

**MINUTES OF THE COMMON COUNCIL  
WORK SESSION  
January 13, 2015  
Council Chambers – Rouss City Hall**

**PRESENT:** Councilor Evan Clark, John Hill and Corey Sullivan; Vice-President Milt McInturff; City Councilor Kevin McKannan and William Wiley; Mayor Elizabeth Minor; Vice-Mayor Les Veach; President John Willingham (9)

**ABSENT:** None (0)

President Willingham called the meeting to order at 7:27 p.m.

**2.0 Public Comments:**

Abi Gomez, resident of 118 Fairway Drive and co-owner of Jack Knuckle Gourmet of Winchester, Winchester's first food truck, wanted to thank the City of Winchester, especially Aaron Grisdale for the idea of mobile food establishments. She stated she is very excited to know they have Winchester's support.

*President Willingham asked if there was anyone else wishing to address Council on this issue. Seeing none, he closed the public hearing at 7:28 p.m.*

**3.0 Items for Discussion:**

**3.1 Presentation:** Nonprofit Organization Activities Subject to Local Taxation

Vice-Mayor Veach tabled this matter for 30 days to allow for additional resolution, ordinances changes and recommendations, along with the report. *The motion was seconded by Mayor Minor then approved 9/0.*

**3.2 R-2015-02:** Resolution – Authorize the Treasurer to issue refunds for erroneously paid personal property taxes to Federal Express Corporation in the amount of \$2,729.69 and Ryder Truck Rental Lease Trust in the amount of \$4,633.10

City Manager Eden Freeman stated this is a standard refund and it's been vetted by both the City Attorney's office as well as the Finance Department.

Vice-President McInturff moved to forward R-2015-02 to Council. *The motion was seconded by Mayor Minor then approved 9/0.*

**3.3 CU-14-640:** Conditional Use Permit – Request of Joshua Schakola on behalf of Verizon Wireless for a conditional use permit for modifications to

a telecommunication tower at 799 Fairmont Ave (Map Number 153-01- -2-A) zoned Limited Industrial (M-1).

Director of Zoning and Inspections Aaron Grisdale presented the request to add 3 additional antennas on the top array of the existing facility at 799 Fairmont Avenue.

Councilor Clark stated he thought that they agreed last year that if there was a greater than 10-15% change that we would approve these administratively. Mr. Grisdale stated this was filed several months ago prior to this amendment coming forward. This had started in the review process prior to the change being approved.

Councilor Clark asked if this represents greater than a 10-15% change in the profile of that antenna. Mr. Grisdale said it does not.

Vice-President McInturff moved to forward CU-14-640 to Council. *The motion was seconded by Councilor Hill then approved 9/0.*

**3.4 O-2015-01: AN ORDINANCE AMENDING AND REENACT ARTICLES 1, 18, 21 AND 23 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO MOBILE FOOD ESTABLISHMENT DEFINITIONS, PERMITS, AND FEES. TA-14-698 (Proposal will establish basic permitting and operational standards for food trucks on private property.)**

Mr. Grisdale presented the proposal to allow mobile food establishments or food trucks to set up on one to ten private properties for a limited duration of time each calendar year. The ordinance would establish basic provisions pertaining to hours of operation, noise ordinance and city code compliance, the scope of vending, waste and trash control requirements, signage allowances, parking and traffic circulation licenses, and permits and fees. This ordinance will allow for a potential food truck operator to set up only in the zoning districts that allow a restaurant by right and not in residential or industrial districts. Within the private property, the operator will not be permitted to block driveways or aisles, ingress/egress lanes, fire lanes, or use parking spaces that are counted towards the minimum parking requirements for the use on that property. In addition, there would be a buffer around the unit to make sure there are no fire issues or other concerns. The proprietor would be required to provide trash receptacles and clean up after themselves. The hours of operation would be allowed between 7 a.m. and 10 p.m. The permit would be handled administratively by the Zoning Administrator. An applicant could come into the office, complete the application form, provide a site sketch to show exactly where they are going to set up, provide the property owner's authorization, meet the minimum requirements, and be able to move forward. This will be a yearly permit that expires on December 31 and can be renewed annually.

Vice-Mayor Veach asked if somebody applied for a permit and paid the fee then later needed to make a change to add more properties, would the fee

have to be paid again or can the permit be amended. Mr. Grisdale stated it would be a flat fee for the permit and they could add up to nine additional properties to the permit for that year.

Vice-Mayor Veach stated under the general requirements, Section 18-25-1(F) states the permit can be revoked if they don't comply with all the requirements of this article. He would like to consider adding 4 other laws, not just what's in this article, but in the other laws they might violate so that the city can revoke the permit.

Councilor Sullivan asked where ice cream trucks fall into all this. Mr. Grisdale said if an operator was looking to set up on a private piece of property that would fall under this type of permit. This would not cover operation on streets or anything else like that. It strictly deals with someone operating on private property.

Councilor Sullivan asked if ice cream trucks need to be encompassed. He said there is a clear kind of hole in what the city is trying to do. Someone can drive the truck around and sell stuff out of it but they just can't park. Mr. Grisdale stated he did not have an answer for that but that he would be glad to research it.

City Attorney Anthony Williams stated Councilor Sullivan is right on point. There is a provision of state code that makes it a misdemeanor to utilize public right of ways without authorization of the locality. If someone was stopping and using that area to conduct business then arguably they would be in violation of that provision. What localities generally do for ice cream trucks is they permit them and include them in an ordinance like this. He stated he was going to ask if there is sufficient language that makes a distinction for mobile vendors that operate during events like Apple Blossom. For example, if somebody pulls up a trailer that is arguably a mobile vehicle and parks it on Handley High School property, which is public property. He suggested the city may want to clarify that is not what this is talking about. He suggested the ordinance be refined prior to adoption.

Councilor Hill asked how many food truck establishments there are on record. Mr. Grisdale stated over the last 2-3 years, there may have been 2 or 3 who have gone through the permitting process but many have been turned away by the current requirements. Hopefully with this ordinance it will make it a lot easier for others to come in and set up. In the last six months, there have been 4 or 5 different vendors that have expressed an interest in the City revisiting this and hopefully in the future will come forward and start a business.

Vice-President McInturff stated he understands what Councilor Sullivan is saying and wonders if maybe what has already been done needs to be broadened to take into consideration the situation with the mobile ice cream trucks. In all fairness, the city is looking one direction for them and another

direction for an individual here. They need to be addressed at the same time. He said he doesn't want to belabor what these people are doing because he is in favor of it and would support it. At the same time, the playing field needs to be made as level as possible for everyone involved while trying to come up with the ideas.

Mr. Grisdale said he did have one quick point of clarification after the special events mentioned. There is a provision here that excludes the requirements for this permit process during licensed special events or something else like that. However, there is that area that needs to be balanced out in terms of if someone is on public right of way or property.

President Willingham asked for folks like Ms. Gomez who are clearly a professional and have a professional vehicle and without creating too much of a regulatory and additional issues, is there some level of professional vehicle that we should also consider. He stated we know what the obviously food trucks look like, but under this standard, someone could have a pickup truck and sell hotdogs out of the back. He asked if there was some way to tie it in to a professional food truck. Mr. Grisdale stated that is something he came across a little bit in some of his research of localities but didn't see too many places in Virginia that had adopted such regulations. In Knoxville, Tennessee, they had some inspection requirements in terms of making sure they were properly inspected and so forth through the state department of motor vehicles. To a certain degree, the operator would have to pass a health department inspection.

President Willingham stated this is a great idea but he doesn't want people to abuse it. He asked how it came to 10 properties. Mr. Grisdale said he looked at other localities in Virginia.

President Willingham expressed his concern with operating a mobile food establishment between 7 a.m. and 10 p.m. He stated he feels we are giving them a disadvantage if we are trying to keep a level playing field. He asked if 10 p.m. is an arbitrary cut off or if it is based off the research that was done. Mr. Grisdale stated it was based off some research where he found some have time restrictions and some do not. This was just a starting point.

Vice-President McInturff suggested letting them decide or let the market decide if those hours are right.

Councilor Clark said he would just let the market decide and leave it 24 hours.

City Manager Freeman asked if there was sense of time that Council would like to see.

Vice-President McInturff moved to forward O-2015-1 to Council with additional requests for recommendations on timing and more equitable

constructs and any other recommendations on the discussion tonight. *The motion was seconded by Councilor Clark then approved 9/0.*

### **3.5 Discussion: Skate Park**

Parks and Recreation Director Jennifer Jones presented the Winchester Parks and Recreation Advisory Board liaison report and updated Council on the Skate Pavilion in Jim Barnett Park. She stated based on the continued non-compliance of the helmet rule as well as vandalism, smoking, trespassing, threatening staff and a general disrespect for the park and the park patrons, the facility has been closed temporarily. She presented three options to Council for the future of the Skate Pavilion.

- Option 1 - Extreme Sports Area - Remove all the Skate Pavilion equipment/obstacles and store them in the Park Maintenance compound and modify the BMX ADA CIP to incorporate the Skate Park into the new design.
- Option 2 - Move equipment into the McCormac Amphitheatre area temporarily until a BMX ADA implemented (usage vs. storage).
- Options 3 - Close the Skate Pavilion permanently. She said if we go with Option 1 or 2, the city will need to have the funds to hire Skate Park monitors, which have been requested with the FY16 budget.

Ms. Freeman stated this is not an item for Council action tonight. Staff simply wanted to bring it to Council's attention because of the safety concerns. Ms. Jones did work with the Park Board and made a recommendation that the skate pavilion be closed temporarily until staff could bring these recommendations to Council and seek input.

Councilor Sullivan stated he doesn't believe closing it permanently is an option and asked about option 1 and 2. Ms. Jones stated the difference between option 1 and option 2 is storage verses usage. If the skate pavilion was moved into the McCormac Amphitheatre some repair work would need to be done.

Councilor Sullivan asked about a pay to use program. Ms. Freeman stated it is a good thought but there are only 86 registered users so one could argue that the demand is not as high as it was initially believed to be. There would still be an issue with helmet compliance, regardless of what option is picked.

Councilor Clark asked if Ms. Jones has talked to other localities with skate parks that seem to be operating successfully. Ms. Jones said the difference is the paid staff monitors that Winchester does not have. Staff tried to station employees on light duty there but when the skateboarders saw the monitor, they stopped coming.

Councilor McKannan asked how incorporating the BMX ADA would change people from not coming due to having to wear helmets. Ms. Jones talked about still needing to hire someone to enforce all the rules. She also addressed how the atmosphere changed in the area. There has been a

general decline of family use and increased vandalism since the skate pavilion was put in.

Councilor McKannan asked if she sees that changing if they would move it to the BMX area. A discussion was held regarding the monitors and the cost associated with the monitoring. The cost of moving the equipment was also discussed which would total about \$25-26,000.

During a discussion regarding changing the helmet rule from required to recommended, Mr. Williams stated unless there is some very strong evidence from professionals in that field that would say helmets are not necessary for skate parks then it needs to be required.

A discussion was held regarding the change of atmosphere including how the attitude is different now and asking the young people who use the facility what they think of closing the pavilion. Vice-President McInturff and Vice-Mayor Veach suggested Option 3 to close the skate pavilion as the best option.

During a discussion regarding the helmet rule and liabilities, Ms. Jones stated she was under the assumption the City would not be sued if a helmet recommendation rule was used. City Attorney Williams mentioned that the helmet issue is an important issue and the City should not rely on immunity. That is not a good defense.

Ms. Freeman stated the insurance question was asked when the skate park was contemplated. VML responded that it would be covered under the city's general liability policy. The rates are not impacted by whether or not there is a helmet rule.

City Council requested the item be brought back with additional information.

### **3.6 R-2015-03: Resolution – Adoption of the 2015 Legislative Agenda**

Ms. Freeman presented the Legislative Agenda items relevant to the city and its operations. She asked whether or not Council would like to share this agenda with Senator Vogel and Delegate Berg.

President Willingham stated he was taken aback by House Bill 1670, which was pre-filed by Delegate Berg, who represents our City. Whether or not it is good legislation is not the question but he does not think it represents the best interests of the City or the citizens of Virginia. Primarily, he is taken aback mostly because the city's state representative pre-filed a bill that would greatly impact this locality and municipality. He stated he is strongly disappointed that our own local state representatives would not go through at least the exercise of finding out what our interests would be and what our thoughts would be in regards to this. To go through and file legislation that would have material impact on the city without at least having any

conversation the city is really disappointing and frankly not to the level or degree of representation that we have as elected leaders. He stated he would encourage this body that if we do pass this and forward it to Council that we do include our strong conversation language in regards to the lack of support that we have had in the past with this bill.

Vice-President McInturff stated along with that is to make a direct comment in that opinion that we expect the courtesy from him or his office to share it with us.

Councilor Clark made a motion to forward R-2015-03 to Council, including the discussion on house bill on 1670. *The motion was seconded by Mayor Minor then approved 9/0.*

#### **4.0 Executive Session**

- 4.1** 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, AND 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, AND PURSUANT TO §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 WHERE IF MADE PUBLIC, THE BARGAINING POSITION OR FINANCIAL INTEREST OF THE CITY WOULD BE ADVERSELY AFFECTED

Vice-President McInturff moved to convene into executive session at 8:39 p.m. *The motion was seconded by Councilor Wiley then approved 9/0.*

Vice-President McInturff moved to reconvene in open session at 9:12 p.m. *The motion was seconded by Vice-Mayor Veach then approved 9/0.*

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.

*A roll call vote was taken, the ayes and nays being recorded as shown below:*

<b><u>MEMBER</u></b>	<b><u>VOTE</u></b>
Councilor Clark	Aye
Councilor Hill	Aye
Vice-President McInturff	Aye
Councilor McKannan	Aye
Mayor Minor	Aye
Councilor Sullivan	Aye
Vice-Mayor Veach	Aye
Councilor Wiley	Aye
President Willingham	Aye

## **5.0 Monthly Reports**

- 5.1** Finance Department
- 5.2** Fire & Rescue Department
- 5.3** Police Department

## **6.0 Adjournment**

Vice-President McInturff moved to adjourn the meeting at 9:13 p.m. *The motion was seconded by Mayor Minor then unanimously approved 9/0.*