

January 25, 2011

The regular meeting of the Council of the City of Martinsville, Virginia, was held on January 25, 2011, in Council Chambers, Municipal Building, at 7:30 PM, with Mayor Kim Adkins presiding. Council Members present included: Mayor Kim Adkins, Vice Mayor Kimble Reynolds, Gene Teague, Mark Stroud, Sr., and Danny Turner. Staff present included: Clarence Monday, City Manager, Brenda Prillaman, Eric Monday, Leon Towarnicki, Wayne Knox, Dennis Bowles, Ruth Easley, Linda Conover, Jim Taipalus, Donna Odell and Eddie Cassady.

Following the invocation by Council Member Mark Stroud and Pledge to the American Flag, the Mayor welcomed everyone to the meeting and recognized members of the local Boy Scout Troop 63 in attendance.

On a motion by Kimble Reynolds, seconded by Mark Stroud, with a 5-0 vote, Council approved the minutes of the January 3, 2011 Council meeting.

City Attorney Eric Monday briefed Council on the proposed graffiti ordinance which has been reviewed by the Planning Commission. He recommended the following two changes as suggested by the Planning Commission: Under Sec. 13.28.4.a—change the 15 day period to 10 day period. Under Sec. 13-28.5.b—bold text indicates addition—“The city manager **with approval of City Council** may waive and release such liens in order to facilitate the sale of the property”

Mayor Adkins opened the public hearing. Emma Benecke of Beechnut Lane voiced concerns about the families having to pay the fines and felt the kids should be held responsible. Mayor Adkins then closed the public hearing. On a motion by Danny Turner, seconded by Gene Teague, with the following 5-0 recorded vote: Adkins, aye; Reynolds, aye; Teague, aye; Stroud, aye; and Turner, aye, Council approved the following graffiti ordinance on second reading with the recommended changes:

BE IT ORDAINED by the Council of the City of Martinsville, Virginia, in regular session held on January 25, 2011 and pursuant to Section 15.2-1812.2 of the Code of Virginia, that Section 13-28 of the City Code be repealed and reenacted, and that Sections 13-28.1 through 13-28.5 be enacted, as follows:

Sec. 13.28. Defacement of property prohibited; criminal penalty.

- (a) *It shall be unlawful for any person to apply graffiti upon or to willfully and maliciously deface or damage in any other manner any public buildings, facilities or other property, or any private buildings, facilities or other property. In any case where the defacement is (i) more than 20 feet off the ground, (ii) on a railroad or highway overpass, or (iii) committed for the benefit of, at the direction of, or in association with any criminal street gang, as that term is defined by section 18.2-46.1 of the Virginia Code, there shall be a mandatory minimum fine of \$500.00. Any fine imposed pursuant to conviction of a minor for violations of this section shall be assessed against the minor and such minor's parents or legal guardian.*
- (b) *Upon a finding of guilt in a case tried before the court without a jury where the violation constitutes a first offense that results in property damage or loss, the court, without entering a judgment of guilt, upon motion of defendant, may defer further proceedings and place defendant on probation pending completion of a plan of community service work. If the defendant fails or refuses to complete the community service as ordered by the court, the court may make final disposition of the case and proceed as otherwise provided. If the community service work is completed as the court prescribes, the court may discharge the defendant and dismiss the proceedings. Such discharge and dismissal procedure under this section shall be without adjudication of guilt and operates as a conviction only for the purposes of applying this article in subsequent proceedings.*
- (c) *Community service work prescribed by the court under subsection (b) shall include, to the extent feasible, the repair, restoration, or replacement of any damage or defacement to property within the city, and may include clean-up, beautification, landscaping or other appropriate community service within the city.*
- (d) *Community service work prescribed by the court under subsection (b) shall be performed under the supervision of the city manager or his/her designee, who shall report on such work to the city imposing the community service work requirement at such times and in such manner as the court may direct.*
- (e) *At or before the time of sentencing under this section, the court shall receive and consider any plan for making restitution or performing community service submitted by the defendant, as well as the recommendations of the city manager or the manager's designee concerning the plan.*
- (f) *As provided in Code of Virginia § 15.2-908, the court may order any person convicted of unlawfully defacing property to pay full or partial restitution to the city for costs incurred by the city in removing or repairing the defacement. No person convicted of a violation of this article shall be placed on probation or have his/her sentence suspended unless such person shall make at least partial restitution for such property damage or is compelled to perform community services, or both, as is more particularly set forth in Code of Virginia, § 19.2-305.1. The court's order of restitution shall be docketed as provided in Code of Virginia § 8.01-446 when so ordered by the court upon written request of the city and may be enforced by the city in the same manner as a judgment in a civil action.*

Sec. 13.28.1. Parental liability for cost of repair of damage to property.

(a) In accordance with § 8.01-44 of the Code of Virginia the city may institute an action and recover from the parents or either of them of any minor living with such parents or either of them for damages suffered by reason of the willful or malicious destruction of, or damage to, public property by such minor. No more than \$2,500.00 may be recovered from such parents or either of them as a result of any incident or occurrence on which such action is based.

(b) The owner of any property in the city may institute an action and recover from the parents, or either of them, of any minor living with such parents, or either of them, for damages suffered by reason of the willful or malicious destruction of, or damage to, such property by such minor. No more than \$2,500.00 may be recovered from such parents, or either of them, as a result of any incident or occurrence on which such action is based. Any recovery from the parent or parents of such minor shall not preclude full recovery from such minor except to the amount of the recovery from such parent or parents. The provisions of this section shall be in addition to, and not in lieu of, any other law imposing upon a parent liability for the acts of his minor child.

Sec. 13-28.2 Definition of "graffiti."

"Graffiti" shall mean the unauthorized application by any means of any writing, painting, drawing, etching, scratching or marking of an inscription, word, mark, figure or design of any type on any public or private building or other real or personal property owned, operated or maintained by a governmental entity or agency or instrumentality thereof or by any private person.

Sec. 13-28.3. Graffiti declared a public nuisance.

The existence of graffiti within the city limits in violation of this article is expressly declared a public nuisance, and is subject to the removal and abatement procedures specified in this article.

Sec. 13-28.4. Removal of graffiti.

(a) The city manager or his/her designated representative is authorized to undertake or contract for the removal or repair of the defacement of any public building, wall, fence or other structure, by the application of graffiti. Further the city manager or his/her designated representative may also undertake or contract for the removal or repair of the defacement by graffiti of any private building, wall, fence or other structure where such defacement is visible from any public right-of-way, but only in accordance with the following procedures:

(1) Prior to such removal of graffiti from private property, the city manager or his/her designated representative shall send to the property owner, by regular mail sent to the last address listed for the owner in city property assessment records, a notice stating: the street address and legal description of the property; that the property has been determined by the city to constitute a graffiti public nuisance; that the owner must take corrective action to abate the public nuisance created by such graffiti within 10 days of the date of the notice; and that if the graffiti is not removed within the 10-day period, the city will begin removal procedures. In the case of unimproved property, the notice shall also state that the cost of such corrective action shall be charged to the property owner. The notice shall further advise the owner of the right to challenge the city's determination and proposed action by requesting a meeting with a city official identified in the notice within 10 days of the date of the notice. The city shall initiate no corrective actions while a request for such a meeting or the outcome of such a meeting is pending. The determination of the designated city official following the requested meeting shall be final.

(2) If no corrective action is taken by the property owner within the 10-day period provided above and there is no request to challenge the city's determination within that period, the city manager or his/her designee shall send to the property owner by regular mail an additional notice that shall conform to the requirements of the first notice as set forth in subsection (a)(1) above and shall also state the date on which the city will commence corrective action to remove the graffiti on the property, which date shall be no earlier than 10 days from the date of mailing the second notice. Such additional notice shall also reasonably describe the corrective action contemplated to be taken by the city. Where the property owner fails to abate the public nuisance within 10 days after issuance of the second notice, the city manager or his/her designated representative is authorized to proceed with removal efforts forthwith.

(3) Before entering upon private property for the purpose of graffiti removal, the city shall attempt to obtain the consent of the property owner, occupant or other responsible party.

(b) Where a structure defaced by graffiti is owned by a public entity other than the city, the removal of the graffiti by the city is conditioned upon securing the consent of an authorized representative of the public entity having jurisdiction over the structure.

(c) If the city manager or his/her designee determines that any graffiti is an immediate danger to public health, safety or welfare and is unable to provide notice by personal service after at least two attempts to do so, then 48 hours after the later of (1) mailing notice to the property owner or other responsible party and (2) posting notice in a conspicuous place on the property, the city may remove or cause the graffiti to be removed.

Sec. 13-28.5. Assessment of costs against property for removal of graffiti.

(a) If the city undertakes corrective action to remove graffiti from private property after complying with the notice provisions of subsection 13-28.4(a)(1), and if the property was unoccupied when such graffiti was applied, the actual cost or expenses for such removal and related repairs shall be chargeable to and paid by the property owner, and may be collected as a special assessment against the respective lot or parcel of land to which it relates in the manner in which city taxes and levies are collected.

(b) Every charge authorized by this section with which the owner of any such property has been assessed and which remains unpaid shall constitute a lien against such property with the same priority as liens for unpaid local taxes and enforceable in the same manner as such liens. The city manager may, with the consent of the city council, waive and release such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed.

Doug Christman and Jim Taipalus gave a status update to Council on the Martinsville Mustangs team regarding: recruitment of players, new coach, advertising & season ticket sales, promotion of picnic deck rentals, away travel arrangements partnered with PHCC for significant cost savings, booking hotel stays in advance for better pricing, and promotion assistance being received from the volunteer booster club "Friends of the Mustangs".

Commissioner of Revenue Ruth Easley briefed Council on the refunds resulting from verification update of estimated BPOL tax:

The Commissioner of the Revenue office annually verifies and updates BPOL license fees based on federal tax return gross receipts information that is provided to the office by individual business taxpayers. Two businesses overestimated their gross receipts for the license year, for which their annual business license was based. One overestimate was for license year 2007 and the other was for license year 2008. Corrections to the assessment have been made by the Commissioner of the Revenue office and forwarded to the City

January 25, 2011

Treasurer. Because the refund amounts are over \$2,500, City Council must authorize the City Treasurer to issue the refunds so that the timing of the refund does not negatively impact the city's cash flow.

City of Martinsville Ordinances address updates of estimated business licenses that were not based on a prior year's actual gross receipts. The city's ordinance §11-23(f) provides that there shall be no interest charged or refunded on an adjustment of estimated tax liability to actual liability at the conclusion of the base year. We would not have assessed interest if the taxpayer had underestimated their gross receipts and we updated the assessment based on verification of actual gross receipts. Consequently, the city ordinances provide that we do not refund interest on these types of assessments when they are based on overestimates provided by the taxpayer.

These refunds are different from other refunds that City Council has authorized in that they did not result due to an appeal or audit on a verified and adjusted actual assessment. These BPOL assessments remained estimates until they could be verified with actual gross receipts as reported on the business federal tax returns. The necessary federal returns to verify the gross receipts for both businesses were provided in late December 2010.

The Code of Virginia authorizes the City Treasurer to issue refunds up to \$2,500 without prior authorization of City Council. Because the refund amount is over this limit, City Council must authorize the City Treasurer to issue the refund. Pursuant to City Ordinance §11-23(f) there is no need to calculate interest provided the refund is made within 30 days of the adjustment to reflect actual tax liability.

On a motion by Danny Turner, seconded by Kimble Reynolds, with a 5-0 vote, Council authorized the City Treasurer to issue refund of \$4,615.47 to Martinsville Anesthesia and another refund of \$3,863.92 to Tier Technologies effective January 26, 2011.

Wayne Knox briefed Council on the process of updating the city's prioritized list of projects for the Year 2011 Regional Comprehensive Economic Development Strategy in order to be eligible for funding. A list of prioritized local projects was reviewed by Council with several suggestions being made: enable automated meter reading; fiber optic high speed internet project; include West End Community Center land preparation; add West End Community Center to brownfields section; future development of NCI; courthouse renovations. The signed authorization letter is required to be sent to the WPPPDC by February 12 so Council decided to review the updated list again at the February 8, 2011 meeting for final approval.

Linda Conover presented the following monthly finance report:

Revenues & Expenditures

Through the end of December, first half of the Fiscal Year 2011, total revenues are \$39,054,755 representing 44.3% of the budget, and are 6.6% greater than anticipated at this point in the fiscal year. This difference is due in part to some unexpected revenues and a tax collection rate higher than the same time in the previous year. Due December 5th, taxes were collected at the following rates of budgeted amounts: Real Estate - 96.95%; Personal Property - 84.9%; Machinery & Tools - 101.1%; Business Equipment - 96.5%. The Local Sales & Use taxes collected through Dec. 31 were \$764,638, approximately 40% of the annual budgeted amount, representing only five months of collections. Meals Taxes collected through Dec. 31 were \$699,162, which is 52.1% of the FY11 budget.

The total expenditures through December are \$39,654,474, reflecting 45% of the budget, which is typical at this point in the fiscal year. Excluding the Special Revenue and School Funds, the excess of expenditures over revenues is \$42,402, which is mainly attributable to timing of debt service payments in the Meals Tax Fund, and the timing of purchasing power and billing for same, and the payment for the new bucket truck in the Electric Fund.

Combined Balance Sheet

As of December 31, the combined fund balance for FY11 is \$12,293,544.

Forecast

At the half-way point for this fiscal year, based on current revenues and expenditures, and barring all unforeseen emergencies and actions by the current General Assembly, staff feels our projection of a FY11 year-end fund balance of \$10.5 million to be accurate.

Dennis Bowles, Director of Utilities, presented the following information regarding

YTD figures on electric revenue:

Effective July 1, 2010, City Council passed a Power Cost Adjustment (PCA) factor of .0068 cents per kilowatt hour of consumption to all electric consumers. The PCA adjustment resulted from increasing power transmission costs related to transmission system reliability (referred to as Reliability Pricing Model (RPM)) and set electric rates to recover power costs of .07686 cents per kWh or \$76.86 MWH. A comparison of Electric Department expenses versus revenue for the 6 months ending December 31, 2010 indicates total expenses of \$9,187,072 and total revenues of \$8,180,080 netting a \$1,006,992 difference. This difference is due in part to expenditures of \$186,000 for a bucket truck, encumbered expense of approximately \$60,000 and increased power cost over the recovery amount set by City Council of \$76.86 MWH. Additionally, there is approximately 6 weeks lag in the time meters are read and billed before a revenue return is seen.

| | Demand Metered @ Watt | KWH Metered @ Watt ST. | KWH Billed by AMP | AMP Metered Demand | PJM | Bill Amount | Monthly Cost Per MWH | Over/Under All in Rate of \$76.86 |
|---------------|-----------------------|------------------------|-------------------|--------------------|--------------|----------------|----------------------|-----------------------------------|
| Jun-10 | | | 17946269 | 38101 | \$370,949.21 | \$1,344,417.81 | \$74.91 | |
| Jul-10 | 37680 | 18935180 | 19081504 | 37,869 | \$338,656.39 | \$1,498,609.60 | \$78.54 | \$1.68 |
| Aug-10 | 38870 | 18311270 | 18465173 | 39,100 | \$328,959.54 | \$1,500,589.07 | \$81.27 | \$4.41 |
| Sep-10 | 34390 | 15174550 | 15296475 | 34,597 | \$300,481.10 | \$1,247,965.65 | \$81.59 | \$4.73 |
| Oct-10 | 23990 | 12516890 | 12621693 | 24,083 | \$253,837.62 | \$1,126,415.55 | \$89.24 | \$12.38 |
| Nov-10 | 27810 | 13683900 | 13827165 | 28,074 | \$300,690.37 | \$1,146,734.22 | \$82.93 | \$6.07 |

As you can see from the table, power costs exceed the electric rate recovery amount of \$76.86 MWH for 5 months out of the past six months. June's power bill figures are included since the June bill is received and paid in mid July. Based on this information, staff recommends maintaining the PCA rate of .0068 for the remainder of the budget year.

Director of Human Resources, Donna Odell, asked that Council rescind the last two scheduled employee unpaid furlough days planned for March and April. After discussion, Council Members Teague, Reynolds, and Stroud asked for more time to study this before a decision is made. Mayor Adkins asked for Council to consider eliminating these two furlough days and she was ready to support it at this meeting, but would support taking time to think about it. Council Member Turner stated he could not support eliminating the furlough days due to pending loss of Penney's store, electric department not breaking even, and needs at Martinsville High School. The Mayor asked for Donna's presentation and supporting documents to be included in the Feb. 8 agenda packet to give Council time to think about it.

On a motion by Gene Teague, seconded by Kimble Reynolds, with a 5-0 vote, Council approved the monthly finance report.

On a motion by Gene Teague, seconded by Kimble Reynolds, with a 5-0 vote, Council approved the following consent agenda:

| BUDGET ADDITIONS FOR 1/25/11 | | | | |
|------------------------------|--------|--|---------|---------|
| ORG | OBJECT | DESCRIPTION | DEBIT | CREDIT |
| FY11 | | | | |
| GENERAL FUND | | | | |
| 01100908 | 480401 | Miscellaneous Revenues - Donations/Police | | 55 |
| 01311085 | 506062 | Police Department - Firearms Supplies | 55 | |
| | | appropriate donation - M.R. | | |
| 01100909 | 490104 | Advance/Recovered Costs | | 100 |
| 01331108 | 501200 | Sheriff - Corrections - Overtime | 93 | |
| 01331108 | 502100 | Sheriff - Corrections - Social Security | 6 | |
| 01331108 | 502110 | Sheriff - Corrections - Medicare | 1 | |
| | | Christmas Parade security | | |
| 01103919 | 443130 | Private Grants - Harvest Foundation | | 654,957 |
| 01812245 | 503140 | Uptown Master Plan Phase I - Prof Services - Engineering | 654,957 | |
| | | Harvest Foundation Grant | | |
| 01100909 | 490134 | Recovered Costs - Parks & Recreation | | 100 |
| 01711210 | 506010 | Parks & Recreation - Special Events | 100 | |
| | | Costs recovered from MHC Coalition | | |
| Total General Fund: | | | 655,212 | 655,212 |
| SCHOOL FUND | | | | |
| 18103909 | 489912 | Miscellaneous | | 500 |
| 11001100 | 561620 | Supplemental S&W | 375 | |
| 51001100 | 561620 | Supplemental S&W | 125 | |
| Total School Fund: | | | 500 | 500 |

January 25, 2011

Business from the floor: Wayne Knox updated council on the relocation status of Quality Catering from 201 Greyson St. He reported a June 1, 2011 deadline has been given to them and they will be relocating to Main Street in the Uptown area. Mike Elder of 923 Childress Dr. expressed his concerns about his desire to have a jury trial for a personal matter.

Comments from City Council: Turner—pointed out that bills are in the House regarding sweepstakes gambling.

Comments from the City Manager: (1)the FY10 comprehensive audit copies have been provided to Council and the auditor will attend the February 22, 2011 Council meeting (2)first session of City's Government Academy was a success with good feedback.

In accordance with Section 2.1-344 (A) of the Code of Virginia (1950, and as amended) and upon a motion by Kimble Reynolds, seconded by Gene Teague,, with the following 5-0 recorded vote: Adkins, aye; Reynolds, aye; Teague, aye; Stroud, aye; and Turner, aye, Council convened in Closed Session, for the purpose of discussing the following matter: (A) Consultation with legal counsel and briefings by staff members, attorneys or consultants pertaining to actual or probable litigation, or other specific legal matters requiring the provision of legal advise by such counsel, as authorized by Subsection 7; (B) A personnel matter as authorized by Subsection 1; (C) Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the City of Martinsville would be adversely affected, as authorized by Subsection 6.

At the conclusion of Closed Session, each returning member of Council certified that (1) only public business matters exempt from open meeting requirements were discussed in said Closed Session; and (2) only those business matters identified in the motion convening the Closed Session were heard, discussed, or considered during Session. On a motion by Gene Teague, seconded by Mark Stroud, with the following recorded 5-0 vote: Adkins, aye; Reynolds, aye; Teague, aye; Stroud, aye; and Turner, aye, Council returned to Open Session. No action was taken.

There being no further business, Mayor Adkins adjourned the meeting at 8:40 pm.

Clarence C. Monday
Clerk of Council

Kim E. Adkins
Mayor