

February 14, 2023

// A regular meeting of the Council of the City of Lynchburg was held on the 14th day of February 2023, at 4:00 p.m. in the Council Chamber, City Hall, Stephanie Reed, President, presiding. The following Members of the Council were present:

Present: Stephanie Reed, Chris Faraldi, Jeff Helgeson, Marty Misjuns, Sterling Wilder, Larry Taylor 6

Absent: MaryJane Dolan 1

// Mayor Reed stated that Councilmember Dolan would be unable to attend the meeting, and she had requested that any and all votes, including motions from the dais, be repositioned to the following Council meeting on February 28th to allow her to participate. Mayor Reed noted that Councilmember Dolan expressed her approval of the Council moving forward with the consent agenda and entering into a closed session to discuss appointments to Boards and Commissions and the water resources item at the end of the meeting. Mayor Reed stated that she intended to support Councilmember Dolan's request to table all votes until February 28th.

// In the matter of the Virginia Freedom of Information Act Training, Agenda Item #1, City Attorney Mr. Matthew Freedman stated that the training was being given because there was a requirement in the state code specific to new members of city councils. He explained that within two months of taking office and every two years thereafter, Councilmembers were required to take the training on the Freedom of Information Act. Executive Director of the Virginia Freedom of Information Advisory Council Mr. Alan Gernhardt began the presentation to the Council. Section 2.2-3704.3 of the Virginia Code indicates that the City Council, the Economic Development Authority, the Executive Director of the Economic Development Authority, and Constitutional Officials, shall complete in-person or online training sessions specific to the requirements of the Virginia Freedom of Information Act. Such training must be completed within two (2) months of assuming an applicable office and every two (2) calendar years thereafter while such an office is held. Mr. Alan Gernhardt, the Executive Director of the Virginia Freedom of Information Advisory Council, is visiting the City of Lynchburg from Richmond to provide the above training to the City Council and other persons who may be interested or require the same.

Councilmember Misjuns asked if there was a service requirement if a petitioner must notify a public body before filing.

Mr. Gernhardt responded that it was not a specific service requirement with legal service because many people acted on their own behalf. He said that they had agreed on three working days in advance of filing, which was changed from 7 days. He said that a meeting exception was added, but the rule had not yet been challenged in court, and the default rule, referencing Title 801 in the Civil Code, was a reasonable period. He said that there was ambiguity as to whether meetings were to follow the default rule or whether notification was required. Councilmember Misjuns clarified that so long as the public body was notified through the Clerk or City Manager, personal service was not required to receive the 7-day expedited hearing. Mr. Gernhardt said that he was not aware of a court case where such an argument was made.

Vice Mayor Faraldi clarified what Mr. Gernhardt's position was to provide legal advice. Mr. Gernhardt stated that he was not the Council's attorney. He said that he was able to discuss hypothetical items and items in general terms, and he was able to provide advice as part of his statutory duties. He said that typically, people were served in a personal capacity or named as individual respondents in a petition if someone alleged a knowing or willful violation. He said that the public body was typically named in most positions.

Councilmember Misjuns noted that the calculation of the costs was done at the lowest cost possible. He clarified what costs were considered, such as the work hours of the employee preparing the records and the materials used. Mr. Gernhardt responded that the language was new as of July 1, 2022. He suggested that if two employees were paid different rates performing the task, then the Council should bill at the lower rate to charge the lowest possible cost. He noted that the courts had not addressed the issue. He said that FOIA encouraged parties to make agreements. He said that one of the greatest costs came from electronic regards and the sheer volume of email and other communication platforms.

Vice Mayor Faraldi asked how many General Assembly members could meet before it was considered a meeting. Mr. Gernhardt replied that a quorum was the determining amount, as defined in § 2.2-3707.01(B), and any meeting, floor session, committee, subcommittee, or other official General Assembly body required a quorum.

Vice Mayor Faraldi noted that he had a government phone and a personal phone and that FOIA followed the individual, not the device or account. He asked Mr. Gernhardt to provide more clarification.

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Mr. Gernhardt stated that the rule applied to however the media was stored, regardless of physical form or characteristics. He said that the records did not stipulate between personal or private accounts. He said that the public record was determined by whether it was prepared or possessed by a public body or officers, agents, or employees in the transaction of public business.

Mayor Reed asked whether group texts between Councilmembers regarding public business would be considered a meeting. Mr. Gernhardt said that it could be. He said that there was a case in 2004 related to emails with a four-hour delay, and there was a 2012 case, Hill vs. Fairfax School Board, where the emails were 1.5 minutes apart. He recommended against text messages or including the entire Council in the CC of an email. He said that if two members responded to the communication at the same time and began discussing public business, then they had an established factual pattern for electronic communication creating a real-time record discussing public business which could potentially be considered a meeting. He recommended that staff be contacted to distribute materials to the entire Board, and the Councilmembers should be BCC'd on the email. He said that staff would be able to archive the records, and they would have access to the records to respond to requests.

Mayor Reed asked if it would be considered a meeting if two or more Councilmembers were invited to an event, and the Councilmembers were requested to speak on public matters or provide an update. Mr. Gernhardt said that was close to the line, and if the other Councilmembers started discussing public business, it could be considered a meeting. He said that it was also up to public perception. Councilmember Helgeson clarified that Councilmembers could attend an event, speak, and then leave; Mr. Gernhardt replied that was possible. Mayor Reed clarified that they wanted to avoid discussing City business between Councilmembers and citizens or other parties. Mr. Gernhardt said that there was a provision in FOIA that stated that discussion with citizens should not be discouraged. He said that it was fine to discuss business with citizens, but there should be caution if there were other Councilmembers present.

// In the matter of Harrisonburg Redevelopment and Housing Authority, Agenda Item #2, Council was briefed on a bond issuance for the housing authority. Mayor Reed noted that the item would appear before Council for action on February 28, 2023. Assistant City Manager Dr. John Hughes introduced the item. Ms. Anne Curtis Saunders, McGuire Woods, provided a report to the Council. Wesley Lynchburg

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Housing, LP plans to renovate property located at 1201 Long Meadows Drive (Wesley Apartments) in the City of Lynchburg and requested issuance of multifamily residential rental housing revenue bonds through the Harrisonburg Redevelopment and Housing Authority (HRHA). The HRHA approved bond issuance by resolution during the meeting of December 21, 2022. The Harrisonburg City Council then approved a resolution on bond issuance through the HRDA as of January 24, 2023. The Lynchburg Redevelopment and Housing Authority (LRHA) approved issuance of bonds for the project (Wesley Apartments) with HRHA by resolution on January 19, 2023. A subsequent resolution approved by the Lynchburg City Council would solidify bond funding through HRHA for Wesley Lynchburg Housing, LP.

// In the matter of the Airport, Agenda Item #3, Campbell County Stormwater Management Maintenance Agreement, Mayor Reed stated that the item would appear before Council for action on February 28, 2023. Airport Director Mr. Andrew LaGala provided the staff report. The City of Lynchburg desires approval of a Stormwater Management Plan for the installation and maintenance of stormwater management practices and facilities labeled as UGD #1 (Underground Detention) on the listed parcel below: Tax Parcel # 22-A-5, Deed Book/Page 101/110, recorded in the Clerk's Office of the Circuit Court of Campbell County, Virginia. This parcel is located on the Lynchburg Regional Airport premises and is associated with the new Council-approved Freedom Aviation 19,600 +/- sf aircraft hangar. The County of Campbell and the City of Lynchburg agree that the health, safety, and general welfare of the residents of Campbell County, Virginia require that on-site stormwater management practices and facilities be constructed and maintained by the City of Lynchburg.

// In the matter of Airport, Agenda Item #4, Amendment to Lease Agreement with Republic Parking System, LLC, Mayor Reed stated that the item would appear before the Council for action on February 28th. Airport Director Mr. Andrew LaGala provided the staff report. Republic currently has a lease with the Airport and manages the passenger terminal parking lots. Republic is requesting a 5th lease amendment to upgrade, purchase, install and operate a new Parking and Revenue Control System (PARCS) at the Lynchburg Regional Airport. This new PARCS will be an equipment investment that will consist of all new up-to-date technology entrance and exit systems, including a monitoring process to assist customers during non-staffing times, and will connect to Republic's contracted call center. While the lease is in

effect, Republic shall be responsible for all repairs and maintenance associated with the new PARCS system. The amendment will extend the lease for an additional five (5) years to commence on March 1, 2023.

// In the matter of City Code, Agenda Item #5, review and discuss a proposed ordinance that would amend Sec. 36-126.6 of the Lynchburg City Code relating to the requirements specific to business license filings in the City, City Attorney Mr. Matthew Freedman provided the report to the Council. At the request of Vice Mayor Chris Faraldi, the City Attorney's Office prepared a draft ordinance for the City Council's review and discussion. If adopted, such an ordinance, in addition to technical corrections shown, would allow the City's Commissioner of Revenue to permit, for reasonable cause, an option to provide an extension of the application deadline for business owners subject to business license filing requirements.

Vice Mayor Faraldi stated that they had worked with a local business owner who had run into issues. He said that if Council decided to move forward, they could adopt a business-friendly policy.

// In the matter of Personal Property Tax, Agenda Item #6, Commissioner of the Revenue Mr. Mitchell Nuckles provided the staff report; Mayor Reed stated that the item would appear before Council for action on February 28th, 2023. City Council used a 75% ratio against the assessed value (according to the NADA pricing guide) to calculate the personal property tax levy in tax year 2022. This ratio was utilized due to the shortage of new vehicles as a result of the economic impacts of COVID-19 and used vehicles appreciating, rather than depreciating from the prior year's value. While supply chain issues persist, used car values have stabilized and most vehicles experienced normal depreciation. It is important to note that the 2023 values are still elevated due to the unprecedented appreciation experienced over the last two years. The Commissioner assesses vehicles using 100% of the clean trade-in value from the January edition of the NADA Used Car Guide. This valuation guide is used by every locality in the Commonwealth of Virginia. The City of Lynchburg realized a 5.08% increase in the assessed value of vehicles for tax year 2022. This year the assessed value of vehicles is expected to increase an average of 10.5%. This will result in a higher tax levy to 75% of current vehicle owners. The Commissioner has explored possible options to lower the tax burden for Lynchburg citizens for the 2023 tax year. The recommended action is to reduce the ratio used against the assessed value (according to the NADA pricing guide) from 100% to 93% to calculate the personal property tax levy, and is provided for in the Code of Virginia.

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Vice Mayor Faraldi asked if, in the 75% ratio in the breakdown from 2016 to 2023 had a 5% increase to the total tax revenue coming to the City. Mr. Nuckles said that was correct. Vice Mayor Faraldi asked if a 93% ratio was projected with a 9.5. Mr. Nuckles said that it was 2.5. He explained that the 9.5 was if they did nothing, but if they took the 7 percentage points, it would be 2.5. Vice Mayor Faraldi asked if that would be at 75% again. Mr. Nuckles said that it would be at 93. Vice Mayor Faraldi asked if there was a positive increase in tax revenue at 75%, why they would not go for the lowest percent. Mr. Nuckles said that he was fine either way, as this work kept the methodology the same as last year. Vice Mayor Faraldi asked what the normal appreciation was on the dollar amount per vehicle. If the costs had leveled on used vehicles, it should be analyzed as to whether they had leveled at the new market of inflationary costs. Mr. Nuckles said that that would be part of it, and the best way to describe this would be part of the new normal. Vice Mayor Faraldi said that he agreed that there was doubt that these costs would return to what they were. Mr. Nuckles said that the original increase in value was driven by SUVs, pickups, and 4WDs, but the new increase was in sedans, so it was a moving issue. Vice Mayor Faraldi said that he believed this was a component of offering relief during the upcoming budget process, because he wanted a decrease for citizens, not for it to stay the same or increase. Mr. Nuckles said that he would like the ratio to be used to arrive at value. Vice Mayor Faraldi asked for clarification. Mr. Nuckles said that he was referring to the value of the car, and the ratio of 93% would get close to the true and uninflated market value of the automobile, and should be used to generate savings, and the rate should be used to generate the revenue. Mr. Benda said that personal property tax bills must be generated, and he would be able to provide options to the Council so that this item could be voted on at the February 28 meeting. Vice Mayor Faraldi asked Mr. Benda how his team would respond to amendment of the ratio and using the rate to offset for tax relief. Mr. Benda said that he differed from Mr. Nuckles in that he would lean toward the ratio as opposed to a rate, because rates could become political in that the Councilmembers were given the position to reduce or increase that rate. Vice Mayor Faraldi said that he was indifferent as to whatever process resulted in tax relief. Mr. Nuckles said that he agreed that he would be amenable to either way.

Councilmember Misjuns asked if the assessed value demonstrated the fair market value of the assets for the next year. Mr. Nuckles said that it was for the uninflated value. Councilmember Misjuns

asked if there were more vehicles this year than last year. Mr. Nuckles said that there were fewer. Councilmember Misjuns asked if those fewer vehicles were worth more. Mr. Nuckles said that was correct. He indicated on the graph the percentage of vehicles that were increasing in value, so even with 75%, 25% of vehicles increased in value last year. If nothing was done this year, it went to 71.76%. The tax had to have an assessment and a rate, and a ratio would be acceptable because the 71.76% would go down. The goal was to have a true assessment and a rate to apply against that assessment.

Councilmember Misjuns asked if the 71% was demonstrating nothing being done with the ratio. Mr. Nuckles said that was correct. He said that if they went with 93%, that number drops to 54%, and with 90%, the number dropped to the low 40s. He said the reason the percentage was higher was due to the lower number of vehicles, likely resulting from people selling their vehicles when the prices were high. Councilmember Misjuns said that there was volatility in those values. Mr. Nuckles said that the demand was not as much as it was six months ago, likely due to gas prices and interest rates, so dealerships were currently selling many of these vehicles at a loss. The majority of the depreciation of that 18% that occurred was in the last three months of the year. Councilmember Misjuns asked if people could notify the Commissioner of the Revenue if they had high mileage on the vehicle that may otherwise go unnoticed. Mr. Nuckles said absolutely. He noted that the high mileage reduction had escalated with the amounts within the fields, which was presented to the citizen on the front of the bill and the mileage chart on the back. Councilmember Misjuns reiterated that citizens should look carefully at that bill and contact the Commissioner of the Revenue to get a reduction that way.

Councilmember Helgeson asked if at 93%, there would still be 3% growth, and at 90%, there would be no growth. Mr. Nuckles said that was correct. Councilmember Helgeson said that this change was an anomaly and had not been done in the past 20 years. Mr. Nuckles confirmed that it had not happened in his 32 years of service. Councilmember Helgeson said that they were proactive in lowering the value as a percentage to 75% due to the higher assessments, but this year, the values were beginning to lower, so he would approve of a percentage of either 90% or 93%. He said that during the budget process, it could be decided whether \$3.80 for property tax was too much and the next steps for lowering it, but at this point, a fair assessment should be established. He said that the first step was deciding between 90% and no growth and 93% and 3% growth, then according to the budget, they could

then decide if a lower tax on cars could be implemented. Councilmember Helgeson asked when they must decide on the percentage. Mr. Benda said that the matter was scheduled for a vote before Council at the February 28, 2023 meeting. Councilmember Helgeson said that if they were not going to lower the rate, he would prefer the 90%. Councilmember Helgeson asked when the tax bills would be sent out. Mr. Nuckles said that they were sent out April 30. Councilmember Helgeson asked what the due date for those bills was. Mr. Nuckles said the due date was June 5. Councilmember Helgeson asked if that was also setting the rate. Mr. Nuckles said that the rate was adopted during the budget process. Mr. Benda said that if it was just the ratio and not the rate, they could send the bills, and if a new rate was proposed and adopted in FY24, it would not go into effect until July 1, so the rate would not be impacted until after the June 5 deadline for bills. Mr. Nuckles said that any rate change for personal property in the past was for the calendar year assessment of tax, but at that time, there was only an annual billing, so this would be the first time there would be a personal property tax with twice-per-year billing. Councilmember Helgeson asked if this would allow for augmentation of billing if rates changed. Mr. Nuckles said that it was likely possible through the IT personnel who handled the billing.

Councilmember Wilder asked if it was known what rates the surrounding counties were using and if adjustments were being made to those. Mr. Nuckles said that last year, Campbell County did 80%. Bedford did not do anything but had now adopted a 33.3% rebate to the citizens, which had been difficult on the Treasurer and Commissioner's Office. Amherst went with 80%, but he was unsure of Nelson County or Appomattox County.

// In the matter of Planning, Agenda Item #7, Council received an update on the City's comprehensive plan. Mr. Kent White, Director of Community Development, gave a brief overview of the item. The Code of Virginia §15.2-2230 requires that the existing comprehensive plan be reviewed by the Planning Commission to determine if the plan should be amended. The current comprehensive plan was adopted by City Council on January 14, 2014. The Planning Commission reviewed the existing Comprehensive Plan on July 27, 2022 and determined that the plan should be amended. Funding for the plan update was included in the FY2023 Operating Budget and, in response to a formal Request for Proposals (RFP) process, Berkley Group was selected to assist with the planning process. The submitted proposal provides for significant input opportunities from City Council, Planning Commission and the public. Mr.

Tom Martin, City Planner, summarized to staff that the comprehensive plan establishes a vision to guide the future growth of the City, identifies goals toward achieving that vision, creates policy guidance for public and private decision makers and identifies tasks that need to be pursued to make the vision and goals a reality. Comprehensive plans are developed to address present and future needs in areas such as (but not limited to) transportation, affordable housing, land use, environmental issues, population growth, economic development and employment, historic areas, land preservation and public facilities. The current project timeline gave an end date of November 2024.

Councilmember Helgeson said that he was concerned that consultants would not efficiently use taxpayer funds to execute such a project. He said that the comprehensive plan may not need to be completely rewritten but perhaps amended in part. The potential next step could be internal revisioning of the plan before hiring an outside consultant to formulate a plan. Mr. Benda said that no vote was required for this, because the money was appropriated in FY23, and there was agreement to move forward with partnering with a third party due to capacity. Successful procurement had been undertaken and the contract was only missing his own signature. An individual had questioned the import of this document, and they were having a conversation, but no vote was necessary. He said that in regard to Councilmember Helgeson's ideas for internal work, he would like to implement them, but they did not have the staff to do so. The process was as driven by the Council's participation in it as anything, so while Councilmember Helgeson was concerned that the third party may make decisions about their City and not the City Council, that was not the case, because they were creating a paradigm that ensured there was as much or as little involvement that each Councilmember could have in this process.

Councilmember Misjuns asked how many consulting firms the RFP process was sent to. Mr. Martin replied that it was put out to the three firms who had submitted applications. Councilmember Misjuns asked if the Berkley Group, who won the contract, was the only firm that had former Lynchburg City employees in it. Mr. Martin clarified that the past City leadership would not be a part of this process. Councilmember Misjuns asked if they were executive directors for the Berkley Group. Mr. Martin said that they worked for the Berkley Group, but he was unsure if they were executive directors. Councilmember Misjuns said that he was concerned about the cost associated with this project and personnel when there were current known material needs in the City such as mold remediation in City schools, for example,

R.S. Payne Elementary School. He asked if they could change this plan to not include consultants. Mr. Martin said that staff was the biggest issue in this case. The timeline for this project was 18 months, and there was not staff capacity to allow them to do it on their own. This was a unique opportunity for this Council as to decide where the City was going to be in 10 or 20 years. Council had voiced issues in regard to requests for rezonings and future land use maps in certain areas of the City, so this was an opportunity for Council to set those standards for how the City would develop. It put developers on notice, gave staff direction on how to formulate recommendations to Council. Councilmember Misjuns asked if the 18-month process was proposed by the consultant. Mr. Martin said that was correct. Councilmember Misjuns said there was another way to get this done.

Councilmember Misjuns motioned to allocate the funds directed for the comprehensive plan and apply them to the CIP for improvements for R.S. Payne.

Mr. Freedman said that Council could provide the direction in doing this if a majority wanted to do so, and he would defer to Ms. Witt, but he believed there was a requirement for appropriations to be done by resolution or ordinance. He submitted that it may be more appropriate if this motion was to be directional and come back in a future meeting in the form of a resolution or ordinance.

Councilmember Misjuns said he would amend the motion to direct the City Manager to return at the next Council meeting with a resolution to amend the FY23 budget and reallocate the funds for the comprehensive plan and apply them to the CIP for renovations at R.S. Payne Elementary School. Councilmember Helgeson seconded the motion.

Councilmember Helgeson said that they should read the comprehensive plan before hiring any consultants. He said that the use of the funds for mold removal would be possibly good utilization.

Councilmember Wilder said that without a vision, the City would perish. He voiced concern that their City was going down a path that did not consider the future and the continued growth that had been witnessed for the past 20 years. He said that if they did not have the 2020 plan to revitalize the downtown area, they would not have had the robust growth and property value increase that had occurred in the area. Their community must have a vision and plan for how they saw themselves 20 years from now. In order to draw families and students to Lynchburg over other robust communities, they must be advantageous in creating a community that people wanted to live in and a quality of life that they would

want to be a part of, but if they did not plan for their future, the City would die, and they would not have the growth they would like to see. He agreed that R.S. Payne and various other institutions in the community required major improvements, but the School Board had funds to address those issues, so they should make sure the School Board was able to adequately address the issues and allocate the funds in an efficient way across all affected buildings. He disapproved of the motion and stated that they should continue the path of the comprehensive plan in order to think about the children of the future, because if their City was not growing, there would not be tax revenue to institute changes in the community to make it a place of employment and living.

Vice Mayor Faraldi said that he understood the concern and perceptions associated with the motion made, and valued having an outside group, including citizens and public stakeholders, to create a document that helped them move a certain direction. He stated his disapproval of motions being made at work sessions without prior notice being given to Councilmembers and the public. He said that he did not think it was good policy to have to make a sudden decision about City business. He stated his appreciation for the desire to allocate any funds to Lynchburg City Schools. He said that this topic may be more suited to a one-on-one discussion with the City Manager, and if there was further issue, the matter could be brought back to in a public meeting before Council. He said that while the concern behind the motion was valid, he cautioned Council from utilizing this process for conducting City business, so he would not be supporting the motion.

Councilmember Helgeson said that he knew this item had been upcoming, which was why he emailed the City Manager. He stated that he did not recall this specific line item from the budget, and did not even know that it was an ability until he emailed the City Manager, who mentioned it in the reply, and as he said today, had already appropriated it but would be giving Council ample time. There could be negative consequences of undertaking plans such as this comprehensive plan, so focus should be given to minimizing those consequences. He said that there should be a vote on the current motion before Council, then they could have a full discussion when the City Manager came back and signed the contract tomorrow and as an official resolution on February 28.

Councilmember Wilder said that businesses also viewed the plans they were making for the community and making decisions about where to make investments. Changing a plan midway hurt the

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businesses coming to the area, and he had concern about that. He agreed with Vice Mayor Faraldi that making decisions with such short notice did not give sufficient clarity to constituents and the community. Businesses may view Lynchburg as unstable if their ventures became affected by a sudden decision made at a meeting. He stated that it was not appropriate to comment on the past City employees who were now working for the Berkley Group because the City was not in a position to question that employment.

Mayor Reed said that at the beginning of the meeting, the request of Councilmember Dolan that she did not want Council to vote on items, and she requested they respect her wishes, but a motion was now on the floor. She said that it was fine for Council to discuss plans moving forward if there were concerns about paying consultants from this point forward and how to manage taxpayer money. It was in poor taste to discuss monies already appropriated to certain issues like this when 18 months of work had been planned and agreed upon to this point, and that should be considered. The concerns regarding exorbitant consulting fees were understood, and there was no issue with researching that in the future, but it was not beneficial to pull out of deals already made with interest to time and expectation with those types of agreements.

Councilmember Misjuns offered a substitute motion to table the discussion until the next meeting when Councilmember Dolan was present, February 28, 2023. Councilmember Taylor seconded the motion.

Vice Mayor Faraldi asked if it was possible for a Councilmember to make a substitute motion on their own motion, and if it meant they were speaking against their original motion. Mr. Freedman said that he believed they could. Because there had been a call for the question, the motion may not necessarily be in order, so the Council could consider by majority or by consensus whether to entertain the substitute motion to allow for Councilmember Dolan to be present to consider these discussions, or alternatively, the Mayor could rule the substitute motion out of order and proceed.

Mayor Reed ruled the substitute motion was in order, and upon no further discussion, the following vote was recorded:

Ayes: Wilder, Helgeson, Reed, Faraldi, Taylor, Misjuns

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Noes:

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Absent: Dolan

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Vice Mayor Faraldi asked if the amended motion must be adopted. Mr. Freedman said that there was consensus among Council to table the discussion, so that motion did not need a vote. Vice Mayor Faraldi said that the amended motion still remained on the floor and must be voted on. Mr. Freedman said that another vote could be taken to move the discussion to the February 28 meeting.

Upon no further discussion, the following vote was recorded:

Ayes: Wilder, Helgeson, Reed, Taylor, Misjuns

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Noes: Faraldi

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Absent: Dolan

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Mr. Benda explained that the issue with earmarking resources in an annual budget, going through the procurement process, and then subsequently decided in an adopted budget year that they no longer wanted to do that, it created concern about their ability to contract in the market space. He said that he understood there were questions about the particular respondent who was successful, and that was the first time he had heard of that. He said that the staff who were employed through the procurement process were subject to VBPA, which was very stringent, and if procedures were not followed correctly, they could get sued. He said that he heard an interest in helping the R. S. Payne School, and there was a return-to-fund balance that was earmarked as resources for Payne for approximately \$700,000. He said that if Council decided resources should be allocated differently than they were currently, he would ask that Council consult with him in order to identify what the best purpose for those funds would be.

Mr. Freedman said that because they had in place a Council Manager form of government, there were certain duties designated to the manager by charter, ordinance, etcetera. One of those duties was general contracting, and Council reserved some power in regard to some specific contracts, and within a comprehensive plan process, there were public hearings, opportunities for public feedback, and Council making any adoption could suggest whatever was seen as appropriate to the plan or changing of the plan, but contracting was typically a power reserved to the City Manager.

//In the matter of the Police Department, Agenda Item #8, Council was briefed on the Lynchburg Police Department and Virginia State Police Partnership. Police Chief Ryan Zuidema gave a summary to Council. The partnership had existed for decades, and most recently the State Police were in the City

around early December to assist staff designated to address community crime, which was a partnership that continued currently. Between mid-December and mid-January, the group had arrested 150 people, 27 of which were felony drug arrests. In that time, 22 firearms were confiscated that had been used in crimes. VSP is also performing additional traffic enforcement in Lynchburg, something that historically had not been done in their communities but was requested in order for more traffic enforcement and more visibility of law enforcement in the area. He said that close and positive relationships were had with the State Police at Division III at Appomattox, as well as the State Police Superintendents in Richmond.

Councilmember Misjuns asked if the Police Department could look into using managed vacancy funding could be utilized to cover the overtime rate, or mileage on patrol vehicles to bring in partner agencies to stop crime.

// In the matter of Roll Call, Agenda Item #6, Councilmember Wilder said that he was thankful for the work being done in their community. He wished everyone a happy Valentine's Day. He stated that it was also Black History Month, a time to embrace their heritage and diverse culture, noting that the Lynchburg school system had more than 50% African-American students, so it was important they were embraced for their culture as all citizens should be. He thanked City staff for all the work done. He also announced that the 2023 MLK Unity Walk would be taking place on Saturday at 11 a.m. at the circle at 5th and Federal Streets, sponsored by the Lynchburg Area Youth Sports Initiative.

Councilmember Misjuns said that he would like to recognize Principal Steel and Bedford Hills, where he attended a STREAM night event, where they had a lot of different activities around science, technology, engineering, and math. Water Resources personnel, Randolph College personnel, and local businesses were helping out with the event, and he thanked them for making a successful event for the children and families. He thanked the City Manager for quickly acting regarding a citizen's concern about political information on display at the museum, which was inappropriate for government and taxpayer dollars to push political agendas. He thanked Mr. Benda for his actions.

Councilmember Taylor said that Lynchburg was not a bad place to live, even with gang trouble. He was currently demolishing a house on Tulip Street. An ex-gang member showed up one day and he gave him a few dollars, and for the last two weeks, that young man had been over there with a hammer, crowbar, pickaxe, taking that house apart. Young people looked up to them, but they just had to reach

them. This young man was working on his own, had had two bypass surgeries, but had the desire to work. He left the gang and was trying to make a living. On a positive note, they could do this. He said the City Council could also do this. He said that it was Love Day, so they should extend love to one another, and they will grow.

Vice Mayor Faraldi said that Dunbar Middle brought home a National Excellence in Ensemble Award and other individual awards from a National Junior Theater Festival in Atlanta. He said that his family was full of thespians, and his sister taught theater education in Charlottesville. It was an amazing feat that he wanted to highlight for the public if they were not aware. He commended them for their performance. He said he felt compelled given the scary scene out in Ohio, he did not know if there were emergency best practices or related policies on the books about something like a tanker on a railroad blowing up, and there had been similar histories in Lynchburg, so he would like to have some understanding of that in the future so that Council did their due diligence of being informed on the protocol for the area. Mr. Benda said that Councilmember Helgeson had sent an email about the same topic, and a reply would be shared with all of the Council.

Mayor Reed said that Councilmembers operated by Rules of Procedure. Section 1.1(A) of the Rules of Procedures stated that part of the purpose of Council was to enable Council to transact business fully and expeditiously and efficiently while affording every opportunity to citizens to witness the operations of government. She said that speaking for herself, as an at-large City Council member, which she was proud to be, she represented 82,000 people in the City, whether they voted for her or not. She said that she took this very seriously, so when she read the phrase "transact business fully" and "citizens can witness the operations of government," how she received that and interpreted that was that she owed their citizens the opportunity to attend or watch on TV a full transaction of business, meaning that if there was an agenda item placed on the agenda, that they were allowed to see public hearings, have a full presentation from staff, and see that all of Council was fully informed on an item before they voted on it, so that they knew that they were fully educated on something that Council was voting on behalf of the citizens. Councilmembers were stopped in public by constituents who asked for reasons as to why Councilmembers voted or did not vote for certain things, and she did not want to appear uninformed, and that she transacted business fully on their behalf, and that they were able to witness the operations of

their government. She said that another item she had been asked about was conduct. Under Section 5.4 of the Prohibited Conduct section in the Rules of Procedure said in part A, all persons appearing before Council or in Council Chambers, meaning everyone in here tonight, while meeting of Council is in session, will not be allowed to campaign for public office, promote private business ventures, use profanity or vulgar language or gestures, use language that insults or demeans any person, or which when directed at a public official or employee is not related to his or her official duties. However, citizens have the right to comment on the performance, conduct, or qualifications of public figures, make non-germane or frivolous statements, interrupt other speakers or engage in behavior that disrupts the meeting, including applause, cheers, or jeers. Meaning that she may have to use the gavel if the audience cheered or jeered. She continued that engaging in behavior that intimidates others was listed as #7, followed by addressing the Council on issues that do not concern the services, policies, or affairs of the Council or City. She said that in Section B, the presiding officer, which was herself, shall preserve order, and decorum at the Council meetings, and she may order the expulsion of any person for violation of these rules, disruptive behavior, or any words or actions which incite violence or disorder subject to appeal of the Council. She said that it continued to describe expelling people, which she hoped she would never have to do, but she had had a lot of phone calls, comments, and concerns from the citizens who she represented about the behaviors that have been exhibited in the Chambers. She said that she was embarrassed. People have been intimidated and verbally assaulted sitting out with the public, made to feel unsafe, people on the dais had been intimidated and threatened, or felt threatened, which was subjective. City staff had been insulted. She said that as the presiding officer of this City Council, she would not tolerate it. She reiterated that all participating members had access to the information in the Rules of Procedure. She stated that she was reminded constantly of the many mayors and presiding officers who had served before her, and she expressed thanks for all of their leadership, but on January 4, she became the presiding officer of the Council and Mayor of the City. She said that she was letting the public know that she would be following the guidelines and was setting a standard for her expectations. She said that children were watching, including her own, and she would let them know the kind of mother they had, and how she expected people to be treated in their City. She said that her last item was about veterans. She thanked the veterans present for their service, including her husband. She said that it had

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come to her attention that a benefit that was offered to their veterans had been criticized recently. In 2011, a constitutional amendment adopted by the State offered tax relief to service members who were 100% permanently disabled for their service in the military and allowed those service members real estate tax relief. She reiterated that this tax relief was for those who were 100% totally and permanently disabled from serving their country. She said that 158 veterans who lived in Lynchburg qualified for that benefit, and one of those was her husband, who was one of 1% of the country who had been willing to risk his life for everyone attending and watching so that they could maintain the right to do so. She said that the 99% of people who did not serve used a phrase that her husband was out of touch with the taxpayers of their City because he had that benefit. She remarked on the incredulity of saying that a man who was permanently disabled from serving their country was out of touch. She said that the 99% of their country who had not served and gone to combat, who had to leave their wife and four children never thinking they would see them again, were those who were out of touch. She said that anyone who had not been willing to risk their lives for people they did not know was out of touch. She said that those who were in the group criticizing her spouse and family for being out of touch, she invited to join her and her husband on Friday at Monument Terrace with all of the other veterans who had served their country bravely. She asked if those people would call veterans in wheelchairs or with oxygen masks out of touch. She said that her grandfather was now 100 years old, had served in World War II, and would have a thing or two to say on the matter.

Mayor Reed also announced that the month of February was Black History Month. Take a moment to remember the ones who came before us, as well as the people here today who continue to make a difference, like current Councilmembers Larry Taylor and Dr. Sterling Wilder. You are continuing a long legacy of service in our community. Thank you for your many contributions, including the installation of a park in White Rock Hill by Councilmember Taylor, and the establishment of the Jubilee Family Development Center by Councilmember Wilder.

// Councilmember Misjuns motioned, seconded Councilmember Helgeson, to move the closed session items until the end of the 7:30 p.m. meeting; Council agreed by consensus.

// The meeting was recessed at 7:00 p.m.

// City Council reconvened the meeting at 7:30 p.m. The following members were present:

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Present: Stephanie Reed, Chris Faraldi, Jeff S. Helgeson, Sterling A. Wilder, Martin Misjuns,
Larry Taylor 6

Absent: MaryJane Dolan 1

Vice Mayor Faraldi gave the Invocation, followed by the Pledge of Allegiance.

// In the matter of Recognitions, Mayor Reed recognized the Heritage High School football team for their accomplishments over the fall. She stated that the Pioneers were the 2022 seminal district tri-champions, the 2022 Region 3C champions, and the 2022 State 3A runners-up. She called for the coaching staff and players to approach the dais and receive their certificates.

// In the matter of Recognitions, Mayor Reed recognized the E.C. Glass High School football team for their dedication and accomplishments during the season. She said that the team won the seminal district regular season championship, the Region 4D championship, and hosted the state semi-final game for the first time in 27 years. She called for the coaching staff and players to approach the dais and receive their certificates.

// Vice Mayor Faraldi requested the Council's unanimous consent to allow Mr. Robert Flood, representing the Peacemakers, to speak during the public comment period. Mayor Reed noted that there was unanimous consent.

// Councilmember Helgeson requested that the agenda include his Loving Lynchburg Taxpayers Together tax relief proposal at the end of General Business by unanimous consent. Vice Mayor Faraldi motioned for the Council to adopt the Consent Agenda, seconded by Councilmember Misjuns. Vice Mayor Faraldi stated that he objected to Councilmember Helgeson's request for unanimous consent. Mayor Reed stated that she objected to Councilmember Helgeson's request for unanimous consent. Councilmember Helgeson motioned that the agenda be amended to include the Loving Lynchburg Taxpayers Together tax relief proposal, seconded by Councilmember Misjuns. Councilmember Misjuns stated that the item should be included on the agenda because it was requested in advance, and councilmembers should have the opportunity to add items to the agenda. He said that he would support the item. Vice Mayor Faraldi asked the City Attorney whether the motion was valid since Council had acted on a related matter. Mr. Freedman responded that Council could provide a majority direction that was different from a previous action. He said that the reason the matter was not on the agenda was because the Council had, as a

majority, acted to provide direction on the same subject. He said that Council had to decide whether to add the item to the agenda or proceed with the previous direction. He said that the motion was properly in order. Vice Mayor Faraldi made a substitute motion to approve the Consent Agenda, seconded by Councilmember Wilder. Councilmember Helgeson stated that the substitute motion was not germane to the motion on the floor. Mr. Freedman said that the motion to approve the Consent Agenda as a substitute motion would not be in order, but what would be in order would be a motion to dispose of the motion to amend in some fashion or to continue the discussion and put the item to a vote. Vice Mayor Faraldi made a substitute motion to adopt the agenda as-is, seconded by Councilmember Wilder. Councilmember Misjuns stated that he would make a substitute motion. Vice Mayor Faraldi clarified that there could not be a second substitute motion on the floor. Mr. Freedman clarified that the rule meant the main motion could only be amended once in a particular fashion. He stated that Council was discussing and debating whether to adopt a substitute motion to adopt the agenda as-is. He said that if the motion failed, the main motion, proposed by Councilmember Helgeson, would be up for discussion and a vote. Mayor Reed clarified that the vote would be on Vice Mayor Faraldi's substitute motion if she called the question. Councilmember Helgeson called a point of order because it was out of order to call the question. He stated that 30 minutes of debate was required to call the question. Mr. Freedman responded that it did not necessarily require 30 minutes of debate, but if each member had been allowed to speak, then the rules had been satisfied. He stated that it was up to the Mayor to determine whether each Councilmember had been allowed to speak and noted that debate should not exceed 45 minutes. Councilmember Helgeson clarified that he distributed the proposal to the Council on January 31, and there was a significant surplus, and a portion should be returned to the taxpayers. He said that the item should be added to the agenda so that the Council could discuss the item. Mayor Reed clarified that there had been many full and transparent discussions on the subject, and the Council had been clear on the intended direction. She noted that a majority of the Council voted at the January 24 meeting to direct staff on how to apply the tax cuts. She said that once something had been voted on by Council, the item could not come back on the agenda as a regular requested item, and it could only come back as an agenda item in three ways: if a majority responded to the requests; as a motion of reconsideration at the following meeting; or by a motion to amend approved by a majority. She stated that 48% of the City residents were

homeowners, and about 52% rented, and of the 48% of homeowners, the majority owned homes with a median assessed value between \$100K and \$200K. She said that if a home was assessed at \$100K, the credit provided by Councilmember Helgeson's tax proposal would be \$60. She said that they had discussed ways to provide relief to residents who did not own their homes. Mayor Reed called the question on the substitute motion from Vice Mayor Faraldi, to adopt the agenda as-is. Mayor Reed called a point of order because Councilmember Helgeson continued to debate the item. Mr. Freedman responded that they had approached over 30 minutes of debate, and at 8:01 p.m., Councilmember Helgeson had the opportunity to speak on the matter. He submitted that typically, the Mayor was the last to speak and could call the vote on the matter.

With no further discussion from Council, the following vote was recorded:

Ayes: Stephanie Reed, Chris Faraldi, Larry Taylor, Sterling Wilder	4
Noes: Jeff Helgeson, Marty Misjuns	2
Absent: MaryJane Dolan	1

Mayor Reed called the vote on the motion to adopt the agenda as-is. Councilmember Helgeson clarified that they were adopting the agenda as written. Mr. Freedman responded that the motion on the table was the agenda as presented with the correction made by consensus. Mayor Reed called the vote on the motion to adopt the agenda with the correction by Vice Mayor Faraldi to allow Mr. Flood to speak on an item.

With no further discussion from Council, the following vote was recorded:

Ayes: Stephanie Reed, Chris Faraldi, Larry Taylor, Sterling Wilder, Marty Misjuns	5
Noes: Jeff Helgeson	1
Absent: MaryJane Dolan	1

Vice Mayor Faraldi made the motion to approve the Consent Agenda, seconded by Councilmember Wilder.

With no further discussion from Council, the following vote was recorded:

Ayes: Stephanie Reed, Chris Faraldi, Larry Taylor, Sterling Wilder, Marty Misjuns,	
Jeff Helgeson	6
Noes:	0

Absent: MaryJane Dolan

1

// In the matter of Public Comment, Agenda Item #7, Citizen Jamie Maxwell was not present.

// In the matter of Public Comment, Agenda Item #8, Citizen Timothy Santiago stated that Robert's Rules of Procedure stipulated refraining from speaking until recognized, speaking to the subject under debate, and only referring to other members in a respectful member. He said that local government had the most impact on the citizens of Lynchburg. He said that there could not be proper debate when the citizens were unruly, and the Council should follow and enforce the rules of procedure.

// In the matter of Public Comment, Agenda Item #9, Citizen Curt Diemer was not present.

// In the matter of Public Comment, Agenda Item #10, Citizen Peter Cefaratti was not present.

// In the matter of Public Comment, Agenda Item #11, Citizen Robert Flood, stated that he was speaking on behalf of Peacemakers, an organization that dealt with conflict resolutions. He said that the founder, Mr. Sean Hunter, was present. He said that they went out into the streets to try to reach the youth and address gun violence. He said that they had about 35 Peacemakers. He said that they wanted to help young people make the right choices. He said that they needed community support to decrease the violence. Mr. Sean Hunter, Founder of Peacemakers, said that they tried to formulate community neighborhood watch groups where members were trained in conflict resolution, basic CPR, first aid, and self-defense. He said that they tried to provide community support to make them safer. He said that they had met the Chief of Police. Mr. Flood stated that he provided a proposal to the City Manager.

// In the matter of General Business, Vice Mayor Faraldi motioned, seconded by Councilmember Wilder, to table all General Business items until the February 28, 2023 meeting.

Councilmember Helgeson said that he would prefer to vote on the items as presented on the agenda.

Councilmember Misjuns said that the business of the city did not end when one Councilmember was absent, so they should continue to get the work done without her.

Vice Mayor Faraldi said that he agreed that that would be the expeditious thing to do, but he did not like that response, so he believed that if a Councilmember wanted to vote on something, he had no problem obliging and allowing them to speak. He felt that Ward I deserved a voice on items being discussed.

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Mayor Reed clarified that Councilmember Dolan was unable to attend today's meetings and had respectfully requested that the Mayor be willing to reposition all votes, including motions from the dais this afternoon and this evening to be rescheduled for the February 28 agenda so that she could partake and contribute to the discussion and votes on the behalf of her constituents, which was agreed upon and was mentioned to Council at the beginning of the work session.

Councilmember Helgeson said that he understood that there were times when members could not attend meetings where critical issues were being discussed, but he did not believe that to be the case here, and he would like to move forward and vote on these items today.

With no further discussion, the following vote was recorded:

Ayes: Wilder, Reed, Faraldi, Taylor	4
Noes: Helgeson, Misjuns	2
Absent: Dolan	1

// Council considered a closed session to discuss appointments to vacancies in the following Boards and Commissions: Parking Authority, Community Development, Community Advisory Committee, Lynchburg Redevelopment Housing Authority, Workforce Development, and Planning Commission, pursuant to §2.2-3711(a)(1) of the Code of Virginia of 1950 as amended, and for Item 10, to discuss the settlement of a monetary claim involving the City's Water Resources Department pursuant to §2.2-3711(a)(7) and §2.2-3711(a)(8) of the Code of Virginia 1950 as amended, and for Item 11, to review and/or evaluate the performance of the City Attorney pursuant to §2.2-3711(a)(1) of the Code of Virginia 1950 as amended.

Vice Mayor Faraldi motioned, seconded by Mayor Reed, to only discuss appointments to the City's Boards and Commissions and the water resources items. Mayor Reed stated that Councilmember Dolan had requested Council discuss only those items because she understood the issue of time restrictions, but the evaluation of the City Attorney did not have an issue of timeliness, and she wanted to be present to partake in that discussion.

Councilmember Helgeson made an amendment to the motion to include all three items, seconded by Councilmember Misjuns.

With no further discussion, the following vote was recorded:

Ayes: Helgeson, Taylor, Misjuns	3
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Noes: Wilder, Reed, Faraldi 3

Absent: Dolan 1

Mayor Reed said that the original motion was now on the floor, which was to only include only two items during closed session.

With no further discussion, the following vote was recorded:

Ayes: Wilder, Reed, Faraldi, Taylor 4

Noes: Helgeson, Misjuns 2

Absent: Dolan

// The meeting was reopened to the public.

// Vice Mayor Faraldi made the following motion to deny the below certification:

WHEREAS, the Council of the City of Lynchburg has convened a closed meeting on this date, pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2 3712 of the Code of Virginia requires a certification by City Council that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Lynchburg certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by Council.

The motion was seconded by Councilmember Wilder, and Council, by the following recorded vote, adopted the motion:

Ayes: Reed, Faraldi, Wilder, Taylor 4

Noes: Helgeson, Misjuns 2

Absent: Dolan 1

// The meeting adjourned at 8:40 p.m.

Clerk of Council