



**WINCHESTER COMMON COUNCIL
IN REGULAR MEETING
NOVEMBER 24, 2015**

A Regular Meeting of the Winchester City Council was held on Tuesday, November 24, 2015 in the Council Chambers, Rouss City Hall. Council President John A. Willingham called the meeting to order at 6:00 PM.

CALL TO ORDER AND ROLL CALL

Present: Councilors Evan Clark, John Hill, Milt McInturff, Kevin McKannan and Corey Sullivan; Mayor Elizabeth Minor; Vice Mayor Les Veach; Vice President William Wiley; and President John Willingham (9)

Absent: None (0)

MOMENT OF SILENCE

President Willingham led the councilors and citizens in a Moment of Silence.

PLEDGE OF ALLEGIANCE

Mayor Minor led the councilors and citizens in the Pledge of Allegiance.

APPROVAL OF MINUTES

2. Motion to approve the November 10, 2015, Regular Meeting and the November 10, 2015, Work Session

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Milt McInturff, Council Member
SECONDER:	Bill Wiley, Council Vice President
AYES:	Clark, Hill, McInturff, McKannan, Minor, Sullivan, Veach, Wiley, Willingham

REPORT OF THE MAYOR

Mayor Minor announced that the City Manager, Eden Freeman, has been recommended by the ICMA Credentialing Advisory Board to receive the ICMA Credentialed Manager designation at their next meeting in January. She stated ICMA Credentialed Managers are professional local government managers qualified by a combination of education and experience, adherence to high standards of integrity and a commitment to lifelong learning and professional development. Mayor Minor stated she was not surprised that Ms. Freeman is being recommended for this designation as she has done a fabulous job since

joining the City one year ago. She announced Saturday, November 28th, is Small Business Saturday and asked that everyone support the local businesses when shopping this weekend. On behalf of City Council, Mayor Minor wished everyone a Happy Thanksgiving.

REPORT OF THE CITY MANAGER

Eden Freeman announced the Winchester Fire & Rescue Department and the Winchester Department of Social Services have organized the inaugural *Stuff the Truck* program to benefit the Winchester Public Schools and several other charitable organizations including CCAP, Salvation Army and the Highland Food Pantry. She stated information on this occasion can be found on the City's website. Crews are going to be collecting winter gear such as coats, gloves, hats and socks for children that can be distributed through Winchester Public Schools as needed. There are a number of collection locations and the community is encouraged to support this program as it benefits the local Winchester residents. As the Mayor mentioned, Saturday is Small Business Saturday. For every \$100 spent in a local small business, \$68 stays in the community, so spending on Saturday and all the other days certainly goes a long way to reinvest in the community. Ms. Freeman announced the new Old Town Shopping and Dining Guide is available and includes information on all of the retailers and businesses downtown. She stated the Winchester Parks and Recreation Guide is also available. The guide should be arriving in the mail soon with a number of opportunities available. Monday, November 30th, will be the annual lighting of the Winchester tree and the Christmas parade throughout downtown. It will start at 7:00 p.m. and parking will be available at all of the parking garages.

REPORT OF THE CITY ATTORNEY

Anthony Williams spoke in regards to loitering and panhandling. He stated criminal law is broken down into two broad categories. One is Mala in se or bad because they are such as murder or robbery. Whatever society you go to those acts are considered wrong and are generally prohibited. The other is Mala prohibita acts that are prohibited because they are bad such as violations of traffic ordinances. Two acts that fall into that category or a subcategory are loitering and panhandling. One thing that is unique to that subcategory is it may implicate certain civil liberties that have become an issue in more recent times. He stated he had expressed concerns about this in 2013 when Council fielded a complaint from a citizen regarding loitering and panhandling on the downtown mall. More recently, there was a public comment along those same lines. His concern in 2013 was that enforcement of these issues may be of a concern as it could be perceived as punishing the status of being poor or homeless. His recommendation has always been to use this ordinance very conservatively as a last resort where there is no other alternative. From a philosophical perspective, he has expressed to never depend on what other localities do for the premise of it being right or legal. He stated this was pointed out recently in the case of *Clatterbuck v. City of Charlottesville*. In that case, which was decided by the U.S. District Court for the

Western District of Virginia on February 19, 2015, the American Civil Liberties Union (ACLU) brought a claim against the City of Charlottesville for enforcement of their panhandling ordinance which restricted people from begging in certain areas of their downtown pedestrian mall. The court essentially ordered that ordinance was unconstitutional and the City was ordered to stop enforcing that ordinance. The ruling came down on two arguments made by the ACLU. One being that the ordinance punished people for their status of being homeless and the second being that it infringed upon their right for free speech. Within four days of that decision, the U.S. Court of Appeals for the Fourth Circuit of Virginia vacated and remanded a decision by the U.S. District Court in Henrico County which would grant summary judgment. Part of the rationale in the Reynolds case, essentially striking down Henrico's panhandling ordinance, was that it relied on the decision made in the Clatterbuck case involving Charlottesville. At that point, he had some discussions with Council and recommended suspension of enforcement of the City's ordinances until these issues could be looked at and further resolved. The police chief obliged and issued an executive order to his officers and suspended enforcement of those two ordinances. In the meantime, Mr. Williams continued to monitor and stay in contact with the local government attorneys in Henrico and Charlottesville to see the status of what has transpired in those two cases and neither was successfully reversed. In fact, his research further indicated the Department of Justice and the ACLU have been examining the enforcement of civil rights claims against localities across the country from panhandling and loitering violations. In one case, Otterson v. Springfield, the Seventh Circuit U.S. Court of Appeals decided on August 7, 2015, citing Reed v. Gilbert for the premise that the panhandling ordinance of Springfield, Illinois is content based and therefore subject to strict scrutiny basically rendering it unconstitutional. He has served on the Local Government Attorneys' (LGA) Ad Hoc Reed Committee to address the reaction of local governments across the state to rule on the content of sign ordinances so he was pretty familiar with that case and the rationale used to reach the decision they did. In another case, Bell v. Boise, which was decided August 6, 2015, the U.S. District Court in Idaho struck down a loitering ordinance that prohibited sleeping in public places deeming it was unconstitutional as it punished the status of being homeless. He stated with those things being said, he has an even heightened concern regarding loitering and panhandling ordinances within the city that fortunately have been suspended ever since the decision on Clatterbuck. As a former police officer, he spoke with the chief, the manager and many members of Council saying that often times when an officer responds to a call for service involving loitering or panhandling, there are other violations that an officer may be able to cite such as obstructing free passage or trespassing. He encouraged the officers to exhaust all of those means when going to a scene of an incident. For the person that came and spoke in front of Council, he was able to provide an alternative violation of law that could have been enforced for every item they complained about. He received a contact by the Chief of Police recently regarding what should be done with the current suspension of the loitering and panhandling ordinances. Based on the current status and his research, his reaction to the chief was the City should consider the rescission of those two

ordinances in their entirety until such time that the LGA or Virginia Municipal League (VML) come up with a model ordinance like the ad hoc committee did on the Reed decision. Currently, he is not aware of any such model ordinance that has been adopted or recommended. Council asked that he give a brief summary of the background and the legal reasons as to why he would make that suggestion before bringing a rescission forward.

1. PUBLIC HEARINGS

- 1.1. Public Hearing: To receive the nomination and citizen input on the appointment of Ralph Grim as a "Ward 3" member of the City School Board to an unexpired four year term commencing December 8, 2015, and ending June 30, 2017

President Willingham asked if there was anyone wishing to address Council on this issue. Seeing none, he closed the public hearing at 6:12 p.m.

2. PUBLIC COMMENTS

Will Radosevich of 208 and 210 North Kent Street spoke in regards to the parking issue on Kent Street. He stated he hoped Council had an opportunity to look over the petition to the Chief of Police signed by 36 residents of the North Kent Street area describing the severe parking issues they have had since the opening of the Chop Stick Café. He shared a few of the stories he heard when talking to the residents over the last month. One, a third generation resident of North Kent Street, stated he times his trips to the grocery store with the slow time or closing of Chop Stick. If he goes during Chop Stick's peak time, the parking spot is taken within a few minutes so it has adversely affected this resident's ability to do basic things such as going to the grocery store. The second was a single mother with a special needs student who has a bus come pick up her child on a daily basis. There was an exchange between a patron of one of the restaurants and the bus driver who pulled into a spot where obscene gestures were exchanged causing a very unsettling incident for the mother. Mr. Radosevich stated he has witnessed one of his tenants at 208 North Kent Street watch out her window for an available spot so she can move her car that is parked one to two blocks away just to unload her belongings from the car. He stated those are just a couple of the stories he heard on how the parking situation is untenable for the residents in the 200 and 300 block of North Kent Street. When the Chop Stick Café was built, it was built over their limited parking. It sounds like the owner really did not consider the parking and assumed there would be free and available parking along with the residents in the historical area. Mr. Radosevich stated he thinks the solution resides in the George Washington Autopark that is about 280 feet from the doorstep of the Chop Stick Café and is intended for short term parking.

President Willingham asked if anyone else wished to address Council. Seeing none, he closed the public comments at 6:16 p.m.

3. CONSENT AGENDA

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Bill Wiley, Council Vice President
SECONDER:	Elizabeth Minor, Mayor
AYES:	Clark, Hill, McInturff, McKannan, Minor, Sullivan, Veach, Wiley, Willingham

3.1.R-2015-40: A Resolution Deleting Sections 3.6 and 6.7 and Amending Section 6.4 and Appendix D of the City of Winchester's Comprehensive Employee Management System

3.2.R-2015-39: Resolution Approving New Positions Related to the Construction of the Waste-To-Energy Project

4. AGENDA

4.1. Announce the resignation of Martha Shickle as a member of the Planning Commission effective December 1, 2015, and direct the Clerk of Council to advertise the vacancy.

4.2. Announce the resignation of Dan Troup as a member of the Economic Development Authority effective December 31, 2015, and direct the Clerk of Council to advertise the vacancy.

4.3. Motion to direct the Clerk of Council to prepare Certificates of Appreciation for Martha Shickle of the Planning Commission; Shep Campbell of the Frederick-Winchester Service Authority; Dan Troup of the Economic Development Authority; Marilyn Finnemore and Terry Bohan of the Old Town Development Board; Minh Le and Lauren Hawley of the School Board; Matt Mintschenko, Brian Wigley and Kyle Homan of the Parks Board; and Nancy Rinker and Theresa Gaines of the Tourism Board.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Bill Wiley, Council Vice President
SECONDER:	Milt McInturff, Council Member
AYES:	Clark, Hill, McInturff, McKannan, Minor, Sullivan, Veach, Wiley, Willingham

5. EXECUTIVE SESSION

(1) MOTION TO CONVENE IN EXECUTIVE SESSION PURSUANT TO §2.2-3711(A)(7) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF RECEIVING LEGAL ADVICE AND STATUS UPDATE FROM THE CITY ATTORNEY AND LEGAL CONSULTATION REGARDING THE SUBJECT OF SPECIFIC LEGAL MATTERS REQUIRING THE PROVISION OF LEGAL ADVICE BY THE CITY ATTORNEY AND MATTERS OF ACTUAL OR PROBABLE LITIGATION Specifically including but not limited to current Winchester Circuit Court case Henschel et. al. v. City of Winchester AND

- (2) PURSUANT TO §2.2-3711(A)(1) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF DISCUSSION AND CONSIDERATION OF INFORMATION REGARDING THE SUBJECT OF THE EMPLOYMENT, ASSIGNMENT, APPOINTMENT, AND PERFORMANCE OF SPECIFIC PUBLIC OFFICERS APPOINTEES, AND EMPLOYEES OF THE CITY OF WINCHESTER INCLUDING THE APPOINTMENT OF OR PROSPECTIVE APPOINTMENT OF MEMBERS TO CERTAIN BOARDS AND COMMISSIONS, Specifically including but not limited to appointment of a member of the EDA, disciplinary matter involving a City employee based on performance concerns and employment of a public officer, AND
- (3) PURSUANT TO 2.2-3711(A)(29) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF DISCUSSION OF THE AWARD OF A PUBLIC CONTRACT INVOLVING THE EXPENDITURE OF PUBLIC FUNDS, INCLUDING INTERVIEWS OF BIDDERS OR OFFERORS, AND DISCUSSION OF THE TERMS OR SCOPE OF SUCH CONTRACT, WHERE DISCUSSION IN AN OPEN SESSION WOULD ADVERSELY AFFECT THE BARGAINING POSITION OR NEGOTIATING STRATEGY OF THE PUBLIC BODY. Specifically including but not limited to RFP #201423

5.1. Motion to convene into Executive Session

Vice President Wiley moved to convene into Executive Session at 6:19 p.m.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Bill Wiley, Council Vice President
SECONDER:	Les Veach, Vice Mayor
AYES:	Clark, Hill, McInturff, McKannan, Minor, Sullivan, Veach, Wiley, Willingham

5.2. Motion to reconvene in open session

Vice President Wiley moved to reconvene in open session at 7:04 p.m.

Upon returning, each member certified that only public business matters lawfully exempted from open meeting requirements of the Virginia Freedom of Information Act were discussed during the closed meeting, and that only those public business matters identified in the motion which convened the closed meeting were heard, discussed, or considered during the closed meeting.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Bill Wiley, Council Vice President
SECONDER:	Les Veach, Vice Mayor
AYES:	Clark, Hill, McInturff, McKannan, Minor, Sullivan, Veach, Wiley, Willingham

6. ADJOURNMENT

6.1. Motion to adjourn

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Corey Sullivan, Council Member
SECONDER:	Elizabeth Minor, Mayor
AYES:	Clark, Hill, McInturff, McKannan, Minor, Sullivan, Veach, Wiley, Willingham

The meeting was adjourned at 7:05 PM.

Kari J. Van Diest, CMC
Deputy Clerk of Council