

**MINUTES OF THE COMMON COUNCIL
IN REGULAR SESSION
December 14, 2010**

A regular session of the Winchester Common Council was held on Tuesday, December 14, 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; Vice-Mayor Michael Butler; Councilor Evan Clark, John Hill, Milt McInturff and John Willingham; Vice-President Art Major; Mayor Elizabeth Minor (8)
ABSENT: Councilor Les Veach (1)

MOMENT OF SILENCE – President Buettner led the citizens and councilors in a Moment of Silence.

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

President Buettner asked for a motion to amend the agenda to include a resolution honoring Vice-Mayor Michael Butler. *The motion was made by Councilor Willingham, seconded by Vice-President Major then unanimously approved by voice-vote.*

APPROVAL OF MINUTES –October 26, 2010 Work Session and November 9, 2010 Regular Meeting

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

REPORT OF THE MAYOR

R-2010-68: Resolution – Retirement of Cpl. Robert Shickle

Mayor Minor presented Megan Shickle, Cpl. Shickle’s spouse, and his family with the resolution honoring her husband.

R-2010-71: Resolution – honoring Michael L. Butler

Mayor Minor presented Vice-Mayor Butler with a resolution honoring his service as Councilor for the City of Winchester.

Vice-Mayor Butler spoke a few words of farewell.

Mayor Minor congratulated to Lt. Stotlemeyer and Corporal Neer of the Winchester Police Department for being recognized by HEAT (Help Eliminate Auto Theft) as two of the top 50 law enforcement officers in the state for auto theft arrests and recovery over the summer months.

Mayor Minor stated the Winchester Police Department would like to remind everyone to be mindful of the state law regarding yielding to pedestrians in crosswalks especially during the hustle and bustle of the holiday season.

Mayor Minor thanked all of the City employees for their generosity to the numerous organizations they donate to throughout the year especially during the holidays. This holiday season, the employees collected \$400 for the Chain of Checks, adopted 14 angels from the City's Angel Tree, donated toys and food to the Timbrook Toy & Food Drive, and gave \$285 to this year's Community Blanket Drive. This is all in addition to the other fundraisers they give to throughout the year.

On behalf of City Council, Mayor Minor wished everyone a Merry Christmas and a safe, healthy New Year.

Councilor Willingham moved to approve R-2010-68 and R-2010-71. *The motion was seconded by Councilor Clark then unanimously approved by voice-vote.*

REPORT OF THE CITY MANAGER – James O'Connor stated unless Council had questions for him, he did not have a report.

REPORT OF THE CITY ATTORNEY – Anthony Williams stated he did not have a report.

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)

Donald Price of 114 Stonebrook Road stated he is the Executive Director of Access Independence. Access Independence is one of 16 centers for independent living serving people with disabilities in this region which includes Clarke, Warren, Shenandoah, Page, Frederick and the City of Winchester. He stated he has been in discussion with Councilor Major and wanted to share his thoughts on what should occur with the parking. He understands there are some issues as far as the city being able to determine what type of placement they can have as far as the accessible meters and who has to be charged a fee and who doesn't have to be charged a fee. From his stand point as a person with a disability and a person who represents those with disabilities, he understands the problems with an unattended garage and in most cases with accessible parking in a garage you have to pay a fee and go on. He encouraged Council to not go forward with this ordinance. He thinks some work needs to be done on the state legislation to get an exclusion for parking garages or lots that are unattended to say that people with disabilities would have to pay in an unattended parking facility. However, the mechanics

of trying to set on sidewalk meters for disabled persons to get out of their car and pay is not a good way to go. He thinks there will be more complications and more bad press than charging for the parking. He also thanked Vice-Mayor Butler for his service to the community.

Todd Golding of 1027 Kinzel Drive stated he opposes both ordinances as they are written in the agenda tonight because it is over stepping what is needed. He understands the need to automate the parking garages and why it is being done. However, he does not follow the logic to exempt the entire city of Winchester. His view is the Commonwealth of Virginia understands the hardships that people with disabilities face and they created this offer for a very specific purpose. He thinks that is something City Council needs to take into account when writing this exemption and making it as narrow as possible. He understands the second ordinance recognizes that no meters shall be placed on handicapped accessible parking spaces on the street. In his experience, some of those spaces are not wheel chair accessible which is something the Parking Authority should address if we are going to have these spaces before moving forward. He requested that if an exemption is going to be written, it be done as narrow as possible for the parking garages and leave the 4 free hours for the on street meter spaces for people with disabilities. He stated his second issue is the City of Winchester has written in the ordinance to exempt people with a license plate from the Commonwealth of Virginia with a Purple Heart insignia or as a former Prisoner of War. While he definitely respects those people for the services and sacrifices they made for our nation, he also asks that if you are going to give them exemption, you give people with a Disabled Veterans license plate from the Commonwealth of Virginia the exact same exemption. In order to get that license plate, you have to have 100% disability from the US Department of Veterans Affairs. Currently, the last estimate he had was 7500 people in the Commonwealth of Virginia have that license plate.

Councilor McInturff moved to adopt the ordinance. The motion was seconded by Councilor Clark.

The ordinance was defeated by the 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	Nay
Councilor Clark	Nay
Councilor Hill	Nay
Vice-President Major	Nay
Councilor McInturff	Nay
Mayor Minor	Nay
Councilor Veach	Absent
Councilor Willingham	Nay
President Buettner	Nay

PUBLIC HEARINGS**O-2010-60: Second 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**

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:28 p.m.

Vice-President Major moved to adopt O-2010-60. *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	Aye
Councilor Clark	Aye
Councilor Hill	Aye
Vice-President Major	Aye
Councilor McInturff	Aye
Mayor Minor	Aye
Councilor Veach	Absent
Councilor Willingham	Aye
President Buettner	Aye

O-2010-61: Second 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

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:29 p.m.

Councilor Willingham moved to approve O-2010-61. The motion was seconded by Councilor Clark.

After a brief discussion, Councilor Clark moved to table O-2010-61 for staff revisions. *The motion was seconded by Vice-President Major then unanimously approved by voice-vote.*

O-2010-62: Second Reading / Closing of Bids / Staff Recommendation / Franchise – AN ORDINANCE TO GRANT FRANCHISE TO USE PUBLIC PROPERTY FOR WIRELESS INTERNET AND RELATED SERVICES FRANCHISE

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:32 p.m.

President Buettner asked if there were any bids.

Deputy Clerk Kari Van Diest stated no bids were turned in as of the deadline.

President Buettner asked if there were any additional bids. One bid was presented to the Deputy Clerk at that time.

President Buettner opened the bid for \$100.00 from Visual Link Internet LC and asked for a motion to accept the bid.

Councilor Willingham moved to accept the bid. 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	Aye
Councilor Clark	Aye
Councilor Hill	Aye
Vice-President Major	Aye
Councilor McInturff	Aye
Mayor Minor	Aye
Councilor Veach	Absent
Councilor Willingham	Aye
President Buettner	Aye

Councilor Willingham moved to authorize the City Manager to execute the accompanying franchise agreement. *The motion was seconded by Councilor McInturff then unanimously approved by voice-vote.*

O-2010-63: Second 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

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:35 p.m.

Vice-President Major moved to table O-2010-63. *The motion was seconded by Councilor Hill then approved 6/0 with Vice-Mayor Butler and Councilor Willingham abstaining.*

O-2010-64: Second 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

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:36 p.m.

Mayor Minor moved to adopt O-2010-64. *The motion was seconded by Councilor Clark 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	Aye
Councilor Clark	Aye
Councilor Hill	Aye
Vice-President Major	Aye
Councilor McInturff	Aye
Mayor Minor	Aye
Councilor Veach	Absent
Councilor Willingham	Aye
President Buettner	Aye

O-2010-65: Second 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

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:37 p.m.

Councilor Willingham moved to adopt O-2010-65. *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	Aye
Councilor Clark	Aye
Councilor Hill	Aye
Vice-President Major	Aye
Councilor McInturff	Aye
Mayor Minor	Aye
Councilor Veach	Absent
Councilor Willingham	Aye
President Buettner	Aye

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

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:38 p.m.

Councilor McInturff moved to adopt O-2010-66. *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	Aye
Councilor Clark	Aye
Councilor Hill	Aye
Vice-President Major	Aye
Councilor McInturff	Aye
Mayor Minor	Aye
Councilor Veach	Absent
Councilor Willingham	Aye
President Buettner	Aye

O-2010-67: Second 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

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:38 p.m.

Mayor Minor moved to adopt O-2010-67. The motion was seconded by Councilor Clark.

Vice-President Major moved to table O-2010-67 to the next Work Session for more discussion. The motion was seconded by Mayor Minor.

Commissioner of the Revenue Ann Burkholder stated time is of the essence and requested Council pass the portion dealing with the gross receipts. She presented 3 options for Council to consider.

President Buettner suggested holding a Special Meeting after the discussion at the Work Session to meet Ms. Burkholder's deadline.

Vice-President Major moved to table O-2010-67 to the Work Session. *The motion was seconded by Councilor Clark then unanimously approved by voice-vote.*

O-2010-68: Second 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

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

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

CU-10-588: Conditional Use Permit - Request of S&J Enterprises dba Buffalo Wild Wings for a conditional use permit for nightclub use at 5 Weems Lane (*Map Number 271-04-1*) zoned Highway Commercial (B-2) District.

Robert Ganse of 238 Hanging Tree Road in Frederick County stated he is trying to be competitive with other restaurants in town. Since the economy tanked two or three years ago, the restaurant business is something people can do without. The business already has karaoke on Friday nights but the Planning staff recommended asking for an extra day and the renewal of the nightclub license at the same time. He added there have been only 4 police calls in the last year to the establishment. Mr. Ganse offered to answer any questions from Council.

With no further citizens to address Council concerning this issue and the President declared the public hearing closed at 7:46 p.m.

Councilor McInturff moved to approve CU-10-588. *The motion was seconded by Vice-President Major then unanimously approved by voice-vote.*

CU-10-590: Conditional Use Permit - Request of Winchester Medical Center for a conditional use permit for personal service and retail use at 401 Campus Boulevard (*Map Number 149-03-1*) zoned Medical Center (MC) District.

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:49 p.m.

Vice-President Major moved to table CU-10-590 indefinitely. *The motion was seconded by Mayor Minor then approved 6/0 with Vice-Mayor Butler and Councilor Willingham abstaining.*

CU-10-593: Conditional Use Permit - Request of Velocitel on behalf of Clearwire for a conditional use permit for collocation of antennas on an existing telecommunications tower and associated ground support equipment 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 7:50 p.m.

Councilor Willingham moved to approve CU-10-593. *The motion was seconded by Mayor Minor then unanimously approved by voice-vote.*

R-2010-70: Resolution – Approval of 2010 Annual Action Plan Substantial Amendment (CDBG Funds)(public hearing advertised in Winchester Star on November 27, 2010)

Social Services Director Carla Taylor stated this notifies the public that Council is receiving public input on the Substantial Amendment decided at the work session.

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:52 p.m.

Vice-President Major moved to amend the resolution as proposed at the November 23, 2010 Work Session. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote. >*

The amended resolution was then unanimously approved by voice-vote.

PUBLIC COMMENTS - *No citizens came forward to address Council.*

CONSENT AGENDA

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

R-2010-69: Resolution – Approval of VDOT Project Administration Agreement for Amherst Street Improvements Project

Direct the Clerk of Council to prepare a Certificate of Appreciation for Chris Scully for service on the Tree Commission

Direct the Clerk of Council to prepare a Certificate of Appreciation for Frank Sublett for service on the Planning Commission

Vice-President Major moved to approve the Consent Agenda. *The motion was seconded by Vice-Mayor Butler then unanimously approved by voice-vote.*

AGENDA

O-2010-69: First Reading - AN ORDINANCE TO REZONE 0.056 ACRES OF LAND AT 210 BAKER STREET (*Map Number 174-1-F-6*) FROM RESIDENTIAL BUSINESS (RB-1) DISTRICT WITH HISTORIC WINCHESTER (HW) DISTRICT OVERLAY TO RB-1 DISTRICT AND TO REZONE 0.051 ACRES OF LAND AT 211-213 BAKER STREET (*Map Number 174-1-G-13*) FROM LIMITED HIGH DENSITY RESIDENTIAL (HR-1) DISTRICT WITH HW DISTRICT OVERLAY TO HR-1 DISTRICT RZ-10-601

Motion to remove O-2010-71 regarding Application for Tax Exemption Status for the Winchester Medical Center from the table. (Tabled at November 23, 2010 Work Session)

Vice-President Major moved to remove O-2010-71 from the table. *The motion was seconded by Councilor McInturff then approved 6/0 with Vice-Mayor Butler and Councilor Willingham abstaining.*

O-2010-71: First Reading – AN ORDINANCE TO DENY THE APPLICATION OF WINCHESTER MEDICAL CENTER FOR TAX EXEMPT STATUS BY CHARITABLE ORGANIZATION PURSUANT TO 27-33 OF THE WINCHESTER CITY CODE

Announcement: The term expiration of Joe Kalbach as a member of the Winchester-Frederick County Economic Development Commission effective January 31, 2011 and direct the Clerk of Council to advertise the vacancy.

ADJOURNMENT

Councilor Willingham moved to adjourn the meeting at 7:55 p.m. *The motion was seconded by Vice-Mayor Butler then unanimously approved by voice-vote.*

Kari J. Van Diest
Deputy Clerk of the Common Council