson 2/3/13
Date

CITY ATTORNEY'S OFFICE Received FEB 1 2013 WINCHESTER, VA

APPROVED AS TO FORM: 2/4/2013
CITY ATTORNEY

Revised: October 23, 2009

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Winchester Parking Authority

Date: January 24, 2013

Re: City Code Section 14-68 When Meters Shall be Operated

THE ISSUE:

Change City Code Section 14-68 *When Meters Shall be Operated* by adjusting the hours of when parking meters shall be operated from Monday through Friday

RELATIONSHIP TO STRATEGIC PLAN:

Goal 3 – Continue revitalization of historic old town

This code change would allow the Authority a vehicle to maintain the financial projections for bond conformity. The only other option is to continue raising monthly rates in the garages and hope to stay at or above 900 spaces rented (900 spaces rented is used in the projections calculations). Current capacity is at 937 spaces rented.

BACKGROUND:

City Code Section 14-68, *When Meters Shall be Operated* stipulates when meters shall be operated. Currently, meters are operated between the hours of 9 am – 4 pm every day from Monday – Friday except for the designated holidays.

Per City Code Section 14-65, the Finance and Administration Committee of the City Council shall be responsible for the regulation, control, rates up to the maximums set forth in §14-66, and use of parking meters installed as provided in this division. The Public Safety Committee shall be responsible for the location of meters within the meter zones. The Winchester Parking Authority shall be responsible for the operation and maintenance of such parking meters (Code 1959, §15-115; Ord. No. 036-90, 11-13-90; Ord. No. 041-93, 11-09-93).

BUDGET IMPACT:

The Authority will capture additional parking meter revenue and meter fine revenue between the hours of 4 pm – 6 pm, Monday – Friday. This will assist the Authority in funding the debt service payments of the George Washington Autopark while maintaining the garages which are open 24/7. Approximate additional revenue is expected to be approximately $1,250 a month/ $15,000 a year (this figure was estimated as $12,500 a month current * 10%) in parking meter revenue. This does not include expired meter fines.

New parking meter stickers will be purchased notifying customers of the new meter operation hours and displayed on each parking meter. The Authority will update its website with the new operation hours and an article will be included in Winchester CitE-NEWS.

OPTIONS:

The Parking Authority in February 2012 implemented another rate increase for the monthly parkers in the garages; current rates are $42 undercover and $35 roof. The Authority would like the flexibility to be able to capture the additional revenue between the hours of 4 pm – 6pm Monday – Friday with the street meters to assist with debt service payments. The Authority would like to encourage turnover in these spaces as the stores have expanded their shopping hours.

RECOMMENDATIONS:

The Winchester Parking Authority recommends that Council **AMEND AND RE-ENACT SECTION 14-68 OF THE WINCHESTER CITY CODE PERTAINING TO WHEN METERS SHALL BE OPERATED** to the hours of 9 am – 6 pm every day from Monday – Friday except for the designated holidays effective July 1, 2013.

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-68 OF THE WINCHESTER CITY CODE PERTAINING TO WHEN METERS SHALL BE OPERATED

WHEREAS, the Common Council of the City of Winchester, Virginia, has determined that it is necessary to adjust the hours of when parking meters shall be operated from Monday through Friday.

NOW, THEREFORE, BE IT ORDAINED that Section 14-68 of the Winchester City Code is hereby amended and re-enacted to read as follows:

SECTION 14-68. WHEN METERS SHALL BE OPERATED.

Parking meters installed pursuant to this division shall be operated between the hours of ~~9:00 A.M. and 4:00 P.M.~~ 9:00 A.M. and 6:00 P.M. every day from Monday through Friday, except for the following designated holidays: New Year's Day (January 1); Lee Jackson Day (January); Martin Luther King, Jr. Day (January); George Washington Day (February); the Thursday and Friday prior to the Grand Feature Parade of the annual Shenandoah Apple Blossom Festival; Memorial Day (May); Independence Day (July 4); Labor Day (September); Veteran's Day (November 11); Thanksgiving Day and the day after Thanksgiving; Christmas Eve; and Christmas Day. When any of the aforesaid holidays fall on a Sunday, parking meters need not be operated on the following Monday. (Code 1959, 15-117; Ord. No. 019-84, 10-09-84; Ord. No. 041-91, 10-08-91; Ord. No. 003-97, 1-14-97; Ord. No. 2009-41, 2-23-2010).

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 2/26/13 (work session), 3/12/13(1st Reading) 4/9/13 (2nd reading) **CUT OFF DATE:** 2/20/13

RESOLUTION ___ **ORDINANCE** X **PUBLIC HEARING** X

ITEM TITLE:
RZ-12-405 AN ORDINANCE TO CONDITIONALLY REZONE 7.74 ACRES OF LAND AT 940 CEDAR CREEK GRADE FROM RESIDENTIAL OFFICE (RO-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO HIGH DENSITY RESIDENTIAL (HR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) & CE DISTRICT OVERLAY

STAFF RECOMMENDATION:
Approval

PUBLIC NOTICE AND HEARING:
Public hearing for 4/9/13 Council mtg

ADVISORY BOARD RECOMMENDATION:
Planning Commission recommended approval.

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Zoning	AMG		2/20/13
2. Economic Development	Not Available - KW 2/21/13		
3. City Attorney		*	2/21/2013
4. City Manager			2-21-13
5. Clerk of Council			

Initiating Department Director's Signature: _____ 2/20/13
(Planning)

CITY ATTORNEY'S OFFICE Received FEB 21 2013 WINCHESTER, VA

Returned 2-21-13
Needs Economic Development Signature

CITY OF WINCHESTER VIRGINIA

2/21/2013 *
CITY ATTORNEY

* See attached memo

CITY COUNCIL ACTION MEMO

To: Mayor and Members of City Council

From: Tim Youmans, Planning Director

Date: February 20, 2013

Re: RZ-12-405

THE ISSUE:
Rezoning a 7.74-acre tract from RO-1 to HR with PUD overlay. The existing CE overlay zoning would remain on the property. The existing RO-1 zoning would permit office development consistent with the recommendation shown in the Comp Plan. The proposed HR(PUD) zoning would result in a 132-unit apartment complex with no commercial development.

RELATIONSHIP TO STRATEGIC PLAN:
School funding: Direction, Proposal, Decision (see 'Budget Impact' below)
Ward Plaza Development- bringing 132 units on line all at once may negatively impact the market for mixed use redevelopment of Ward Plaza.

BACKGROUND:
See attached staff report

BUDGET IMPACT:
This project could generate school-aged children impacting attendance at City schools. There are no proffers to mitigate the potential impact on education expenses. Also, City's ability to realize long-term revenue from BPOL and/or sales tax asssociated with commercial use developed under existing RO-1 zoning would be lost. However, new high-quality multifamily development would create more demand for commercial development elsewhere.

OPTIONS:
- Approve subject to latest version of proffers and Development Plan
- Approve subject to revised proffers and/or Development Plan (Applicant must initiate this)
- Deny (must state reasons for denial in the motion- e.g. "inconsistent with Comp Plan")

RECOMMENDATIONS:
Planning Commission (on a 3-2-1 vote) recommended approval subject to latest version of proffers and Development Plan.

February 26, 2013
Council Work Session

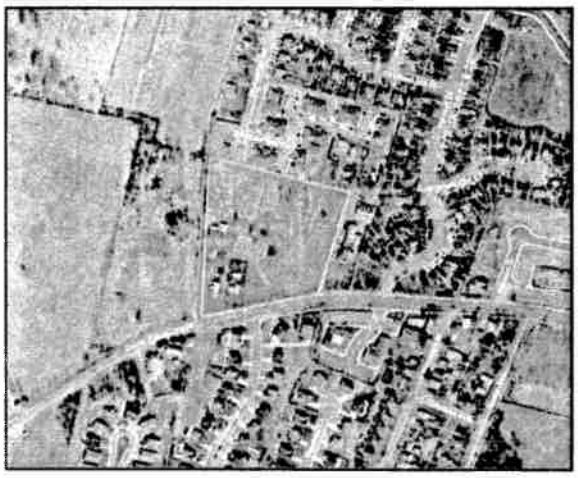
RZ-12-405 AN ORDINANCE TO CONDITIONALLY REZONE 7.74 ACRES OF LAND AT 940 CEDAR CREEK GRADE FROM RESIDENTIAL OFFICE (RO-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO HIGH DENSITY RESIDENTIAL (HR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) & CE DISTRICT OVERLAY

REQUEST DESCRIPTION

The request is to change the underlying zoning of a large tract of mostly vacant land at the western limits of the City along the north side of Cedar Creek Grade from RO-1 to HR subject to proffers. While it keeps the Corridor Enhancement (CE) overlay zoning in place, it proposes to add Planned Unit Development (PUD) overlay zoning as well. The HR rezoning would permit the construction of up to 139 apartment units, assuming that the overlay Planned Unit Development (PUD) provisions and Corridor Enhancement (CE) provisions are met. The applicant has provided an updated Conceptual Site Layout Plan dated December 3, 2012 depicting 132 apartment units in seven three-story buildings and 3 four-story buildings. A separate building housing management and maintenance offices as well as recreational amenities is proposed out close to Cedar Creek Grade along with a combination tennis/basketball court. The outdoor recreational facility and adjoining open space, which was originally proposed for conveyance to the City as public parkland, would remain private with an easement granted to the City for public use.

AREA DESCRIPTION

The subject parcel contains a vacant single-family residence and some agricultural structures. This parcel and one residentially used property immediately to the east comprise an existing RO-1 district. Along with numerous other properties throughout the City, these two properties were rezoned by the City (i.e. not at property owner request) in the 1990's in an effort to stem what was then viewed as undesirable multifamily rental housing. Land to the north and further to the east is zoned HR and contains multifamily development as well as townhouse development. Land to the south fronting along Cedar Creek Grade is also zoned HR and contains single-family residences.



Land to the west is situated in Frederick County. The adjoining Frederick County parcel owned by Greystone Properties, LLC was conditionally rezoned from Rural Areas (RA) to Residential Planned Community (R4) by Frederick County along with other properties including a larger tract owned by Miller & Smith about five years ago. The 360-acre Willow Run project is slated for 1,390 residential units as well as 36 acres of commercial uses. The Greystone Properties portion of the larger Willow Run project is primarily single-family attached (i.e. townhouse) residential and age-restricted housing. It includes a spine road (Birchmont Dr) that connects Cedar Creek Grade with the extension of Jubal Early Drive to the north. That connection is required to be built prior to the 200th residential permit being issued. A public street connection to Cidermill Lane from the County spine road is also part of the approved Willow Run project. Cidermill Lane is currently being extended to the County line as part of the last phase of the Orchard Hill townhouse development.

COMMENTS FROM STAFF

An incomplete request was first presented at a public hearing by the Planning Commission on October 16, 2012. The matter was tabled at the applicant's request during the November and December 2012 regular meetings of the Commission pending a traffic impact study. The applicant had requested that the Planning Commission public hearing be delayed from September 2012 until October of 2012 so that additional information could be provided to the City with respect to potential impacts caused by school-aged population generated from developments where there are two- and three-bedroom units. That information was subsequently provided to the Planning Director via email from Mr. Thomas Moore Lawson, on behalf of the applicant as an enclosure with a September 21, 2012 email. A more complete fiscal analysis dated January 10, 2013 was received by the Planning Director on January 14, 2013 and provided to the Planning Commission for consideration at the January 15, 2013 Commission meeting

In a letter to the Planning Director dated August 15, 2012, Mr. Bob Cocker, Manager for the applicant (Valley View Management, LLC) explains the proposed rezoning and the proposed Racy Meadows Apartment Complex project. The applicant also provided an original Proffer Statement dated August 16, 2012 which is addressed further below in the comments from staff. An updated Proffer Statement dated January 9, 2013 was received via email on January 15, 2013 (the same day as the January Commission meeting) and considered by the Commission on that date. Along with the updated Proffer Statement, an updated exhibit dated 12/3/12 (but received by the City on January 14, 2013) titled 'CONCEPTUAL SITE LAYOUT PLAN Rezoning Exhibit "A"' was also submitted. This second version superseded the original rezoning exhibit titled 'OVERALL SITE PLAN, CONCEPTUAL LAYOUT and TRAFFIC PATTERN PLAN,' dated 8/6/12.

A third version of the Proffer Statement dated February 18, 2013 was received via email by the Planning Director on February 18, 2013 and distributed via email to the Commission on the morning of the February 19, 2013 Commission meeting. The updated proffers were reviewed at the February 19th Commission meeting in advance of the Commission's favorable recommendation to City Council.

Comprehensive Plan Consistency

The Character Map contained in the adopted Comprehensive Plan calls for a Commerce Revitalization/Infill in this area and for the connection of Stoneleigh Drive to Cedar Creek Grade. PUD overlay allows for consideration of up to 18 dwelling units per acre, which in the case of 7.74 acres would translate to a maximum of 139 dwelling units. The applicant is proposing 132 dwelling units in addition to a building housing management offices and common recreational amenities. The Comprehensive Plan also calls for increased multifamily development citywide to attract young professionals and empty nesters. The proposed upscale apartments would serve these targeted populations.

The Cedar Creek Grade corridor has undergone considerable change over the past 25 years from being primarily single-family development along a two-lane roadway to becoming a mixed use corridor served by a four-lane arterial. A number of sites that were rezoned to RO-1 by the City in the 1990's were subsequently rezoned on a conditional basis to Highway Commercial (B-2) by private developers. These conditional B-2 rezonings often included restrictions on commercial uses. This effort includes the two lots along the south side of Cedar Creek Grade across from the east end of the subject Racey property where two large office buildings are situated today. Corridor Enhancement (CE) overlay zoning was established along Cedar Creek Grade in 2006.

Potential Impacts & Proffers

The proposal is a conditional rezoning request wherein the applicant has voluntarily submitted proffers to mitigate potential impacts arising from the rezoning of the property from HR to HR (PUD). The original

August 6, 2012 Proffer Statement was structured to address six areas under the heading of Site Planning Improvements. These were: Street and Access Improvements; Interior Site Circulation; Site Development; Landscaping and Design; Recreation; and, Stormwater Management. The last paragraph of the Proffer Statement bound the developer to develop the site in accordance with the Conceptual Site Layout Plan, Rezoning Exhibit "A" dated August 6, 2012. The second version of the Proffer Statement dated January 9, 2013 added two more headings which were: Density; and Phasing. The information pertaining to Density was still incomplete as it pertained to Percentages for building coverage and open space. The third version of the Proffer Statement dated February 18, 2013 added one more heading which addressed rules and regulations, including reference to a separate list of tenant rules that are part of a lease agreement.

At the October 16, 2012 meeting, the applicant was asked by the Planning Commission to conduct a Fiscal Impact Analysis and a Traffic Impact Analysis which are two studies that can be required by the Planning Commission for a PUD rezoning application per Sections 13-4-2.2k and l of the Zoning Ordinance.

Fiscal Impact Analysis

The multifamily (i.e. non-commercial) project, from a land use perspective, is inconsistent with the adopted Comprehensive Plan. As noted above, the Commission requested a Fiscal Impact Analysis showing the impacts on City revenue and expenditures generated by the project as compared to revenue and expenditures arising from development allowed under the current RO-1 development. While the current RO-1 zoning permits office development which generates no school-aged population, it also permits single-family residential homes at a density of 4.3 units per acre which is between the current LR and MR residential district densities. Single-family homes tend to generate more school-aged population then multifamily units, but there would be many fewer single-family homes possible under the current RO-1 zoning than possible under the proposed HR zoning.

The proposed conditional HR(PUD) zoning would permit no commercial office development, but would instead yield 132 apartment units, primarily consisting of two-bedroom units. However, the applicant is asking that some of the units be allowed to have three bedrooms, which might increase the likelihood of school-aged population. The additional support material provided by Mr. Lawson on behalf of the applicant notes that the 300 units of similar apartment development in Stuart Hill (180 units) and Pemberton Village (120 units) only generate 4 elementary students, 1 middle school student, and 4 high school students. This was determined based upon students picked up at City school bus stops serving these developments. It is possible that some students are transported to the public schools by other means.

The Commission requested that the City's Economic Redevelopment Director review the proposal and comment on the fiscal impacts associated with changing the zoning from the current RO-1 which would support general and medical office development to instead have all HR (PUD) zoning that would specifically consist of 132 apartment units and no commercial development. In the attached memo to the Planning Director dated February 10, 2013, Mr. Deskins suggests that a more economically viable development scenario would be to retain zoning supporting commercial development such as offices on a two acre portion of the site out along Cedar Creek Grade while allowing the remaining 5.75 acres to be rezoned to HR(PUD) for the development of 120 apartment units. The two acres of RO-1 or B-2 zoned land out front could support upwards of 30,000 square feet of development which would generate BPOL and/or Sales tax revenue for the City in the range of $15K-$50K and greatly help offset any expenditures arising from the residential development on the rear of the tract (SEE ATTACHED).

Traffic Impact Analysis

At the October 16, 2012 meeting, the Commission also required a Traffic Impact Analysis. This is appropriate given the close proximity to the Frederick County corporate limits where VDOT has authority

to require review of rezonings that create a certain threshold of additional traffic above that generated by the current zoning. A Traffic Signal Warrant Study dated 12/4/12 was submitted on 12/10/12 to the Planning Director and to the Public Services Director, Perry Eisenach. The Warrant Study concluded that a traffic signal would not be warranted at the proposed intersection of Cedar Creek Grade and the extension of Stoneleigh Drive, even if situated opposite of the existing Cedar Creek Grade/Stone Ridge Rd intersection. The Public Services Director reviewed the study and agreed with the findings.

The Traffic Signal Warrant Study included an analysis of Trip Generation based upon four different Development Scenarios. The figures are contained in Table 1 on page 6 of the Study (See attached Table 1). The proposed scenario, calling for 132 apartment units, would generate 94 trips in the PM Peak Hour and an Average Daily Traffic (ADT) volume of 980 trips. If the 7.74 acres were instead developed with by-right office development consisting of upwards of 120,000 square feet of medical-dental office development, then it would generate 424 trips in the PM Peak Hour and an ADT volume of 4,692 trips (about 4.8 times the amount of traffic generated by the development proposed with the rezoning). If the site was rezoned to HR District without the proposed PUD overlay zoning, then it would support upwards of 108 multifamily units. This development would generate 77 trips in the PM Peak Hour and an ADT volume of 799 trips. Staff has not observed problems at intersections such as Harvest Drive and W. Jubal Early Dr where considerably larger numbers of apartments, retirement cottages, assisted living, and conventional single-family units are linked to major streets in the City.

Based upon the updated Development Plan, the development is now proposed to include a private extension of Stoneleigh Drive connecting with another private drive that then intersects Cedar Creek Grade at an unsignalized intersection located approximately 240 feet west of the Harvest Drive intersection. This new location is where the existing driveway into the adjoining Horton property is currently located. That driveway would be eliminated under the proposal and a connection to the Horton property would be provided from a point internal to the Racey Meadows development north of the existing Horton residence closest to Cedar Creek Grade. The original Development Plan aligned the private extension of Stoneleigh Drive with Stoneridge Rd providing access to the Harvest Ridge residential development on the south side of Cedar Creek Grade.

The revised street location reduces impacts on the Harvest Drive neighborhood and provides for a less direct connection to the public portion of Stoneleigh Drive in the Orchard Hill neighborhood. It also provides for improved sight distance to the west as compared with the previous alignment. It will, however, require the granting of an exception by City Council to allow for the new private street to be situated within 300 feet of the existing Harvest Drive intersection. The Commission may wish to ask for additional study of how the addition of this 3-way intersection would impact traffic flow in the area. At a minimum, a dedicated left-turn lane eastbound should be constructed.

Alterations were made to traffic flow on Cedar Creek Grade at Stoneridge Rd intersection after VDOT had widened the road from two lanes to four lanes in 1993. The alteration decreased the capacity of Cedar Creek Grade by converting one of the two eastbound lanes and one of the two westbound lanes approaching Stoneridge Rd into right-turn and left-turn lanes respectively. That change essentially reduced Cedar Creek Grade down to a single through lane eastbound and westbound at that one location.

The applicant is proffering to extend a private roadway northward to connect with another private roadway internal to the apartment development. It would also connect to the privately-owned portion of Stoneleigh Drive serving the existing Summerfield Apartment development. Summerfield Apartments were approved with improved access only to the north connecting with the public portion of Stoneleigh Dr in the Orchard Hill townhouse development. The developer of the Summerfield Apartment development offered to extend Stoneleigh Drive as a public street southward to allow for an orderly extension of that street ultimately to Cedar Creek Grade once the Racey property was developed. Due to

strong opposition from adjoining Orchard Hill residents, City Council turned down a subdivision proposal in 1997 that would have extended the public street, but the apartment development site plan was nonetheless approved relying solely upon access to Harvest Drive, a Category II Collector Street via local (Category I) streets within the Orchard Hill development.

As noted above, the Comprehensive Plan calls for the orderly extension of roadway connecting the Summerfield and Orchard Hill neighborhoods to Cedar Creek Grade. This allows for improved traffic flow and improved service delivery for City services such as fire and rescue, police, school buses, and refuse, yard waste, and recycling pickup. It also implements the New Urbanism principle of an interconnected grid street network advocated in the Comprehensive Plan and avoids undesirably long an inefficient single-access point development typical of 1960's – 1990's suburban sprawl. Total traffic on any one street is reduced since residents do not have to drive through other neighborhoods to get to the major streets in the City. The applicant is also proffering traffic calming measures along the proposed private roadway.

Site Development and Buffering

The updated Conceptual Site Layout Plan depicts 132 apartment units in seven three-story buildings and 3 four-story buildings. Proffers #3 & 4 address Site Development as well as Landscaping and Design. Two of the 3 four-story buildings would back up to the Summerfield Apartment development along the northern boundary furthest from Cedar Creek Grade. The third four-story structure is located along the west side of Stoneleigh Dr. Per the proffered layout, all of the buildings would be situated at least 25 feet away from any exterior property line and at least 50 feet away from Cedar Creek Grade. The closest apartment building is now 135 feet away from Cedar Creek Grade. Proffer #3 provides detailed information about separations between buildings on the site. Proffer #4 provides detailed information about the landscaped buffers, including the quantity of evergreen and deciduous trees required. Staff encouraged the applicant to be more specific about the extent of upright evergreen screening and this was included in the revised proffers.

Recreation and Open Space

Proffer #5 addresses recreational amenities and open space. The applicant is proposing combination basketball court and tennis court situated out close to Cedar Creek Grade just west of the building that would house management offices as well as some indoor recreation use. Since the facility overlaps, it can only be used at one time as either a half-court basketball facility or a tennis court- not both. A single facility for a multifamily development of this size is on the low end of facilities provided per dwelling unit. The applicant should clarify what additional active recreational amenities are proposed in the community building or elsewhere within the development.

The proffers and the plan also call for an 8-foot wide asphalt trail extending through the active recreational area out along Cedar Creek Grade. The revised layout provides for a longer continuous segment of multipurpose trail west of the private street intersection. The applicant is no longer proposing to convey any recreation amenities to the Winchester Parks & Recreation Department (WP&RD) but is still proposing for it to become a part of a citywide satellite park system. The proffer has been reworded to have the facilities remain with the property owner and have an easement granted for public use of the facilities.

Stormwater Management

Proffer #6 addresses the impacts of stormwater management and the applicant's measures to mitigate the potential impacts. A detailed stormwater analysis would be generated by the applicant and reviewed by the City at the time of site plan. It is intuitive that the applicant's proposed layout which, in many places, calls for a 75-foot wide green buffer at the low end of the site adjoining Cedar Creek Grade is superior to

any plan allowed by right under current zoning that would permit impervious coverage consisting of office buildings and parking lots situated as close as 35 feet of the public right of way line.

Density

The updated Proffer Statement includes a breakdown by bedroom count. The applicant proposes 72 one-bedroom units, 42 two-bedroom units, and 18 three-bedroom units. The actual project density is not specifically stated in the proffer, but it comes out to 17 units per acre where 18 units per acre is the absolute maximum permissible under PUD zoning.

Community Rules and Regulations

The February 18, 2013 version of the Proffer Statement now includes language making reference to rules and regulations which shall be generated *and amended from time to time by the owner* of the aprtment complex. The attachment is an example of the rules and regulations that might be used. The applicant is simply proffering that there will be rules and regulations maintained, but is not commiting to any specifics. The Commission has requested more complete information pertaining to covenants and restrictions that will ensure that the project meets high standards for maintenance and management of the complex.

Project Phasing

The applicant has indicated that there is no proposal to phase in the project as part of the PUD rezoning. A note on the Development Plan states: "No Phasing Applies. The Project Shall be Constructed Fourteen (14) Consecutive Months." If the applicant proposes to obtain occupancy of any of the units prior to the entire development being completed, then that should be noted as required per Section 13-4-2.2h. The phasing plan should clearly note the timing of the roadway connection to Summerfield Apartments and the completion of the recreational amenities relative to occupancies of any units.

Other Issues

The applicant has now addressed most if not all of the requirements for a complete PUD proposal as spelled out in Section 13-4 of the Zoning Ordinance. Among the Development Plan requirements are the following:

- Topographic Map
- Land Use plan showing the height of structures
- Width of all streets, driveways and loading areas
- Approximate location of existing and proposed utilities
- A plan or statement detailing covenants, restrictions, and conditions pertaining to the use, maintenance and operation of common spaces
- Percentage of the Total Tract used as Open Space, and,
- A plan or report indicating the extent and timing of all off-site improvements

RECOMMENDATION

Generally, staff feels that the proposal is consistent with many of the broader elements of the City's long-term vision to attract more young professionals and empty-nesters to the City. The residential use of the property is compatible with the existing high-density multifamily use to the north as well as existing residential use to the east and south and the proposed residential development in Frederick County immediately to the west.

However, the proposed rezoning does reflect a deviation from the land use designation shown on the Character Map in the Comprehensive Plan. This is particularly a concern given the evolving land use

pattern along Cedar Creek Grade which has non-residential development along the street with residential in behind it (e.g. The Landing at Park Place, Melco PUD, and the commercial office development opposite of Harvest Drive on the south side of Cedar Creek Grade). The proposed residential use toward the rear of the site and the proffered indirect extension of Stoneleigh Drive provides for a logical extension of the existing and proposed land uses in this specific segment of Cedar Creek Grade. The efforts to work joint access with the adjoining Horton property also represents good planning practice. Also, the effort by the applicant to situate the apartment buildings, at least 135 feet back from Cedar Creek Grade represents good planning, but the incorporation of some commercial development along Cedar Creek Grade would create better conformity with the 'Commerce Revitalization/Infill" designation shown in the Comprehensive Plan exhibit.

At the February 19, 2013 meeting, staff presented the Commission with three draft motions consisting of a completely favorable motion, a partially favorable motion, and an unfavorable motion. The favorable recommendation on **the entire request**, then a motion read:
MOVE, that the Planning Commission forward Rezoning **RZ-12-405** to City Council recommending approval because the proposed HR (PUD/CE) zoning, as proffered, supports the expansion of housing serving targeted populations and facilitates the extension of Stoneleigh Drive as called out in the Comprehensive Plan. The recommendation is subject to adherence with the Proffer Statement updated **February 18, 2013** and the updated Development Plan titled 'CONCEPTUAL SITE LAYOUT PLAN Rezoning Exhibit "A"' dated December 3, 2012.

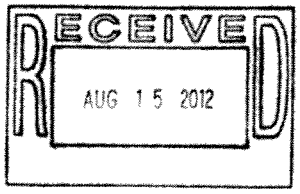
The partially favorable recommendation on the request where City staff recommended that 2 acres be left RO-1 or considered for rezoning to B-2(PUD) instead read:
MOVE, that the Planning Commission forward Rezoning **RZ-12-405** to City Council recommending approval to rezone the rear 5.75 acre portion of the tract because the proposed HR (PUD/CE) zoning, as proffered, supports the expansion of housing serving targeted populations and facilitates the extension of Stoneleigh Drive as called out in the Comprehensive Plan. The recommendation is subject to adherence with the Proffer Statement updated **February 18, 2013** and the updated Development Plan titled 'CONCEPTUAL SITE LAYOUT PLAN Rezoning Exhibit "A"' dated December 3, 2012 except as to how it designates apartment development on the front two acres of the tract.

The motion for the unfavorable recommendation on the request read:
MOVE, that the Planning Commission forward Rezoning **RZ-12-405** to City Council recommending disapproval because the proposed HR (PUD/CE) zoning is less desirable than the existing RO-1(CE) zoning, creates potential negative impacts associated with multifamily development, and is inconsistent with the adopted Comprehensive Plan that calls for Commerce Revitalization/Infill in this area of the City.

At the February 19, 2013 meeting, on a 3-2-1 vote (Shore and Beatley opposing and Wiley abstaining), the Planning Commission forwarded Rezoning **RZ-12-405** to City Council recommending approval because the proposed HR (PUD/CE) zoning, as proffered, supports the expansion of housing serving targeted populations and facilitates the extension of Stoneleigh Drive as called out in the Comprehensive Plan. The recommendation is subject to adherence with the Proffer Statement updated **February 18, 2013** and the updated Development Plan titled 'CONCEPTUAL SITE LAYOUT PLAN Rezoning Exhibit "A"' dated December 3, 2012

Valley View Management, LLC
817 Cedar Creek Grade, #200
Winchester, Virginia 22601 Tel.: (540) 313-4364

August 15, 2012



Mr. Timothy P. Youmans, Director of Planning
City of Winchester, Virginia
15 N. Cameron Street
Rouss City Hall
Winchester, Virginia 22601

Re: Racy Meadows Apartment Complex
940 Cedar Creek Grade
Winchester, Virginia
Tax Map: 249-01-2
Rezoning Application: RZ-12-405

Dear Sir:

The Comprehensive Plan of the City of Winchester recommends that the area in and around the above-referenced project have an Residential Office District (RO-1) zoning. This district permits a combination of residential and light commercial uses.

This rezoning proposal is requesting that this parcel be rezoned to a High Density Residential (HR) with a Planned Unit Development District (PUD) overlay. This zoning would permit the use of multifamily residential. The RO-1 district specifically allows only the use of single-family residences. Even though this proposal varies from the existing zoning district, it does provide a similar type of housing to what exists on the adjacent property to the north and generally confirms to the use of mixed housing types in the area. The RO-1 district also promotes the use of light commercial developments and related service facilities. This proposal does not have a commercial element as part of the development, but instead proposes to install a recreational facility that will be transferred to the Winchester Parks and Recreation Department for public use. This type of facility is desired as part of the RO-1 district and we feel will be welcomed by the local residents and the tenants of this development to a much greater extent than a commercial use.

This proposal to develop the above-referenced project into an HR district with a multifamily use and a PUD overlay generally conforms to the Comprehensive Plan of the City of Winchester by allowing a varied residential use in this area and by providing a public park for the local residents. A commercial use on this property could have an adverse effect on the

neighborhood due to its lighting, potential late night use, and noise generation. The provision for a public park, in lieu of a commercial element, can be controlled by the hours of permitted use and will generally serve all of the local residents by providing a recreational facility in their immediate area for convenience.

Thank you for your attention to this matter. If you would have any questions or would require further information please do not hesitate to contact me.

Sincerely,
Valley View Management, LLC

Robert A. Cocker
Manager

RACEY MEADOWS APARTMENT COMPLEX
REZONING REQUEST PROFFER
(Conditions for this Rezoning Request)

Tax Map Number: 249-01-2
Owner: Lester E. Racey & Hilda C. Racey
Applicant: Valley View Management LLC

Revision Dates: August 6, 2012, January 9, 2013, February 18, 2013, February 26, 2013

Property Information

The undersigned applicant hereby proffers that in the event the Council of the City of Winchester (Council) shall approve the rezoning of 7.74 acres from Residential Office District (RO-1) to High Density Residential District (HR) with a Planned Unit Development District (PUD) overlay and maintaining the Corridor Enhancement District (CE), then development of the subject property shall be done in conformity with the terms and conditions as set forth herein, except to the extent that such terms and conditions may be subsequently amended or revised by the applicant and such be approved by the Council in accordance with Virginia law. In the event that such rezoning is not granted, then these proffers shall be deemed withdrawn and have no effect whatsoever. These proffers shall be binding upon the applicant and their legal successor or assigns.

Any and all proffers and conditions, accepted or binding upon the aforementioned property, as a condition of accepting these proffers, shall become void and have no subsequent effect.

Site Planning Improvements

The undersigned applicant, who is acting on behalf of the owners of the above described property, hereby voluntarily proffers that, if the Council of the City of Winchester approves the rezoning, the undersigned will provide:

1. **Street and Access Improvements:**
   - Design and construction of approximately 830 feet of Private Street from the existing Cedar Creek Grade Right-of-Way to the private street section of Stoneleigh Drive in the Summerfield Luxury Apartment Complex to the north of this property.
   - A connection to the Frederick County line shall be planned to connect to the development to the future Birchmont Drive and its possible signalized intersection with Cedar Creek Grade.
   - Traffic calming measures shall be installed along this private street section to lessen the adverse effects of through traffic in this apartment complex development.

2. **Interior Site Circulation:**

- Access shall be provided via interior driveways and drive aisles which connect to the proposed private street section to provide the needed access to Cedar Creek Grade Roadway.

3. **Site Development:**

- A minimum separation distance of thirty-two feet (32') shall be maintained between all building pads.
- A minimum separation distance of sixteen feet (16') shall be maintained between all building lines and the face of curb of the adjacent parking areas.
- All building restriction setbacks in accordance with the underlying High Density Residential District (HR) shall be maintained with this development to maintain the desired setback requirements between the adjacent parcels and differing residential uses.
- No buildings shall be constructed closer than fifty feet (50') to the Cedar Creek Grade Right-of-Way, and no apartment building will be constructed closer than one hundred thirty-five feet (135') from the Cedar Creek Grade Right-of-Way.
- Applicant agrees to construct no more than seventy-two (72) one-bedroom apartment units, forty-two (42) two-bedroom apartment units, and eighteen (18) three-bedroom apartments units.
- Applicant proffers that the quality of construction will not be less than the quality of construction of its existing Stuart Hill Apartment complex.

4. **Landscaping and Design:**

- A fifty foot (50') active recreation and landscaping buffer shall be provided along the Cedar Creek Grade Right-of-Way. Twenty-five feet (25') of this buffer shall be dedicated to landscaping. Extensive landscaping shall be provided in this 25' buffer that consists of a minimum of two plants per ten linear feet with one half of the plants being evergreen and one half being deciduous. Minimum evergreen plant height, at the time of planting, shall be six feet. The landscaping plan shall be incorporated as part of the site development plans. This landscaping plan shall be approved by the Planning Commission as part of the design of these areas.
- In the other perimeter areas of the site where existing residential developments have been constructed, specifically along the eastern and northern boundary lines, an opaque screen consisting of an evergreen hedgerow or double row of evergreens shall be constructed. Pursuant to City of Winchester ordinances applicant shall submit for review and approval landscape, lighting and other required plans. Applicant understands that the property is in an area which is subject to a PUD overlay and that the property will be subject to the requirements of the same.

5. **Recreation:**

- As stated above, a fifty foot (50') active recreation and landscaping buffer shall be provided along the Cedar Creek Grade Right-of-Way. Twenty-five feet (25') of this buffer shall be dedicated to active recreation for use by the residents of this development and the local public. The active recreation element shall consist of an eight foot (8') walking trail that will become part of the City of Winchester's local trail system.
- Additionally, a combination tennis/basketball court shall be constructed as part of this development that shall be available for public use as well.
- At their completion and in accordance with the directives of the Winchester Parks and Recreation Department (WP&RD), these active recreation structures shall be owned by the applicant but shall be made available for use by residents of the City of Winchester taking first into account the recreational needs for use of these facilities by the residents of the apartment complex and to become part of the City-wide satellite parks system.

6. **Storm Water Management:**

- All storm water management and storm water quality facilities shall be installed underground in accordance with the standards and specifications of the Winchester Public Works Department. These facilities shall be maintained by the owner of the development and be constructed so as to secure the safety of the public at all times.

Density

Total Number of One-Bedroom Units:	72
Total Number of Two-Bedroom Units:	42
Total Number of Three-Bedroom Units:	18
Percentage of Tract to be Occupied by Structures:	__%
Percentage of Tract to be Open Space:	__%

Community Rules and Regulations

The apartment complex shall operate under rules and regulations which shall be generated and amended from time to time by the owner of the apartment complex. Attached and incorporated to this proffer statement are examples of the rules and regulations which will be appended to and made a part of the lease agreements with all of the tenants within the apartment complex. The applicant proffers to maintain rules and regulations in order to ensure the quality of the apartment complex.

Phasing

Applicant proposes to commence construction on all units within this complex at the same time but does expect that certain units will be delivered for occupancy before others. As part of the overall construction, however, the roadway connections as depicted on the attached and incorporated layout plan will be installed and will have at least a base coat of asphalt on them at the time of occupancy of the first apartment building.

The conditions proffered above and in accordance with the accompanying rezoning exhibit, entitled Racey Meadows Apartment Complex Conceptual Site Layout Plan Exhibit "A" dated December 3, 2012, and as prepared by Painter-Lewis, P.L.C., are presented as a conceptual plan only. The final plan shall be developed after it has been submitted, reviewed and approved by the City of Winchester and as the applicant proceeds through the various approval processes required by the City of Winchester shall be binding upon the heirs, executors, administrators, assigns and successors in interest of the applicant and owner. In the event the Council grants said rezoning and accepts these conditions, the proffered conditions shall apply to the land rezoned in addition to other requirements set forth in the City of Winchester Code.

Respectfully submitted,

APPLICANT

_____ Date: _____

Valley View Management LLC
By: Robert A. Cocker
Its: Manager

STATE/COMMONWEALTH OF _____,
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of February, 2013, by Robert A. Cocker, Manager of VALLEY VIEW MANAGEMENT LLC.

_____
Notary Public

My commission expires: _____.
Registration Number: _____.

PROPERTY OWNER

_____ Date: _____
Hilda C. Racey

STATE/COMMONWEALTH OF _____,
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of February, 2013, by HILDA C. RACEY.

_____
Notary Public

My commission expires: _____.
Registration Number: _____.

THE FOLLOWING RULES AND REGULATIONS ARE A PART OF YOUR LEASE AGREEMENT:

_____ **1. RENTAL PAYMENTS**

1. All rents are due and payable on the first of each month by check or money order only at the Rental Office on the premises.
2. Unless otherwise specified, checks are made payable to the property of residence.
3. All rental payments received late accrue a late fee as specified in Paragraph 5 of the Lease Agreement. Rent and late charges may be paid by personal check up to the 5th day of each month unless a notice to pay or quit possession has been given by the landlord. Thereafter, all rents and late charges must be paid by cashier's check or bank money order.
4. Filing charges and attorney fees will accrue if applicable.
5. Checks returned for non-sufficient funds will accrue a returned check fee, and must be replaced with a cashier's check or money order in the amount of the rent and a late charge, if applicable, pursuant to Paragraph 5 of the Lease Agreement.

_____ **2. UTILITY RENT**

In those apartments where submeters have been installed to monitor the Tenants utility consumptions, the monthly usage is billed (SUBMETERING) to the Tenant by the Landlord. This utility consumption is part of the rent and all bills are due and payable on the first of the month following receipt of the utility bill. A late fee is assessed on all late payments.

_____ **3. NOTICE TO VACATE**

Paragraphs 25 and 26 of the Lease Agreement detail proper compliance.

_____ **4. BREAKING LEASE**

Paragraphs 27 of the Lease Agreement details responsibility.

5. MAINTENANCE

Maintenance service requests are to be directed to the Rental Office. Emergency maintenance service is also available after hours to handle requests ot a true emergency nature which cannot wait until normal business hours.

6.ACCESS/DELIVERIES

After Rental Office hours emergency maintenance personnel will permit admittance only to those persons with proper identification, ***specifically identified in the Lease Agreement.*** Maintenance staff is not required to respond to non-emergency calls after Rental Office hours. If maintenance staff chooses to come the charge for this service is $45 from 5:30 p.m. to midnight and $75 from midnight to 8:30 a.m. ***Payment must be made immediately to the employee providing access.*** Keys for loan are available at the Rental Office for any deliveries when the tenant is not at home. However, written permission to loan keys must be left at the Rental Office. Management personnel cannot sign for or go to the apartment with any deliveries.

_____ **7. TENANT CHARGES**

Any damages or associated costs to the property as a result of negligence, carelessness, or misuse by any member of Tenant's household, or his servants, agents, guests, invitees or visitors, is assessed to the Tenant. Examples of chargeable items include: jammed garbage disposals, broken windows, lock changes due to loss of keys, cleaning of backups due to improper use of plumbing fixtures, etc. Clause 15, Apartment Care, specifies proper use of equipment. At move-out, the apartment is to be left in clean and acceptable order; any cleaning not performed as outlined in the Notice of Intention to Vacate or any damages to the premises will be charged to the Tenant.

8. BUILDING CARE

A major cost of caring for the buildings and grounds is a result of the repair, replacement or cleanup of damage caused by carelessness or destructiveness. These costs are ultimately reflected in higher rents. Consequently, for everyone's benefit, Management urges all Tenants to treat the property as if it was their own.

9. LAUNDRY

Properties are furnished either with laundry rooms or equipped with individual washers and dryers in the apartments. Privately owned laundry equipment is not permitted. Unless otherwise posted, washers and dryers are not to be used before 7:00 a.m. or after 10:30 p.m. Clothing is to be removed promptly from machines. Machines are not to be overloaded. Dyeing of fabric is strictly prohibited. Washers and dryers are to be left free of dirt or sand. Machine outages are to be reported to the Rental Office. Drying lines are not permitted in the the laundry rooms, outside the buidlings, or on the balconies or terraces. Landlord reserves the right to increase fees to cover his increased cost of utilities and maintenance repairs.

_____ **10. TRASH DISPOSAL**

The Tenant is not to allow trash and garbage to accumulate in the apartments. Landlord has provided several solutions to refuse disposal in order to keep the premises clean; Tenants are required to avail themselves of dumpsters and/or outside receptacles and regularly scheduled trash pick-ups in order to maintain the community. Boxes are to be broken down as much as possible. Bundles of refuse are not to be placed in public hallways, under hall stairs and other common areas. Dirty diapers and pet litter are to be disposed of in appropriate containers and removed from apartment to the dumpsters not less than twice per week.

11. STORAGE

Flammable items are not to be stored. Balconies and terraces are not for storage. In all cases Management assumes no responsibility for loss or damage to articles that are stored.

_____ **12. USE OF BALCONIES, TERRACES, WINDOWS, LAWN**

For everyone's safety and to ensure an attractive community, Management enforces specific rules regarding the use of balconies, terraces, etc. Hanging rugs, drapes, clothing or laundry of any kind on window sills, balconies, terraces or lawns is strictly prohibited. Tenants are not permitted to keep anything on window sills or on or outside the balcony rails; flower pots must only be hung inside of balcony rails. Only approved furnishings are allowed on the balconies or terraces; the use of balconies or terraces as storage space is not permitted. Only approved window treatments are allowed at the windows or door; the hanging of sheets, flags, etc. is strictly prohibited. The shaking of brooms, dust mops, rags or other cleaning materials out of the windows, doors, terraces or balconies is not allowed. Tenants are not to permit anything to be thrown out of the windows or over the balconies of the leased premises. No property of any description is to be placed on the lawn. Per fire regulations and because they contain gasoline, motocycles or scooters are to be kept in parking lots only and not in or near the premises. No charcoal cooker, brazier, hibachi, or grill, or any gasoline or other flammable liquid or liquefied petroleum gas-fired stove or similar devices shall be ignited or used on the balconies, terraces or patios.

13. USE OF FACILITIES PLAYING, LOITERING, DOORS

Playing or loitering in hallways, on entrace steps, on sidewalks, or in parking areas is strictly prohibited. Playing ball or riding bicycles on the lawns or engaging in any activity which would be destructive to grass or shrubs is not permitted.

14. ALTERATIONS, REDECORATIONS AND INSTALLATIONS EQUIPMENT

Painting, papering, altering or adding to the structure, equipment or fixtures is prohibited without prior written consent from Management. The use of contact paper, cork board, or non-strippable wallpaper is not allowed since such items damage the walls. Repairs necessitated by such damage will be charged to the Tenant. The installation or attachment of door knockers, doorbells, security or locking devices, television or radio antennas, or any electrical or mechanical equipment will only be permitted with written permission. Tenants will be charged for removal of improper devices or equipment, and for any associated damage. Running exposed wires for electrical appliances or fixtures in violation of the electrical codes is strictly prohibited.

15. APARTMENT CARE

The apartment is to be maintained in a clean, safe and orderly condition at all times. Damage caused by negligence or improper use will be charged to the Tenant.

A. Walls and Woodwork - Adhesive fasteners (used to hand pictures) damage walls and are prohibited; a reasonalbe number of nails and picture hangers are permitted. All woodwork is to be protected against injury or defacement.

B. Floors - For best results, kitchen floors are to be cleaned with a good self-polishing wax, not paste, acrylic, cleaning or clear vinyl waxes.

C. Ceilings - In those communities where the walls and ceilings are constructed of concrete, the Tenant is not to fasten, attach, or otherwise distub any of the walls or ceilings in or on the premises. Any plumbing leaks or water stains that may appear on walls, ceilings or floors are to be reported immediately to the Rental Office.

D. Carpets - Carpeting, where furnished by Landlord, is to be vacuumed often and shampooed when necessary. Damage to carpeting will be charged to the Tenant.

E. Appliance Maintenance - Landlord furnishes and maintains such appliances that are now and may be placed in the leased premises, and as the Landlord deems suitable and appropriate. Landlord is not liable for any damage caused directly or indirectly in furnishing or maintaining the appliances, or by the failure to maintain the appliances in operation. Negligent use by the Tenant in the operation of any applicane will result in a charge to the Tenant.

(1) Refrigerators - The landlord will furnish and maintain in operation in the leased premises such refrigeration as the Landlord shall deem suitable and appropriate, but shall not be liable for any damages which may be caused, directly or indirectly, in furnishing or maintaining the same, or by failure to maintain the same in operation. Tenant agrees that if any member of his household, his servants, guests, or visitors shall cause damage to the refrigerator of Landlord, Tenant agrees to pay the cost to repair the damage. Regular defrosting will provide excellent service from the unit; however, the use of infrared devices or sharp objects for defrosting are not permitted. Damage to the refrigerator as a result of improper defrosting will be charged to Tenant.

(2) Stoves/Ovens - Regular cleaning will provide better performance from the unit.

(3) Garbage Disposals - Garbage disposals are provided. Cold water must be run while the unit is in operation and until the drain is cleared. Tenants are not to overload the units or to dispose of items such as large bones, paper, rags, corn cobs, corn husks, stringy vegetables (such as celery, sweet potatio skins), glass or foil in the disposal.

(4) Dishwashers - Dishwashers are provided. Food particles are to be removed from all dishes. A commercial detergent designed specifically for diswashers is to be used, not sudsing types or liquid detergents used in hand or clothers washing.

(5) Washers and Dryers - A commercial detergent designed specifically for clothes washing is to be used. Dryer lint traps are to be cleaned after each use. Units are not to be overloaded.

F. Plumbing Fixtures - The water closets and other water and sewer apparatus and fixtures are not to be used for purposes other than those for which they were designed. Sweepings, matches, rags, disposable diapers, ashes, or other improper articles are not to be thrown therein. Disposable diapers or other "disposable" products are not to be flushed down commodes. Contrary to manufacture's claims they will stop us sewer lines, causing overflows and back-ups for which Tenant will be charged. All running water, dripping faucets and water leaks should be reported immediately to the Rental Ofice for repair.

G. Electric Light Bulbs and Fuses - Electric light bulbs and fuses are provided for all fixtures by Landlord at the time Tenant takes possession of the apartment. Thereafter, the Tenant must provide bulbs and fuses of a like kind and quality, to be left in the fixtures and operable when Tenant vacates the premises. Failure to comply with this provision will result in a charge to the Tenant.

H. Heating and Air Conditioning - All failures or unusual noises are to be reported to the Rental Office. In cold weather, heat should never be turned off completely; rather, the thermostat should be set at a minimum of 55' to avoid frozen water pipes which could break. To obtain maximum performance for the equipment and to minimize utility consumption the following measures should be undertaken:

(1) Thermostats/accustats are to be set at 78' during the cooling season and at 68' during the heating season

(2) During the air conditioning season vents should be adjusted for maximum coolness throughout the apartment

(3) When equipment is in operation, doors and windows should be kept closed. Air conditioning dehumidifies air as well as cools it, but cannot dehumidify and cool outside air. Open doors and windows force the air conditioning and heating units to run longer and work harder

(4) Fan switches should be set on "auto" at all times.

(5) Intake vents should not be blocked nor should articles be stored in the heating and air conditioning equipment closets. Doing so inhibits air flow forcing the compressor to work harder and resulting in higher utility bills.

I. **Energy Conservation** - In order to reduce the cost and consumption of utilities the following guidelines are provided:

(1) Applicances should be maintained as outlined in Clause 15 (Apartment Care). In addition, conservative applicance use will result in energy savings.

(2) Plumbing fixture repairs, e.g., running commodes, dripping faucets, etc,. as outlined in Clause 15, should be reported immediately to Rental Office.

(3) All areas of air infiltration should be reported immediately to the Rental Office.

(4) During the heating season, blinds and drapes should remain open during the day to capture solar energy; during the cooling season, blinds and drapes should be drawn against sunlight.

(5) Tenants should turn off lights when exiting their apartments.

J. **Smoke Detectors** - Tenants are responsible for reasonable care of the smoke detectors, for interim testing, and for notifying Landlord in writing of any malfunctioning detectors between annual inspections. If a complaint is issued, Landlord must repair or replace the inoperative detector within five (5) days after receiving the Tenant's written notification.

K. **Keys and Locks** - Each Tenant acknowledges his receipt of keys at move-in; all keys must be returned to Landlord when the Tenant vacates the premises. Tenants may not replace or add any additional locking devices or other security devices, or duplicate keys, without the prior written consent of Landlord.

_____ **16. WATERBEDS** Waterbeds are permitted under the following terms and conditions: In garden communities waterbeds are permitted in ground floor apartments only. Tenant must obtain a waterbed liability endorsement to his insurance policy and provide Management with a copy of said endorsement. Landlord is not responsible for any damage casued, directly or indirectly, by Tenant's waterbed.

17. PEST CONTROL Pest control service is available at no charge by calling or visiting the Rental Office.

18. TV SERVICE Cable TV is provided by local cable contractor; all payments, service and repairs are between Tenant and Contractor.

19. PARKING Parking facilities are designated by Landlord. Any improperly parked vehicle will be ticketed by Management. After it is ticketed, the car may be towed at the owner's expense and risk. Abandoned vehicles, cars being "worked on," and ones with improper plates found in lots owned by Landlord will be ticketed. If the owner does not remove the vehicle, it will be towed. (The car may be reclaimed from the towing company after charges have been paid.) Minibikes, go-carts, or other non-licensed, self-propelled vehicles are prohibited. The Rental Office keeps a file of license tag numbers of current Tenants' vehicles. Tenants are urged to notify the Rental Office of any changes. Landlord reserves the right to charge for parking facilities. If assigned spaces are issued, any illegally parked vehicles will be towed at the sole risk and expense of the Tenant. Everyone is expected to abide by posted speed limits. Commercial vehicles, boats, trailers, RV's are strictly prohibited.

20. SIGNS AND ADVERTISING Posting of signs or advertising materials is not permitted.

_____ **21. PETS** On properties where pets are permitted, or for those disabled tenants who are permitted to keep and maintain a help animal trained to assist in such disability, the Tenant must fully and completely comply with the Pet Addendum.

22. REMOVAL FOR OBJECTIONABLE NOISE Some noise from neighbors at various times is inherent in multifamily living. However, if everyone is reasonable and considerate in their mode of living, noise is not a problem. The playing of radios, stereos, television or musical instruments must always be such as not to disturb other tenants. Occupants of apartments other than those on the lowest level must have a minimum of 80% of their floors carpeted and must avoid heavy walking or other noises that will distrub those below.

23. REMOVAL FOR CRIMINAL ACTS The commission of any criminal act of physical violence to persons or property on or near the premises or the illegal use, sale or distribution of narcotics and/or controlled dangerous substances on or near the premises or in the building, common areas, driveways, parking areas, lobby or recreational facilities by Tenant, his vistors or guests constitutes a serious violation of the Lease Agreement and shall be grounds for termination of the Lease.

24. ABSENCE OF TENANTS Tenants must notify the Rental Office in writing of any extended absence from the premises which exceeds seven (7) days.

_____ **25. INSURANCE** It is the responsibility of each tenant to cover his property and his legal liability while residning in the apartment. Management requires Tenants to obtain such insurance listing Valley View Management, LLC as the "additional insured".

_____ **26. USE OF TOBACCO AND TOBACCO PRODUCTS** This property specifically allows the use of tobacco and tobacco related products. The disposal of ashes, cigarette/cigar butts, pipe tobacco, chewing tobacco/snuff is to be done only in appropiate disposal products. Under no circumstances shall any tobacco product be disposed of on the grounds of Lee Trace, whether that be the parking lot or the grass area. Additionally, no tobacco products shall be discarded anywhere in a lit stage. Failure to comply is subject to Lease termination.

These Rules and Regulations are for the convenience, safety and welfare of all Residents of Valley View Management, LLC properties. Violations of any of these Rules may be sufficient cause for termination of a Lease at the option of the Landlord. Management reserves the right to rescind or change any of the foregoing Rules and to make such other rules and regulations as may be deemed necessary for the safety, welfare and cleanliness of its properties. **ALL RATES AND FEES OR CHARGES FOR SERVICES OR MATERIALS ARE SUBJECT TO CHANGE FROM TIME TO TIME IN RESPONSE TO ECONOMIC CONDITIONS.**

Trip Generation

Trip generation for the planned apartment complex was developed from the ITE Trip Generation Manual, 7th edition. The full build-out of the project is planned to occur by the year 2014. The resulting trips generated by the project are summarized as Scenario 3 in Table 1.

In addition to the trip generation resulting from the proposed project, several other potential development types were evaluated for comparison. These are also presented in Table 1.

Table 1 Trip Generation Comparisons

Scenario 1 - Developed under current RO-1 w/ single family detached dwellings

Land Use	ITE Code	Amount	AM Peak Hour In	AM Peak Hour Out	AM Peak Hour Total	PM Peak Hour In	PM Peak Hour Out	PM Peak Hour Total	Avg. Daily Trips
Residential - single family detached (27 units)	210	27	8	23	31	23	12	35	312
Total New Trips			8	23	31	23	12	35	312

Scenario 2 - Developed under HR zoning w/o PUD overlay

Land Use	ITE Code	Amount	AM Peak Hour In	AM Peak Hour Out	AM Peak Hour Total	PM Peak Hour In	PM Peak Hour Out	PM Peak Hour Total	Avg. Daily Trips
Apartments (108 units)	220	108	12	45	57	50	27	77	799
Total New Trips			12	45	57	50	27	77	799

Proposed Development

Scenario 3 - Developed under HR zoning with PUD overlay

Land Use	ITE Code	Amount	AM Peak Hour In	AM Peak Hour Out	AM Peak Hour Total	PM Peak Hour In	PM Peak Hour Out	PM Peak Hour Total	Avg. Daily Trips
Apartments (138 units)	220	138	15	57	71	61	33	94	980
Total New Trips			15	57	71	61	33	94	980

Scenario 4 - Developed under B-2 zoning as Medical-Dental Offices

Land Use	ITE Code	Amount	AM Peak Hour In	AM Peak Hour Out	AM Peak Hour Total	PM Peak Hour In	PM Peak Hour Out	PM Peak Hour Total	Avg. Daily Trips
Medical-Dental Office Building (120,000 sq ft FAR = .35)	720	120	280	144	424	213	319	532	4,692
Total New Trips			280	144	424	213	319	532	4,692

VALLEY
VIEW
MANAGEMENT

January 10, 2013

Mr. Timothy P. Youmans, Director of Planning
City of Winchester, Virginia
15 N. Cameron Street
Rouss City Hall
Winchester, Virginia 22601

Re: Rezoning Application RZ-12-405
Fiscal Analysis

Dear Sir:

The property identified on Tax Map 249-01-2 which is the subject of the above Rezoning Application, is currently zoned RO-1, and could be developed as a light commercial or service related office building containing a maximum of 120,000 square feet. As an office building, the property would not have any services provided by the City, but it would generate revenue through real estate taxes.

Based upon the current vacancy rate on Cedar Creek Grade and Jubal Early Drive, it is logical to assume that a prudent developer/investor would not build more than 30,000 square feet in any four year period. This then would create a total "build-out" time period for maximum density of 16 years.

To determine the revenue to be collected from this parcel under an RO-1 development, we have used the real estate assessment and the corresponding real estate taxes collected from 905 Cedar Creek Grade, zoned B-2, and located almost directly opposite from the property. That property is assessed at $10.00 per square foot for the land and $70.87 per square foot for the improvements.

Under those assumptions, with 25% of the land being improved every four years, the assessed value for the improved property in the first phase would be Land, $842,886.00, and Improvements, $2,126,100.00, for a total assessment of $2,968,986 on the first phase. The resulting taxes, assuming that the millage rate remains at $0.95 per $100, would be $28,205.37.

Under this scenario, the property, developed under a RO-1 development would add $28,205.37 to the City's revenue every four years, beginning in 2017.

817 Cedar Creek Grade, #200 Winchester, Virginia 22601
540/313-4364 • 540/313-4363 FAX

If, however, the property were to be developed under a zoning of HR with a PUD Overlay, generating 132 market rate multi-family apartments, one reasonably could expect that development to generate revenues similar to the Stuart Hill Apartments, located one mile north.

Stuart Hill was assessed in 2012 for $12,596,000.00 or $69,977.78 per unit for its 180 units, or a total tax bill of $119,662.00.

An apartment developer/investor would build all 132 units at one time taking approximately 16 months to complete the project. The completed project, utilizing the existing assessment on a comparable property, would create an assessed value of $9,237,067.00; and tax revenue to the City, assuming that the millage rate remains at $0.95 per $100, would be $87,752.14 in 2015, and every year thereafter.

As in the development under the RO-1 zoning, the development under the HR zoning would not require City services, but it is logical to assume that the project would conceivably be home to public school age children whose attendance in the schools would be a fiscal cost to the City via the school system.

In August, in response to concerns voiced about the impact of "Market Rate, Multi-Family Apartments" on the school system, a study was undertaken of five Market Rate communities located in the City of Winchester. Those five communities contain a total of 610 apartment units that account for a total of 49 school age children that are currently in Winchester City public schools. This results in an expectation of a ratio of 8/10 of one student per new apartment unit created; or in the case of the proposed new development, 10.56 students. These students will have a fiscal impact on the school system as discussed below.

According to the Winchester Public Schools, as presented by the Finance Department of the City of Winchester, the Operating Budget for the School System for the year 2012-2013 will be $48,341,890.00 or $11,237.00 per student. Of this amount, the City appropriation is 55.13% or $26,651,702.00, or $6,195.18 per student.

Earlier in these discussions, it was determined that the proposed HR, PUD Overlay development could possibly add as many as 10.56 students to the Winchester Public School System. Those students, if all of them are, in fact, generated would cost the taxpayers $6,195.18 per student, or a total of $65,421.10.

We also, earlier in these discussions, determined that the proposed HR development would create $87,752.14 in new tax revenues for the City in 2015, thereby a revenue positive situation of $22,331.04 in 2015.

Should you wish to discuss this Fiscal Analysis further, pleas do not hesitate to contact the undersigned.

Sincerely,
Valley View Management LLC

Robert A. Cocker
Manager

LAWSON AND SILEK, P.L.C.

120 EXETER DRIVE, SUITE 200
POST OFFICE BOX 2740
WINCHESTER, VA 22604
TELEPHONE: (540) 665-0050
FACSIMILE: (540) 722-4051

THOMAS MOORE LAWSON • TLAWSON@LSPLC.COM

September 21, 2012

Tim Youmans, Planning Director
City of Winchester
Rouss City Hall
15 North Cameron Street
Winchester, VA 22601

Re: Racy Meadows Apartment Complex
Rezoning Application: RZ-12-405
Our File No. 890.007

VIA E-MAIL

Dear Tim:

As you know as part of the above-referenced rezoning application submitted by Valley View Management LLC, there have been questions raised about the number of school children that are generated by apartment complexes in the City of Winchester. In response, our client has found that at its, and at other market-rate apartment complexes, the number of school children generated is very small, especially when compared to other apartment complexes in the City. To further confirm this understanding we have had conversations with Winchester Public Schools and obtained bus stop counts for the number of children being generated at various apartment complexes around the City. For your convenience, we enclose that information.

The net of this is that our client's understanding has been proved correct. We find this information to be very helpful and hopefully dispositive of any concerns about the number of school children being generated by market-rate apartment complexes. After you have reviewed this information please do not hesitate to give me a call with any questions. In the interim, I would ask that this be placed in the rezoning application file for consideration by members of Council.

Thank you for your attention to these matters. I look forward to working with you on this rezoning.

Very truly yours,

/s/ Thomas Moore Lawson

Thomas Moore Lawson

TML:sih
Enclosure
cc: Valley View Management LLC

FRONT ROYAL ADDRESS: POST OFFICE BOX 682, FRONT ROYAL, VIRGINIA 22630, TELEPHONE: (540) 635-9415 • FACSIMILE: (540) 635-9421 • E-MAIL: JSILEK@LAWSONANDSILEK.COM

Stuart Hill and Pemberton Village

School Bus Stops serving these apartments:

Bus Stop Number	Headcount 2011-2012	Headcount 2012-2013
F-44	2	4
D-159	2	1
JH-62	12	4

Summerfield

School Bus Stops serving these apartments:

Bus Stop Number	Headcount 2011-2012	Headcount 2012-2013
F-35	1	1
D-154	0	1
JH-64	8	3

2265 Wilson Boulevard

School Bus Stops serving these apartments:

Bus Stop Number	Headcount 2011-2012	Headcount 2012-2013
F-47	11	12
D-108	9	10
D-109	4	4
JH-67	6	6

Treetops Park

School Bus Stops serving these apartments:

Bus Stop Number	Headcount 2011-2012	Headcount 2012-2013
F-28	0	0
D-184	0	0
JH-101	1	1

York Terrace

School Bus Stops serving these apartments:

Bus Stop Number	Headcount 2011-2012	Headcount 2012-2013
F-69	11	16
D-187	10	12
D-188	12	10
JH-102	20	30

Peppertree Apartments and Orchard Crest Apartments

School Bus Stops serving these apartments:

Bus Stop Number	Headcount 2011-2012	Headcount 2012-2013
F-30	22	25

F-31	27	27
D-104	0	0
D-105	1	2
D-106	12	24
D-107	12	10
JH-79	21	26

Woodstock Terrace and Morgan Apartments

School Bus Stops serving these apartments:

Bus Stop Number	Headcount 2011-2012	Headcount 2012-2013
Q-38	25	28
Q-27	23	23
Walking Zone for Daniel Morgan		
JH-31	25	38

To: Tim Youmans, Planning Director

From: Jim Deskins, Director of Economic Redevelopment

Subject: Rezoning Application RZ-12-405

Date: 02/10/2013

As per your request I have reviewed Mr. Cocker's Fiscal Analysis concerning the above noted rezoning application. In my review I looked closely at his assumptions along with the immediate development patterns surrounding the subject site on Cedar Creek Grade. I provide the following comments:

- Mixed use development appears to be the dominant development pattern on the corridor
- That the development of all 7.75 acres as commercial, based on current absorption rates, could require as much as a twenty plus year period,
- and the financial projects provided by Mr. Cocker did not reflect city tax income other than property tax on his commercial tax revenue assumptions. An accurate assumption would reflect sales tax receipts and or BPOL revenues

I would suggest that a more accurate potential financial analysis would project that the property be developed as a mixed use parcel with approximately 2 acres as commercial and 5.75 acres as multifamily. It is my position that this would result in a project that is currently marketable and would generate more income to the city and the developer. By using the same assumptions provided by Mr. Cocker for the first phase of commercial development with the addition of sales tax and or BPOL revenue, I have projected that the 2-acre commercial project would generate revenue to the city in a range between $43,205 and $78,205. This new revenue projection is based on a range of BPOL and or sales tax generation of $15,000-$50,000. These numbers are based on gross sales of $150 per square foot and/or $300,000 in professional business transactions per 1000 square feet per year, in a 30,000 square foot facility. Reducing the total number of apartments to reflect the reduction of HR-zoned multifamily land from 7.75 to 5.75 acres could result in approximately 120 units rather than the projected 132 units. This assumes that the front 2 acres of commercial land would be rezoned from RO-1 to B-2 and could still contribute to the density computation.

Therefore, reducing the gross revenue to the city in property tax from the apartments to $79,774.66; then applying Mr. Cocker's cost attributable to the potential increased enrollment in Winchester Public Schools (reduced proportionately by the reduction in units to be built), I would estimate that the total net revenue the city could anticipate would fall within a range $37,331 to $77,331 per year. This compares to the net revenue figure of $22,331 per year estimated by Mr. Cocker for the 132-unit apartment development.

AN ORDINANCE TO CONDITIONALLY REZONE 7.74 ACRES OF LAND AT 940 CEDAR CREEK GRADE FROM RESIDENTIAL OFFICE (RO-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO HIGH DENSITY RESIDENTIAL (HR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) & CE DISTRICT OVERLAY

RZ-12-405

WHEREAS, the Common Council has received an application from Valley View Management, LLC to rezone property at 940 Cedar Creek Grade from Residential Office (RO-1) with Corridor Enhancement (CE) District overlay to High Density Residential (HR) District with Planned Unit Development (PUD) District overlay and Corridor Enhancement (CE) District overlay; and,

WHEREAS, the Planning Commission forwarded the request to Council on February 19, 2013 recommending approval of the rezoning request as depicted on an exhibit entitled "*Rezoning Exhibit RZ-12-405 Prepared by Winchester Planning Department February 12, 2013*" because the proposed HR (PUD/CE) zoning, as proffered, supports the expansion of housing serving targeted populations and facilitates the extension of Stoneleigh Drive as called out in the Comprehensive Plan. The recommendation is subject to adherence with the Proffer Statement updated February 18, 2013 and the updated Development Plan titled 'CONCEPTUAL SITE LAYOUT PLAN Rezoning Exhibit "A"' dated December 3, 2012; and,

WHEREAS, a synopsis of this Ordinance has been duly advertised and a Public Hearing has been conducted by the Common Council of the City of Winchester, Virginia, all as required by the Code of Virginia, 1950, as amended, and the said Council has determined that the rezoning associated with this property herein designated supports the expansion of housing serving targeted populations and facilitates the extension of Stoneleigh Drive as called out in the Comprehensive Plan.

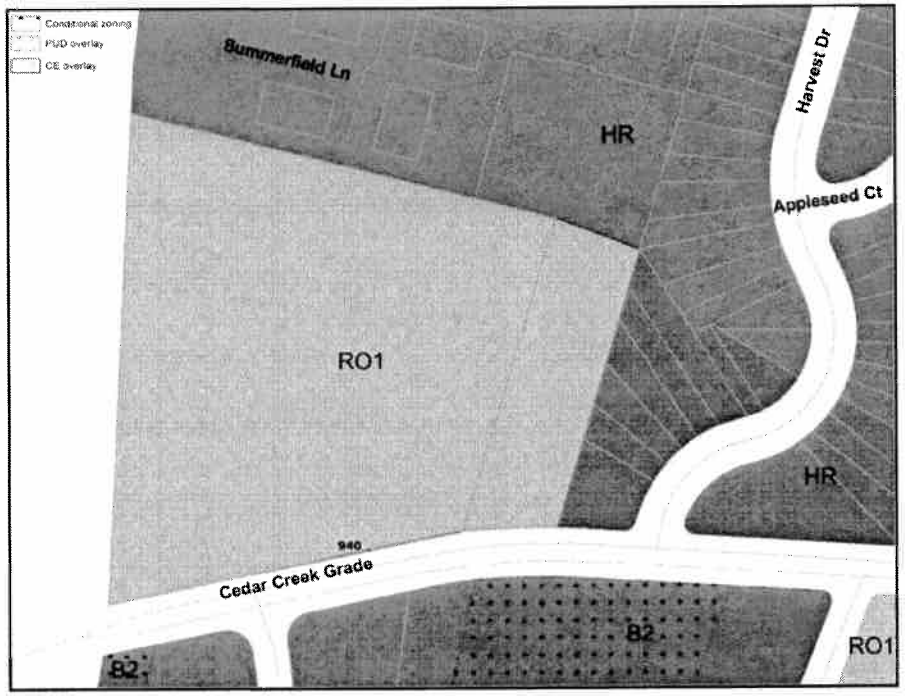
NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Winchester, Virginia that the following land is hereby rezoned from the existing zoning designation of Residential Office (RO-1) with Corridor Enhancement (CE) District overlay to High Density Residential (HR) District with Planned Unit Development (PUD) District overlay and Corridor Enhancement (CE) District overlay:

Approximately 7.74 acres of land at 940 Cedar Creek Grade, as depicted on an exhibit entitled "*Rezoning Exhibit RZ-12-405 Prepared by Winchester Planning Department February 12, 2013*".

BE IT FURTHER ORDAINED by the Common Council of the City of Winchester, Virginia that the rezoning is subject to adherence with the Proffer Statement updated February 18, 2013 and the updated Development Plan titled 'CONCEPTUAL SITE LAYOUT PLAN Rezoning Exhibit "A"' dated December 3, 2012.

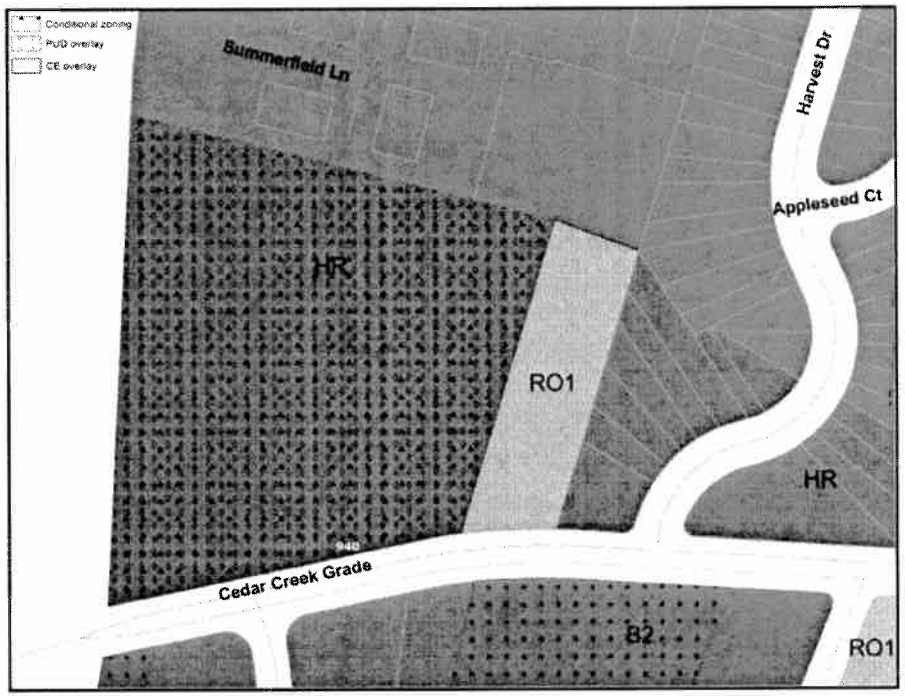
REZONING EXHIBIT
RZ-12-405

PREPARED BY WINCHESTER PLANNING DEPARTMENT
FEBRUARY 12, 2013



EXISTING

RO-1 (CE) ZONING FOR 940 CEDAR CREEK GRADE



PROPOSED

CONDITIONAL HR (PUD/CE) ZONING FOR 940 CEDAR CREEK GRADE

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Dale Iman

Date: 01/10/13

Re: Council Appointed Boards and Commissions

THE ISSUE: To review the City's current composition and operation of Council Appointed Boards and Commissions.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 2 – Develop a High Performing Organization

BACKGROUND:

Council Vice President, Willingham and Vice Mayor, McInturff were assigned the task of reviewing the Council process of soliciting, appointing and training members of the City's numerous Boards and Commissions. Working closely with the City Manager and City Attorney the attached report and recommendation has been developed which is designed to improve the appointment process and improve the flow of information between boards, commissions and the City Council. In addition, the proposed policy addresses the feasibility of combining the responsibilities of some boards and commissions in an effort to reduce the total number of boards and commissions required.

BUDGET IMPACT:

There will be no impact on the Budget.

OPTIONS:

1. Implement the recommended procedural changes.
2. Do not change the existing procedure.

RECOMMENDATIONS:

It is recommended that Council direct staff to make the required changes and implement the recommendations outlined in the report.

Winchester Virginia

Rouss City Hall
15 North Cameron Street
Winchester, VA 22601

Telephone: (540) 667-1815
FAX: (540) 722-3618
TDD: (540) 722-0782
Website: www.winchesterva.gov

To: Honorable Members of Common Council

From: Vice President Willingham and Vice Mayor McInturff

Subj.: Council Appointed Boards and Commissions

Date: December 21, 2012

MEMORADUM

On August 21, 2012, Vice President Willingham and Vice Mayor McInturff were asked to work with the City Manager, City Attorney, and City Staff to review the City's current composition and operation of Council Appointed Boards and Commissions. Through a review of available materials and a series of individual and group discussions, this report was generated as an update and recommendation to Common Council focusing on the following areas:

1. Composition/Operations

There are currently thirty-six (36) Council Appointed Boards and Commissions identified on the City's Boards and Commissions List. With very few exceptions, these bodies are either statutorily required entities (such as the Planning Commission and School Board), or otherwise required as part of a program that the City has chosen to undertake (such as the Board of Architectural Review and Community Development Committee). There are very few Council Appointed Boards and Commissions which are purely discretionary in nature (such as the

Natural Resources Advisory Board) or not mandated but established by choice as part of a program or initiative that the City is participating in (such as the Old Town Development Board).

In order to ensure that all Council Appointed Boards and Commission positions are adequately filled and in timely fashion, with the most qualified personnel, we recommend that the City Manager be tasked with initiating an ongoing process to encourage and solicit citizen involvement in appointed boards and commissions. In addition, the President shall annually appoint two (2) members of Council to serve as the Council Liaisons for handling all matters associated with reviewing applications and conducting preliminary interviews of candidates. The recommended process would be as follows:

1. The Manager shall ensure that a Staff Liaison is appointed to every Board and Commission.

2. The Staff appointed liaison would be responsible for collecting and reviewing qualifications of candidates for their respective boards and to notify the Assistant City Manager of Board and Commission vacancies 60 days prior to the expiration date.

3. The Assistant City Manager would then contact the Council Liaisons to make them aware of applications and any open positions that need to be filled and to provide application material of citizens who have expressed formal interest in serving.

4. The Assistant City Manager would be responsible for conveying this to the Council Liaisons in a timely manner to ensure adequate time for review of applications and interviewing of candidates.

5. The Assistant City Manager would be responsible to keep the Council Liaisons up to date on the status of board participants, vacancies, expiration of terms, etc.

6. The Staff Liaison would contact board members eligible for reappointment and determine their interest and report findings to the Assistant City Manager .

7. At the end of the term of each member, the staff liaison will give a report to the Assistant City Manager on the board members participation, attendance, performance, etc. The Assistant City Manager would be responsible to keep the Council Liaisons up to date on the status of board participants, attendance, performance etc.

8. The Council Liaisons shall be responsible for reviewing this information and recommending to Council timely appointments to the various Boards and Commissions.

9. Staff Liaisons shall prepare a "Council Appointed Board Report" on a monthly basis, or as frequently as deemed necessary by the Manager, which shall be submitted to the City Manager for inclusion with the Written Reports submitted for Council review on monthly Work Session Agendas. The reports shall include actions and items of interest currently underway with regard to Council Appointed Boards as well as Board vacancies and other operational concerns.

This process would ensure that Council maintains involvement and awareness of the needs of the various boards and commissions while ensuring that City Staff personnel are continuing to address the needs of the boards as well as the needs of the City's Administration.

Consistent with the second goal discussed during the 2012 Council Strategic Planning Process ("To develop a high performing City Organization"), we would recommend that Council consider reorganizing some of its appointed Boards and Commissions which are not specifically mandated by state legislation.

For example, we would recommend the elimination of the Natural Resources Advisory Board and Tree Commission and the consolidation of the responsibilities and resources of these two individual boards under the umbrella of the Parks and Recreation Board. It is believed that this reallocation of resources will provide for more efficient and effective local governance of the issues faced by these three individual Council Appointed Boards.

If Council decides to move forward with this recommendation, the Department of Parks and Recreation will be called upon to work with the City Attorney and Public Services Department to incorporate the necessary revisions into the City Code.

Finally, while this Report has been drafted specifically to address issues related to Council Appointed Boards and Commissions, during the review of these matters, it was concluded that the appointment of the Mayor, Members of Council, or other City Officials to serve in their official capacities as participating and voting members of non-governmental organizations may create significant conflicts of interest and should be avoided. This should not be construed as a recommendation to preclude the Mayor, Members of Council, or other City Officials from volunteering to serve in their individual and personal capacities on such organizations, nor preclude the appointment by Council of non-voting liaisons who do not participate directly in the organizational operations of these entities.

2. Training / Orientation

A formal Orientation shall be required for all new members of Council Appointed Boards and Commissions. The orientation shall identify and train new members regarding the Goals and Objectives of Common Council, their responsibilities as appointed members of the respective Boards and Commissions, describe the general functioning of the City's Administration, and introduce new members to the general operation of local government in the City of Winchester.

This presentation shall be organized by the City Manager, and shall include presentations from the City Attorney, City Staff, and member(s) of Council at the discretion of the governing body.

3. Code of Ethics

The City currently has a Code of Ethics embodied within its Comprehensive Employee Management System ("CEMS") in Section 7.16 which applies to all City Employees, Members

of Council, and Members of Council Appointed Boards and Commissions. The section reads as follows:

7.16 Code of Ethics

The Code of Ethics is intended to provide ethical guidelines for City Councilors, employees and Council appointed Board and Commission members that are responsive to the public needs and preclude even the appearance of impropriety in the performance of their duties. All City Councilors, employees and Council appointed Board and Commission members have an obligation to conduct their official duties in a manner that serves the public interest, upholds the public trust and protects the City's resources. To this end, City Councilors, employees and Council appointed Board and Commission members have a responsibility to:

1. Perform their duties to the very best of their abilities, treating the public and each other in a courteous manner that is fair and equitable, without regard to race, color, gender, age, religion, national origin, disability, political affiliation, or any other factor unrelated to the impartial conduct of City business.

2. Demonstrate integrity, honesty, and ethical behavior in the conduct of all City business.

3. Ensure that their personal interests do not come into conflict with their official duties, resulting in a real conflict of interest or the appearance of a conflict of interest when dealing with vendors, customers, and other individuals doing business or seeking to do business with the City.

4. Ensure that they do not accept any gift, favor or thing of value that may tend to, or be reasonably perceived to, influence the discharge of their duties, or grant any improper favor, service or thing of value in the discharge of their duties. This shall include the acceptance of a gift from a person who has interests that may be substantially affected by the performance of the employee's official duties under circumstances where timing and nature of the gift would cause a reasonable person to question the employee's impartiality in the matter affecting the donor. This prohibition shall not apply to the acceptance of any gift, favor or thing of value that benefits the City and/or the community as a whole.

5. Ensure that information concerning the property, government or affairs of the City is held confidential, disclosed only with proper legal authorization, and never to advance the financial or other special interest of themselves or others.

6. Ensure that all City resources, including City funds, equipment, vehicles and other property, are used in strict compliance with City policies and solely for the benefit of the City.

7. Avoid any behavior that could fall under the definitions of misconduct in Section 7.2 Discipline of the City's Comprehensive Employee Management System.

Councilors, Board and Commission members, Department Heads, and supervisors must take a leadership role in the promotion and execution of the Code of Ethics. All City officials and employees have a responsibility to place cooperation, trust, and respect at the head of all they do.

But despite the formal incorporation of these provisions into the CEMS, which has been adopted and approved by a Resolution of Common Council, members of Council Appointed Boards and Commissions do not receive exposure or any formal training on this upon their appointment. As such, it is very likely that few members are even aware of their duties and responsibilities consistent with the foregoing Code of Ethics.

Accordingly, it is recommended that all members of Council Appointed Boards and Commissions consent to and follow, as a condition precedent to participation, the Code of Ethics as approved by the Governing Body. This consent shall be memorialized in a signed document prepared by the City Attorney reflecting the provisions of Section 7.16 of the CEMS and may include any additional provisions deemed necessary by Council to create a uniform Code of Ethics that embodies the expectations of Council and the Community with regard to service on a Council Appointed Board or Commission. Service on such bodies should be viewed and acknowledged as a privilege with accompanying responsibilities of appropriate conduct. The Code of Ethics should be signed by all appointed members prior to their formal appointment and should be enforced where violations occur.

Additionally, it is recommended that the Manager be directed to expand the CEMS provisions to include a non-comprehensive list of causes for removal or other forms of

disciplinary action available to Common Council to address instances of improper conduct by an appointed member of a Board or Commission.

CONCLUSION

The City should require all new members of Council Appointed Boards and Commissions to execute a written Agreement prepared by the City Attorney memorializing that they are aware of, and will abide by the Code of Ethics in Section 7.16 of the CEMS and any other ethical requirements that the governing body may adopt as applicable to such members. The CEMS should be expanded to include causes for removal and other disciplinary measures for members who do not abide by these rules.

New members should receive training through a formal Orientation process which shall be organized by the Manager or his designee and should include presentations by City Staff, the City Attorney and members of Council (at Council's discretion) on topics including ethical responsibilities as an appointed board member and the general operation of City government.

Finally, a Council Liaison system should be established to continually work with the Assistant City Manager to ensure that vacancies to various the boards and commissions are properly filled. An outline of one possible system is included in Section 3 of this Memorandum.

Respectfully Submitted:

John Willingham, Vice President

Milt McInturff, Vice Mayor