

October 11, 2011

099

// A regular meeting of the Council of the City of Lynchburg was held on the 11th day of October, 2011, at 4:00 P.M. in the Council Chamber, City Hall, Joan F. Foster, President, presiding. The following Members were present:

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

6

Absent: Johnson

1

// Vice Mayor Johnson arrived at 4:03.

// Larry Faust with the Urban Deer Management Program gave a report from the Department of Game and Inland Fisheries regarding the City's new "Official Kill Permit Terms and Conditions" as of September 15, 2011.

// City Manager Kimball Payne gave a summary of questions that were asked by Council on September 27, 2011 regarding the Greater Lynchburg Transit Company (GLTC) FY 2012 Supplemental Funding request. Mr. Payne stated that GLTC made the request for \$100,000 from the City to prevent further reductions in services provided by the Greater Lynchburg Transit Company. During Council discussion, Council expressed concerns regarding the audit findings in GLTC's audit report and expressed no confidence in First Transit. Council Member Cary made a motion to defer action on this item until GLTC Board had a chance to meet and reconsider this item, seconded by Council Member Gillette and passed by the following recorded vote:

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

7

Noes:

0

// City Manager Kimball Payne gave a summary of the Proposed Code Amendment regarding Truck Prohibitions on City Streets. Mr. Payne stated that the State Code allows the governing body to delegate to the City Manager the authority to take actions on local streets as to regulatory signs such as stop and speed limits. Mr. Payne further stated that these signs go through a process in Public Works that results in an executive order that is signed by the City Manager for each individual street. The current practice is that truck prohibitions have been treated through the same process as regulatory signs although there is no clear grant of authority as in other sections of the City Code. Mr. Payne stated that he recommended items 9, 10 and 11 be removed to amend the Code. After Council discussion Council Member Perrow, Physical Development Committee (PDC) Chair stated this item came before PDC which recommended that staff draft an amendment to the City Code delegating authority to the City Manager to determine truck prohibitions and to post streets as "No Trucks" where appropriate due to cut-thru traffic or physical restraints. Council Member Perrow made a motion to approve the request which required no second, Council by the following recorded vote approved the draft amendment to the City Code regarding Truck Prohibitions on City Street:

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

7

Noes:

0

// During roll call Council Member Cary thanked Deputy City Manager Bonnie Svrcek and City staff for a great participation at the Virginia 10/4 Miler that was held on September 24, 2011.

// City Council recessed the meeting at 5:04 p.m.

// City Council reconvened the meeting at 7:30 p.m.

The following Members were present:

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

Absent: 0

Council Member Perrow gave the Invocation, followed by the Pledge of Allegiance.

// Council Member Gillette made a statement that he would excuse himself from the closed meeting due to a conflict with Centra Health.

// Copies of the minutes of the September 27, 2011 meeting, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Nelson, seconded by Council Member Cary, Council by the following recorded vote approved the minutes as amended:

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

Noes: 0

// In the matter of Economic Development – General, Resolution #R-11-104 amending the FY 2012 General Fund budget and appropriating \$30,000 to allow the Office of Economic Development to provide incentives to attract and grow arts and cultural organizations, laid over from the September 27, 2011 meeting, was again presented and read, and on motion of Council Member Nelson, seconded by Council Member Cary, Council by the following recorded vote adopted the Resolution:

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

Noes: 0

// In the matter of Library – General, Resolution #R-11-105 amending the FY 2012 City Capital Projects Fund budget and appropriating \$150,000 with resources from a donation from St. John's Episcopal Church to build a dedicated story time room at the Lynchburg Public Library, laid over from the September 27, 2011 meeting, was again presented and read, and on motion of Council Member Nelson, seconded by Council Member Cary, Council by the following recorded vote adopted the Resolution:

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

Noes: 0

// In the matter of Fire – General, City Council Report #8 was considered. On motion of Council Member Nelson, seconded by Council Member Cary, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-11-107, as presented, amending the FY 2012 City/Federal/State Aid Fund budget and appropriating \$7,200, to purchase a Forcible Entry Simulator for the Fire Department's Burn Building:

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

Noes: 0

// In the matter of Fire – General, City Council Report #9 was considered. On motion of Council Member Nelson, seconded by Council Member Cary, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-11-108, as presented, amending the FY 2012

October 11, 2011

101

City/Federal/State Aid Fund budget and appropriating \$7,527, to purchase a Temperature Monitoring System (TMS) for the Fire Department's Burn Building:

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

7

Noes:

0

// In the matter of Police – General, City Council Report #10 was considered. On motion of Council Member Nelson, seconded by Council Member Cary, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-11-109, as presented, amending the FY 2012 City/Federal/State Aid Fund budget and appropriating \$35,820 with resources of \$29,850, an in-kind match of \$5,970, to send crash team members to accident reconstruction training and to purchase equipment:

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

7

Noes:

0

// In the matter of Police – General, City Council Report #11 was considered. On motion of Council Member Nelson, seconded by Council Member Cary, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-11-110, as presented, amending the FY 2012 City/Federal/State Aid Fund budget and appropriating \$51,224, fully reimbursable, to purchase replacement digital in-car video recording equipment and computer tablets:

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

7

Noes:

0

// In the matter of Police – General, City Council Report #12 was considered. On motion of Council Member Nelson, seconded by Council Member Cary, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-11-111, as presented, amending the FY 2012 City/Federal/State Aid Fund budget and appropriating \$53,227 with resources of \$42,137, an in-kind match of \$8,438, to provide selective DUI and occupant restraint enforcement activities, attend related training and purchase equipment:

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

7

Noes:

0

// In the matter of Public Works – Street Vacation, a public hearing was held regarding City Council Report #13 regarding the petition of Ms. Joan Menge to vacate a portion of Hillsman Street located between 416, 420 and 424 Hillsman Street and 513 Brunswick Drive, which extends approx. 3 hundred seventy-eight and 4 tenths (378.4) feet. City Planner Tom Martin provided a brief summary regarding the request. Ms. Joan Menge gave a report of the request and asked for Council approval. 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 item came before PDC and made a motion to vacate a portion of Hillsman Street located between 416, 420 and 424 Hillsman Street and 513 Brunswick Drive. The motion did not require a second, and Council by the following recorded vote

adopted Ordinance #O-11-112, as presented, vacating a portion of Hillsman Street located between 416, 420 and 424 Hillsman Street and 513 Brunswick Drive:

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

7

Noes:

0

// In the matter of Community Planning - Zoning, a public hearing was held regarding City Council Report #14 outlining the petition of First Baptist Church of South Lynchburg for a Conditional use Permit (CUP) at 2431, 2438, 2458, 2467 and 2503 Tazewell Avenue to allow the construction of a church and associated parking in an R-3, Medium-Density Residential District. City Planner Tom Martin gave a summary of the request and stated the Planning Commission recommended approval of the CUP petition. Mr. Scott Beasley representing the petitioner asked for approval of the request. There was no one else present who wished to speak to this item, and the public hearing was closed. On motion of Council Member Cary, seconded by Vice Mayor Johnson, Council by the following recorded vote adopted Resolution #R-11-113, as presented, granting the Conditional Use Permit:

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

7

Noes:

0

// In the matter of Community Planning - Zoning Amendments, a public hearing was held regarding City Council Report # 15 outlining the petition of Ricardo & Cynthia Marshall, Come As You Are Ministries to rezone approximately forty-nine hundredths (.49) acres at 1713 12th Street and 1110 Kemper Street from I-2, Light Industrial District to B-3, Community Business District to allow the use of the existing building as a church and child care facility. City Planner Tom Martin gave a summary of the request and stated the Planning Commission recommended approval of the rezoning request. Mr. and Mrs. Ricardo Marshall, the petitioners, asked for approval of the request. There was no one else present who wished to speak to this item, and the public hearing was closed. On motion of Vice Mayor Johnson, seconded by Council Member Perrow, Council by the following recorded vote adopted Ordinance #O-11-114, as presented, approving the petition of Come As You Are Ministries to rezone approximately forty-nine hundredths (.49) acres at 1713 12th Street and 1110 Kemper Street from I-2, Light Industrial District to B-3, Community Business District to allow the use of the existing building as a church and child care facility:

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

7

Noes:

0

// In the matter of Community Planning - Zoning, a public hearing was held regarding City Council Report #16 outlining the petition of Lynchburg Municipal Employees Federal Credit Union for a Conditional Use Permit (CUP) at 3176 Fort Avenue to allow a comprehensive signage plan which would include a digital display in an R-3, Medium-Density Residential District. City Planner Tom Martin gave a summary of the request and stated the Planning Commission recommended approval of the CUP request. Jane Foster, Manager/CEO, Lynchburg Municipal Employees Federal Credit Union asked for approval of the request. 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 Cary, Council by the following

recorded vote adopted Resolution #R-11-115, as presented, granting the Conditional Use Permit:

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

7

Noes:

0

// In the matter of City Code, a public hearing was held regarding City Council Report #17 regarding amending Section 35.1-22, Buildings, uses and lots, of the Zoning Ordinance. City Planner Tom Martin gave a summary of the request and stated the Planning Commission recommended approval of the Zoning Ordinance request. 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 item came before PDC and made a motion to amend Section 35.1-22, Buildings, uses and lots, of the Zoning Ordinance. The motion did not require a second, and Council by the following recorded vote adopted Ordinance #O-11-116, as presented, amending Section 35.1-22, Buildings, uses and lots, of the Zoning Ordinance:

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

7

Noes:

0

// In the matter of City Code/Community Development – General, a public hearing was held regarding City Council Report #18 regarding amending the Zoning Ordinance by adding Section 35.1-20.1, Zoning Inspection Warrants. City Attorney Walter Erwin stated when City Council considered the issue of zoning inspection warrants at its meeting in June, Council was provided with a summary explaining the history of this matter and a summary of the proposed ordinance. Mr. Erwin further explained that since the ordinance was originally drafted and presented to City Council, with Council Member Nelson's assistance, it has been revised to include a number of additional safeguards to protect the rights of property owners and tenants. The revisions provide that:

- an inspection warrant can only be sought to investigate complaints alleging a non-permitted use of property or violations of occupancy limits.
- an inspection warrant can only be obtained from a judge and not a magistrate.
- the zoning administrator must give the property owner and tenant's prior notice of his intent to seek an inspection warrant.
- the notice to the property owner and tenants must advise them of the date and time the zoning administrator will appear in court to seek an inspection warrant so they can attend the hearing or file a written statement with the court objecting to the issuance of the inspection warrant.
- an inspection warrant must specify the date and time the inspection will take place and can only take place during daylight business hours.
- the inspection warrant must mail a copy of the inspection warrant to the property owner and post a copy on the door of the property at least 5 business days prior to the inspection.

There were 6 individuals that spoke in favor of the Zoning Inspection Warrants and there were 21 individuals that spoke in opposition regarding this item. Some of their concerns were their rights as a home owner and this was unconstitutional and infringed on citizen rights for privacy. There was no one

else present who wished to speak to this item, and the public hearing was closed. Council Member Helgeson stated that it was wrong to make laws for the least common denominator and asked Council Members to go along with the will of the people in the auditorium and with him and vote this down. Council Member Helgeson made a motion, seconded by Council Member Cary to deny the Zoning Inspection Warrants. Council Member Perrow stated that he agreed with Council Member Helgeson and that he believed that personal liberties absolutely trump neighbors desires or inconveniences. Council Member Cary asked does it make sense to make new policy for one or two cases, and that it did not and further stated that he had serious concerns if this zoning ordinance is approved. After further discussion Council voted on the motion and the motion failed by the following recorded vote:

Ayes: Cary, Helgeson, Perrow 3

Noes: Gillette, Johnson, Nelson, Foster 4

On motion of Council Member Nelson, seconded by Council Member Gillette, Council by the following recorded vote adopted Ordinance #O-11-117, as presented, approving the Zoning Inspection Warrants:

Ayes: Gillette, Johnson, Nelson, Foster 4

Noes: Cary, Helgeson, Perrow 3

// In the matter of Community Development – CDBG, a public hearing was held regarding City Council Report #19 regarding approving the 2010 Consolidated Annual Performance and Evaluation Report (CAPER) for the Community Development Block Grant (CDBG) and HOME Program to the U.S. Department of Housing and Urban Development (HUD). Grants Manager Melva Walker provided a summary of the 2010 Consolidated Annual Performance and Evaluation Report. There was no one present who wished to speak to this item, and the public hearing was closed. On motion of Vice Mayor Johnson, seconded by Council Member Gillette, Council by the following recorded vote adopted Resolution #R-11-118, as presented, approving the 2010 Consolidated Annual Performance and Evaluation Report:

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

Noes: 0

// The closed meeting was moved after the work session.

// On motion of Vice Mayor Johnson, seconded by Council Member Gillette, Council by the following recorded vote elected to hold a closed meeting for consultation with legal counsel and briefings by staff members regarding specific legal matters requiring the provision of legal advice, specifically, the discussion of contractual matters between the City and Centra Health, pursuant to Section 2.2-3711(A.)(7) of the Code of Virginia, 1950:

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

Noes: 0

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

// Council Member Helgeson 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 Vice Mayor Johnson, and Council by the following recorded vote adopted the motion:

Ayes: Cary, Helgeson, Johnson, Nelson, Perrow, Foster	7
Noes:	0
Absent: Gillette	1

// The meeting was adjourned at 10:30 P.M.

Clerk of Council