

**MINUTES OF THE COMMON COUNCIL  
IN REGULAR SESSION  
June 10, 2008**

A regular session of the Winchester Common Council was held on Tuesday, June 10, 2008 in the Council Chambers, Rouss City Hall. President Charles Gaynor called the meeting to order at 7:35 p.m.

**PRESENT:** President Gaynor, Vice President Griffin, Mayor Minor, Vice-Mayor Buettner, and Councilors Butler, Clark, Coyne, Helm, Major, and Masters. (10)

**ABSENT:** Councilor Nelson. (1)

**INVOCATION** – Rabbi Jonathan Brown of Beth El Congregation pronounced the invocation.

**PLEDGE OF ALLEGIANCE** – Mayor Minor led councilors and citizens in the Pledge of Allegiance.

**APPROVAL OF MINUTES** – Vice-President Griffin moved that the minutes of the May 13, 2008 Regular Meeting be approved as presented. *The motion was seconded by Councilor Helm and unanimously approved by voice-vote.*

**REPORT OF PRESIDENT**

- National Dump the Pump Day Proclamation

Mayor Minor presented the National Dump the Pump Day Proclamation.

- Public Hearing: To provide interested citizens an opportunity to appear before the Council and state their views on approval or disapproval of the budget supplemental appropriations and transfers for Fiscal Year ending June 30, 2008.

*No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:41 p.m.*

- Public Hearing: To provide interested citizens an opportunity to appear before the Council and state their views on approval or disapproval of the budget supplemental appropriations for Fiscal Year ending June 30, 2009.

*No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:41 p.m.*

- Public Hearing: AN ORDINANCE TO AMEND SECTION 2.9 OF THE WINCHESTER CITY CODE TO FACILITATE THE INCORPORATION OF AN ANNUAL BUDGET

*No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:42 p.m.*

- Public Hearing: AN ORDINANCE TO CONVEY TWO PARCELS OF REAL ESTATE COMPRISING APPROXIMATELY 0.6660 ACRES AND 0.1412 ACRES TO THE WINCHESTER PARKING AUTHORITY

*No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:42 p.m.*

- Public Hearing: AN ORDINANCE TO CONDITIONALLY REZONE 633 CEDAR CREEK GRADE CURRENTLY ZONED HIGHWAY COMMERCIAL, B-2 DISTRICT WITH CORRIDOR ENHANCEMENT, CE OVERLAY TO INCLUDE PLANNED UNIT DEVELOPMENT, PUD OVERLAY AND, TO CONDITIONALLY REZONE A PORTION OF 629 CEDAR CREEK GRADE FROM HIGHWAY COMMERCIAL, B-2 DISTRICT WITH CORRIDOR ENHANCEMENT, CE OVERLAY TO HIGH DENSITY RESIDENTIAL, HR DISTRICT WITH PLANNED UNIT DEVELOPMENT, PUD OVERLAY AND CORRIDOR ENHANCEMENT, CE OVERLAY AND, TO REZONE A SEPARATE PORTION OF 629 CEDAR CREEK GRADE FROM HIGHWAY COMMERCIAL, B-2 DISTRICT WITH CORRIDOR ENHANCEMENT, CE OVERLAY TO INCLUDE PLANNED UNIT DEVELOPMENT, PUD OVERLAY. RZ-08-05

*No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:43 p.m.*

- Public Hearing: AN ORDINANCE AMENDING ARTICLES 1-2 AND 18-9 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE DEFINITION OF FENCE AND PERTAINING TO PERMIT REQUIREMENTS FOR FENCES AND ACCESSORY STRUCTURES TA-08-01

*No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:44 p.m.*

- Public Hearing: AN ORDINANCE TO ADOPT ARTICLE 11.1 OF THE WINCHESTER CITY CODE PERTAINING TO GRAFFITI ABATEMENT

*No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:44 p.m.*

- Public Hearing: AN ORDINANCE TO AMEND AND RE-ADOPT CHAPTER 6, ARTICLE 1, SECTION 6-9 OF THE WINCHESTER CITY CODE REGARDING VACANT BUILDING REGISTRY; AND, TO INCORPORATE A DEFINITION OF VACANT BUILDING

*No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:44 p.m.*

- Public Hearing: ORDINANCE TO AMEND AND RE-ADOPT THE SCHEDULE OF FEES FOR SERVICE INTO SECTION 7.1-1 OF THE WINCHESTER CITY CODE

*No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:45 p.m.*

- Public Hearing: Request of Sweet Caroline's LLC for a modification of conditions for an existing conditional use permit for a nightclub at 29 W. Cork Street zoned Central Business, B-1 District with Historic Winchester, HW overlay. CU-08-07

Brian Hart stated he and his wife own a mental health practice at 214 South Braddock Street. He is speaking against Sweet Caroline being approved for this amendment. He stated his business backs up directly to their parking lot. They had one incident this year when rock star, Bret Michaels, was performing and his wife's session with clients was interrupted. There was a bass canon booming all of the time and the music was so loud, she couldn't conduct the sessions. They did speak to the owner who was very agreeable to take care of that problem. He hopes Council will consider his suggestion to not fully disapprove the request but that any entertainment will not start until after 9 p.m. at night including music played loudly in the establishment. He and his wife have come into the parking lot after entertainment at his place and found beer bottles, liquor bottles, and used condoms in the back parking lot. They do not have an objection to the request but they do have an objection to what some of his clientele have done in the back parking lot. We would ask that if this is approved, it is only approved to start any type of entertainment, music or bands of any nature, after 9 p.m. That would give his business time to finish up with the night time clients and take care of business for not just them but the owner as well.

President Gaynor asked if this is just Mr. Hart's business and not his residence as well. Mr. Hart stated is not his residence but the owner of the building is here to speak as well.

Councilor Masters asked when Mr. Hart moved into his business. Mr. Hart stated his wife has been in practice there for about 8 years. They have not had problems before until this past year. He didn't know if the establishment is having an increase in business or if there is not enough policing of his staff of what is going on behind the building. The music has been a real issue with the bass canons. It is not sound proof enough so you can still hear the boom, boom, boom. If you are trying to conduct therapy or martial therapy as his wife does, it is not conducive to do martial therapy when a husband and wife are disagreeing with that constant thumping of a bass canon.

Shelly Selove stated she and her husband are the owners of the building at 214 South Braddock Street. The building houses 5 or 6 different private counseling practices. She has been there for 7 years before Sweet Caroline's came. She has 3 concerns of problems about the business within the last year or so. One is the misuse of the parking lot. Since Sweet Caroline's has come in, they do see lots of alcohol

containers, beer cans, and used condoms. She has seen people come behind there and urinate in the parking area behind the building. She has a real concern about the therapists. A lot of the therapists are women and they do work late. She is concerned about them coming into the parking lot and coming into contact with a patron who is intoxicated urinating on the side of the building or something. She has a real concern with their safety. She has spoken with the owner a few days ago and he has offered to help clean up the parking lot and she is very grateful for that but she still has concerns for safety. Another issue is the parking lot where the bands park. The bands park right on the street and when they are trying to come out of Indian Alley to get on Cork Street in the evening, especially on evenings there is a band, it is difficult to see around there. It has been very terrifying, late at night after a long week at work, trying to see around this big, band equipment. She has had a couple of times when the band equipment blocked Indian Alley. She went to talk to the manager and he directed her to drive over the gravel into the other parking lot which did not make her happy. She is concerned that it is a dangerous situation on those nights. Because of problems with the noise, safety concerns, and difficulty getting out onto Indian Alley, she moved her late night from Friday to Thursday night in Winchester. If we are opening up other days and she understands bands will be playing this Thursday, it will really interrupt her business. She has tried to adjust to accommodate his business and now there will be more nights there are going to be bands. Her last concern is the disruption of the music. She is concerned because she runs a counseling practice but she also rents spaces to tenants and has two tenants who are thinking about moving out of the building because of this issue. She wants to work with the owner and hopes something can be worked out but she really has a concern about her business and that of her tenants.

Councilor Coyne asked how late her session go. She stated sometimes they go up to 9 o'clock but here are times she is there until 10 o'clock writing case notes and wrapping things up.

Ramon Selove stated he is the co-owner of Winchester Professional Counseling and of the business at 214 South Braddock. When these therapists have to change the times of their appointments to cut back, it costs a lot of money. When a renter decides to leave because the area is not conducive to their business that affects not only money making potential but the value of the office building property so it is a serious issue to us. They have tried to work with the owner and did not show up at the Planning Commission meeting because they had hoped to make arrangements with the owner and negotiate to find an agreement acceptable to all of us. They continue to be hopeful they can do that. There was a meeting scheduled today in hopes to do that before tonight but the owner did not show up. He would ask that if not declining the extension of the Conditional Use Permit, Council would at least not approve it until some successful negotiation could be made to accommodate both businesses.

Terry Hudson of 29 West Cork Street and owner of Sweet Caroline's stated he understands the Conditional Use Permit becomes into affect from 10 o'clock on. You do not need a license to have music before 10 o'clock. The Bret Michaels incident was just a fluke. We have been there for 5 years and have never had a problem. He

wasn't there at the time and the sound check was not scheduled. The windows were all open and the doors were open. When he did find out, he remedied the situation and paid for the sessions that were interrupted. He thought the meeting scheduled for today was for yesterday and they were not able to get together afterwards. He was the one who suggested at the previous meeting that his staff be responsible for cleaning up around there. When he sent out the letters to the neighbors he included his cell phone number so if there are any problems, he could try to remedy the situation. At the last meeting, a gentleman said he heard music yesterday when they are not open. There is a garage band that practices in Indian Alley that is there quite often. We have had maybe 3 sound checks before 7 o'clock in the past 5 years. Bands do not usually get there before 7 especially on Fridays because they are traveling from jobs or other gigs. There is music coming from somewhere else during the day time. When he requested this, it was more for karaoke nights or to have a D.J. an extra night. It will be 9 o'clock or after. Usually, if it is a band like this Thursday, it is an all-ages show with a band that appeals to the younger crowd. We are going to start that show at 7:30 so the sound check will be about 6:30. He would let her know and if it is a problem we can shut it down and wait until she is finished or he will again pay for the session. He let them know that he will be happy to pay for the sessions that are interrupted. These shows will be once every 2 to 3 months when we have these big bands and it is just for the fact we can get somebody like a Bret Michaels or Little Feet when they come to town because the routing is much cheaper. It is the only way we can afford these bands. It is the only time we would use this permit other than a karaoke night or for a D.J. It would certainly not be every night or even every month where there would be a band on a Tuesday or Wednesday.

President Gaynor stated he did get a call last night from an adjacent business owner and asked if the doors are normally open. Mr. Hudson stated the doors are not usually open but they have been lately due to a broken air conditioner that was just replaced. The music is not broadcast outside.

President Gaynor stated the other complaint he received was from the noise caused by emptying bottles at 1:30 or 2 a.m. He added he knows Mr. Hudson is trying to recycle and he commended him for that but it was a unique complaint. Mr. Hudson stated that would be the bottles from Cork Street Tavern. His nephew comes to recycle bottles on Mondays between 2 and 4 p.m. The bottles are never drug out at night. He also wanted to emphasize they will do everything they can to clean up around there but there are 5 or 6 other establishments around that area. He can guarantee that all of the bottles are not coming from only his business. He will be happy to have his people take care of it but they can not all be coming from Sweet Caroline's.

Mike Allen stated he is part owner of two properties immediately adjacent to Sweet Caroline's, 19 West Cork Street and 210 South Braddock Street. He wanted to echo the concerns of his neighbor. He has several tenants in both of the buildings and he has heard some comments about some of the noise late in the evenings. He is concerned this is going to be a problem that increases exponentially as there is more activity in the night club. He is not opposed to the activity he has in there but he asked that what ever Council decides to do they consider how compatible it is with

some of the neighboring activities. We have professional businesses that are operating and sometimes people are in the offices until 6 or 7 p.m. or even later at night sometimes. His major concerns are with some of the trash and other sort of things that are happening around the buildings. He has had a big increase in the amount of graffiti on the buildings that he has had to deal recently. He is not sure it can be directly attributed to the club but the club is attracting a lot of people that may be involved in those types of activities. Just recently, he had to have pest control come and treat the back of the property on Braddock Street because of an insect infestation problem that appears to be originating from the area where they store all of the empty bottles and trash in the back of the building. The pest controller stated there were a lot of practices he noted back there that were not professionally handled. There were trash cans without lids on them. There were trash cans with standing water in them that are just breeding grounds for all kinds of insects. Financially, we are having to bear some of the burden of the clean up involved with their activities. He asked once again that Council considers some of the activities of the neighboring properties when considering this ordinance change.

*With no further citizens to speak concerning this issue, the President declared the public hearing closed at 8:03 p.m.*

- Public Hearing: Request of Oakcrest Properties, LLC for a conditional use permit for multifamily dwellings within an existing structure at 163-165 North Loudoun Street zoned Central Business, B-1 District with Historic Winchester, HW overlay. CU-08-08

*No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 8:04 p.m.*

- Public Hearing: Request of SPCA of Winchester, Frederick and Clarke Counties for expansion of an animal shelter at 115 Featherbed Lane zoned Commercial Industrial, CM-1 District. CU-08-09

William Wood of 146 Morning Glory Drive stated he is the executive director of the SPCA and was present to answer any questions Council may have.

*With no further citizens to speak concerning this issue, President declared the public hearing closed at 8:05 p.m.*

## **FINANCE AND ADMINISTRATION**

Chairman Buettner presented the following:

- Second Reading, by title, for adoption: AN ORDINANCE TO AMEND SECTION 2.9 OF THE WINCHESTER CITY CODE TO FACILITATE THE INCORPORATION OF AN ANNUAL BUDGET

*The motion was adopted by the affirmative roll-call vote of a majority of all members of the Common Council, the ayes and nays being recorded as shown below:*

<b><u>MEMBER</u></b>	<b><u>VOTE</u></b>
Vice-Mayor Buettner	Aye
Councilor Butler	Aye
Councilor Clark	Aye
Councilor Coyne	Aye
Vice-President Griffin	Aye
Councilor Helm	Aye
Councilor Major	Aye
Councilor Masters	Aye
Mayor Minor	Aye
Councilor Nelson	Absent
President Gaynor	Aye

- Motion to approve the Fiscal Year 2008 Budget Supplemental Appropriations and Transfers.

*The motion was seconded by Vice-President Griffin then unanimously approved by voice-vote.*

- Motion to approve the Fiscal Year 2009 Budget Supplemental Appropriations.

*The motion was seconded by Councilor Major then unanimously approved by voice-vote.*

- Motion to approve the 2008-2012 Consolidated Plan and 2008 Annual Action Plan for use of CDBG, HOME and local housing funds.

*The motion was seconded by Vice-President Griffin then unanimously approved by voice-vote.*

- Motion to adopt a resolution setting the Personal Property Relief tax rate.

*The motion was seconded by Mayor Minor then unanimously approved by voice-vote.*

- Motion to approve fee increases for the Parks and Recreation Department.

*The motion was seconded by Vice-President Griffin then unanimously approved by voice-vote.*

**PLANNING AND DEVELOPMENT**

Chairman Griffin presented the following:

- Second Reading, by title, for adoption: AN ORDINANCE TO CONVEY TWO PARCELS OF REAL ESTATE COMPRISING APPROXIMATELY 0.6660 ACRES AND 0.1412 ACRES TO THE WINCHESTER PARKING AUTHORITY

*The motion was adopted by the affirmative roll-call vote of a majority of all members of the Common Council, the ayes and nays being recorded as shown below:*

<u>MEMBER</u>	<u>VOTE</u>
Vice-Mayor Buettner	Aye
Councilor Butler	Aye
Councilor Clark	Aye
Councilor Coyne	Aye
Vice-President Griffin	Aye
Councilor Helm	Aye
Councilor Major	Aye
Councilor Masters	Aye
Mayor Minor	Aye
Councilor Nelson	Absent
President Gaynor	Aye

- Second Reading, by title, for adoption: AN ORDINANCE TO CONDITIONALLY REZONE 633 CEDAR CREEK GRADE CURRENTLY ZONED HIGHWAY COMMERCIAL, B-2 DISTRICT WITH CORRIDOR ENHANCEMENT, CE OVERLAY TO INCLUDE PLANNED UNIT DEVELOPMENT, PUD OVERLAY AND, TO CONDITIONALLY REZONE A PORTION OF 629 CEDAR CREEK GRADE FROM HIGHWAY COMMERCIAL, B-2 DISTRICT WITH CORRIDOR ENHANCEMENT, CE OVERLAY TO HIGH DENSITY RESIDENTIAL, HR DISTRICT WITH PLANNED UNIT DEVELOPMENT, PUD OVERLAY AND CORRIDOR ENHANCEMENT, CE OVERLAY AND, TO REZONE A SEPARATE PORTION OF 629 CEDAR CREEK GRADE FROM HIGHWAY COMMERCIAL, B-2 DISTRICT WITH CORRIDOR ENHANCEMENT, CE OVERLAY TO INCLUDE PLANNED UNIT DEVELOPMENT, PUD OVERLAY. RZ-08-05

*The motion was adopted by the affirmative roll-call vote of a majority of all members of the Common Council, the ayes and nays being recorded as shown below:*

<u>MEMBER</u>	<u>VOTE</u>
Vice-Mayor Buettner	Aye
Councilor Butler	Aye
Councilor Clark	Aye
Councilor Coyne	Aye
Vice-President Griffin	Aye
Councilor Helm	Aye
Councilor Major	Aye

Councilor Masters	Aye
Mayor Minor	Aye
Councilor Nelson	Absent
President Gaynor	Aye

- Second Reading, by title, for adoption: AN ORDINANCE AMENDING ARTICLES 1-2 AND 18-9 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO THE DEFINITION OF FENCE AND PERTAINING TO PERMIT REQUIREMENTS FOR FENCES AND ACCESSORY STRUCTURES TA-08-01

Councilor Masters stated he had expressed concern at the committee meeting over the definition and the responsibility of property owners. The provision as it states right now is asking that a fence be allowed to provide adequate light, air, and convenience of access and not light, air, danger and congestion of travel and transportation. His concern was that even though most people classify a tree as landscape which this ordinance tries to circle but he does not consider that the case. He thinks you can have a live fence as well as a dead fence. He thinks that the fact that we are setting limits for someone to put up a fence but we can allow someone who has landscaping or trees that are every bit as thick, taller and basically impervious does not address the issue. It not only does not address the issue but in some areas we allow that to happen where there is a danger to travel because there is an obstruction. He feels that had not been fully vetted. He does not feel comfortable voting for this. He would love to see it tabled and moved back into committee and discussed some more. He stated at some point in a person's life they have to take responsibility for their own actions instead of having the Planning and Zoning committee running after everyone because someone put their fence on someone else's property. They need to take responsibility and not ask for help. If someone puts a fence on his property, he thinks he would be able to take care of it himself. He feels the Zoning Department is adequately staffed and should be able to do the job with taking care of things that they have been doing and not to issue permits to everyone who wants to put a fence up.

Councilor Coyne stated he appreciates the fact that staff brought this forward but he is not going to vote in favor of it. If he understands correctly, the reason it came to Council was because of several violations of the ordinance brought to the BZA for fences that were put up incorrectly. He understands that creates a hardship but he doesn't think that justifies putting a hardship on the other residents of the city who want to construct a fence in their backyard that would otherwise be compliant. Even though there is no fee for the permit, it definitely puts a burden on the homeowner to have to go and get the permit. It could add additional cost to the fence if a company has to do it so he is not going to vote for it.

Councilor Major stated he is not in favor of this either. He feels the intention of this was very good to rectify a problem of citizens putting up fences that don't meet our existing ordinances. We have existing ordinances on the books regarding fences. To him, permits are for building, plumbing and more safety issues. That is why we have a permit process. We want to make sure people are doing things right. He doesn't think a fence necessarily falls into that same category. He agrees with Councilor

Coyne that we are putting an undue burden on people who are going to do it right anyway. If someone calls Zoning or asks for the ordinances that are out there regarding fences, there should be no problem. If they fail to do that, then there may be a problem. But anyone who is going to fail to do that isn't going to get a permit anyway. He thinks it is more government that doesn't need to be there so he is going to vote no on this.

President Gaynor asked Zoning Administrator Vince Diem if he would be able to construct a barbed-wire fence. Mr. Diem stated there is no prohibition against a barbed-wire fence. There is nothing in the ordinance that differentiates against materials used.

Vice-President Griffin asked if there is anything else that could be done short of a permit. Mr. Diem suggested doing something similar to the current Certificate of Occupancy for a home occupation or for new businesses which is a review that requires about 5-10 minutes of staff's time but would save several months of enforcement effort.

*The motion was defeated by a roll-call vote of a majority of all members of the Common Council, the ayes and nays being recorded as shown below:*

<u>MEMBER</u>	<u>VOTE</u>
Vice-Mayor Buettner	Nay
Councilor Butler	Aye
Councilor Clark	Aye
Councilor Coyne	Nay
Vice-President Griffin	Aye
Councilor Helm	Aye
Councilor Major	Nay
Councilor Masters	Nay
Mayor Minor	Nay
Councilor Nelson	Absent
President Gaynor	Aye

- Second Reading, by title, for adoption: AN ORDINANCE TO ADOPT ARTICLE 11.1 OF THE WINCHESTER CITY CODE PERTAINING TO GRAFFITI ABATEMENT

Councilor Masters stated he supports graffiti abatement but he thinks Council and the city need to be aware of what this means if we pass it. This ordinance states graffiti on public or private property. The end of a tradition is about to happen tonight because the kids who paint all over this town with their graduation paints is technically defacing the streets. What would have to be done tomorrow is to start painting over everyone's signs. If this ordinance didn't state that, it would not be the case. But, it says it is public property and we have to remove it in 5 days. It makes no distinction about "wink, wink, we will overlook this". It says we are going to ask the private property owner to remove it in 5 days and he would expect the City of

Winchester would do the same. He is going to be support it but he wished there was someone in the private sector that would come forward with a large parking lot and allow youngsters to still practice a tradition that they have for a number of years. With the way this is stated, we will be bound to take care of that.

President Gaynor stated we also have the Apple Blossom Festival painting apple blossoms in the street and suggested an amendment for the exception of roadways.

Councilor Coyne stated the difference is the blossoms are put on with the city’s consent. The city puts them on there. The 2008’s and other school years are put on necessarily with the City’s consent and that’s the definition of graffiti. He thinks the blooms are okay but other forms of graffiti might not be. It’s not done with the consent of the city.

President Gaynor stated he understands what Councilor Masters is saying and there is a tradition there too. Hopefully, the people enforcing this will have enough common sense to respect some things.

*The motion was adopted by the affirmative roll-call vote of a majority of all members of the Common Council, the ayes and nays being recorded as shown below:*

<u>MEMBER</u>	<u>VOTE</u>
Vice-Mayor Buettner	Aye
Councilor Butler	Aye
Councilor Clark	Aye
Councilor Coyne	Aye
Vice-President Griffin	Aye
Councilor Helm	Aye
Councilor Major	Aye
Councilor Masters	Aye
Mayor Minor	Aye
Councilor Nelson	Absent
President Gaynor	Aye

- Second Reading, by title, for adoption: AN ORDINANCE TO AMEND AND RE-ADOPT CHAPTER 6, ARTICLE 1, SECTION 6-9 OF THE WINCHESTER CITY CODE REGARDING VACANT BUILDING REGISTRY; AND, TO INCORPORATE A DEFINITION OF VACANT BUILDING

*The motion was adopted by the affirmative roll-call vote of a majority of all members of the Common Council, the ayes and nays being recorded as shown below:*

<u>MEMBER</u>	<u>VOTE</u>
Vice-Mayor Buettner	Aye
Councilor Butler	Aye
Councilor Clark	Aye
Councilor Coyne	Aye
Vice-President Griffin	Aye

Councilor Helm	Aye
Councilor Major	Aye
Councilor Masters	Aye
Mayor Minor	Aye
Councilor Nelson	Absent
President Gaynor	Aye

- Motion to approve a request of Sweet Caroline's LLC for a modification of conditions for an existing conditional use permit for a nightclub at 29 W. Cork Street zoned Central Business, B-1 District with Historic Winchester, HW overlay. CU-08-07

*The motion was seconded by Councilor Major.*

Councilor Clark asked for an explanation of the conditional use permit's modifications being requested. Planning Director Tim Youmans stated there are 10 recommendations from the Planning Commission. The tenth recommendation is a new condition and states the applicant will be responsible for picking up any trash outside the facility. The applicant has no concerns about it. The two recommendations that have changed are numbers 4 and 5. Number 4 states the night club use will be limited to no more than 20 nights per month. It was previously every Friday and Saturday night and two Thursdays and Sundays a month. Condition number 5 states the night club use will end no later than 1:30 a.m. on Saturday and Sunday mornings and no later than 1 a.m. on the other days of the week.

Councilor Clark asked if there are no stipulations to the start time. Mr. Youmans stated the night club use as defined in the Zoning Ordinance to begin at 10 o'clock. Council could consider a condition for things occurring prior 10 o'clock that are directly associated with the night club use. Life entertainment that occurs before 10 o'clock is not defined as night club use and therefore does not require a conditional use permit.

Councilor Masters ask who monitors or makes sure the applicant is accountable to the 20 nights. Mr. Youmans stated it would be on a complaint bases. It would be up to a citizen or business owner to notify the Zoning Administrator Vince Diem.

Councilor Masters stated we have some concerns tonight and he doesn't want to see anyone's business hurt. We are asking for certain conformity yet he doesn't see how we are able to monitor it and feels this is an area that needs to be looked at. Mr. Youmans stated most of the venues are advertised and if we see one is held that does not comply, we would contact the applicant.

President Gaynor asked how long the conditional use permit is good for. Mr. Youmans stated an original permit is for one year and then renewed every three years after. Since this one is not an original, it would be every three years for renewal.

Councilor Coyne asked if the original conditional use permit will still be reviewed for renewal in September 2009. Mr. Youmans stated this will supersede that and it will be reviewed three years from today.

President Gaynor moved to amend the motion to include the conditional use permit be reviewed in September of 2009. *The motion was seconded by Mayor Minor then approved with a 10-1 vote. Councilor Helm voted in the negative.*

Councilor Major moved to table the issue for 30 days to let the parties try to work out an agreement. *The motion was seconded by Councilor Clark then defeated by a 5-5 vote. President Gaynor, Vice-President Griffin, Mayor Minor, Vice-Mayor Buettner and Councilor Coyne voted in the negative.*

*The motion to approve the request as amended was approved unanimously by voice-vote.*

- Motion to approve a request of Oakcrest Properties, LLC for a conditional use permit for multifamily dwellings within an existing structure at 163-165 North Loudoun Street zoned Central Business, B-1 District with Historic Winchester, HW overlay. CU-08-08

*The motion was seconded by Councilor Major.*

Vice-Mayor Buettner moved to amend the motion so the Conditional Use Permit does not convey with the sale of the property. *The motion was seconded by Councilor Butler then unanimously approved by voice-vote.*

*The motion to approve the request as amended was then unanimously approved by voice-vote.*

- Motion to approve a request of SPCA of Winchester, Frederick and Clarke Counties for expansion of an animal shelter at 115 Featherbed Lane zoned Commercial Industrial, CM-1 District. CU-08-09

*The motion was seconded by Mayor Minor then unanimously approved by voice-vote.*

- Motion to approve exceptions per Section 8-1 of the Land Subdivision Ordinance for deviations from standards pertaining to subdivision of land and dedication of street right of way at 2479 Papermill Road.

*The motion was seconded by Mayor Minor then unanimously approved by voice-vote.*

- Announce the term expirations of James R. Wilkins, III and John Scully as members of the Industrial Development Authority expiring August 31, 2008, and direct the Clerk of Council to advertise the vacancy. Mr. Wilkins and Mr. Scully are not eligible for re-appointment.

**PUBLIC SERVICES**

Chairman Helm presented the following:

- Information Regarding Site Work/Excavation at Water Treatment Plant

Councilor Helm stated the money for this project will be pulled out of reserves. Council has passed a resolution to reimburse the fund from bond proceeds.

- Motion for approval of Special Order for Consent by Department of Environmental Quality for Water Treatment Plant.

Councilor Helm reported an unfortunate incident of low environmental impact was out of compliance with DEQ recommendations. A release from the city’s sedimentation pond on the pre-treatment side of the extraction process occurred causing the water that came out of the river to go back in to the river too rapidly. DEQ has also provided a list of concerns they want us to consider most of which are in compliance but a couple are still pending.

*The motion was seconded by Councilor Major then unanimously approved by voice-vote.*

- Announce the term expirations of Richard Helm and Timothy Coyne as members of the Frederick-Winchester Service Authority expiring August 31, 2008, and direct the Clerk of Council to advertise the vacancy. Mr. Helm and Mr. Coyne are eligible for re-appointment.

**COMMUNITY SAFETY**

Chairman Butler presented the following report:

- Second Reading, by title, for adoption: ORDINANCE TO AMEND AND RE-ADOPT THE SCHEDULE OF FEES FOR SERVICE INTO SECTION 7.1-1 OF THE WINCHESTER CITY CODE

*The motion was adopted by the affirmative roll-call vote of a majority of all members of the Common Council, the ayes and nays being recorded as shown below:*

<u>MEMBER</u>	<u>VOTE</u>
Vice-Mayor Buettner	Aye
Councilor Butler	Aye
Councilor Clark	Aye
Councilor Coyne	Aye
Vice-President Griffin	Aye

Councilor Helm	Aye
Councilor Major	Aye
Councilor Masters	Aye
Mayor Minor	Aye
Councilor Nelson	Absent
President Gaynor	Aye

- First Reading: AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-27 OF THE WINCHESTER CITY CODE PERTAINING TO THE SPEED LIMIT ON CEDAR CREEK GRADE
- Motion to recommend Ron Stickley to the Virginia Emergency Response Council (VERC) for appointment to the Winchester/Frederick Local Emergency Planning Committee (LEPC).

*The motion was seconded by Mayor Minor then unanimously approved by voice-vote.*

- Motion to reappoint Captain Eddie McClellan as a member of the Lord Fairfax Emergency Medical Services Council for a three year term expiring June 30, 2011.

*The motion was seconded by Vice-President Griffin and Mayor Minor then unanimously approved by voice-vote.*

- Motion to appoint Perry S. McAlister as a member of the Lord Fairfax Emergency Medical Services Council for an unexpired term ending June 30, 2009.

*The motion was seconded by Vice-President Griffin then unanimously approved by voice-vote.*

## **HEALTH, EDUCATION AND WELFARE**

Chairman Coyne presented the following:

- Announce the resignation of Tom Hoy as a member of the Northern Shenandoah Valley Disability Services Board and direct the Clerk of Council to advertise the vacancy.

## **NEW BUSINESS**

Mayor Minor stated how much fun it was to see the children and adults participating at the All-American Soap Box Derby on Saturday. She expressed special thanks to Derby Director Frank Sublett and his committee for all of their hard work. Mayor Minor congratulated the Stock Class and Super Stock Class winners Jacob Genda of Berryville and Chris Patton of Frederick County and wished them luck at the national All-American Soap Box Derby championships in Akron, Ohio on July 26<sup>th</sup>.

Mayor Minor also expressed her best wishes to those participating in Access Independence’s “Roll Your Own” this weekend. She added that our own City Manager Brannon Godfrey is participating and wished him luck.

Mayor Minor reminded everyone to Dump the Pump on June 19<sup>th</sup> to help make a difference in Winchester.

Vice-President Griffin announced the upcoming meetings for the Comprehensive Plan and asked all the citizens to plan on attending to participate in the process. All of the meetings are to begin at 6:30 p.m.

June 24 <sup>th</sup>	Virginia Ave-Charlotte DeHart Elementary School
June 26 <sup>th</sup>	Quarles Elementary School
July 14 <sup>th</sup>	John Kerr Elementary School
July 22 <sup>nd</sup>	Frederick Douglass Elementary School

**ADJOURNMENT** – With no further business to discuss, Vice-President Griffin moved that the meeting adjourn at 8:56 p.m. *The motion was seconded by Mayor Minor then unanimously approved by a voice-vote.*

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Kari J. Van Diest  
Deputy Clerk of the Common Council