June 3, 2020

// A special meeting of the Council of the City of Lynchburg was held on the 3rd day of June, 2020 at 10:00 a.m. in the Council Chamber, City Hall, Treney Tweedy, President, presiding. The following members were present:

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| Present: | Mary Jane Dolan, Jeff Helgeson, J. Randy Nelson, E. J. Turner Perrow (by telephone) Sterling A. Wilder, Beau Wright (by telephone), Treney Tweedy | 7 |
| Absent: | | 0 |

// The special meeting was called to order at 10:10 a.m. Mayor Tweedy noted this is to reconsider two items brought to Council on June 1, 2020. Today's meeting has been called due to Councilmember Helgeson's allegation that the specially called meeting on June 1, 2020 was not a legally called meeting under Council's Rules of Procedure. She requested the City Attorney address them on this matter. First, Councilmember Nelson made a motion to allow Councilmembers Perrow and Wright to participate in the meeting by phone. The motion was seconded by Councilmember Wilder and passed by the following vote:

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| Ayes: | Dolan, Helgeson, Nelson, Tweedy, Wilder | 5 |
| Noes: | | 0 |

The Clerk of Council stated that Councilmembers Perrow and Wright were present by phone. Mr. Erwin stated that he does not believe the meeting on Monday was an unlawful meeting. The Virginia Freedom of Information Act does not require any type of special notice for a special meeting. It says notice of the meeting shall be reasonable under the circumstances. City Council's Rules of Procedure do state that Councilmembers will be given 12 hours' written notice prior to the meeting, but City Council's Rules of Procedures are not laws. They have been adopted to promote the efficient operation of City Council business. The Virginia Supreme Court has said that failure to conform to parliamentary procedure will not invalidate an action if the requisite number of the public body is present and vote. We had a majority present and a majority voted on June 1, 2020. In addition, the Rules of Procedure allow City Council to amend or suspend the Rules of Procedure whenever a majority of Council decides to do so. That is exactly what the majority of Council did at its special meeting. Given the issues discussed, he thinks it is

prudent for Council to reconvene today and to readopt this ordinance to put that issue to rest so there will be no confusion among our citizens.

Mayor Tweedy asked for a motion to reconsider the ordinance to amend and reenact the Code of the City of Lynchburg, 1981 by adding thereto a new Section Number 27-29 relating to the declaration of curfews in times of emergency and reaffirm the June 1, 2020 declaration of a local emergency. Councilmember Nelson made that motion and it was seconded by Councilmember Helgeson. Councilmember Helgeson said he appreciated a lengthy discussion he held with Councilmember Nelson wherein they discussed the problems of having a Special Meeting where the governing body set law for 82,000 people in the City. He stated that we do not just meet ad hoc or "willy-nilly." Council duly adopted Rules of Procedure and it was done intentionally and unanimously several years ago. He got an email with an hour and twenty minutes' notice of a meeting on something that is pretty important for the citizens of the City. He assumed the meeting would be done according to our Rules of Procedure and he was really disappointed that it was not. He thanked Councilmember Nelson for having the courage and conviction to understand that this is uncharted territory and we do not take it lightly. Council should follow its Rules of Procedure before convening a meeting and before suspending its Rules of Procedure. He is happy to support this motion so we can rescind the vote that was cast on June 1 and debate the issue of the curfew going forward.

Councilmember Wilder is thankful for the City Attorney who gives them the guidance and the wisdom they need to navigate this situation. He appreciates the forty years of service the attorney has given to this City.

Councilmember Nelson stated he also has great confidence and faith in the City Attorney's opinion as there is one Virginia Supreme Court case that articulates his rationale and there are cases in other states that do the same. However, Councilmember Nelson pointed out that a crafty defense attorney could find an arguable basis to challenge any arrests that may arise from a detention that was prompted by or during a curfew violation. Rather than take the chance of facilitating protracted litigation from such a scenario, he would rather "push the pause button" and have a redo as to what we intended on June 1st.

Councilmember Perrow said he agrees with Mr. Erwin and Councilmember Nelson and feels that everything done on June 1 was proper. The notice they were given of today's meeting was in violation of Council's Rules of Procedure because it was a motion to reconsider without having a motion to reconsider on the table. He is happy to support the motion and noted it was exactly the procedure Council followed at its meeting on June 1, 2020. Following the logic that Monday's meeting was outside the Rules of Procedure, today's meeting would be as well. It is not accurate that Monday's meeting was illegal because we were within our rules and within the law of the Commonwealth. We need to move forward. He said he was not able to stay for the remainder of the meeting because he had a prior scheduled meeting. The motion to reconsider passed by the following vote:

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| Ayes: | Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Wright | 7 |
| Noes: | | 0 |

The second item on the agenda is a motion to amend and reenact the Code of the City of Lynchburg, 1981 by adding thereto a new Section Number 27-29 relating to the declaration of curfews in times of emergency. The City Attorney indicated this would allow the City Manager to implement a curfew and add any additional exemptions that might not be set forth in the ordinance. It has a sunset provision for August 31, 2020, but does not mean that the declaration of a curfew will stay in effect until then. The City Manager can end it at any time by a declaration and will be evaluating it daily. The sunset clause is to take it off the books until Council can discuss it length and decide if they would like to keep it on a permanent basis. Ms. Svrcek clarified that the ordinance will be in effect until the curfew is either reconsidered or expires.

Councilmember Wright stated he understands the decision as to whether or not to enact the curfew would be considered on a daily basis by the City Manager and the Chief of Police. Councilmember Wright noted that the unknown of the sunset date of August 31, 2020 is disconcerting for people. He would suggest they have the sunset date of this upcoming Tuesday, June 9, 2020, when City Council can revisit it at its normal City Council meeting and made that as a motion. Councilmember Helgeson seconded the motion.

Councilmember Wright noted he wants the community to know they are listening and will consider this as a body at their regular meeting on June 9. Councilmember Helgeson noted he seconded the motion because it is more of a reasonable conversation than having it not sunset for months. He thinks there are lots of things in the ordinance that they need to discuss and they should think collectively about the whole ordinance. Giving unfettered executive power allows for more. It is their responsibility to put in place good policy and not policy that is crafted quickly. The restaurants have been waiting to open for month as well as gyms and the hours of the gym will not meet the curfew. They all want their citizens to be safe. The shorter we have this curfew the better because these things are hurtful for our community.

Councilmember Helgeson noted one of the exemptions is for City employees. Lots of times government makes laws and for some reason, it is exempt. He does not like that at all. Restaurants are at a 50 percent capacity per the governor's order and now we are saying they have to close at 8:00 p.m. He thinks they can all agree because we all want what is best for our City. He understands how they want to protect but let us do it wisely and use judicious prudence and ask for wisdom. Obviously no one likes this violence but let us not hurt the law abiding because of the bad.

Councilmember Nelson noted that it was often said in law school classes that "hard cases make bad law." When you are reacting to something this is revulsive and overwhelming, you are not able to so carefully think through all the secondary consequences. Council passed an ordinance in about 14 hours. In the luxury of reflection and deeper concentration, he believes that changes to the ordinance are appropriate. A curfew restricts certain fundamental constitutional rights, such as the freedom of movement and the freedom of assembly. Restrictions seeking to remedy an emergency situation needs to be narrowly constructed and very restrictively applied. He would suggest the time of this curfew be restricted to those hours of actual darkness and would suggest the curfew start at 9:00 p.m. The Clerk of Council clarified for Councilmember Wright that Councilmember Nelson would like him to consider a friendly amendment to narrow the span to 9:00 p.m. to 6:00 a.m. Mr. Erwin stated the ordinance does not contain a time limit but they can certainly add it. The City Manager has the authority to amend the time limits. Councilmember Nelson would the ordinance to narrow the burden as much as possible and it should be related to those times when persons may use the cover of darkness to assist them in misbehaving. Councilmember

Wright agreed with Councilmember Nelson that the authority to set the time limit of the curfew should not be up to the City Manager.

Councilmember Wilder noted that it might not have been clear to persons that the curfew would be evaluated daily and did not have to last until August 31, 2020. He appreciates they can look at it again at their June 9, 2020 meeting. Chief Zuidema indicated that the curfew did help them manage some of the challenges they experienced last night and he does think it is necessary. They are constantly monitoring intelligence and also in contact with law enforcement in other communities. He is not advocating a curfew indefinitely and does not take lightly the impact this has on the community. He was comfortable with changing the beginning time of the curfew to 9:00 p.m. because most of the nefarious activity they have been seeing has been happening after dark. The police are not doing stop checks and are giving a warning first. They want to educate first and foremost. The curfew serves as a tool and helps the public understand the gravity of the situation. Councilmember Wilder commented that he relies on the judgment of the police department. He is thankful for those putting their lives on the line in order to maintain calm.

Vice Mayor Dolan indicated she would support the 9:00 p.m. start time and the June 9 date to reconsider the curfew ordinance. This is all about the safety of our citizens and we need to do whatever we need to do.

Ms. Svrcek noted there is a list of frequently asked questions regarding the curfew on the City's website. At the end of the day, they want people to exercise common sense and good judgment.

Councilmember Helgeson said their job is not to just acquiesce their elected responsibility to experts. He appreciates their advice and they take their guidance coupled with the citizens they represent. He would suggest they change the end time to 4:30 a.m. because some of the gym classes start at 5:00 a.m. Leaving decisions to control people up to experts or nonelected people can cause trouble. Councilmember Wright indicated he would accept the end time of 4:30 a.m. as a friendly amendment. He would like them to move to a vote as his phone is losing power.

Mayor Tweedy noted Lynchburg is not immune to unrest or injustice. We want to save lives of our citizens who are also customers. We want to save the lives of our officers. We want to save our businesses,

which are the investment of people in our town. She noted that none of them as elected officials were out there on Sunday night standing with the officers. We want to use our power to speak for our citizens but we also have to use common sense in a time of crisis. She would defer to the police chief and is not for changing the time so people can go to the gym at 5:00 a.m. Protesting is not isolated to a few blocks. There is a whole communication network out here that we do not know about as good law abiding citizens. If we are going to second guess the police chief, she needs some applications for what they do and that includes councilmembers and those they represent. We are either in this together or divided we fall. This is about life and the blood, sweat and tears people have poured into their businesses and they want to save and secure both. She would call for a vote on the motion of a 9:00 p.m. start time and 6:00 a.m. end time. She made that as a friendly amendment and Councilmember Wright said he is not as concerned about the end time.

Mr. Erwin said the Rules of Procedure do not address friendly amendments and Robert's Rules of Order do not accept friendly amendments. Once a motion is on the table, it cannot be tweaked unless there is consensus to do so. Once a motion is made, it belongs to the entire body and the entire body votes. Council's Rules of Procedure allow for a member to make one substitute motion. Mayor Tweedy made a substitute motion for the hours to be 9:00 p.m. to 6:00 a.m. Vice Mayor Dolan seconded the motion. Councilmember Wilder asked Mayor Tweedy if she would accept 5:00 a.m. and she did not wish to do so. Councilmember Nelson wants the time tied to when it becomes dark and when it becomes light. Tomorrow's sunrise is 5:56 a.m. He would not object to 5:30 a.m. Mayor Tweedy said she is erring on the side of public safety. Councilmember Helgeson does not think the people that want to destroy property are going to set their alarm to get up and do so. He would like to think about some of the gyms that have classes that start at 5:00 a.m. He would like to make some other tweaks to the ordinance and Mayor Tweedy clarified they are voting on the entire ordinance as written with the exception of adding a start time of 9:00 p.m. and end time of 6:00 a.m. and the sunset date of June 9, 2020. Mr. Erwin clarified that the first motion they need to vote on is to replace the original motion, which would have had the hours being 9:00 p.m. to 4:30 a.m. The motion passed by the following vote:

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| Ayes: | Dolan, Tweedy, Wilder, Wright | 4 |

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| Noes: | Helgeson, Nelson | 2 |
| Absent: | Perrow | 1 |

Mr. Erwin clarified that they are now voting on the motion made by Mayor Tweedy and seconded by Vice Mayor Dolan to approve the entire ordinance with a sunset date of June 9, 2020 and the hours being 9:00 p.m. to 6:00 a.m. Councilmember Helgeson wanted to discuss this motion some more and Mr. Erwin clarified that Council has discussed this for more than thirty minutes and a motion to call to question is in order without further discussion. Councilmember Nelson deferred to Councilmember Helgeson. Councilmember Helgeson wanted child custody transfers to be added to the list of exceptions. Councilmember Nelson stated that writing into the ordinance all sorts of detailed exceptions opens it up for abuse and would make it very difficult for the police to enforce. In his experience, parents are not generally transferring custody of their children during these early morning hours and Council can discuss this in more detail next week. The motion passed by the following vote:

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| Ayes: | Dolan, Nelson, Tweedy, Wilder, Wright | 5 |
| Noes: | Helgeson | 1 |
| Absent: | Perrow | 1 |

Mr. Erwin explained that the Virginia Supreme Court has said that it is appropriate for a governing body to give local officials the authority to administer ordinances. The court has said it is not possible for a governing body to spell out every detail in an ordinance. It is appropriate to give considerable discretion to the officials that are charged with administering ordinances as long as there are reasonable guidelines in place to guide those officials. He thinks this ordinance does that and we have to simply trust our City officials.

Council then considered the reaffirmation of the June 1, 2020 declaration of local emergency. Ms. Svrcek wants to be clear that bringing the curfew ordinance to Council was not taken lightly or “willy-nilly.” It was brought to them after consultation with the City Attorney and the Chief of Police after a very serious incident of civil unrest. She cannot have police officers injured and the allegation that she is making

decisions lightly is unfair and unfounded and very difficult to sit here and take. She appreciates their tweaking of the ordinance as this is unprecedented times with no play book. She certainly understands the impact of the curfew on so many individuals. It is her responsibility to protect the citizens, employees and law enforcement officials. Her heart is very heavy with each difficult decision brought before her, particularly when our public safety personnel are being injured and attacked. That is the reason she declared a local emergency on June 1, 2020.

Councilmember Nelson made a motion to reaffirm this declaration, which was seconded by Councilmember Wilder. Councilmember Helgeson asked for clarification that this is another declaration of emergency on top of the one declared in March 2020 for the coronavirus. Ms. Svrcek said he is correct that they are under two declarations of emergency. We are in an unprecedented time when we have not experienced a declaration of local emergency for two local emergencies. Councilmember Helgeson noted that we have an ordinance that requires citizens to be penalized for a false alarm. We penalize them and charge them when they pull the alarm when there was no fire.

He is wondering if the local emergency declared for the pandemic is going away before this new one is enacted. It takes the power from them having open meetings with transparency. It turns it from the legislative branch that discusses it to the executive branch that acts. He thinks they have had more than six people in the hospital with other illnesses in the past. He wants to give public safety all the tools that he can give them while representing our citizens' constitutional rights. We had an isolated instance of a protest that turned into a riot. He hopes this will be rescinded quickly so we can allow our citizens to get back to freedom.

Councilmember Nelson expressed his appreciation to all of City staff that directed its time and effort toward what is certainly a unique time and circumstance. He stated that there is a rule book and it is the U.S. Constitution. Any restriction of on a fundamental constitutional liberty has to be narrowly drawn and allow the least restrictive imposition on those fundamental liberties. He thinks what City Council is doing here, by putting the times into the ordinance, allows us to do that. The motion passed by the following vote:

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| Ayes: | Dolan, Nelson, Tweedy, Wilder | 4 |
| Noes: | Helgeson | 1 |
| Absent: | Perrow, Wright (was no longer able to participate by phone) | 2 |

Chief Zuidema said last night there was a peaceful protect, which may speak to the fact that some of the actions Council and staff have been taking are helping. They have continued to make arrests stemming from criminal actions on Sunday and Monday night. Councilmember Helgeson noted he appreciates the arrests that are being made and he hopes for the protection of our citizens and personal property that the criminals are arrested. The Chief and City Manager believe the curfew needs to remain in effect tonight with the hours of 9:00 p.m. and 6:00 a.m.

// The meeting was adjourned at 11:50 a.m.

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Clerk of Council

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These meeting minutes were recorded and transcribed by Robin Craig while serving as the Clerk of Council; however, due to her unavailability, they were not signed or certified by Mrs. Craig.

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Interim Clerk of Council