

**MINUTES OF THE COMMON COUNCIL
IN REGULAR SESSION
November 9, 2010**

A regular session of the Winchester Common Council was held on Tuesday, November 9, 2010 in the Council Chambers, Rouss City Hall. President Jeff Buettner called the meeting to order at 7:01 p.m.

PRESENT: President Jeff Buettner; Councilor Evan Clark, Milt McInturff, Les Veach and John Willingham; Vice-President Art Major; Mayor Elizabeth Minor (7)

ABSENT: Vice-Mayor Michael Butler; Councilor John Hill (2)

MOMENT OF SILENCE – President Buettner 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 – October 12, 2010 Regular Session and October 26, 2010 Work Session

Deputy Clerk of Council Kari Van Diest stated she has noted a clerical error on the September 14, 2010 minutes where the Vice-President was mentioned as closing out the public hearings when actually it was the President. She asked that the minutes be amended as reflected in the revised copies distributed before the meeting.

Vice-President Major moved to amend the September 14, 2010 minutes as revised. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

Ms. Van Diest stated the draft minutes for the October 26th Work Session are not complete. Action was taken to take an ordinance off the table that was not accurately reflected in the minutes. She asked that the minutes be tabled along with the accompanying item O-2010-34 until next month when the minutes can be approved.

Vice-President Major moved to table the October 26, 2010 minutes for revision and O-2010-34. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

Vice-President Art Major moved to approve the October 12, 2010 minutes. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

REPORT OF THE MAYOR

Mayor Minor congratulated President Buettner, Vice-President Major, and Councilor Clark on their reelection. She also congratulated John Tagnesi on his election to council. She stated she is looking forward to working with all of them.

Presentation – Mayor Minor presented the VML Green Government Challenge Certificate that she received at the VML Conference last month to Tom Hoy, Assistant Public Services Director, for successfully implementing environmental policies and taking practical actions to reduce carbon emissions.

Presentation – Corn Toss Games by Tyrus Thomas and Jayden Sibert of Winchester, VA Cornhole Company & Dick Kent of Signet Screen Printing and Embroidery

Councilor Veach introduced Mr. Thomas, Mr. Sibert, and Mr. Kent who presented the Corn Toss Games to the City to be used by the Police Department and Parks and Recreation.

Mayor Minor continued with her report by stating the City has begun the Leaf Pick-up Season. She asked that everyone be aware of the posted no parking signs so that the crews can get to the leaves for pick up.

Mayor Minor stated November is National Adoption Awareness Month. In Virginia, there are over 6,000 children in foster care including 1,325 awaiting adoption. Currently, there are over 31 children in foster care in the City of Winchester. All children deserve a stable, secure home. You can provide that stability and security for a child who must temporarily be away from his family because of serious family problems. If you have ever thought about adoption, being a foster parent, or learning more about the foster care program, please contact Clarke, Frederick and Winchester (CFW) program at 540-771-0893.

Mayor Minor stated the Winchester Department of Social Services received \$41,171 from the Community Development Block Grant to fund the Homeless Prevention Program in September. To date, DSS has received 45 applications with 22 approvals to aid residents of Winchester facing imminent eviction. The overwhelming reason that these households were facing eviction was loss of a job. There is approximately \$10,000.00 in remaining funds. For information about the Homeless Prevention Program, please contact Georjean Coco, Assistant Director, Winchester Department of Social Services, at 540-686-4836.

Mayor Minor stated over 3000 people attended the The 2nd Annual International Children's Festival on October 2nd in Jim Barnett Park. It was truly a great event.

Mayor Minor stated Saturday, October 30, 2010 marked the eleven year anniversary of Winchester Police Sergeant Ricky Timbrook's death in the line of duty. In honor of Sergeant Timbrook's love of children and unwavering generosity, the Timbrook family and the Winchester Police Department each year sponsor the Annual Rick Timbrook Food/ Toy Drive benefiting Winchester children. Over the past 11 years the drive has provided food and toys for hundreds of Winchester families in need of assistance. We

hope that you will consider making a donation to continue supporting this worthy program. Toy collection boxes will be placed at City Hall, the War Memorial Building (Jim Barnett Park) and the lobby of the Winchester Police Department this week. The food and toys will be hand delivered to the families the week of December 5th.

Mayor Minor announced the South End Fire Company will be hosting a Pancake Breakfast fundraiser on Saturday, November 13th from 7 to 11 a.m. at 17 W. Monmouth Street. She asked that everyone come out to enjoy a great breakfast and show your support of our local firefighters.

Mayor Minor stated this week we honor our veterans who have sacrificed so much to serve and protect our country. We are all so thankful for the freedoms we have and the men and women who have served and continue to serve to preserve those freedoms - Thank you and God bless you.

REPORT OF THE CITY MANAGER

City Manager Jim O'Connor stated he did not have a report unless there were questions from Council.

REPORT OF THE CITY ATTORNEY

City Attorney Anthony Williams did not give a report.

O-2010-45: Second Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-19 OF THE WINCHESTER CITY CODE REGARDING REAL ESTATE TAX EXEMPTION FOR THE ELDERLY AND DISABLED (Public Hearing held on September 14, 2010)

Todd Golding, a Winchester resident, stated he applauds the Commissioner of the Revenue and her staff for the work they have done and supports her chief issue with this including the income of non-relatives that live in the house. He does not support an arbitrary deadline for filing for the tax exemption nor does he support removing the ability of people to file for the first time. He also does not support the idea of requiring someone who files to have an affidavit from a physician licensed in the Commonwealth of Virginia. The reason for this is very simple. If someone asked him today to prove that he has cancer from a physician licensed in the Commonwealth of Virginia, he could not. His hematologist works for the Department of Veterans Affairs and is licensed in Maryland. It does not mean he has cancer any less but that he cannot prove it. Secondly, if a person comes into our city, buys a home and is eligible for this, they actually have to wait to file the following year. He requested that Council leave that part of the ordinance the way it exists right now where there is no arbitrary deadline so the first time filers will be able to apply. An example of the implications a deadline could cause is when he got injured in the Marine Corps, he spent 93 days in a naval hospital. That happened on January 16th. Ninety-three days later would have been after this deadline. He asked that Council think about that.

Vice-President Major moved to adopt O-2010-45. The motion was seconded by Councilor Veach.

Councilor Clark stated he would like to make an amendment to the motion on the floor to change the wording on the licensed physician in the Commonwealth of Virginia to read “a licensed physician” and strike “in the Commonwealth of Virginia.” so it would apply to any of the 50 states in the territory. The other thing he would like to consider is the current statute seems like there is a filing deadline which precedes the Commissioner generating her tax roles for the year. He thinks that deadline is appropriate but he would also include “at the time of a purchase of a house.” Therefore, if a citizen purchases a house, they can file at that time for the following year. He asked the Commissioner if that would be possible.

Commissioner of the Revenue Ann Burkholder stated the ordinance has been amended to state “the application is accompanied by a sworn affidavit of a licensed medical doctor or other documentation deemed satisfactory by the Commissioner” to address the first of Mr. Golding’s issues. In terms of the other issue, we have until April 15 because that is about the time we are preparing the tax books. It does cost us a good bit to be processing those throughout the year. It is a lot better management practice for us to do them one time a year. A fair amount of staff is devoted to the process. If it is the will of Council, they will go through it but it is her preference for better management of her office and the planning of the taxes would be to have a cut off time as most localities do across the state.

Councilor Clark asked if they already have to process prorated taxes for someone who buys a home during the year. Commissioner Burkholder stated they do have to do that but it is an entire other process to establish the tax relief.

Since the first issue was already amended, Councilor Clark amended his motion to leave the deadline as it is stated in the statute and also at the time someone purchases a home so they may be able to file at that time. The amendment was seconded by Vice-President Major.

Vice-President Major stated he agrees there should be a deadline but is concerned about someone buying a house and getting taxed because they didn’t get an application in. He asked if there was some way to rectify that.

Ms. Burkholder stated that while it is easier for her office to handle the applications one time a year, she can include it for first time buyers if it is the will of Council.

Councilor Veach asked for clarification if there was for first time home buyers or first time in the city.

Councilor Clark stated he did not use the term first time buyers; it was Ms. Burkholder’s phrase. He would take that phrase out of the mix. He stated it would be anytime a person buys a house in Winchester. We want to encourage citizens to buy in Winchester but not to coordinate it with the tax deadlines. He asked to strike first time buyer and say when a person purchases a house.

Vice-President Major clarified that first time buyer is not in the ordinance. What has been stricken is “and from owners eligible to file for the first time” which is what Councilor Clark amended to put back in there.

Councilor Clark agreed.

The amendment was unanimously approved by voice-vote.

The amended ordinance was then 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	Absent
Councilor Clark	Aye
Councilor Hill	Absent
Vice-President Major	Aye
Councilor McInturff	Aye
Mayor Minor	Aye
Councilor Veach	Aye
Councilor Willingham	Aye
President Buettner	Aye

O-2010-34: Second Reading – AN ORDINANCE TO ADD, AMEND, AND RE-ENACT SECTION 14-69 OF THE WINCHESTER CITY CODE PERTAINING TO THE DEPOSIT OF COIN REQUIRED; OVERTIME PARKING (Public Hearing held on August 10, 2010)

O-2010-34 was tabled in the previous motion under the Approval of the Minutes.

PUBLIC HEARINGS

O-2010-55: Second Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-5 OF THE WINCHESTER CITY CODE REGARDING THE “MANNER OF CREDITING PAYMENT”

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:22 p.m.

Councilor Veach moved to adopt O-2010-55. *The motion was seconded by Vice-President Major then 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	Absent
Councilor Clark	Aye
Councilor Hill	Absent
Vice-President Major	Aye
Councilor McInturff	Aye
Mayor Minor	Aye
Councilor Veach	Aye
Councilor Willingham	Aye
President Buettner	Aye

O-2010-56: Second Reading - AN ORDINANCE TO CONDITIONALLY REZONE APPROXIMATELY 0.496 ACRES OF LAND AT 301, 303, 307 AND 309-311 SOUTH CAMERON STREET (Map Numbers 193-01-K-10, 11, 12 & 13) FROM RESIDENTIAL BUSINESS (RB-1) DISTRICT WITH HISTORIC WINCHESTER (HW) DISTRICT OVERLAY TO CENTRAL BUSINESS (B-1) DISTRICT WITH HW DISTRICT OVERLAY. RZ-10-178

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:23 p.m.

Vice-President Major moved to adopt O-2010-56. *The motion was seconded by Mayor Minor then 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	Absent
Councilor Clark	Aye
Councilor Hill	Absent
Vice-President Major	Aye
Councilor McInturff	Aye
Mayor Minor	Aye
Councilor Veach	Aye
Councilor Willingham	Aye
President Buettner	Aye

O-2010-57: Second Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTIONS 14-70 OF THE WINCHESTER CITY CODE PERTAINING MOTOR VEHICLES AND TRAFFIC

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:24 p.m.

Vice-President Major moved to adopt O-2010-57. *The motion was seconded by Councilor Willingham then 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	Absent
Councilor Clark	Aye
Councilor Hill	Absent
Vice-President Major	Aye
Councilor McInturff	Aye
Mayor Minor	Aye
Councilor Veach	Aye
Councilor Willingham	Aye
President Buettner	Aye

O-2010-59: Second Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTIONS 23-3 AND 23-6 OF THE WINCHESTER CITY CODE PERTAINING TO PROHIBITION OF SMOKING

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:25 p.m.

Vice-President Major moved to adopt O-2010-59. *The motion was seconded by Councilor Willingham then 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	Absent
Councilor Clark	Aye
Councilor Hill	Absent
Vice-President Major	Aye
Councilor McInturff	Aye
Mayor Minor	Aye
Councilor Veach	Aye
Councilor Willingham	Aye
President Buettner	Aye

CU-10-573: Conditional Use Permit - Request of Network Building & Consulting, LLC on behalf of Verizon Wireless for a conditional use permit to upgrade an existing telecommunications tower with additional antennas at 799 Fairmont Ave (*Map Number 153-01-2*) zoned Limited Industrial (M-1) District.

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:25 p.m.

Councilor Willingham moved to approve CU-10-573. *The motion was seconded by Councilor Clark then unanimously approved by voice-vote.*

PUBLIC COMMENTS

Mike Brill of 824 South Loudoun Street asked several questions regarding the possible Millwood Avenue closure and expressed his concerns for the impact on downtown businesses.

President Buettner informed Mr. Brill that Council has not discussed the possible closure. The study is still being conducted through the Metropolitan Planning Organization. He stated there will be more public meetings regarding the issue in December.

Kathleen Clark stated she is an Outreach and Advocacy Specialist at Access Independence in Winchester. She came to speak about the proposed ordinance that has been tabled. She is opposed to changing the regulation right now that provides 4 free hours of parking to people with handicapped plates or placards. She thinks it is an undue hardship on our citizens with disabilities and would discourage business in the downtown area. She is disappointed the ordinance is being brought back to City Council after it was

tabled to be reexamined two months ago. She is discouraged that after the reexamining it is again being proposed to be changed.

No further citizens came forward to address Council and the President declared the public comments closed at 7:35 p.m.

CONSENT AGENDA

AGENDA

O-2010-60: First Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 16-8 OF THE WINCHESTER CITY CODE REGARDING DISCHARGE OF AIR GUN, GRAVEL SHOOTER OR SIMILAR INSTRUMENT

President Buettner presented O-2010-60 for First Reading.

O-2010-61: First Reading – AN ORDINANCE TO ADD SECTION 16-33 TO THE WINCHESTER CITY CODE PERTAINING TO SECONDHAND PRECIOUS METAL OR GEM DEALERS RECORDING OF PROPERTY AND REPORTING TO POLICE

President Buettner presented O-2010-61 for First Reading.

O-2010-62: First Reading – AN ORDINANCE TO GRANT FRANCHISE TO USE PUBLIC PROPERTY FOR WIRELESS INTERNET AND RELATED SERVICES FRANCHISE

President Buettner presented O-2010-62 for First Reading.

O-2010-63: First Reading – AN ORDINANCE TO AMEND AND RE-ENACT ARTICLES 1 AND 15.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS AND USE PROVISIONS FOR WELLNESS & FITNESS CENTERS AND RECREATIONAL FACILITIES

President Buettner presented O-2010-63 for First Reading.

O-2010-64: First Reading – AN ORDINANCE TO APPROVE THE APPLICATION OF THE EAGLE HEIGHTS PRESBYTERIAN CHURCH FOR TAX EXEMPT STATUS BY RELIGIOUS ORGANIZATION PURSUANT TO 27-33 OF THE WINCHESTER CITY CODE

President Buettner presented O-2010-64 for First Reading.

O-2010-65: First Reading – AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO SIGN A PERFORMANCE AGREEMENT BY AND BETWEEN THE CITY OF WINCHESTER, THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WINCHESTER AND O’SULLIVAN FILMS INC. AND TO PROVIDE THE LOCAL MATCH TO THE GOVERNOR’S DEVELOPMENT OPPORTUNITY FUND GRANT

President Buettner presented O-2010-65 for First Reading.

O-2010-66: First Reading – AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-31 OF THE WINCHESTER CITY CODE PERTAINING TO TRUCK ROUTES

President Buettner presented O-2010-66 for First Reading.

O-2010-67: First Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTIONS 28-24 THROUGH 28-38 OF THE WINCHESTER CITY CODE REGARDING LICENSE FEES AND TAX RATES FOR BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSES

President Buettner presented O-2010-67 for First Reading.

O-2010-68: First Reading – AN ORDINANCE TO AUTHORIZE THE ADDITIONAL APPROPRIATION OF FUNDS FOR NECESSARY EXPENDITURES OF THE CITY OF WINCHESTER, VIRGINIA FOR THE FISCAL YEAR ENDING JUNE 30, 2011

President Buettner presented O-2010-68 for First Reading.

R-2010-61: Resolution – Authorize application for Federal Enhancement Grant for the Green Circle Trail

Councilor Clark moved to approve R-2010-61. *The motion was seconded by Councilor Veach then unanimously approved by voice-vote.*

R-2010-62: Resolution – Authorization for the issuance of Economic Development Revenue Bonds in the amount of \$2,300,000

Item Withdrawn by Applicant Prior to the Meeting.

R-2010-63: Resolution – Utilization of the EDA’s disposition procedures in the disposition of any property conveyed to the authority

Councilor Willingham moved to approve R-2010-63. *The motion was seconded by Vice-President Major then unanimously approved by voice-vote.*

R-2010-65: Resolution – Approval of 2010 CDBG Administration Services Contract with NSVRC

Vice-President Major moved to approve R-2010-65. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

R-2010-66: Resolution – Approval of 2010 HOME Administration Services Contract with NSVRC

Councilor Veach moved to approve R-2010-66. *The motion was seconded by Mayor Minor then unanimously approved by voice-vote.*

R-2010-67: Resolution – Request to the State of Virginia to be contacted before changes to the BPOL taxes

Vice-President Major moved to approve R-2010-67. *The motion was seconded by Councilor Clark then unanimously approved by voice-vote.*

Motion to direct the Clerk of Council to advertise a vacancy for an unexpired term on the Community Development Committee

Councilor Veach moved to approve the direction to advertise. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

EXECUTIVE SESSION

MOTION TO CONVENE IN EXECUTIVE SESSION PURSUANT TO §2.2-3711(A)(7) OF THE CODE OF VIRGINIA FOR CONSULTATION WITH LEGAL COUNSEL TO RECEIVE LEGAL ADVICE AND STATUS UPDATE CONCERNING PENDING OR PROBABLE LITIGATION.

Vice-President Major moved to convene into executive session at 7:39 p.m. *The motion was seconded by Mayor Minor then unanimously approved by voice-vote.*

Mayor Minor moved to reconvene in open session at 7:59 p.m. *The motion was seconded by Councilor McInturff then unanimously approved by voice-vote.*

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:

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

Councilor Willingham stated he could only certified the portions of executive session that he was present for.

ADJOURNMENT

Councilor Willingham moved to adjourn the meeting at 7:59 p.m. *The motion was seconded by Vice-President Major then unanimously approved by voice-vote.*

Kari J. Van Diest
Deputy Clerk of the Common Council