// A regular meeting of the Council of the City of Lynchburg was held on the 10th day of November, 2009, at 5:00 P.M. in the Council Chamber, City Hall, Joan F. Foster, President, presiding. The following Members were present:

Present: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster 6

Absent: Johnson 1

// Mayor Foster announced that Council Member Johnson was representing the City at the National League of Cities conference in Texas.

// City Manager Kimball Payne along with Legislative Liaison Linda McMinimy presented a proposed Legislative Agenda for the 2010 session of the General Assembly. Mr. Payne stated that a number of positions from the 2009 Legislative Agenda have been removed as they are no longer relevant. Mr. Payne also noted that there are no new positions. Ms. McMinimy provided an overview regarding the Proposed 2010 Legislative Priorities:

<u>Comprehensive Services Act (CSA)</u>: New CSA policy changes and guidelines are being implemented which duplicate the mission of the existing community services board system (to provide mental health services for children). This results in an expansion of mandated services to include a vaguely defined population that does not fit under the traditional foster care or special education definitions. In light of the current budget situation the new policies and guidelines should be reconsidered or their costs borne solely by the State and not shifted to localities.

<u>Local Law Enforcement Funding</u>: The Commonwealth should be equitable in its support for local law enforcement funding both to those localities with police departments (HB 599 funding) and to those in which Sheriff's Departments provide law enforcement (through the Compensation Board). Cities should not bear a disproportionate burden for law enforcement funding through continued reductions in funds provided by HB 599.

<u>Transportation</u>: The General Assembly should ensure that adequate dedicated, non-general fund revenues are available to maintain the current transportation infrastructure, especially bridges and key arterial and collector roadways and adequately support non-automobile transportation modes such as public transportation, pedestrian and bikeways and airports. In addition, provide a dedicated, long-term funding source for intercity rail, specifically, the new Amtrak service between Lynchburg and Boston and the extension of passenger service south to Bristol, the TransDominion Express.

<u>Utility Marking</u>: The General Assembly should support efforts to exempt local governments from State Corporation Commission (SCC) requirements to mark private water and sewer lines. This imposes additional costs and liability exposure on localities.

Ms. McMinimy briefly reviewed the other legislative positions. Mr. Payne stated that the Police Department would like to add the following position to the agenda:

<u>Law Enforcement</u>: In June of 2009 the U.S. Supreme Court upheld a Nevada statute making it a misdemeanor offense for someone who has been lawfully stopped by a law enforcement officer for reasonably suspicious behavior to refuse to identify themselves to the officer. The Supreme Court found

that requiring someone who has been lawfully stopped because of suspicious behavior to identify themselves to a law enforcement officer serves legitimate government interests and is not a violation of the individual's privacy rights. The City recommends that the General Assembly adopt a similar statute during the 2010 Session.

// Council Member Garrett left the meeting at 5:13 p.m.

On motion of Council Member Perrow, seconded by Council Member Gillette, Council by the following recorded vote adopted the 2010 Legislative Agenda with the inclusion of the Law Enforcement position:

Ayes: Dodson, Gillette, Helgeson, Perrow, Foster	5
Noes:	0
Absent: Garrett, Johnson	2

// Council Member Garrett returned to the meeting at 5:18 p.m. during agenda item #2.

// City Manager Kimball Payne reviewed the draft agenda for the joint City Council/School Board meeting on November 17. Several Council Members suggested that an item regarding the FY2011 Budget should be added to the agenda. Mr. Payne stated that he would inform the Schools that this item has been added to the agenda.

// City Attorney Walter Erwin provided an overview regarding options available to City Council in filling the upcoming vacancy on Council. Mr. Erwin stated that the City Charter does not require Council to follow any particular procedure when filling a vacancy. Mr. Erwin explained that the State Code prohibits a person from holding more than one elected office at the same time, and that the taking of the oath for a second elected office by a person vacates any other elected office held by such person. Mr. Erwin went on to say that Section 5(f) of the City Charter provides that a vacancy on City Council shall be filled as follows:

Sec. 5. Council-Composition; election of members; terms and vacancies.

(f) The council shall be a continuing body and no measure pending before such body shall abate or be discontinued by reason of the expiration of the term of office or removal of the members of said body or any of them. Vacancies occurring in the membership of the council shall be filled by the council within thirty days for a term to expire when the qualified voters of the city at large or the ward in which the vacancy occurred, as the case may be, have elected a successor at the next ensuing general election for councilmen and the person so chosen has duly qualified. If the vacancy occurs in a ward, the successor so chosen shall be a registered voter of that ward. All vacancies filled by the council shall be by majority vote of the remaining members.

Mr. Erwin explained that the City Charter does not specify what happens if City Council fails to fill a vacancy within thirty days. Mr. Erwin stated that an October 28, 1982 Opinion from Virginia Attorney General advised that even though the City Charter intends that a vacancy on City Council shall be filled within thirty days, the failure to make an appointment within thirty days does not cause Council to lose its power to make the appointment at a later date or give the circuit court judges the authority to make the appointment. Mr. Erwin went on to say that if Council does not choose to fill the vacant position it simply remains unfilled until the candidate elected at the May 2010 general election takes office on July 1, 2010. Mr. Erwin also advised Council regarding the procedure to fill the upcoming vacancy of the Clerk of Court when he retries at the end of the year. Council Members reviewed the various options that could be used to fill the upcoming vacancy when Council Member Garrett resigns from City Council to become a member of Virginia House of Delegate. Council Member Helgeson stated that with the challenges that the City will face during the upcoming budget process, that a former Council Member, with City budget experience, would be an ideal person for Council to appoint to fill the remainder of Council Member Garrett's term. <u>Council Member Helgeson suggested former Council Member Joe Seiffert as a possible candidate to fill the remainder of Council Member Garrett's term on City Council.</u> Other suggestions included using the process for filling a vacancy on the School Board, i.e., receiving applications/interviewing interested candidates, or having each Council Member bring a list of names of qualified individuals for discussion in a closed meeting. Vice Mayor Dodson questioned if City Council should wait until Council Member Garrett resigns from City Council before proceeding with filling the vacancy, while other Council Members stated that Council needed to proceed with the process in order to have a person ready to take office when the vacancy occurs. Council agreed that since Council Member Johnson was not present this item will be added to the next work session agenda for further discussion.

// During roll call and in response to Council Member Perrow's inquiry, City Manager Kimball Payne stated that the Finance and IT Departments are working on procedures and software changes that need to be in place in order for the City to implement on-line billings/payments, and that it is anticipated that on-line water and sewer billings will be available by March 2010. Mayor Joan Foster announced that there are five members of the Mayor's Youth Council attending the National League of Cities Conference in Texas.

// City Council recessed the meeting at 5.58 p.m.

// City Council reconvened the meeting at 7:30 p.m. Vice Mayor Dodson gave the Invocation, followed by the Pledge of Allegiance.

// Copies of the minutes of the October 27, 2009 meeting, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote approved the minutes as presented:

Ayes:	Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:		0
Absent:	Johnson	1

// In the matter of Finance – General, Resolution #R-09-127 appropriating $500,000 to the FY 2010 General Fund Reserve for Contingencies with resources from the Designated Local Aid to the Commonwealth Reserve, and appropriating $18,045 to the Office of the Clerk of Court to restore funding cut by the State, laid over from the October 27, 2009 meeting, was again presented and read, and on motion of Vice Mayor Dodson, seconded by Council Member Gillette, Council by the following recorded vote adopted the Resolution:

Ayes:	Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:		0
Absent:	Johnson	1

// In the matter of Courts - General, City Council Report #7 was considered. On motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-09-129, as presented, amending the FY 2010 City/Federal/State Aid Fund budget and appropriating $80,000, fully reimbursable, for the provision of screening, assessment, supervision, treatment, and intervention services for the mentally ill who come in contact with the criminal justice system:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Taxes, City Council Report #8 was considered. On motion of Vice Mayor Dodson, seconded by Council Member Gillette, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-09-130, as presented, amending the FY 2010 General Fund budget and appropriating $171,968 to refund an overpayment of erroneously paid business license taxes by Candler Oil Company, Inc. for the calendar years 2006 and 2007:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Police - General, City Council Report #9 was considered. On motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-09-131, as presented, amending the FY 2010 City/Federal/State Aid Fund budget and appropriating $39,933, with $37,408 reimbursement, to provide selective DUI and Occupant Restraint enforcement activities, attend related training, and purchase equipment:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Police - General, City Council Report #10 was considered. On motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-09-132, as presented, amending the FY 2010 City/Federal/State Aid Fund budget and appropriating $26,500, fully reimbursable, to send crash team members to accident reconstruction training and to purchase equipment:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Community Planning - Zoning Amendments, a public hearing was held regarding City Council Report #11 outlining the petition of Lynchburg College to rezone 2.54 acres from I-2, Light Industrial District, to B-5C, General Business District (Conditional), and for a Conditional Use Permit (CUP) to allow the renovation and use of an existing building and paved area as a college academic building with associated parking at 300 Monticello Avenue. City Planner Tom Martin provided a brief summary regarding the petition, stating that the Planning Commission recommended approval for the rezoning and CUP. Mr. John Lewis, representing the petitioner, outlined the request and asked for approval. There was no one else present who wished to speak to this item, and the public hearing was closed. On motion of Council Member Helgeson, seconded by Council Member Perrow, Council by the following recorded vote adopted Ordinance #0-09-133, as presented, approving the rezoning of 2.54 acres at 300 Monticello Avenue from I-2, Light Industrial District, to B-5C, General Business District (Conditional):

Ayes:	Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:		0
Absent:	Johnson	1

On motion of Council Member Helgeson, seconded by Council Member Gillette, Council by the following recorded vote adopted Resolution #R-09-134, as presented, granting a Conditional Use Permit to allow the renovation and use of an existing building and paved area as a college academic building with associated parking at 300 Monticello Avenue:

Ayes:	Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:		0
Absent:	Johnson	1

// In the matter of Community Planning – Historic Board, a public hearing was held regarding an appeal by Michael and Karen Owen to a decision by the Historic Preservation Commission (HPC) regarding the denial of a Certificate of Appropriateness (COA) to paint the brickwork at 3206 Rivermont Avenue. Dr. James Mundy, representing the HPC, provided a brief summary regarding the request. Dr. Mundy explained that a COA is required for any alterations to the exterior of property in Historic Districts. Dr. Mundy stated that the painting of the brickwork was done prior to HPC review, was in violation of the Historic District guidelines, and therefore the HPC denied the COA after the fact. Mr. Michael Owen explained that his house was built in 1941 rather than 1914. Mr. Owen stated that the design guidelines states that brickwork that has never been painted should not be painted unless the exterior is extremely mismatched from earlier repairs or patching. Mr. Owen went on to say that the brickwork on his house is extremely mismatched and that he had already scheduled the brickwork to be painted before he could meet with the HPC. Mr. Owen noted that there are six houses within three blocks of his house with painted brickwork and that he does not feel that he violated the integrity of the historic district. One individual spoke in favor of the request, stating that painting the brickwork makes the house look beautiful. There was no one else present who wished to speak to this item, and the public hearing was closed. Council Member Helgeson stated that the HPC guidelines should not be used to take away private property rights with regard to making changes to the exterior of their houses. Some Council Members commented that Council was being asked to evaluate the appropriateness of the work itself and not the way it came about, that it was unfortunate that the HPC guidelines could not be followed in this instance due to time constraints regarding the scheduling of the painter, but noted that the brickwork was mismatched and the painting of the brickwork did improve the appearance of the property. Following discussion, and on motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote adopted Resolution #R-09-135, as presented, to reverse the decision of the Historic Preservation Commission to deny the Certificate of Appropriateness to paint the brickwork at 3206 Rivermont Avenue:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Community Planning - General, City Council Report #13 was considered.
On motion of Council Member Helgeson, seconded by Council Member Perrow, Council by the following recorded vote adopted Resolution #R-09-136, as presented, approving the dedication and naming of two Public Streets located on the south side of Phillips Circle to be known as "Emeline Drive" and "Creekview Court":

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// On motion of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote elected to hold a closed meeting to consider appointments to Council-appointed Boards and Commissions, i.e., Community Development Advisory Committee, pursuant to Section 2.2-3711(A)(1) of the Code of Virginia, 1950, as amended:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// The meeting was re-opened to the public.

// Council Member Perrow made the following motion:

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

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

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

The Motion was seconded by Council Member Gillette, and Council by the following recorded vote adopted the motion:

Ayes:	Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:		0
Absent:	Johnson	1

// In the matter of Appointments, and on nomination of Council Member Gillette, seconded by Council Member Helgeson, Council by the following recorded vote appointed Michael Bedsworth to serve on the Community Development Advisory Committee to fill an unexpired term ending December 31, 2011:

Ayes:	Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:		0
Absent:	Johnson	1

// The meeting was adjourned at 8:23 P.M. to November 17, 4:30 P.M. to meet with the Lynchburg School Board.

Clerk of Council