LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 11, 2012**			AGENDA ITEM NO.: 1
CONSENT:	REGULAR:	WORK SESSION: **X**	CLOSED SESSION: (Confidential)
ACTION:	INFORMATION: **X**		

ITEM TITLE: **Presentation of the FY 2012 Comprehensive Annual Financial Report and Related Reports**

RECOMMENDATION: No action required.

SUMMARY: Council has been provided with printed copies of the FY 2012 Comprehensive Annual Financial Report (CAFR) and related documents. Representatives of the audit firm Brown Edwards, LLC will attend the work session and present an overview of the reports.

PRIOR ACTION(S): N/A

FISCAL IMPACT: N/A

CONTACT(S): Donna Witt, 455-3968

ATTACHMENT(S): None

REVIEWED BY: lkp

170K

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 11, 2012**			AGENDA ITEM NO.: **2**
CONSENT:	REGULAR:	WORK SESSION: **X**	CLOSED SESSION: (Confidential)
ACTION:	INFORMATION: **X**		
ITEM TITLE: **Lynch's Landing Annual Report**			

RECOMMENDATION: No action required.

SUMMARY: Lynch's Landing Executive Director Anna Bentson will attend Council's work session and will report on the activities of Lynch's Landing over the last year and the organization's goals for further progress. Attached is a document that provides background.

PRIOR ACTION(S): None

FISCAL IMPACT: N/A

CONTACT(S): Kimball Payne, 455-3990

ATTACHMENT(S): 2013-2014 Lynch's Landing Work Plan Summary

REVIEWED BY: lkp

166K

2013-2014 Lynch's Landing Work Plan Summary

Lynch's Landing: Lynchburg's Leader for Downtown Revitalization

We GET Downtown

Our downtown is the heart and soul of our community. Each year, Lynch's Landing works to save our historic buildings, revive the commercial core, strengthen businesses and support Downtown as a vital center for community life in Lynchburg. We really do GET Downtown.

Our mission is to identify opportunities and develop resources that position and sustain downtown and the riverfront as a vital economic, cultural, historic, recreational and residential center for our community. We envision a downtown environment where people, businesses, organizations and events can be successful.

Successful downtown strengthening doesn't just happen. It requires bold and committed leadership in both the public and private sectors, focused and consistent actions, and collaborative involvement from Downtown stakeholders. Lynch's Landing is governed by a Board of Directors, comprised of 18 members representing retail, restaurant, professional, industrial businesses, and property owners in downtown Lynchburg and the Central Virginia region.

Lynch's Landing, relying heavily on its partnerships and the commitment and involvement of individuals and businesses, conducts its business through committees and staff support. The decision-making and implementation structure of Lynch's Landing and its committees allows for input in ongoing downtown management, development, and promotional efforts. It produces meaningful involvement and ownership on the part of the participants and assures that diverse and representative groups are given an opportunity to impact decisions. Lynch's Landing has a cooperative agreement with the City of Lynchburg to provide downtown management and support.

Lynch's Landing is a national Main Street™ program, accredited by the National Trust for Historic Preservation Main Street™ Center, and a designated Virginia Main Street community. The Main Street Approach® is a unique preservation-based economic development tool that enables communities to revitalize downtown and neighborhood business districts by leveraging local assets - from historic, cultural, and architectural resources to local enterprises and community pride. It is a comprehensive strategy that addresses the variety of issues and problems that challenge traditional commercial districts.

Locally, we center our annual work plan around five strategies:

- Sustaining a Healthy Non-Profit Organization
- Marketing Downtown as an Arts & Entertainment District
- Creating a Successful Environment for Businesses and Events
- Ensuring Safe, Attractive and Inviting Public Spaces
- Serving as a Source of Information and Communication for and about Downtown

Lynch's Landing believes in:

- Promoting Downtown Lynchburg as a unique and vibrant place to live, work and play
- Providing positive quality of life experiences for people living in or visiting Downtown Lynchburg
- Acting as a conduit for information sharing about Downtown Lynchburg
- Promoting and supporting the arts in Downtown Lynchburg
- Supporting redevelopment and preservation projects in the Downtown area

- Working closely with the City of Lynchburg, local leaders, and partner organizations to streamline communication and efforts to improve Downtown Lynchburg
- Providing forums for downtown merchants and business owners to learn, communicate and share information

STRATEGY #1:
Sustaining a Healthy Non-Profit Organization
Committee Responsible: Organization

- Friday Cheers Fundraising Events
- Grant Identification and Applications
- Downtown Partnership Campaign
- Sponsorship Management and Development
- Measurement and Reporting to Stakeholders
- Downtown Branding and Messaging Campaign
- Downtown Awards Program
- Annual Meeting and Report
- Volunteer Recruitment, Retention and Training

STRATEGY #2:
Marketing Downtown as an Arts & Entertainment Destination
Committees Responsible: ER, Promotion

- First Fridays Communication & Coordination
- Launch of the James River Batteau Festival
- Friday Cheers Summer Concert Series
- Get!Downtown Street Festival
- Support for Public Art Efforts
- Downtown Youth Art Crawl, in partnership with the Academy of Fine Arts
- Social Media, Website and E-Newsletter

STRATEGY #3:
Creating a Successful Environment for Businesses and Events
Committees Responsible: ER, Promotion

- Training and Professional Development for Downtown Businesses
- Collaborate, Educate & Engage Downtown Residents
- Retail Promotion Events (Diva Crawl, Sidewalk Sale, Holiday Traditions)
- Collaborate, Education & Engage College Students
- Cooperative Advertising for Restaurant, Retail, Corporate and Non-Profit Partners
- Support for Lynchburg Restaurant Week
- Collaborate, Educate & Engage Downtown Employees

STRATEGY #4:
Serving as a Source of Information and Communication for and about Downtown
Committees Responsible: Promotion, Organization

Downtown Branding and Messaging Campaign
Mobile-friendly Website
Social Media
Advertising Plan
E-Mail Communication and Downtown Calendar
Historic Preservation Education

STRATEGY #5:
Ensuring a Safe, Attractive and Inviting Space
Committee Responsible: Design

- Beautification and Amenity Program
- Winter Lights
- Support and Coordination on Public Infrastructure Improvements
- Support and Coordination on Complete Streets, Pedestrian and Bike Friendly Policies
- Support and Coordination on Downtown & Gateway Signage, Banners
- Historic Preservation Education
- Volunteer Clean-Up Projects
- Creation and Promotion of Downtown Walking Map

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 11, 2012** AGENDA ITEM NO.: **3**

CONSENT: REGULAR: WORK SESSION: **X** CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Zoning Ordinance Amendments – Section 35.1-38.2, Institutional District (IN-2), Section 35.1-38.3, Institutional District (IN-2)**

Section 35.1-11.11, Terms beginning with "P" through "R"

Landscaping Ordinance Sections 35.1-25.1.2, Applicability, 35.1-25.1.8, Street trees for multi-family, commercial, institutional and industrial districts, 35.1-25.1.9, Foundation Plantings, 35.1-25.1.11, Buffering, 35.1-25.1.12, Tree Canopy Requirements, 35.1-25.1.16, Alternate layout of landscaping

Sign Ordinance Sections 35.1-26.3, General Regulations, 35.1-26.5, Temporary signs, 35.1-26.9, Signs in B-1, B-2 and IN-1 Districts, 35.1-26.10, Signs in B-3, B-5 and IN-2 Districts

Section 35.1-47, General Standards

RECOMMENDATION: Conduct work session concerning the proposed *Zoning Ordinance* amendments for the creation of Institutional Districts, IN-1 and IN-2, associated revisions to Terms, the Landscaping Ordinance, Sign Ordinance and General Standards. Forward the items to the Planning Commission for the requisite public hearing.

SUMMARY: On February 9, 2010, City Council initiated amendments to the *Zoning Ordinance* related to institutions. Over a period of seventeen (17) months, the Planning Commission and City staff worked with a group of stakeholders to draft ordinance revisions that would facilitate the development of the City's institutions without the need for obtaining a conditional use permit (CUP), as in currently required.

The resulting draft proposed the creation of two (2) new zoning districts: IN-1 districts intended for institutions that are smaller in scale and located primarily within or adjacent to residential areas and IN-2 districts intended for large scale institutions primarily located within or adjacent to non-residential areas. The *Zoning Ordinance* amendments were drafted to address common themes that resulted from early discussions with stakeholders:

1. Improvements that do not cause off-site impacts should be allowed by right.
2. Primary concern should be related to expansions or incremental growth that results in off-site impacts.
3. A definition of what a substantial impact requiring a more in-depth review should be developed.
4. There should be flexibility in requirements for master plans. Planning beyond two (2) years is speculative for institutions at best.
5. An ongoing dialogue between Institutions and the City should be developed.

On August 9, 2011, City Council conducted a work session on the amendments and identified concerns related primarily to the IN-2 district language and a letter from Liberty University stating that it did not support the current draft. Council directed staff to redraft the *Zoning Ordinance* amendments prior to scheduling a public hearing.

City staff has been working with Liberty University over the past fifteen (15) months to draft an IN-2 district that would address the concerns of Liberty University while still addressing the common themes that emerged early in the process. As a result of the discussions, other ordinance sections which were not considered by the Planning Commission are proposed for amendment and would require new public hearings. These sections include Section 35.1-11.11 by amending the term "residence" to "residential", and amending Section 35.1-47, General Standards by removing the term "site plan". The current draft of the IN-2 district regulations are substantially different from what was originally considered. Substantive changes include: information required at the time a rezoning application for an IN-2 District is submitted to the City; the list of permitted uses in the district; a traffic study required only if a new arena, stadium, auditorium or new entrance to a city street is proposed; all legally existing nonconforming uses (with the exception of signs and billboards) would become conforming uses; the flexibility to disburse required landscaping within the area proposed for development; the exemption of wayfinding signs and signs not legible from outside of the district from the sign ordinance; additional square footage for signs placed on buildings three (3) stories or greater in height; and exemptions from the requirements of Section 35.1-22, Buildings Uses and Lots, Section 35.1-24, Accessory Buildings and Uses, Section 35.1-25, Off Street Parking and Loading and Section 35.1-50, Arenas, Auditoriums and Stadiums. City Staff recommends that Council forward the items back to the Planning Commission for new public hearings.

PRIOR ACTION(S):

February 9, 2010: City Council initiated an amendment to the *Zoning Ordinance* regarding Institutions.

February 9, 2011: Planning Division recommended approval of the *Zoning Ordinance* amendments. Planning Commission moved the *Zoning Ordinance* amendments to a work session for further discussion.

June 8, 2011: Planning Commission directed staff to schedule a new public hearing for the proposed *Zoning Ordinance* amendments.

July 13, 2011: Planning Division recommended approval of the *Zoning Ordinance* amendments. Planning Commission recommended approval (7-0) of the *Zoning Ordinance* amendments.

August 9, 2011: City Council conducted work session on the *Zoning Ordinance* amendments. City Council directed staff to redraft *Zoning Ordinance* amendments addressing concerns.

FISCAL IMPACT: None

CONTACT(S): Tom Martin, City Planner – 455-3900
Kent White, Director of Community Development – 455-3900

ATTACHMENT(S):

- Ordinance Draft - December 11, 2012
- Ordinance Draft - August 9, 2011
- Letter from Liberty University - July 13, 2011

REVIEWED BY: lkp

168K

DRAFT – DECEMBER 11, 2012

ORDINANCE

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF LYNCHBURG, 1981, BY ADDING THERETO A NEW SECTION NUMBERED 35.1-38.2, THE NEW SECTION RELATING TO INSTITUTIONAL DISTRICTS (IN-1); ADDING THERETO A NEW SECTION NUMBERED 35.1-38.3, THE NEW SECTION RELATING TO INSTITUTIONAL DISTRICTS (IN-2); TO AMEND AND REENACT SECTIONS 35.1-25.1.2, 35.1-25.1.8, 35.1-25.1.9, 35.1-25.1.11, 35.1-25.1.12 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, RELATING TO THE LANDSCAPING ORDINANCE; AND, TO AMEND AND REENACT SECTIONS 35.1-26.5, 35.1-26.9, 35.1-26.10 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, RELATING TO THE SIGN ORDINANCE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That the Code of the City of Lynchburg, 1981, be and the same is hereby amended and reenacted by adding thereto a new Section numbered 35.1-38.2 as follows:

Section 35.1-38.2. Institutional District (IN-1)

(a) Intent. This district is to provide for institutional uses such as schools, colleges, universities, senior living facilities, medical facilities and churches with multiple buildings contained in a campus setting. This district will provide flexibility for institutions while creating development standards to minimize off site impacts such as noise, lighting, traffic and the availability / capacity of water and sanitary sewer infrastructure associated with their development. Off site impacts related to erosion and sediment control / stormwater management will be mitigated by existing city ordinances.

The amount of off site impact related to an institution depends as much on the location as the size and scale of the campus. To ensure that development standards and permitted uses are appropriate to the location of the campus, IN-1 Districts will be established based on the following circumstance:

IN-1 districts are intended for institutional campuses that are smaller in scale and located primarily within or adjacent to residential areas.

Institutions are encouraged to maintain a dialogue with city staff that will provide a greater understanding of the relationship of the institutions' and the city's future development plans and the availability of adequate water, sanitary sewer and transportation infrastructure.

(b) Definitions.

(1) Campus – A designated area of land including the buildings and grounds of institutional uses such as schools, colleges, universities, senior living facilities, medical facilities and churches.

(2) Concept Plan – A generalized, illustrative plan indicating how off site impacts such as traffic, water and sanitary sewer availability / capacity, lighting and noise are mitigated and providing an assessment of existing and future development of the institution's campus, including buildings, parking areas, recreational facilities, open space and access points to city streets. In addressing off site impacts related to traffic the city encourages the institution to include improvements for sustainable alternatives such as: provisions for bus service, sidewalks and pedestrian crossings, pedestrian trails and bicycle trails, connected internal site circulation or

park and ride lots which could if implemented improve the Level of Service (LOS) standards on city streets serving the institution.

(3) Level of Service (LOS) – A scale that measures the amount of traffic that a roadway or intersection can accommodate, based on such factors as maneuverability, driver dissatisfaction and delay. LOS is graded on a scale of A thru F, where LOS-A is free-flowing traffic and LOS-F is stop-and-go congestion.

(4) Open Space – Any land or area, the preservation of which would: conserve and enhance scenic resources, protect streams, promote conservation of soils or provide for passive or active recreational space. Open spaces may include plaza areas, provided they contain a landscaped component. Setback areas may be included in the computation of required open space.

(5) Residence or residential – the terms “residence” or “residential” shall be as defined in Section 35.1-11.11(s) and for the purposes of determining setback and/or height requirements for IN-1 District, shall not include any properties owned, leased, or used by the institution regardless of zoning or land use.

(6) Residential Street – any local city street where the majority of land use on one or both sides of the street within the block is residential.

(c) Establishment of District.

(1) The process for establishing an IN-1 Institutional District for a campus shall be the same as provided for a change to the Official Zoning Map as outlined in Section 35.1-17(b), Amendments of the Zoning Ordinance.

(2) Establishment of an IN-1, Institutional District. At the time the IN-1, Institutional District is established, the institution shall provide to the city:

a. A concept plan with a two (2)-year projection of future development at the campus. The concept plan is intended to be illustrative in nature and should provide an overview of how the campus will develop; how off site impacts such as noise, lighting and traffic will be mitigated and proposed uses that would require an extension or upgrade to water / sanitary sewer infrastructure. The concept plan is not intended to serve as a master plan. Permitted and accessory uses do not need to be indicated on the concept plan provided the development standards of the Institutional District are met and adequate transportation and water / sanitary sewer infrastructure is available to serve the development.

b. A traffic study prepared by a firm qualified to conduct traffic engineering studies. The methodology for the required traffic study shall be as specified in the City’s Manual of Specifications and Standard Details in effect at the date of the adoption of this ordinance. Technical guidelines for traffic studies may be obtained from the city’s transportation engineer. The traffic study shall include the following information:

i. The existing Level of Service (LOS) for city streets and intersections serving the campus.

ii. The projected amount of growth of the campus that would result in a street or intersection Level of Service (LOS) lower than “D” for city streets or intersections serving the institution, or

iii. In the case of city streets or intersections with a Level of Service (LOS) already lower than “D” the projected amount of growth of the campus that would result in further lowering the Level of Service (LOS).

(3) In considering whether to permit establishment of an IN-1 district for the campus the Planning Commission’s and City Council’s review shall be restricted to a determination of existing and future land uses, the adequacy of the transportation, water and sanitary sewer infrastructure capacity available to support the institution’s future development at such campus and how the impacts of such campus to adjacent residential areas will be addressed.

(d) Uses permitted by right.

Use	
Accessory to the Institution Such as dormitories, visitor and faculty housing, book stores, coffee shops, cafeterias, offices, facilities management, storage and recreational uses	
Churches	
Colleges	
Medical Facilities	
Schools	
Senior Living Facilities	

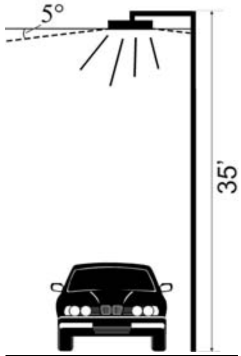
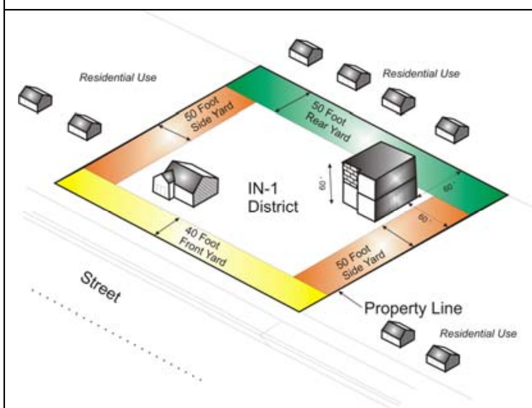
(e) Uses permitted by conditional use permit (CUP)

The following conditional uses shall be permitted, if specifically indicated on the approved concept plan; otherwise, they will be conditional uses once the concept plan is approved.

Use	
New access point to Residential City streets	
Lighted Athletic Fields Adjacent to Residential Use	
Private water / sewer treatment facilities when public infrastructure is available	

(f) Standards.

Standard	
Minimum Land Area	5 acres
Front Yard	40 feet
Side Yard	50 feet
Rear Yard	50 feet
Setback from Adjacent Residential Use	50 feet
Setback for structures and uses existing at the time district is established	Structures and uses with a setback less than required by these standards and existing at the time the district is established shall not be considered nonconforming and may be enlarged or expanded within the existing setback.
Uses permitted within required yards and setback	None
Height Requirement	Equal to distance of structure from adjacent residential use
Open Space	Twenty Percent (20%) of the campus
Lighting	▪ Glare shielded no illumination

	beyond property line ▪ Shall not radiate above five degrees (5°) below horizontal ▪ Thirty-five feet (35') in height. (Excludes athletic field lighting.)
Landscaping	See Landscaping Ordinance Section 35.1-25.1 thru 35.1.1-25.1.16
Signs	IN-1 – See Sign Ordinance Section 35.1-26.9
Stormwater Management	See Stormwater Management - Chapter 16.2
Erosion and Sediment Control	See Erosion and Sediment Control - Chapter 16.1
	
IN-1 Institutional District Dimensional Standards	

(g) New Concept Plan Required. A new concept plan for a campus shall be required when the city's technical review committee (TRC) determines in approving a site plan for the institutional campus:

(1) The cumulative total of the institution's existing and proposed development at the campus would result in a Level of Service (LOS) lower than "D" for city streets and intersections serving such campus or in the case of city streets or intersections serving such campus that had a Level of Service (LOS) lower than "D" at the time the district was established a further lowering of the Level of Service; or

(2) Adequate water / sanitary sewer capacity or infrastructure, as determined by current engineering standards, is not readily available to serve the institution's existing and proposed development at such campus; or

(3) A period of five (5) years has passed since the review of a concept plan by the Planning Commission for such campus.

(h) The new concept plan shall be prepared as stated in Section 35.1.38.2(c)2a and when the requirement for a new concept plan is based upon LOS standards, a traffic study shall be required as specified in Section 35.1-38.2(c)2b.

(1) Improvements required to maintain a LOS “D” for city intersections or to prevent a further lowering of the Level of Service when the institutional development itself gives rise to the need for the improvement shall be required to be made by the institution. Only those improvements where there exists a clearly demonstrated nexus between the proposed development of the campus and the need for the improvement shall be required to be made by the institution.

(2) The new concept plan with a two (2)-year projection shall be submitted to the Planning Commission for review and comment. The Planning Commission’s review shall be restricted to a determination of the adequacy of the transportation, water and sanitary sewer infrastructure capacity available to support the institution’s future development at that campus and how the impacts of the institution at such campus to adjacent residential areas are being addressed.

Section 35.1-38.3. Institutional District (IN-2)

(a) This district is to provide for institutional uses such as schools, colleges, universities, senior living facilities, medical facilities and churches with multiple buildings contained in a campus setting. This district will provide flexibility for institutions while identifying area intended for future development.

IN-2 districts are for larger institutional campuses consisting of at least three hundred (300) contiguous acres, which have access to a State primary road and are primarily adjacent to districts other than residential districts. In determining whether a campus consists of at least three hundred (300) contiguous acres, property that is divided by any public or private right-of-way shall not be considered noncontiguous as a result of such division.

(b) Establishment of Institutional District (IN-2).

(1) The process for establishing an IN-2, Institutional District shall be the same as the process provided for amending the Official Zoning Map which is set forth in Section 35.1-17(b), provided however; an applicant shall not be required to submit a legal description, a metes and bounds description or a schematic site plan of the property that is the subject of the application. The site plan review procedures set forth in Section 35.1-14 shall not be applicable to applications to establish IN-2, Institutional Districts.

(2) At the time an application to establish an IN-2, Institutional District is submitted the applicant shall provide to the city:

(a) A map indicating the boundaries of the proposed IN-2, Institutional District, including:

(i) the boundaries of all parcels to be contained in the IN-2, Institutional District
(ii) the tax map identification numbers of all parcels to be contained within the IN-2, Institutional District
(iii) where available, the established street addresses of all parcels to be contained with the IN-2, Institutional District

(c) Permitted Uses

(1) Upon establishment of an IN-2, Institutional District by Council, the institution and its accessory uses shall be permitted by right, and, notwithstanding the provision of Section 35.1-27 of the Lynchburg City Code, all conforming uses and lawful nonconforming uses existing within an IN-2, Institutional District at the time of its creation, including replacements, renovations, and expansion of such uses, shall be permitted by right; provided however, no nonconforming sign or nonconforming billboard shall be expanded except as may be allowed by the Sign Ordinances set forth in Sections 35.1-26 *et seq*. of the Lynchburg City Code.

(2) Other uses not related to the institution shall be permitted by right or by conditional use permit as shown in the following use table:

Use	Permitted	Conditional Use Permit
Arenas, auditoriums or stadiums unlimited in capacity		√
Armories	√	
Arts & crafts shops	√	
Auction Rooms	√	
Automobile and truck rental	√	
Automobile and truck tire sales	√	

Automobile driving schools	√	
Automobile painting and body repair shops	√	
Automobile service stations	√	
Automobile, truck and trailer sales with outside sales and storage permitted	√	
Banks, savings and loan and similar establishments	√	
Banquet halls	√	
Barber and beauty shops	√	
Battery sales	√	
Bicycle rentals	√	
Billboards subject to the regulations of Section 35.1-26.1	√	
Blacksmith shops	√	
Boardinghouses or lodging houses	√	
Bookbinding, blueprinting, duplicating and print shops	√	
Bottling plants	√	
Building material sales	√	
Care centers	√	
Carpentry shops	√	
Churches and other places of worship	√	
Clubs and fraternal organizations	√	
Cluster Commercial development	√	
Coffee and peanut roasting	√	
Commercial amusement (temporary)		√
Commercial amusements	√	
Commercial greenhouses	√	
Commercial kennels for dogs and other pets	√	
Commercial recreation		√
Commercial swimming pools		√
Computer centers	√	
Contractors' establishments	√	
Convents and monasteries	√	
Custom dressmaking	√	
Custom furniture making	√	
Dairies, pasteurizing plants, or ice cream manufacture	√	
Dance halls	√	
Dance studios	√	
Depositories for the storage of office records, microfilm or computer tapes	√	
Diaper services	√	
Drive-in theaters	√	
Dry cleaning and dying plants	√	
Exterminators	√	
Food service facilities	√	
Fire Stations	√	
Flexible space developments as provided in Section 35.1-43.14		√
Funeral undertakers	√	
Furniture upholstering and repair shops	√	
Group homes	√	
Gymnasiums	√	
Halls or theaters for music, drama, lectures or other civic or amateur presentations of the arts	√	
Health salons	√	
Hiring halls and other places of assembly for the registration or assignment of employment	√	

Hospitals and Sanatoriums	√	
Hotels and Motels	√	
Ice manufacture	√	
Interior decorating establishments	√	
Large scale retail establishments not meeting the provisions of Section 35.1-43.22 thru Section 35.1-43.28.		√
Laundries	√	
Leather products (not to include tanning)	√	
Libraries	√	
Loan offices	√	
Medical and dental facilities, laboratories and offices	√	
Medical offices	√	
Monument and gravestone sales	√	
Motion-picture production studios	√	
Motor freight stations		√
Moving and storage establishments		√
Museums and similar institutions of noncommercial nature	√	
Newspaper offices	√	
Offices	√	
Opticians and optometrists	√	
Parking lots	√	
Pawn shops	√	
Pharmacies	√	
Photographic developing and printing establishments	√	
Photographic studios	√	
Police Stations	√	
Printing plants	√	
Public utilities	√	
Radio towers and transmitting stations		√
Rebuilding and rethreading establishments	√	
Residential uses of any density or type not related to the Institution		√
Restaurants, including drive-in and outdoor restaurants	√	
Retail Sales	√	
Sales lots for construction and farm equipment and similar machinery	√	
Schools and colleges of all types and accessory uses	√	
Second hand stores including auction sales provided such activity is conducted wholly within an enclosed building	√	
Senior living facilities	√	
Shoe repair	√	
Sign shops	√	
Soundproof radio and television studios without towers, that produce no electromagnetic effect on adjoining properties	√	
Stage and motion-picture studios	√	
Storage warehouses and yards, except sand yards, gravel yards, coal yards, railroad yards, automobile wrecking yards, junkyards or the storage of combustibles prohibited by the fire code	√	
Tailoring shops	√	
Telecommunication towers and facilities (See Article XI. Telecommunications towers and facilities)	√	
Telephone exchanges and dial centers	√	
Tourist homes or bed and breakfast	√	
Traditional neighborhood development		√
Transient trailer parks		√

Travel bureaus	√	
Travel trailer sales and rentals	√	
Trucking terminals		√
Veterinarian hospitals with or without outdoor kennels	√	
Wholesale or produce markets	√	
Wholesale sales	√	
Window blinds, shades and awnings (manufacture)	√	

(d) Future Planning

1. Institutions are encouraged to maintain a dialogue with city staff that will provide a greater understanding of the relationship of the institutions' and the city's future development plans and the availability of adequate water, sanitary sewer and transportation infrastructure.

2. An institution may, but is not required to, submit with its application to establish an IN-2, Institutional District, a concept master development plan for the proposed IN-2, district. Such plan shall show the institution's anticipated future development of the district for a period of not less than two (2) years, nor more than five (5) years.

3. At the time an arena, stadium, auditorium or new entrance to a city street is proposed for construction by the institution, a traffic impact study shall be required. The traffic impact study shall be prepared by a firm qualified to conduct such studies and shall be conducted in compliance with the City's Manual of Specifications and Standard Details in effect as of the date of adoption of this ordinance. The study shall indicate the following:

   a. The existing level of service for the city streets and intersections serving the IN-2 district.
   b. The impact the anticipated arena, stadium, auditorium or new entrance will have on the Level of Service (LOS) on city streets and intersections.
   c. Improvements that will be necessary to prevent such anticipated arena, stadium, auditorium or new entrance to a city street from reducing the Level of Service (LOS) of the streets or intersections serving the IN-2 district lower than "D"; and
   d. In the case of city streets or intersections with an existing Level of Service (LOS) of "D", improvements necessary to prevent the arena, stadium, auditorium or new entrance to a city street from further reducing the Level of Service.

(e) Exemptions

1. The IN-2, Institutional District shall be exempt from the requirements of the following Zoning Ordinance of the Lynchburg City Code:

   a. Section 35.1-22. Buildings, Uses and Lots
   b. Section 35.1-24. Accessory Buildings and Uses
   c. Section 35.1-25. Off Street Parking and Loading, provided; however any institution in the IN-2, Institutional District shall provide adequate parking and unloading areas to accommodate permitted uses within the district. The district shall be deemed to not have adequate parking and unloading areas, when the lack of parking and/or unloading areas in the district causes vehicles to be regularly parked in, or to partially or completely, block, and public right-of-way.
   d. Section 35.1-50, Arenas, Auditoriums and Stadiums

2. That Sections 35.1-11.11, 35.1-25.1.2, 35.1-25.1.8, 35.1-25.1.9, 35.1-25.1.11, 35.1-25.1.12 35.1-26.5, 35.1-26.9, 35.1-26.10, 35.1-47 of the Code of the City of Lynchburg, 1981, be and the same are hereby amended and reenacted as follows:

Sec. 35.1-11.11. Terms beginning with "P" through "R".

Terms used in this zoning ordinance, when defined in this section, shall have the following meaning:

(a) Parking area, off-street: An off-street area containing one (1) or more parking spaces, with passageways and driveways appurtenant thereto. In general, there shall be an average of at least three hundred (300) square feet of parking area per parking space and the required number of usable parking spaces.

(b) Parking garages: A building occupied by a public, community, commercial or private establishment providing space for the temporary storage of six (6) or more automobiles and other vehicles, where service or repair facilities are not permitted. A parking garage shall not be considered an accessory use, nor shall it be used for the storage of dismantled or wrecked motor vehicles, parts thereof, or junk, nor shall the sale of automobiles or trailers take place within it unless otherwise permitted by the zoning ordinance.

(c) Parking lot: An open lot serving the functions defined above for a parking garage.

(d) Parking space: An off-street space available for the parking of one (1) motor vehicle on a transient basis and having a minimum width of nine (9) feet and an area of not less than one hundred sixty-two (162)

square feet, exclusive of passageways and driveways appurtenant thereto and having direct usable access to the street.

(e) Pedestrian facility: A sidewalk, walking path, bike path or transit / shuttle stop.

(f) Planned unit development: A multiple-unit residential development of at least five (5) acres laid out in accordance with a preconceived site plan and in harmony with provisions and procedures for the "PUD", planned unit development zoning district.

(g) Preservation: Any activity designed to prevent deterioration or destruction of a structure, a group of structures, or an area or a district.

(h) Private recreational facilities: A facility such as a swimming pool, tennis court or basketball court which is an accessory use located on a residential lot, the use of which is restricted to the occupants of the principal use and guests for whom no admission or membership fees are charged.

(i) Programmed: For the purposes of the zoning ordinance, the word "programmed" shall refer to a public facility which has been formally scheduled for construction within the following ten (10) years. Such formal scheduling may be in terms of an approved capital improvements program, an officially adopted thoroughfare, public utilities or community facilities plan specifying the approximate date of construction of the facility, or a similar official plan or program.

(j) Public: Any land, structure or building owned, used or maintained by the city government, or a regional authority of which the city is a member, or their agencies.

(k) Public utility: A public utility is an activity, or a building housing such an activity, which operates to serve the community as a whole, or a portion of the community, and which is publicly run or subject to special government controls.

(l) Reach: Longitudinal segments of a river or stream, which will be affected by the placement of an obstruction in a floodway or floodway fringe.

(m) Recreational vehicle: A vehicle which is:

(1) built on a single chassis;

(2) four hundred (400) square feet or less when measured at the largest horizontal projection;

(3) designed to be self-propelled or permanently towable by a light duty truck; and

(4) designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational camping, travel or seasonal use.

(n) Reconstruction: Any activity designed to rebuild entirely, or partially, a structure.

(o) Recycling bins: Recycling bin operations shall be located in industrial or business districts in an area no larger than five thousand (5,000) square feet or at public school or public recreation sites for the collection of recyclable materials. The operation of the recycling bins and the materials allowed to be collected, shall be under the supervision of the director of public works, and the location of the recycling bins shall be approved by the director of community planning and development. The definition does not include recycling containers which are used on site by a private entity for the purpose of storing recyclable waste materials generated only by such private entity.

(p) Rehabilitation: Any activity designed to place a structure into a usable condition with or without architectural change.

(q) Regulatory flood protection level: That level delineated by the one hundred (100) year flood.

(r) Renovation: Any activity relating to the updating and/or the modernization of an older structure involving architectural change.

(s) Residence or residential: A building or part of a building containing dwelling units or rooming units, including single-family or two-family houses, multiple dwellings, boarding or rooming houses or apartment hotels. Residences do not include the following:

(1) Such transient accommodations as transient hotels, motels, tourist cabins or trailer courts.

(2) Dormitories, fraternity or sorority houses, monasteries or convents.

(3) In a mixed building, that part of the building used for any nonresidential uses, except accessory to residential uses.

"Residential" means pertaining to a residence.

(t) ~~Residence~~ Residential district: Any district whose designation begins with the letter "R".

(u) Residence, single-family: A building containing only one (1) dwelling unit.

(v) Restoration: Any activity designed to impart a major flavor of an earlier state of a building.

(w) Riding stable: Any zoning lot used or designed for the boarding, breeding or care of horses or ponies, other than for farming or agricultural purposes, either with or without instruction in riding.

(x) Rooming house: A dwelling consisting of one (1) single building in which, for compensation, lodging or meals, or both, are furnished to transient or nontransient guests. A rooming house shall not be deemed a home occupation. Rooming houses shall adhere to Section 35.1-51.1, Boardinghouses, lodging houses, or rooming houses, of the zoning ordinance.

Sec. 35.1-25.1.2. Applicability.

(a) The provisions of this ordinance are applicable to the development or redevelopment of any property after the effective date of this ordinance and located in an R-4, R-5, B-1, B-2, B-3, B-4, B-5, B-6, **IN-1, IN-2,** I-1, I-2 or I-3 district or to any use requiring conditional use permit approval.

(b) When an existing use is expanded, enlarged, or redeveloped as defined in Section 35.1-11.5, (c) of the zoning ordinance only those portions of the property subject to the expansion, enlargement, or redevelopment are subject to the provisions of the landscaping ordinance.

(c) It is not the intent of this ordinance to regulate landscaping for one or two family dwellings.

Sec. 35.1-25.1.8. Street trees for multi-family, commercial**, institutional** and industrial districts.

(a) For all multi-family, commercial**, institutional** and industrial developments, street trees are required at the rate of one (1) shade tree for each forty (40) feet of street frontage or in the case where overhead utility lines prohibit the planting of shade trees one (1) ornamental tree for each twenty (20) feet of street frontage.

(b) Required street trees shall be planted along the property line that fronts the street and shall not be planted within the public right-of-way or within any utility easements.

(c) Street trees within the site distance triangle may be raised to allow for visibility.

Sec. 35.1-25.1.9. Foundation plantings.

(a) All sides of multi-family, commercial, **institutional** or industrial buildings, which front on a public or private street or are visible from an adjacent residential district, shall be landscaped with foundation plantings as follows:

(1) One (1) ornamental tree per fifty (50) linear feet of building, and

(2) One (1) large shrub per ten (10) linear feet of building, or

(3) One (1) medium shrub and one (1) small shrub per ten (10) linear feet of building, or

(4) Three (3) small shrubs per ten (10) linear feet of building, or

(5) Any combination of 2, 3 or 4 above.

(b) Foundation plantings may be placed in collective groupings along the perimeter of the building for which required.

(c) In the event that the city planner determines that topography or other landscaping would prevent the required foundation plantings from being visible from a public or private street or an adjacent residential district, the only foundation plantings that shall be required are for the wall of the building on which the main entrance is located.

Sec. 35.1-25.1.11. Buffering.

(a) In all instances where a commercial district, **institutional district,** industrial district, or any parking area is located adjacent to any residential district, or a multi-family residential district is adjacent to a one or two family residential district, a vegetative evergreen buffer shall be established on the property for which said buffer is required.

(b) Where required, the planting area for buffering shall be a minimum of twenty (20) feet in width extending along the entire length of the development area and shall generally be required along the property line unless topographic or other considerations would make it more effective located back from the property line.

(c) The vegetative buffer shall consist of a staggered evergreen tree line with a baseline filler of medium height evergreen shrubs. The evergreen tree material shall be a minimum of four (4) feet in height at time of planting. The evergreen tree line shall be planted in rows fifteen (15) feet apart and staggered ten (10) feet on center. In lieu of the baseline filler an earthen berm may be used. The earthen berm shall vary in width and height and shall be curvilinear in form and provide a gentle tie-in with the existing grade. Average height of earthen berms used to satisfy this requirement shall be three (3) feet in height.

(d) Where appropriate existing vegetation may be used to satisfy this requirement. Existing vegetation may be required to be supplemented with additional evergreen material in order to meet the buffering requirements. The need for additional evergreen material shall be determined during the site development plan review process.

Sec. 35.1-25.1.12. Tree canopy requirements.

(a) For purposes of this section, "tree canopy" shall include all areas of coverage by existing plant material exceeding five (5) feet in height, and the extent of planted tree canopy at maturity shall be based on the published reference text, manual of woody landscape plants, fifth edition, 1998, by Michael A. Dirr.

(b) The planting or replacement of trees on a development site shall be required to the extent that, at a twenty (20) years, minimum tree canopies will be provided as follows:

	Minimum Tree Canopy Required
B-1, B-2, B-3, B-4, B-5, B-6, **IN-1, IN-2,** I-1, I-2, I-3	10% of entire development site
R-4, R-5	10% of entire development site
R-3	15% of entire development site
R-C, R-1, R-2	20% of entire development site

(c) Existing trees that are to be preserved may be included to meet all or part of the tree canopy requirements.

(d) Existing trees infested with disease or structurally damaged to the extent that they pose a hazard to person or property, or to the health of other trees on site, shall not be included to meet the tree canopy requirements.

(e) Tree canopy requirements do not replace, or negate full compliance with, the requirements of any other section of the landscaping ordinance. However, if planting of landscaping required by this ordinance meets or exceeds the tree canopy requirement, no further planting of trees or replacement of trees is required by this section.

(f) In areas zoned B-4, central business district, B-6, riverfront business district or where the city planner determines that crime prevention through environmental design (CPTED) principles apply, the city planner, in consultation with the city's urban forester, may allow the off-site planting of up to ninety-nine (99) percent of the required street trees, parking area screening, buffering and foundation plantings. Off-site planting areas shall be within the city limits and in such location as approved by the city planner.

(g) The following shall be exempt from the tree canopy requirements.

(1) Dedicated K-12 school sites.

(2) Playing fields and other non wooded recreation areas

(3) Designated wetlands

(4) Other facilities and uses similar in nature as determined by the city council.

Sec. 35.1-25.1.16. Alternate layout of landscaping.

(a) The city planner with the concurrence of the planning commission may approve an alternative layout to landscaping required by this ordinance provided that the spirit and intent of the ordinance are preserved and the goals of Section 35.1-25.1 are assured.

(b) To provide grater flexibility for the layout and operations of institutions, landscaping required by this ordinance for an IN-2, Institutional District may be disbursed within the area proposed for development. In disbursing the required landscaping, no special approvals shall be required, provided that the same, quantity and size of landscaping as required by this ordinance are installed.

Sec. 35.1-26.3. General regulations.

(a) The following shall not be subject to the provisions of the zoning ordinance regulating signs:

(1) Signs which are subject to the regulations of the Virginia Department of Transportation and which are placed in the public rights-of-way or on city-owned property by the city for public information purposes. Such signs include but are not limited to, signs which direct or regulate pedestrian or vehicular traffic, community identification signs which identify the location of buildings and facilities or scenic or historic attractions, and similar types of signs;

(2) Flags;

(3) Memorial signs or tablets; and

(4) Decorative embellishments attached to light poles.

(5) Scoreboards.

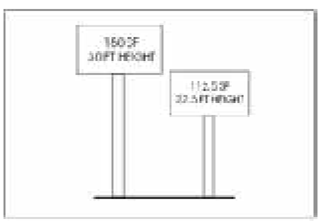
(6) Signs that are intended for wayfinding purposes in or signs that are only legible from within an IN-1 or IN-2, Institutional District.

(b) For the purposes of the zoning ordinance, other provisions notwithstanding, awning signs shall be allowed and treated as building mounted signs. The maximum permissible area for awning signs shall be subject to, and calculated with, the maximum permissible building mounted sign area for the specific district in which such signs are located. These provisions are applicable to awning signs regardless of the material.

(c) Window signs covering more than twenty-five percent (25%) of the glass area shall be calculated with and included in the maximum permitted building mounted sign area in the district.

(d) Discontinued uses. Within thirty (30) days after a use or activity that is advertised by a sign ceases, the owner of such use or activity or the owner of the property on which the sign advertising the discontinued use or activity is located shall remove any changeable copy on the sign. In the event the use of any nonconforming sign is abandoned for two (2) or more years the sign and its supporting structure shall be removed by the owner of the use or activity or by the owner of the property on which the sign is located. If the sign and its supporting structure are not removed the city shall give the property owner notice to remove the sign and a deadline for removal. If the property owner fails to remove the sign after having been given written notice by the city to do so or if the city after reasonable efforts to do so is unable to locate the property owner, the city may pursue any or all of the following remedies: (i) through its employees or agents enter the property upon which the sign is located, remove the sign and its supporting structure and bill the property owner for the costs of such removal; (ii) apply to a court of competent jurisdiction for an order requiring the removal of such abandoned nonconforming sign by the owner by means of injunction or other appropriate remedy; and/or (iii) charge the owner of the property where the sign is located with a violation of the zoning ordinance as provided in Section 35.1-20.

(e) Existing signs. Any existing sign and/or sign structure legally erected and maintained, which is nonconforming to the provisions of the June 22, 2004 amendments to the zoning ordinance, may continue in its nonconforming status as long as it is maintained in its then structural condition as it existed at the time of adoption of this article (see nonconforming Section 35.1-27). When a nonconforming sign, sign frame, and/or sign structure is intentionally reconstructed or structurally altered by the business or building owner, the surface area and height requirements for a new sign, sign frame, and/or sign structure, under this ordinance, shall apply. The new sign, sign frame, and/or sign structure may exceed the ordinance requirements, however, to a limit which is calculated by taking a twenty-five percent (25%) reduction in the height and/or square foot area of the original sign, sign frame and/or sign structure, provided that the new sign, sign frame, and or sign structure is constructed within sixty (60) days of the removal of the previous nonconforming sign and sign application approval is granted as provided in Sections 35.1-26 through 35.1-26.16.14 of the zoning ordinance. New signs, sign frames and/or sign structures, which exceed the ordinance requirements pursuant to this provision shall be considered as nonconforming. Replacements of signs destroyed by acts of God, or other occurrences beyond the control of the owner shall comply fully with Section 35.1-26 of the zoning ordinance.



25 % Reduction

(f) Portable signs, pennants, streamers, off site directional signs, and flashing signs are prohibited.

(g) Compliance with electrical code. All illuminated signs must comply with UL standards of the statewide uniform building code.

(h) Violations and penalties: refer to Section 35.1-20.

Sec. 35.1-26.5. Temporary signs.

(a) The following banners are permitted in the zoning districts of the City of Lynchburg:

District	*Size*	*Quantity*	*Setback*	*Wall Projection*
R-1, R-2, R-3, R-4, R-5	24 SF	1 Per Street Frontage	8 Feet	3 Inches Max
B-1, B-2, B-4, B-6	24 SF	1 Per Street Frontage	8 Feet	3 Inches Max
B-3, B-5, **<u>IN-1, IN-2</u>**	32 SF	1 Per Street Frontage	8 Feet	3 Inches Max
I-1, I-2, I-3	24 SF	1 Per Street Frontage	8 Feet	3 Inches Max

(b) Banners may be erected only by the occupant of the lot and the advertising matter shall apply only to the nature of the activity occupying the lot on which the banner is erected.

(c) An application and permit for a banner or inflatable item is required as provided in 35.1-26.14. No such permit shall be issued for a period to exceed sixty (60) days. Permits for banner signs and inflatable items shall not be issued for any location during a period of thirty (30) days after the expiration date of a permit for a banner or inflatable item previously issued for the same location, unless the business operated at the location has changed ownership. In no case shall a banner or inflatable item be displayed for more than a total of one hundred and eighty (180) days per calendar year. Said banners and inflatable items shall be securely fastened to the ground or other immovable object and shall be located a minimum of eight (8) feet from the property line.

(d) Temporary construction signs are permitted in the zoning districts of the City of Lynchburg as follows:

District	*Size*	*Quantity*
R-C, R-1, R-2, R-3	6 SF	1
R-4, R-5	16 SF	1
B-1, B-2, B-3, B-4, B-5, B-6, **IN-1, IN-2**	32 SF	1
I-1, I-2, I-3	32 SF	1

One temporary construction sign shall be allowed for each contractor, subcontractor, architect or engineer. Temporary construction signs shall only be allowed on the property on which construction will commence within the next three (3) months, and may be erected on the wall of a construction trailer, construction shed or on the ground. Temporary construction signs shall not be lighted by any means and shall be removed prior to a certificate of occupancy (CO) being granted for said building. A sign permit is not required for the placement of a temporary construction sign.

(e) Temporary real estate signs are permitted in the zoning districts of the City of Lynchburg as follows:

District	*Size*	*Quantity*
R-C, R-1. R-2, R-3	6 SF	1 per Street Frontage
R-4, R-5	16 SF	1 per Street Frontage
B-1, B-2, B-3, B-4, B-5, B-6, **IN-1, IN-2**	32 SF	1 per Street Frontage
I-1, I-2, I-3	32 SF	1 per Street Frontage

Temporary real estate signs are to be placed only on the property that is for sale or lease. Temporary real estate signs shall be removed within three (3) days of the sale or lease of the property.

(f) One (1) temporary subdivision identification sign not exceeding thirty-two (32) square feet in area may be erected during construction at an entrance to the subdivided property; provided not over two (2) signs shall be erected for any one (1) subdivision. These signs shall be removed upon completion or sale of seventy-five (75) per cent of the lots in the subdivision. No electric or other luminous sign and no sign illuminated by a floodlight or other similar device shall be permitted.

(g) Temporary signs that are permitted by this section may not be placed on utility poles, traffic control signs or within the public rights-of-way.

(h) All temporary signs must be removed within three (3) days after the event or activity being advertised or promoted by the temporary sign has been completed.

Sec. 35.1-26.9. Signs in B-1**,** ~~and~~ B-2 **and IN-1** districts.

Signs pertaining only to the uses conducted on the premises, but not including any roof signs or billboards, will be permitted, subject to the following conditions:

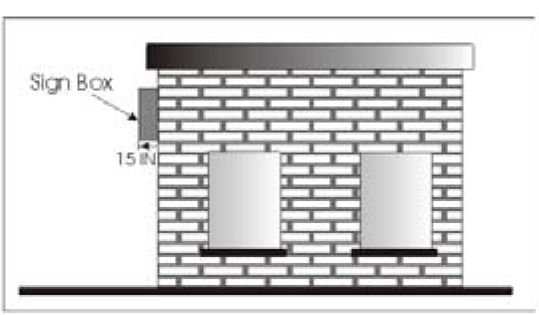
(a) Building mounted signs shall face only upon an abutting street or an abutting parking lot of the same parcel where the sign is located. The aggregate face area of all signs on any one (1) wall of the building shall not exceed twenty-four (24) square feet. Newly constructed groups of buildings shall have unified and coordinated building mounted signs.

(b) One (1) free-standing sign structure, permanently fixed to the ground, may be erected on each street on which a lot occupied by a permitted use abuts, provided such sign structure does not extend beyond the lot line nor shall such sign be located closer to the front property line than two (2) feet. Such sign structure shall be limited to two (2) sign faces, each of which shall not exceed twenty-four (24) square feet in surface area. Any architectural or decorative surrounds to support or enhance the sign face may not exceed twenty-five percent (25%) of the maximum allowable sign face surface area. Sign bases, uprights, or poles located under the sign shall not count toward the architectural or decorative surrounds calculation. The overall height of any such sign structure, including its architectural or decorative surrounds, shall not exceed ten (10) feet above the ground.

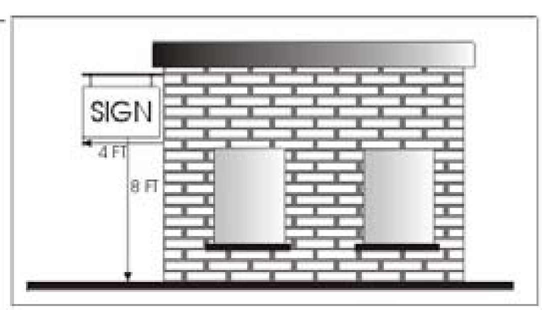
(c) When a group of buildings is coordinated into a business**, IN- 1, Institutional campus** or shopping area, one (1) free-standing sign structure, permanently fixed to the ground and designed to identify the area as a whole, may be erected on each street on which the area abuts, provided such sign structure shall not be located closer to the front property line than two (2) feet. Such sign shall be limited to two (2) sign faces, each of which shall not exceed twenty-four (24) square feet in area for the first business tenant, but may be increased incrementally by four (4) square feet for each additional business tenant up to a maximum of thirty-two (32) square feet. Any architectural or decorative surrounds to support or enhance the sign face may not exceed twenty-five percent (25%) of the maximum allowable sign face surface area. The overall height of any such sign, including its architectural or decorative surrounds, shall not exceed ten (10) feet above the ground.

(d) Any pole supporting a freestanding sign shall be in an eighteen (18) inch wide rectangular enclosure. The material and color of the enclosure shall coordinate with the sign and/or building. Any freestanding sign in a historic district shall be monument style, maximum seven (7) feet in height, comply with the historic district guidelines, and receive approval from the secretary of the historic preservation commission. Decisions of the secretary may be appealed to the historic preservation commission.

(e) No building mounted sign shall project more than fifteen (15) inches beyond the face of a building. Signs mounted perpendicular to the building may project a maximum of four (4) feet beyond the face of the building and allow for eight (8) feet of clearance between the bottom of the sign structure and the ground. No sign shall project above the parapet wall of the building.



Building Mounted Signs



Projecting Signs Perpendicular to Building

(f) The provisions of this section do not apply to signs that are further than twelve (12) inches away from the inside face of an exterior window pane.

(g) Sign illumination. When any sign is lighted in these districts, such lights shall be enclosed in the sign, shaded or indirect so that the source of illumination is not visible and in no way interferes with the vision of motorists or with neighboring residents. Only white illumination shall be used, and no flashing (on-and-off) sign simulating movement shall be permitted, except signs indicating time and/or temperature or similar signs erected for the convenience of the public. No fluorescent paint or other preparation shall be used for high reflection.

(h) One sign with the word "open" (neon or otherwise) shall be permitted per use, provided the sign does not exceed four (4) square feet. Said sign shall not count towards the maximum allowable sign square footage.

(i) For visibility regulations at intersections see Section 35.1-23(j). (Ord. No. O-04-074, 6-22-04)

(g) Sign illumination. When any sign is lighted in these districts, such lights shall be enclosed in the sign, shaded or indirect so that the source of illumination is not visible and in no way interferes with the vision of motorists or with neighboring residents. Only white illumination shall be used, and no flashing (on-and-off) sign simulating movement shall be permitted, except signs indicating time and/or temperature or similar signs erected for the convenience of the public. No fluorescent paint or other preparation shall be used for high reflection.

(h) One sign with the word "open" (neon or otherwise) shall be permitted per use, provided the sign does not exceed four (4) square feet. Said sign shall not count towards the maximum allowable sign square footage.

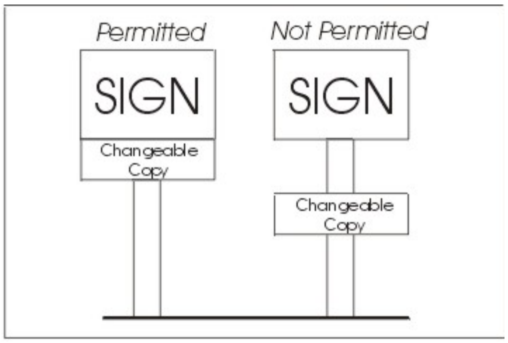
(i) For visibility regulations at intersections see Section 35.1-23(j).

Sec. 35.1-26.10. Signs in B-3, ~~and~~ B-5 **and IN-2** districts.

Signs pertaining only to the uses conducted on the premises, but not including any roof signs or billboards, will be permitted, subject to the following conditions:

(a) Building mounted signs shall face only upon an abutting street or an abutting parking lot of the same parcel where the sign is located. The aggregate sign face surface area of all signs, including trim or embellishment, on any one (1) building wall within two-hundred (200) feet from the abutting street right-of-way shall not exceed twenty-five (25) square feet plus one (1) square foot for each lineal foot of such wall. In no case shall the sign face surface area exceed one-hundred fifty (150) square feet. The aggregate sign face surface area of all signs on any one (1) building wall greater than two-hundred (200) feet from the abutting street right-of-way shall not exceed twenty-five (25) square feet plus two (2) square feet for each lineal foot of such wall. In no case, shall the sign face surface area exceed two-hundred (200) square feet. **For buildings three (3) stories or greater in height the sign size may increase twenty (20) square feet per story above the maximum permissible sign area.** Newly constructed groups of buildings shall have unified and coordinated building mounted signs.

(b) One (1) free-standing sign structure, permanently fixed to the ground, may be erected on each street on which a lot occupied by a permitted use abuts, provided such sign structure is not located closer to the front property line than two (2) feet. Such sign structure shall be limited to two (2) sign faces, each of which shall not exceed fifty (50) square feet in area. Any changeable copy sign must abut or connect with the sign face and the total square footage for both sign face surface area and changeable copy sign surface area may not exceed sixty-six (66) square feet. The changeable copy sign surface area itself may be no larger than twenty-two (22) square feet. Any architectural or decorative surrounds to support or enhance the sign face and/or changeable copy sign face may not exceed twenty-five percent (25%) of the allowable sign face surface area. The overall height of any such sign structure, including any architectural or decorative surrounds, shall not exceed seventeen (17) feet above the ground.



Changeable Copy Signs

(c) When a group of buildings is coordinated into a business**, IN-2, Institutional campus** or shopping area, one (1) free-standing sign structure, permanently fixed to the ground, designed to identify the area as a whole may be erected on each street on which the area abuts, provided such sign shall not be located closer to the front property line than two (2) feet. For a group of buildings that is between one hundred thousand (100,000) square feet and two hundred thousand (200,000) square feet, such sign shall be limited to two (2) faces, each of which shall not exceed seventy-five (75) square feet in area plus sixteen (16) square feet for a changeable copy sign. The changeable copy sign must be attached to the sign. For a group of buildings that exceeds two hundred thousand (200,000) square feet in area, such sign shall be limited to two (2) faces, each of which shall not exceed one hundred twenty-five (125) square feet in area plus sixteen (16) square feet for a changeable copy sign. The changeable copy sign must be attached to the sign. Any architectural or decorative surrounds to support or enhance the sign and/or changeable copy sign may not exceed twenty-five percent (25%) of the allowable sign area. The overall height of any such sign, including any architectural or decorative surrounds, shall not exceed seventeen (17) feet above the ground.

(d) Any pole supporting a freestanding sign shall be in an eighteen (18) inch wide rectangular enclosure. The material and color of the enclosure shall coordinate with the sign and/or building. Any freestanding sign in a historic district shall be monument style, comply with the historic districts design guidelines and receive administrative approval from the secretary of the historic preservation commission. Decisions of the secretary may be appealed to the historic preservation commission.

(e) No sign applied flat to the wall shall project more than fifteen (15) inches beyond the face of a building. Signs mounted perpendicular to the building may project a maximum of four (4) feet beyond the face of the building and allow for eight (8) feet of clearance between the bottom of the sign structure and the ground. No sign shall project above the parapet wall of the building.

(f) The provisions of this section do not apply to window signs on the inside of buildings that are further than twelve (12) inches away from the inside face of an exterior window pane, nor to small signs on outdoor merchandise display racks, cases and vending devices.

(g) Traffic direction signs, each not exceeding four (4) square feet in area, and four (4) feet in height may be displayed on any lot zoned as B-3 or B-5 as follows: Signs identifying vehicular entrance to and exit from the lot and signs of the type generally used for traffic control necessary for the safe and proper control of vehicular and pedestrian traffic within the lot.

(h) Sign illumination. When any sign is lighted in this district, such lights shall be enclosed in the sign, shaded or indirect so that the source of illumination is not visible and in no way interferes with the vision of motorists or with neighboring occupants. Only white illumination shall be used, and no flashing (on-and-off) sign, nor any sign simulating movement shall be permitted, except signs indicating time and/or temperature or similar signs erected for the convenience of the public. No fluorescent paint or other preparation shall be used for high reflection.

(i) Neon tubing of any color is permitted on a sign, provided the neon is installed within a channel enclosure.

(j) One sign with the word "open" (neon or otherwise) shall be permitted per use, provided the sign does not exceed four (4) square feet. Such a sign shall not count towards the maximum sign square footage.

(k) For visibility regulations at intersections see Section 35.1-23(j).

Sec. 35.1-47. General standards.

All uses and structures for which a conditional use permit ~~or site plan~~ review permission is required shall conform to the following general standards:

(a) The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it shall be such that it will be in harmony with the appropriate and orderly development of the district in which it is located.

(b) The location, nature and height of buildings, walls and fences and the nature and extent of the landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

(c) Operation in connection with any special use will not be more objectionable to nearby properties by reason of noise, fumes, vibration or other characteristics than would be the operations of any permitted use not requiring a special permit.

(d) Parking areas will be of adequate size for the particular use, properly located and suitably screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.

(e) Public utility service (electricity, sewerage, storm drainage, and water) will be adequate to service the proposed use and will have suitable access thereto, and the proposal will not overburden existing facilities; or, any on-site water supply, sewage treatment, storm drainage disposal, or power plant proposals will be adequate to serve the proposed use.

(f) In addition, uses shall conform to specific standards as set forth in the remainder of this article.

(g) The site of the proposed development is served by public sewers and water supply, and waste disposal will be provided to an extent acceptable to the director of community services and the city health officer.

3. That this ordinance shall become effective upon its adoption.

Adopted:

Certified:_________________________________
Clerk of Council

DRAFT – AUGUST 9, 2011

ORDINANCE

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF LYNCHBURG, 1981, BY ADDING THERETO A NEW SECTION NUMBERED 35.1-38.2, THE NEW SECTION RELATING TO INSTITUTIONAL DISTRICTS (IN-1– IN-2); TO AMEND AND REENACT SECTIONS 35.1-25.1.2, 35.1-25.1.8, 35.1-25.1.9, 35.1-25.1.11, 35.1-25.1.12 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, RELATING TO THE LANDSCAPING ORDINANCE; AND, TO AMEND AND REENACT SECTIONS 35.1-26.5, 35.1-26.9, 35.1-26.10 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, RELATING TO THE SIGN ORDINANCE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That the Code of the City of Lynchburg, 1981, be and the same is hereby amended and reenacted by adding thereto a new Section numbered 35.1-38.2 as follows:

Section 35.1-38.2. Institutional District (IN-1 / IN-2)

(a) Intent. This district is to provide for institutional uses such as schools, colleges, universities, senior living facilities, medical facilities and churches with multiple buildings contained in a campus setting. This district will provide flexibility for institutions while creating development standards to minimize off site impacts such as noise, lighting, traffic and the availability / capacity of water and sanitary sewer infrastructure associated with their development. Off site impacts related to erosion and sediment control / stormwater management will be mitigated by existing city ordinances.

The amount of off site impact related to an institution depends as much on the location as the size and scale of the campus. To ensure that development standards and permitted uses are appropriate to the location of the campus, Institutional Districts will be established based on the following two (2) circumstances:

IN-1 districts are intended for institutional campuses that are smaller in scale and located primarily within or adjacent to residential areas.

IN-2 districts are intended for large scale institutional campuses that are primarily located within or adjacent to non-residential areas. Since these uses may still border residential areas, development standards will provide for a transition between the institutional and residential uses.

Institutions with a campus in either district are encouraged to maintain a dialogue with city staff that will provide a greater understanding of the relationship of the institutions' and the city's future development plans and the availability of adequate water, sanitary sewer and transportation infrastructure.

(b) Definitions.

(1) Campus – A designated area of land including the buildings and grounds of institutional uses such as schools, colleges, universities, senior living facilities, medical facilities and churches.

(2) Concept Plan – A generalized, illustrative plan indicating how off site impacts such as traffic, water and sanitary sewer availability / capacity, lighting and noise are mitigated and providing an assessment of existing and future development of the institution's campus, including buildings, parking areas, recreational facilities, open space and access points to city streets.

In addressing off site impacts related to traffic the city encourages the institution to include improvements for sustainable alternatives such as: provisions for bus service, sidewalks and pedestrian crossings, pedestrian trails and bicycle trails, connected internal site circulation or park and ride lots which could if implemented improve the Level of Service (LOS) standards on city streets serving the institution.

(3) Level of Service (LOS) – A scale that measures the amount of traffic that a roadway or intersection can accommodate, based on such factors as maneuverability, driver dissatisfaction and delay. LOS is graded on a scale of A thru F, where LOS-A is free-flowing traffic and LOS-F is stop-and-go congestion.

(4) Open Space – Any land or area, the preservation of which would: conserve and enhance scenic resources, protect streams, promote conservation of soils or provide for passive or active recreational space. Open spaces may include plaza areas, provided they contain a landscaped component. Setback areas may be included in the computation of required open space.

(5) Residence or residential – the terms “residence” or “residential” shall be as defined in Section 35.1-11.11(s) and for the purposes of determining setback and/or height requirements for IN-1 or IN-2 Districts, shall not include any properties owned, leased, or used by the institution regardless of zoning or land use.

(6) Residential Street – any local city street where the majority of land use on one or both sides of the street within the block is residential.

(c) Establishment of District.

(1) The process for establishing an Institutional District for a campus shall be the same as provided for a change to the Official Zoning Map as outlined in Section 35.1-17(b), Amendments of the Zoning Ordinance.

(2) At the time the Institutional District is established, the institution shall provide to the city:

a. A concept plan with a two (2)-year projection of future development at the campus. The concept plan is intended to be illustrative in nature and should provide an overview of how the campus will develop; how off site impacts such as noise, lighting and traffic will be mitigated and proposed uses that would require an extension or upgrade to water / sanitary sewer infrastructure. The concept plan is not intended to serve as a master plan. Permitted and accessory uses do not need to be indicated on the concept plan provided the development standards of the Institutional District are met and adequate transportation and water / sanitary sewer infrastructure is available to serve the development.

b. A traffic study prepared by a firm qualified to conduct traffic engineering studies. The methodology for the required traffic study shall be as specified in the City’s Manual of Specifications and Standard Details in effect at the date of the adoption of this ordinance. Technical guidelines for traffic studies may be obtained from the city’s transportation engineer. The traffic study shall include the following information:

i. The existing Level of Service (LOS) for city streets serving the campus.

ii. The projected amount of growth of the campus that would result in a Level of Service (LOS) lower than “D” for city streets serving the institution, or

iii. In the case of city streets with a Level of Service (LOS) already lower than "D" the projected amount of growth of the campus that would result in further lowering the Level of Service (LOS).

(3) In considering whether to permit establishment of an IN-1 or IN-2 district for the campus the Planning Commission's and City Council's review shall be restricted to a determination of existing and future land uses, the adequacy of the transportation, water and sanitary sewer infrastructure capacity available to support the institution's future development at such campus and how the impacts of such campus to adjacent residential areas will be addressed.

(d) Uses permitted by right.

Use	IN-1	IN-2
Accessory to the Institution Such as dormitories, visitor and faculty housing, book stores, coffee shops, cafeterias, offices, facilities management, storage and recreational uses	√	√
Churches	√	√
Colleges	√	√
Medical Facilities	√	√
Schools	√	√
Senior Living Facilities	√	√
Medical Facilities	√	√
Uses permitted by right and by Conditional Use Permit in R-1, R-2, R-3, R-4, R-5, B-1, B-2 and B-3 Districts		√

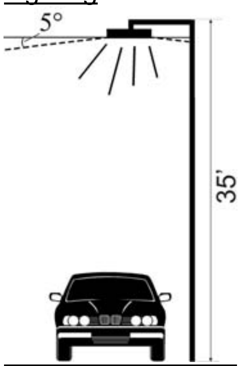
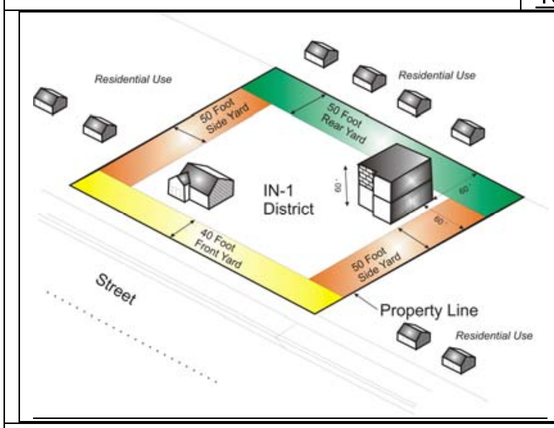
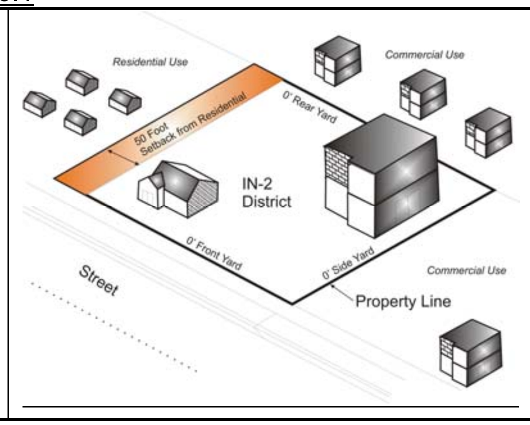
(e) Uses permitted by conditional use permit (CUP)

The following conditional uses shall be permitted, if specifically indicated on the approved concept plan; otherwise, they will be conditional uses once the concept plan is approved.

Use	IN-1	IN-2
New access point to Residential City streets	√	√
Lighted Athletic Fields Adjacent to Residential Use	√	√
Private water / sewer treatment facilities when public infrastructure is available	√	√

(f) Standards.

Standard	IN-1	IN-2
Minimum Land Area	5 acres	5 acres
Front Yard	40 feet	None
Side Yard	50 feet	None
Rear Yard	50 feet	None
Setback from Adjacent Residential Use	50 feet	50 feet
Setback for structures and uses existing at the time district is established	Structures and uses with a setback less than required by these standards and existing at the time the district is established shall not be considered nonconforming and	Structures and uses with a setback less than required by these standards and existing at the time the district is established shall not be considered nonconforming and

	may be enlarged or expanded within the existing setback.	may be enlarged or expanded within the existing setback.
Uses permitted within required yards and setback	None	None
Height Requirement	Equal to distance of structure from adjacent residential use	Equal to distance of structure from adjacent residential use
Open Space	Twenty Percent (20%) of the campus	
Lighting 	▪ Glare shielded no illumination beyond property line ▪ Shall not radiate above five degrees (5°) below horizontal ▪ Thirty-five feet (35') in height. (Excludes athletic field lighting.)	
Landscaping	See Landscaping Ordinance Section 35.1-25.1 thru 35.1.1-25.1.16	
Signs	IN-1 – See Sign Ordinance Section 35.1-26.9 IN-2 – See Sign Ordinance Section 35.1-26.10	
Stormwater Management	See Stormwater Management - Chapter 16.2	
Erosion and Sediment Control	See Erosion and Sediment Control -Chapter 16.1	
		
Institutional District Dimensional Standards		

(g) New Concept Plan Required. A new concept plan for a campus shall be required when the city's technical review committee (TRC) determines in approving a site plan for the institutional campus:

(1) The cumulative total of the institution's existing and proposed development at the campus would result in a Level of Service (LOS) lower than "D" for city streets serving such campus or in the case of city streets serving such campus that had a Level of Service (LOS) lower than "D" at the time the district was established a further lowering of the Level of Service; or

(2) Adequate water / sanitary sewer capacity or infrastructure, as determined by current engineering standards, is not readily available to serve the institution's existing and proposed development at such campus; or

(3) A period of five (5) years has passed since the review of a concept plan by the Planning Commission for such campus.

(h) The new concept plan shall be prepared as stated in Section 35.1.38.2(c)2a and when the requirement for a new concept plan is based upon LOS standards, a traffic study shall be required as specified in Section 35.1-38.2(c)2b.

(1) Improvements required to maintain a LOS "D" or to prevent a further lowering of the Level of Service when the institutional development itself gives rise to the need for the improvement shall be required to be made by the institution. Only those improvements where there exists a clearly demonstrated nexus between the proposed development of the campus and the need for the improvement shall be required to be made by the institution.

(2) The new concept plan with a two (2)-year projection shall be submitted to the Planning Commission for review and comment. The Planning Commission's review shall be restricted to a determination of the adequacy of the transportation, water and sanitary sewer infrastructure capacity available to support the institution's future development at that campus and how the impacts of the institution at such campus to adjacent residential areas are being addressed.

2. That Sections 35.1-25.1.2, 35.1-25.1.8, 35.1-25.1.9, 35.1-25.1.11, 35.1-25.1.12 35.1-26.5, 35.1-26.9, 35.1-26.10 of the Code of the City of Lynchburg, 1981, be and the same are hereby amended and reenacted as follows:

Sec. 35.1-25.1.2. Applicability.

(a) The provisions of this ordinance are applicable to the development or redevelopment of any property after the effective date of this ordinance and located in an R-4, R-5, B-1, B-2, B-3, B-4, B-5, B-6, **IN-1, IN-2,** I-1, I-2 or I-3 district or to any use requiring conditional use permit approval.

(b) When an existing use is expanded, enlarged, or redeveloped as defined in Section 35.1-11.5, (c) of the zoning ordinance only those portions of the property subject to the expansion, enlargement, or redevelopment are subject to the provisions of the landscaping ordinance.

(c) It is not the intent of this ordinance to regulate landscaping for one or two family dwellings.

Sec. 35.1-25.1.8. Street trees for multi-family, commercial**, institutional** and industrial districts.

(a) For all multi-family, commercial**, institutional** and industrial developments, street trees are required at the rate of one (1) shade tree for each forty (40) feet of street frontage or in the case where overhead utility lines prohibit the planting of shade trees one (1) ornamental tree for each twenty (20) feet of street frontage.

(b) Required street trees shall be planted along the property line that fronts the street and shall not be planted within the public right-of-way or within any utility easements.

(c) Street trees within the site distance triangle may be raised to allow for visibility.

Sec. 35.1-25.1.9. Foundation plantings.

(a) All sides of multi-family, commercial, **institutional** or industrial buildings, which front on a public or private street or are visible from an adjacent residential district, shall be landscaped with foundation plantings as follows:

(1) One (1) ornamental tree per fifty (50) linear feet of building, and

(2) One (1) large shrub per ten (10) linear feet of building, or

(3) One (1) medium shrub and one (1) small shrub per ten (10) linear feet of building, or

(4) Three (3) small shrubs per ten (10) linear feet of building, or

(5) Any combination of 2, 3 or 4 above.

(b) Foundation plantings may be placed in collective groupings along the perimeter of the building for which required.

(c) In the event that the city planner determines that topography or other landscaping would prevent the required foundation plantings from being visible from a public or private street or an adjacent residential district, the only foundation plantings that shall be required are for the wall of the building on which the main entrance is located.

Sec. 35.1-25.1.11. Buffering.

(a) In all instances where a commercial district, **institutional district,** industrial district, or any parking area is located adjacent to any residential district, or a multi-family residential district is adjacent to a one or two family residential district, a vegetative evergreen buffer shall be established on the property for which said buffer is required.

(b) Where required, the planting area for buffering shall be a minimum of twenty (20) feet in width extending along the entire length of the development area and shall generally be required along the property line unless topographic or other considerations would make it more effective located back from the property line.

(c) The vegetative buffer shall consist of a staggered evergreen tree line with a baseline filler of medium height evergreen shrubs. The evergreen tree material shall be a minimum of four (4) feet in height at time of planting. The evergreen tree line shall be planted in rows fifteen (15) feet apart and staggered ten (10) feet on center. In lieu of the baseline filler an earthen berm may be used. The earthen berm shall vary in width and height and shall be curvilinear in form and provide a gentle tie-in with the existing grade. Average height of earthen berms used to satisfy this requirement shall be three (3) feet in height.

(d) Where appropriate existing vegetation may be used to satisfy this requirement. Existing vegetation may be required to be supplemented with additional evergreen material in order to meet the buffering requirements. The need for additional evergreen material shall be determined during the site development plan review process.

Sec. 35.1-25.1.12. Tree canopy requirements.

(a) For purposes of this section, "tree canopy" shall include all areas of coverage by existing plant material exceeding five (5) feet in height, and the extent of planted tree canopy at maturity shall be based on the published reference text, manual of woody landscape plants, fifth edition, 1998, by Michael A. Dirr.

(b) The planting or replacement of trees on a development site shall be required to the extent that, at a twenty (20) years, minimum tree canopies will be provided as follows:

Minimum Tree Canopy Required

B-1, B-2, B-3, B-4, B-5, B-6, **<u>IN-1, IN-2,</u>** I-1, I-2, I-3	10% of entire development site
R-4, R-5	10% of entire development site
R-3	15% of entire development site
R-C, R-1, R-2	20% of entire development site

(c) Existing trees that are to be preserved may be included to meet all or part of the tree canopy requirements.

(d) Existing trees infested with disease or structurally damaged to the extent that they pose a hazard to person or property, or to the health of other trees on site, shall not be included to meet the tree canopy requirements.

(e) Tree canopy requirements do not replace, or negate full compliance with, the requirements of any other section of the landscaping ordinance. However, if planting of landscaping required by this ordinance meets or exceeds the tree canopy requirement, no further planting of trees or replacement of trees is required by this section.

(f) In areas zoned B-4, central business district, B-6, riverfront business district or where the city planner determines that crime prevention through environmental design (CPTED) principles apply, the city planner, in consultation with the city's urban forester, may allow the off-site planting of up to ninety-nine (99) percent of the required street trees, parking area screening, buffering and foundation plantings. Off-site planting areas shall be within the city limits and in such location as approved by the city planner.

(g) The following shall be exempt from the tree canopy requirements.

(1) Dedicated K-12 school sites.

(2) Playing fields and other non wooded recreation areas

(3) Designated wetlands

(4) Other facilities and uses similar in nature as determined by the city council.

Sec. 35.1-26.5. Temporary signs.

(a) The following banners are permitted in the zoning districts of the City of Lynchburg:

District	*Size*	*Quantity*	*Setback*	*Wall Projection*
R-1, R-2, R-3, R-4, R-5	24 SF	1 Per Street Frontage	8 Feet	3 Inches Max
B-1, B-2, B-4, B-6	24 SF	1 Per Street Frontage	8 Feet	3 Inches Max
B-3, B-5, **<u>IN-1, IN-2</u>**	32 SF	1 Per Street Frontage	8 Feet	3 Inches Max
I-1, I-2, I-3	24 SF	1 Per Street Frontage	8 Feet	3 Inches Max

(b) Banners may be erected only by the occupant of the lot and the advertising matter shall apply only to the nature of the activity occupying the lot on which the banner is erected.

(c) An application and permit for a banner or inflatable item is required as provided in 35.1-26.14. No such permit shall be issued for a period to exceed sixty (60) days. Permits for banner signs and inflatable items shall not be issued for any location during a period of thirty (30) days after the expiration date of a permit for a banner or inflatable item previously issued for the same location, unless the business operated at the location has changed ownership. In no case shall a banner or inflatable item be displayed for more than a total of one hundred and eighty (180) days per calendar year. Said banners and inflatable items shall be securely fastened to the ground or other immovable object and shall be located a minimum of eight (8) feet from the property line.

(d) Temporary construction signs are permitted in the zoning districts of the City of Lynchburg as follows:

District	*Size*	*Quantity*
R-C, R-1, R-2, R-3	6 SF	1
R-4, R-5	16 SF	1
B-1, B-2, B-3, B-4, B-5, B-6, **IN-1, IN-2**	32 SF	1
I-1, I-2, I-3	32 SF	1

One temporary construction sign shall be allowed for each contractor, subcontractor, architect or engineer. Temporary construction signs shall only be allowed on the property on which construction will commence within the next three (3) months, and may be erected on the wall of a construction trailer, construction shed or on the ground. Temporary construction signs shall not be lighted by any means and shall be removed prior to a certificate of occupancy (CO) being granted for said building. A sign permit is not required for the placement of a temporary construction sign.

(e) Temporary real estate signs are permitted in the zoning districts of the City of Lynchburg as follows:

District	*Size*	*Quantity*
R-C, R-1. R-2, R-3	6 SF	1 per Street Frontage
R-4, R-5	16 SF	1 per Street Frontage
B-1, B-2, B-3, B-4, B-5, B-6, **IN-1, IN-2**	32 SF	1 per Street Frontage
I-1, I-2, I-3	32 SF	1 per Street Frontage

Temporary real estate signs are to be placed only on the property that is for sale or lease. Temporary real estate signs shall be removed within three (3) days of the sale or lease of the property.

(f) One (1) temporary subdivision identification sign not exceeding thirty-two (32) square feet in area may be erected during construction at an entrance to the subdivided property; provided not over two (2) signs shall be erected for any one (1) subdivision. These signs shall be removed upon completion or sale of seventy-five (75) per cent of the lots in the subdivision. No electric or other luminous sign and no sign illuminated by a floodlight or other similar device shall be permitted.

(g) Temporary signs that are permitted by this section may not be placed on utility poles, traffic control signs or within the public rights-of-way.

(h) All temporary signs must be removed within three (3) days after the event or activity being advertised or promoted by the temporary sign has been completed.

Sec. 35.1-26.9. Signs in B-1**,** ~~and~~ B-2 **and IN-1** districts.

Signs pertaining only to the uses conducted on the premises, but not including any roof signs or billboards, will be permitted, subject to the following conditions:

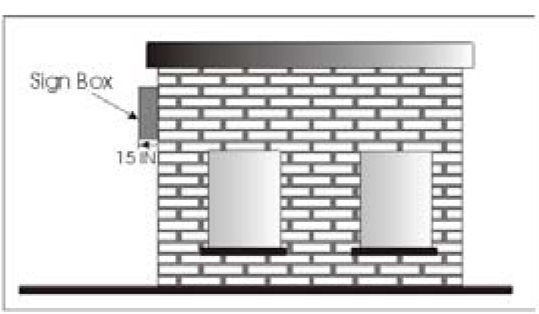
(a) Building mounted signs shall face only upon an abutting street or an abutting parking lot of the same parcel where the sign is located. The aggregate face area of all signs on any one (1) wall of the building shall not exceed twenty-four (24) square feet. Newly constructed groups of buildings shall have unified and coordinated building mounted signs.

(b) One (1) free-standing sign structure, permanently fixed to the ground, may be erected on each street on which a lot occupied by a permitted use abuts, provided such sign structure does not extend beyond the lot line nor shall such sign be located closer to the front property line than two (2) feet. Such sign structure shall be limited to two (2) sign faces, each of which shall not exceed twenty-four (24) square feet in surface area. Any architectural or decorative surrounds to support or enhance the sign face may not exceed twenty-five percent (25%) of the maximum allowable sign face surface area. Sign bases, uprights, or poles located under the sign shall not count toward the architectural or decorative surrounds calculation. The overall height of any such sign structure, including its architectural or decorative surrounds, shall not exceed ten (10) feet above the ground.

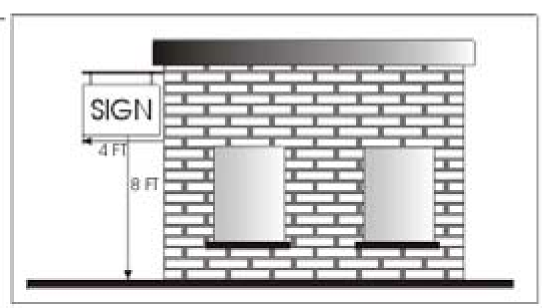
(c) When a group of buildings is coordinated into a business**, institutional campus** or shopping area, one (1) free-standing sign structure, permanently fixed to the ground and designed to identify the area as a whole, may be erected on each street on which the area abuts, provided such sign structure shall not be located closer to the front property line than two (2) feet. Such sign shall be limited to two (2) sign faces, each of which shall not exceed twenty-four (24) square feet in area for the first business tenant, but may be increased incrementally by four (4) square feet for each additional business tenant up to a maximum of thirty-two (32) square feet. Any architectural or decorative surrounds to support or enhance the sign face may not exceed twenty-five percent (25%) of the maximum allowable sign face surface area. The overall height of any such sign, including its architectural or decorative surrounds, shall not exceed ten (10) feet above the ground.

(d) Any pole supporting a freestanding sign shall be in an eighteen (18) inch wide rectangular enclosure. The material and color of the enclosure shall coordinate with the sign and/or building. Any freestanding sign in a historic district shall be monument style, maximum seven (7) feet in height, comply with the historic district guidelines, and receive approval from the secretary of the historic preservation commission. Decisions of the secretary may be appealed to the historic preservation commission.

(e) No building mounted sign shall project more than fifteen (15) inches beyond the face of a building. Signs mounted perpendicular to the building may project a maximum of four (4) feet beyond the face of the building and allow for eight (8) feet of clearance between the bottom of the sign structure and the ground. No sign shall project above the parapet wall of the building.



Building Mounted Signs



Projecting Signs Perpendicular to Building

(f) The provisions of this section do not apply to signs that are further than twelve (12) inches away from the inside face of an exterior window pane.

(g) Sign illumination. When any sign is lighted in these districts, such lights shall be enclosed in the sign, shaded or indirect so that the source of illumination is not visible and in no way interferes with the vision of motorists or with neighboring residents. Only white illumination shall be used, and no flashing (on-and-off) sign simulating movement shall be permitted, except signs indicating time and/or temperature or similar signs erected for the convenience of the public. No fluorescent paint or other preparation shall be used for high reflection.

(h) One sign with the word "open" (neon or otherwise) shall be permitted per use, provided the sign does not exceed four (4) square feet. Said sign shall not count towards the maximum allowable sign square footage.

(i) For visibility regulations at intersections see Section 35.1-23(j). (Ord. No. O-04-074, 6-22-04)

(g) Sign illumination. When any sign is lighted in these districts, such lights shall be enclosed in the sign, shaded or indirect so that the source of illumination is not visible and in no way interferes with the vision of motorists or with neighboring residents. Only white illumination shall be used, and no flashing (on-and-off) sign simulating movement shall be permitted, except signs indicating time and/or temperature or similar signs erected for the convenience of the public. No fluorescent paint or other preparation shall be used for high reflection.

(h) One sign with the word "open" (neon or otherwise) shall be permitted per use, provided the sign does not exceed four (4) square feet. Said sign shall not count towards the maximum allowable sign square footage.

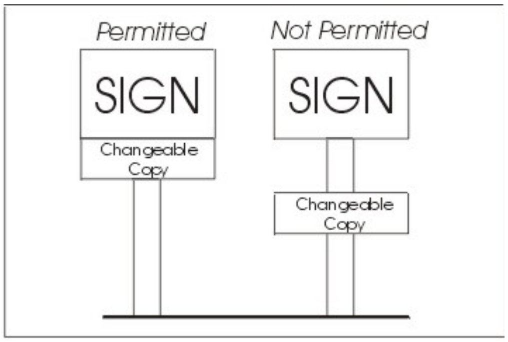
(i) For visibility regulations at intersections see Section 35.1-23(j).

Sec. 35.1-26.10. Signs in B-3, ~~and~~ B-5 **and IN-2** districts.

Signs pertaining only to the uses conducted on the premises, but not including any roof signs or billboards, will be permitted, subject to the following conditions:

(a) Building mounted signs shall face only upon an abutting street or an abutting parking lot of the same parcel where the sign is located. The aggregate sign face surface area of all signs, including trim or embellishment, on any one (1) building wall within two-hundred (200) feet from the abutting street right-of-way shall not exceed twenty-five (25) square feet plus one (1) square foot for each lineal foot of such wall. In no case shall the sign face surface area exceed one-hundred fifty (150) square feet. The aggregate sign face surface area of all signs on any one (1) building wall greater than two-hundred (200) feet from the abutting street right-of-way shall not exceed twenty-five (25) square feet plus two (2) square feet for each lineal foot of such wall. In no case, shall the sign face surface area exceed two-hundred (200) square feet. Newly constructed groups of buildings shall have unified and coordinated building mounted signs.

(b) One (1) free-standing sign structure, permanently fixed to the ground, may be erected on each street on which a lot occupied by a permitted use abuts, provided such sign structure is not located closer to the front property line than two (2) feet. Such sign structure shall be limited to two (2) sign faces, each of which shall not exceed fifty (50) square feet in area. Any changeable copy sign must abut or connect with the sign face and the total square footage for both sign face surface area and changeable copy sign surface area may not exceed sixty-six (66) square feet. The changeable copy sign surface area itself may be no larger than twenty-two (22) square feet. Any architectural or decorative surrounds to support or enhance the sign face and/or changeable copy sign face may not exceed twenty-five percent (25%) of the allowable sign face surface area. The overall height of any such sign structure, including any architectural or decorative surrounds, shall not exceed seventeen (17) feet above the ground.



Changeable Copy Signs

(c) When a group of buildings is coordinated into a business**, institutional campus** or shopping area, one (1) free-standing sign structure, permanently fixed to the ground, designed to identify the area as a whole may be erected on each street on which the area abuts, provided such sign shall not be located closer to the front property line than two (2) feet. For a group of buildings that is between one hundred thousand (100,000) square feet and two hundred thousand (200,000) square feet, such sign shall be limited to two (2) faces, each of which shall not exceed seventy-five (75) square feet in area plus sixteen (16) square feet for a changeable copy sign. The changeable copy sign must be attached to the sign. For a group of buildings that exceeds two hundred thousand (200,000) square feet in area, such sign shall be limited to two (2) faces, each of which shall not exceed one hundred twenty-five (125) square feet in area plus sixteen (16) square feet for a changeable copy sign. The changeable copy sign must be attached to the sign. Any architectural or decorative surrounds to support or enhance the sign and/or changeable copy sign may not exceed twenty-five percent (25%) of the allowable sign area. The overall height of any such sign, including any architectural or decorative surrounds, shall not exceed seventeen (17) feet above the ground.

(d) Any pole supporting a freestanding sign shall be in an eighteen (18) inch wide rectangular enclosure. The material and color of the enclosure shall coordinate with the sign and/or building. Any freestanding sign in a historic district shall be monument style, comply with the historic districts design guidelines and receive administrative approval from the secretary of the historic preservation commission. Decisions of the secretary may be appealed to the historic preservation commission.

(e) No sign applied flat to the wall shall project more than fifteen (15) inches beyond the face of a building. Signs mounted perpendicular to the building may project a maximum of four (4) feet beyond the face of the building and allow for eight (8) feet of clearance between the bottom of the sign structure and the ground. No sign shall project above the parapet wall of the building.

(f) The provisions of this section do not apply to window signs on the inside of buildings that are further than twelve (12) inches away from the inside face of an exterior window pane, nor to small signs on outdoor merchandise display racks, cases and vending devices.

(g) Traffic direction signs, each not exceeding four (4) square feet in area, and four (4) feet in height may be displayed on any lot zoned as B-3 or B-5 as follows: Signs identifying vehicular entrance to and exit from the lot and signs of the type generally used for traffic control necessary for the safe and proper control of vehicular and pedestrian traffic within the lot.

(h) Sign illumination. When any sign is lighted in this district, such lights shall be enclosed in the sign, shaded or indirect so that the source of illumination is not visible and in no way interferes with the vision of motorists or with neighboring occupants. Only white illumination shall be used, and no flashing (on-and-off) sign, nor any sign simulating movement shall be permitted, except signs indicating time and/or temperature or similar signs erected for the convenience of the public. No fluorescent paint or other preparation shall be used for high reflection.

(i) Neon tubing of any color is permitted on a sign, provided the neon is installed within a channel enclosure.

(j) One sign with the word "open" (neon or otherwise) shall be permitted per use, provided the sign does not exceed four (4) square feet. Such a sign shall not count towards the maximum sign square footage.

(k) For visibility regulations at intersections see Section 35.1-23(j).

3. That this ordinance shall become effective upon its adoption.

Adopted:

Certified:________________________________
Clerk of Council

LIBERTY UNIVERSITY
www.liberty.edu

Changing Lives... One Degree at a Time

PUBLIC COMMENTS
ON PROPOSED INSTITUTIONAL ZONING ORDINANCE

DELIVERED TO CITY OF LYNCHBURG PLANNING COMMISSION
Wednesday, July 13, 2011

Liberty University was pleased to accept your invitation to participate in a process to improve how the City's zoning code relates to colleges and other institutional landowners. We realize how important it is to use properties in ways that don't interfere with the property rights of neighbors while still respecting the property rights of everyone. As you may recall, Liberty moved from a residential neighborhood setting to the commercial and industrial area of Candler's Mountain so its plans for expansion would not interfere with anyone else's property. When that land was annexed into Lynchburg, Liberty obtained Business 5 zoning with vested rights for college development. Liberty moved to obtain greater development freedom and certainty, but that didn't last. In 1991, the City imposed Conditional Use Permits for any new improvements to college campuses in the City's business districts. Liberty University looked forward to the recent evaluation of zoning ordinances as an opportunity to restore its B-5 development rights.

What this exchange among the institutions, planning commissioners and staff has generated is a great improvement for the smaller scale institutional campuses in residential areas. We are pleased to see that our sister institutions can look forward to a better zoning district that takes into account their needs while safeguarding the interests of the neighborhoods in which they chose to locate.

However, Liberty University would have preferred that the large-scale institutional campuses located outside residential areas have the option to simply be restored to their pre-CUP status with development by-right. The IN-2 zoning district is, in some ways, worse than a Conditional Use Permit requirement because it empowers staff to make various threshold determinations on development, such as new access points to public roadways, required traffic improvements, what is "visual impact," and sufficiency of water and sewer capacity. Also, there is no option for IN-2 developers to provide for their own water and sewage treatment needs. The subjective nature of these determinations, when combined with non-elected decision makers, creates too much uncertainty and potential for mischief over time. For Liberty University, this IN-2 district is not an improvement. For now, we will remain under the CUP process because, although it is flawed, at least elected officials decide the development conditions that will be imposed for future development. And Liberty University will continue to advocate for vested by-right zoning for campuses in commercial and industrial areas.

We also plan to continue to work with the City and its elected representatives to make the best decisions in the best interests of the economic development of our City. Recently, the City and Liberty have worked together well on cooperative projects involving expanded airport service, the Wards Road pedestrian bridge and the City library reading room expansion. Even though Liberty paid market value when acquiring a parcel of surplus City property to expand its student recreation fields, I am pleased to announce today that Liberty University has decided to donate to the City the commercial parcel needed to expand the Lynchburg Public Library reading room. We appreciate and value this close working relationship and expect it to continue.

Liberty University • 1971 University Boulevard • Lynchburg, Virginia 24502
Phone: 1-800-543-5317 • Web Site: www.liberty.edu • E-mail: admissions@liberty.edu

// A regular meeting of the Council of the City of Lynchburg was held on the 27th day of November, 2012, at 7:30 P.M. in the Council Chamber, City Hall, Michael Gillette, President, presiding. Council Member Cary gave the Invocation, followed by the Pledge of Allegiance. The following Members were present:

Present: Cary, Foster, Helgeson, Johnson, Nelson, Perrow, Gillette 7

Absent: 0

// Copies of the minutes of the November 13, 2012 meeting, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Cary, seconded by Council Member Nelson, Council by the following recorded vote approved the minutes as presented:

Ayes: Cary, Foster, Helgeson, Johnson, Nelson, Perrow, Gillette 7

Noes: 0

// Mr. Emmett Lifsey with CJMW Architects provided an update on the Story Room addition for the Lynchburg Public Library, 2315 Memorial Avenue. His presentation included an artist rendering of the Story Room, a map indicating its planned location, and an explanation of the room's features and amenities.

// In the matter of Public Works – General, a public hearing was held regarding City Council Report #3 regarding a request to grant a License Agreement to Liberty University to place 120 feet of fiber optic cable in City-owned right-of-way from 3436 Odd Fellows Road to connect to its facility at 3125 Albert Lankford Drive. City Manager Kimball Payne gave an overview of the request. A representative from Liberty University asked Council to approve the license agreement. There was no one else present who wished to speak to this item, and the public hearing was closed. Council Member Perrow, Chair of the Physical Development Committee (PDC) stated that this matter had come before PDC. He stated that in compliance with the Virginia Conflict of Interest Act he would abstain from the discussion of and the voting on this item because his company provided engineering services to Liberty University and he, therefore, had a personal interest in this item. On motion of Vice Mayor Johnson, seconded by Council Member Cary, Council by the following recorded vote adopted Resolution #R-12-132, as presented, granting a License Agreement to Liberty University to place 120 feet of fiber optic cable in City-owned right-of-way from 3436 Odd Fellows Road to connect to their facility at 3125 Albert Lankford Drive:

Ayes: Cary, Foster, Helgeson, Johnson, Nelson, Gillette 6

Noes: 0

Abstention: Perrow 1

// In the matter of Economic Development – General, a public hearing was held regarding City Council Report #4 regarding boundary amendments to Enterprise Zones #2 and #46. Director of Economic Development Marjette Upshur gave a brief summary of the request. There was no one else present who wished to speak to this item, and the public hearing was closed. Council Member Nelson stated he would have to abstain from voting on this item due to the fact that he represented clients in the Enterprise Zone areas and felt it would be a conflict of interest. On motion of Council Member Foster, seconded by Council

Member Cary, Council by the following recorded vote adopted Resolution #R-12-133, as presented, regarding boundary amendments to Enterprise Zones #2 and #46:

Ayes: Cary, Foster, Helgeson, Johnson, Perrow, Gillette 6

Noes: 0

Abstention: Nelson 1

// In the matter of Public Works – General, City Council Report #5 was considered. Council Member Perrow, Chair of the Physical Development Committee (PDC) stated that this matter had come before the PDC which recommended approval to participate in the FY 2014 VDOT Revenue Sharing Program. This motion does not require a second, and Council by the following recorded vote adopted Resolution #R-12-134, as presented, to participate in the FY 2014 VDOT (Virginia Department of Transportation) Revenue Sharing Program:

Ayes: Cary, Foster, Helgeson, Johnson, Nelson, Perrow, Gillette 7

Noes: 0

// In the matter of Courts – General, City Council Report #6 was considered. On motion of Council Member Foster, seconded by Vice Mayor Johnson, Council by the following recorded vote adopted Ordinance #0-12-135, as presented, to amend the City Code relating to Courthouse Maintenance Fees:

Ayes: Cary, Foster, Helgeson, Johnson, Nelson, Perrow, Gillette 7

Noes: 0

// In the matter of City Code/Public Works – General, City Council Report #7 was considered. On motion of Council Member Foster, seconded by Council Member Nelson, Council by the following recorded vote adopted Ordinance #0-12-136, as presented, to amend the City Code relating to Tree Maintenance within the City:

Ayes: Cary, Foster, Helgeson, Johnson, Nelson, Perrow, Gillette 7

Noes: 0

// In the matter of Library – General, City Council Report #8 was considered. On motion of Council Member Cary, seconded by Council Member Nelson, Council by the following recorded vote adopted Ordinance #0-12-137, as presented, to amend the City Code relating to fees for the operation and maintenance of the Public Law Library:

Ayes: Cary, Foster, Helgeson, Johnson, Nelson, Perrow, Gillette 7

Noes: 0

// In the matter of City Council, City Council Report #9 was considered. City Manager Kimball Payne gave a summary of the amendments that had been made after Council's November 13th meeting to the Proposed 2013 Legislative Agenda. Council Member Cary noted that the Transportation section should read "The State should continue its support for the Amtrak intercity passenger rail service from Lynchburg to Boston including the continuance of funds for the Bus Bridge between Lynchburg and Roanoke as part of the Trans Dominion Express". On motion of Council Member Perrow, seconded by Vice Mayor

Johnson, Council by the following recorded vote adopted the Proposed 2013 Legislative Agenda with the noted corrections:

Ayes: Cary, Foster, Helgeson, Johnson, Nelson, Perrow, Gillette 7

Noes: 0

// The meeting was adjourned at 8:42 P.M.

Clerk of Council

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 11, 2012**			AGENDA ITEM NO.: 7
CONSENT:	REGULAR: **X**	WORK SESSION:	CLOSED SESSION: (Confidential)
ACTION: **X**		INFORMATION:	

ITEM TITLE: **Zoning Ordinance Amendment – Digital Billboards – Section 35.1-26.13, Billboards, Section 35.1-38, General Business District (B-5), Section 35.1-40, Light Industrial Districts (I-2), Section 35.1-41, Heavy Industrial Districts (I-3)**

RECOMMENDATION: Approval of the Zoning Ordinance Amendments.

SUMMARY: Council initiated amendments to the *Zoning Ordinance* to allow Commercial Electronic Variable Message Signs (Digital Billboards) on February 28, 2012. Digital billboards can display multiple digital images in six (6)-second increments as permitted by the Code of Virginia. Digital billboards eliminate the need for on-site installation of vinyl posters and allow the billboard industry to increase advertisement space without adding additional billboard locations. The Planning Commission recommended approval of the *Zoning Ordinance* amendments because:

- Digital signs are allowed by-right or have been allowed by conditional use permit (CUP) in certain areas of the City.
- Digital billboards are "site specific" and the conditional use permit process would allow oversight concerning location.
- Allowing digital billboards is not contrary to the goals and objectives of the *Comprehensive Plan 2002-2020*.

PRIOR ACTION(S):

February 28, 2012:	Council initiated amendments to *Zoning Ordinance* to allow Digital Billboards.
April 11, 2012:	Planning Commission conducted a public hearing concerning the amendments and forwarded to the CSC for comment.
June 1, 2012:	Citizen Steering Committee (CSC) work session.
July 11, 2012:	Planning Commission work session.
August 8, 2012:	Planning Commission work session.
September 12, 2012:	Planning Commission work session.
September 26, 2012:	Planning Commission conducted a public hearing concerning the *Zoning Ordinance* amendments. A motion to approve failed (3-3, with 1 member absent, Hannon). Planning Commission directed staff to place the amendments on a future agenda for discussion by the full Commission.
October 24, 2012:	Planning Division recommended approval of the *Zoning Ordinance* amendments.
	Planning Commission recommended approval (4-3) of the *Zoning Ordinance* amendments.

FISCAL IMPACT: None

CONTACT(S): Tom Martin, City Planner – 455-3900
Kent White, Director of Community Development – 455-3900

ATTACHMENT(S):

- Ordinance
- October 24, 2012 Planning Commission Minutes
- September 26, 2012 Planning Commission Minutes.
- September 26, 2012, City Attorney Memorandum.
- September 12, 2012, Planning Commission Minutes.
- August 8, 2012, Planning Commission Minutes.
- July 11, 2012, Planning Commission Minutes.
- July 11, 2012, Memorandum to Planning Commission with June 1, 2012 CSC Comments
- April 11, 2012, Planning Commission Minutes
- April 11, 2012, Planning Commission Report
- Billboard Location Map

REVIEWED BY: lkp

ORDINANCE:

AN ORDINANCE TO AMEND AND REENANCT SECTION 35.1-26.13, BILLBOARDS, SECTION 35.1-38, GENERAL BUSINESS DISTRICT (B-5), SECTION 35.1-40, LIGHT INDUSTRIAL DISTRICTS (I-2) AND SECTION 35.1-41, HEAVY INDUSTRIAL DISTRICTS (I-3) OF THE CODE OF THE CITY OF LYNCHBURG, 1981, AS AMENDED, THE AMENDED SECTIONS RELATING TO COMMERCIAL ELECTRONIC VARIABLE MESSAGE SIGNS (DIGITAL BILLBOARDS).

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LYNCHBURG:

1. In order to promote the public necessity, convenience, general welfare, and good zoning practice, Sections 35.1-26.13, 35.1-38, 35.1-40 and 35.1-41 of the Code of the City of Lynchburg, 1981, be and the same are hereby amended and reenacted as follows:

Sec. 35.1-26.13. Billboards.

All billboards constructed or erected after the enactment of this ordinance shall conform to the following requirements:

(a) No person shall cause to be constructed or erected in a B-5 district any billboard except a billboard that replaces a then existing billboard in a B-5 district. Any billboard existing in a B-5 district at the time of enactment of this ordinance, and any replacements and any billboard existing in an I-2 or I-3 district at the time of enactment of this ordinance shall not be considered as a nonconforming billboard provided said billboard is in compliance with this ordinance. All other billboards existing at the time of enactment of this ordinance shall be deemed nonconforming billboards.

(b) Any billboard located within three hundred (300) feet of the center line of, and readily readable from, any limited access highway shall be located not nearer than five hundred (500) feet to an exit ramp. The required distance shall be measured along the center line of the highway, in the direction in which traffic is approaching the exit ramp, beginning at the nearest intersecting point of a line drawn perpendicular to the said center line through the beginning of the nearest exit ramp with said highway. No billboard shall be located in such a manner as to obstruct an existing advertising structure viewed from a point on the main traveled portion of said highway at a distance of three hundred (300) feet approaching said sign.

(c) Billboards shall be located no less than five hundred (500) feet apart.

(d) The spacing provisions cited above shall not apply to billboards separated by buildings or other obstructions in such a manner that only one (1) sign located within the required spacing distance is visible from the road at any one (1) time.

(e) Except on property located adjacent to limited access highways, no billboard shall be located within one hundred fifty (150) feet of any property zoned for or used as a residential development, church, playground, school or public park.

(f) The area of the advertising surfaces erected on any billboard shall not exceed six hundred seventy-five (675) square feet, and no billboard(s) shall be double-decked, multi-decked, stacked or side-by-side structures with more than one (1) surface area facing the same direction.

(g) When any billboard is lighted, such lights shall be enclosed in the sign, shaded or indirect, so that they will in no way interfere with the vision of motorists or with neighboring residents. Only white illumination shall be used, and no flashing (on-and-off) sign, nor any sign simulating movement, shall be permitted, except signs indicating time and/or temperature or similar signs erected for the convenience of the public. No fluorescent paint or other preparation can be used for high reflection.

(h) The maximum height of a billboard shall be forty (40) feet from the grade of the thoroughfare to which the sign is oriented or from the base of the structure, whichever is higher.

(i) Commercial electronic variable message signs or digital billboards may be permitted in I-2, Light Industrial Districts and I-3, Heavy Industrial Districts by conditional use permit. Existing billboards in B-5, General Business Districts may be replaced and converted to a digital billboard upon approval of a conditional use permit. Digital billboards shall conform to the following additional standards:

1. Digital billboards shall not change the displayed message more frequently than once every six (6) seconds.

2. Display brightness shall not exceed three tenths (0.3) foot candles over ambient light levels. Foot candle readings shall be measured using an appropriate meter at a distance of two hundred fifty (250) feet perpendicular to the face of the digital billboard.

3. Digital billboards shall have automatic dimming capabilities.

~~(i)~~ **(j)** All billboards shall be maintained by the owner in accordance with Section 33.1-370.2 of the Code of Virginia.

~~(j)~~ **(k**) No billboard shall be erected, rebuilt, altered or relocated without a building permit.

Sec. 35.1-38. General business district (B-5).

(a) Intent. This district is to provide for a variety of commercial and similar uses which require large sites and which often produce substantial nuisance effects. The location of these districts should provide for a high level of access, relatively large amounts of level land, and opportunities to shield adjacent residential districts from nuisance effects.

(b) Special regulations. The following special regulations shall apply in general business districts:

(1) Direct access shall be available to at least one (1) arterial street.

(2) Driveways shall be kept to a minimum and shall meet the requirements of the "Standard Entrance Policy" of the City of Lynchburg.

(c) Prohibited uses.

(1) Within any business B-5 district, as indicated on the official zoning map, no lot, building or structure shall be used and no building or structure shall be erected which is intended or designed to be used, in whole or in part, for other than one (1) or more of the following specified purposes; provided that no operations shall be carried on which create conditions of smoke, fumes, noise, odor, light or dust detrimental to health, safety or the general welfare of the community.

(d) Uses permitted by right. The following uses shall be permitted by right in the general business district subject to the regulation of Section 35.1-14 to the zoning ordinance:

(1) Uses permitted by right in the B-3 district except single-family dwellings.

(2) The following additional uses:

Auction rooms

Armories

Automobile and truck rental

Automobile, truck and trailer sales with outside sales and storage permitted Automobile service stations

Automobile and truck tire sales

Rebuilding and retreading establishments

Battery sales

Bottling plants

Billboards, subject to the regulations of Section 35.1-26.1**3**

Blacksmith shops

Bookbinding

Building material sales

Carpentry shops

Coffee and peanut roasting

Commercial amusements

Contractors' establishments

Dairies, pasteurizing plants, or ice cream manufacture

Dance halls

Depositories for the storage of office records, microfilm or computer tapes

Diaper services

Drive-in theaters

Dry cleaning and dying plants

Exterminators

Furniture upholstering and repair shops

Custom furniture manufacturing

Commercial greenhouses

Hiring halls and other places of assembly for the registration or assignment of employment

Automobile painting and body repair shops

Laundries

Sales lots for construction and farm equipment and similar machinery

Ice manufacture

Commercial kennels for dogs and other pets

Wholesale or produce markets

Monument and gravestone sales

Motion-picture production studios

Newspaper offices

Photographic developing and printing establishments

Printing plants

Second-hand stores including auction sales provided such activity is conducted wholly within an enclosed building

Small sign shops

Storage warehouses and yards, except sandyards, gravel yards, coal yards, railroad yards, automobile wrecking yards, junkyards or the storage of combustibles prohibited by the fire code

Travel trailer sales and rentals

Window blinds, shades and awnings (manufacture)

Leather products (not to include tanning)

Other uses determined by the city council to be of similar character to and compatible with the above uses.

(e) Permitted accessory uses. The following uses are permitted as accessory to principal uses permitted in general business districts:

(1) Accessory uses permitted in B-3 districts.

(2) Other uses determined by the planning commission to be customarily accessory to uses permitted in this district.

(3) Exterior signs pertaining to the uses conducted on the premises, as regulated in the B-4 district, except that projecting signs otherwise complying with this ordinance will be permitted.

(f) Uses permitted by conditional use permit. The following uses shall be permitted in general business districts as conditional use under the regulations of Section 35.1-15 and Article X of the zoning ordinance:

(1) Commercial amusement (temporary).

(2) Commercial recreation.

(3) Arenas, auditoriums or stadiums unlimited in capacity.

(4) Moving and storage establishments.

(5) Transient trailer parks.

(6) Radio towers and transmitting stations.

(7) Residential uses of any density or type.

(8) Motor freight stations.

(9) Trucking terminals.

(10) Commercial swimming pools.

(11) Schools and colleges of all types exceeding a maximum enrollment of one hundred (100) students.

(12) Flexible space developments as provided in Section 35.1-43.14.

(13) Large scale retail establishments not meeting the provisions of Section 35.1-43.22 thru Section 35.1-43.28.

(g) Standards for B-5 business districts.

(1) General standards

	B-5
Minimum average lot area per establishment (square feet)	None required
Minimum lot depth (feet)	0

(2) Yards. When a lot in any business B-5 district is used, in whole or in part, for residential purposes, the yard requirements shall be the same as those in a residential R-5 district.

a. Front yards.

1. Where all of the lots contained within a block are located in a business B-5 district, no front yard will be required.

2. Where the lots contained within a block are partly in this district and partly in another district in which a greater front yard is required, the front yard requirements of the latter district shall apply to the entire street frontage in both districts, or twenty (20) feet, whichever distance is the greater.

b. Side yards. No side yard shall be required except where a business B-5 district abuts a residential district, in which case the yard required on the abutting side shall be the same as that required in the residential district.

c. Rear yards. The requirement for rear yards is the same as that for business B-2 districts, Section 35.1-35.

(3) Height regulations. The height regulations shall be the same as those required for a business B-4 district, Section 35.1-37.

(4) Area regulations. The area requirements shall be the same as those required for a business B-2 district, Section 35.1-35.

(h) Signs. (As provided in Sections 35.1-26 through 35.1-26.16)

(i) Parking requirements. Off-street parking and loading space shall be provided; however, the requirements of off-street parking of said section shall not apply in connection with buildings located in the first fire district as described in the city code.

Sec. 35.1-40. Light industrial districts (I-2).

(a) Intent. This district is intended to provide for industrial uses of a variety of types which produce relatively low levels of smoke, smell, noise light, dust and other nuisances. These areas would contain many of the same types of activity as the restricted industrial districts, but lower development standards would be permitted. In general, operations are appropriate in this district which: (1) do not involve nuisances discernible at the lot line; and (2) do not deal with large volumes of customers on a continuous basis throughout the day. No use shall be allowed in this district unless listed below as a use permitted by right, as a permitted accessory use or as a use permitted by conditional use permit, provided, however, that any such permitted use existing prior to December 13, 1988, may be enlarged or expanded, but not relocated, so long as it meets all other applicable requirements of this chapter. Any such use shall not be subject to any of the limitations or other regulations prescribed for non-conforming uses elsewhere provided in this chapter.

(b) Uses permitted by right. The following uses shall be permitted in light industrial districts subject to the regulations of Section 35.1-14.

(1) Uses permitted by right in restricted industrial districts (I-1) (except for an office building which is not directly related to an industrial activity).

(2) Adhesive products (manufacturing).

(3) Armories.

(4) Artisans and craft work.

(5) Automobile and truck parts manufacturing.

(6) Automobile parking garage, repair shop or parking lot subject to approval by the city council as provided by other ordinances of the city.

(7) Bakery goods (manufacturing).

(8) Battery (manufacturing).

(9) Blueprinting and photostating establishments.

(10) Billboards subject to the regulations of Section 35.1-26.1**3**.

(11) Bottling and beverage works.

(12) Bookbinding.

(13) Box (manufacturing).

(14) Broom and brush (manufacturing).

(15) Bus and other transit stations.

(16) Cameras and other photographic equipment (manufacturing).

(17) Candy (manufacturing).

(18) Carpentry and cabinet making shops.

(19) Catering establishments.

(20) Ceramic products (manufacturing).

(21) Chemical apparatus (manufacturing).

(22) Coffee and peanut roasting.

(23) Commercial greenhouses.

(24) Communications systems service (manufacturing and wholesale).

(25) Computer centers.

(26) Confection (manufacturing).

(27) Cosmetics (manufacturing).

(28) Data processing service.

(29) Dairies and/or pasteurizing plants.

(30) Depositories for the storage of office records, microfilm or computer tapes.

(31) Die casting.

(32) Distribution center.

(33) Drugs (manufacturing).

(34) Dry cleaning establishments.

(35) Dyeing establishments.

(36) Electrical appliances (manufacturing and fabrication).

(37) Electrical equipment (manufacturing and fabrication).

(38) Electronic components and instruments (manufacturing and fabrication).

(39) Electroplating.

(40) Extracts, food and flavor (manufacturing).

(41) Fence (manufacturing).

(42) Food wholesale.

(43) Food products (manufacturing) other than fish, sauerkraut, vinegar, or yeast, or the refining or rendering of fats or oils.

(44) Furniture and fixtures (manufacturing).

(45) Glass products (manufacturing).

(46) Government buildings used exclusively by the city, county, state or federal government for public service.

(47) Hardware and tools (manufacturing).

(48) Ice, natural and dry manufacturing.

(49) Ice cream (manufacturing).

(50) Ink products (manufacturing).

(51) Instruments, professional, scientific and controlling (manufacturing).

(52) Insulating material (manufacturing).

(53) Jewelry (manufacturing).

(54) Laboratories (research and testing).

(55) Laboratory apparatus (manufacturing).

(56) Latex (fabrication, not including paint).

(57) Laundry plants.

(58) Leather products (manufacturing, not to include tanning).

(59) Linen supply establishments.

(60) Lithographing.

(61) Luggage (manufacturing, not to include tanning).

(62) Machinery and machines, household and office (manufacturing).

(63) Machine shops.

(64) Machine tools, light (manufacturing).

(65) Medical equipment (manufacturing).

(66) Metal finishing.

(67) Metal products and machinery, medium and light (manufacturing and fabrication).

(68) Milk and dairy products (processing and distribution).

(69) Modular and mobile homes (manufacturing).

(70) Monument works and statuary (production).

(71) Motorcycles (manufacturing and fabrication).

(72) Musical instruments (manufacturing).

(73) Motor freight terminals.

(74) Moving and storage establishments.

(75) Novelty products (manufacturing).

(76) Off-street parking garages and lots incidental to industrial activities.

(77) Office, general, directly related to industrial activities.

(78) Optical equipment (manufacturing).

(79) Orthopedic and medical appliances (manufacturing).

(80) Packaging and paper products manufacturing from previously prepared materials.

(81) Perfumes (manufacturing).

(82) Pharmaceuticals (manufacturing).

(83) Plastics (fabrication).

(84) Photoengraving.

(85) Photography film (manufacturing and processing).

(86) Polish (manufacturing).

(87) Porcelain enamel products (manufacturing and fabrication).

(88) Pottery and chinaware (manufacturing).

(89) Printing and publishing.

(90) Radio and television studios and stations, provided that studios produce no exterior electromagnetic effect and are soundproofed from adjoining properties.

(91) Retail/wholesale display rooms for sales at industrial establishments of products manufactured on site and other products of the corporation provided the display area does not exceed fifteen (15) percent of the total floor area.

(92) Rope, fibrous (manufacturing).

(93) Rubber fabrication.

(94) Rugs (manufacturing).

(95) Shoe manufacturing.

(96) Signs (manufacturing).

(97) Silverware, plate and sterling (manufacturing and fabrication).

(98) Spices (manufacturing and processing).

(99) Sporting and athletic goods (manufacturing).

(100) Starch (manufacturing).

(101) Static transformer stations, transmission lines, gas and water mains, conduits for the transmission of electric energy including telephone, telegraph, and noncommercial radio and television poles and appurtenances thereto.

(102) Telephone exchanges.

(103) Textile mills products (manufacturing and fabrication).

(104) Tobacco products (manufacturing).

(105) Toiletries (manufacturing).

(106) Tool, die or pattern making shops.

(107) Toys and games (manufacturing).

(108) Trade expositions.

(109) Twine, fibrous (manufacturing).

(110) Union halls.

(111) Warehousing and storage, except sandyards, gravel yards, coal yards, railroad yards, automobile wrecking yards, junkyards, or the storage of combustibles prohibited by the fire code.

(112) Wax and wax products (manufacturing).

(113) Wearing apparel (manufacturing).

(114) Welding and blacksmith shops.

(115) Wholesale establishments with a building area of five thousand (5,000) square feet or more. A portion of the establishment may be used for retail display area, provided the retail sales (a) do not exceed fifteen (15) percent of the total building area, and (b) are not used for second hand (consignment) merchandise or auction centers and do not require outdoor storage such as lumber yards, wholesale warehouses for the sale of motor vehicles, farm, or heavy construction equipment.

(116) Window blinds, shades and awnings (manufacturing).

(117) Wire (manufacturing).

(118) Wood products (manufacturing).

(119) Wool processing.

(120) Flexible space developments as provided in Section 35.1-43.14.

(121) Other uses determined by the city council to be of similar character to and compatible with the above uses.

(c) Permitted accessory uses. The following uses shall be permitted as accessories to permitted principal uses in light industrial districts:

(1) Uses permitted and as regulated as accessory uses in restricted industrial districts (1-1).

(2) Other uses determined by the city council to be customarily accessory to uses permitted in this district.

(d) Uses permitted by conditional use permit. The following uses shall be permitted as conditional use permit in light industrial districts under the regulations of Section 35.1-15 and Article X of this ordinance:

(1) Arenas, auditoriums or stadiums.

(2) Business incubator.

(3) Commercial amusement (temporary).

(4) Commercial recreation.

(5) Drive-in theaters.

(6) Heliports, helistops and STOL-ports; provided, that such facilities meet all applicable federal, state and local regulations and are located at least one-half (1/2) mile from any residential district.

(7) Public and community recreation facilities.

(8) Radio and television transmission towers.

(9) Sanitary or solid waste management facility, private - establishment of a new facility.

(10) Digital billboards subject to the regulations of 35.1-26.13(i)

(e) Standards. See Section 35.1-39.

(f) Signs. (As provided in Sections 35.1-26 through 35.1-26.16)

(g) Parking requirements. Off-street parking and loading as required and regulated in Section 35.1-25 of this ordinance.

Sec. 35.1-41. Heavy industrial districts (I-3).

(a) Intent. These districts are intended to provide for industrial and other activities which produce the highest levels of nuisance permitted under federal and state air and water pollution regulations. Generally, the objective of this ordinance is to limit nuisances and any other objectionable characteristics to those which are not discernible beyond the boundary of the district. No use shall be allowed in this district unless listed or defined below as a use permitted by right, as a permitted accessory use or as a use permitted by conditional use permit, provided, however, that any such permitted use existing prior to December 13, 1988, may be enlarged or expanded, but not relocated, so long as it meets all other applicable requirements of this chapter. Any such use shall not be subject to any of the limitations or other regulations prescribed for non-conforming uses elsewhere provided in this chapter.

(b) Uses prohibited. The following uses are prohibited in heavy industrial districts:

(1) Abattoir or slaughterhouse, except for poultry which is incidental to a commercial use permitted by this ordinance.

(2) Acetylene gas manufacture on a commercial scale.

(3) Acid manufacture, such as sulphurous, sulphuric, nitric, picric, hydrochloric or other corrosive or offensive acid manufacture, or their use or storage, except on a limited scale as accessory to a permitted industry.

(4) Asphalt roofing, tar roofing or waterproofing manufacture.

(5) Bleaching powder, ammonia or chlorine manufacture.

(6) Celluloid or pyroxylene manufacture or processing; the manufacture of explosive or highly inflammable cellulose products.

(7) Coal tar manufacture or tar distillation.

(8) Creosote manufacture or creosote treatment.

(9) Distillation of bones.

(10) Fat rendering.

(11) Fertilizer manufacture or the compounding of fertilizers on a commercial scale.

(12) Fireworks or explosives manufacture, nitrating process, the loading of explosives or their storage in bulk.

(13) Fish smoking or curing or processes involving recovery from fish or animal offal.

(14) Gas manufacture, or gas storage in quantity exceeding five hundred thousand (500,000) cubic feet within one hundred (100) feet of any lot line; or in quantity exceeding two hundred (200) cubic feet if the pressure is greater than one hundred (100) pounds per square inch.

(15) Glue or size manufacture.

(16) Horn processing.

(17) Lime, gypsum, plaster or plaster of paris manufacture.

(18) Match manufacturing.

(19) Office uses which are not directly related to an industry.

(20) Petroleum manufacturing.

(21) Potash manufacture.

(22) Residential uses, including those of an institutional nature - institutional residential uses being those associated with churches or religious organizations, schools, hospitals, health or adult care facilities but (1) excluding residences of bona fide caretakers and their families, and (2) any residence constructed prior to and occupied as a residence since December 12, 1978. The limitations of Section 35.1-27, nonconforming uses, notwithstanding, such residences, in the event they are damaged or destroyed due to fire or other unforseen

circumstances (but not including neglect), may be rebuilt in their original location with substantially the same height and exterior dimensions, provided that they have frontage on an improved city street and that reconstruction is completed to the point that a new certificate of occupancy is issued within twenty-four (24) months from the date of damage or destruction.

(23) Retail uses, unless specifically permitted under Section 35.1-41(c).

(24) Sanitary or solid waste management facilities, private, except as otherwise permitted under Section 35.1-41(e).

(25) Schools, hospitals, clinics and similar institutions.

(26) Soda, soda ash, caustic soda manufacture.

(27) Starch, glucose and dextrine manufacture.

(28) Turpentine, varnish or shellac manufacture.

(29) Any other use or purpose which will create conditions of smoke, fumes, noise, odors or dust detrimental to the health, safety and general welfare of the community.

(c) Uses permitted by right. The following uses shall be permitted by right in heavy industrial districts subject to the regulations of Section 35.1-14 of this ordinance:

(1) Any manufacturing or industrial use which is not specifically prohibited by Section 35.1-41(b) above, provided, however, that any such prohibited use legally existing at the time of enactment of this chapter shall not be subject to any of the limitations or other regulations prescribed for non-conforming uses elsewhere provided in this ordinance.

(2) Contractor and construction shops and yards.

(3) Retail/wholesale display rooms for sales at industrial establishments of products manufactured on site and other products of the corporation provided the display area does not exceed fifteen (15) percent of the total floor area.

(4) Truck painting and body repair shops.

(5) Wholesale display rooms within industrial establishments as regulated by Section 35.1-40(b)(115).

(d) Permitted accessory uses. Uses not specifically prohibited by subsection (b) above are permitted as accessory uses in heavy industrial districts.

(e) Uses permitted by conditional use permit. The following uses shall be permitted by conditional use permit under the regulations of Section 35.1-15 and Article X of this ordinance:

(1) Automobile service stations.

(2) Circus, carnival or other similar transient enterprise.

(3) Food service facilities incident to one or a group of permitted uses.

(4) Sanitary or solid waste management facility, private - establishment of a new facility.

(5) **<u>Digital billboards subject to the regulations of 35.1-26.13(i)</u>**

~~(5)~~ **(6)** Uses as determined appropriate by the city council.

(f) Standards. See Section 35.1-39.

(g) Signs. (As provided in Section 35.1-36)

a. The area of the advertising surface erected on any structure shall not be less than one hundred seventy-five (175) square feet nor more than six hundred seventy-five (675) square feet.

b. All other billboards located in this district shall be located no less than five hundred (500) feet apart and shall be subject to the size requirements in paragraph c. above and the illumination requirements in Section 35.1-41, (g) (3), of this ordinance.

c. The spacing provisions cited above shall not apply to billboards separated by buildings or other obstructions in such a manner that only one (1) sign located within the required spacing distance is visible from the road at any one time.

(2) Sign illumination. When any billboard is lighted in this district, such lights shall be enclosed in the sign, shaded or indirect so that the source of illumination is not visible and in no way interferes with the vision of motorists or with neighboring residents. Only white illumination shall be used and no flashing (on-and-off) sign simulating movement shall be permitted. No fluorescent paint or other preparation can be used for high reflection.

(h) Parking requirements. Off-street parking and loading space shall be provided as required in Section 35.1-25; provided, however, the requirements of said section shall not apply in connection with buildings located in the first fire district as described in the city code.

2. That this ordinance shall become effective upon its adoption.

Adopted:

Certified: ________________________________

Clerk of Council

169K

MINUTES FROM THE OCTOBER 24, 2012 PLANNING COMMISSION MEETING (MINUTES HAVE BEEN APPROVED):

3. Discussion of an amendment to Section 35.1-26.13 of the *Zoning Ordinance* pertaining to digital billboards: Mr. Martin reminded them that at their September 26, 2012 meeting they had voted in favor of leaving in the requirement for a conditional use permit for a digital billboard and they had voted in favor of reducing the number of nonconforming billboards that needed to be removed in order to put up a digital billboard from two to one. However, they had tied on their vote to forward the amended draft ordinance to City Council, which equates to a denial. Their bylaws direct them to continue to discuss a topic until they have arrived at a recommendation for City Council.

Chair Hamilton asked Commissioner Hannon to begin the discussion, as they had not been able to hear his input at the September 26, 2012 meeting He stated that the more he thought about requiring the tradeoff of a nonconforming billboard in order to erect a digital billboard, the more uncomfortable he became with the idea. He thinks that it is a good idea and if they were to recommend it, they would certainly demonstrate that their hearts are in the right place. However, he is convinced that it is unfair to those who do not have any control of any of the nonconforming billboards in the City. He also notes that although Commissioner Barnes make a good argument for the placement of a digital billboard as being site specific, he can think of parts of the City where erecting one just would not matter, such as the Wards Road corridor and a large part of Timberlake Road. He feels that if they are going to err, that they should err on the side of an individual property owner's right to determine if it is an appropriate use in certain zones. If a normal billboard can be built somewhere by right, Commissioner Hannon feels that a digital billboard should be able to be built by right.

Commissioner Barnes remarked that he had a conversation with Andrew McRoberts, a lawyer at the CPEAV conference. Although it could certainly not be considered an official legal opinion, Mr. McRoberts' opinion was that any zoning or planning decision is a line drawing exercise where some people benefit and some people do not. Mr. McRoberts' position was that from a legal standpoint, it was not a problem to have this type of provision in the ordinance.

Commissioner Hannon noted that that there has to be some rational basis between who wins and who loses in the purpose of the ordinance. If a rezoning was done to favor a particular group, it would not be right. The decision needs to follow the *Comprehensive Plan.* He feels that what we have here is that there is no direct nexus between putting up a by-right digital billboard and retiring a nonconforming billboard. Commissioner Hannon feels that people that are in the same position (in this case each owns a normal billboard and can convert it to a digital billboard) should be treated exactly the same. They cannot be treated exactly the same if one owns a nonconforming billboard and one does not and there is a stipulation that one must remove a nonconforming billboard before erecting a digital billboard.

Commissioner Coleman asked Mr. Walter Erwin to come up and asked Mr. Erwin if he felt that there was anything out of order with the ordinance in terms of what they are trying to accomplish. Mr. Erwin stated that he does feel that the provision to only allow a digital billboard to be put up if a nonconforming billboard is removed does freeze a lot of people out of the market and he does have a problem with it. The connection would need to be made that the reason for this requirement is that the number of messages to which the public is exposed would increase if a digital billboard were in place rather than a normal billboard. In order to keep the message level at the same general level, a person should be willing to give up a nonconforming billboard. Mr. Erwin is suggesting this would need to be the connection that needs to be explained in the language of the ordinance, if they feel that keeping the level of messages at the same general level is something that is important to them.

Mr. Erwin said it is certainly consistent with current zoning philosophy that a locality wants certain nonconforming uses to go away. We cannot compel them to go away under Virginia law but nonconforming uses are not consistent with current zoning practices. A locality would like to do things to encourage them to go away and this proposed provision is an incentive. Mr. Erwin has discussed this with an attorney at Sands Anderson in Richmond who specializes in zoning law. The attorney felt that an argument could be made that this is a legitimate purpose of government to try and offer an incentive to make nonconforming billboards go away. It is somewhat inconsistent maybe with the protections that Virginia law affords nonconforming uses. However, you can make a legitimate argument either way. If the Planning Commission and City Council feel that this provision is something it believes should be in the ordinance, the two attorneys agreed there was no reason not to put it in the language. If it is challenged, then the City could decide to take the digital billboard portion out of the ordinance since it has no obligation to allow them.

Mr. Erwin would have a concern with a provision in the ordinance that says that the only people who can put up a digital billboard are those that own a nonconforming billboard. However, you could say to them that it is the City's desire to try and keep the level of messages at the same general level. Another thing to consider is whether there are companies that would put up a digital billboard other than the current companies. Certainly, in theory, that is possible but we currently have basically two companies that own the majority of the nonconforming billboards in the City. Mr. Erwin pointed out that it might be the reality that no new companies would want to come in and put up a digital billboard.

Commissioner Coleman said it would not be his desire that new sign companies are unable to come into the City. Mr. Erwin thought that the provision, as written, requiring a company to purchase a nonconforming billboard, if it does not already own one, would be tough because the existing companies could simply not sell them in order to freeze out the competition. Mr. Erwin does have a problem with a provision that would prevent new companies from coming into the City or forcing them to try and buy something that is not for sale or, if it is for sale, is at such an exorbitant price that purchasing it would make it impractical to try and put up a digital billboard.

Commissioner Hooper wanted clarification that wording the ordinance so that companies that own a nonconforming billboard would have to retire one but those that do not own one would not have to do so is arbitrary and capricious. Mr. Martin said there is a difference of opinion on that and the opinion that matters is the City Attorney's. Mr. Martin pointed out that an existing company with a nonconforming billboard could set up a company in another name and put up a digital billboard. The way Commission Hooper is proposing to write the provision would be non-enforceable and Mr. Martin is not sure what it would be accomplishing. Mr. Erwin pointed out that if they chose to write the provision the way Commissioner Hooper is suggesting, then they would have to write in a provision to prevent what Mr. Martin has suggested from happening. There is a provision like that in the building code that says that if a company owns a certain percentage in a new company, then it is treated one and the same. That does not mean that companies would not try and scheme to get around this provision and the City would have to be prepared to deal with that, if it happens.

Commissioner Hannon asked if there is anything in the current sign ordinance that limits the number of messages that can be displayed. Commissioner Hannon is asking for clarification that the basis for putting in this provision would be that the City has the authority to control the number of message units. He pointed out that a company can currently change its message on a regular billboard as many times as it wants. Commission Hannon noted that they have no testimony or template to determine how the City would pick the number of message units that a billboard company could display and therefore, how it could use that as the basis for putting this provision in the ordinance.

Mr. Erwin noted that there is a provision in the sign ordinance for changeable copy signs that the message cannot change more than once every six seconds. That number was based on the state guidelines. He acknowledged there is no standard for the number of times that a standard sign can be changed. Commissioner Hannon was still not certain how we could justify this provision by saying that we are controlling the number of message units when the City does not currently have anything in its sign ordinance regarding controlling the number of message units. Mr. Erwin said that the difference is that billboards are off premise advertising. They are running messages for third parties. Mr. Erwin agreed that we currently do not control the number of times that a company can change the message on a traditional billboard; however, it is impractical for them to change it several times a day due to the time it takes and the cost of changing the paper, etc. Therefore, one could make the argument that right now there is a practical limit to the number of messages that can be displayed on a traditional billboard. If digital billboards are allowed, the City would be enhancing the number of messages a billboard can display simply because it is easier and more economical to do so electronically.

Commissioner Hannon said he understands that point but is asking if the City has the authority to control the number of message units and use that as the basis for drafting an ordinance provision. Mr. Erwin thought that the argument could be made that it is appropriate for the City to ask a company to do what this provision is proposing because the number of messages a company can display is being enhanced. Again, it is up to the Planning Commission and City Council to decide whether or not it should be in the ordinance. Mr. Erwin acknowledged that a counter argument could be made that we should not try to tell someone who has a lawful, nonconforming billboard that they should take it down on the basis that the City is trying to limit the number of messages that it can display.

Mr. Martin remarked that he understood the point Commissioner Hannon is trying to make. The other side to remember is what is stated in the *Comprehensive Plan.* The *Comprehensive Plan* is very clear in stating that the City should limit reinvestment in existing billboards and should explore strategies for their eventual removal through purchase programs or sunset provisions. Mr. Martin thinks the Planning Commission was trying to reach some type of compromise between technology and the goals of the *Comprehensive Plan.*

Commissioner Sale noted that the Planning Commission has spent a lot of time trying to balance the language between a presumed business interest and what is in the *Comprehensive Plan.* He noted that the words "restrict" and "limit" are not declarative; they are imperative. It would seem to Commissioner Sale that if they cannot find a way to just keep the current level, which is not restricting or limiting, then they should not allow digital billboards because the words of the *Comprehensive Plan* are pretty clear. Given the way the *Comprehensive Plan* is worded, which guides their planning and directives and balance issues, this is clearly a balance issue not for but against digital billboards.

Commissioner Hannon is not sure where the *Comprehensive Plan* says that where billboards are permitted that digital billboards are disfavored. Commissioner Sale said that the wording in Objective 1.A.(6) of Chapter 6 is pretty specific. He would make the argument that it is our guide rather than a legal interpretation of what would pass muster in a court of law.

Commissioner Coleman stated that he agrees with the *Comprehensive Plan* and how it relates what the citizens want in terms of character, integrity and aesthetics. He has heard though that we can continue to be faithful to the plan as we continue and move along. This ordinance may not be the place where we want to frame that incentive. Commissioner Coleman hears that some are saying that we are increasing billboards if we allow digital billboards, but he is not sure he sees it that way. This does not have to be the time that we try and get rid of the nonconforming billboards. The City can find some other way and he does not see why we should try and prevent some of our businesses from taking advantage of this opportunity as long as we maintain integrity to the *Comprehensive Plan.*

Commissioner Barnes asked for clarification that Virginia does not allow for a sunset provision on nonconforming uses. Mr. Erwin said that some states have an amortization schedule on nonconforming uses. Both state and federal courts have upheld that provision maintaining that it is not a taking of property as long as you give the property owner a reasonable period of time to recover their investment. Virginia has not given local governments the authority to require nonconforming uses, including billboards, to be phased out. A locality can provide incentives for a nonconforming use to go away. He reminded them that a nonconforming billboard cannot be put up again if it is destroyed by more than 50 percent, unless it is destroyed by a natural disaster.

Commissioner Barnes asked Mr. Erwin if he was aware of what any other localities have done to provide incentives. Mr. Erwin was not aware of any incentives regarding nonconforming uses. He could research that if they would like. He had previously given them the example of Alexandria, which is using form-based zoning to implement some design standards that are otherwise not allowed to be placed in an ordinance. If, for example, a building is built with certain aesthetic features, the locality will allow them a greater density or not require a conditional use permit. This provision of allowing a digital billboard if a nonconforming billboard is removed is kind of along the same line.

Commissioner Swienton asked Mr. Erwin if, aside from environmental mitigation, if he is aware of any instances in anyone's code that requires an owner to do something on another property in order to construct something on their own property. Mr. Erwin said he was not aware of any but that does not mean they are not out there. If the Planning Commission would like him to research this topic, he could do so. Commissioner Swienton asked if, as a Dillon Rule state, a locality is authorized by legislature to require a property owner to do something on another piece of property in order to do something on their own property. Mr. Erwin said he is not aware of any particular legislation, however, local governments argue that the Dillon Rule allows a locality the express powers given them by the General Assembly and the implied powers that are necessary to carry out the express powers. The State Code clearly gives local governments the authority to adopt zoning ordinance that regulate signs. The General Assembly gives a local government the implied authority to fill in the details because the courts have said that one cannot fill in all the details in the enabling legislation.

Commissioner Hannon asked for clarification from Mr. Erwin that if someone were to ask for a conditional use permit on Parcel A, the locality is not allowed to attach a condition that is totally unrelated to Parcel A. For example, someone wants to open a supermarket and the City says they have to close their gas station on the other side of town. Mr. Erwin said that is correct.

Commissioner Sale stated that it is a general business practice to purchase properties in order to do something else. It is a regular business practice to purchase properties to acquire money or leverage or whatever. Mr. Erwin agreed that would be legitimate. For example, the City has had situations where a property owner cannot do its stormwater control measures on a particular property but agrees to do them somewhere else. Home Depot is an example of that practice. They were unable to do the stormwater measures on their property but agreed to do them on City-owned property along the Blackwater Creek. That is kind of similar to what this provision is proposing.

Commissioner Sale asked Mr. Haynes of Lamar Advertising for some information on typical lease arrangements between a sign company and a landowner. Mr. Haynes said that in some cases they own the land and in some cases, they have lease arrangements. There are other cases where they have an easement, which is the same as a utility easement. They have leases as short as five years and as long as thirty years. The leases typically have rollover factors in them. The cost of the lease is driven by the market and it tends to flow with the real estate market. Mr. Haynes explained that it does not matter whether or not the billboard is nonconforming or not; it is whether or not it is on a heavily traveled commercial corridor. Mr. Haynes said the lease cost will typically run between ten and twenty percent of the billboard revenue.

Commissioner Hooper pointed out that the City is restricting and limiting the placement of billboards by zoning standards. As Mr. Martin has pointed out previously, there are only a few locations left that could meet the standards for a new billboard. Commissioner Hooper thought that where most of the billboards are currently located is in commercial corridors, for example, Route 29. It would not bother him to see digitals billboards in those areas.

Chair Hamilton pointed out that the part about sunset provisions should not be in the *Comprehensive Plan* because it is not allowed in Virginia. Commissioner Swienton pointed out that as a commission, they can also not look at purchase programs. That type of program would have to be a City Council action.

Chair Hamilton thought that it came down to whether or not allowing digital billboards would be considered reinvesting in billboards. Commissioner Sale thought that was implied. Commissioner Hooper thought billboards are already restricted by zoning.

Commissioner Hannon remarked that they still need to have a basis for requiring someone to retire a nonconforming billboard in order to put up a digital one. The only one that would be reasonable would be in order to limit the number of message units that are displayed. Commissioner Hannon feels that there is no basis for determining the maximum number of message units that should be displayed other than what Mr. Erwin pointed out as a physical limit. Making that a legal limit is a leap too far, in Commissioner Hannon's opinion.

Chair Hamilton wanted to get a feel from the commissioners at this point on how they felt about the removal of a nonconforming billboard for a digital billboard. Commissioner Sale was in favor of it due to what is said in the *Comprehensive Plan.* Commissioner Hannon was not in favor of it due to the word "placement." It is the desire of the *Comprehensive Plan* to restrict the placement of billboards, which is already done through zoning. What they are talking about is the "content" of a billboard, whether it is a regular message or a digital message.

Commissioner Sale said he was there when this plan was written and it talks about limiting the reinvestment in existing billboards. Allowing digital billboards would expand their capability. To him, there is a sense in the *Comprehensive Plan* that goes against digital billboard expansion unless there is some way to compromise. When this plan was adopted, the citizens and City Council were saying that they felt that there are enough billboards now and the City needs to move away from where we are currently. That is his understanding of what is meant by this objective. If we cannot find something that is legal and sustainable before the court of people, then perhaps we should not proceed with digital billboards.

Commissioner Hannon wanted to know if digital billboards were specifically discussed when the *Comprehensive Plan* was written. Several of the commissioners noted that they did not exist when this plan was being discussed. Commissioner Sale would note that a digital billboard gives a company six times the advertising capability of a stationary billboard. It seems to him that is something that the billboard companies would very much desire. To him, that is an expansion of what currently exists.

Commissioner Swienton noted that when the citizens were looking at photos of billboards, as they had done during the public input portion of the *Comprehensive Plan,* they were looking at photos of traditional billboards. Maybe digital billboards would have more of an aesthetic appeal. Commissioner Swienton also pointed out that the conditional use permit process would meet the objective of limiting reinvestment in existing billboards. He pointed out that it does not say "prevent reinvestment."

Commissioner Hannon remarked that he does not have a problem with digitalizing an existing billboard in a zone where a traditional billboard is permitted and it could be done without a conditional use permit. He would also not require a conditional use permit for a new digital billboard where they are permitted by right. He would also take it a step further and say that nonconforming billboards could be digitalized with a conditional use permit.

Commissioner Hannon went further to say that he has not seen any objective criteria for them to use to determine whether a conditional use permit should be granted or not for an existing conforming billboard or for a new digital billboard to be erected. Chair Hamilton thought that there were plenty of negative externalities that they were supposed to consider based on the highest and best use of a piece of property. Commissioner Hannon remarked that they have a whole history of what the negative impacts are for those types of considerations so that we can treat everyone fairly. As far as digital billboards are concerned, depending on which study you use, they are just diametrically opposed. He thinks that it would come to a decision based on aesthetics and under Virginia law, they are not allowed to do that.

Chair Hamilton thought that Commissioner Barnes had previously pointed out that there are safety, property and economic issues to consider outside of whether or not you think a billboard is attractive or not and they are very site specific. Commissioner Hannon asked if they are supposed to consider economic issues. Chair Hamilton said not property value issues but they are to consider impactful issues on neighborhood character.

Commissioner Coleman reminded them of Mr. Martin's comment that came out of the zoning diagnostic study in terms of the public feeling that the City overuses the conditional use permit process. He feels that in order to maintain integrity to the *Comprehensive Plan,* the conditional use permit process is needed in this ordinance, but he is still struggling with whether or not this ordinance is where we want to try and get rid of the nonconforming billboards.

Commissioner Barnes remarked that he would like to make a motion in order to move this along. As much as he would like them to keep in the provision to have a tradeoff with nonconforming billboards, he is beginning to feel that this is not the way they should do it. The City should look at ways of eliminating them, but this does not look like the place to do it.

Commissioner Barnes made a motion to remove paragraph 4, which was seconded by Commissioner Coleman. Commissioner Sale noted that if they pass this amendment and then forward the ordinance to City Council, they would be going against the *Comprehensive Plan,* and he cannot support that. Commissioner Hooper wanted clarification that they would be voting to eliminate paragraph 4, but there would be an opportunity to add other verbage. Chair Hamilton said that was correct. The motion passed by the following vote:

AYES:	Barnes, Coleman, Hamilton, Hannon, Hooper and Swienton	6
NOES:	Sale	1
ABSTENTIONS:		0
ABSENT:		0

Commissioner Barnes made a motion to forward the amended ordinance to City Council, which was seconded by Commissioner Swienton. Commissioner Swienton asked Mr. Erwin about a possible scenario if City Council were to pass this and issue conditional use permits for digital billboards. Would those conditional use permits become a vested right if City Council were to decide it wanted to amend the ordinance? Mr. Erwin said conditional use permits go with the land, so you would not be able to take them back. Mr. Erwin clarified that City Council could certainly amend the language and go back to a more restrictive language if they chose to in the future.

Commissioner Barnes reiterated that he thinks digital billboards are very site specific and they need to preserve some oversight on where they are allowed. Commissioner Swienton wanted to make sure that as the *Zoning Ordinance* and *Comprehensive Plan* are rewritten that the consultants and staff be sure to look at this section of the plan and recommend some ways to implement it. Commissioner Swienton feels better after hearing Mr. Erwin say that this does not become a vested right and the ordinance can be changed if they see something they would like to change in the future.

Commissioner Hannon had a question for Commissioner Barnes about appropriateness. If they are talking about an industrial district, what would be the criteria for denying a conditional use permit request? Commissioner Barnes said traffic would be one. Commissioner Hannon has not seen any studies that show that digital billboards have a negative impact on traffic. Commissioner Barnes said there are studies that show they do and they should preserve the right to evaluate them on a case-by-case basis.

Commissioner Swienton pointed out that churches come before them to change a traditional sign to a digital sign. The sign may have been there for fifty years but the surrounding area may have changed. He looks at the fact that things may have changed with a road since a billboard was put up many years ago. Perhaps something changed near the billboard but it may not make a bit of difference. They may fly through the item fairly quickly. Commissioner Swienton clarified that they would not be looking forward to anticipate changes that might happen in the area. They would be looking at what has changed since the billboard was constructed and how the area looks today. It might have made sense to put a billboard there forty years ago but does not make sense today. Commissioner Hannon pointed out that billboards are not subject to a conditional use permit presently. Commissioner Swienton noted that they are in uncharted territory with digital billboards, which makes the case for a conditional use permit even stronger.

Commissioner Hannon said it comes down to philosophy. One philosophy is the default position of government control over private property and the ability to use it as you see fit even subject to very restrictive zoning. Commissioner Hannon's default position is to give the private property owner that right and that authority to put up a digital billboard by right today if he is allowed to put up a regular billboard today by right.

Commissioner Hooper remarked that he voted to strike paragraph 4 but he thinks that an amended version of paragraph 4 still needs to be in the ordinance. He thought they had reached consensus that it was a good thing for someone to have to remove a nonconforming billboard if they wanted to put up a digital billboard and he is not sure why they are not taking advantage of this opportunity. Commissioner Swienton noted that they had split 3 to 3 on this at the September 26, 2012 meeting. Commissioner Hooper noted that Mr. Erwin had told them it was not an unreasonable request to put in the ordinance. The commissioners told him he was free to make another amended motion. Commissioner Hooper said he did not know how to word it.

Chair Hamilton asked if there was consensus to support some other wording of the provision. Commissioner Coleman said he would not support it because he would rather they not rush into something to get rid of the nonconforming billboards but that they would take time to figure out how they could most effectively do it. Commissioner Coleman is in support of the amended ordinance because he feels it maintains the integrity of the *Comprehensive Plan* because the conditional use permit will maintain some type of government control over the process.

Commissioner Hooper reiterated that this is an opportunity to do something about the nonconforming billboards. Commissioner Barnes said he is all in favor of doing that, however, with all the complications they have run into in trying to do it, he does not think this is the place to do it.

Commissioner Sale asked Mr. Erwin how he felt about how it should be worded. Mr. Erwin said before they get down to wording, they should figure out if the majority supports putting it back in. His view of the discussion they have had is that a majority does not support the provision for removing a nonconforming billboard. Commissioner Hooper said he heard that the majority wanted to take the paragraph out so they could move it along, but he thought they were going to reword it.

Chair Hamilton asked each of them if, given all the time in the world to find the right wording for the provision, if each of them would support a tradeoff. There was not a majority of commissioners that would support it. Chair Hamilton pointed out that they do not have the tools to incentivize the removal of digital billboards; however, all this discussion is conveying that message to City Council. She would prefer they work with City Council on other incentives rather than putting the provision into this ordinance as a punitive issue.

Chair Hamilton reminded them that there is a motion to approve the draft ordinance as amended. It would allow new digital billboards in I-2 and I-3 districts by conditional use permit and the conversion of conforming billboards in B-5 districts to digital billboards by conditional use permit. Commissioner Hannon reiterated that he feels that anywhere you can build a billboard by right today, you should be able to build a digital billboard by right today. Although he thinks this draft ordinance is the best they will get out of this discussion today, he will be voting against it.

The motion passed by the following vote:

AYES:	Barnes, Coleman, Hamilton and Swienton	4
NOES:	Hannon, Hooper and Sale	3
ABSTENTIONS:		0
ABSENT:		0

MINUTES FROM THE SEPTEMBER 26, 2012 PLANNING COMMISSION MEETING (MINUTES HAVE BEEN APPROVED):

a. Consideration of amending Section 35.1-38, General Business District (B-5), Section 35.1-26.13, Billboards, Section 35.1-40, Light Industrial Districts (I-2) and Section 35.1-41, Heavy Industrial Districts (I-3) of the *Zoning Ordinance* to allow Commercial Electronic Variable Message Signs (Digital Billboards) on properties zoned I-2, Light Industrial District, I-3, Heavy Industrial District and to allow existing billboards in B-5, General Business Districts to be converted to digital billboards upon approval of a conditional use permit. Development standards proposed for the installation of a digital billboard would require the removal of two (2) nonconforming billboards located elsewhere in the city.

Mr. Martin reminded the commissioners that this action was initiated by City Council on February 28, 2012. The Planning Commission conducted a public hearing on this matter on April 11, 2012 and forwarded the matter to the Citizens Steering Committee in June 2012. There was no consensus from the CSC. The members expressed various opinions regarding their pros and cons. The Planning Commission has conducted several work sessions. The original draft of the ordinance proposed to allow new digital billboards as a matter of right in I-2, I-3 and existing conforming billboards could be replaced in B-5 districts. With input from the CSC as to what is stated in the *Comprehensive Plan*, the Planning Commission has tried to draft the ordinance to allow digital billboards while still implementing the goals and objectives of the plan.

The first place in the plan that this applies is in the Design, Character and Quality section, Goal 1. "Ensure that development and redevelopment reinforces the City's unique character and sense of place." Objective 1.A.5 in that section states the desire to "restrict the placement of off-site, outdoor advertising (billboards) in the City, especially in or near residential areas, schools, parks, historic site and districts, scenic areas, gateways and commercial areas." Objective 1.A.6 states that the City should 'limit reinvestment in existing billboards and explore strategies for their eventual removal through purchase programs or sunset provisions.'

The present draft ordinance would allow digital billboards by conditional use permit. It was the feeling of the commission that smaller digital signs have been before the Planning Commission and City Council for approval. Therefore, large digital billboards should not be allowed by right. Mr. Martin pointed out those conditional use permits for digital signs have been in residential districts not commercial and industrial districts.

The draft ordinance is also proposing the removal of two nonconforming billboards in order to allow a digital billboard. The City Attorney has given his opinion on this proposal. Mr. Erwin's opinion states that there is no obligation on the part of the City to allow digital billboards by right. As an incentive for allowing the digital billboard, Mr. Erwin believes it is acceptable for the City to require the removal of a nonconforming billboard. The number of nonconforming billboards to be removed is a policy decision. The Planning Division does recommend approval of the draft ordinance.

Chair Hamilton asked for anyone who wished to speak in favor of the petition. No one came forward. She asked for anyone who wished to speak in opposition to the petition. Mr. Lee Beaumont, representing Liberty University, the Plaza, Candlers Station Holdings, LLC and other entities came forward. He stated that there are some parts of the ordinance they like and some parts they do not. They think the digital billboards should be allowed as a by-right use because of where they are located. They do not want to tie up a lot of time and money going through the conditional use permit process. If this ordinance is passed as it is, the only ones who will be "invited to the party" are those that own two or more nonconforming billboards in the City. Obviously, the value of these assets will be greatly increased. In addition, when there are no more nonconforming billboards, no one can put up a digital billboard. Mr. Beaumont feels that a CUP application should stand on its own merits rather than be based on whether or not someone has other assets in the City. Mr. Beaumont would suggest that the City buy the nonconforming billboards if its desire is to eliminate them.

Mr. Robert Haynes of Lamar Advertising and Outdoor Advertising came forward to speak in opposition. He has also spoken with Tony McBride of McBride Signs who was unable to make it to the meeting. He cannot support the ordinance as it is written because it states a minimum of two nonconforming billboards must be removed. It could be required that more than two nonconforming billboards be removed and that is just too big a price to pay. He thinks the commission has spent a lot of time on the issue and it is time to take a vote and bring it to a conclusion.

Chair Hamilton asked if there was anyone else who wished to speak in opposition to the petition. No one came forward. She closed the public hearing portion of the petition.

Commissioner Swienton asked Mr. Martin if a billboard that has messages facing both ways would be counted as one or two billboards. Mr. Martin said it would be counted as one unless it is "V" shaped. Commissioner Swienton asked if there was a limit on the "V." Mr. Martin said there was a limit, but he did not know it off the top of his head. Commissioner Swienton asked for clarification that if it is a double facing billboard currently that it could remain a double facing billboard and Mr. Martin stated that was correct.

Commissioner Coleman stated that he is in support of digital billboards but wants to remain faithful to the *Comprehensive Plan*. He asked Mr. Martin why the signs on Fifth Street are considered nonconforming. Mr. Martin explained that this area was rezoned to B-6, which does not allow billboards.

Commissioner Swienton asked how the list of persons to notify of this proposed amendment change was derived. Mr. Martin explained that staff did not do individual notifications to property owners or those that are leasing the billboards. This proposed change is being done as a comprehensive zoning amendment and legal notices were placed in *The News and Advance*.

Commissioner Hooper asked for clarification of the decommissioning of two nonconforming billboards. That is said to be voluntary and we cannot require them to do so. Mr. Martin said that was correct but they would offer to do so because it is one of the standards. Commissioner Hooper said that it is a "you shall" and not a "you may." Mr. Martin said if you want a digital billboard, it is something one would have to be willing to do. It is considered voluntary because no one is making them apply for the conditional use permit. If someone wants to erect a digital billboard that does not own any nonconforming billboards, he would have to purchase two from a company that does own them. That is how someone new would come into the market the way the ordinance is currently worded. Once all the nonconforming billboards are down, the ordinance will most likely have to be rewritten, but that scenario is not likely to happen for many years.

Commissioner Swienton asked how the billboards are taxed and Mr. Martin stated they are taxed separately from the land.

Commissioner Swienton would be fine with the idea of the CUP process in I-2 and I-3 for new billboards and CUPs in B-5 to replace existing billboards because there are many parts of the City that are unique and it would be difficult to draft an all-encompassing ordinance. Commissioner Swienton thinks the idea of removing nonconforming billboards makes it too restrictive on free market competition. It would give those companies that own nonconforming signs a new Monopoly piece that is very profitable. Chair Hamilton asked for clarification that he was not suggesting the CUP process for digital billboards be allowed in any other districts and Commissioner Swienton said that was correct.

Commissioner Hooper shares the same sentiments about the monopoly being created. Commissioner Hooper asked Mr. Haynes if there would ever come a point where they would remove any of their nonconforming billboards so that they do not have to maintain them. Mr. Haynes said that would not happen. They could even use more in this area from a business demand standpoint. He pointed out that they already lose some signs to development because the signs cannot be relocated on a B-5 property or sometimes they lose the lease on the property. Lamar's legal counsel did not like the wording "a minimum of two nonconforming signs" being removed because that implies that the City could ask for more than two. Mr. Haynes suggested (and he has discussed this with Mr. McBride) that they would like the flexibility to remove a nonconforming billboard and "bank" that removal until they are ready to put up a digital billboard. Commissioner Swienton asked for clarification that the poles would be removed as well as the sign and Mr. Haynes said they would be removed. The foundation may or may not be removed depending on the landowner.

Commissioner Sale said he goes back to the *Comprehensive Plan*. There was no question in that plan that the citizens, the Planning Commission and City Council felt that billboards are not necessarily a contributor to the quality of life in Lynchburg. The *Comprehensive Plan* is our guide and he feels they need to keep that very much before them even if it does have fair market penalties. There are a lot of things that they talk about that affect a person's ability to do business. The *Comprehensive Plan* says that we should find ways to restrict billboards in Lynchburg. Commissioner Sale felt they had required the CUP process because digital billboards are a major piece in the life of the City. To look at requiring a CUP is a wise way to go into this issue.

Commissioner Sale said that nonconforming billboards are in so many words "illegal." It would seem to him that if we have zoning that states that we should not have them and then we essentially continue to allow them, we have an opportunity here to restrict them. It seems to him that they have an opportunity in hand that is consistent with our *Comprehensive Plan*. He also reminded them that a digital billboard can be viewed as a 6:1 ratio of business possibilities. Even if you look at removing two nonconforming billboards, you are looking at a 3:1 ratio of business possibilities.

Commissioner Sale would be in favor of changing the CUP requirement but he believes that we would be going contrary to what the *Comprehensive Plan* intends, desires and explicitly states if we did not take this opportunity to restrict nonconforming billboards. Commissioner Sale pointed out that the digital billboards are very expensive. Anyone new who wants to go into the market is going to have to put out a lot of capital. In his opinion, the idea of purchasing a nonconforming billboard is not that constrictive to a business that does not presently own one. He would like to keep the number at two but is willing to considering dropping the requirement to one nonconforming billboard.

Chair Hamilton asked for clarification about what the sign ordinance says about digital reader boards in commercial districts. Mr. Martin explained that digital reader boards up to sixteen square feet are allowed in B-3 and B-5. They are not allowed in the industrial districts. Commissioner Swienton pointed out that digital billboards do have light dimming capabilities at night.

Commissioner Barnes stated that he is very strongly in favor of retaining the requirement for a conditional use permit because digital billboards are very site specific in terms of their safety and impact on surrounding properties. Each one should be considered individually and he will not vote for an ordinance that allows them by right.

Commissioner Barnes is struggling with the issue of removing a nonconforming billboard and is not sure where he stands on that point. He understands Mr. Beaumont's point about others entering the market that do not currently own nonconforming billboards in Lynchburg. He does agree with Commissioner Sale that we need to be cognizant of the clear objectives of the *Comprehensive Plan* and feels we certainly need to find incentives to phase out nonconforming billboards.

Commissioner Coleman asked Mr. Martin to clarify what the City Attorney had meant in his opinion when he stated that he cannot give a definitive answer as to whether or not requiring an applicant to remove a nonconforming billboard would survive a legal challenge. Mr. Martin wanted to clarify that nonconforming uses are not “illegal,” as stated earlier by Commissioner Sale. Nonconforming uses are allowed to remain and there is no sunset clause in Virginia. The Attorney General’s opinion is that you cannot have a sunset clause on nonconforming uses because property owners have invested money. The nonconforming use can continue to remain until it is removed or destroyed. Even then, the General Assembly has allowed them to be rebuilt in the case of a fire or an act of God. Obviously, you make something nonconforming because you eventually want it to go away. It is very hard to make them go away, so you have to seize the opportunities when they present themselves. This might be one of those opportunities short of purchasing the billboards ourselves. The number of signs that would be required to be removed is a policy decision.

Commissioner Coleman asked Mr. Beaumont to come back for some clarification. Mr. Beaumont explained that since they do not own any nonconforming billboards in the City (Mr. Martin did think they owned one), they would not even be able to come to the table and barter for a digital billboard in an area that would allow them by conditional use permit. Mr. Beaumont remarked that if you have to add on the cost of acquiring assets that you do not own, the price of doing a digital billboard could get very, very steep. In the example of acquiring an easement for construction, a piece of property worth $5,000 could suddenly cost $50,000. Liberty would be at the mercy of the sign companies to pay whatever they want. They may not even want to sell them because the income stream on some of them might be very lucrative.

Commissioner Sale said he is concerned about the position in which this proposal would place Liberty and others, however, he pointed out that the tradeoff in terms of six messages to one or six messages to two is a good step forward in terms of advertising capability. Mr. Beaumont acknowledged that there is an increase but this adds an unknown element (acquiring the nonconforming billboards) that might make the numbers so far out of the ballpark that they don’t even try.

Commissioner Hooper asked if this clause could only apply to those that own nonconforming billboards and Mr. Martin said then you would only be penalizing those companies and favoring outside interests. Mr. Martin clarified that in that case the process would no longer be a fair and equitable standard and would become arbitrary and capricious. He did not think that would survive a legal challenge.

Mr. Martin felt that the Planning Commission needs to consider whether or not those statements in the *Comprehensive Plan* are important enough to try and seize an opportunity to reduce nonconforming billboards. It also needs to consider the number of nonconforming billboards that would be required to be removed. It should also consider whether or not the conditional use permit process is necessary because the City just went through a zoning diagnostic exercise, which revealed that the City requires too many conditional use permits. Mr. Martin reminded them that they are only talking about allowing existing billboards to be replaced in the most intensive commercial district in the City. Essentially, they are only talking about allowing existing billboards to be converted in the industrial districts because there are not that many locations left where a new billboard can be erected. Mr. Martin wanted them to consider what the CUP process would really add that cannot be covered with standards.

Commissioner Coleman expressed concern that he might need to abstain from this process because he feels like he might have a personal interest in this issue because he has a billboard on property that he owns in a B-5 district. Chair Hamilton said that if there is a perceived conflict of interest, he has to make that decision.

Commissioner Swienton acknowledged that it is very important for them to consider the *Comprehensive Plan* but he is looking at the origin of this ordinance. City Council did not start this process by saying that they wanted the Planning Commission to evaluate this section of the *Comprehensive Plan* to see how the City can reduce the number of billboards. The process was originated by city Council and their directive was for the Planning Commission to begin the process of writing a digital billboard ordinance.

Mr. Martin remarked that they cannot ignore the *Comprehensive Plan* just because of the way this action was initiated. The commission has to consider the plan for all requests that come before it. Commissioner Swienton agreed that they should not ignore the plan and it is factored into the ordinance. However, he looks at the request, which was to put up digital billboards. There may be other ways to reduce the number of nonconforming billboards that have been successful in other cities that can be adopted and might be worthwhile to examine.

Commissioner Sale made a motion to amend the number of nonconforming billboards to be removed from two to one. The motion was seconded by Commissioner Coleman. Commissioner Barnes asked why he was making this motion. Commissioner Sale said it does begin a minimum process of reducing nonconforming billboards but still reduces the impact to a potential applicant. This gives someone a six to one benefit, which seems to him to be more cost effective.

Commissioner Barnes suggested that they take out the wording “a minimum of” in order to make the process more predictable. Mr. Martin suggested they remove those words no matter which number of signs they choose. Commissioner Sale was amenable to that amendment to his motion.

Chair Hamilton acknowledged that clearly the *Comprehensive Plan* says that the citizenry does not want the nonconforming billboards. Chair Hamilton feels that the first step in reducing them was making those billboards nonconforming. As Mr. Haynes has stated, they are slowly being reduced, “a slow cancer” is the term he has used.

The motion passed by the following vote:

AYES:	Barnes, Coleman, Hooper and Sale	4
NOES:	Hamilton and Swienton	2
ABSTENTIONS:		0
ABSENT:	Hannon	1

Commissioner Swienton stated that he does not believe that a business or a nonprofit institution should be required to buy something off property to allow it to do something on its property. Chair Hamilton stated that she was in full agreement with that statement. Commissioner Hooper said that he is agreement to a point but he takes note of what Mr. Martin has said and thinks that we are talking about a fairly limited number of billboards. He thinks going from two to one is a good compromise and we need to take this issue in context.

Mr. Martin pointed out that many of the billboards are only nonconforming because of the way they are constructed, such as the one at 3430 Odd Fellows Road (zoned B-5), which is stacked one on top of another. If that billboard was made to be conforming, then it could be replaced with a digital one through the CUP process.

Chair Hamilton said she was not in favor of the buying piece because it locks out people who should have every right to take advantage of this opportunity. She feels that as the City develops as the *Comprehensive Plan* has set out, the billboards that are in residential areas will leave by attrition, development or land repurposing. If they are so egregious, then the City should probably purchase them and remove them.

Commissioner Swienton made a motion to strike the paragraph numbered “4”. Chair Hamilton wanted to second the motion but was not sure she was allowed to do so. Commissioner Coleman asked Commissioner Swienton what it would do if this paragraph was stricken. Commissioner Swienton thought that this would allow a petitioner to voluntarily proffer to remove a nonconforming sign as a condition of their CUP proposal but would not require them to purchase one if they did not already own one.

Mr. Martin thought there was some confusion. An applicant cannot offer their own conditions. City Council sets the conditions. Commissioner Swienton thought that staff helps an applicant come up with proposed conditions. Mr. Martin reminded them they cannot make one applicant follow a condition but not another applicant. Mr. Martin explained that the incentive to get a digital billboard is doing away with a nonconforming billboard. Mr. Martin summarized that if they want to get rid of nonconforming billboards, they should not try to do it through an arbitrary use of the CUP process. It will not work and will not be legal. It needs to be done in the ordinance as a design standard.

Commissioner Swienton goes back to the main directive given to them by Council. It was to develop a digital billboard ordinance, not to remove nonconforming billboards. That is a secondary objective and should be undertaken as we look at the *Comprehensive Plan*.

Chair Hamilton said she is favor of a CUP process without the requirement of removing a nonconforming billboard on a case-by-case basis in B-5, I-2 and I-3 districts. As far as the nonconforming billboards are concerned, part of the planning process is patience. She does not feel that this ordinance is the right place to do it.

Commissioner Sale said it is interesting that they are placing the *Comprehensive Plan* secondary and not as the basis for informing them of what they should do in drafting an ordinance. A billboard is on someone else's property. You are essentially purchasing an improvement on someone else's property. Purchasing something in order to proceed in another direction is a very common business practice. It is not necessarily encumbering and addresses what is clearly in our *Comprehensive Plan*. We have been more thorough on other parts of the *Comprehensive Plan* that were not as explicit as this objective. If City Council wants them to look at digital billboards, the commission needs to help them see its own *Comprehensive Plan* and what has been laid out by its own action. He thinks this issue was brought forth by the Citizens Steering Committee. Granted, City Council may be surprised and may decide not to do this and go against its own *Comprehensive Plan*, but he does not think that is where the commission ought to be as City planners. The *Comprehensive Plan* is their "Bible."

Commissioner Barnes asked if someone could ask for this requirement to be waived as part of the CUP process and Mr. Martin said they could not. Mr. Martin said they would have to ask for a variance and there would be no grounds for a variance.

Commissioner Coleman said he was not sure this was the moment they want to seize even though something has to be done about nonconforming billboards. His opinion is based on what persons in opposition here today have said, although he acknowledges that we need to follow the *Comprehensive Plan*. He thinks it would be wise for them to separate out the two objectives and have patience with the issue of nonconforming billboards.

Chair Hamilton does not necessarily think that it would "anti-Comp Plan" to strike paragraph "4". They would still be looking at limiting the number of new billboards in the City, which is what the *Comprehensive Plan* states. They would just not be seizing the opportunity to reduce the nonconforming billboards that they had originally proposed. If each digital billboard is taken case by case by conditional use permit, they would also be ensuring that each situation is right for the City. Although we already see a lot of CUP petitions, in the case of digital billboards, we would not be talking about a great number of them coming forward. She thinks that a digital billboard is so impactful that they do need to have a CUP process for approving each of them. She would not be in favor of a by right use at all.

There was discussion about a second for Commissioner Swienton's motion, and Chair Hamilton clarified that the motion had died for lack of a second.

Commissioner Sale made a motion to recommend the approval of the draft ordinance as amended to City Council. Commissioner Hooper seconded the motion.

Commissioner Sale understands the issue of CUPs. He is willing to consider alternatives but thinks this ordinance as written is a place to begin.

Commissioner Hooper would not agree with approving this ordinance without the CUP process because of the potential impact of a digital billboard. It is not like we know what they will do or how people will react to them. He thinks reducing the number of nonconforming billboards to be removed from two to one is a fair compromise. He does not think it would be an unfair item for someone to deal with that wants to put in a digital billboard because of the potential income capability. He thinks it a fair compromise to address what is in the *Comprehensive Plan*.

Commissioner Swienton noted that they have diverse opinions and perspectives and that is what the makeup of the commission is supposed to have. If they agreed on everything all the time, he would not be sure that Council selected the proper mix. He thinks the spirited discussion and differing viewpoints is very healthy. He is in agreement with the CUP portion being necessary but wants to ensure that the process will be as low cost to the applicant as possible. As far as the nonconforming billboard removal part, he cannot support voluntarily requiring someone to purchase an asset on another property to do something on their own property.

Commissioner Barnes is strongly in favor of keeping the CUP requirement. As far as the nonconforming billboard item, he is leaning toward agreeing that we need to be true to the goals of the *Comprehensive Plan* and provide an incentive for the removal of nonconforming billboards. If we do not provide incentives, they are not going to go away. He is in support of voting for the ordinance as written.

Commissioner Coleman agrees that the *Comprehensive Plan* states that they should find ways to reduce the number of nonconforming billboards in the City. He supports the CUP process because he does not feel that persons should be allowed by right to put up any type of message they would to put in front of the public. He thinks they can find others ways to reduce the number of nonconforming billboards to allow a person to apply for a digital billboard without further encumbrance.

Commissioner Sale pointed out that they received a newspaper clipping from staff from 1987 showing that City Council was considering at the time to implement a ban on billboards in the City. The current *Comprehensive Plan* expresses the sentiments of that City Council and we have been unable to do anything about them until now. If nothing else, this ordinance should be put forth the way it is to test the political will of our City Council in terms of backing the objectives of its *Comprehensive Plan*. Commissioner Sale feels the commission should be making its decisions based upon the *Comprehensive Plan* and then leaving the final decision up to City Council.

Commissioner Coleman remarked that he understands the zoning is sometimes the reason a billboard is nonconforming. However, he feels that there are certain parts of our City where positive messaging is very important. When we begin to reduce that, he gets really concerned.Commissioner Swienton pointed out that the newspaper article states the City Council wanted no new billboards in downtown or B-5 districts and new billboards be allowed only in industrial areas. That is consistent with our current ordinance.

Chair Hamilton called for a vote on the motion on the table, which is to recommend approval of the ordinance to City Council as amended. The motion failed by the following vote:

AYES:	Barnes, Hooper and Sale	3
NOES:	Coleman, Hamilton and Swienton	3
ABSTENTIONS:		0
ABSENT:	Hannon	1

There was discussion about how they should proceed. Commissioner Sale wondered if this would be a way of informing and responding to City Council's directive. City Council asked the commission to consider digital billboards and this is the result. Mr. Martin said the commission needs to decide; he cannot tell them what to do. However, they would essentially be sending them a draft without a recommendation.

Char Hamilton suggested that they can continue to discuss the ordinance until they can come up with a recommendation that can go to City Council. Commissioner Swienton wanted the chance for the full commission to vote on the ordinance because there will likely be a tiebreaker in that case.

Chair Hamilton asked Mr. Martin if they should have a discussion with Council to determine if this process is enough for them. Mr. Martin said that has to be their decision but came back to the conditional use permit and said he still did not understand why they want that process. Commissioner Coleman said that he wants the CUP process so they can make sure there are no negative messages. Chair Hamilton remarked that they do not get to dictate the message. Commissioner Coleman said he was just expressing his reservations. Other than that, he does not have any reservations.

After consulting the bylaws, Mr. Martin pointed out that section 8.3.3 states: "Whenever an agenda item involves a recommendation to the City Council, the Commission shall make every effort to continue to consider the item attempting to conclude a recommendation. If a motion has been made and defeated, additional, different motions may be made concerning the item under consideration."

With that in mind, the commissioners were in agreement that they should discuss this again with the full commission in attendance. In the meantime, Chair Hamilton will discuss where they are with Mayor Gillette and get his input on how they should proceed.

Mr. Martin commented that it is understandable why they are debating this issue because it is very important to the long-term makeup of the City. By all means, if the commission is not comfortable, it should continue to consider the issue.

Commissioner Sale made a motion, which was seconded by Commissioner Barnes, to bring this issue back for discussion at the next meeting that has a full attendance of commissioners.

Commissioner Hooper wanted to address why he thinks they need the CUP process. The City does not currently have digital billboards. He thinks it is going to be important for them to evaluate the potential visual impact and the surrounding area.

The motion passed by the following vote:

AYES:	Barnes, Coleman, Hamilton, Hooper, Sale and Swienton	6
NOES:		0
ABSTENTIONS:		0
ABSENT:	Hannon	1

MEMORANDUM

The City Attorney's Office

To: Tom Martin, City Planner

From: Walter Erwin, City Attorney

Subject: Electronic Billboards

Date: September 26, 2012

You advise that the City is considering an amendment to the zoning ordinance that would allow the use of electronic billboards. It has been suggested that the ordinance include a provision providing that if an applicant for a permit to install an electronic billboard owns nonconforming billboards, the applicant must give up a nonconforming billboard in order to install an electronic billboard. You wish to know if such a provision is legal. I researched this issue and am afraid I cannot give you a definite answer as to whether or not a requirement that in order to install an electronic billboard an applicant would have to give up a nonconforming billboard would survive a legal challenge. I was unable to locate any statutes or cases that deal with this precise issue.

In theory, a zoning ordinance should try to phase out nonconforming uses because such uses often fly in the face of current planning for the community. When dealing with nonconforming billboards, a number of states have allowed localities to require such billboards to be removed after a certain period of time as long as the grace period is reasonable. While other states have recognized the amortization of billboards as a legitimate zoning tool, the Virginia Attorney General has advised that amortization is not authorized in Virginia because amortization conflicts with the provisions of the state code regulating nonconforming uses and vested rights. In general, Virginia is protective of nonconforming uses, taking the position that someone who has spent money establishing a legal use should not be deprived of his property values by a zoning change that no longer allows the use. Including a provision in the zoning ordinance that requires an applicant to give up a legal nonconforming billboard in order to construct an electronic billboard in another zoning district could be viewed as contrary to the protections Virginia affords nonconforming billboards.

However, it can also be argued the proposed amendment does not require an applicant to get rid of a nonconforming billboard, it simply offers the applicant an incentive for doing so, the incentive being the installation of an electronic billboard. The City does not have an obligation to allow the installation of electronic billboards. Therefore, it can be argued the City can condition the installation of an electronic billboard, which will enhance the applicant's ability to display messages, on the applicant giving up a nonconforming billboard in order to keep the number of visual messages to which citizens are being bombarded at the current level. Allowing the installation of an electronic billboard without the simultaneous removal of a nonconforming billboard would increase the number of messages to which citizens are exposed. Since there is no right to construct an electronic billboard, the zoning ordinance is simply offering an applicant an incentive the applicant is free to accept or reject.

The proposed provision is somewhat similar to "form based" zoning in which a locality uses the zoning ordinance to regulate such things as a building's façade and materials, colors, the location of windows and doors and other special features. Virginia's courts have held that attempts to use zoning ordinances to require impose form based standards on property owners exceed the authority given to local governments under state law. However, several localities have created form based districts or overlay zones that offer landowners incentives if they voluntarily follow the form based codes. For example: (i) a landowner can follow the rules of a form based zoning ordinance and build by right or in the alternative the landowner can prepare their own building design and go through the special use process or (ii) a landowner can follow a form based code that allows the development of his property at a greater density than is normally allowed. Form based ordinances that are set up in this manner are not imposing mandatory requirements on property owners; if owners voluntarily decide to comply with the form based ordinances they receive something in return. Under the current proposal, an applicant is being offered the choice of keeping all of his nonconforming billboards, as allowed by Virginia law, or voluntarily giving up a nonconforming billboard in return for the opportunity to install an electronic billboard that will expand the applicant's advertising opportunities.

The City Attorney's Office does not object to amending the zoning ordinance to include a provision providing that in order to install an electronic billboard an applicant must give up a nonconforming billboard. However, the conditions imposed by a zoning ordinance must be reasonably related to the uses being regulated and must promote legitimate governmental interests. In order to increase the chances such a provision will survive a legal challenge, the zoning record needs to demonstrate what the provision is trying to accomplish and why it is needed. For example, if the rationale for the amendment is the concern that electronic billboards will expose citizens to more messages than are currently allowed so there is a need to get rid of some of the existing messages, the zoning record should (i) contain information documenting that electronic billboards offer many more advertising opportunities than traditional billboards (ii) that even if a nonconforming billboard is removed the owner of the electronic billboard will still come out ahead message wise (iii) that in order to limit the visual clutter to which citizens are exposed it is appropriate to remove a nonconforming billboard to counter the increased number of messages that will be displayed on the electronic billboard, etc.

MINUTES FROM THE SEPTEMBER 12, 2012 PLANNING COMMISSION MEETING (MINUTES HAVE BEEN APPROVED):

a. Discussion of the digital billboards ordinance: Mr. Martin reminded the commissioners that the billboard discussions have centered on the desire for digital billboards by businesses and the sign industry versus the goal expressed in the *Comprehensive Plan* of reducing or even eliminating billboards in the City. The Planning Commission at its last meeting had suggested allowing digital billboards by conditional use permit with a standard of removing two nonconforming billboards for each digital billboard installed. Staff has compiled a list of where the nonconforming billboards are located and who owns each of them. The majority of them are owned by Lamar. There are a few owned by McBride and one owned by 24outdoor.com.

The commissioners felt that the draft ordinance expresses the comments and concerns they had laid out in their earlier discussions. Commissioner Barnes asked for some wordsmithing to clarify that billboards will require a conditional use permit in all affected districts (IN-2, IN-3 and B-5).

Commissioner Hannon commented that he would like to know the underlying zoning of the nonconforming billboards. Commissioner Hannon would also like to know the history and/or rationale behind limiting billboards in business districts. Mr. Martin had a newspaper article from the time the billboard issue was last discussed by City Council. As he recalls, there was just a desire to limit billboards in general. Commissioner Hannon thought they might need to look at why billboards are allowed in some areas and not in others. Mr. Martin thought that it was a compromise at the time because of where the billboards are primarily located. They are in areas like the expressway and 460, which is where the billboard companies and the City wanted to locate them.

Commissioner Hannon remarked that there might be grandfathered billboards in a primarily commercial corridor such as Timberlake Road that he would not object to being allowed to convert to digital. The underlying zoning might be B-3, for instance, but the billboard is located on a commercial piece of property on a corridor that is primarily commercial. On the other hand, grandfathered billboards on a residentially zoned piece of property would not be appropriate for digitalization.

Chair Hamilton pointed out that it would be an issue of inconsistent zoning if you had a piece of property zoned B-3 nested in a B-5 zone. Chair Hamilton thought it would be antithetical to correct the billboard issue before the inconsistent zoning was addressed. Commissioner Hannon thought that one issue is a “map or paper” issue and one is a “dollars and sense” issue. He thought that, at least to the property owner o landlord, the “dollars and sense” issue should take precedence.

Mr. Martin thought if they want to tackle billboards in B-3 districts, they would probably have to change the ordinance to make existing B-3 billboards a permitted use as has been done with existing billboards in B-5 districts. This is because there is a statute in the state code that does not allow one to increase the nonconformity of something. Mr. Martin thought that increasing a billboard to digital would obviously be increasing its nonconformity. Commissioner Hannon would agree that increasing the size of a billboard would be increasing its nonconformity, but he was not sure that he felt that digitizing it would be doing so.

Mr. Martin explained that VDOT looks at nonconformity in terms of monetary value. If you were to replace a wooden billboard with a digital billboard, it would certainly increase its monetary value. Commissioner Hannon did not see the nexus between the value of a sign and its nonconformity. Commissioner Hannon also pointed out that in the case of where nonconforming billboards are side by side, replacing the two billboards with one digital billboard might actually decrease its nonconformity. Mr. Martin agreed that those are good points and the nexus between what makes something nonconforming is debatable.

Mr. Martin mentioned that there has been an arising idea about a “cap and replace” ordinance. That type of ordinance would cap the number of billboards in the City and designate “sending” and “receiving” areas. Signs that are taken down in one area such as downtown, for instance, could be replaced in a more appropriate location such as Wards Road or Timberlake Road.

Commissioner Hannon’s initial reaction to that suggestion is not favorable because it sounds like a Lamar Advertising protection ordinance. That kind of approach would freeze new billboard companies out of doing business in Lynchburg.

Chair Hamilton pointed out that they are kind of doing that by requiring a company to remove two nonconforming billboards. Another company wanting to come to Lynchburg other than Lamar or McBride would have to buy two nonconforming billboards before they could put up a digital one. Commissioner Hannon thought that option would be economically unfeasible. Lamar and McBride prize their billboards very highly. Commissioner Hannon thought this raises the discussion that there may be some areas where it would be appropriate to replace standard billboards with digital billboards without a conditional use permit process. Mr. Martin reminded them that the ordinance was written that way originally and summarized for them how they had arrived at the way it is currently written.

Chair Hamilton suggested that they take this to public hearing and then possibly schedule it for another work session.

Commissioner Sale brought up the topic of prioritizing the list of nonconforming billboards and which ones they would most like to see removed. Mr. Martin thought they could certainly have that discussion but did not think that by ordinance they could specify which ones had to be removed when a digital billboard is approved.

Commissioner Hannon wondered if we are treating people the same way and thought this might need to be brought up with the City Attorney. For example, Lamar Advertising already owns nonconforming signs and could be allowed to take two nonconforming signs down and put up one digital billboard. A new company wants to come to the City and put up a digital billboard but is told they need to go buy two nonconforming signs. Are two people trying to do the same thing being treated exactly the same way? Even 24outdoor.com only owns one nonconforming billboard and would not be allowed to put up a new billboard without purchasing another nonconforming billboard. The commissioners noted that this could be rectified by at least allowing them in industrial zones with a conditional use permit but taking out the requirement to remove two nonconforming billboards in those cases.

The commissioners decided to leave the ordinance as it is and hold the public hearing to get further input.

MINUTES FROM THE AUGUST 8, 2012 PLANNING COMMISSION MEETING (MINUTES HAVE BEEN APPROVED):

b. Consideration of amending Section 35.1-26.13, Billboards of the Zoning Ordinance to allow Commercial Electronic Variable Message Signs (Digital Billboards) on properties zoned I-2, Light Industrial District and I-3, Heavy Industrial District. The proposed amendment would also allow conforming billboards in B-5, General Business Districts to be replaced with digital billboards.

Mr. Martin commented that there has been some discussion about the possibility of allowing digital billboards in B-5 districts with the removal of a nonconforming billboard in another location in the City. The comments from the Citizens Steering Committee reflect varying opinions that recognize both the pros and cons of billboards. Mr. Martin would suggest that the City needs to come to the realization that there will never be a complete elimination of billboards and we are currently not keeping up with technology. He reiterated that new billboards are allowed in I-2 and I-3 districts and billboards in B-5 districts are a permitted use provided that they remain in the same location. There are approximately 35-36 “grandfathered” or nonconforming billboards throughout the City. They are nonconforming due to the underlying zoning, their size or the fact that they are stacked on top of each other or side by side. By state code, even nonconforming billboards can be replaced in most cases if destroyed by an act of God.

Commissioner Coleman asked why the *Comprehensive Plan* talks about limiting or reducing billboards. Chair Hamilton explained that during the charrette process for the *Comprehensive Plan,* citizens were shown various pictures (developments, streetscapes, etc.) and were asked what they liked and did not like. What came out of that exercise was that billboards are aesthetically unpleasing to the majority of people. They thought that billboards are inappropriate in certain areas of the City.

Commissioner Barnes expounded on his idea that possibly billboards could be allowed by conditional use permit. It seems to him that billboards are site specific in terms of their safety, their aesthetics and even their economic impact. He is suggesting that the commission and City Council have some oversight over them rather than a blanket approval for them. Mr. Martin clarified for them that this proposed ordinance would allow the conversion of regular billboards in B-5 districts to a digital billboard.

Commissioner Hannon said he was drawn to the idea of allowing a digital billboard by permit with the condition that a nonconforming billboard be removed somewhere else in the City. This would allow the City to use the new technology as a lever to get rid of the nonconforming billboards and thus meet one of the goals of the *Comprehensive Plan.*

Commissioner Swienton noted that they require organizations to come in for modified signs, such as the church did today. It seems ironic to him that we would require an organization to come in for a conditional use permit for a small sign but we would allow a digital billboard by right with this proposed ordinance. He finds that unequal. The conditional use permit process might also allow them the option of moving a sign’s location if it was deemed appropriate for safety reasons. The CUP process would allow more flexibility based on site specifics. Commissioner Swienton clarified that this suggested CUP process would only apply to the conversion of an existing regular billboard to a digital billboard or, as he is suggesting, moving a regular billboard somewhere else on the property.

Mr. Martin asked for clarification that this CUP process could apply to someone who does not want to convert a billboard but would like to move its location. The commissioners were in agreement that they would like the CUP process to allow for this type of scenario. Mr. Martin remarked that staff will need to draft some new language and hold another public hearing, as these suggested changes will be significant enough to warrant another public hearing.

Mr. Martin remarked that, as they have heard, digital billboards are expensive. He does not think they will be inundated with numerous requests for digital billboards suddenly. It is highly unlikely that all the nonconforming billboards would go away immediately. He would see them remaining in the inner city for a while, which was a concern to Commissioner Coleman who feels that this is the best and most cost effective medium for some organizations to utilize.

Commissioner Barnes pointed out that the study he had provided them at the last meeting talked about cities that are considered to strictly regulate billboards and those that are more lenient. That was based on fifteen factors and he would suggest that Lynchburg regulates ten out of the fifteen factors in its current billboard ordinance.

There was discussion about whether the petitioner should have a nonconforming billboard location already selected when they come in with a CUP request or should there be sort of a “hot” list. It was the consensus of the commissioners that they should allow the petitioner to do the economic analysis and come in with a billboard already selected for elimination.

Mr. Robert Haines of Lamar Advertising and Mr. Tony McBride of McBride Signs came forward to give some comments. Mr. Haines explained that the study Commissioner Barnes had provided them was not from a neutral organization. It was done by an organization formerly known as Society Created to Reduce Urban Blight (SCRUB), which he feels is the most anti-billboard organization in the United States. There is a study being done by the billboard industry to refute that study. He had some information to provide them on the economic impact of billboards in Philadelphia that was done by the billboard industry.

Mr. Haines pointed out that they have lost billboards as a result of development and that is likely to continue to happen. If they lose a nonconforming billboard, as is being suggested, it will really impact the industry.

Mr. McBride liked what they are suggesting but wondered if they could “bank” a nonconforming sign if they lose one for some reason. For example, they lose a nonconforming sign due to the sale of the property but are not ready to replace a billboard with a digital one until a year or two later. Could they have that nonconforming sign in a “bank?” Mr. Haines noted that there is something like this concept in Roanoke County. Chair Hamilton said it was certainly a point for discussion.

c. Annual Report on the Activities of the Planning Commission for Fiscal Year 2012: Mr. Martin had some suggestions for amendments to the report. The commissioners agreed with those changes, as well as one suggested by Commissioner Swienton. If approved, Mr. Martin will schedule a date for Chair Hamilton to present the report to City Council. Commissioner Coleman made a motion to forward the report to City Council, which was seconded by Commissioner Barnes. The motion passed by the following vote.

AYES:	Barnes, Coleman, Hamilton, Hannon and Swienton	5
NOES:		0
ABSTENTIONS:		0
ABSENT:	Hooper and Sale	2

MINUTES FROM THE JULY 11, 2012 PLANNING COMMISSION MEETING (MINUTES HAVE BEEN APPROVED):

c. Consideration of amending Section 35.1-26.13, Billboards of the Zoning Ordinance to allow Commercial Electronic Variable Message Signs (Digital Billboards) on properties zoned I-2, Light Industrial District and I-3, Heavy Industrial District. The proposed amendment would also allow conforming billboards in B-5, General Business Districts to be replaced with digital billboards.

Mr. Henry reminded the commissioners that they had first held a public hearing on this item at their April 11, 2012 meeting and the item was then sent to the Citizens Steering Committee (CSC) for their input. Their comments have been provided to the commissioners. Commissioner Sale, as the liaison for that committee, gave an overview of the meeting. He said there were some strong feelings from those representing the business community that digital billboards provide good advertising access. There was concern for others about the distraction they might cause for drivers.

The bigger issue that emerged was what the *Comprehensive Plan* suggests to do with billboards, which essentially says to present strategies to reduce or eliminate billboards. There was a discussion at the CSC meeting on how to mitigate the issues with conforming and nonconforming billboards. There was an interesting proposal at that meeting to possibly trade nonconforming billboards with conforming digital billboards as a way of reducing the number of billboards and meeting the goal of the *Comprehensive Plan.*

Further, there was a community interest issue expressed in that the digital billboards can issue public service announcements such as “Amber alerts” or most recently could have been used to make pertinent information available about the Derecho storm. The commercial interest is that one digital billboard can contain six advertisements. The sense that Commissioner Sale got from the business community is that the digital billboard advertisement is a good investment.

Commissioner Sale remarked that there were equally strong feelings from some of the CSC members that they would like all billboards removed for aesthetic reasons. However, there was an understanding that it is a legitimate advertising medium. The question becomes how do we have them and protect the quality of living in Lynchburg.

Mr. Robert Haynes of Lamar Advertising and Mr. Tony McBride with McBride Signs were present to speak in favor of the petition. The commissioners had some questions about nonconforming billboards versus conforming billboards and whether or not the nonconforming signs could be replaced if they were knocked down for some reason. Mr. Haynes explained that it is his understanding from Mr. Tom Martin that they could put up new billboards in industrial districts. The billboards currently in B-5 districts are considered conforming but no new billboards can be built in B-5 districts. The billboards can be replaced in B-5 districts but they have to be replaced in the same exact location. Mr. Haynes explained that with regard to nonconforming billboards in other districts, under state law they can be replaced, if damaged, up to a one year period with a 50 percent economic calculation.

Mr. Haynes explained that 85 percent of their sales are from local regional businesses and they are requesting digital billboards. It is a great vehicle for businesses because they can get their ads up quickly and change them easily at reduced costs. Mr. Haynes pointed out that they have limited billboard inventory in the City now. Because of the changes in the ordinance, the boards kind of got skewed and it is hard to get a good spread for a customer.

Mr. Haynes explained that their digital billboards contain a message that changes every ten seconds. The images are static; there are no scrolling images or animation. He mentioned that his company put up the first digital billboards in southwest Virginia. VDOT did a study of traffic accidents before and after and there was no change. The industry did a Freedom of Information Act request to the Federal Highway Administration because its study has never been officially released. The memos from that request basically show that there was no difference between a regular billboard and a digital billboard in terms of safety.

Mr. McBride remarked that the digital billboards are really one of the only ways they can grow their business and service their customers due to the strict regulations on putting up new billboards in the City. Over the years, they have lost boards due to development of properties and those lost boards cannot be replaced. He pointed out that although new boards are allowed in industrial districts, those areas are not in locations where their customers want to place their advertising.

Chair Hamilton asked for anyone else who wished to speak in favor of the petition. No one came forward. She asked for anyone who wished to speak in opposition to the petition. No one came forward. She closed the public hearing portion of the petition.

Commissioner Barnes commented that he has been able to do some research and thinking on this matter since their April meeting. There are three things to consider—safety, aesthetics and economics. The research on digital billboards is really inconsistent. It depends on speed, location, complexity of the message, how much the message pulls in the attention of the driver and how long a driver spends looking at the message. The study information really varies widely on how long a driver spends looking at a message. On the one hand, if you want billboards then the studies want to argue that the billboard attracts attention. If you arguing for their safety, then the studies argue that people only glance at it.

The aesthetics issue is, of course, subjective. Some surveys have been done over the past few decades and they found that approximately 70 percent of people think billboards are ugly.

In terms of economics, Commissioner Barnes found that marketing studies indicate that billboards are an effective form of advertising. They are effective at raising a business' visibility and drawing in new customers. However, there are negative economic impacts. Commissioner Barnes found a study done last summer released in December done by nonpartisan group in Philadelphia. The study found that properties within 500 feet of a billboard suffered a $30,000 decrease in property value upon their sale. Having billboards in a census area also decreased a home's value by $1,000.

The study also looked at 20 other cities and compared those with relatively strict billboard ordinances versus those with relatively more lenient ordinances. The study found that median income for strict cities is significantly higher than the more lenient cities. The poverty rate is lower, as well as home vacancy rates. The study did a regression analysis that filtered out other influences.

Commissioner Sale brought up what the *Comprehensive Plan* says about billboards and the desire to reduce or eliminate billboards, particularly in nonconforming locations. The makeup of the CSC seems to reflect the views of our community. Some like them and some do not. The business community would like more access, which speaks toward digitalization. Commissioner Sale brought up the idea again of writing the ordinance in such a way as there is a trade of a certain number of nonconforming billboards for each conforming digital billboard. There should still be an increase in advertising since a digital billboard can carry six messages. There would be some picking and choosing of where the least attractive nonconforming billboards are located. In his opinion, this is kind of a win-win possibility and is being faithful to the *Comprehensive Plan.*

Mr. Haynes commented that this type of amendment would affect the future growth of their business dramatically. There have been billboards that have left the market since the *Comprehensive Plan* was written. In answer to a question about what percentage of their sales is from billboards, Mr. McBride stated that he does approximately 45 to 50 percent in billboards. Mr. Haynes stated that his local office does 100 percent billboard sales.

Commissioner Coleman noted that Commissioner Barnes' research is very sobering and powerful. He has always been a champion for billboards and his main concern has been with controlling what goes on the signs. Commissioner Sale has made a good case that as a commission, it is their job to support the *Comprehensive Plan.* In Commissioner Coleman's opinion, there is not just purely a business interest for the importance of billboards. Nonprofit organizations and others can use billboards for monumental message reproducing. He is in support of the amendment.

Commissioner Swienton wanted time to consider the *Comprehensive Plan*. He is not ready to vote today and would like to take the matter to a work session.

There was still some confusion as to what is a conforming billboard in a B-5 district. Mr. Henry noted that a conforming sign means that it conforms to setbacks. Chair Hamilton noted that she remembered when they did the sign ordinance that legal billboards in B-5 districts were grandfathered in as conforming. Mr. McBride pointed out that no new billboards are allowed in B-5 districts. There are approximately 36 nonconforming billboards in the City. That number does not specify whether they are in B-5 districts or residential districts. There are 82 billboards in the City.

Commissioner Swienton asked if a business in B-5 could erect multiple billboards. Mr. Henry stated that only existing conforming signs in B-5 could be replaced with digital billboards. There could be no new ones erected in B-5 districts.

Commissioner Barnes commented that he is not opposed to digital billboards, but he is more inclined to allow them by conditional use permit. This would be in order for the specifics of the site, the location and the traffic to be considered when a billboard is approved.

Commissioner Coleman made a motion to table this matter to a work session on August 8th. The motion was seconded by Commissioner Barnes and passed by the following vote:

AYES:	Barnes, Coleman, Hamilton, Hooper, Sale and Swienton	6
NOES:		0
ABSTENTIONS:		0
ABSENT:	Hannon	1

MEMORANDUM

The Department of Community Development

Planning

455-3900

To: Planning Commission

From: Tom Martin, AICP, City Planner

Subj: Digital Billboards

Date: July 11, 2012

The Planning Commission conducted a public hearing concerning proposed *Zoning Ordinance* amendments to Section 35.1-26.13, Billboards on April 11, 2012. The amendments were initiated by Council on February 28, 2012. After the public hearing, the Planning Commission directed staff to schedule a meeting with the Citizens Steering Committee (CSC) to solicit input on the proposed revisions.

City staff conducted a meeting with the Citizen Steering Committee on June 1, 2012. City staff gathered comments from the Citizen Steering Committee related to digital billboards. The comments were both positive and negative concerning the revisions. A vote was not taken and there was clearly no consensus regarding the amendments.

Comments:
- The City should strive for no billboards.
- Since the billboards would be digital, employees would not be coming as frequently to maintain the areas around the billboard.
- The Wards Road area is cluttered and temporary signs should be reduced in the area.
- Los Angeles is brighter than here, digital billboards near his house and it was a distraction, but digital billboards look better.
- Frequency of change should be related to speed of corridor.
- How do they compare to static billboard at night?
- Digital billboards have a cleaner appearance with light spread evenly across sign.
- Easier for small business to gain advertising.
- Content is no different than a static board.
- Do you have to have a business license to operate a billboard in the city? (Yes and Taxable)
- Digital billboards are contrary to *Comprehensive Plan* and add clutter.
- No good reason to do so, just because other areas have them.
- Same structure life expectancy as static. Digital panel about ten (10) years.
- Suggest two (2) for one (1). Nonconforming for digital.
- If we remove all billboards, will people coming to Lynchburg be able to find things?
- Digital medium not available in static.

- One (1) chance in six (6) that a message would be there.
- Need to consider rights of owners v. *Comprehensive Plan* goals.
- No backup generator, AEP Power.
- No noise from the board.
- Economic benefit, aesthetic benefit.
- Could be a safety consideration.
- Light impact issue.
- Should limit numbers of advertising; is increase in sales relative to billboards?
- TV and radio is not equivalent to billboards.
- How would digital billboards contribute to a sense of place?
- Take down nonconforming billboards and replace with digital billboards is a good compromise.
- Although *Comprehensive Plan* says to eliminate or limit billboards, current ordinance does not accomplish this.
- Typically, people choose Lynchburg because it is not the “big city”.
- A lot of young people leave, but billboards won’t keep them here.
- City business is being restricted due to lack of access to billboards.

MINUTES FROM THE APRIL 11, 2012 PLANNING COMMISSION MEETING (MINUTES HAVE BEEN APPROVED):

e. Consideration of amending Section 35.1-26.13, Billboards of the Zoning Ordinance to allow Commercial Electronic Variable Message Signs (Digital Billboards) on properties zoned I-2, Light Industrial District and I-3, Heavy Industrial District. The proposed amendment would also allow conforming billboards in B-5, General Business Districts to be replaced with digital billboards.

Mr. Martin had the following comments for the commissioners. This action was initiated by City Council on February 28, 2012. Mr. Martin provided a map with the location of the existing billboards (82) in the City. Forty-six of the billboards are conforming and thirty-six are non-conforming for a variety of reasons.

Staff first looked at the safety of digital billboards. There have been numerous studies done by numerous organizations dealing with whether or not a digital billboard distracts a driver causing accidents. The Federal Highway Administration conducted a Phase I analysis of these studies and determined them to be inconclusive and recommended further study. A Phase II analysis was done in three locations, one of which was Richmond, VA. Those studies used eye tracking software to determine the amount of time a driver took their eyes off the road to read a digital billboard. That study has been completed but a release date has not been scheduled.

A digital billboard can display up to ten messages at six-second intervals. The advantages are that a sign company can expand its advertising without creating new billboard locations. It is also better for the environment since the old vinyl posters materials are not discarded in the landfills. Mr. Martin mentioned that representatives from McBride Signs and Lamar Advertising helped City staff draft the proposed ordinance. The ordinance would allow digital billboards in locations that are presently conforming. It also deals with the brightness of the billboards by ensuring that they automatically dim at night and that the foot candles do not exceed certain levels. The Planning Division recommends approval of the ordinance. Mr. Martin added that it is not likely we will see many of them immediately as they are a large capital investment for a sign company. He also pointed out that billboard locations are taxable.

Commissioner Barnes commented that he had done some research on line and is not comfortable that he has done enough research. He concurs that the research out there is inconclusive. Some cities are placing a moratorium on digital billboards. Commissioner Barnes would like more time to look into the research. Mr. Martin pointed out that you have to look at who is doing the studies and look at the funding source for the study. For that reason, Mr. Martin would place more merit on what the FHA study shows. Mr. Martin also pointed out that the locations where they are proposing these signs be placed are at relatively slow speed areas. Commissioner Barnes remarked that there are also aesthetic issues to consider as many of these signs are located on major corridors of the City.

Commissioner Hannon noted that he had recently visited Las Vegas where there are many of these signs and, in his opinion, they are hideous. He questions whether a City that prides itself on historic rejuvenation and historic places should have digital billboards.

Chair Hamilton noted that they had put a lot of time developing the sign ordinance and it would be a disservice to amend it so quickly without taking time to study it very carefully. Commissioner Sale thinks that we are going to see these billboards in Lynchburg at some point in time. It is a matter of how we see them. There may be some better constraints that we might want to put in the ordinance. Commissioner Sale suggested that there may be other countries that have these types of signs and may be ahead of us in terms of studying safety issues and the visual impact of digital billboards. We may want to look at some other localities that have digital billboards. Mr. Martin noted that there is one near Lowes on Timberlake Road in Campbell County. Commissioner Hannon noted that they will have no control over how the advertisement looks.

Chair Hamilton asked the representatives present to come forward and speak. Mr. Robert Haynes with Lamar Advertising and Mr. Tony McBride with McBride signs were present. Mr. Haynes noted that he put a digital billboard up on Brambleton Drive in Roanoke. VDOT did a study about a year later and found no difference in accidents. Mr. Haynes said that their digital billboards have six advertisers and the messages change every ten seconds. The change is instantaneous. They are all auto-dimming and have cameras on them. They are monitored nationwide from a central location. Mr. Haynes also pointed out that he is a private company and is allowed to turn down clients if he feels they want to display something that might be found to be offensive or that might cause a lot of controversy.

He explained that the images are static and not like billboards you might see in Las Vegas or New York. He also pointed out that they can display an “Amber alert” or wanted posters. If they have gaps between advertisers, they will do ads for non-profit organizations.

Chair Hamilton asked if the sign ordinance had impacted them in any way. Mr. McBride said that it had not really impacted his business. Mr. Haynes said that it has affected his business in terms of not being able to move signs around due to sign ordinance restrictions.

Commissioner Hannon noted that, in his opinion, the adverse aesthetic impact of billboards is significant. He thinks Lynchburg’s views and vistas are very important to the City.

It was the consensus of the commissioners that they would like to engage the Citizens Steering Committee in this discussion. Staff will work on setting up a meeting with the committee.

The Department of Community Development

City Hall, Lynchburg, VA 24504 434-455-3900

To: Planning Commission
From: Planning Division
Date: April 11, 2012
Re: ***Zoning Ordinance*** **Amendment – Section 35.1-26.13, Billboards**

I. PETITIONER

City of Lynchburg, 900 Church Street, Lynchburg, VA 24504
Representative: Tom Martin, AICP, City Planner, Planning Division, 900 Church Street, Lynchburg, VA 24504

II. LOCATION

The *Zoning Ordinance* amendment would affect conforming billboards located in a B-5, General Business District, I-2, Light Industrial District or I-3, Heavy Industrial District.
Property Owner: N/A

III. PURPOSE

The purpose of this amendment is to allow "Commercial Electronic Variable Message Signs" or "Digital Billboards" in a B-5, General Business District, I-2, Light Industrial District or I-3, Heavy Industrial District.

IV. SUMMARY

- Council initiated amendments to the *Zoning Ordinance* to allow "Digital Billboards" on February 28, 2012.
- Digital billboards eliminate the need for on-site installation of vinyl posters and allow the billboard industry to increase advertisement space without adding additional billboard locations.

The Planning Division recommends approval of the *Zoning Ordinance* amendment.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** During the preparation of the City's *Comprehensive Plan 2002-2020,* a "community character" survey was conducted to gain an understanding of resident perceptions and preferences for the city. The survey indicated that survey participants "responded favorably to images showing active, pedestrian-friendly environments, streets with generous landscaping, brick sidewalks, and outdoor cafes, and images of well-maintained public spaces, including urban plazas and natural park settings. Images receiving the lowest ranking showed commercial strips, billboards, pole-mounted and large commercial signs, parking lots with minimal landscaping and unadorned buildings". (***pg. 6.4***) The *Comprehensive Plan 2002-2020's* Design, Character & Quality, Goal 1 is to "ensure that development and redevelopment reinforce the city's unique character and sense of place". Objective 1A (5) states "restrict the placement of off-site, outdoor advertising (billboards) in the city, especially, in or near residential areas, schools, parks, historic sites and districts, scenic areas, gateways and commercial areas". Objective 1A (6) states

"limit reinvestment in existing billboards and explore strategies for their eventual removal through purchase programs or sunset provisions". (***pg. 6.21-6.22***)

2. **Zoning.** *Zoning Ordinance* regulations pertaining to billboards have remained essentially unchanged since September 8, 1987. However, the regulations were moved to their current section as part of the Sign Ordinance amendments approved by Council on June 22, 2004. Section 35.1-26.13, (g) of the *Zoning Ordinance* permits only white illumination for billboards and prohibits flashing (on-and-off) or any billboard that simulates movement. As a result of this section, the Zoning Administrator has determined that "digital" billboards are not permitted within the city. Billboards are permitted by the *Zoning Ordinance* only on property that is zoned I-2, Light Industrial District or I-3, Heavy Industrial District. Billboards located on property zoned B-5, General Business District are allowed to remain and be replaced in the exact location as they exist.
3. **Proffers.** N/A
4. **Board of Zoning Appeals (BZA).** N/A
5. **Surrounding Area.** N/A
6. **Site Description.** A review of the City's Geographic Information System's (GIS) data indicates that there are eighty-two (82) billboard locations in the city. Of these locations, forty-six (46) are deemed to be conforming with the *Zoning Ordinance* while thirty-six (36) are nonconforming. Reasons for nonconformity include zoning, location in a special overlay district, stacked, "v" shaped, side by side or not meeting spacing requirements.
7. **Proposed Use of Property.** N/A
8. **Traffic, Parking and Public Transit.** There have been numerous studies related to the safety of digital billboards with varying results. A February 2009 Phase I Federal Highway Administration (FHWA) study reviewed the results and determined them to be inconclusive. A Phase II FHWA study was conducted in Reading, Pennsylvania and Richmond, Virginia. Both localities have numerous digital billboards, static billboards and other points of visual interest. The purpose of the study was to determine the frequency that participant drivers glanced away from the roadway, the percentage of time they looked at the roadway and the time spent looking at digital billboard displays. An analysis of the data is not complete. A release date for the study has not been scheduled.
9. **Stormwater Management.** N/A
10. **Emergency Services.** N/A
11. **Impact.** Commercial Electronic Variable Message Signs (CEVMS) or "digital" billboards are those that can display a digital image rather than a static one. Each digital billboard can display multiple advertisements in six (6)-second increments as permitted by the Code of Virginia. Digital billboards eliminate the need for on-site installation of vinyl posters and allow the billboard industry to increase advertisement space without adding additional billboard locations.

    The proposed *Zoning Ordinance* amendments would only allow digital billboards to be placed in locations that a billboard would otherwise be "conforming". The draft language also would require that digital billboards be "auto" dimming and not exceed three tenths (.03) foot-candles over ambient light conditions, which is an industry standard.
12. **Technical Review Committee.** N/A

VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of amending Section 35.1-26.13, Billboards of the Zoning Ordinance, to allow "digital" billboards where conforming in B-5, General Business Districts, I-2, Light Industrial Districts and I-3, Heavy Industrial Districts.

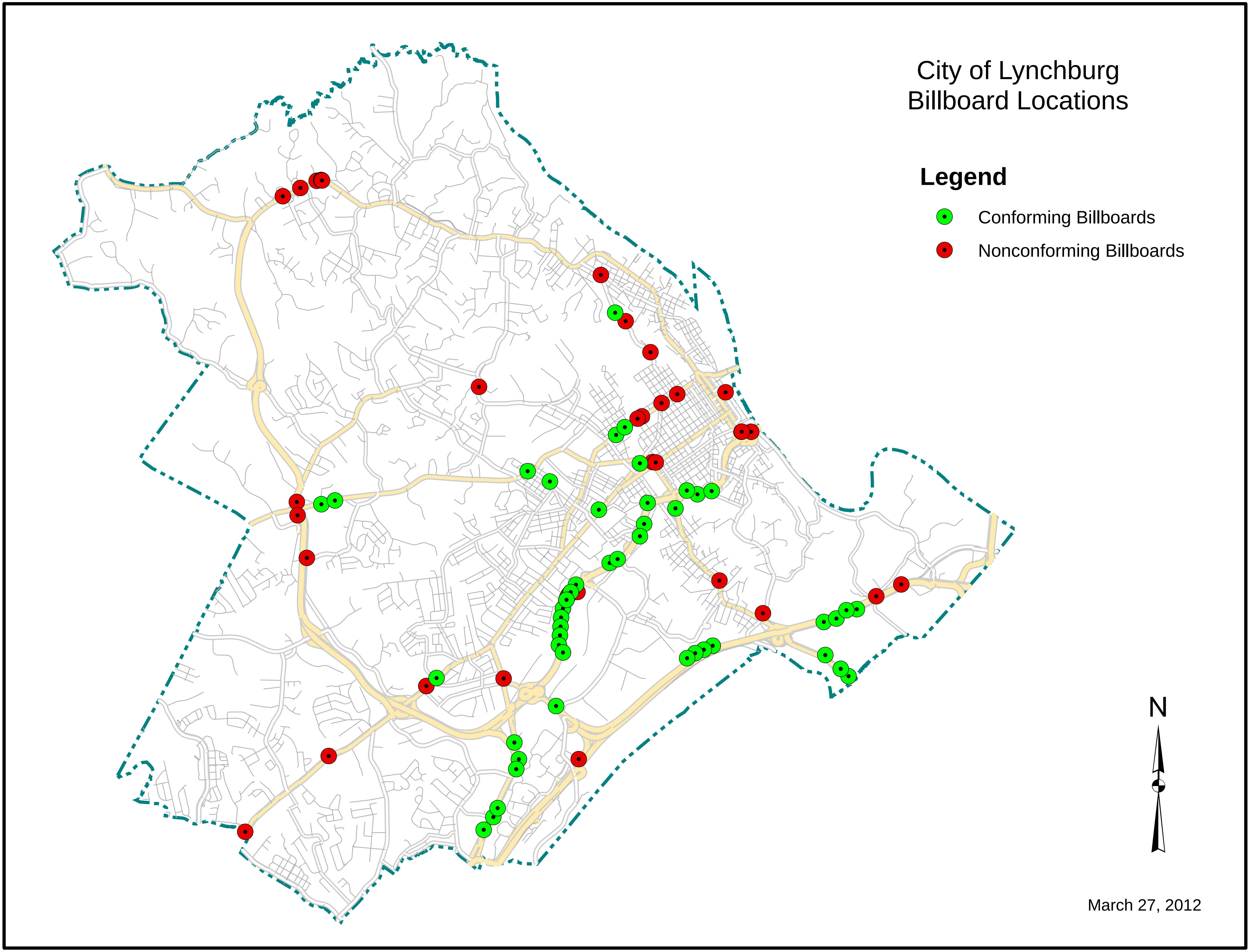
This matter is respectfully offered for your consideration.

William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Ms. Bonnie M. Svrcek, Deputy City Manager
Mr. Walter C. Erwin, City Attorney
Mr. Kent L. White, Director of Community Development
Mr. J. Lee Newland, City Engineer
Ms. Cynthia Kozerow, Lynchburg Police Department
Captain Thomas Mack, Acting Fire Marshal
Mr. Donald DeBerry, Transportation Engineer
Mr. Doug Saunders, Building Commissioner
Mr. Robert Fowler, Zoning Administrator
Mr. Jacob Dorman, Environmental Reviewer
Mr. Tony McBride, McBride Sign Company
Mr. Robert Haynes, Lamar Advertising

VII. ATTACHMENTS

1. **Section 35.1-26.13, Billboards Draft Ordinance**
2. **Billboard Location Map**


City of Lynchburg
Billboard Locations
Legend
Conforming Billboards
Nonconforming Billboards
N
March 27, 2012

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 11, 2012** AGENDA ITEM NO.: **8**

CONSENT: REGULAR: **X** WORK SESSION: CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Right-of-Way Vacation – Between Lakeside Drive & Whitehall Road**

RECOMMENDATION: After a public hearing, approve the vacation of right-of-way and create a separate parcel of approximately four hundred twelve thousandths (0.412) of an acre between Lakeside Drive and Whitehall Road.

SUMMARY: The City Manager's Office and the Office of Economic Development are petitioning to vacate excess right-of-way and to create a separate parcel of approximately four hundred twelve thousandths (0.412) of an acre between Lakeside Drive and Whitehall Road. The right-of-way was originally acquired by the Virginia Department of Transportation (VDOT) prior to the 1976 annexation for the construction of a grade separated interchange. In 2006, the City performed a study to evaluate options for the area and adopted a concept for an at-grade improvement, which would not require the subject property for construction. The right-of-way was transferred to the City from VDOT in 2009.

If the parcel is created, it would be marketed for sale. Section 35.1-10 of the *Zoning Ordinance* provides that that where territory is not specifically included in a district it shall automatically be classified as an R-1, Low Density, Single-Family Residential District. Since the property is in a commercial area, Council is requested to initiate proceedings to designate the property as "Regional Commercial" on the *Future Land Use Map* and to amend the zoning to B-5, General Business District.

PRIOR ACTION(S):
December 11, 2012: Physical Development Committee (PDC)

FISCAL IMPACT: None

CONTACT(S): Marjette Upshur, Director of Economic Development – 455-4492
Kimball Payne, City Manager – 455-3990

ATTACHMENT(S):
- Ordinance
- Plat

REVIEWED BY: lkp

ORDINANCE

AN ORDINANCE TO VACATE FOUR HUNDRED TWELVE THOUSANDTHS (0.412) OF AN ACRE OF EXCESS RIGHT-OF-WAY.

WHEREAS, the City owns four hundred twelve thousandths (0.412) of an acre of unused, excess right-of-way that is located between Lakeside Drive and Whitehall Road in the City of Lynchburg, Virginia; and

WHEREAS, the Virginia Department of Transportation originally acquired the property in question for the construction of a grade separated interchange and the property consists of the remnants of various parcels of property that were not used by the Virginia Department of Transportation and which the Virginia Department of Transportation subsequently conveyed to the City; and

WHEREAS, the Council of the City of Lynchburg here finds that the City is not currently using the four hundred twelve thousandths (0.412) of an acre of excess right-of-way and has no plans to use such right-of-way in the future; the City's continued ownership of the four hundred twelve thousandths (0.412) of an acre of excess right-of-way is no longer necessary or required for the best interest of the City; and that Council finds that no public inconvenience will result from vacating the four hundred twelve thousandths (0.412) of an acre of excess right-of-way;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lynchburg, on its own motion, and in accordance with the provisions of Section 15.2-2006 of the Code of Virginia, 1950, as amended, and Sections 35-71 through 35-77 of the City Code, 1981, as amended, that the following described right-of-way be, and the same hereby is, discontinued and vacated, namely:

BEGINNING AT VIRGINIA DEPARTMENT OF HIGHWAYS CONCRETE MONUMENT FOUND, SAID MONUMENT BEING ON A NEW SOUTHERLY RIGHT OF WAY LINE FOR WHITEHALL ROAD, THENCE ALONG SAID NEW LINE SOUTH 71 DEGREES 08 MINUTES 22 SECONDS EAST 228.47 FEET TO A 1/2 INCH REBAR SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 146 DEGREES 48 MINUTES 54 SECONDS, A RADIUS OF 10.00 FEET, A LENGTH OF 25.62 FEET, A CHORD OF 19.17 FEET AND A CHORD BEARING OF SOUTH 02 DEGREES 16 MINUTES 05 SECONDS WEST TO A 1/2 INCH REBAR SET ON A NEW NORTHERLY RIGHT OF WAY LINE FOR LAKESIDE DRIVE; THENCE ALONG SAID NEW LINE SOUTH 75 DEGREES 40 MINUTES 32 SECONDS WEST 221.42 FEET TO A 1/2 INCH REBAR SET; THENCE LEAVING NEW NORTHERLY RIGHT OF WAY LINE OF LAKESDIE DRIVE AND ALONG A NEW LINE ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 04 DEGREES 00 MINUTES 23 SECONDS, A RADIUS OF 1537.18 FEET, A LENGTH OF 107.49 FEET, A CHORD OF 107.47 FEET AND A CHORD BEARING OF NORTH 00 DEGREES 11 MINUTES 42 SECONDS EAST TO A 1/2 INCH REBAR SET; THENCE CONTINUING ALONG A NEW LINE NORTH 01 DEGREES 48 MINUTES 30 SECONDS WEST 40.35 FEET TO THE POINT OF BEGINNING AND CONTAINING APPROXIMATELY 0.412 ACRES.

Provided, however, that any easement to locate, relocate, repair, replace, maintain and perpetually operate all utilities currently located therein or needed by the City in the future is hereby reserved unto the City of Lynchburg.

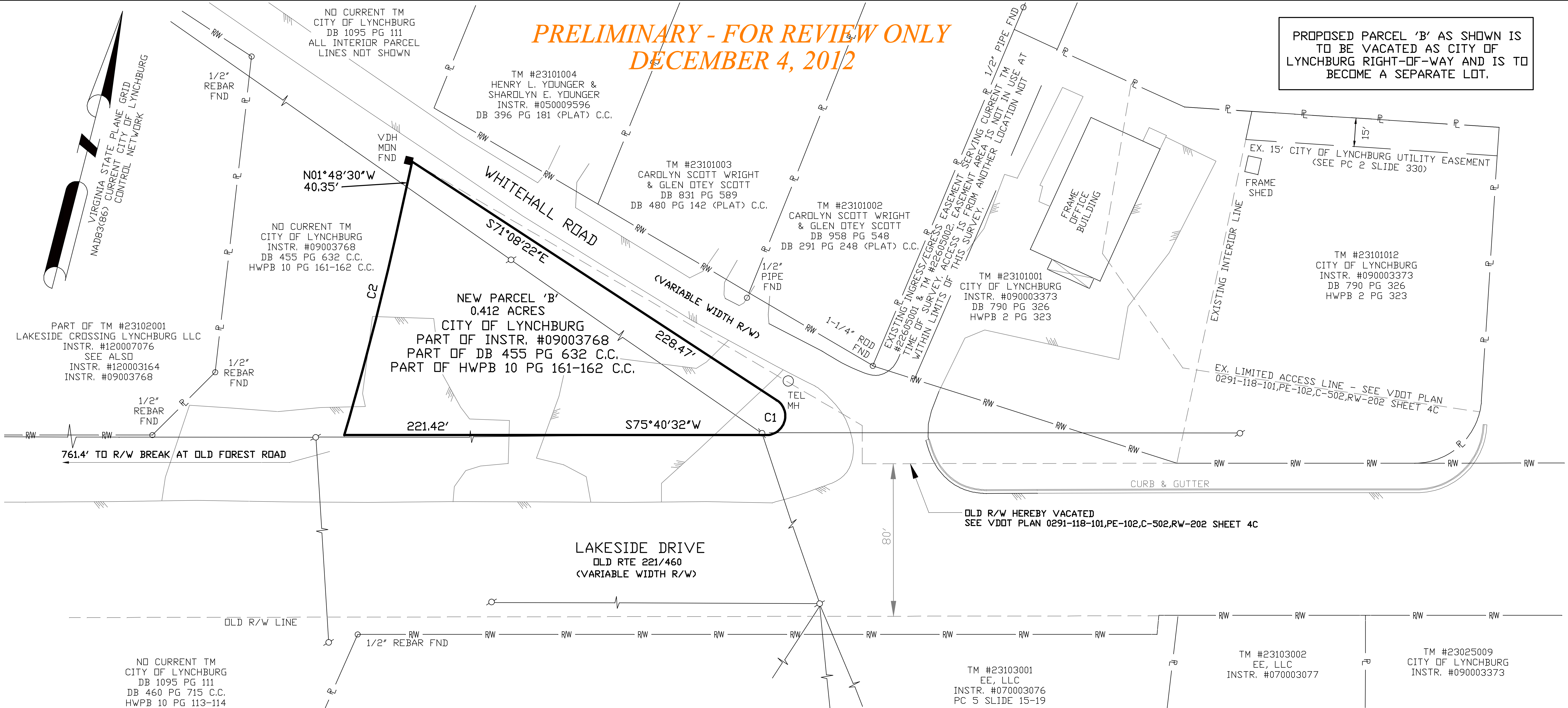
BE IT FURTHER ORDAINED that in so vacating the excess right-of-way, the City hereby creates a separate parcel that will be marketed for sale, that the Clerk of Council is hereby authorized and directed to deliver a dully certified copy of this ordinance to the Clerk of the Circuit Court for the City of Lynchburg so that said certified copy of this ordinance may be recorded as deeds are recorded and indexed in the name of the City of Lynchburg, and the City Manager is hereby authorized to sign any documents that may be needed to complete the vacation of the right-of-way.

Adopted:

Certified: __________________________

Clerk of Council

167K



THE DEDICATION OF THE SUBDIVISION SHOWN HEREON IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS, PROPRIETORS, AND TRUSTEES, IF ANY. THE OWNERS CERTIFY THAT THEY ARE THE FEE SIMPLE OWNERS OF SAID LAND AND ARE LEGALLY ENTITLED TO SUBDIVIDE THE SAME.

CITY MANAGER, LYNCHBURG, VIRGINIA ______ DATE ______

COMMONWEALTH AT LARGE TO WIT:
STATE OF VIRGINIA - CITY/COUNTY OF ______
I, ______ A NOTARY PUBLIC IN AND FOR THE STATE AFORESAID, DO HEREBY CERTIFY THAT THE OWNERS WHOSE NAMES ARE SIGNED HEREON HAVE ACKNOWLEDGED THE SAME BEFORE ME THIS ______ DAY OF ______ ,20 ______
MY COMMISSION EXPIRES ______

NOTARY PUBLIC

THIS PLAT HAS BEEN PREPARED FROM AN ACTUAL FIELD SURVEY AS OF DATE SHOWN HEREON AND THERE ARE NO VISIBLE EASEMENTS OR ENCROACHMENTS EXCEPT AS SHOWN.

THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND THEREFORE DOES NOT NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.

THE AREA SHOWN IS LOCATED IN FLOOD HAZARD ZONE 'X' AS INDICATED ON FLOOD INSURANCE RATE MAP BY FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), COMMUNITY PANEL NUMBER 5100930101D, DATED JUNE 3, 2008. ZONE 'X' IS DEFINED ON SAID MAP AS "AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN".

THIS SURVEY WAS COMPLETED AT THE REQUEST OF ECONOMIC DEVELOPMENT AUTHORITY OF CITY OF LYNCHBURG.

SUBJECT PROPERTY CAN BE SERVED BY CITY OF LYNCHBURG PUBLIC WATER.

SUBJECT PROPERTY IS NOT CURRENTLY SERVED BY CITY OF LYNCHBURG PUBLIC SANITARY SEWER. ADDITIONAL PUBLIC SEWER IS REQUIRED.

THE OWNERS DO NOT WISH TO PLACE RESTRICTIONS ON SUBDIVISION AT THIS TIME.

THERE ARE NO NEW UTILITIES PLANNED AT TIME OF SURVEY.

SUBJECT PROPERTIES SHOWN ARE CURRENTLY ZONED B-5 (GENERAL BUSINESS)

	C2	C1
D	4°00'23"	146°48'54"
R	1537.18'	10.00'
L	107.49'	25.62'
C	107.47'	19.17'
CB	N00°11'42"W	S02°16'05"W

SUBDIVISION PLAT APPROVED:

CITY ENGINEER, LYNCHBURG, VA ______ DATE ______

CITY PLANNER, LYNCHBURG, VA ______ DATE ______

LEGEND
OVERHEAD UTILITY
UTILITY POLE
EDGE OF PAVEMENT
1/2" REBAR SET (UNLESS NOTED OTHER)
CORNER FOUND AS NOTED
R/W MONUMENT FOUND STAMPED AS NOTED

0 40 80 120

COMMONWEALTH OF VIRGINIA
MICHAEL W. CASSIDY
Lic. No. 2396
LAND SURVEYOR

PRELIMINARY FOR REVIEW ONLY

PIEDMONT SURVEYORS PLLC
3831 OLD FOREST ROAD - SUITE 6
LYNCHBURG, VA 24501
434-426-9510
WWW.PIEDMONTSURVEYORS.COM

PROJECT NO. 2012-427
DRAWING NO. 2012-427-2
DATE 11/08/2012
SCALE 1" = 40'
SHEET 1 OF 1

PLAT SHOWING
CITY OF LYNCHBURG RIGHT-OF-WAY VACATION AND CITY OF LYNCHURG PROPERTY DIVISION, AREA OF LAKESIDE DRIVE, OLD FOREST ROAD & WHITEHALL ROAD

CITY OF LYNCHBURG, VIRGINIA

From: Joe Eskridge [mailto:joe_eskridge101@comcast.net]
Sent: Tuesday, November 27, 2012 8:46 PM
To: valeria.chambers@lynchburgva.gov
Subject: FW: Speaking before city council

Valeria,

As a city resident and chairperson of the Lynchburg Area Center for Independent Living (LACIL), I would like to go before City Council--regarding a budget request--on Tuesday, December 11, 2012. May I? Please confirm. Thank you.

Best regards,

Joe Eskridge

101 Two Creek Dr, Lynchburg, VA 24502 - 434-238-0705

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 11, 2012** AGENDA ITEM NO.: 10

CONSENT: REGULAR: WORK SESSION: CLOSED SESSION: (Confidential)

ACTION: INFORMATION:

ITEM TITLE: **Appointment to the Horizon Behavioral Health (Formerly, Community Services Board) Board of Directors**

RECOMMENDATION: Receive the list of candidates interested in serving on the Horizon Behavioral Health Board of Directors.

SUMMARY:

Section 37.2-501 of the Virginia State Code states that prior to making any appointments to a community services board, the local government must disclose and make available to the public the names of those persons being considered for an appointment. Also, the local government must make any information on the candidates available to the public if such information is available to the local government.

PRIOR ACTION(S):

None

FISCAL IMPACT:

None

CONTACT(S):

Valeria P. Chambers 455 -3990

ATTACHMENT(S):

List of candidates

REVIEWED BY: lkp

162K

INDIVIDUALS BEING CONSIDERED FOR
APPOINTMENT TO THE
HORIZON BEHAVIORAL HEALTH BOARD OF DIRECTORS

Currently serving on Board
Clyde T. Clark, Sr.

Volunteers
None

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 11, 2012** AGENDA ITEM NO.: 11

CONSENT: REGULAR: X WORK SESSION: CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Budget Amendment and Appropriation; Technology Trust Fund (TTF) Fees for the Office of the Circuit Court Clerk**

RECOMMENDATION: Adopt a resolution to amend the FY 2013 General Fund budget and appropriate $40,755 with resources from the State Compensation Board, Technology Trust Fund fees to support information technology needs in the Office of the Circuit Court Clerk.

SUMMARY: As required by the Code of Virginia, Section 17.1-279 – Additional fee to be assessed by circuit court clerks for information technology, "the clerk of each circuit court shall assess a $5 fee, known as the "Technology Trust Fund Fee," in each civil action, upon each instrument to be recorded in the deed books, and upon each judgment to be docketed in the judgment lien docket book. Such fee shall be deposited by the State Treasurer into a trust fund." Annually, a portion of this fee is returned to the local Office of the Circuit Court Clerk based on its information technology needs. These funds cannot be used to take the place of current funding supplied by the locality.

PRIOR ACTION(S):
Finance Committee, October 23, 2012

FISCAL IMPACT:
None

CONTACT(S):
Eugene C. Wingfield, Circuit Court Clerk, 455-2611

ATTACHMENT(S):
Resolution

REVIEWED BY: lkp

RESOLUTION;

BE IT RESOLVED that the FY 2013 General Fund budget is amended and $40,755 is appropriated with resources from the State Compensation Board, Technology Trust Fund fees to support information technology needs in the Office of the Circuit Court Clerk.

Introduced: Adopted:

Certified: ______________________________
Clerk of Council

160K

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 11, 2012**			AGENDA ITEM NO.: 12
CONSENT:	REGULAR: **X**	WORK SESSION:	CLOSED SESSION: (Confidential)
ACTION: **X**		INFORMATION:	

ITEM TITLE: **Contract Change Order – Northwest Expressway Drainage Improvements**

RECOMMENDATION:

Adopt a resolution to approve a change order up to the amount of $ 344,404.34 to continue the improvements along the Northwest Expressway to finish the project.

SUMMARY:

The drainage improvement project along the Northwest Expressway (PFC Desmond T. Doss Memorial Expressway) was part of a Revenue Sharing grant that the city received from the Virginia Department of Transportation. The total amount of the grant is $700,000 based on an estimated cost of $660,000. The city bid the work out and the project was awarded to Concrete Foundations Inc. The contract is a unit price contract and staff prepared the contract as a minimal plan contract in which quantities were estimated from aerial photography (no survey measurements were taken). The original contract amount was $378,550.00. Due to additional rock, poor soil conditions and actual material quantities, several items are running over in the contract. To be able to complete the project, using all VDOT Revenue Sharing funds, a change order must be executed. Staff also wants to pave the shoulders with any remaining revenue sharing funds to prepare the expressway for overlay in the summer.

These drainage improvements will help stabilize the roadway surface, improve the management of stormwater along this corridor and prevent erosion of the shoulder.

PRIOR ACTION(S):

PDC Meeting December 11, 2012

FISCAL IMPACT:

Funds for the change order are available from remaining VDOT Revenue Sharing Funds on several projects.

CONTACT(S):

Lee Newland, City Engineer - 455-3947
Dave Owen, Director of Public Works – 455-4469

ATTACHMENT(S):

Resolution

REVIEWED BY: lkp

RESOLUTION:

BE IT RESOLVED THAT a change order up to the amount of $ 344,404.34 is approved to complete the Northwest Expressway Drainage Project as a VDOT Revenue Sharing Project.

Adopted:

Certified: ___________________________

Clerk of Council

164K

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 11, 2012** AGENDA ITEM NO.: 13

CONSENT: REGULAR: **X** WORK SESSION: CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **A Resolution Amending Section 1.7 of the City's Self-Insurance Plan Document**

RECOMMENDATION: Adopt a resolution amending Section 1.7 of the City's Self-Insurance Plan Document to provide liability coverage for individuals hired by the City through temporary employment agencies.

SUMMARY: On December 20, 1985, City Council approved a Self-Insurance Program to cover the City's liability claims and lawsuits. At the same time, City Council also approved a Plan Document for the Self-Insurance Program. The Plan Document explains the Self-Insurance Program and sets forth the general terms and conditions for the administration of the program. Under the Plan Document the Self-Insurance Program provides coverage to the City, the members of City Council, and the City's appointed officials, employees and volunteers.

In recent years in an effort to reduce costs, the City has been hiring individuals from temporary employment agencies to perform certain jobs that in the past were performed by City employees. Utilizing individuals from temporary employment agencies reduces the City's costs because the City does not have to provide medical benefits, VRS benefits, Workers' Compensation benefits or unemployment benefits for such individuals. The City has typically used individuals from temporary employment agencies as refuse associates, administrative assistants, financial technicians, custodians and similar positions. To date, individuals from temporary employment agencies have not been allowed to operate City vehicles as part of their job duties.

The Public Works Department wishes to start a pilot program that will allow individuals from temporary employment agencies to drive City vehicles such as dump trucks, garbage trucks, pickup trucks and other vehicles as part of their jobs. The individuals that are allowed to drive City vehicles will undergo the same Department of Motor Vehicles background checks as City employees and will be supervised by City employees. However, the temporary employment agencies that employ these individuals do not provide liability coverage for motor vehicle accidents arising out of their employees' job duties with the City. Since the City's Self-Insurance Plan currently only provides liability coverage for motor vehicles that are operated by City employees, the Plan Document needs to be amended to provide liability coverage for individuals hired by the City through temporary employment agencies. Public Works will closely monitor the pilot program and if allowing individuals from temporary employment agencies to drive City vehicles results in an increase in accidents the pilot program will be discontinued.

PRIOR ACTION(S): City Council approved the City's Self-Insurance Program and Plan Document on December 20, 1985. The Pan Document was previously amended on August 8, 1995 and July 8, 2003, to clarify language and terminology and to incorporate changes in state laws.

FISCAL IMPACT: It is not anticipated that this amendment to the Plan Document will have a significant fiscal impact on the City since the City is already obligated to handle motor vehicle claims that occur as a result of accidents involving City employees.

CONTACT(S): Walter C. Erwin, City Attorney, 455-3973

ATTACHMENT(S): A resolution amending Section 1.7 of the City's Self-Insurance Plan Document; copy of the Self-Insurance Plan Document

REVIEWED BY: lkp

RESOLUTION

BE IT RESOLVED that Section 1.7 of the Plan Document for the Self-Insurance Program of the City of Lynchburg is hereby amended and readopted as follows:

1.7 Definition of City

In respect to the protection afforded by this Self-Insurance Program, the unqualified word “City” includes, but is not limited to, the following:

A. The City of Lynchburg, a municipal corporation of the Commonwealth of Virginia, including City Council and all of the City’s appointed officials, employees and volunteers, including individuals hired by the City through temporary employment agencies. For the purposes of this Plan, the word “volunteer shall mean any person who has volunteered his or her services to the City and whose services have been accepted by and are performed under the direction and control of a City department and whose volunteer work has been approved by the Risk Manager.

B. Boards, commissions, or authorities, all the members of which are appointed by the City Council, except the Lynchburg Redevelopment & Housing Authority, the Lynchburg School Board and the Greater Lynchburg Transit Company.

C. The automobile liability coverage provided under Section 3, Item 3.3 of this Plan Document applies only to the City and its employees, including individuals hired by the City through temporary employment agencies. Such coverage does not apply:

1. to any person or organization, or to any agent or employee thereof, operating an automobile sales agency, testing agency, repair shop, service station, storage garage or public parking place, with respect to any accident arising out of the operation thereof.

2. with respect to any hired automobile, to the owner or a lessee thereof, other than the City, nor to any agent or employee of such owner or lessee.

Adopted:

Certified: ________________________
Clerk of Council

163K

CITY OF LYNCHBURG SELF-INSURANCE PROGRAM

PLAN DOCUMENT

Originally Adopted: December 20, 1985 with an effective date of January 1, 1986

Revised: July 8, 2003

CITY OF LYNCHBURG SELF-INSURANCE PROGRAM PLAN DOCUMENT

SECTION 1: GENERAL PROVISIONS

SECTION 2: PROPERTY COVERAGES

SECTION 3: LIABILITY COVERAGES

CITY OF LYNCHBURG SELF-INSURANCE PROGRAM
PLAN DOCUMENT

PURPOSE: The provisions of the Self-Insurance Program (the "Program") are intended to provide protection for the City and public officials and employees against claims and liability arising from the performance of official duties. All coverage and costs of defense that are provided hereunder are from public funds, provided as a part of the City's Self-Insurance Program. This Plan Document addresses the administration of the City's Self-Insurance Program, sets forth the types of claims that are covered under the Plan, the limitations and exclusions from coverage, outlines the defense of claims and lawsuits and address the responsibilities of individuals seeking coverage under the Self-Insurance Plan, all as more particularly set forth below.

SECTION 1: GENERAL PROVISIONS

1.1 Interpretation.

The various provisions of this Plan Document shall be interpreted together, to explain the overall intent of the Self-Insurance Plan, and no individual provision shall be interpreted or construed independently of overall context. The masculine shall include the feminine, and vice versa, and the singular shall include the plural, and vice versa, unless the context clearly indicates otherwise. If any provision hereof is ever determined to be invalid or unenforceable for any reason, it shall be deemed severable; and the remaining provisions shall be interpreted or construed so as to continue to effect the overall intent of the Self-Insurance Plan.

1.2 Program Year

The term "program year" wherever used herein shall mean the period beginning July 1, 1986 and each consecutive fiscal year thereafter.

1.3 Self-Insurance Fund

The City will establish a Self-Insurance Fund for the sole purpose of funding the Self-Insurance Program.

1.3 Purchase of Commercial Insurance

The provisions of the Self-Insurance Program notwithstanding, commercial insurance can and should be purchased, when it is financially feasible to do so, to cover as many of the Self-Insurance Fund's exposures as possible.

1.5 Self-Insured Limits

Except as to uninsured/underinsured motorist claims and except as otherwise provided by City Council, the Self-Insurance Program will provide protection up to $500,000.00 per occurrence combined single limit (bodily injury and property damage) for those coverage's listed. The City's maximum aggregate liability for any and all claims or suits shall be $500,000.00 per occurrence, regardless of the number of claims or claimants arising out of the same occurrence, and regardless of the number of persons allegedly responsible for such occurrence, and regardless of the number of acts or omissions that lead to injury of anyone or all of the claimants; provided, however, that the City shall provide a higher limit of liability with respect to such claims if the City is required to do so by statute, but then only to the extent required by statute.

1.6 Self-Insurance Program Deductible

In an effort to increase loss control and safety awareness within the various City departments, the Self-Insurance Program may include deductible provisions. The deductibles will apply when the City becomes liable for a bodily injury or property damage claim resulting from the negligent or careless actions of a covered individual. The department in which the individual causing the bodily injury or property damage is employed will incur the deductible. The City Manager is authorized to approve the necessary procedures to implement a deductible program including the deductible amounts.

1.7 Definition of City

In respect to the protection afforded by this Self-Insurance Program, the unqualified word "City" includes, but is not limited to, the following: .

A. The City of Lynchburg, a municipal corporation of the Commonwealth of Virginia, including City Council and all of the City's appointed officials, employees and volunteers. For the purposes of this Plan, the word "volunteer shall mean any person who has volunteered his or her services to the City and whose services have been accepted by and are performed under the direction and control of a City department and whose volunteer work has been approved by the Risk Manager.

B. Boards, commissions, or authorities, all the members of which are appointed by the City Council, except the Lynchburg Redevelopment & Housing Authority, the Lynchburg School Board and the Greater Lynchburg Transit Company.

C. The automobile liability coverage provided under Section 3, Item 3.3 of this Plan Document applies only to the City and its employees. Such coverage does not apply:

1. to any person or organization, or to any agent or employee thereof, operating an automobile sales agency, testing agency, repair shop, service station, storage garage or public parking place, with respect to any accident arising out of the operation thereof.

2. with respect to any hired automobile, to the owner or a lessee thereof, other than the City, nor to any agent or employee of such owner or lessee.

1.8 Claims Adjustment

A. The City will provide claims administration services through the Risk Management Office or through the services of an independent third party claims administration organization.

B. Claims will, at all times, be adjusted in compliance with this Self-Insurance Program. The Risk Management Office and the City Attorney's Office are authorized to develop Claims Reporting Procedures for the adjustment of claims.

C. The City will provide loss control through the Risk Management Office. The City may also supplement the loss prevention services provided by its staff with the services of an independent loss prevention organization. The Risk Management Office will assist the various City departments with the development of employee safety programs.

1.9 Defense of Claims

A. If any claims for money or any lawsuits are threatened or filed against the City or any member of City Council, any appointed official, employee, or volunteer as defined in Section 1.7, arising from actions or omissions made in good faith in the performance of official duties on behalf of the City of Lynchburg, the City Attorney's Office, subject to the limitations, terms, definitions, exclusions, and provisions set forth in this Plan document, shall represent or shall contract with outside legal counsel to represent the City with respect to such claim or cause of action.

B. The City Attorney, in such manner as he may deem proper, is hereby authorized to compromise and settle, in the amount of $20,000 or less, any litigation or claim involving the interest of the City or brought against the City, arising from the conduct of any covered individual in the discharge of his duties. Any settlement, cost or expense of a claim or judgment awarded against the City shall be taken from the City's Self-Insurance Fund.

C. In the event of a real or potential conflict of interest involving the City Attorney's representation of the City and any covered individuals on any lawsuit or combination of claims or lawsuits; and in the event that any such conflict of interest or other ethical consideration might impede effective representation and legal defense by the City Attorney, the City Attorney is authorized to retain outside or additional counsel, at his sole discretion, to represent any such individuals who shall in his opinion require such counsel.

D. If, because of conflict of interest or for any other reason, the City Attorney determines it necessary or advisable to retain outside counsel to defend a covered individual, the selection of said counsel shall be made solely by the City Attorney and not by the covered individual. The covered individual shall be under a strict and full duty of cooperation with defense counsel, regardless of whether that counsel is a member of the City Attorney's Office or outside counsel.

E. The City may, at the sole discretion of the City Attorney and the City Manager, deny to a covered individual the coverage and/or defense afforded under this Self-Insurance Plan, or limit that coverage and/or defense, where the City Attorney and the City Manager determine that it is in the City's best interest to do so. No action shall lie against the City, its officials and employees, by or on behalf of any covered individual or any other third party to compel or enforce the protection provided by this Self-Insurance Plan, and there shall be no third party beneficiary of this Plan.

1.10 Other Protection/Secondary Coverage

A. The protection provided under this Self-Insurance Program, shall be in excess of and secondary behind any other valid and collectible insurance, self-insurance or protection or indemnity of any kind available to the City or a covered individual, either as an insured under another policy or otherwise. As regards any protection, defense or indemnity provided under the provisions of the Plan Document, insofar as required or permitted by law, it shall only be excess over any other valid and collectible insurance, self-insurance or protection.

B. If, at the time of loss, there is insurance available to the City other than that provided by this Program, which covers such loss or which would have covered such loss except for the existence of this Program, the Self-Insurance Program shall not be liable for any amount other than the excess over any amount which is collectible under such other insurance applicable to a loss hereunder.

1.11 No Reduction by Loss

Notwithstanding any provision in this Program to the contrary, the amount of coverage provided hereunder with respect to any one occurrence shall not be reduced by the payment of any loss under the Program resulting from any other occurrence.

1.12 Actuarial Review

Periodically, the City may arrange for the Self-Insurance Fund have an actuarial or claims reserve review by an outside party. This review will be used to keep the City Administration appraised of the financial condition of the Fund and to ensure compliance with applicable Federal and State requirements.

SECTION 2: PROPERTY COVERAGES

2.1 Limits of Property Coverage and Advances from Self-Insurance Fund

Damage to and losses of City owned real and personal property are covered through the purchase of commercial insurance and are not reimbursed from the City's Self-Insurance Fund. The City's Risk Manager may advance City departments monies from the Self-Insurance Fund for property losses if the City believes it can reasonably expect to recover such sums from a third party through subrogation or some other means. If the City is unable to recover a property loss from a third party, the City department that received an advance from the Self-Insurance Fund must return all monies that were advanced from the Fund prior to the end of the fiscal year in which the monies were advanced.

SECTION 3: LIABILITY COVERAGES

3.1 Comprehensive General Liability (including Law Enforcement Liability and Completed Operations)

The Self-Insurance Program shall, subject to the limitations, terms and conditions contained herein, indemnify the City for all sums which the City shall be obligated to pay by reason of the liability imposed upon the City by law or assumed by the City under a settlement agreement, for damages direct or consequential, and expenses, all as more fully defined by the term "ultimate net loss", on account of personal injuries, including death, at any time resulting therefrom, suffered or alleged to have been suffered by any person or persons (excepting employees of the City injured in the course of their employment); and/or damages to or destruction of property or the loss of use thereof.

3.2 Liability for Underground Storage Tanks

The Self-Insurance Program shall, subject to the limitations, terms and conditions contained herein, indemnify the City for taking corrective action and/or compensating third parties for bodily injury and property damage arising from the sudden or non-sudden accidental release of petroleum based substances from the underground storage tanks owned and/or operated by the City. Such coverage shall be secondary to any coverage provided by any other insurance policy or plan, including the coverage provided by the Virginia Underground Storage Tank Fund, and is further subject to the self-insured limits of Section 1.5 of this Plan.

3.3 Automobile Liability

The Self-Insurance Program shall, subject to the limitations, terms and conditions contained herein, indemnify the City for all sums which the City shall be obligated to pay by reason of the liability imposed upon the City by law or assumed by the City under a settlement agreement, for damages direct or consequential, and expenses, all as more fully defined by the term "ultimate net loss", on account of personal injury, including death, at any time resulting therefrom, suffered or alleged to have suffered by any person or persons (excepting employees of the City injured in the course of their employment); and/or damage to or destruction of property or the loss of use thereof, arising out of the ownership, maintenance or use of any automobile.

3.4 Automobile Medical Payment Coverage

The Self-Insurance Program will not participate in automobile medical payments coverage.

3.5 Uninsured/Underinsured Motorist Coverage

The Self-Insurance Program shall pay all sums the City is legally entitled to recover as damages from the owner of any uninsured or underinsured motor vehicle resulting from bodily injury to or death of any person or injury to or destruction of property caused by an occurrence subject to a maximum limit with respect to each motor vehicle of either $25,000 because of bodily injury to or death of one person in anyone accident and, subject to the limit of one person, to a limit of $50,000 because of bodily injury or death of two or more persons in anyone accident, and to a limit of $20,000 because of injury to or destruction of property of others in any one accident or the minimum amount required to be provided by self-insurers pursuant to Virginia Code Sections 38.2-2226 and 46.2-368 or any successor statutes. The owner's or vehicle operator's liability for these damages must have resulted from the ownership, operation or use of the uninsured/underinsured motor vehicle.

3.6 Incidental Medical Malpractice

The Self-Insured Program shall, subject to the limitations, terms and conditions contained herein, pay on behalf of the City all sums which the City shall be obligated to pay by reason of the liability imposed upon the City by law for damages arising out of incidental professional medical services rendered or which should have been rendered to any person or persons by any duly qualified medical practitioner, or nurse, or technician employed by or acting on behalf of the City provided such liability is based solely upon error, negligence, omission or mistake committed during the period of this program.

3.7 Public Officials Liability and Errors & Omissions Liability

The Self-Insurance Program shall, subject to the limitations, terms and conditions contained herein, indemnify the City against any claim or claims for breach of duty which may be made against the City by reason of any negligent act, error or omission, whenever or wherever committed or alleged to have been committed, on the part of the City or any person who has been, is now, or may hereafter be employed by the City during the existence of the Self-Insurance Program.

3.8 Exclusions

A. Claims that are excluded from coverage

The coverage provided by the Self-Insurance Plan does not apply to:

1. Criminal charges, even if arising from or related to the performance of duties, unless a defense and coverage are requested in writing and the City Attorney and the City Manager, in their sole discretion, the exercise of which such discretion shall not be reviewable or subject to challenge, then make a fact-based determination that the criminal charges and/or penalties sought to be imposed do not entail criminal intent by the covered individual and are for merely technical, unintentional and non-willful violations of statutes, laws, ordinances or regulations which impose criminal liability. The City Attorney and the City Manager may condition providing the costs of defense on a favorable final determination of the criminal charges, such as by a finding of not guilty, a dismissal, or a nol prosse.

2. Damage or destruction of property owned by the City.

3. Any case or claim arising from personal conduct not involving the performance of official official duties by a covered individual, even if the conduct occurred during working hours and/or in the workplace.

4. Any case or claim arising from misconduct of a covered individual that shows a lack of good faith or that is so extreme, and so inconsistent with established policies, practices, or procedures that the misconduct rises to the level of being willful, wanton, or for the purpose of intentionally causing harm, deceiving, or defrauding, even if the conduct occurred during the performance of official duties, or acts which are willful, malicious, wanton or committed outside the scope of employment or authority of the person so acting.

5. Acts performed by constitutional officers and their employees.

B. Types of Damages Which Are Covered and Which Are Excluded

1. The City will provide coverage as set forth in this Plan Document, for compensatory

damages.

2. The City will not provide coverage for criminal fines or for punitive damages, unless the City Attorney and the Manager, in their sole discretion, the exercise of which such discretion shall not be reviewable or subject to challenge, make a fact-based determination that the conduct which gave rise to the criminal fines or punitive damages occurred in good faith and in the reasonable performance of official duty and comprised nothing more severe than simple negligence, inadvertence, or error of judgment. The burden shall be on the individual seeking such coverage to convince the City Attorney and City Manager that such coverage should be provided.

3.9 Additional Exclusions

A. Coverage under this Self-Insurance Plan is provided for the purpose of protecting the City and covered individual from claims made by third parties. Other than for uninsured/underinsured motorist claims, there is no coverage for any damage or loss experienced by any covered individual for personal or bodily injury, injury to reputation, property damage or loss, or any other type of loss whatsoever, even if the damage or loss occurs during the performance of official duties.

B. Neither a defense nor protection will be provided for claims that are covered or protected under another program, by another self-insurer, or by other insurance, including without being limited to, Worker's Compensation, auto insurance, Unemployment Compensation, aircraft and watercraft insurance, etc.

3.10 Conditions of Coverage

A. Duty to Report. If an incident occurs that may reasonably give rise to a claim referred to in this Plan Document, the employee or official involved shall, as soon as practically possibly after the incident, report the incident, pursuant to the City's claims reporting procedures, to Risk Management Office. The report shall include the particulars of the incident, such as time, place, circumstances, and names and addresses of any injured person(s) and witnesses, tc the extent reasonably available.

B. Duty to Provide Notice of Claims and Lawsuits. If a written claim is made or a Bill of Complaint, Motion for Judgment, or any other court paper is served on, mailed to, or otherwise provided to or received by any individual covered under this Self-Insurance Plan, such individual shall immediately deliver the claim or court paper to the City Attorney and shall request that coverage and a defense be provided.

C. Duty of Cooperation. The covered individual shall fully cooperate and assist in the investigation and defense of any claim or lawsuit, including being truthful and making full disclosure to all representatives of the City, cooperating fully in the conduct of litigation, providing any requested authorization for settlements, and cooperating in enforcing any right of contribution or indemnity against any insurer, person, or organization who or which may be liable to the covered individual and/or City. The covered individual shall not do anything to prejudice the rights or financial interests of the City; and to that end the covered individual shall not make any admission, sign any document prejudicial to the City's financial interests, or voluntarily make any payment (other than on his own behalf), communicate directly with the legal representative of an adverse party, or assume any obligation or incur any expense other than first aid to others at the time of the injury. The covered individual shall cooperate fully with the City's representatives in the investigation of any claim, securing of evidence, obtaining attendance of witnesses, attendance at hearings, trials, interviews, etc., and in such other matters as the City shall direct. No loss of pay will be charged against any covered individual because of such cooperation. The covered individual will agree to any settlement negotiated by the City, which does not impose personal liability on the covered individual.

D. Subrogation. In the event of any payment made under this procedure, the City shall be subrogated to all of a covered individual's rights of recovery against any insurer, person or organization, and a covered individual shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. A covered individual shall do nothing to prejudice such rights. Whether or not such act would prejudice any subrogation rights, no person who is maintaining or will maintain an uninsured or underinsured motorist claim against the City may settle, compromise, stipulate to damage with or permit any confession of judgment by any other person, entity or insurer with respect to the same accident, occurrence or injury.

E. Consequence of Failure to Meet Duties. If a covered individual fails to fully, properly, and timely comply with any of the duties imposed by Sections A., B., C. or D., above, then the City may, in its sole discretion, summarily terminate or limit coverage and may cease providing a defense. The City shall promptly notify a covered individual in writing if coverage and/or a defense is so terminated or limited, and the reason for doing so.

3.11 Coverage and Defense and Reservation of Rights

The City may, in its sole discretion, make such investigation and settlement it deems proper before determining whether or not to provide coverage and a defense, and it may initially defend and reserve its rights concerning continued defense and coverage until a later time, pending a more complete factual understanding. If the City later determines that a defense and coverage are not authorized or required hereunder, then it shall not be obligated to continue providing coverage, and its obligation to provide a defense shall be governed solely by the Canons of Professional Responsibility of the Virginia State Bar.

3.12 Cross Liability

In the event of claims being made by reason of personal injuries and/or property damage suffered by any employee of the City for which another City employee is or may be liable, then this Program shall cover such employee against whom a claim is made or may be made.

13.13 Definitions

A. Personal Injuries. The term "personal injuries," whenever used herein, shall include; but is not limited to: bodily injury, mental injury, mental anguish, shock, sickness, disease, disability, false arrest, false imprisonment, false eviction, detention, malicious prosecution, discrimination, humiliation, invasion of right of privacy, libel, slander or defamation of character, piracy or any infringement of copyright or of property, erroneous service of civil papers, violation of civil rights, assaults and battery, and disparagement of property.

B. Property Damage. The term "property damage," wherever used herein, shall mean damage to or destruction of or loss of use of property, excluding, however, damage to property owned by the City, but including damage to property of others in the care, custody or control of the City or property which is purchased by the City under a contract which provides that the title remain with the sellers until payments have been completed, the liability of the Self-Insurance Program being limited to the amount of payments outstanding.

D. Incident or Occurrence. The term "incident or "occurrence," wherever used herein, shall mean an accident or any happening or event or a continuous or repeated exposure to conditions which unexpectedly and unintentionally result in personal injury or damage to property. All such exposures to substantially the same conditions existing at or emanating from one location shall be deemed one occurrence.

E. Ultimate Net Loss. The term "ultimate net loss," shall mean the total sum which the City becomes obligated to pay by reason of claims covered under Section 3 of this Program, either through adjudication or compromise, after making proper deductions for all recoveries and salvages and shall also include, but not limited to, hospital, medical and funeral charges and all sums paid as salaries, wages, compensation, fees, charges and all costs, premiums on attachment or appeal bonds, interest, expenses for doctors, lawyers, nurses and investigators and other persons, and for litigation, settlement, adjustment and investigation of claims and suits which are paid as a consequence of any occurrence covered hereunder, excluding only the salaries of the City's permanent employees.

F. Automobile. The term "automobile" shall mean any motor vehicle, trailer or semi-trailer, including its equipment and any other equipment permanently attached thereto. The word "trailer" shall include semi-trailer.

G. Completed Operations Hazard. Includes bodily injury and property damage arising out of operations, but only if the bodily injury or property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the City. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

1. when all operations to be performed by or on behalf of the City under the contract have been completed,

2. when all operations to be performed by or on behalf of the City at the site of the operations have been completed, or

3. when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or sub-contractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise completed, shall be deemed completed.

The Completed Operations Hazard does not include bodily injury or property damage arising out of:

1. operations in connection with the transportation of property, unless the bodily injury or property damage arises out of a condition in or on a vehicle created by the loading or unloading thereof.

2. the existence of tools, uninstalled equipment or abandoned or unused materials.

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 11, 2012** AGENDA ITEM NO.: **14**

CONSENT: REGULAR: X WORK SESSION: CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Budget Amendment and Appropriation; Department of Homeland Security Federal Emergency Management Agency's National Preparedness Directorate's Grant for a Paramedic Training Project for the Fire Department**

RECOMMENDATION: Adopt a resolution to amend the FY 2013 City/Federal/State Aid Fund budget and appropriate $140,144 with resources from the Department of Homeland Security Federal Emergency Management Agency's (DHS/FEMA) National Preparedness Directorate's FY 2012 Assistance to Firefighters Grant (AFG) in the Operations and Safety category to fund a Paramedic training project for the Fire Department.

SUMMARY: DHS/FEMA awards grant funding through the Assistance to Firefighters Grant (AFG) program with the primary goal of meeting the firefighting and emergency response needs of fire departments and other agencies by assisting with the purchase of critically needed equipment, protective gear, emergency vehicles, training, and other resources needed to protect the public and emergency personnel from fire and related hazards.

The department requested funding for a Paramedic training project. This training would result in national registry paramedic certification for ten (10) employees and includes costs for tuition, textbooks, personnel costs (overtime & back filling vacancies), clinical precepting, and written and practical testing. Lynchburg is experiencing an increase in call volume, particularly EMS responses, which comprise eighty-five percent (85%) of the calls for service. Twelve (12) Advanced Life Support (ALS) employees are eligible to retire, at which point there will be an ALS shortfall in the field. The total cost for the Paramedic training project is $175,180. The department also applied for funds to purchase replacement rescue tools and equipment; however, this funding was not approved.

The grant provides eighty percent (80%) of the approved funding; twenty percent (20%) of the total project cost must be provided by the submitting agency. The twenty percent (20%) match of $35,036 is already available in the City/Federal/State Aid Fund budget for Fire Programs.

PRIOR ACTION(S):
Finance Committee, August 14, 2012
Finance Committee, October 23, 2012

FISCAL IMPACT: None, the required twenty percent (20%) local match is available in the City/Federal/State Aid Fund budget for Fire Programs.

CONTACT(S):
Fire Chief Steven B. Ferguson, 455-6340
Battalion Chief Jason Campbell, 455-6363
Ellen Davidson-Martin, Fire Administrative Manager, 455-6368

ATTACHMENT(S):
Resolution

REVIEWED BY: lkp

RESOLUTION:

BE IT RESOLVED That the FY 2013 City/Federal/State Aid Fund budget is amended and $140,144 is appropriated with resources from the Department of Homeland Security Federal Emergency Management Agency's (DHS/FEMA) National Preparedness Directorate's FY 2012 Assistance to Firefighters Grant (AFG) to fund a Paramedic training project for the Fire Department.

Introduced: Adopted:

Certified: ________________________________
Clerk of Council

159K

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 11, 2012** AGENDA ITEM NO.: 15

CONSENT: REGULAR: **X** WORK SESSION: CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Reimbursement Resolution for Debt Financing of Capital Improvement Project Expenditures**

RECOMMENDATION: Adopt a resolution authorizing reimbursement from bond proceeds for expenditures made by the City in advance of the issuance and receipt of the bond proceeds in accordance with Treasury Regulation Section 1.150-2.

SUMMARY: The attached reimbursement resolution provides for City Council's authorization to temporarily fund capital expenditures using existing cash until the next bond issue occurs which will permanently finance those capital expenditures. In particular, this resolution may be applicable to expenses related to Heritage High School as that project proceeds. Adoption of the resolution provides greater flexibility with respect to funding decisions related to this and other capital projects.

PRIOR ACTION(S): N/A

FISCAL IMPACT: Undetermined

CONTACT(S): Donna S. Witt, Director of Financial Services, 455-3968

ATTACHMENT(S): Resolution Authorizing Reimbursement

REVIEWED BY: lkp

RESOLUTION OF THE COUNCIL OF THE CITY OF LYNCHBURG, VIRGINIA, TO AUTHORIZE THE REIMBURSEMENT FROM THE PROCEEDS OF TAX-EXEMPT OBLIGATIONS OF EXPENDITURES TO BE MADE BY THE CITY IN ADVANCE OF THE ISSUANCE AND RECEIPT OF THE PROCEEDS OF SUCH TAX-EXEMPT OBLIGATIONS

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG, VIRGINIA, AS FOLLOWS:

SECTION 1. The Council (the "Council") of the City of Lynchburg, Virginia (the "City"), hereby approves the financing of the acquisition, construction, installation, furnishing and equipping of capital improvement projects of and for the City, including public school improvement projects and public buildings, streets and bridges and other general municipal improvement projects and water and sewer improvement projects of and for the City (collectively, the "Projects"), through the issuance and from the proceeds of an issue of not to exceed $20,000,000 principal amount of tax-exempt obligations of the City. Of such total amount of $20,000,000, subject to reallocation by the City from time to time, the amount of $15,000,000 shall be allocable to public school improvement projects and public buildings, streets and bridges and other general municipal improvement projects and the amount of $5,000,000 shall be allocable to water and sewer improvement projects of and for the City.

SECTION 2. The Council hereby authorizes the City to make expenditures on the Projects in advance of the issuance and receipt of the proceeds of tax-exempt obligations of the City and to reimburse such expenditures from the proceeds of such tax-exempt obligations. The adoption of this resolution shall be considered as an "official intent" within the meaning of Treasury Regulation Section 1.150-2 promulgated under the Internal Revenue Code of 1986.

SECTION 3. This resolution shall take effect upon its adoption.

Adopted:

Certified: ______________________________
Clerk of Council

165K

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 11, 2012** AGENDA ITEM NO.: 16

CONSENT: REGULAR: **X** WORK SESSION: CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Human Services Building Loan Refunding**

RECOMMENDATION: Adopt resolutions authorizing the City to refund the Series 2003 Bond from the proceeds of a General Obligation Refunding Bond, Series 2012 to be issued by the City and to pay all issuance costs.

SUMMARY: In August 2003, as part of the City's use of historical tax credits for the J.W. Ould Building Project (Human Services Building), the Lynchburg Redevelopment and Housing Authority (LRHA) issued lease revenue bonds in the amount of $6,600,000, bearing interest of 3.8% and maturing on September 1, 2023. The building was then leased to the City for use by the City's Human Services Department with payments equal to the bond service payment. In addition, a parking agreement was signed in which the City agreed to rent parking spaces for use by the Human Services Department staff.

At the December 5, 2012 LRHA Board meeting, the Commissioners approved the refunding of the Series 2003 Bond, termination of the lease and transfer of title to the J.W. Ould Building to the City. They further agreed to release the Deed of Trust and the Assignment of all security held by LRHA for payment of the principal and interest on the bonds. In addition, the Authority is released from the Parking Agreement.

The City will issue a General Obligation Refunding Bond, Series 2012 to refund the Series 2003 Bond. The current outstanding principal is $4,129,625.08. The new interest rate is 2.05% yielding an approximate savings of $432,000 over the remaining eleven years. Council should be aware that this debt will now factor into the City's financial guidelines for debt limits.

An additional resolution is attached to pay or reimburse the Authority any costs incurred by the Authority for this transaction. Estimated issuance costs are $42,000 for attorney fees. SunTrust Bank, the registered owner of the bond, did not charge any bank fees for the transaction.

The City's financial advisor has reviewed and endorsed this transaction.

PRIOR ACTION(S): As noted.

FISCAL IMPACT: Debt Service savings of $432,000 over the remaining life the bonds.

CONTACT(S): Donna S. Witt, Director of Financial Services, 455-3968

ATTACHMENT(S): Resolution for the appropriation of issuance costs; Resolution for the issuance of a refunding bond; Exhibit A

REVIEWED BY: lkp

RESOLUTION

BE IT RESOLVED THAT the FY 2013 General Fund Budget is amended and $42,000 is appropriated from with resources from the General Fund Reserve for Contingencies City Manager's Discretionary Funding for issuance costs related to the FY 2013 General Obligation Public Improvement Bank Qualified Refunding Bond to refinance the Capital Lease for the J. W. Ould Building occupied by Human Services.

Introduced: Adopted:

Certified: ______________________________

Clerk of Council

171K1

RESOLUTION AUTHORIZING THE ISSUANCE OF A CITY OF LYNCHBURG, VIRGINIA, GENERAL OBLIGATION REFUNDING BOND, SERIES 2012, IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED FOUR MILLION TWO HUNDRED THOUSAND DOLLARS ($4,200,000) FOR THE PURPOSE OF REFUNDING ON A CURRENT BASIS THE LYNCHBURG REDEVELOPMENT AND HOUSING AUTHORITY LEASE REVENUE BOND (J.W. OULD BUILDING PROJECT), SERIES 2003, DATED AUGUST 29, 2003

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG, VIRGINIA, AS FOLLOWS:

SECTION 1. Findings and Determinations. The Council (the "Council") of the City of Lynchburg, Virginia (the "City"), hereby finds and determines as follows:

(a) On August 29, 2003, the Lynchburg Redevelopment and Housing Authority (the "Authority") issued its Lynchburg Redevelopment and Housing Authority Lease Revenue Bond (J.W. Ould Building Project), Series 2003, dated August 29, 2003, in the principal amount of $6,600,000, bearing interest at the rate of 3.80% and maturing on September 1, 2023 (the "Series 2003 Bond"), for the purpose of financing the acquisition of the J.W. Ould Building from Commerce Street Partners, L.P. (the "Partnership").

(b) In the resolution adopted by the Board of Commissioners of the Authority on August 19, 2003 authorizing the issuance of the Series 2003 Bond, the Board of Commissioners of the Authority designated the Series 2003 Bond as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986.

(c) By Lease Agreement, dated December 11, 2001 (the "Lease"), the Partnership leased the J.W. Ould Building to the City for use by the City's Human Services Department.

(d) Upon the Authority's acquisition of the J.W. Ould Building and the execution by the City and the Authority of an Addendum to Lease, dated August 29, 2003, the Authority became the successor in interest to the Partnership as Lessor under the Lease.

(e) By Parking Agreement, dated December 11, 2001 (the "Parking Agreement"), the City agreed to rent certain parking spaces to the Partnership for use by occupants of the J.W. Ould Building.

(f) By Addendum to Parking Agreement, dated August 29, 2003, the Authority became the successor in interest to the Partnership under the Parking Agreement.

(g) The Series 2003 Bond is secured by a Deed of Trust, dated as of August 29, 2003 (the "Deed of Trust"), from the Authority, pursuant to which the Authority granted a lien on the J.W. Ould Building and its rights under the Lease, and by an Assignment of Rent and Lease, dated as of August 29, 2003 (the "Assignment"), pursuant to which the Authority assigned to SunTrust Bank (the "Bank"), as purchaser of the Series 2003 Bond, among other things, its rights to certain rental and other payments to be made by the City under the Lease.

(h) The Series 2003 Bond is currently subject to optional redemption upon ten (10) days' notice given by the Authority to the Bank, as the Registered Owner of the Series 2003 Bond, in the event of the exercise by the City of the option to make prepayments under the Lease or from any other money available for such purpose, upon payment of the principal amount of the Series 2003 Bond to be prepaid, plus accrued interest to the prepayment date.

(i) The City proposes to refund the Series 2003 Bond on a current basis from the proceeds of a City of Lynchburg, Virginia, General Obligation Refunding Bond, Series 2012 (the "Refunding Bond"), to be issued by the City. In connection with such refunding, the City and the Bank have agreed that the ten (10) days' notice requirement and other provisions of the Series 2003 Bond applicable to an optional prepayment of the Series 2003 Bond will be waived by the Bank, as Registered Owner of the Series 2003 Bond.

(j) The City has requested the Authority, and the Authority by resolution adopted by its Board of Commissioners on December 5, 2012 (the "Authority Resolution") has agreed, to consent to the refunding of the Series 2003 Bond on a current basis. The City has further requested the Authority, and the Authority in the Authority Resolution has agreed, upon the issuance of the Refunding Bond by the City to the Bank and the cancellation of the Series 2003 Bond by the Bank and the surrender of the Series 2003 Bond by the Bank to the Authority, (i) to terminate the Lease and to transfer title to the J.W. Ould Building to the City and (ii) to release the Deed of Trust and the Assignment and any and all other security held by the Authority for payment of the principal of and interest on the Series 2003 Bond.

(k) The City has represented to the Authority it will release the Authority, effective upon the cancellation of the Series 2003 Bond by the Bank and the surrender of the Series 2003 Bond by the Bank to the Authority, from all obligations arising under, and all liability arising as a result of, the Parking Agreement.

(l) The City has represented to the Authority the City will promptly pay or reimburse the Authority for any amounts, including any taxes or rebates, which become due from the Authority to any other party as a result of (i) the transaction that is the subject of the Authority Resolution, (ii) the Series 2003 Bond and/or (iii) the J.W. Ould Building Project.

(m) The City has represented to the Authority the City will pay all of the costs and expenses, including fees of the Authority's legal counsel, incurred by the Authority, prior to and subsequent to the adoption of the Authority Resolution with respect to the transaction that is the subject of the Authority Resolution.

SECTION 2. Authorization of Issuance of Refunding Bond. (a) Pursuant to Chapter 26 of Title 15.2 of the Code of Virginia, 1950, the same being the Public Finance Act of 1991, there is authorized to be issued a City of Lynchburg, General Obligation Refunding Bond, Series 2012, in the principal amount of not to exceed Four Million Two Hundred Thousand

Dollars ($4,200,000) (hereinbefore defined as the "Refunding Bond") for the purpose of refunding the Series 2003 Bond on a current basis.

(b) The Refunding Bond shall be issued to the Bank in the principal amount then due and owing on the Series 2003 Bond on the date of delivery of the Series 2003 Bond to the Bank. Contemporaneously with the delivery of the Refunding Bond to the Bank, the Bank shall cancel the Series 2003 Bond and surrender the Series 2003 Bond to the Authority.

(c) The Refunding Bond shall bear interest at the rate of two and five hundredths percent (2.05%) per annum, payable quarterly in arrears. The interest rate set forth in the immediately preceding sentence is based on the marginal maximum corporate federal income tax rate in effect on the date of adoption of this resolution of thirty-five percent (35%)*; provided* that in the event of a decrease in the marginal maximum corporate federal income tax rate, the Bank shall have the right to adjust such interest rate upwards in order to maintain the after-tax yield to the Bank; and *provided further* that in no event shall such interest rate exceed two and twenty-six hundredths percent (2.26%) per annum. Interest on the Refunding Bond shall be calculated on the basis of a 360-day year comprised of twelve 30-day months.

(d) The principal of and interest on the Refunding Bond shall be payable in equal quarterly installments on March 1, 2013 and on each March 1, June 1, September 1 and December 1 thereafter to and including June 1, 2023, with a final quarterly installment of principal of and interest on the Refunding Bond being payable on September 1, 2023, the same being the final maturity of the Refunding Bond. The City shall have the right to prepay the Refunding Bond at any time without penalty upon ten (10) days' notice given by the City to the Bank, as Registered Owner of the Refunding Bond.

SECTION 3. Pledge of Full Faith and Credit of City. The full faith and credit of the City are irrevocably pledged to the punctual payment of the principal of and interest on the Refunding Bond as the same become due. In each year while the Refunding Bond is outstanding and unpaid, the Council shall be authorized and required to levy and collect annually, at the same time and in the same manner as other taxes of the City are assessed, levied and collected, a tax upon all taxable property within the City, over and above all other taxes, authorized or limited by law and without limitation as to rate or amount, sufficient to pay when due the principal of and interest on the Refunding Bond to the extent other funds of the City are not lawfully available and appropriated for such purpose.

SECTION 4. Tax Covenant; Refunding Bond Deemed Designated as Qualified Tax-Exempt Obligation. (a) The City covenants and agrees that it shall comply with the provisions of Sections 103 and 141-150 of the Internal Revenue Code of 1986 and the applicable Treasury Regulations promulgated thereunder so long as the Refunding Bond is outstanding.

(b) The Council confirms that the Series 2003 Bond was designated by the Authority as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986 and that the Refunding Bond is deemed designated as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3)(D)(ii) of the Internal Revenue Code of 1986.

SECTION 5. Form of Refunding Bond; Execution and Authentication of Refunding Bond. (a) The Refunding Bond and the certificate of authentication of the Registrar shall be in substantially the forms set forth in Exhibit A attached hereto.

(b) The Refunding Bond shall be executed, for and on behalf of the City, by the manual or facsimile signature of the Mayor of the City and shall have an impression of the corporate seal of the City or a facsimile thereof embossed or imprinted thereon, attested by the manual or facsimile signature of the Clerk of Council or any Deputy Clerk of Council of the City.

(c) The Director of Financial Services is hereby appointed the Registrar for the Refunding Bond and is hereby authorized to execute the certificate of authentication on the Refunding Bond. The Refunding Bond shall not be valid or obligatory for any purpose unless and until the certificate of authentication endorsed on the Refunding Bond shall have been manually executed by the Registrar.

SECTION 6. Ratification, Confirmation and Approval of Actions and Proceedings. All actions and proceedings heretofore taken by the Council, the City Manager, the Deputy City Manager, the Director of Financial Services and the other officers, employees, agents and attorneys of the City in connection with the authorization and issuance of the Refunding Bond are hereby ratified, confirmed and approved.

SECTION 7. Filing of Resolution With Circuit Court. The City Attorney of the City is directed to file a copy of this Resolution, certified by the Clerk of Council of the City to be a true and correct copy hereof, with the Circuit Court of the City in accordance with Section 15.2-2607 of the Code of Virginia, 1950.

SECTION 8. Repeal of Conflicting Ordinances, Resolutions and Other Proceedings. All ordinances, resolutions and other proceedings in conflict herewith are, to the extent of such conflict, repealed.

SECTION 9. Effectiveness of Resolution. This Resolution shall take effect upon its adoption.

Adopted:

Certified: ______________________________
Clerk of Council

171K

EXHIBIT A

UNITED STATES OF AMERICA
COMMONWEALTH OF VIRGINIA
CITY OF LYNCHBURG
GENERAL OBLIGATION REFUNDING
BOND, SERIES 2012

REGISTERED	**REGISTERED**
NO. R-1	**$__________**

INTEREST RATE:	**MATURITY DATE:**	**DATE OF BOND:**
2.05%	**SEPTEMBER 1, 2023**	**DECEMBER __, 2012**

REGISTERED OWNER: **SUNTRUST BANK**

PRINCIPAL SUM: **DOLLARS**

The City of Lynchburg, a municipal corporation of the Commonwealth of Virginia (the "City"), for value received, acknowledges itself indebted and hereby promises to pay to the Registered Owner (named above), or registered assigns, on the Maturity Date (specified above), the Principal Sum (specified above) and to pay interest on such Principal Sum until the payment of such Principal Sum in full, at the Interest Rate (specified above) per annum. The Refunding Bond shall bear interest at the rate of two and five hundredths percent (2.05%) per annum, payable quarterly in arrears. The Interest Rate specified above is based on the marginal maximum corporate federal income tax rate in effect on the date of this Bond of thirty-five percent (35%)*; provided* that in the event of a decrease in the marginal maximum corporate federal income tax rate, the Registered Owner of this Bond shall have the right to adjust such interest rate upwards in order to maintain the after-tax yield to such Registered Owner; and *provided further* that in no event shall such Interest Rate exceed two and twenty-six hundredths percent (2.26%) per annum. Interest on this Bond shall be calculated on the basis of a 360-day year comprised of twelve 30-day months.

The principal of and interest on this Bond shall be payable in quarterly installments in the amount of $________ on March 1, 2013 and on each March 1, June 1, September 1 and December 1 thereafter to and including June 1, 2023, with a final quarterly installment of principal of and interest on this Bond in the amount of $________ being payable on September 1, 2023, the same being the Maturity Date of this Bond. The City shall have the right to prepay this Bond at any time without penalty upon ten (10) days' notice given by the City to the Registered Owner of this Bond.

The Director of Financial Services of the City, in the City of Lynchburg, Virginia, has been appointed as the Registrar for this Bond. The principal of and interest on this Bond are payable in such coin or currency of the United States of America as at the respective dates of payment thereof is legal tender for public and private debts.

This Bond is one of an issue of Bonds aggregating ______________________ _______________ Dollars ($__________) in principal amount issued under and pursuant to and in full compliance with the Constitution and statutes of the Commonwealth of Virginia, including Chapter 15.2 of the Code of Virginia, 1950 (the same being the Public Finance Act of 1991), and a resolution and other proceedings of the Council of the City duly adopted and taken under the Public Finance Act of 1991, for the purpose of refunding on a current basis the outstanding principal amount of a Lynchburg Redevelopment and Housing Authority Lease Revenue Bond (J.W. Ould Building Project), Series 2003, dated August 29, 2003, issued to finance the acquisition of the J.W. Ould Building, the same being leased to the City for use by its Human Services Department.

The full faith and credit of the City are irrevocably pledged to the punctual payment of the principal of and interest on this Bond as the same become due. In each year while this Bond is outstanding and unpaid, the Council of the City is authorized and required to levy and collect annually, at the same time and in the same manner as other taxes of the City are assessed, levied and collected, a tax upon all taxable property within the City, over and above all other taxes, authorized or limited by law and without limitation as to rate or amount, sufficient to pay when due the principal of and interest on this Bond to the extent other funds of the City are not lawfully available and appropriated for such purpose.

This Bond shall not be valid or obligatory unless the certificate of authentication hereon shall have been manually signed by or on behalf of the Registrar.

It is certified, recited and declared that all acts, conditions and things required to exist, happen or be performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other indebtedness of the City, does not exceed any limitation of indebtedness prescribed by the Constitution or statutes of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the City has caused this Bond to be executed by the manual or facsimile signature of its Mayor, a facsimile of the corporate seal of the City to be imprinted hereon, attested by the manual or facsimile signature of the Clerk of Council [or the Deputy Clerk of Council] of the City, and this Bond to be dated the date first above written.

CITY OF LYNCHBURG, VIRGINIA

____

[SEAL]

Mayor

Attest:

____
[Deputy] Clerk of Council

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds delivered pursuant to the within-mentioned proceedings.

By: ______________________________
Director of Financial Services,
as Registrar

Date of Authentication: _______________

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **December 11, 2012**			AGENDA ITEM NO.: 17
CONSENT:	REGULAR: **X**	WORK SESSION:	CLOSED SESSION: (Confidential)
ACTION: **X**		INFORMATION:	

ITEM TITLE: **A Resolution Initiating an Amendment to Section 35.1-11.8 of the Zoning Ordinance**

RECOMMENDATION: Adopt a resolution initiating an amendment to Section 35.1-11.8 of the Zoning Ordinance to replace the terms "retarded or mentally handicapped" and "mentally ill, mentally retarded" with the terms "mental illness, intellectual disability or developmental disabilities."

SUMMARY: In 2012 the General Assembly adopted legislation to eliminate the term "mental retardation" and similar terms from the state code and to replace such language with the term "intellectual disabilities" and similar terms. Section 35.1-11.8 of Lynchburg's Zoning Ordinance, which defines group homes, contains the terms "retarded or mentally handicapped" and "mentally ill, mentally retarded." The section in the state code that defines group homes uses the terms "mental illness, intellectual disability or developmental disabilities." As a result of its discussions at its November 13, 2012, work session and its November 27, 2012, council meeting, City Council decided that the City should follow the State's example and decided that Section 35.1-11.8 of the Zoning Ordinance should be amended to remove the outdated terms "retarded or mentally handicapped" and "mentally ill, mentally retarded" and to replace such language with the terms "mental illness, intellectual disability or developmental disabilities."

PRIOR ACTION(S): City Council discussed this matter at its November 13, 2012, work session and its November 27, 2012, council meeting.

FISCAL IMPACT: None

CONTACT(S): Walter C. Erwin, City Attorney, 455-3973

ATTACHMENT(S): A resolution initiating an amendment to Section 35.1-11.8 of the Zoning Ordinance to replace the terms "retarded or mentally handicapped" and "mentally ill, mentally retarded" with the terms "mental illness, intellectual disability or developmental disabilities."

REVIEWED BY: lkp

RESOLUTION:

WHEREAS, in 2012 the General Assembly adopted legislation to eliminate the term “mental retardation” and similar terms from the state code and to replace such language with the term “intellectual disabilities” and similar terms.

WHEREAS, Section 35.1-11.8 of Lynchburg’s Zoning Ordinance, which defines group homes, contains the terms “retarded or mentally handicapped” and “mentally ill, mentally retarded.”

WHEREAS, the section in the state code that defines group homes uses the terms “mental illness, intellectual disability or developmental disabilities.”

WHEREAS, the City Council has determined that the City should follow the State’s example and that Section 35.1-11.8 of the Zoning Ordinance should be amended to remove the outdated terms “retarded or mentally handicapped” and “mentally ill, mentally retarded” and to replace such language with the terms “mental illness, intellectual disability or developmental disabilities.”

NOW, THEREFORE, BE IT RESOLVED by the City Council that in order to promote the public necessity, convenience, general welfare and good zoning practice the City Council does hereby initiate, will consider and directs City Staff to prepare a proposed amendment of Section 35.1-11.8 of the City’s Zoning Ordinance replacing the terms “retarded or mentally handicapped” and “mentally ill, mentally retarded” with the terms “mental illness, intellectual disability or developmental disabilities.”

Adopted:

Certified: ________________________
Clerk of Council

161K