

**MINUTES OF THE COMMON COUNCIL
IN REGULAR SESSION
June 9, 2009**

A regular session of the Winchester Common Council was held on Tuesday, June 9, 2009 in the Council Chambers, Rouss City Hall. President Jeffrey Buettner called the meeting to order at 6:59 p.m.

MOTION TO AMEND AGENDA

President Buettner moved to amend the June 9, 2009 Council Agenda to amend the Report of President item 1 – Motion to approve a resolution honoring Dennis Kellison. *The motion was seconded by Mayor Minor then unanimously approved by voice-vote.*

PRESENT: President Jeff Buettner; Vice-Mayor Michael Butler; Councilor Evan Clark, John Hill, Milt McInturff, Les Veach and John Willingham; Vice-President Art Major; Mayor Elizabeth Minor (9)

ABSENT: None (0)

INVOCATION – Pastor George Fletcher of First Baptist Church pronounced the invocation.

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

APPROVAL OF MINUTES – May 12, 2009 Regular Meeting and May 26, 2009 Special Meeting.

Vice-Mayor Butler moved to approve the minutes of the May 12, 2009 Regular Meeting and the May 26, 2009 Special Meeting. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

REPORT OF PRESIDENT

- Motion to approve a resolution honoring Dennis Kellison.

Vice-President Major moved to approve the resolution. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

Councilor Willingham presented the resolution to Mr. Kellison.

- 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, 2009.

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:06 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 Fiscal Year ending June 30, 2010 Annual Budget.

Scott Anderson of 104 Oakwood Court stated he is the Director of the Frederick County Division of Court Services and a lifelong resident of the City of Winchester. He thanked all of the council members for the time they have spent meeting with him, the coordinator of the Starting Point program, and the advisory board chair, Steve Gyurisin, to discuss the funding issues for the Starting Point program given the situation in regards to funding cuts from the State, County and the City of Winchester. He would also like to thank Jody Wall and Jennifer Shearop of the Top of Virginia Regional Chamber of Commerce for organizing the problem solving session that gave us the information to provide to City Council on the cost benefits of the Starting Point program as opposed to incarcerating people at the Regional Jail. As a result of the study, it was determined it costs roughly \$88.00 to bring somebody to the Starting Point program as opposed to the \$206.81 to take somebody to the Regional Jail. The time the police would be involved with a public inebriate if they were brought to Starting Point is roughly 15 minutes as opposed to an average of 60 minutes if those individuals were taken to jail. He previously provided members of council with letters from Bruce Conover, Superintendent of the Regional Jail, where he estimates an additional cost to the jail of over \$200,000.00 if the Starting Point program were to be eliminated completely. He has also provided council members with a letter from General District Court Judge David Whitacre in regards to the impact a reduction in funding could have on his already over burdened court docket. He knows City Council has some very tough decisions in regards to funding for FY10. Starting Point has provided services in Winchester for 30 years. He thinks the program provided has been invaluable for the City of Winchester. It is cost effective and enables people to turn their lives around. He offered to answer any questions Council may have regarding the information provided prior to the meeting. There is a letter from his board chairman, Steve Gyurisin, that tries to address concerns brought up by Council regarding the funding, other funding options, and things they can do to try to keep the program operational in FY10. He thanked Council for their time and expressed his pleasure for meeting with them. He stated it has been an educational experience for him and hopes it has been an educational experience for Council as well.

With no further citizens to speak, President Buettner closed the public hearing at 7:09 p.m.

- Public Hearing: AN ORDINANCE TO AMEND ARTICLE 19 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO LANDSCAPING AND SCREENING REQUIREMENTS TA-09-01

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:09 p.m.

- Public Hearing: AN ORDINANCE TO VACATE AND CONVEY TO ONE OR MORE ADJACENT PROPERTY OWNERS PORTIONS OF SPRING STREET RIGHT OF WAY SV-09-01 – **CANCELLED**
- Other Citizen Comments:

John Nelson of 1720 Handley Avenue stated he represents the family of Polly's Cab. Polly's Cab has been operated by his father in law, Ernie Nesselrodt, for roughly 40 years and has been participating in a public/private partnership providing transportation for Winchester's citizens and businesses. He and the representatives from Companies about to speak share a common perspective. Those familiar with the taxicab industry understand that the market they participate in is different from other market types. Terms such as Certificate of Convenience and Necessity, police investigations into the suitable character of an owner/operator, police background investigations for drivers, and taxi cab inspections all exist to improve safety and the service to the community. While it may be easy to assume that the term Certificate of Convenience and Necessity is to solely restrict or control the economics of competition within the industry, proponents of local taxicab regulation warn that the consequences of not enough regulation have a direct negative impact on public safety. There is precedence, policy, and process established under the title of Certificate of Convenience and Necessity which has been previously followed in the City of Winchester. You will hear that process described from owners who have followed it themselves. Finally, he wished to briefly address the elephant in the room. The reality is that the local taxicab ordinance has become an issue on the table because the ordinance was not followed when a company from outside of Winchester operated unlawfully in the city for several months with no consequence. The ordinance makes clear that there are consequences for operating vehicles for hire in Winchester without taxi permits for drivers and a Certificate of Convenience and Necessity for the company. City officials have been unclear as to if they will hold that company accountable for not following the ordinance, an ordinance that local companies are required to heed every day. This lack of fidelity to the law has created a sense of mistrust between the local companies and city government. Though we appreciate having been invited to have an appropriate voice in a dialogue regarding editing the ordinance, it is difficult to have faith that a new ordinance will be enforced, in light of these recent events. The city attorney refers to the action at the Public Safety Committee on Tuesday, June 2nd, as a clarification. However, we know there is a difference between the meaning

behind a Certificate of Convenience and Necessity and a Certificate of Taxicab Operation. He asked Council to consider the request to stop the proposed code change and allow a body to examine the code and propose a larger code revision.

Randy Cadmus of 427 North Cameron Street stated he is here to oppose the language change in the ordinance. He is a third generation resident in Winchester. He was born here, his mother was born here, and his grandparents lived here. His grandmother taught in the city school system for 30 years. His grandfather was a builder and successful business man in Winchester. Their names were William and Nancy Bonnet. His grandparents taught him how to be an entrepreneur and to play by the rules. For many years, he watched his grandfather get permits, inspections, and build large facilities. He grew from that. His cousins own Hedge Brook Farms in the county. His father was a small business man in Winchester. When he opened the cab company in Winchester, it was under the premise of following the rules. Because of the rules, they were not able to open in the city at first since they could not find a building. They opened in the county. However, they applied for a Certificate of Convenience and Necessity because of the hardship of picking their passengers up in the county and not being able to pick them back up in the city. It was made clear by the police that they could not pick up the passengers after dropping them off and they complied because it was against the law. They followed the process, applied and showed the need because they had customers they could not serve in the county because of this barrier. It came before Council through Chief Varnau and Council allowed three of us to stay because there was a need. The point is we came by the rules and played by the rules. He believes there is a firm that is not playing by the rules. Coming in the front door to compete is fine as far as Yellow Cab is concerned but coming in the back door is not acceptable. Nobody else was afforded that opportunity and he believes they should not either.

With no further citizens to speak, President Buettner closed the public hearings at 7:17 p.m.

6. REPORTS OF STANDING COMMITTEES

6-1 FINANCE AND ADMINISTRATION

Chairman Major presenting the following:

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

Councilor Clark moved to approve the FY09 Budget Supplemental Appropriations and Transfers. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

- Motion to approve and appropriate the 2010 Annual Budget.

Councilor Willingham moved to approve the 2010 Annual Budget. *The motion was seconded by Vice-Mayor Butler.*

Vice-Mayor Butler stated he previously made a motion that was tabled to restore the funding to Starting Point to \$185,220.00. He appreciates Council listening to him at that meeting while he expressed his concerns. His main reason to reestablish funding is from a fiscal stand point. Alcoholism is a disease that can't be cured but it can be controlled. Starting Point was established to give people a place to sober up instead of going through the court system and clogging up the dockets. Personally, he feels that doing away with Starting Point is not going to get rid of the problem. Winchester has a long history of enabling or facilitating this behavior. As far as the fiscal side, taking people to jail will cost us approximately \$50-60,000.00 more based on the numbers from the community project. This will also take officers off the streets. Starting Point has helped to keep officers on the street to do their jobs more effectively. The indirect costs include the time and the effect of having the officers off the street and the medical costs the jail will have to assume that Starting Point does not. Plus, the unquantifiable costs that will occur in Social Services, Economic Development, public opinion, merchant issues, and city staff involvement. The residential side of Starting Point does not have a professional staff but they do have the backing and structure of court services. Law enforcement will tell you they do not have any problems there. The bottom line is we need to look at this and restore the funding to allow the program to continue.

Mayor Minor stated she feels the city will be spending more than it will be saving. As unfortunate as it may be, it is a service that is needed and a service the city provides. She doesn't know if it could ever be funded in it's entirety but she would like to fund a certain percent of it.

Councilor Clark stated the reason the committee struck this line item and looked at half way funding was to save money. This is a glaring example of being penny wise and pound foolish. He thinks it is ludicrous that it will cost the jail \$200,000.00 in processing and labor and that does not include the city staff, police officers and other people involved or the public safety issues. It strikes him that while it is a noble effort to save money; this is not the place to do it because it will cost us more money in the end. In terms of caring for our population, Starting Point and Detox do a better job with this segment of this population than any other resource in the area. He thinks it is critical that something be done about it. He would like to consider the proposals submitted tonight by Mr. Gyurisin and Mr. Anderson to serve the population that needs to be served and save some money.

Councilor Hill stated that Mr. Butler is absolutely correct in saying it is the alcoholism that is a disease in itself that needs to be treated. Starting Point has done an excellent job in dealing with the citizens in the city who have that

problem. He had an opportunity to visit Starting Point and he was impressed with the work that is put in by the staff there. They listened to some of the suggestions he made. He thinks Council needs to consider not cutting as deeply as proposed. He won't say how much but he does think they need to be supported by more than just 50% of their budget.

The motion was defeated 4/5 with President Buettner; Vice-President Major; Councilor McInturff, Veach and Willingham voting in the negative.

Councilor Clark motioned to approve a 30% reduction which reduces the original budget of \$185,220.00 to an amount of \$130,000.00. This allows Starting Point and Detox to stay open 24 hours a day, 7 days a week with a skeleton crew. It will save us money in the jails and police department, keep police officers on the streets, and help the people that need it. *The motion was seconded by Vice-Mayor Butler.*

Vice-Mayor Butler stated the Old Dominion Community Criminal Justice Board is proposing a fee for clients using the center and to look at other funding sources. They would also like to put together a committee to work with Council on their expressed concerns. Mr. Butler stated he is willing to work with them on that committee. At the last presentation, there was an impression left that we are overrun with out of town clients. Reviews of the data found only 15% of those who use the services are from out of town.

Councilor McInturff stated he appreciates what Mr. Butler has to say as a follow up but this is the eleventh hour and the fifty-ninth minute. Why was it not looked at before now? Why does it have to be looked at after the next fiscal year begins about raising fees and other funding and forming a committee? Why wasn't it done in March or April or May? Why is it now being done as a reaction to the possibility of these funds being cut? That is the biggest thing he has a problem with. He has a problem with the idea of Starting Point not trying to help themselves.

Vice-President Major stated there has been a lot of figures and information thrown around in the discussion and he wanted to clear up a couple of things. First, Council is not talking about closing the Detox center. Council is discussing reducing the funding. There have been a lot of comments made here and in the paper about why we are closing it down but we are not. Council is asking for a reduction in funding and to have that service still available for the Public Inebriate Center for people to spend the night. He does have a problem with the residential center. He does not believe tax payer money should be spent on funding a residential program for people that can come in from anywhere. He will support keeping the Public Inebriate Center portion operating and thinks it can be done with a lot less operating hours and still be effective. He is still willing to try out the over night stay but the residential program is something he cannot support. If the 30% reduction

keeps the residential portion open, he cannot support it. Vice-President Major asked Mr. Anderson if it is the intention to continue the residential program if the center can stay open 24 hours a day, 7 days a week.

Mr. Anderson stated it is the intention to keep the residential portion open as well. He added in reference to Councilor McInturff's comments, the other budget scenarios have been available for more than a month and were provided to Vice-Mayor Butler. He believes he was supposed to meet with Councilor McInturff after the Chamber of Commerce study but was not able to meet. The figures were not put together at the last minute. They have been available for some time. The letter in front of Council tonight was to address the concerns Council had given them over a period of time since the discussions of the financing issues first started. If the program is able to fund the Public Inebriate Center and keep somebody there around the clock as it has for 30 years, it will have someone there that can oversee the residential center.

Vice-President Major stated since the residential center will remain open, he cannot support Councilor Clark's motion.

President Buettner stated he spent time with Mr. Anderson yesterday while taking a tour of the facility. He has also spent a lot of time thinking about this and has gone back and forth. He appreciates what the Inebriate Center does and thinks it is beneficial to have that. He does not agree it needs to be open 24 hours a day/7 days a week. With most things, you have peak times and if it is staffed for that, the majority of people brought in for drunk and disorderly will be processed as they are now. If a person is picked up at 10 a.m. on a Tuesday for being drunk, maybe he does not need to be there and he needs to be in jail. It is a philosophical question but based on the number of hours, it looks like the Inebriate Center could be open every evening from 6 p.m. to 8 a.m. and provide that service to keep the police officers on the street and the costs down at the jail. He has similar feelings to Vice-President Major on the residential section. That should be a privately funded, non-profit. He does not think the City of Winchester's tax dollars should go to support the residential program. If anything, the city may be creating a crutch to facilitate the problem. He agrees that alcoholism is a disease but if you know you are going to be taken to the Inebriate Center to spend the night instead of taking the next step, is the city really helping? He understands from Starting Point and from listening to the people who came in here that there have been some really great stories and some success stories but it is not accredited, it is not licensed, and there is no counselor. Therefore, it is not really a program so to speak. It is a place you can pay if you have money to stay the night over an amount of time and he is not sure that is where the tax dollars of the city should be going. If Council is going to put money back into the budget, he would rather see it going to somewhere that is working on prevention, the Boys & Girls Club, Healthy Families or any other program that gets into the

homes and gets to the children who in the wrong environment grow up to be clients of Starting Point. To him, there would be more bang for the dollar there than to keep Starting Point open where there are no repercussions for illegal actions. He cannot support funding at a level that would keep it open 24 hours a day/7days a week. Keeping it open in the evenings would do what we need it to do. He would welcome a task force to come back with answers as to how many of 2200 people served a year are one time visitors or repeat visitors. If someone is going 8-10 times a year, there should be a better solution than dropping them off at the drunk tank. That is not solving the problem or helping the individual. He would like the task force to look at those things. The residential program should be funded through non-profit or private dollars not public dollars.

Councilor Veach reiterated that Council is reducing funding for this and a lot of other things out of necessity. The budget had to be reduced by \$7 million dollars and this is one of the areas that was affected. As Vice-President Major said, Council is not closing them down. Council is asking them to come up with some ideas for opportunity.

Vice-Mayor Butler responded to Councilor McInturff's statements by saying there was correspondence from Starting Point to City Manger Brannon Godfrey and the Chair of the Budget Committee dated February 23rd and March 3rd on some of the issues Councilor McInturff said they weren't addressing. He also expressed his concern that Council is asking Starting Point to make changes that will be hard to do cutting them as deeply as Council is doing. He asked Council to consider reducing funding to the 30% level for one year and to look at some of those issues during that time.

Councilor Clark's motion was defeated 4/5 with President Buettner; Vice-President Major; Councilors McInturff, Veach and Willingham voting in the negative.

President Buettner moved to eliminate 3 of the 5 proposed furlough days and manage the funds through the hiring freeze, attrition and Utilities money if needed. As Council gets a better picture of revenues, he would like to consider eliminate the remaining 2 days as well. *The motion was seconded by Mayor Minor then unanimously approved by voice-vote.*

The motion to approve the FY10 Annual Budget was 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.

6-2 PLANNING AND DEVELOPMENT

Chairman Butler presenting the following:

- Second Reading, by title, for adoption: AN ORDINANCE TO AMEND ARTICLE 19 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO LANDSCAPING AND SCREENING REQUIREMENTS TA-09-01

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 Butler	Aye
Councilor Clark	Aye
Councilor Hill	Aye
Vice-President Major	Aye
Councilor McInturff	Aye
Mayor Minor	Aye
Councilor Veach	Aye
Councilor Willingham	Aye
President Buettner	Aye

- First Reading, by title: AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 25-17 OF THE WINCHESTER CITY CODE REGARDING THE COMPOSITION; APPOINTMENT; AND TERM OF MEMBERS OF THE OLD TOWN DEVELOPMENT BOARD
- Motion to appoint Nancy Rinker, Min Lee, and Niki Wilson as members of the Winchester-Frederick County Tourism board for a three year term expiring June 30, 2012.

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

- Announce the term expirations of William Bayliss and Larry Omps as members of the Industrial Development Authority expiring August 31, 2009, and direct the Clerk of Council to advertise the vacancies. Mr. Omps is eligible for re-appointment. Mr. Bayliss is not eligible for re-appointment.

6-3 PUBLIC SERVICES

Chairman Veach presented the following:

- Motion to adopt a resolution approving modifications and additions to the street inventory.

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

- Motion to adopt a resolution authorizing the City Manager to sign the Project Administration Agreement with the Virginia Department of Transportation for Revenue Sharing Projects on bikeways, sidewalks, and curbs and gutters.

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

- Motion to approve the installation of all brick sidewalks on Cameron, Piccadilly and Braddock Streets as part of the Downtown Infrastructure Improvement Project for an approximate cost of \$185,000.00 to be funded from the project contingency fund first with any remaining balance to be funded from the Utility Capital Reserves.

The motion was seconded by Mayor Minor.

Vice-Mayor Butler stated he can't see funding brick sidewalks at this time. The original intention was to put concrete with a brick border which would have a very handsome look for the downtown. With getting rid of 3 furlough days and declining other proposed funding, the money comes out of the same pot and he cannot see giving this project anymore money. He supports the infrastructure project but this is not a critically important issue.

The motion passed 6/3 with Vice-Mayor Butler; Councilors Clark and Hill voting in the negative.

- Announce the term expirations of Tim Coyne and Art Major as members of the Frederick-Winchester Service Authority expiring August 31, 2009, and direct the Clerk of Council to advertise the vacancies. Mr. Coyne and Mr. Major are eligible for re-appointment.

6-4 COMMUNITY SAFETY AND SERVICES

Chairman Minor presented the following:

- First Reading, by title: AN ORDINANCE TO AMEND AND RE-ADOPT SECTIONS OF CHAPTER 31 OF THE WINCHESTER CITY CODE PERTAINING TO TAXICABS IN ORDER TO PROVIDE FOR CONSISTENCY THROUGHOUT CHAPTER 31.

- Motion to forward the nomination of Richard Troop as a member of the Winchester/Frederick Local Emergency Planning Committee.

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

6-5 HEALTH, EDUCATION AND WELFARE

Chairman Willingham presented the following:

- Motion to re-appoint Ann Wigley as a member of the Social Services Advisory Board to a four year term ending March 31, 2013.

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

- Motion to appoint Fran Jeffries as a member of the Lord Fairfax Community College Board to a four year term expiring June 30, 2013.

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

- Motion to appoint Carolyn Griffin as a member of the Community Development Committee to a three year term expiring December 31, 2011.

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

NEW BUSINESS

- Report of the Mayor.

Mayor Minor congratulated the Handley High School Girls' tennis team for winning the Northwestern District Girls' Tennis Team Tournament. She also gave special congratulations to Sarah Mummau of Handley for winning the Northwestern District Girls' Tennis Singles Tournament. What a wonderful season for all the athletes!

Mayor Minor stated this year's Winchester All – American Soap Box Derby Winners are in the Super Stock Division - Logan Rutherford and in the Stock Division - Zackary Michael. The winners from our race will represent the Winchester area while competing for the Soap Box Derby Championship in Akron Ohio on July 25, 2009. She wished both boys good luck in Ohio!

Mayor Minor stated it is that time again to “dump the pump” and take a ride for FREE on Winchester’s Transit Buses instead of driving a car. On June 18th, you can “go green” and make a difference to help improve the

environment, save money by consuming less gasoline, and reduce our nation's overall dependence on foreign oil.

Mayor Minor announced it is "check your tire" week and reminded everyone the importance of checking the tire pressure on your vehicles.

Vice-President Major stated this was a very difficult budget process and expressed his gratitude for the support and creativity from staff and the citizens.

ADJOURNMENT

Mayor Minor moved to adjourn the meeting at 8:13 p.m. *The motion was seconded by Councilor Clark then unanimously approved by voice-vote.*

Kari J. Van Diest
Deputy Clerk of the Common Council