

// A regular meeting of the Council of the City of Lynchburg was held on the 14TH day of June, 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, Johnson, Foster

5

Absent: Nelson, Perrow

2

// Council Member Perrow arrived at 4:02 p.m.

// City Manager Kimball Payne introduced Lynch's Landing Director Anna Bentson. Ms. Bentson gave a brief history of Lynch's Landing with the vision which is to create a downtown environment where people, businesses, organizations, and events can be successful.

// City Manager Kimball Payne stated that on May 5, 2011, City staff met with Vice Mayor Johnson and Council Member Helgeson to discuss the ward boundary adjustments to Ward II and Ward III that are necessary as a result of population changes identified within the 2010 Census. Mr. Payne went on to say the guidelines for redistricting advise that the population for wards should be within five percent (5%) of the ward's ideal population relative to the total population of the City. The ideal population of each ward would be eighteen thousand eight hundred and ninety-two (18,892) individuals. The boundary adjustments also cannot result in "retrogression" or a condition where the minority population does not have the same voting strength. After Council discussion, Council Member Helgeson made a motion, seconded by Council Member Perrow, to authorize City staff to proceed with conducting information meetings and Council by the following recorded vote approved the motion:

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

6

Noes:

0

Absent: Nelson

1

// Community Dialogue on Race and Racism Update was tabled until the June 28 meeting and item #20 regarding Greater Lynchburg Transit Company (GLTC) was heard at this time.

// City Manager Kimball Payne stated that the GLTC Item #20 requesting additional funding to fund operations through June 30, 2011 has been withdrawn. General Manager of GLTC Michael Carroll stated the reasons why the request for additional funds had been withdrawn. Several Council Members had concerns why the request has been withdrawn at this time. Council Member Gillette stated that he had concerns regarding GLTC:

- The GLTC budget was poor
- Had no idea what was going on
- Asked Council for \$280,000 because of increase in diesel fuel, when in fact it was for personnel costs

// City Manager Kimball Payne stated the School Board has endorsed continued participation in committee discussions regarding the consolidation of health benefits. Mr. Payne went on to say in previous discussions, a School Board Member and a City Council Member have served on the Consolidation

Committee as various possibilities for consolidation or greater collaboration were explored. Mr. Payne further stated that the anticipation from future discussion regarding consolidation will focus, at least on the near term, on benefits consolidation alone. As suggested by the consultant, AON Hewitt, that discussion should address a number of issues including:

- Determine operational set up such as shared position for support of ongoing program, joint benefits committee, voting structure
- Consider Rx, Stop Loss and Vision vendor consolidation
- Determine if consultant is needed and, if so, select consultant to serve joint group
- Adopt guiding principals, goals and focus
- Develop long-term strategic plan
- Commence implementation of long-term strategic plan
- Launch competitive bidding of benefits and wellness vendors and conduct negotiations
- Develop communications program for employee population

Mr. Payne stated if the Consolidation Committee will continue to have a role, in either the short or long term, Schools has indicated its intention to have two School Board Members serve on the committee. The immediate issue for City Council to consider is if Council wants to add another Council Member to the Consolidation Committee.

// Department of Emergency Services Director William Aldrich gave a brief summary of the Region 2000 Emergency Communications Regional Cooperative Agreement. Mr. Aldrich stated that overall the regional cooperative agreement and radio communications system have been extremely successful and beneficial to the member agencies. Mr. Aldrich further stated that over the years, several issues have been identified that have caused the Central Virginia Radio Communications Board (CVRCB) to consider updating the agreement to preserve the successful regional effort for the future. Those issues are:

- The bond issue that financed the current radio system will be paid in full in the upcoming fiscal year.
- Harris Corporation has notified CVRCB that many of the infrastructure parts of the system, including the main communications switch, will begin reaching “end of life” status in February of 2014. After reaching “end of life” status Harris will no longer guarantee being able to provide parts to maintain the effected equipment.
- The CVRCB is not a legal entity in and of itself; therefore, it cannot enter into contracts or procure equipment or services under its own name. This has been problematic over the years in providing maintenance services on the system.
- The City of Lynchburg originally agreed to be the “Fiscal Agent” for the CVRCB. Again, this arrangement has proved problematic in procurement and contract efforts since the City was not actually procuring the items for itself.

After Council discussion, Council Member Perrow made a motion, seconded by Council Member Gillette to authorize the City Manager to approve the Region 2000 Emergency Communications Regional

June 14, 2011

063

Cooperative Agreement. Council by the following recorded vote approved the agreement as presented:

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

Noes: 0

Absent: Nelson 1

// During roll call Council Member Cary stated he had three items: 1) Thanked Leslie King on a wonderful speech she delivered at the Yoder Center Celebration of the book "Remembering Tinbridge Hill in Lynchburg, Virginia 1920-1970". 2) Welcomed new Finance Director, Anthony Beckles for Lynchburg Public Schools. 3) To invite City Council to Riverside Park to the Lynchburg Amateur Radio Club's Emergency Exercise starting at 12:00 noon Saturday, June 18th and ending on Sunday, June 19 at 12:00 noon.

// Council Member Helgeson questioned the downtown revitalization spending and handed out a chart showing the assessment from the City in 2001 compared to 2011. The taxable value of the city has grown by approximately 80% and the downtown area has grown about 63% but the actual taxes after you couple all the money that is on rehab where there is no taxes paid, the total tax that has actually increased has been approximately \$300,000+ on property downtown.

// Council Member Perrow stated he had three items: 1) reported that the Public Works crew did a very good job putting down storm pipe in the Richland Hills area. 2) Interested in an update on the consultant work done with the Police Department. 3) Annual request regarding senior citizens requesting closed captioning of city productions.

// Council Member Perrow made a motion to reappoint the following to the School Board seconded by Council Member Cary.

School District 1 – Dr. Regina Dowell-Sowell

School District 3 – Treney L. Tweedy

Appoint School District 2 – Jennifer Poore, and Council by following recorded vote approved the motion:

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

Noes: 0

Absent: Nelson 1

And by consensus of Council the remaining Boards and Commissions appointments were moved to the June 28th meeting. Council Member Gillette congratulated Council Member Cary and Mrs. Cary on their 43rd wedding anniversary.

// City Council recessed the meeting at 6:01 p.m.

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

The following Members were present:

Present: Cary, Gillette, Helgeson, Perrow, Foster 5

Absent: Johnson, Nelson 2

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

// Carolyn Bell presented a book to City Council titled "Remembering Tinbridge Hill in Lynchburg, Virginia – 1920 – 1970".

// Copies of the minutes of the May 24, 2011 meeting, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote approved the minutes as presented:

Ayes: Cary, Gillette, Helgeson, Perrow, Foster	5
Noes:	0
Absent: Johnson, Nelson	2

// In the matter of Budget, Resolution #R-11-064 amending the FY 2011 General Fund budget and appropriating \$859,608 with resources from the savings in the General Fund to fund a staff bonus for the June 30, 2011 pay date and that the Fleet, Water, and Sewer Funds are approved to fund a bonus for staff using savings in the FY 2011 Adopted budgets, laid over from the May 24, 2011 meeting, was again presented and read, and on motion of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote adopted the Resolution:

Ayes: Cary, Gillette, Helgeson, Perrow, Foster	5
Noes:	0
Absent: Johnson, Nelson	2

// In the matter of Circuit Court – General, Resolution #R-11-065 amending the FY 2011 General Fund budget and appropriating \$22,265, with resources from the State Compensation Board, Technology Trust Fund fees to support information technology needs in the Office of the Circuit Court, laid over from the May 24, 2011 meeting, was again presented and read, and on motion of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote adopted the Resolution:

Ayes: Cary, Gillette, Helgeson, Perrow, Foster	5
Noes:	0
Absent: Johnson, Nelson	2

// In the matter of Police – General, Resolution #R-11-066 amending the FY 2011 City/Federal/State Aid Fund budget and appropriating \$33,000, with resources from the 2010 State Homeland Security Program, to purchase thermal imaging equipment for use in critical incident response, laid over from the May 24, 2011 meeting, was again presented and read, and on motion of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote adopted the Resolution:

Ayes: Cary, Gillette, Helgeson, Perrow, Foster	5
Noes:	0
Absent: Johnson, Nelson	2

// In the matter of Police – General, City Council Report # 11 was considered. On motion of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote adopted Resolution #R-11-069, as presented, amending the FY2011City/Federal/State Aid Fund budget and appropriating \$500, fully reimbursable, to supplement the purchase of an electric golf cart to use in driving simulations:

Ayes: Cary, Gillette, Helgeson, Perrow, Foster	5
Noes:	0
Absent: Johnson, Nelson	2

// In the matter of Police – General, City Council Report #12 was considered. On motion of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-11-070, as presented, amending the FY 2011 City/Federal/State Aid Fund budget and appropriating \$16,040, fully reimbursable, to purchase a license plate reader (LPR) for criminal law enforcement use only:

Ayes: Cary, Gillette, Helgeson, Perrow, Foster 5

Noes: 0

Absent: Johnson, Nelson 2

// In the matter of Police – Emergency Communications, City Council Report #13 was considered. On motion of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-11-071, as presented, amending the FY 2011 City/Federal/State Aid Fund budget and appropriating \$85,554, fully reimbursable, to assist in financing the planning process of upgrading the regional radio system:

Ayes: Cary, Gillette, Helgeson, Perrow, Foster 5

Noes: 0

Absent: Johnson, Nelson 2

// In the matter of Community Planning - Zoning, a public hearing was held regarding City Council Report #14 outlining the petition of Spring Hill Cemetery Association for a Conditional Use Permit (CUP) at 3000 Fort Avenue/1550 James Street to allow the construction of an office addition, parking area and columbarium in an R-3, Medium Density, Two-Family Residential District. City Planner Tom Martin gave a summary of the request and stated that the Planning Commission recommended approval of the CUP petition. Mr. Proctor Harvey representing the petitioner gave an outline 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. On motion of Council Member Gillette, seconded by Council Member Helgeson, Council by the following recorded vote adopted Resolution #R-11-072, as presented, granting the Conditional Use Permit:

Ayes: Cary, Gillette, Helgeson, Perrow, Foster 5

Noes: 0

Absent: Johnson, Nelson 2

// In the matter of Community Planning - Zoning, a public hearing was held regarding City Council Report #15 outlining the petition of Virginia University of Lynchburg, Inc. for a Conditional Use Permit (CUP) at 2054 Garfield Avenue to allow the use of an existing dwelling as university offices in an R-3, Medium Density, Two-Family Residential District. City Planner Tom Martin gave a summary of the request and stated that the Planning Commission recommended approval of the CUP petition. Mr. Dave Evans representing the petitioner gave an outline 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. On motion of

Council Member Cary, seconded by Council Member Gillette, Council by the following recorded vote adopted Resolution #R-11-073, as presented, granting the Conditional Use Permit:

Ayes: Cary, Gillette, Helgeson, Perrow, Foster	5
Noes:	0
Absent: Johnson, Nelson	2

// In the matter of Community Planning - Zoning, a public hearing was held regarding City Council Report #16 outlining the petition of Virginia University of Lynchburg for a Conditional Use Permit (CUP) to allow the construction of a two hundred twenty-four bed student dormitory and associated parking in an R-3, Medium Density Two Family Residential District at 2057 Garfield Avenue. City Planner Tom Martin gave a summary of the request and stated that the Planning Commission recommended approval of the CUP petition. Ms. Amy Seippo representing the petitioner gave an outline 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. On motion of Council Member Perrow, seconded by Council Member Cary, Council by the following recorded vote adopted Resolution #R-11-074, as presented, granting the Conditional Use Permit:

Ayes: Cary, Gillette, Helgeson, Perrow, Foster	5
Noes:	0
Absent: Johnson, Nelson	2

// In the matter of Public Works – General, a public hearing was held regarding City Council Report #17 to approve a lease agreement of City owned property located behind 908, 910 and 912 Main Street and part of 914 Main Street on a month-to-month basis to Ralph Wilson, President of 908 Main Street Lynchburg, LLC. Real Estate Manager Steve Lawson gave a 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 Perrow, Physical Development Committee (PDC) Chair stated that this item came before PDC which recommended approval. Council Member Perrow made a motion to approve the request which required no second, Council by the following recorded vote adopted Resolution #R-11-075, as presented, approving a lease agreement of City owned property located behind 908, 910 and 912 Main Street and part of 914 Main Street on a month-to-month basis to Mr. Ralph Wilson:

Ayes: Cary, Gillette, Helgeson, Perrow, Foster	5
Noes:	0
Absent: Johnson, Nelson	2

// In the matter of Economic Development – General, a public hearing was held regarding City Council Report #18 to authorize the transfer of 863 Church Street (The Carter Glass Building) to the Economic Development Authority. Economic Development Director 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. On motion of Council Member Helgeson seconded by Council Member Perrow, Council by the following recorded vote adopted Resolution #R-11-076, as presented, to authorize the transfer of 863

June 14, 2011

067

Church Street property to the Economic Development Authority:

Ayes: Cary, Gillette, Helgeson, Perrow, Foster

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Noes:

0

Absent: Johnson, Nelson

2

// In the matter of City Code/Police – General, City Council Report #19 was considered. On motion of Council Member Helgeson, seconded by Council Member Gillette, Council by the following recorded vote adopted Ordinance #0-11-077, as presented, to amend Sections of the City Code relating to the use of pneumatic guns and to repeal Sections relating to working or transacting business on Sunday:

Ayes: Cary, Gillette, Helgeson, Perrow, Foster

5

Noes:

0

Absent: Johnson, Nelson

2

// In the matter of Greater Lynchburg Transit Company (GLTC), Council Report #20, was moved to the Work Session.

// The only appointments that were made was the School Board; that appointment was made during Roll Call. The remaining Boards and Commissions appointments will be discussed at the June 28, 2011 Council Meeting.

// The meeting was adjourned at 8:17 P.M.

Clerk of Council

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **June 28, 2011**

AGENDA ITEM NO.: 1

CONSENT:

REGULAR:

WORK SESSION: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: Request from Central Virginia United Soccer Club, Inc. (CVU) to Further Amend the Agreement between the City and CVU

RECOMMENDATION: Approve a request to further amend the agreement between the City and Central Virginia United Soccer Club, Inc. (CVU, formerly Lynchburg United Soccer Club, Inc.).

SUMMARY: Last June, City Council approved an amendment to the agreement between CVU and the City regarding the soccer complex located on Route 501 just east of Lynchburg. That amendment provided for the construction of two artificial turf fields in lieu of four natural grass fields and established a ten year window for repayment of the original loan, starting July 1, 2012. A copy of the Council report from that meeting and an excerpt of the minutes are attached for reference. Also attached are a copy of the original 2002 agreement and the 2010 amendment.

Attached is a new request from CVU asking that the agreement be further amended in two aspects:

- CVU would build three natural grass fields instead of two artificial turf fields, taking advantage of a favorable environment for procuring contractor services
- The City would agree to take a second deed of trust position on the property until the construction loan for the new fields is repaid.

It should be noted that when the soccer complex was originally acquired by CVU's predecessor organization, the City was in a second deed of trust position until the debt to the original property owner was satisfied.

If this proposal is approved and proceeds as planned, it appears that there would be more playable fields provided to the community sooner than anticipated.

PRIOR ACTION(S): May, 2002 approval of original agreement; June 22, 2010 approval of amendment.

FISCAL IMPACT: None

CONTACT(S): Kimball Payne, 455-3990

ATTACHMENT(S): June 22, 2010 Council Report; May 2002 Agreement; June 2010 Amendment; June 8, 2011 letter from CVU seeking further amendment; Resolution

REVIEWED BY: lkp

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED THAT The City Manager is authorized to sign a second amendment to the agreement between Central Virginia United Soccer Club, Inc. and the City of Lynchburg to reflect the construction of three additional natural grass fields in lieu of two artificial turf fields and the City taking a second deed of trust position on the soccer complex property until the construction loan for the new fields is repaid.

Adopted:

Certified:

Clerk of Council

104L

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **June 22, 2010**

AGENDA ITEM NO.: 2

CONSENT:

REGULAR:

WORK SESSION: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: Request from Central Virginia United Soccer Club, Inc. (CVU) to Amend the Existing Agreement Between the City and CVU

RECOMMENDATION: Consider a request to amend the agreement between the City and Central Virginia United Soccer Club, Inc. (CVU, formerly Lynchburg United Soccer Club, Inc.) to change the number and type of fields to be constructed and to provide for additional time for compliance.

SUMMARY: In May of 2002 the City entered into an agreement with the Lynchburg United Soccer Club (LUS) that memorialized the terms and mutual obligations related to the City's contribution of funds in support of the development of additional soccer fields in the community. That agreement is attached for Council's reference.

The agreement's main points included:

- A City contribution of \$500,000 to support the development of a ten-field soccer complex
- A fifteen year term for the repayment of the contribution
- Forgiveness of the repayment obligation in annual installments of \$38,500 for every year that LUS operates at least six fields in the complex
- Repayment of any balance after 15 years

CVU has asked to appear on Council's agenda to discuss a proposal outlined in a letter dated June 14, 2010 that would amend the agreement to provide for the construction of two artificial turf fields in lieu of four natural grass fields and to reset the start date for the fifteen year repayment period to July 1, 2012.

PRIOR ACTION(S): May 2002 Agreement

FISCAL IMPACT: None

CONTACT(S): Kimball Payne, 455-3990

ATTACHMENT(S): May 20, 2002 Agreement; Letter from CVU dated June 14, 2010

REVIEWED BY: lkp

Excerpt of the Minutes of the City Council Meeting of June 22, 2010

// In the matter of the Request to Revise the Central Virginia United Soccer Agreement. Council Member Nelson informed that he would abstain from this item because he was involved in the soccer club, and assisted in the negotiation and writing of the agreement and was involved in the initiative to bring this to the Council before he was on Council. City Manager Kimball Payne gave a brief overview of the request stating the main points of the agreement. Mr. Payne further stated that two fields had been built which are in Campbell County and the Central Virginia United Soccer Club, Inc. (CVU) would like to amend this agreement by (1) reduce the fields from 6 to 4, two of which would be artificial turf and (2) the beginning date for the 15-year period for the forgiveness or repayment be reset to July 1, 2012 which gives them 10 more years on this agreement.

Council Member Helgeson asked had the payments been coming back annually. Mr. Payne stated that the agreement doesn't call for a payment; there is a balloon at the end of the 15 years that has to be repaid. Council Member Perrow stated that he liked the idea of the turf fields and that he is supportive of dropping the number of fields to four if they are synthetic fields. Council Member Perrow also stated that there had not been any significant growth in the program towards the soccer complex. Council Member Perrow went on to say that he would support increasing the payback window to ten (10) years.

Council Member Johnson stated he would support the extension of this contract and would like to hear about the specific need for the sports complex. Council Member Johnson felt like there was no need for a complex at this time due to the many fields already available. Mayor Foster stated that she would like to see a multi-sports complex being discussed with the Board whereby not just soccer but other sports could use this complex. Council Member Helgeson stated that making changes to the agreement is a bad precedent and the City needs to stay with the current contract and has not heard a compelling reason as to why there should be changes or amendments. Council Member Gillette stated that he would be willing to amend some but not others and that one turf field could be more valuable as seven (7) grass fields. Council Member Gillette stated that he was comfortable with Council Member Perrow's suggestion to adjust the number of fields and give a little bit of leeway on the payback period.

Council Member Perrow made the following motion "that the agreement be amended to include two (2) natural turf fields and two (2) synthetic turf fields and

extending the term of payment to twenty (20) years.” The motion was seconded by Council Member Gillette. Council Member Helgeson stated that he was not going to support the motion because the City had already had a contract that everybody agreed to and after eight (8) years felt there should have been more progress made and believes it would be setting a bad precedent. After further discussion Council by the following recorded vote passed the motion:

Ayes: Dodson, Gillette, Johnson, Perrow, Foster

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Noes: Helgeson,

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Abstention: Nelson

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AGREEMENT

THIS AGREEMENT is made and entered into this 20TH day of MAY, 2002, by and between the **CITY OF LYNCHBURG**, a municipal corporation of the Commonwealth of Virginia, hereinafter referred to as the "City" and **LYNCHBURG UNITED SOCCER, INC.**, a non-stock, non-profit Virginia corporation, hereinafter referred to as "LUS."

WITNESSETH:

WHEREAS, the City and LUS entered into an agreement dated December 9, 1998 regarding the terms for acquisition and development of a soccer complex to benefit the citizens of Lynchburg; and

WHEREAS, the performance of the terms of that agreement were delayed for reasons mutually beneficial to both the City and LUS; and

WHEREAS, LUS has contracted to acquire and develop real property suitable for a soccer complex, which real property is more particularly described in the attachment described as "EXHIBIT A" (hereinafter referred to as "Site"), as contemplated in the aforesaid agreement; and

WHEREAS, said delays and the terms of LUS's contract to purchase the Site necessitate the City to consent and approve of the same.

WHEREAS, LUS proposes to build a ten field soccer complex on the Site in order to promote and encourage soccer opportunities for youth in the City of Lynchburg and the Central Virginia region; and

WHEREAS, the City approves of the acquisition of the Site by LUS and is willing to complete performance of its previous agreement to make a contribution to LUS for the development of a soccer complex at the Site if LUS meets the terms and conditions contained in this agreement.

NOW, THEREFORE, in consideration of the said payments previously made by the City to LUS, the agreement of LUS to purchase the Site using funds other than those provided by the City, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I. TERM

This agreement shall begin on the date it is executed by the City and LUS and shall continue for as long as LUS owns or operates the proposed soccer complex.

ARTICLE II. CONTRIBUTION BY CITY

(a) The City agrees to pay the balance of the previously agreed-upon contribution of \$500,000.00 to LUS if such funds will be only used for engineering and construction of a soccer complex capable of containing at least ten soccer fields at the Site. The City's contribution may not be used by LUS for any other purposes without the prior written approval of the City. The City has paid \$141,880 to LUS. The balance of the contribution (\$358,120.00) shall be payable to LUS on January 2, 2004 or whenever two full-size (70 yard x 120 yard) soccer fields have been completed and are operational at the Site, whichever event or date shall last occur.

(b) The City's contribution shall be evidenced by a fifteen-year note secured by a deed of trust lien on the Site. Once LUS has acquired the Site, LUS agrees, at its expense, to prepare, execute and record whatever documents are necessary to give the City a deed of trust lien on the Site to secure the \$141,880.00 initial payment from the City. Upon receipt of the balance of the contribution (\$358,120.00), LUS agrees, at its expense, to prepare, execute and record whatever documents are necessary to amend the note and deed of trust to include the entire amount of the \$500,000 payment.

(c) The City will forgive the \$500,000 contribution in annual installments of \$38,500 for each year LUS operates a minimum of six (6) soccer fields at the Site on a regular and sustained basis and complies with all of the other terms and conditions of this agreement. The City will not begin forgiving the \$500,000.00 contribution until LUS has constructed and is operating a minimum of six (6) soccer fields at the Site. The City will not forgive any portion of the \$500,000 contribution during any year in which LUS does not operate a minimum of six (6) soccer fields at the Site or fails to comply with the other terms and conditions of this agreement. At the end of the fifteen (15) year period, LUS must repay any portion of the \$500,000.00 contribution that has not been forgiven by the City.

(d) The fifteen year period for the forgiveness or repayment of the City's contribution shall begin with LUS's receipt of the balance of the contribution payment from the City.

(e) Beginning July 15, 2002, and on January 15th and July 15th of each year thereafter, LUS shall file semi-annual reports with the City, which shall include information showing LUS's progress in constructing the soccer complex, its budget for estimated construction, operation and maintenance costs for the soccer complex, its plans to raise the necessary revenues for the construction, operation and maintenance of the sports complex, the status of its fund raising efforts, its efforts in making the sports complex available to City residents and such other information that will give the City an accurate summary of the activities of LUS in the construction, operation and maintenance of the soccer complex.

ARTICLE III. CONSTRUCTION AND MAINTENANCE OF THE SOCCER COMPLEX

LUS shall purchase the Site and construct soccer fields thereon in a timely manner. The soccer complex at the Site will ultimately include at least ten (10) full size fields (each having a minimum width of approximately 65 yards and a minimum length of approximately 100 yards), parking facilities, restroom facilities and a concession facility.

The City shall have no obligation to provide any funding to LUS beyond the initial contribution of \$500,000. However, during the first five years of the operation of the soccer complex, the City may consider sharing in the maintenance costs of the soccer fields with Bedford County and Campbell County. The sharing of the maintenance costs by the City is contingent

upon LUS and the City developing mutually agreeable field development and field maintenance standards for the soccer complex and upon Bedford County and Campbell County agreeing to share in the maintenance costs on an equal basis with the City. In exchange for such maintenance, LUS will give due consideration to requests from the City to use the soccer fields for soccer activities sponsored or endorsed by the City if usage is compatible with field availability and LUS's policies regarding use of the fields.

ARTICLE IV. CITY'S RIGHT OF FIRST REFUSAL

In the event LUS decides to sell or otherwise transfer the property during the term of this agreement, the City shall have a ninety (90) day right of first refusal to purchase the property at its fair market value as a soccer complex. To determine the fair market value, the City will hire a M.A.I. designated appraiser to appraise the property and LUS will hire a M.A.I. designated appraiser to appraise the property. The fair market value of the soccer complex will be reached by averaging the two appraisals. In determining its fair market value, the property will be appraised as its highest and best use being a soccer complex, and other possible uses of the property shall not be considered in determining its fair market value as a soccer complex.

If the City does not elect to exercise its right of first refusal, LUS may sell or otherwise transfer the property acquired for the soccer complex once LUS has completely retired the \$500,000.00 contribution from the City by either forgiveness of the contribution as provided in

Article (II.) (c) and (d), above, or by repayment of any portion of the remaining balance of the \$500,000.00 contribution that has not been forgiven by the City.

ARTICLE V. SITE APPROVAL

Subject to the conditions imposed upon LUS for future development of the Site, the City does hereby approve the Site as appropriate for LUS to develop the same as a soccer complex in accordance with the aforesaid agreement made between the City and LUS.

ARTICLE VI. NONDISCRIMINATION

LUS agrees that in the use and operation of the soccer complex, it will not, on the grounds of race, color, religion, sex or national origin, discriminate or permit discrimination against any person or groups of persons.

ARTICLE VII. ACTION PLAN

LUS agrees that it will develop and update, as needed, an action plan to make sure the soccer complex will be available to all City residents, and that under-served residents of the City, particularly the youth in the inner City, will be proactively recruited to participate in LUS's soccer programs. A copy of such action plan and updates shall be filed with the City's Parks and Recreation Division by April 1 of each year this agreement remains in effect. LUS will consult with and use the Lynchburg Hunton Young Men's Christian Association as a resource in developing and updating the action plan.

ARTICLE VIII. AUDIT

LUS shall retain the services of an independent, certified public accountant to perform an organization-wide audit for each year this agreement remains in effect. The annual audit shall be performed in accordance within the following standards: (a) the generally accepted Government Operations, Programs, Activities and Functions issued by the Comptroller General of the United States; (b) the standards and specifications as prescribed by the Auditor of Public Accounts for the Commonwealth of Virginia; (c) the generally accepted auditing standards as defined by the American Institute of Certified Public Accountants; (d) the Single Audit Act of 1984; and (e) the OMB Circular A-133. Each annual audit shall be for the calendar year beginning January 1, of each year this agreement remains in effect. The independent auditor shall, after completing the audit examination, submit a formal written report of the audit to the City's Director of Finance.

LUS shall keep true and accurate accounts, records, books and data of its activities, and the City and its representatives shall have the right at all reasonable times to inspect, examine and copy such accounts, records, books and other data related to the soccer complex.

ARTICLE IX. ASSIGNMENT

LUS shall not assign or transfer any of its rights, interests or obligations under this agreement and shall not assign or transfer the operation of the Soccer Complex to any other person, organization, corporation or other entity without the prior written consent of the City.

ARTICLE X. TERMINATION OF AGREEMENT

If LUS (1) has not constructed at least two soccer fields on the Site within three years of the execution of this agreement, or (2) fails to fulfill in a timely and proper manner its obligations under this agreement, or (3) violates any of the terms and conditions of this agreement, and fails to remedy such deficiencies within a period of sixty (60) days after receipt from the City Manager, or his designee, of written notice to remedy the same; the City shall have the right to terminate this agreement at the end of the sixty (60) day notice period and the parties shall have no further rights, liabilities or obligations to one another hereunder, other than that the entire remaining balance of the \$500,000.00 contribution paid to LUS shall at once become due and payable, without notice, to the City. The City's failure to exercise this option in the event of default shall not constitute a waiver of the City's right to exercise the same in the event of any subsequent default.

ARTICLE XI. COMPLAINTS AND NON-COMPLIANCE

In the event the City receives a written complaint from a disclosed source concerning LUS's activities in fulfilling its obligations under this agreement, or if the City discovers a material violation of this agreement by LUS, the City Manager, or his designee, will immediately notify LUS indicating the specific nature of the complaint or the violation. LUS shall respond directly to the complainant or to the City, as appropriate, within ten calendar days of LUS's receipt of notification from the City. Should the complainant or the City determine that LUS's response is inadequate, a meeting shall be held to discuss the matter. If the matter is resolved, LUS will

confirm the resolution of the matter in writing to the City and the complainant. If the matter is not resolved at the meeting, the City will confirm in writing to LUS the areas of dispute and request a response from LUS within ten calendar days. The City will then make a final determination of the resolution of the dispute and transmit its determination to LUS.

ARTICLE XII. FINANCIAL INTEREST

LUS covenants that, in the acquiring of the Site for a soccer complex and constructing and operating the soccer complex, no employee, agent, consultant, officer, or board member of LUS has or shall have any personal, financial interest.

ARTICLE XIII. NOTICE

Notices to LUS under this agreement shall be sufficient if sent, by registered mail, postage prepaid, addressed to the Commissioner, Lynchburg United Soccer, P. O. Box 738, Lynchburg, Virginia 24505-0738, or to such other person as LUS may designate in writing from time to time. Notices to the City shall be sufficient if mailed, by registered mail, postage prepaid, addressed to the City Manager, P. O. Box 60, Lynchburg, Virginia 24505, or to such other person as the City may designate in writing from time to time.

ARTICLE XIV. GENERAL PROVISIONS

(a) Marginal headings contained in this agreement are for convenience only and shall not be considered to amplify, relate to, modify or otherwise affect any of the terms, provisions, or conditions of this agreement.

(b) This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

(c) All terms and conditions with respect to this agreement are expressly contained herein, and both parties agree that no representative or agent of the City or LUS have made any oral representations or promises with respect to this agreement not expressly contained herein.

(d) In the event any provision of this agreement shall be considered to be invalid or unenforceable, then the remaining portions shall remain in full force and effect.

(e) This agreement and the deed of trust and the note referenced herein constitute the entire agreement between the City and LUS. The terms and conditions of this agreement, the deed of trust and note may be amended by a written document executed by both the City and LUS.

(f) LUS agrees to observe and obey during the term of this agreement all federal, state, and local laws, ordinances, rules and regulations, currently in force or subsequently adopted, that apply to the construction and operation of the soccer complex.

(g) While the City is willing to make a contribution to LUS to assist in the development of the soccer complex, the development and operation of the soccer complex is not a joint venture between the City and LUS. Except for the contributions made to LUS by the City, LUS is solely responsible for the construction and maintenance costs, taxes, utilities, trash removal, environmental problems, insurance costs, liabilities, etc. associated with the soccer complex.

(h) LUS cannot use the Site for any purpose other than a soccer complex and related purposes without the prior written approval of the City.

(i) If LUS ceases to exist or operate as a 501(c)(3) corporation before the City's \$500,000,000 contribution has been forgiven by the City or repaid by LUS, the entire remaining balance of the contribution shall at once become due and payable, without notice, to the City.

Executed this 22nd day of May, 2002, by
Kimball Payne, City Manager, representing the City of Lynchburg, and Mark Rinckel,
Commissioner, representing Lynchburg United Soccer, Inc.

CITY OF LYNCHBURG

BY Kimball Payne
City Manager

LYNCHBURG UNITED SOCCER, INC.

BY Mark A. Rinckel
Commissioner

Susan P. Romero
Secretary

EXHIBIT A

All that tract or portion of land located in Long Mountain Magisterial District, Campbell County, Virginia, which originally contained 102.512 acres of land as shown by Plat of Survey made by Ernest C. Hawkins, Jr., C.L.S., dated March 16, 1973, and entitled "Plat Showing a Portion of F. L. Hege Estate", said plat being attached to this deed and made a part hereof by reference; LESS AND EXCEPT those two parcels of land previously conveyed to the Estate of F. L. Hege as follows: (a) 4.40 acres conveyed to the Commonwealth of Virginia by deed dated June 20, 1979, and of record in the Clerk's Office of the Circuit Court of Campbell County, Virginia, in Deed Book 554, Page 634; and (b) 1.273 acres conveyed to Frank L. Hege, Jr., by deed dated February 11, 1985, and of record in the aforesaid Clerk's Office in Deed Book 612, Page 664.

The property herein intended to be conveyed contains 96.839 acres, more or less, said land being sold by the boundary and not by the acre.

The property herein conveyed is a portion of that lot or parcel of land conveyed unto Frank L. Hege by deed dated August 12, 1909, and of record in the aforesaid Clerk's Office in Deed Book 86, Page 442. Frank L. Hege is now deceased and by will recorded in the aforesaid Clerk's Office in Will Book 48, Page 646, conveyed all of his estate to five of his children, namely: Felix D. Hege; Fred W. Hege, Hubert S. Hege, Winnie H. Brown and Effie H. Montgomery, subject to the life estate of Effie Williams Hege, widow. Effie Williams Hege is now

deceased, thereby vesting title to the aforesaid property in the five children of Frank L. Hege. Fred W. Hege is now deceased, and by will of record in the aforesaid Clerk's Office in Will Book 72, Page 112, conveyed all of his property to his wife, Evelyn Manley Hege; Hubert S. Hege is now deceased, and by will of record in the aforesaid Clerk's Office in Will Book 71, Page 231, left all of his property to his widow, Mary Taylor Hege. Effie Hege Montgomery, now being remarried, is now Effie M. Sandridge.

ADDENDUM OF AGREEMENT

THIS ADDENDUM OF AGREEMENT made and dated this 15th day of December, 2010, by and between the **CITY OF LYNCHBURG**, a municipal corporation of the Commonwealth of Virginia (the "City") and, **LYNCHBURG UNITED SOCCER, INC.**, a non-stock, non-profit Virginia Corporation ("LUS").

WITNESSETH:

WHEREAS, the City and LUS entered into an agreement dated May 20, 2002 regarding the terms for the acquisition and development of a soccer complex to benefit the citizens of Lynchburg; and,

WHEREAS, LUS has requested that the May 20, 2002, Agreement be amended to change the terms of the Agreement dealing the number and type of soccer fields LUS must construct at the soccer complex and to modify LUS's repayment obligation to the City. A copy of the request from LUS to modify the terms of the May 20, 2002, Agreement and a copy of the City Council's minutes showing the action taken by Council on LUS's request are attached to this Addendum for informational purposes; and

WHEREAS, the City is willing to modify the terms of the May 20, 2002 Agreement as provided in this Addendum of Agreement.

NOW, THEREFORE, WITNESSETH: For and in consideration of the sum of One Dollar (\$1.00), cash in hand paid, and other valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual promises and covenants hereinafter contained, the City and LUS hereto mutually agree to amend the May 20, 2002 Agreement as follows, to-wit:

ARTICLE III. CONSTRUCTION AND MAINTENANCE **OF THE SOCCER COMPLEX, SECTIONS (c) AND (d)**

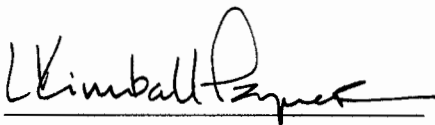
Are hereby amended as follows:

- (c) Beginning on July 1, 2012, the City will forgive the \$500,000 contribution in annual installments of \$50,000 for each year LUS operates a minimum of four (4) soccer fields (provided that at least two of the soccer fields are to be constructed of field turf and must be similar to the turf fields constructed at E.C. Glass and Heritage High School) at the Site on a regular and sustained basis and complies with all of the other terms and conditions of this agreement. The City will not forgive any portion of the \$500,000 contribution during any year in which LUS does not operate a minimum of four (4) soccer fields as described above at the Site or fails to comply with the other terms and conditions of this agreement. At the end of the 10 year period, LUS must repay any portion of the \$500,000.00 contribution that has not been forgiven by the City.
- (d) The ten year period for the forgiveness or repayment of the City's contribution shall begin on July 1, 2012.

Except as modified herein, all the terms and conditions set forth in the May 20, 2002, Agreement between the City and LUS shall remain in full force and effect and shall apply to this Addendum.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum of Agreement to be executed by their duly authorized officers as of the day and year first above written.

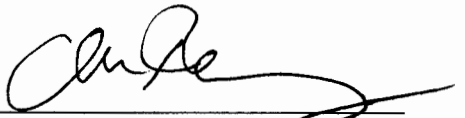
CITY OF LYNCHBURG

By: 

L. Kimball Payne, City Manager

ATTEST: 

Interim Clerk of Council

By: 
Chuck Flournoy, Commissioner

ATTEST: 
Secretary



June 14, 2010

Mr. Kimball Payne
City Manager
City of Lynchburg

Dear Kim:

As the Commissioner of Central Virginia Soccer Club, Inc. (formerly Lynchburg United Soccer Club, Inc.), I request to be added to agenda for the June 22, 2010 City Council meeting.

Together with other members of our Board of Directors, I wish to petition Council to amend CVU's existing Agreement with the City (dated May 20, 2002) in two ways:

1. To amend Article II., Section (c) such that the minimum number of fields required to begin forgiveness of the City's contribution is reduced from six to four, provided that the two remaining to be built are of field turf – type construction (similar to those at E.C. Glass and Heritage High Schools) rather than grass as originally planned.

This is an important change made possible by advances in the field turf technology over the last few years and validated by our own experience with the turf fields at Glass and Heritage. For instance, our Spring Tournament would have been cancelled completely due to wet field conditions and the ensuing damage and safety concerns had we not secured the opportunity to fulfill a partial schedule at E.C. Glass. The economic impact our tournaments have on the City was well documented in our last report to the City (amounting to over \$2M in the last three years using standard economic multipliers); to cancel tournaments due to unplayable field conditions dramatically reduces their positive economic impact and makes it difficult to compete against other cities and clubs which do offer turf fields. In short, the economic and program advantages of two turf fields far outweigh the importance of the four grass fields that were originally contemplated.

2. To amend Article II., Section (d) such that the beginning date for the fifteen year period for the forgiveness or repayment of the City's contribution is re-set to July 1, 2012.

The financial and philanthropic climate has changed greatly since the creation of this agreement. The ability of non-profit organizations in Lynchburg and throughout the country to raise capital funds has been severely limited in the years since our agreement was created. During these years, we have focused our efforts on improving the breadth and quality of our programs. The results have been significant: our travel program has grown to over 20 teams which have achieved success at some of the

most prestigious tournaments in the country; our new Academy program has grown to over 40 players in its first year; and our recreation program serves over 600 participants annually.

Much of this success may be attributed to the hiring of a full-time Club Director and subsequently a full-time Technical Director. We have also focused on expanding the club's geographic horizons, and now serve players from throughout the Region 2000 area.

The Complex has already paid dividends to the City, in that our entire recreation program is now conducted at the Complex – which relieves the City's schools, parks and public areas from having to be maintained and prepared as they were in the past. This is a cost savings to the City from a maintenance and personnel perspective, and opens up City spaces on weekends for other sports or family activities. The resulting tangible and intangible public relations benefit to the City and its taxpayers was not contemplated nor promised by CVU when the agreement was drafted. In fact, when the agreement was first made with the City, not only was travel practice to be prohibited on the fields at the Complex but no recreational competition was ever planned to be held at the Complex and the City would have continued to be responsible to maintain its venues for that purpose.

I would point out as well that the Complex has allowed the City to use the two lighted fields at Peaks View #4 and #5 for softball competition. The Complex was originally planned to be only a "showcase" site for weekend matches and special competition, not a routine practice site nor a recreational facility. By enabling our travel teams to practice and play matches at the Complex instead of Peaks View #4 and #5, the City has been able to devote these fields for softball league competition – which provides more income to the City but results in significantly higher maintenance fees for CVU due to increased usage.

Our club has borne the complete expense of Complex maintenance throughout its existence. We have also made a number of capital improvements, including the addition of more parking lots, new drainage areas and requisite fencing, and additional pump and watering facilities.

Over the course of the last two years, our Board of Directors has engaged in a series of strategic planning exercises which have identified the addition of two turf fields at the Complex as our most pressing need. Additional field space will facilitate the continued growth and development of the club, as well as ensuring the continued growth and success of our tournaments. A Complex Advisory Board is now being formed which will oversee a capital campaign aimed at adding two new turf fields to the Complex, should Council agree to amend our existing agreement to allow this change in design.

In May, we hosted a fundraising event – raising over \$25,000 – which will enable us to update the master plan for the Complex. We expect the new engineering study to demonstrate that the addition of two turf fields will enable us to achieve our growth and service objectives more efficiently than would the addition of four grass fields. Importantly, the turf fields dramatically reduce the need for water, which should negate the originally planned need for a dam and reservoir.

Further, by re-setting the beginning date for the fifteen year period for the forgiveness or repayment of the City's contribution, Council will enable CVU to raise funds for a reasonable period in which potential donors need not fear that their contributions will be used to repay the debt to the City.

In short, we ask Council to amend our agreement with the City in recognition of the fact that the original intent of the agreement has already been accomplished. We are already hosting tournaments which have made a significant economic impact in the region, and commercial enterprises throughout the City are already enjoying the benefits from them.

We are a non-profit entity that has and continues to serve the children, families, educational, social and commercial interests of the community, fulfilling a need for youth sports activities that makes the City of Lynchburg and the surrounding area a more attractive place to live and raise children. We ask that you support our mission and continued growth and success by amending our agreement as we have outlined above.

Sincerely,

Chuck Flournoy

Chuck Flournoy
Commissioner



June 8, 2011

Mr. L. Kimball Payne
City Manager
City of Lynchburg
900 Church Street
Lynchburg, VA 24504

Dear Mr. Payne:

On behalf of the Board of Directors of Central Virginia United Soccer Club, Inc., (formerly Lynchburg United Soccer) I would like to be placed on Council's agenda for the June 28 meeting.

Our purpose in returning to Council following our appearance last June is to request two further adjustments to the amendment of the CVU agreement with the City concerning the Central Virginia Regional Soccer Complex. Changes in the local construction climate have presented us with an opportunity to move much quicker with the addition of fields than we originally anticipated. However, we need Council's help.

Over the last several months, our Complex Advisory Committee - which includes Board members as well as members of the business community - has been meeting regularly to address our immediate need for more fields. The Committee commissioned Darryl Glass of Coleman-Glass Construction to produce a scope of work and to seek bids for the most expedient way to complete as many fields on the Complex property as possible in a relatively short period of time. This planning was prompted in large part by knowledge of the impending closure of the Peakview 8&9 game fields for maintenance and rest in 2012, and also by a desire to complete the Complex so that it may be used for tournaments to an even greater extent.

The report we received was surprising. Whereas the original master plan estimated an average cost of \$200,000 per grass field for construction, the new estimate showed that we could build three additional fields for \$350,000 total (including necessary roads, drainage and parking areas). We realized as well that construction costs for any more than these three will be significantly more expensive, based on the difficult topography of the remaining contiguous areas of the property. This opportunity is short-lived in that we have been advised that as the economic climate improves, construction firms will not take on projects such as this at near-cost pricing.

With this information in hand, we approached the Bank of the James regarding a short term construction loan of \$350,000 which would enable us to begin construction of the additional three fields immediately. They have confirmed a willingness to provide this loan - with the condition that they occupy the position of first lien holder.

Thus we come before Council to request two changes to our existing agreement with the City concerning the Complex:

1. We request the City move to a second position on the lien on the 96-acre property, which would enable CVU to use the property as collateral for a construction loan.
2. We request the City accept completion of these three additional grass fields as the new criteria for final compliance regarding our Agreement. This would bring the total number of full-size regulation soccer fields at the Complex to five, just one short of the six originally called for in our Agreement with the City but still more than sufficient to conduct tournaments.

With the passage of these two slight adjustments, we will proceed with construction immediately. Time is of the essence; we need to have the grading and surface preparation done so that seeding may be done this fall. First use could come as early as the spring of 2012.

A great deal of work and planning has brought us to this point and put us in a position to take advantage of this opportunity.

- A test well has been drilled to confirm that there is more than sufficient water available to maintain these new fields.
- Corporate donors have come forward with the promise of significant financial contributions which will anchor our capital campaign, contingent upon our ability to reach agreement with the City and begin construction immediately.
- Several local businesses have demonstrated their support for the Complex in a tangible way by bringing their employees to the Complex as part of their "Day of Caring" activities.
- Plans have been drawn for a Pavilion at the Complex to house concessions, restrooms, storage and office space, along with a playground and picnic area for families visiting the Complex.
- Plans now call for the eventual conversion of one of these three new fields to become a Championship turf field.

The major fundraising campaign which is already underway will gain significant momentum from the start of construction, enabling us to fund these additional improvements through private donations.

The City's support for these plans is critical - and in our view more than justified based upon the valuable service which CVU has provided to its constituents for over 30 years. Indeed, had the City funded and staffed its own recreational soccer program for these many years the expenditures would total far more than the \$500,000 which the City has provided to CVU as seed money for the Complex. Further, from its inception CVU has paid the total cost of maintaining the Complex, even though our Agreement contemplates City assistance

which we have never requested nor has any been received. Finally, the preferred outcome upon which the City justified its investment in the Complex has already been realized, in that CVU is already conducting tournaments and bringing significant economic impact to the community with only the two fields currently completed.

From my understanding of our Agreement, the initial grant was never seen by the City as a debt that was budgeted with the hope or expectation to eventually be repaid unless the Complex did not generate the commercial activity for which it was intended. The Complex is indeed fulfilling the City's goal to spur the creation of a Complex which would serve the community's need for recreational activities for its youth and also provide local businesses with positive economic impact was on target and obtainable. These benefits are happening already.

With these considerations in mind - and with the knowledge that passage of these two adjustments to our Agreement will enable us to begin construction of three new fields almost immediately - we ask Council to act favorably upon our petition in the best interests of not only the children and families of our community but also the various business and commercial interests which will continue to benefit from our growth and programs.

Respectfully submitted,

Chuck Flournoy
Past Commissioner
Central Virginia United Soccer, Inc.



Central Virginia United, Inc. • P.O. Box 738 • Lynchburg, VA 24505-0738

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **June 28, 2011**

AGENDA ITEM NO.: 3

CONSENT:

REGULAR:

WORK SESSION: **X**

CLOSED SESSION:

(Confidential)

ACTION:

INFORMATION: **X**

ITEM TITLE: **Many Voices – One Community, Community Dialogue on Race & Racism Update**

RECOMMENDATION: No Action Required.

SUMMARY: In 2007, the Many Voices One Community (MVOC), Community Dialogue on Race and Racism initiative began with the leadership of a working group comprised of City employees and other leaders throughout the community. This group successfully organized over 50 study circles with over 1300 participants. As a result of the first round of study circles, action groups were formed to implement the ideas generated in study circles. In 2008, the working group transitioned to an advisory board which was endorsed by City Council to begin leading the efforts of the Community Dialogue on Race & Racism. MVOC continues to engage the community in study circles, action groups and to support organizations with similar missions as MVOC within the community. The mission of MVOC is to create a racially equitable community where race and/or ethnicity are not predictors of success in any aspect of life and where public policies, institutional practices and social structures no longer favor one group over another. MVOC is dedicated to making racial equity a reality in our community.

Assistant to the City Manager Leslie King, along with members of the MVOC Advisory Board, Gloria Preston and Everett Heath, will provide an update on recent activities of the Community Dialogue, will outline plans for future activities, and will answer questions.

PRIOR ACTION(S): N/A

FISCAL IMPACT: N/A

CONTACT(S): Leslie King, 455-4212

ATTACHMENT(S): None

REVIEWED BY: lkp

103L

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **June 28, 2011**

AGENDA ITEM NO.: 4

CONSENT:

REGULAR:

WORK SESSION: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Line of Duty Funding**

RECOMMENDATION: Independently self-fund the costs of the State mandated Line of Duty benefits and approve the attached resolution opting out of the VRS Line of Duty Trust Fund.

SUMMARY: The Line of Duty Act was created in 1966 to provide a death benefit to public safety employees killed in the line of duty. The Act has been amended over the years to expand the benefits, most notably to add the continuation of health care benefits. Public safety employees include law enforcement and correctional officers, firefighters, EMTs, paramedics and volunteer fire and rescue personnel. These benefits are in addition to others provided by the Virginia Retirement System (VRS) group life insurance and the public safety death benefits provided by the federal government.

In the 2010 session of the General Assembly, the budget conference committee introduced a budget amendment to shift the cost of the Line of Duty Act from the general fund of the state to the local governments. This amendment passed the General Assembly and the shift in costs became effective July 1, 2010.

Effective July 1, 2010, a Trust Fund was created in VRS to pay the FY2011 costs of approximately \$9,500,000. The Trust Fund borrowed from the VRS Life Insurance program to fund the FY2011 costs. These funds must be paid back to the life insurance fund starting in FY2012.

The Line of Duty benefits are administered by the State Department of Accounts. Claims are normally investigated by the State Police. Payments for benefits are now being made from the Line of Duty Trust Fund.

Effective July 1, 2011, all local governments must either:

- Start paying the Line of Duty Trust Fund the currently advertised rate of \$233.89 per eligible paid employee and \$58.47 per eligible volunteer. If this option is chosen, the local government has until June 30, 2012 to opt out of the Trust Fund or the decision becomes irrevocable; or
- Opt out of the Trust Fund and self-fund the benefit

PRIOR ACTION(S): \$105,952 was appropriated in the FY2012 Budget for Line of Duty funding

FISCAL IMPACT: Approximately \$41,500 from the City's medical fund to reimburse the Department of Accounts for FY2011 Line of Duty costs for City of Lynchburg beneficiaries

CONTACT(S): Kimball Payne, 455-3990; Margaret Schmitt, 455-4208

ATTACHMENT(S): VRS Opt-Out Resolution
Line of Duty Presentation

REVIEWED BY: lkp

RESOLUTION

Irrevocable Election Not to Participate in Line of Duty Act Fund

WHEREAS, pursuant to Item 258 of the Appropriations Act, paragraph B, the Virginia General Assembly has established the Line of Duty Act Fund (the "Fund") for the payment of benefits prescribed by and administered under the Line of Duty Act (Va. Code § 9.1-400 et seq.); and

WHEREAS, for purposes of administration of the Fund, a political subdivision with covered employees (including volunteers pursuant to paragraph B2 of Item 258 of the Appropriations Act) may make an irrevocable election on or before July 1, 2012, to be deemed a non-participating employer fully responsible for self-funding all benefits relating to its past and present covered employees under the Line of Duty Act from its own funds; and

WHEREAS, it is the intent of The City of Lynchburg to make this irrevocable election to be a non-participating employer with respect to the Fund;

NOW, THEREFORE, IT IS HEREBY RESOLVED that The City of Lynchburg hereby elects to be deemed a non-participating employer fully responsible for self-funding all benefits relating to its past and present covered employees under the Line of Duty Act from its own funds; and it is further

RESOLVED that the following entities,

Lynchburg Police Department
Lynchburg Fire Department
Lynchburg Sheriff's Department

to the best of the knowledge of The City of Lynchburg, constitute the population of its past and present covered employees under the Line of Duty Act; and it is further

RESOLVED that, as a non-participating employer, The City of Lynchburg agrees that it will be responsible for, and reimburse the State Comptroller for, all Line of Duty Act benefit payments (relating to existing, pending or prospective claims) approved and made by the State Comptroller on behalf of The City of Lynchburg on or after July 1, 2010; and it is further

RESOLVED that, as a non-participating employer, The City of Lynchburg agrees that it will reimburse the State Comptroller an amount representing reasonable costs incurred and associated, directly and indirectly, with the administration, management and investment of the Fund; and it is further

RESOLVED that The City of Lynchburg shall reimburse the State Comptroller on no more than a monthly basis from documentation provided to it from the State Comptroller.

Adopted:

Certified:

Clerk of Council

Line of Duty Act Funding

Public Safety Benefits Previously
Funded by the Commonwealth

The Line of Duty Act

- Provides benefits to paid and volunteer first responders who die or become disabled in the line of duty
- Defined and governed by Virginia Code
- Administered by the Department of Accounts (DoA)
- Only change is that funding shifted from State to localities for local covered members as 7/1/10

The Benefits

- \$100,000 for death occurring as a direct or proximate result of official duties
- \$25,000 for death by presumptive causes while active or within 5 years of retirement
- Continued health care coverage for disabled employee, spouse or surviving spouse, dependent children to age 21
- College tuition at a VA public school for spouse and children (funded by the school)

Eligible Employees/Volunteers Covered by the City of Lynchburg

- Police Officers
- Firefighters
- Sheriff and Deputies
- Employee Members of VA National Guard
- Employee Members of VA State Defense Force
- Volunteer Police Chaplains
- ? Life Saving Crew – DoA may approve benefits

Current Situation

- 5 existing LOD beneficiaries
- 365 eligible employees
- Funding shift to localities was effective 7/1/10
- DoA makes all decisions regarding eligibility and awarding benefits – no appeal or recourse available to locality

Current Situation

- City is responsible for training potential participants and assisting those who choose to apply for LOD benefits
- Cost driver will be medical coverage inflation
- Highest risk is multiple, concurrent public safety deaths
- Unknowns include impact of health care reform, future General Assembly actions, number of qualifying members, interpretations by DoA, case law and others.

Available Funding Choices

- Participate in VRS Fund
- Purchase group coverage from VML
- Individually self fund

VRS Fund

- Irrevocable choice must be made by 7/1/12
 - If no decision to opt out this year, must pay FY2012 fees to VRS
- Fund managed by VRS
- Actuarial contribution rate set by VRS
- VRS “loan” \$9.5 M from the group life insurance fund to pay FY2011 claims

Expected Costs

- FY 2012 costs:
 - \$233.89 for each covered public safety employee
 - \$58.47 for each covered volunteer
 - \$23.39 for each employee who is also a member of the National Guard
- Expected cost of about \$106,000 for FY2012

Projected Cost Increases

- VRS projects cost increase within three years - FY2015:
 - \$642.47 for each covered public safety employee
 - \$160.62 for each covered volunteer
 - \$64.28 for each employee who is also a member of the National Guard
- Total cost about \$300,000
- Future rates are uncertain and will be determined by who “opts-in” and the claims experience

Pros and Cons of VRS

Pros

- Minimal Risk
- Easy
- Rates include loan repayment and FY11 costs

Cons

- Irrevocable decision
- Rates include 2011 loan repayment based on total costs of pool
- Subject to VRS rate-setting, increases and potential market losses – rates will be determined by who and how many “opt-in”

Group Coverage through VML

- Requires City property and liability coverage through VML
- Initial rates the same for all members, moving as quickly as possible to an experience rated model
- Coverage will pay claims required by the Act and administrative expenses invoiced by the Dept of Accounts
- No coverage is provided for existing claims or any claim incurred before 7/1/11 and not yet reported

Costs of VML Group Coverage

- VML Premium:
 - \$200 per eligible employee
 - \$73,000 FY12 total

AND

- Costs for Existing Beneficiaries
 - \$800 - \$1500 DoA administrative fee (\$160 – \$300 per beneficiary)
 - \$40,000+ medical coverage costs for FY11 forward

Pros and Cons of VML

Pros

- Good track record
- Property Insurance covered by VML
- Lower initial cost

Cons

- Does not cover existing beneficiaries
- Participation eligibility is restricted to those with VML property and casualty insurance.
- Unknown future costs

Independent Self Funding

- Fully fund costs of Line of Duty independent of any other fund or insurance product
 - Continue to fund a Line of Duty reserve to cover costs of death benefits
 - FY12 includes \$105,952
 - Absorb medical coverage costs in medical funds
 - Little initial impact: current beneficiaries are also eligible for City medical coverage in retirement
 - In the future, LoD beneficiaries will stay in City medical coverage group

Independent Self Funding Costs

■ Current Costs:

- \$40,000 to DoA for all payments made since 7/1/10
- \$160 -300 annual administrative fees to DoA for each beneficiary

■ Future Costs:

- Increase LoD reserves by approximately \$100,000 per year for at least 5 years
- Up to \$1,500 State Police investigation fee for each new LoD applicant

Pros and Cons

Independent Self Funding

Pros

- Expect lower long term cost
- Takes advantage of the cost containment features of City medical coverage
- Full ownership of resources
- Do not share in VRS experience pool
- Do not share in repayment of \$9.5M “loan” from VRS group life insurance fund
- Does not rely on what other localities decide

Cons

- Absorb all risk
- Local admin responsibilities
- May have to pay expenses of possible legal challenges to eligibility
- Unknown future costs

Recommendation

- Independent self-funding
 - Totality of known information supports self-funding
- Resolution to opt-out of VRS fund by June 30, 2011

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **July 28, 2011**

AGENDA ITEM NO.:

CONSENT:

REGULAR:

WORK SESSION: **X**

CLOSED SESSION:

(Confidential)

ACTION:

INFORMATION: **X**

ITEM TITLE: **Update on Arts & Cultural District, Presentation of “Vision Plan” by Stakeholder Group**

RECOMMENDATION: No action required.

SUMMARY: The Office of Economic Development will provide Council an update on the administration of the recently-designated Arts & Cultural District. The update will include the creation of the Arts & Cultural Project Grant, designed to support arts- and culture-related activities in the District. The update will also include the presentation of a “Vision Plan” for the District, developed by a District stakeholder group.

PRIOR ACTION(S): Council approved an ordinance creating the Arts and Cultural District on April 27, 2010.

FISCAL IMPACT: Amusement Tax collected from existing “qualified arts organizations” in the District will be used to fund the Arts & Cultural Project Grant. In FY2010, the sum of those collections was \$31,759. The Adopted FY 2012 Budget includes \$30,000 in an Arts & Cultural District Reserve. Longitudinal data collection of the economic impact of increased arts & cultural activities is needed to determine accurate fiscal impact.

CONTACT(S): Marjette G. Upshur - 455-4492

ATTACHMENT(S): Arts & Cultural Project Grant Guidelines
Arts & Cultural Project Grant Application
Arts & Cultural District Stakeholders “Vision Plan”

REVIEWED BY: lkp



James River Arts & Cultural District

Arts & Cultural Project Grant Application

Guidelines, Rules & Restrictions

Background

From the Code of the City of Lynchburg: “The Lynchburg City Council finds that the continued development and success of its arts and cultural venues requires incentives, and determines that the most appropriate method of offering incentives for the area described below is to create an arts and cultural district in that area, as authorized by Section 15.2-1129.1 of the Code of Virginia. City Council believes the establishment of an arts and cultural district will improve the economic conditions of this geographic area located in the central portion of the City which could, in turn, benefit the welfare of the citizens of Lynchburg.” In order to equitably administrate the Arts & Cultural District, and to encourage the participation of citizens and arts & cultural organizations to conduct projects, events and activities to further the arts and culture in Lynchburg, City staff has created the Arts & Cultural Project Grant.

Guidelines

Program guidelines for the Arts & Cultural Project Grant are intended to attract citizens, organizations and consortiums that wish to create and execute projects within the Arts & Cultural District to benefit the welfare of the citizens of Lynchburg. The term “project” may include events, activities, capital investments, promotions, improvements, displays or like pursuits that serve to further arts and culture in the District. Guidelines include but are not limited to:

- Grant funds are for arts- and culture-related projects only
- Projects must show an estimated economic impact
- Projects must demonstrate a public benefit
- Applicants must demonstrate familiarity with arts & cultural organizations, artists and/or other relevant constituencies within the District
- Applicants must demonstrate collaboration with constituencies within the District
- Projects that have secured other funding resources will be given priority
- Grant funds can only be used for the specific project or event applied for, and cannot be used for organizations’ routine operating expenses
- Projects must take place within the Arts & Cultural District

Other Funding Sources

Priority consideration will be given to applicants who have secured other funding sources for their projects. Applicants should not expect the Arts & Cultural Project Grant to fund more than 75% of their project.

Application Requirements

Applications are reviewed and grants awarded on a first-come first-served basis.

Applications must be received no later than 45 days prior to the project start date, and applicants are encouraged to apply for the grant as soon as they are able to thoroughly complete the application. Please submit seven (7) hard copies of the Arts & Cultural Project Grant Application to: The Office of Economic Development, Attn: Arts & Cultural Project Grant, 828 Main Street, 10th Floor, Lynchburg, VA 24504. Certain projects may require permitting from the City of Lynchburg; it is the responsibility of grant applicants to determine these requirements. To learn more about Special Events permits, please visit the City's website www.lynchburgva.gov.

Eligible Applicants

Any citizen of Lynchburg, non-profit organization within city limits, or any consortium of groups within the City are eligible to apply. Though an applicant is not required to be a citizen of Lynchburg or be located within City limits, priority will be given to these applicants. Grant funds cannot be used for projects for which a single entity or individual profits directly; this is not applicable to projects in which proceeds are donated or there is no intent for profit generation.

Eligible Use of Grant Funds

Grant funds are only for projects within the geographic boundaries of the Arts & Cultural District. Grant funds can be used to leverage other funding sources for the specific project, but are solely intended to cover expenses directly related to the project for which the grant was applied. Grant funds may not be used to cover the routine operating expenses of an organization, or for expenses incidental to a project or event such as personal expenses, dues, planning expenses, etc., or used to fund projects that have a primary purpose of fundraising for the applicant organization.

Application Review Process

Applications are reviewed on a first-come first-served basis by a review committee comprised of city staff, A&C District stakeholders and other community leaders. Grant recipients will be selected based on the merits of their project vis-à-vis the program guidelines and thorough completion of the application. The City of Lynchburg Office of Economic Development will utilize the recommendations of the review committee, but in all cases will retain sole discretion for the grant amounts awarded.

Grant Terms and Amounts

Grants are offered on a first-come first-served basis and will be available until all reserved funds are encumbered. The maximum grant award is \$5,000. Multiple organizations or individuals may apply separately for a grant for the same project. The amount of the grant awarded will be based on the criteria described in the program guidelines, to include but not limited to the scope of the project, the greatest public benefit, the greatest economic impact, collaboration, and percentage of total project funding. The Arts & Cultural District includes three sections: Downtown, Fifth Street and Rivermont Avenue; no more than 90 percent of allocated grant funding can be expended in any one section.

Grant Administration

Grant recipients will be required to sign a Grant Disbursement Agreement that may include an audit of grant expenditure. Recipients will also be required to acknowledge the City of Lynchburg and the Arts & Cultural District in all promotional materials.



James River Arts & Cultural District Arts & Cultural Project Grant Application

Project Title		
Applicant Organization/Individual	Address of Organization/Individual	
Employer Identification Number (if applicable)		
Is Applicant: ☐ an Individual ☐ Non-Profit Organization ☐ For-Profit Entity ☐ Other (Please Explain)		
Project Start Date:	Project End Date:	Est. Attendance (if applicable):
Requested Grant Amount:	Total Project Cost:	
	PROJECT LEADER	Organization Director (if applicable)
Full Name		
Title		
Organization		
Telephone Number		
Fax Number		
E-Mail Address		
Mailing Address		
Web Address		
Signature		
Date		

Project Summary

Describe on this page the project for which you are requesting an Arts & Cultural Project Grant. Explain how this project meets the guidelines noted above. Please be thorough, but limit your description to one page.

Estimated Economic Impact and Benefit to the Public

Describe how this project will enhance the Arts & Cultural District, and explain the project's benefit to the citizens of Lynchburg. Provide an estimated economic impact for the project; for assistance with this estimate, applicants can utilize the Americans for the Arts "Arts & Economic Prosperity Calculator," available online. The City of Lynchburg Office of Economic Development can assist applicants when requested.

Sources of Project Funds

If necessary, duplicate this page to accommodate additional sources.

State

Agency Name:

Amount Received:

\$

Status

Purpose

Federal

Agency Name:

Amount Received:

\$

Status

Purpose

Local

Name of Locality:

Amount Received:

\$

Status

Purpose

Private

Source(s):

Amount:

\$

Status

Purpose

Other

Source(s):

Amount:

\$

Status

Purpose

Budget Narrative

Describe how funds will be used. Detail all indirect costs. Identify any in-kind contributions. Identify all sources of funds. Explain estimates used. Explain how, when, and by whom the sources of funds will be obtained and managed.

Authorization

By signing this Application, the Authorizing Agent is guaranteeing that the information contained in this Application is correct and verifiable. The Authorizing Agent is affirming that the funds requested herein will be used for the specific purpose outlined in this Application and for no other purpose. Providing false, inaccurate or misleading information or the use of grant funds for other than the expressed purpose will result in disqualification from consideration and forfeiture of any grant awarded. Upon grant approval, the Authorizing Agent agrees to sign a Grant Disbursement Agreement that may include an audit of grant expenditure.

Name of Requesting Entity: _____

Name of Authorizing Agent: _____

Title of Authorizing Agent: _____

Address of Authorizing Agent: _____

Email Address: _____

Telephone Number: _____

Signature of Authorizing Agent: _____

Date: _____

James River Arts & Culture District (JRACD)
10 Year Vision/Action Plan
By the JRACD Planning Group¹
Updated 6-20-11

Vision: The James River Arts & Culture District will be a visually and actively vibrant area of downtown Lynchburg where business and residential life come together through arts and culture. The District includes three connected areas: Downtown, Rivermont Avenue to Cabell Street, and Fifth Street. (See city ordinance and district map for more details).

Vision Plan:

- **Communications:** Ways to disseminate information to the public regarding the JRACD
 - o Competition to create logo
 - o Physical markers – signs designating the JRACD
 - District designation flags – color coded for each of the three mini districts
 - o Brochure – includes information regarding restaurants, shopping, district sights/sites, and other information deemed necessary
 - Include map – depicting the JRACD and its amenities
 - Info regarding BPOL tax abatement and other available incentives
 - Arts related business would be part of First Friday events
 - o Information locations (Kiosk/ Visitors Center) – place with which to disseminate information; (possibly called art boxes)
 - o Encourage LL, JRC, and CVB to add JRCAH pages to their web sites
- **Events:** Happenings in the James River Arts & Culture District to bring visitors and residents to the downtown area.
 - o Festivals – bring arts, bateau, beer/wine and music festivals to Riverfront Park
 - o Maintain and grow First Fridays – Facilitate the expansion of First Fridays with district organizations and businesses – especially kid & elderly activities earlier in the day
 - o Street musicians – encourage and/or facilitate a musical street scene
 - o Kids projects – create and/or facilitate events for parents to bring children to the district area
 - o New Year’s Eve/First Night Festivities – create and/or facilitate a yearly downtown event free and open to the public
 - o District arts & cultural organizations – work with these organizations to strengthen their programs

¹ Marjette Upshur and Brian Gleason, City of Lynchburg Office of Economic Development; Ted Batt, Academy of Fine Arts; Don Pendleton, Consensus Realty; Terri Cornwell, Liberty University; Edwana Coleman, The Ellington; Eddie Claiborne, Fifth Street Development Corporation; Krista Boothby and David Neumeyer, James River Council for the Arts & Humanities; Tony Camm, JRCAH and Holiday Inn Select; Kennon Williams, Nelson Byrd Woltz Landscape Architects; Frank Britt, Britt Marketing; Kathy Shaw, Beeswax Candle Co.

- o Maintain Get Downtown – work with Lynch’s Landing to make this event a continued success
- **Attractions:** Features or venues in the James River Arts & Culture District that will draw attention to the area or can be used for events.
 - o Riverfront Park – make use of the park for more events and public art
 - o Public Art Features – encourage and/or facilitate the erection of outdoor art
 - 5th Street Roundabout – work with 5th Street CDC to commission a public art project for the circle and four corners of the roundabout space
 - Water Fountain – give the fountain a more visually enticing structure with which to lure people to the riverfront area
 - o Artist Galleries – encourage the opening of art galleries by and for artists
 - Encourage city to give property tax break to landlords who rent to galleries
 - o Concert Hall – encourage and/or facilitate the building or renovation of a downtown property for a public city concert hall
 - Encourage and/or facilitate the completion of the Academy of Music Theater
 - o Encourage the completion of the Lower Bluffwalk project and promote and encourage its role as an arts venue
- **Aesthetics:** Visual indications of the James River Arts & Culture District that contribute to the attractiveness of the area.
 - o Public Art projects – encourage and/or facilitate the creation of public art projects
 - o Streetscape:
 - Flower containers – creates a more inviting and cheerful tone to the district
 - Public Benches – create places for conversation and relaxation
 - Street lighting – make the streets more inviting during evening hours
 - o Open venues: develop best practices to encourage restaurants, shops, galleries, museums, residences, theaters to remain open longer and/or have more performances/events
- **Funding:** Means with which to accomplish the goals set out in this plan.
 - o Grants funded by city amusement tax collections in the District and administered by the Office of Economic Development
 - o Other grant sources such as the Virginia Commission for the Arts, the Greater Lynchburg Community Trust, and any other city appropriations
 - o Capital Improvement funding from the City of Lynchburg in accordance with the Downtown Master Plan
- **Partners:** The Planning Group recommends the following organizations/individuals for partnerships – The James River Council for the Arts & Humanities, Lynch’s Landing, Restaurant & Retail Assoc., Convention and Visitors Bureau, district businesses, district residents, City of Lynchburg through its Office of Economic Development and other agencies such as Parks & Rec., district arts & cultural organizations, and any other entities that affirm these goals for the district.

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **June 28, 2011**

AGENDA ITEM NO.: 10

CONSENT: REGULAR: **X**

WORK SESSION:

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Zoning Ordinance Amendment – Section 35.1-20.1, Zoning Inspection Warrants**

RECOMMENDATION: Consideration of amending the *Zoning Ordinance* to continue to provide the Zoning Administrator the authority to seek inspection warrants for zoning enforcement investigations.

SUMMARY: Administrative inspections are an important part of the enforcement of codes and ordinances (the building code, the fire code, the zoning ordinance, etc.). In 1976 the Virginia Attorney General issued an opinion advising that a zoning official had the authority to seek an inspection warrant to inspect property for a suspected zoning violation if the property owner refused to give consent. The Attorney General also issued similar opinions for building code officials, fire marshals, etc. In 2009 the General Assembly amended §15.2-2286 of the Code of Virginia to provide that a locality can include a provision in its zoning ordinance authorizing the Zoning Administrator to seek an inspection warrant from a magistrate or court to inspect a dwelling for a suspected violation of the *Zoning Ordinance* (such as the illegal operation of a boarding or rooming house or an excessive number of unrelated people residing in a dwelling) if the owner or tenant refuses to consent to an inspection. The General Assembly's 2009 amendment overrides the Attorney General's 1976 opinion and localities are now required to formally adopt a provision within their zoning ordinance if they choose to continue to allow the Zoning Administrator to pursue an inspection warrant for zoning violations. Since the General Assembly amended the Virginia Code in 2009 a number of localities including Albemarle County, Arlington County, the City of Hampton, York County and the Town of Herndon have amended their zoning ordinances to include inspection warrant provisions.

Even though the City's Zoning Administrator has had the authority to seek inspection warrants since 1976, it has not been necessary to do so. Generally, the fact the Zoning Administrator had such authority was enough to convince property owners to consent to inspections when the Zoning Administrator needed to inspect property as part of the investigation of a zoning complaint. The proposed amendment would not give the Zoning Administrator any additional authority; rather, it would simply allow the Zoning Administrator to continue to exercise the authority he previously possessed and be compliant with state law.

Currently when the Zoning Administrator receives a complaint regarding the number of people living in a dwelling the following actions are taken:

- The number of occupants is requested from the property owner;
- License plates of cars at the residence are checked to determine ownership;
- Water usage rates are checked to gauge the number of people living in the residence;
- Police Department calls for service are reviewed for information relating to number of people in the residence;

Although the majority of complaints are addressed through the actions listed above, occasionally property owners may live out of state and/or are difficult to contact; the property owners are uncooperative providing information concerning occupants; the high turnover rate in the occupants of boarding/rooming houses may make it difficult to determine the number of people residing in a building; and/or the occupants do not own vehicles. There are also rare situations where a violation is suspected and either the neighbors are reluctant to testify in court or citizen complaints cannot be resolved due to the lack of information necessary to pursue legal actions through the courts. While infrequent use is expected, allowing the Zoning Administrator to continue to

have the ability to request an inspection warrant from the court would maintain an additional tool to address suspected zoning violations when all other resources have been exhausted.

The Planning Commission recommended approval of the *Zoning Ordinance* amendment because:

- The amendment would allow the Zoning Administrator to keep what could be a valuable “tool” to help investigate suspected zoning violations.
- Enforcement of the *Zoning Ordinance* is an integral part of implementing the *Comprehensive Plan* and the lack of authority to seek an inspection warrant could hamper the investigation of alleged zoning violations.

PRIOR ACTION(S):

April 12, 2011: City Council initiated an amendment to the *Zoning Ordinance* to add Section 35.1-20.1, Inspection Warrants.

May 11, 2011: Planning Division recommended approval of the *Zoning Ordinance* amendment.
Planning Commission recommended approval of the *Zoning Ordinance* amendment (7-0).

FISCAL IMPACT: None

CONTACT(S): Robert Fowler, Zoning Administrator – 455-3900
Tom Martin, City Planner - 455-3900;
Kent White, Director of Community Development – 455-3900
Walter Erwin, City Attorney – 455-3973

ATTACHMENT(S):

- Proposed Ordinance – Section 35.1-20.1
- Proposed Procedures for Seeking Inspection Warrants
- § 15.2-2286 of the Code of Virginia
- Resolution #R-11-033
- Planning Commission Report – May 11, 2011
- Planning Commission Minutes – May 11, 2011
- Speaker Signup Sheet

REVIEWED BY: lkp

ORDINANCE

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF LYNCHBURG, 1981, AS AMENDED, BY ADDING THERETO A NEW SECTION NUMBERED 35.1-20.1, THE NEW SECTION RELATING TO INSPECTION WARRANTS.

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

1. That the General Assembly recently amended the State Code to give local governments the authority to include a provision in their zoning ordinances allowing zoning officials to apply for an administrative inspection warrant to inspect property to determine if zoning violations exist when the property owner refuses to consent to an inspection.
2. It is the intent of City Council to protect the character and the social and economic stability of all parts of the city; to encourage the orderly and beneficial development of all parts of the city; and to protect and conserve the value of land and buildings appropriate to the various districts established by the zoning ordinance.
3. That in order to promote the public necessity, convenience, general welfare and good zoning practice the Code of the City of Lynchburg is amended by adopting Section 35.1-20.1 as follows:

Sec. 35.1-20.1. Inspection warrants.

As provided by Section 15.2-2286(15) of the Code of Virginia, for the purpose of enforcing the provisions of this chapter, the zoning administrator, or his duly authorized agent, shall have the authority to apply for the issuance of inspection warrants by a magistrate or court of competent jurisdiction. The zoning administrator or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony establishes probable cause that a zoning ordinance violation has occurred, request that the magistrate or court grant the zoning administrator or his agent an inspection warrant to enable the zoning administrator or his agent to enter the subject dwelling for the purpose of determining whether violations of the zoning ordinance exist. The zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section. It shall be a violation of the zoning ordinance for any owner, managing agent, tenant, occupant or other person, to deny the zoning administrator, or his duly authorized agent, access to any dwelling after the zoning administrator, or his duly authorized agent have obtained an inspection warrant from a magistrate or a court of competent jurisdiction.

Adopted:

Certified:

Clerk of Council

Proposed Administrative Inspection Warrant Procedures

Purpose

When responding to and investigating complaints of alleged zoning violations sometimes it is necessary for zoning officials to inspect a building to determine if a zoning violation exists. Occasionally the owner or tenant of a building will refuse to consent to a zoning inspection. The purpose of these procedures is to ensure that any administrative zoning inspection conducted by the City's zoning officials is conducted in a proper manner as provided by the Code of Virginia and that the right of owners and tenants to be free from unreasonable inspections is protected.

Complaints

- When a complaint regarding a violation of the zoning ordinance is received the complaint will be documented, and linked to the address and inspected within 48 hours.
- Complainant information shall be documented with as much detail as possible. The complainant has the right to remain anonymous at the time of making a complaint. Specifically, the name, address and telephone number of any complainant furnished in confidence shall be protected as confidential, within the guidelines established by the Code of Virginia, Freedom of Information Act.
- The information collected from a complainant shall include that which would support the allegation of any zoning violations. Examples include the number of vehicles, traffic and delivery of merchandise and unusual activity that may indicate that an activity is taking place that would violate the City's zoning ordinance.
- Inspections shall only take place during normal business hours.
- Zoning staff shall first establish ownership through the City Assessor's Office and/or the Clerk of Court.
- Zoning staff will contact the property owner/tenant regarding the complaint and request to make an inspection of the property.
- If the owner cannot be contacted, Zoning staff will attempt to contact the tenants to request an inspection of the property to identify the number of permanent residents or activities taking place by inspecting the property and talking with the tenants.
- If Zoning staff still cannot make contact with the owner/tenant to gain access to the property, information regarding the number of vehicles, model(s) and license plate information of the vehicles parked at the property and other pertinent information will be used to try and determine if a zoning violation exists.

- If needed, Zoning staff will attempt to verify calls for service from other city agencies.

Violations of the Zoning Ordinance

- If Zoning violations are identified, the property owner and tenants shall be notified in writing that they have 30 days in which to comply with the applicable section of the zoning ordinance and schedule a re-inspection of the property.
- If the owner/tenant does not schedule an inspection or upon re-inspection the violation remains and a notice will be issued advising the owner/tenant of the legal process that can be used to deal with a zoning violation.

Administrative Warrants

- If the property owner/tenant refuses to meet and/or give access to the property, the Zoning Administrator will request the City Attorney review the information, supporting documents and affidavit to request an Administrative Inspection Warrant from the Circuit Court Judge. This information would include probable cause, supported by an affidavit particularly describing the place, things or person to be inspected and the purpose for which the inspection for testing is made. The affidavit must contain either a statement that consent to inspect has been sought and refused, or explain the facts or circumstances reasonably justify the inability to obtain consent in order to effectively enforce the zoning ordinance.
- If an Administrative Inspection Warrant is requested for excessive occupancy only legal documentation such as State issued ID's will be requested by the Zoning Administrator to determine if tenants are related.
- If a warrant is requested from the Circuit Court Judge the scope of the warrant shall describe the areas to be searched and photographed. No inspection shall exceed the scope of Court's order and supervision will be provided by the Director of Community Development, the City Attorney or their designee to ensure the scope of the Administrative Inspection Warrant is not exceeded.
- If the Zoning Administrator has been threatened by an owner/tenant the Zoning Administrator may request a City police officer to accompany the Zoning Administrator during the administrative inspection for the sole purpose of preventing anyone from attempting to intimidate or impede the Zoning Administrator in the performance of his duties. Even if a police officer accompanies the Zoning Administrator it shall be the responsibility of the Zoning Administrator to serve the Inspection Warrant and to conduct the inspection and to interview the property owner or tenants, the police officer's presence is solely for the purpose of preserving the peace and order.

Code of Virginia

§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties.

A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

1. For variances or special exceptions, as defined in § 15.2-2201, to the general regulations in any district.
2. For the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning ordinance, and pending the orderly amendment of the ordinance.
3. For the granting of special exceptions under suitable regulations and safeguards; notwithstanding any other provisions of this article, the governing body of any locality may reserve unto itself the right to issue such special exceptions. Conditions imposed in connection with residential special use permits, wherein the applicant proposes affordable housing, shall be consistent with the objective of providing affordable housing. When imposing conditions on residential projects specifying materials and methods of construction or specific design features, the approving body shall consider the impact of the conditions upon the affordability of housing.

The governing body or the board of zoning appeals of the City of Norfolk may impose a condition upon any special exception relating to retail alcoholic beverage control licensees which provides that such special exception will automatically expire upon a change of ownership of the property, a change in possession, a change in the operation or management of a facility or upon the passage of a specific period of time.

The governing body of the City of Richmond may impose a condition upon any special use permit issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special use permit shall be subject to an automatic review by the governing body upon a change in possession, a change in the owner of the business, or a transfer of majority control of the business entity. Upon review by the governing body, it may either amend or revoke the special use permit after notice and a public hearing as required by § 15.2-2206.

4. For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the locality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307 or subsection C of § 15.2-2311.

Whenever the zoning administrator has reasonable cause to believe that any person has engaged in or is engaging in any violation of a zoning ordinance that limits occupancy in a residential dwelling unit, which is subject to a civil penalty that may be imposed in accordance with the provisions of § 15.2-2209, and the zoning administrator, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the attorney for the locality petition the judge of the general district court for his jurisdiction for a subpoena duces tecum against any such person refusing to produce such data or information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued the subpoena to quash it.

Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of less than 30 days, but not less than 10 days, for a notice of violation involving temporary or seasonal commercial uses, parking of commercial trucks in residential zoning districts, maximum occupancy limitations of a residential dwelling unit, or similar short-term, recurring violations.

Where provided by ordinance, the zoning administrator may be authorized to grant a modification from any provision contained in the zoning ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements, if the administrator finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification. Prior to the granting of a modification, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice. The zoning administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph. The decision of the zoning administrator shall constitute a decision within the purview of § 15.2-2311, and may be appealed to the board of zoning appeals as provided by that section. Decisions of the board of zoning appeals may be appealed to the circuit court as provided by § 15.2-2314.

The zoning administrator shall respond within 90 days of a request for a decision or determination on zoning matters within the scope of his authority unless the requester has agreed to a longer period.

5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any such violation shall be a misdemeanor punishable by a fine of not less than \$10 nor more than \$1,000. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than

\$10 nor more than \$1,000, and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not less than \$100 nor more than \$1,500.

However, any conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall be punishable by a fine of up to \$2,000. Failure to abate the violation within the specified time period shall be punishable by a fine of up to \$5,000, and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of up to \$7,500. However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of such dwelling unit against a tenant to eliminate an overcrowding condition in accordance with Chapter 13 or Chapter 13.2 of Title 55, as applicable. A conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall not be punishable by a jail term.

6. For the collection of fees to cover the cost of making inspections, issuing permits, advertising of notices and other expenses incident to the administration of a zoning ordinance or to the filing or processing of any appeal or amendment thereto.

7. For the amendment of the regulations or district maps from time to time, or for their repeal. Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated (i) by resolution of the governing body; (ii) by motion of the local planning commission; or (iii) by petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the subject of the proposed zoning map amendment, addressed to the governing body or the local planning commission, who shall forward such petition to the governing body; however, the ordinance may provide for the consideration of proposed amendments only at specified intervals of time, and may further provide that substantially the same petition will not be reconsidered within a specific period, not exceeding one year. Any such resolution or motion by such governing body or commission proposing the rezoning shall state the above public purposes therefor.

In any county having adopted such zoning ordinance, all motions, resolutions or petitions for amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or consents to action beyond such period or unless the applicant withdraws his motion, resolution or petition for amendment to the zoning ordinance or map, or both. In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action as otherwise would be required by this subdivision.

8. For the submission and approval of a plan of development prior to the issuance of building permits to assure compliance with regulations contained in such zoning ordinance.

9. For areas and districts designated for mixed use developments or planned unit developments as defined in § 15.2-2201.

10. For the administration of incentive zoning as defined in § 15.2-2201.

11. For provisions allowing the locality to enter into a voluntary agreement with a landowner that would result in the downzoning of the landowner's undeveloped or underdeveloped property in exchange for a tax credit equal to the amount of excess real estate taxes that the landowner has paid due to the higher zoning classification. The locality may establish reasonable guidelines for determining the amount of excess real estate tax collected and the method and duration for applying the tax credit. For purposes of this section, "downzoning" means a zoning action by a locality that results in a reduction in a formerly permitted land use intensity or density.

12. Provisions for requiring and considering Phase I environmental site assessments based on the anticipated use of the property proposed for the subdivision or development that meet generally accepted national standards for such assessments, such as those developed by the American Society for Testing and Materials, and Phase II environmental site assessments, that also meet accepted national standards, such as, but not limited to, those developed by the American Society for Testing and Materials, if the locality deems such to be reasonably necessary, based on findings in the Phase I assessment, and in accordance with regulations of the United States Environmental Protection Agency and the American Society for Testing and Materials. A reasonable fee may be charged for the review of such environmental assessments. Such fees shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and administrative expense involved in such review.

13. Provisions for requiring disclosure and remediation of contamination and other adverse environmental conditions of the property prior to approval of subdivision and development plans.

14. For the enforcement of provisions of the zoning ordinance that regulate the number of persons permitted to occupy a single-family residential dwelling unit, provided such enforcement is in compliance with applicable local, state and federal fair housing laws.

15. For the issuance of inspection warrants by a magistrate or court of competent jurisdiction. The zoning administrator or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony establishes probable cause that a zoning ordinance violation has occurred, request that the magistrate or court grant the zoning administrator or his agent an inspection warrant to enable the zoning administrator or his agent to enter the subject dwelling for the purpose of determining whether violations of the zoning ordinance exist. The zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.

B. Prior to the initiation of an application for a special exception, special use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, or prior to the issuance of final approval, the authorizing body may require the

applicant to produce satisfactory evidence that any delinquent real estate taxes owed to the locality which have been properly assessed against the subject property have been paid.

(Code 1950, § 15-968.5; 1962, c. 407, § 15.1-491; 1964, c. 564; 1966, c. 455; 1968, cc. 543, 595; 1973, c. 286; 1974, c. 547; 1975, cc. 99, 575, 579, 582, 641; 1976, cc. 71, 409, 470, 683; 1977, c. 177; 1978, c. 543; 1979, c. 182; 1982, c. 44; 1983, c. 392; 1984, c. 238; 1987, c. 8; 1988, cc. 481, 856; 1989, cc. 359, 384; 1990, cc. 672, 868; 1992, c. 380; 1993, c. 672; 1994, c. 802; 1995, cc. 351, 475, 584, 603; 1996, c. 451; 1997, cc. 529, 543, 587; 1998, c. 385; 1999, c. 792; 2000, cc. 764, 817; 2001, c. 240; 2002, cc. 547, 703; 2005, cc. 625, 677; 2006, cc. 304, 514, 533, 903; 2007, cc. 821, 937; 2008, cc. 297, 317, 343, 581, 593, 720, 777; 2009, c. 721.)

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: April 12, 2011

AGENDA ITEM NO.: 13

CONSENT: REGULAR: X

WORK SESSION:

CLOSED SESSION:

(Confidential)

ACTION: X

INFORMATION:

ITEM TITLE: Consideration of Initiating Amendments to the *Zoning Ordinance* – Zoning Inspection Warrants

RECOMMENDATION: Initiate amendment to the *Zoning Ordinance* to create Section 35.1-20.1, Inspection Warrants. Initiating the amendment will not alter the *Zoning Ordinance*, but will allow staff to advertise for public hearings before the Planning Commission and City Council.

SUMMARY: § 15.2-2286 of the Code of Virginia provides that the Zoning Administrator may request an inspection warrant from the court magistrate to enable entrance into a dwelling for the purpose of determining whether violations (such as the number of unrelated people residing in a dwelling) of the *Zoning Ordinance* exist. Currently when the Zoning Administrator receives a complaint regarding the number of people living in a dwelling the following actions are taken:

- Number of occupants is requested from the property owner
- License plates of cars at the residence are checked to determine ownership
- Water usage rates are checked to gauge the number of people living in the residence
- Police Department calls for service are reviewed for information relating to number of people in the residence

Often occupants do not own vehicles and out of state property owners are difficult to contact or are not cooperative in providing information concerning occupant information. There is a high turnover rate in the occupants of boarding/rooming houses which also makes it difficult to determine the number of people residing in a building. Neighbors of a property with a perceived zoning violation are often reluctant to testify in court. The majority of complaints are addressed through the actions listed above and violations are corrected. There are other situations where a violation is believed to exist and citizen complaints can not be resolved due to the lack of information needed to pursue legal actions through the courts.

While infrequent use is expected, allowing the Zoning Administrator the ability to request an inspection warrant from the court magistrate would provide an additional tool to address suspected zoning violations when all other resources have been exhausted.

PRIOR ACTION(S): None

FISCAL IMPACT: None

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

ATTACHMENT:

- Resolution

REVIEWED BY: lkp

WHEREAS: the General Assembly recently amended the State Code to give local governments the authority to include a provision in their zoning ordinances allowing zoning officials to apply for an administrative inspection warrant to inspect property to determine if zoning violations exist when the property owner refuses to consent to an inspection.

WHEREAS, Lynchburg's Zoning Ordinance does not currently allow the Zoning Administrator to request an inspection warrant from the magistrate or court of competent jurisdiction to enable entrance into a dwelling for the purpose of determining whether violations of the Zoning Ordinance exist.

WHEREAS, it is the intent of City Council to protect the character and the social and economic stability of all parts of the city; to encourage the orderly and beneficial development of all parts of the city; and to protect and conserve the value of land and buildings appropriate to the various districts established by the zoning ordinance.

WHEREAS, the City Council has determined that its consideration of and action on the proposed zoning amendments will promote the public necessity, convenience, general welfare and good zoning practice within the City;

NOW, THEREFORE, BE IT RESOLVED by the City Council that in order to take advantage of the authority granted to the City by the General Assembly and 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 the City's Zoning Ordinance which would allow the Zoning Administrator to request an inspection warrant from the magistrate or court of competent jurisdiction to enable entrance into a dwelling for the purpose of determining whether violations of the Zoning Ordinance exist.

Adopted: April 12, 2011

Certified: Valeri O. Clark
Clerk of Council

054L

c: R. Fowler
~~K. White~~

The Department of Community Development

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

To: Planning Commission
From: Planning Division
Date: May 11, 2011
Re: **Zoning Ordinance Amendment – Section 35.1-20.1, Inspection Warrants**

I. PETITIONER

City of Lynchburg, 900 Church Street, Lynchburg, Virginia 24504

Representative(s): Mr. Tom Martin, AICP, City Planner, Mr. Robert Fowler, Zoning Administrator, 900 Church Street, Lynchburg, Virginia 24504

II. LOCATION

N/A

Property Owner: N/A

III. PURPOSE

The purpose of this petition is to amend the *Zoning Ordinance* by adding Section 35.1-20.1, Inspection Warrants. The section would allow the Zoning Administrator to request an inspection warrant from the court magistrate to enable entrance into a dwelling for the purposes of determining whether violations of the *Zoning Ordinance* exist.

IV. SUMMARY

- The amendment would allow the Zoning Administrator the ability to obtain an inspection warrant for dwellings.
- The amendment would provide an additional “tool” to address suspected zoning violations.
- Infrequent use of inspection warrants is expected.

The Planning Division recommends approval of the conditional use permit petition.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The *Comprehensive Plan 2002-2020* states “a comprehensive plan does little for a community if it is not implemented. The most important implementation tools are the City’s land use management ordinances: the *Zoning Ordinance*, *Subdivision Ordinance*, *Erosion & Sediment Control Ordinance*, and others”. (pg 5.9) Enforcement of the *Zoning Ordinance* is an integral part of implementing the *Comprehensive Plan*. While infrequent use is expected, the proposed amendment would allow the Zoning Administrator another tool in determining if zoning violations exist.
2. **Zoning.** The current *Zoning Ordinance* was adopted in 1978. The ordinance has been amended over time to address specific issues, maintain consistency with state code and provide for development proposals that would have otherwise been prohibited. In depth revisions have been adopted to Sign Regulations (2004), Landscaping (2006), Flood Hazard Districts (2008), Large Scale Retail Establishments (2009) and Off-street Parking (2009). The city is currently drafting language for the creation of Institutional Districts.
3. **Board of Zoning Appeals (BZA).** N/A
4. **Surrounding Area.** N/A

5. Site Description. N/A

6. Proposed Use of Property. N/A

7. Traffic, Parking and Public Transit. N/A

8. Stormwater Management. N/A

9. Emergency Services. N/A

10. Impact. Section 35.1-17, Amendments of the Zoning Ordinance states an amendment to the text or official zoning map of the ordinance may be initiated by the City Council or Planning Commission provided any resolution or motion proposing the rezoning shall state the public necessity, convenience, general welfare or good zoning practice constituting the public purpose of such rezoning. On April 12, 2011, the City Council passed Resolution #R-11-033 initiating an amendment to the Zoning Ordinance that would allow the Zoning Administrator the ability to request an inspection warrant from the court magistrate to allow entrance into a dwelling for the purpose of deterring whether violations exist. The resolution states that the text amendment was initiated in order to take advantage of the authority granted to the City by the General Assembly and to protect the character and the social and economic stability of all parts of the city.

Chapter 15.2-2286 of the Code of Virginia provides that the Zoning Administrator may request an inspection warrant from the court magistrate to enable entrance into a dwelling for the purpose of determining whether violations (such as the number of unrelated people residing in a dwelling) of the Zoning Ordinance exist. Currently, when the Zoning Administrator receives a complaint regarding the number of people living in a dwelling the following actions are taken:

- Number of occupants is requested from the property owner
- License plates of cars at the residence are checked to determine ownership
- Water usage rates are checked to gauge the number of people living in the residence
- Police Department calls for service are reviewed for information relating to number of people in the residence

Often occupants do not own vehicles and out-of-state property owners are difficult to contact or are not cooperative in providing information concerning occupant information. There is a high turnover rate in the occupants of boarding/rooming houses which also makes it difficult to determine the number of people residing in a building. Neighbors of a property with a perceived zoning violation are often reluctant to testify in court. The majority of complaints are addressed through the actions listed above and violations are corrected. There are other situations where a violation is believed to exist and citizen complaints can not be resolved due to the lack of information needed to pursue legal actions through the courts.

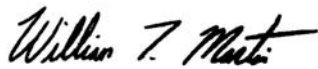
While infrequent use is expected, allowing the Zoning Administrator the ability to request an inspection warrant from the court magistrate would provide an additional tool to address suspected zoning violations when all other resources have been exhausted.

11. 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 the Zoning Ordinance by adding Section 35.1-20.1, Inspection Warrants to allow the Zoning Administrator to request an inspection warrant from the court magistrate to enable entrance into a dwelling for the purpose of determining whether violations of the Zoning Ordinance exist.

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
Battalion Chief Greg Wormser, Fire Marshal
Mr. Douglas Saunders, Acting Building Commissioner
Mr. Robert Fowler, Zoning Administrator
Mr. Jacob Dorman, Environmental Reviewer

VII. ATTACHMENTS

- 1. April 12, 2011 Council Agenda Item Summary**
- 2. Resolution #R-11-033**
- 3. Code of Virginia, Section 15.2-2286**
- 4. Proposed Section 35.1-20.1, Inspection Warrants**

MINUTES FROM THE MAY 11, 2011 PLANNING COMMISSION MEETING (MINUTES HAVE BEEN APPROVED):

- c. Consideration of amending the Zoning Ordinance by adding Section 35.1-20.1, Inspection Warrants. The proposed amendments would provide the Zoning Administrator or his duly authorized agent the authority to apply for the issuance of an inspection warrant by a magistrate or court of competent jurisdiction to allow the Zoning Administrator to enter a dwelling for the purposes of determining if a zoning violation exists. The proposed amendment would provide that the Zoning Administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the dwelling prior to seeking issuance of an inspection warrant.**

Mr. Martin explained that this item relates to a state code that allows zoning administrators the ability to gain inspection warrants. Currently, when the zoning administrator receives a complaint regarding the number of occupants in a dwelling, he takes several actions. He requests the number of occupants from the owner, looks at license plates of vehicles at the residence, looks at water usage rates and checks with the police department regarding calls for service. However, there are inherent problems with these methods. Often the residents do not have vehicles. Property owners are often non-responsive or unwilling to cooperate. Typically what happens when the zoning administrator has exhausted all of his means to determine the number of residents, it is very difficult to take someone to court to ensure enforcement of the *Zoning Ordinance*. This would provide another tool to the zoning administrator. Staff does not see it being used very frequently. It will be a matter of last resort. It is important to remember that enforcement of the *Zoning Ordinance* is an integral part of implementing the *Comprehensive Plan*. The Planning Division recommends approval of this zoning amendment.

Mr. Rob Fowler came forward. He explained that this was brought to staff's attention by the City Attorney in 2009 when the state made the change. Staff did not act on it at that time because there had really been no need to have this tool available. Staff is normally able to address citizen complaints about these types of issues by going through the measures that are described in the report. In the past year, he has run into a couple of instances where he believes that the neighbors are right about the activity but he is unable to do anything about it. Some people question whether this is really a matter of life safety. He has information to believe that someone is living in a closet and someone is living in a hallway. There are possibly padlocks on the doors. However, Mr. Fowler does not have enough evidence to go to the magistrate to obtain a warrant to gain access. The owner has advised staff to stay off the property and not to talk to the tenants. Mr. Fowler explained that when he is unable to close the matter, the neighbors still have to deal with the issue. He probably receives approximately twenty complaints a year of this type of activity. They are not always college students. Those are the easy ones to fix because he can work with the colleges and the property owners on those. He envisions using this tool for illegal rooming houses.

Mr. Fowler explained that they have no intention of knocking down doors and looking through closets. Once he receives a certain amount of complaints and has exhausted all resources, he would work with the department director and the City Attorney's office. Mr. Fowler mentioned that the Inspections Division has this authority, as well as the police department and Fire Marshal's office.

Chair Hamilton asked for anyone else to speak in favor of the petition. No one came forward. She asked for anyone to speak in opposition to the petition or with questions. Mr. C. J. Hicks came forward. He asked about the scope of the warrants and whether or not they are limited to occupancy violations. He asked if their scope possibly expands once the zoning administrator enters the building and sees something else. Mr. Hicks would hate to see these warrants abused.

Chair Hamilton asked if there was anyone else present to speak in opposition or with questions. No one came forward. Chair Hamilton asked Mr. Walter Erwin, the City Attorney, to come forward. He

explained that in the past couple of years, the General Assembly recognized that in enforcing the building code, the fire code, the amusement devices regulations and a number of other areas, sometimes the property owners will not cooperate. This is particularly true if the property owner suspects that he has a violation. The General Assembly expanded the authority of code officials to get administrative inspection warrants. The General Assembly felt it was appropriate to give zoning officials the same authority. This is the same procedure that the police department has to follow in order to get a search warrant. The zoning administrator would have to appear before the magistrate and specify the facts that he believes justify the issuance of an inspection warrant. If the judge or magistrate believes that there is probable cause to justify a search, he will issue the warrant.

Mr. Erwin explained that the warrant is not without limit. It identifies the particular violation you are searching for, for example, occupancy violations. Another example could be someone running an illegal business activity out of their home. In that case, the warrant would authorize inspection for that violation. It does not open it up for the person to go through unlimited inspection of the property. Mr. Erwin explained that there is something called the "plain view doctrine." If you are searching and you see something else in plain view, then you are entitled to act on that. A building code official might have a warrant for an electrical issue and while he is there, he sees another code violation that is in plain view. He can act on that but he is not authorized to inspect items that are not in plain view.

Commissioner Swienton asked if the zoning administrator would be allowed to open drawers or would his purview be restricted to what is in plain view. Mr. Erwin explained that he would not be allowed to open drawers but he would be allowed to search areas where it was possible for a person to be living. He could check the bedrooms and open closets to see if there was evidence that someone was living in those areas. He would be allowed to search those areas of the building where it would be reasonable to believe that someone could be living.

Commissioner Sale asked what would happen if there were other non-related plain view crimes apparent, for example, a meth lab. Mr. Erwin explained that does come up from time to time during building code enforcement. In this case, the building code official is not authorized to act on illegal activities. He makes his observations and reports them to the police department. Then the police department can act on that information and get a search warrant. In this case, if the zoning administrator sees illegal activities or building code violations, he would report them to the appropriate official and they would follow through with their investigations.

Commissioner Sale asked to what degree a zoning official can go in order to gain access to a dwelling. Mr. Erwin explained that the inspection warrant allows you to use whatever reasonable force may be necessary to carry out the search. If the police department is searching for drugs, the warrant may authorize them to kick the door in and go in without warning. What the City usually does in the case of building code warrants (and it would likely be the same process that would be used for zoning officials) is to notify the owner that he has a warrant and when he would like to carry out the inspection. If the risk to the public justifies breaking a door down, he would be authorized to do so. Mr. Erwin gave the example of a possible gas leak being that type of situation. However, in the case of a zoning code violation, he did not think that you would ever have emergency conditions. If the zoning official gets there and the owner does not let him in, he could call a locksmith. Mr. Erwin commented that staff has never used violence to enter a property for a building code search and he would envision handling zoning code violations the same way. Mr. Erwin said that recently the building code official took a property owner to court because the property owner would not show up to allow him to inspect the property. The judge ordered the property owner to be present and to allow the building code official to execute the search warrant. The property owner would have been held in contempt of court if he did not comply at that point.

Chair Hamilton asked Mr. Hicks if his concerns had been addressed. He said they have been addressed and he did not have any more questions.

Commissioner Swienton said that he could see where a building code violation could impact the safety of occupants. In the case of too many occupants living in a house and all of them have adequate living conditions, he is curious how that affects their safety. Mr. Erwin agreed that a lot of zoning code violations would not involve a life safety issue. For example, he mentioned a complaint about someone operating an illegal business. The neighbors were upset because there was additional traffic. The neighbors felt the business was detracting from the quality of life in the neighborhood. They wanted the City to act on their complaints.

Mr. Erwin stated that there are provisions in the building code that recognize that having too many people in a structure can pose risks. It can be unsanitary or the kitchen facilities may not be adequate. If someone is living in a closet and there is no heat, they might put in space heaters and that increases the risk of fire. There is the potential that if too many people are living in a house and there is a fire, that everyone may not be able to get out of the structure. A lot of the structures where the City receives the complaints about overcrowding are older structures and not built to modern construction standards.

Commissioner Swienton asked if there are limits to the number of family members living in a dwelling if they are all related. Mr. Erwin stated that the City's *Zoning Ordinance* does not limit the number of related family members (by blood or marriage) that can live in a dwelling. In that dwelling, there can also be one non-related person living there. The other definition of a family is up to three non-related people. However, the Fire Marshal, building code official or health department might conclude that there are too many people in the structure for safety or health reasons. One of those officials could order some of the people to move out of the dwelling.

Commissioner Hannon thought it was curious that the number of occupants living in a dwelling is not tied to the size of the dwelling. There could be a six-bedroom house and only three non-related people can live in it. He asked Mr. Erwin what is the rational basis for not linking the number of people to the size of the property. Mr. Erwin explained that when the current *Zoning Ordinance* was adopted in 1978, a limit of no more than five non-related persons living in a dwelling was defined in that version. It was not based on the size of the structure either. In 1989, the City was starting to receive a lot of complaints about too many college students living in homes near campuses. There were a number of illegal rooming houses as well. The City decided to lower the allowed number to three non-related persons living in a dwelling. It is somewhat of an arbitrary number but that is the number recommended by staff and accepted by City Council. Mr. Erwin remarked that the ordinance could be revised to tie it into the size of the structure or number of bedrooms but that has never been brought forward for a possible *Zoning Ordinance* amendment.

Commissioner Hannon asked how one investigates the relationship of family members and whether or not they are actually related by blood or marriage. Mr. Erwin remarked that Lynchburg has been fortunate and has not had the problems with immigrants that other cities in Virginia have. That is a real problem because they may not have the same documents that U.S. citizens have to verify their identity or they may have forged documents. Lynchburg has not had this problem but it certainly could have in the future. In that case, Mr. Erwin would probably seek help from other localities that have had to deal with this issue.

Commissioner Hannon asked if Virginia recognizes common law marriage. Mr. Erwin said Virginia recognizes common law marriages from other states but does not recognize a common law marriage formed in Virginia. Mr. Erwin said Virginia still has a law on the books that prevents unmarried individuals from living together, although it has not been enforced for a number of years.

Commissioner Coleman pointed out that the General Assembly has given other officials the opportunity to do this and now it is coming to zoning officials. Commissioner Coleman stated the City Attorney has helped Commissioner Coleman to understand the suggested process and to alleviate his

concerns. Commissioner Coleman made the following motion, which was seconded by Commissioner Sale:

“That the Planning Commission recommends to City Council approval of amending the Zoning Ordinance by adding Section 35.1-20.1, Inspection Warrants to allow the Zoning Administrator to request an inspection warrant from the court magistrate to enable entrance into a dwelling for the purpose of determining whether violations of the Zoning Ordinance exist.”

Commissioner Sale commented that he believes the City has handled these types of violations well in the past and believes this will not be used frequently. He sees this as a valuable tool and does not think the City will misuse this warrant option. There will be the checks and balance portion as well of a third party, such as the judge or magistrate, looking at the probable cause and evidence for the warrant. He thinks this will be another tool for creating a conversation between the City and a property owner. Mr. Erwin pointed out that there is a provision in the language that the zoning administrator will consult with the City Attorney before obtaining a warrant.

Commissioner Hannon asked Mr. Fowler to come back to address how he has handled these types of complaints in the past when he has come to an impasse with the property owner. Mr. Fowler said he has been fortunate enough to have closure in just about every complaint. In the past year, there have been two instances where he has hit a brick wall. The neighbors are calling and are furious because they know something is going on. Staff has been to the properties enough to know something is going on. Mr. Fowler has been doing this for 24 years and has learned when someone has something to hide by their actions. One property owner is so adamant that he has told staff to not even drive by his property. Mr. Fowler mentioned that he has nothing personal to gain in this request. This is an attempt to answer citizen complaints. Mr. Fowler said he does not have enough evidence in these instances to pursue a warrant. The neighbors are a little reluctant to come forward and he is not even sure that they have enough evidence to go to the magistrate. Based on a conversation Mr. Fowler had with one of the tenants, staff believes there is something going on inside. Mr. Fowler received information that someone is living in a closet, someone is living in a hallway and there are padlocks on the doors.

Mr. Erwin explained that when Mr. Fowler had approached him about getting a warrant for this property, Mr. Erwin had pointed out that the change needed to be made in the *Zoning Ordinance* first before he could pursue a warrant. Right now, there is no basis for a zoning official to get an inspection warrant. Commissioner Hannon clarified with Mr. Fowler that normally he is able to use public information to put together a case that there is a zoning violation and then proceed. Sometimes, however, circumstances arise where it is not possible for him to use only non-intrusive methods to put together a factual case to proceed to court. Mr. Fowler said that is correct. He goes through a process of garnering information from neighbors, the property owner, water usage and any contact the police may have made. He has been fortunate in the past to obtain compliance with the ordinance. However, in these recent cases, he has hit a place where he believes there are violations but he cannot put a case together.

Commissioner Swienton asked Mr. Fowler if he believes the people in these situations are voluntarily living in these conditions or is it a type of false imprisonment. Mr. Fowler said that would be a judgment call. He has talked to tenants and is surprised at what they are paying to live in these conditions but without a steady job and good credit, they will pay what they have to in order to keep a roof over their head.

Mr. Fowler commented that he did not want to lead the commission to believe that this would only be used for occupancy complaints. There are other situations where he might use it but he can promise them that staff has no intention of making anyone a criminal and has no intention of going this far until they have exhausted all avenues and believe that the neighbors have a valid issue.

Chair Hamilton asked them to keep their discussion to the motion that is on the floor. Commissioner Coleman would like to keep the motion on the floor and added that his confidence comes from his knowledge that the magistrate will do a fine job. He has seen them in very difficult situations and is very confident that this will not be abused and will be very helpful to the City.

Commissioner Swienton is in the favor of the concept of some type of checks and balance system. Obviously, he wants to keep people living in sound living conditions. He wants to make certain that this is worthwhile and used properly. Commissioner Swienton wanted to discuss the process of carrying out a warrant. Mr. Fowler indicated that he would probably take a police officer with him but acknowledged that the actual process is not in place yet. Commissioner Swienton asked how he could tell if the people are related or unrelated. How could he tell if there is a zoning code violation separate from perhaps a public health violation? Mr. Fowler indicated that they generally do not get complaints about families. They get complaints about number of people and activity. Every situation is different but he has not received a complaint where they have gone and found a family occupying a dwelling. Usually these are high traffic situations where people are very transient. When you go into a house, you can kind of pick up on the activity. Mr. Fowler acknowledged there is the possibility he could go into a house and find that everyone is related and there is no violation.

Mr. Fowler commented that he has no intention of running out tomorrow and using this. This is something where staff has to clearly define a procedure and make sure they follow it and only use it when they have exhausted all other typical measures and really believe there is something going on. The key is that you can glean from the neighbors' concerns and frustrations and the actions by the property owner that it is a safe bet that something illegal is going on.

Commissioner Hannon commented that he thinks they can safely concur with what the General Assembly and its Senate have agreed is necessary for jurisdictions.

The motion passed by the following vote:

AYES:	Barnes, Coleman, Hamilton, Hannon, Hooper, Sale and Swienton	7
NOES:		0
ABSTENTIONS:		0
ABSENT:		0

May 11, 2011

[illegible]