

May 13, 2008

The regular meeting of the Council of the City of Martinsville, Virginia, was held on May 13, 2008, in Council Chambers, Municipal Building, at 7:30 PM, with Mayor Kimble Reynolds, Jr. presiding. Council Members present included: Kimble Reynolds, Jr., James Clark, Kathy Lawson, Ron Ferrill, and Gene Teague. Staff present included: Clarence Monday, City Manager, Leon Towarnicki, Brenda Prillaman, Eric Monday, Dennis Bowles, Linda Conover, Mike Rogers, Wayne Knox, Esther Artis, John Dyches, and Ruth Easley.

Following the invocation by Mayor Kimble Reynolds, Jr. and Pledge to the American Flag, Mayor Reynolds welcomed everyone to the meeting.

On a motion by Ron Ferrill, seconded by Kathy Lawson, Council approved the minutes of the April 22, 2008, April 23, 2008, and May 5, 2008 meetings.

On a motion by Gene Teague, seconded by Kathy Lawson, with the following recorded vote: Mr. Reynolds, aye; Mr. Clark, aye; Mrs. Lawson, aye; Mr. Ferrill, aye; and Mr. Teague, aye, Council approved, on second reading, the following revisions of the Erosion and Sediment Control Ordinance—Chapter 8 of the City Code:

EROSION AND SEDIMENT CONTROL*

Article I. In General

- Sec. 8-1. Definitions.
- Sec. 8-2. Purpose of chapter.
- Sec. 8-3. Relationship of chapter to subdivision and zoning ordinances.
- Sec. 8-4. Penalty for violations of chapter.
- Sec. 8-5. Enjoining violations; legal action to enforce chapter.
- Sec. 8-6. Effect of compliance with chapter in action for damages.
- Sec. 8-7. State regulations adopted.
- Sec. 8-8. Responsibility for administering and enforcing local control program.
- Sec. 8-9. Inspection and record of land-disturbing activities; correction of defects.
- Sec. 8-10. ~~Duty of building official with respect to complaints concerning control measures; procedure in case of approved, but ineffective, control measures.~~
- Sec. 8-11. Plan review and inspection fee.
- Secs. 8-12—8-21. Reserved

Article II. Control Plan for Land-Disturbing Activities

- Sec. 8-22. Submission
- Sec. 8-23. Review and approval or disapproval.
- Sec. 8-24. Changing approved plan.
- Secs. 8-25—8-34. Reserved.

Article III. Permit for Land-Disturbing Activities

- Sec. 8-35. Required.
- Sec. 8-36. Plan approval and payment of fee prerequisite to issuance.
- Sec. 8-37. Applicant to certify as to compliance with approved plan, etc.
- Sec. 8-38. Applicant to execute right-of-entry agreement.
- Sec. 8-39. Applicant's bond or other security.
- Sec. 8-40. Article requirements are in addition to other provisions relating to issuance of permits.
- Secs. 8-41—8-50. Reserved.

Article IV. Board of Appeals

- Sec. 8-51. ~~Established; composition; appointment and terms of members.~~
- Sec. 8-52. ~~Chairman and vice chairman.~~
- Sec. 8-53. ~~Rules of procedure; minutes; resolutions; quorum.~~
- Sec. 8-54. ~~Appeals to board generally.~~
- Sec. 8-55. ~~Grant of variances.~~
- Sec. 8-56. ~~Required vote for reversal of decisions, etc.~~
- Sec. 8-57. ~~Appeals from board of appeals.~~

***Cross references**—Building regulations, Ch. 6; streets and sidewalks, Ch. 19; swimming pools, Ch. 20; water and sewers, Ch. 23; subdivision ordinance, App. A; zoning ordinance, App. B.

State Law references—Erosion and Sediment Control Law, Code of Virginia, §§ 21-89.1—21-89.15; local control programs, § 21-89.5.

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ARTICLE I. IN GENERAL

Sec. 8-1. Definitions.

As used in this chapter, unless the context clearly indicates otherwise, certain terms, titles and phrases shall be defined as follows: *Agreement in lieu of a plan*: A contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

Applicant: Any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

~~*Board of appeals*: The board of appeals for erosion and sediment control established by article IV of this chapter.~~

~~*Board or Virginia Soil and Water Conservation Board*: The agency created in section 10.1-502 of the Code of Virginia.~~: The Virginia Soil and Water Conservation Board.

Certified Inspector: An employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes the program within one year after enrollment.

Certified plan reviewer: An employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes the program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1.

Certified program administrator: An employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for project administration and successfully completes the program within one year after enrollment.

City: The City of Martinsville.

Clearing: Any activity which removes the vegetative ground cover including, but limited to, root mat removal and/or topsoil removal.

Conservation plan, erosion and sediment control plan or plan: A document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan, inventory and management information, with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Conservation standards: The criteria, guidelines, techniques and methods for the control of erosion and sedimentation.

Department: The Department of Conservation and Recreation.

Development: A tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

Director: The Director of the Department of Conservation and Recreation.

~~*District, or soil and water conservation district*: The Blue Ridge Soil and Water Conservation District, which is a governmental subdivision of the state and a public body corporate and politic organized in accordance with the Soil Conservation Districts Law, title 10.1, chapter 5 (§ 21-1 et. Seq.), Code of Virginia.~~

Erosion and Sediment Control Plan: A document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, and appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the plan approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Erosion impact area: An area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of one acre 10,000 square feet or less used for residential purposes.

Excavating: Any digging, scooping or other method of removing earth materials.

Filling: Any depositing or stockpiling of earth materials.

Grading: Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled conditions.

Land-disturbing activity: Any land change which may result in soil erosion from water or wind and the movement of sediments into State waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling land. The phrase shall not include:

1. Such minor land-disturbing activities as home gardens and individual home landscaping, repairs, and maintenance work.
2. Individual service connections.
3. Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street, or sidewalk, provided such land-disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced.
4. Septic tank lines or drainage fields, unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system.
5. Surface or deep mining.
6. Exploration or drilling for oil and gas, including the well site, roads, feeder lines and off-site disposal areas.
7. Tilling, planting or harvesting of agricultural, horticultural or forest crops or livestock feedlot operations; including engineering operations and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, ~~chapter 8.1 Article 2, (section 62.1-115.1 10.1-604 et seq.)~~ of Chapter 6, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (Sec. 10.1-1100 et seq.) of this title or is converted to bona fide agricultural or improved pasture use as described in Subsection B of Sec. 10.1-1163.
8. Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company.
9. ~~Preparation for single-family residences separately built, unless in conjunction with multiple construction in subdivision development.~~
9. Disturbed land areas for commercial or noncommercial uses of less than ten thousand (10,000) square feet in size.
10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles.
11. Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this ordinance.
12. Emergency work to protect life, limb or property and emergency repairs; provided that, if the land-disturbing activity would have required an approved erosion and sediment control plan if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the ~~building~~ official plan approving authority.

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Land-disturbing permit: A permit issued by the building official City of Martinsville for clearing, filling, excavating, grading or transporting, or any combination thereof, on all lands except those specifically exempted by the provisions of this chapter.

Local erosion and sediment control program or local control program: An outline or explanation of the various elements or methods employed by the city to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and including such items as this chapter, policies and guidelines, technical materials, inspection, enforcement and evaluation.

Natural Channel Design Concepts: The utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull breach and its floodplain.

Owner: The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

Peak Flow Rate: The maximum instantaneous flow from a given storm condition at a particular location.

Permittee: The person to whom the permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

Person: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of this state, any interstate body or any other legal entity.

Plan-approving authority: The building Public Works official, who is responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.

Program authority: The City of Martinsville which has adopted a soil erosion and sediment control program approved by the Board.

Responsible Land Disturber: An individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who (i) holds a Responsible Land Disturber certificate of compliance, (ii) holds a current certificate of competence from the Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review, (iii) holds a current Contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1.

Runoff Volume: The volume of water that runs off the land development project from a prescribed storm event.

Single-family residence: A noncommercial dwelling that is occupied exclusively by one family.

State erosion and sediment control program or state program: The program adopted by the board consisting of conservation regulations administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia including regulations designed to minimize erosion and sedimentation.

State waters: All waters on the surface and under the ground wholly or partially within or bordering the commonwealth or within its jurisdiction.

~~*Subdivision:* The division of a parcel of land into two (2) or more lots or parcels for the purpose of transfer of ownership or building development or, if a new street is involved, any division of a parcel of land; provided that a division of land for agricultural purposes into lots of five (5) acres or more and not involving a new street shall not be deemed a subdivision. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.~~

Transporting: Any moving of earth materials from one place to another, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover, either by tracking or buildup of earth materials, to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

Water Quality Volume: The volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

(Ord. of 2-23-82, § 2.1; Ord. No. 90-15, 11-27-90) State law reference—Similar definitions, Code of Virginia, § 21-89.3.

Sec. 8-2. Purpose of Chapter.

This ordinance shall be known as the "Erosion and Sediment Control Ordinance of the City of Martinsville." The purpose of this chapter is to prevent degradation of properties, stream channels, waters and other natural resources of the City of Martinsville ~~conserve the land, water, air and other natural resources of the city and promote public health and welfare of the people in the city~~ by establishing requirements for the control of erosion and sedimentation and soil erosion, sediment deposition and nonagricultural runoff by establishing procedures whereby these requirements shall be administered and enforced.

(Ord. of 2-23-82, § 1.1)

This Chapter is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4 (Sec. 10.1-560 et seq.), known as the Virginia Erosion and Sediment Control Law.

Sec. 8-3. Relationship of chapter to subdivision and zoning ordinances.

This chapter is intended to be an adjunct to the city's subdivision and zoning ordinances wherein such apply to the development and subdivision of land or wherein such apply to development on previously subdivided land within the city.

(Ord. of 2-23-82, § 1.1) Cross references—Subdivision ordinance, App. A; zoning ordinance, App. B.

Sec. 8-4. Penalty for violations of chapter.

A violation of this chapter shall be deemed a Class 1 misdemeanor ~~punishable by a fine of not more than one thousand dollars (\$1,000.00), or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment.~~

In addition to any criminal penalties provided under this section, any person who violates any provision of this chapter may be liable to the city in a civil action for damages, as follows:

1. Any person who violates any provision of this ordinance shall, upon finding of the District Court of the City of Martinsville, be assessed a civil penalty. The civil penalty for any one violation shall be \$100, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total \$3000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.

Note: The adoption of civil penalties according to this schedule shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under this section. Refer to Code of Virginia, Sec. 10.1-562 J.

2. The Public Works official, or the owner of the property which has sustained damage or which is in imminent danger of being damaged, may apply to the Circuit Court of the City of Martinsville to enjoin a violation or threatened violation of this ordinance, without the necessity of showing that an adequate remedy at law does not exist. However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to the property.

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3. In addition to any criminal penalties provided under this ordinance, any person who violates any provision of this ordinance may be liable to the City of Martinsville in a civil action for damages.
4. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this chapter shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars (\$2,000.00) for each violation. A civil action for such violation or failure may be brought by the City of Martinsville.
Any civil penalties assessed by a court shall be paid into the treasury of the City of Martinsville, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.
5. With the consent of any person who has violated or failed, neglected or refused to obey any condition of a permit or any provisions of this chapter, the building official City of Martinsville may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not exceed the limit specified in subsection (4) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (4).
6. The Commonwealth's Attorney shall, upon request of the City or the permit issuing authority, take legal action to enforce the provisions of this ordinance.
7. Compliance with the provisions of this ordinance shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

(Ord. of 2-23-82, § 5.1; Ord. No. 90-15, 11-27-90) **Stated law reference**—Similar provisions, Code of Virginia, § 21-89.11.

Sec. 8-5. Enjoining violations; legal action to enforce chapter.

(a) The building official City of Martinsville may apply to the circuit court of the city for injunctive relief to enjoin a violation or a threatened violation of this chapter, without the necessity of showing that there does not exist an adequate remedy at law.

(b) The commonwealth's attorney shall, upon request of the building official, take legal action to enforce the provisions of this chapter.

(Ord. of 2-23-82, §§ 5.2, 5.3) **State law reference**—Similar provisions, Code of Virginia, § 21-89-11.

Sec. 8-6. Effect of compliance with chapter in action for damages.

Compliance with the provisions of this chapter shall be prima facie evidence, in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation, that all requirements of law have been met and the complaining party must show negligence in order to recover any damages.

(Ord. of 2-2-82, § 5.4) **State law reference**—Similar provisions, Code of Virginia § 21-89-11.

Sec. 8-7. State regulations adopted.

~~The regulations as adopted and amended from time to time in the state erosion control program are adopted and incorporated into this chapter by reference as if they were set forth verbatim.~~

(a) Pursuant to section 10.1-562 of the Code of Virginia, the City of Martinsville hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook, as amended.

(b) Before adopting or revising regulations, the City of Martinsville shall give due notice and conduct a public hearing on the proposed or revised regulations, except that a public hearing shall not be required when the City of Martinsville is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the City of Martinsville proposes or revises regulations that are more stringent than the state program.

(Ord. of 2-23-82, § 1.1; Ord. No. 90-15, 11-27-90) **Sec. 8-8. Responsibility for administering and enforcing local control program.**

The Erosion and Sediment Control Program of the City of Martinsville shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person. The building official-Certified Program Administrator shall have the overall responsibility for administering and enforcing the local erosion and sediment control program. The City of Martinsville hereby designates the public works department as the plan-approving authority. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the public works department, engineering division.

(Ord. of 2-23-82, § 3.1) **Sec. 8-9. Inspection and record of land-disturbing activities; correction of defects.**

~~(a) The building official is responsible for developing and implementing a systematic program for on-site inspection to insure that the erosion and sediment control measures on the approved plans are actually carried out. The building official may require monitoring and reports from the person responsible for carrying out the plan. Inspections of land-disturbing activities shall be conducted by a certified inspector. The City of Martinsville may require the person responsible for carrying out the plan to monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.~~

~~(b) The building official is also responsible for the developing and implementing a file system for land-disturbing projects. The file should contain a record of each inspection, date of inspection, date land-disturbing activities commenced and comments concerning compliance and noncompliance. The Certified Inspector shall periodically inspect the land-disturbing activity in accordance with Sec 4VAC50-30-60 of the Virginia Erosion and Sediment Control Regulations to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.~~

~~If the Certified Inspector determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.~~

~~The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed in violation of this ordinance and shall be subject to the penalties provided by this ordinance.~~

~~(c) A report shall be made of each inspection pursuant to this section. If there is a case of noncompliance, the report shall contain statements of the conservation measures needed for compliance and a recommended time in which such measures should be commenced and completed. The person responsible for the work shall be given a copy of the report so that he may correct those items which are not in compliance. The owner, occupier or operator shall be given notice of each inspection and an opportunity to accompany the inspector.~~

~~(dc) Upon determination of a violation of this ordinance, the Public Works Official may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken. that the items of noncompliance have not been corrected within the time specified in the inspection report referred to in subsection (c) above, the building official shall prepare a notice to comply containing a detailed description of the conservation measures necessary for compliance and the time within which such conservation measures shall be completed. The notice to comply shall be served upon the~~

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permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities. Upon failure to comply within the time specified, the permit may be revoked, and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this chapter and, upon conviction, shall be subject to the penalties provided under section 8-4. When no action is taken within the time specified in the notice to comply, the building official shall prepare a letter of intent to utilize the performance bond, cash escrow or other legal arrangements to apply the conservation measures to correct the deficiency. This letter of intent will be sent by registered or certified mail to the person responsible for carrying out the plan, and the building official shall utilize the performance guarantee which is in effect and request a local contractor to undertake the needed erosion control measures on behalf of the city. If land-disturbing activities have commenced without an approved plan, the **Public Works Official** may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

Where the alleged noncompliance is causing or is imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.

The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the Circuit Court of the City of Martinsville.

If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the **Public Works Official** may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the City of Martinsville.

The owner may appeal the issuance of an order to the Circuit Court of the City of Martinsville.

Any person violating or failing, neglecting or refusing to obey an order issued by the **Public Works Official** may be compelled in a proceeding instituted in the Circuit Court of the City of Martinsville to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall be lifted immediately.

Nothing in this section shall prevent the **Public Works Official** from taking any other action authorized by this ordinance.

(e) Upon receipt of a sworn complaint of a substantial violation of this chapter from the building official, the city manager may, in conjunction with or subsequent to a notice to comply, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken. Where the alleged noncompliance is causing or is in the imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, such an order may be issued whether or not the alleged violator has been issued a notice to comply. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The notice shall be served in the same manner as a notice to comply and shall remain in effect for seven (7) days from the date of service, pending application by the building official or alleged violator for appropriate relief to the circuit court. Upon completion of corrective action, the order shall immediately be lifted. Nothing in this section shall prevent the city from taking any other action specified in this chapter.

(Ord. of 2-23-82, § 3.9; Ord. No. 90-15, 11-27-90)

Sec. 8-10. Duty of building official with respect to complaints concerning control measures;

~~— procedure in case of approved, but ineffective, control measures.~~

~~(a) The building official shall be responsible for handling complaints concerning absent or ineffective erosion control measures.~~

~~(b) When, upon investigation, it is determined that ineffective erosion control measures are being followed, but such measures are in accordance with approved plans, the building official shall give notice in writing to the applicant, stating the necessary actions required to correct the ineffective measures. The notice shall state the time allowed to make the corrections and shall be considered as an amendment to the original plan.~~

~~(Ord. of 2-23-82, § 3.9; Ord. No. 90-15, 11-27-90)~~

Sec. 8-110. Plan review and inspection fee.

At the time an applicant submits his erosion and sediment control plan and permit application under this chapter, he shall also submit a plan review and inspection fee of ~~fifteen dollars (\$15.00)~~ one hundred dollars (\$100.00), plus ~~one dollar (\$1.00)~~ fifty dollars per additional acre of land being disturbed or ~~five dollars (\$5.00)~~ per building lot, whichever is greater. The maximum fee shall be ~~one hundred fifty dollars (\$150.00)~~.

(Ord. of 2-23-82, § 3.8) **State law reference**—Authority for above fee, Code of Virginia, § 29-80.5.

Secs. 8-1211—8-21. Reserved.

ARTICLE II. CONTROL PLAN FOR LAND-DISTURBING ACTIVITIES

Sec. 8-22. Submission.

(a) Any person desirous of engaging in any land-disturbing activity shall submit to the ~~building official~~ Planning and Zoning Administrator for the City of Martinsville three (3) copies of an erosion and sediment control plan for such activity. Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the City an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the plan-approving authority.

(b) The preparation and submission of the erosion and sediment control plan for a proposed land-disturbing activity shall be the responsibility of the owner or lessee of the land or his duly authorized agent. When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner. The standards contained within the "Virginia Erosion and Sediment Control Regulations", and the Virginia Erosion and Sediment Control Handbook as amended are to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan.

(c) Where land-disturbing activities involve lands under the jurisdiction of ~~the City and Henry County~~ more than one local control program, a plan, at the option of the applicant, ~~shall be submitted to both jurisdictions for review and approval or~~ may be submitted to the board for approval, rather than to each jurisdiction concerned. Where the land-disturbing activity results from the construction of a single-family residence, and agreement in lieu of a plan may be submitted for an erosion and sediment control plan if executed by the plan-approving authority.

(d) In order to prevent further erosion, the ~~building official~~ City may require submission and approval of a conservation plan for any land identified as an erosion impact area.

(e) Where land-disturbing activity results from the construction of a single-family residence, an "agreement in lieu of a plan" may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

(f) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:

1. Construction, installation or maintenance of electric, natural gas and telephone utility lines and pipelines; and;
2. Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

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Individual approval of separate projects within subdivisions 1 and 2 of this subsection is not necessary when the Board approved specifications are followed, however, projects included in subdivisions 1 and 2 must comply with Board approved specifications. Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the City of Martinsville's erosion and sediment control program.

(g) State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia Sec. 10.1-564.

(h) In addition, in accordance with § 10.1-561 of the Code of Virginia, stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

(i) In accordance with § 10.1-561 of the Code of Virginia, any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and volume requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2 and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

(j) In accordance with the procedure set forth by § 10.1-563 (E) of the Code of Virginia, any person engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks, pursuant to a permit issued by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation banks annually with the Board for review and approval consistent with guidelines established by the Board.

(Ord. of 2-23-82, § 3.2—3.4; Ord. No. 90-15, 11-27-90) **State law reference—Control plan required, Code of Virginia, § 21-89.6.**

Sec. 8-23. Review and approval or disapproval.

(a) The ~~building~~ public works official shall have the responsibility of reviewing and approving erosion and sediment control plans submitted under this article. ~~During his review of any plan, he shall consult with the city engineer and other personnel or the Virginia Polytechnic Institute Extension Service for technical advice and assistance.~~

(b) In determining the adequacy of a plan, the ~~building~~ official plan-approving authority shall be guided by the same requirements, standards, regulations and guidelines ~~recommendations~~ contained in the "Virginia Erosion and Sediment Control Regulations", and the ~~this chapter and the 1980 Edition of the Virginia Erosion and Sediment Control Handbook, as amended.~~ When the standards vary between the publications, the State regulations shall take precedence.

(c) A plan shall be approved, in writing, within forty-five (45) days from receipt thereof by the ~~building~~ public works official, if the plan meets the requirements of the board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, to the program authority, as provided by § 10.1-561, of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance. However, the plan-approving authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § 10.1-561 of the Virginia Erosion and Sediment Control Law. Failure to provide the name of an individual holding a certificate of competence shall be a violation of this ordinance.

(d) If a plan is disapproved, within forty-five (45) days from the receipt thereof, the ~~building~~ public works official shall specify, in writing, such modifications, terms and conditions as will permit approval of the plan and communicate these requirements to the applicant.

(e) If no action is taken by the ~~building~~ public works official within forty-five (45) days of the receipt of a plan, the plan shall be deemed approved and a land-disturbing permit shall be issued under article III of this chapter.

(f) Pursuant to § 10.1-561.1 of the Code of Virginia, and erosion control plan shall not be approved until it is reviewed by a certified plan reviewer.

(g) Variances: The plan-approving authority may waive or modify any of the standards that are deemed to be too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:

- (1) At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the plan-approving authority shall be documented in the plan.
- (2) During construction, the person responsible for implementing the approved plan may request a variance in writing from the plan-approving authority. The plan-approving authority shall respond in writing either approving or disapproving such a request. If the plan-approving authority does not approve a variance within 10 days of the receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

(Ord. of 2-23-82, § 3.3; Ord. No. 90-15, 11-27-90) **State law reference—Approval or disapproval of control plans, Code of Virginia, § 21-89.6.**

Sec. 8-24. Changing approved plan.

An approved plan may be changed by the plan-approving authority:

1. Where inspection has revealed the inadequacy of the plan to accomplish the erosion and sediment control objectives of the plan; or
2. When the person responsible for carrying out the approved plan finds that, because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of the regulations, are agreed upon by the ~~building~~ public works official and the person responsible for carrying out the plan.

~~No changes in time sequence than one year shall be granted. Postponement of any work included in an approved plan for longer than one year shall require the applicant to receive a new permit for this work.~~

(Ord. of 2-23-82, § 3.5; Ord. No. 90-15, 11-27-90) **State law reference—Similar provisions, Code of Virginia, § 21-89.6.**

Sec. 8-25—8-34. Reserved.

ARTICLE III. PERMIT FOR LAND-DISTURBING ACTIVITIES

Sec. 8-35. Required.

(a) Each person who is required to prepare and submit an erosion and sediment control plan for a proposed land-disturbing activity shall obtain a land-disturbing permit from the ~~building~~ public works official before the proposed activity is commenced.

(b) Obtaining a permit for a proposed land-disturbing activity shall be the responsibility of the owner or lessee of the land or his duly authorized agent.

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(c) Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.

(d) No person may engage in any land-disturbing activity until he has acquired a land-disturbing permit, unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance, and has paid the fees and posted the required bond.

(Ord. of 2-23-82, § 3.6; Ord. No. 90-15, 11-27-90) Sec. 8-36. Plan approval and payment of fee prerequisite to issuance.

(e) The building public works official shall not issue a land-disturbing, grading, building, or other permit unless the applicant has gained approval of his submitted erosion and sediment control plan and has paid the fee prescribed in section 8-11.

(Ord. of 2-23-82, § 3.6; Ord. No. 90-15, 11-27-90) Sec. 8-37. Applicant to certify as to compliance with approved plan, etc.

No land-disturbing permit shall be issued by the building public works official, unless the applicant has certified on his permit application that he will properly perform the control measures included in the plan approved under this chapter and will abide by the requirements of the city.

(Ord. of 2-23-82, § 3.6) Sec. 8-38. Applicant to execute right-of-entry agreement.

The applicant for a land-disturbing permit shall execute a right-of-entry agreement with the city which will guarantee the right-of-entry by appropriate persons for the purpose of inspecting and monitoring the land-disturbing activities and installation, reinstallation or maintenance of erosion and sediment control measures in the event the applicant fails to install or maintain such measures after notice in writing.

(Ord. of 2-23-82, §§ 3.6, 3.7) Sec. 8-39. Applicant's bond or other security.

(a) The building public works official shall, prior to issuing any land-disturbing permit, require the applicant, other than the city, to present a reasonable performance bond, cash escrow, letter of credit, any combination thereof or some legal arrangement acceptable to the building public works official to insure that measures could be taken by the city at the applicant's expense should he fail, within the time specified, to initiate or maintain appropriate conservation action which may be required of him as a result of his land-disturbing activity. Should it become necessary to take such measures, and the costs are found to exceed the securities held, the city may collect the additional amount from the permittee.

(b) The amount of the bond or other security for performance shall not exceed the total estimated cost to initiate and maintain appropriate conservation action based on a unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed 25% of the cost of the conservation action.

(c) Within sixty (60) days of the achievement of adequate stabilization of the site, as determined by the City, the bond or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant, or terminated, as the case may be.

(Ord. of 2-23-82, § 3.7; Ord. No. 90-15, 11-27-90) State law reference—Similar provisions, Code of Virginia, § 21-89.7.

Sec. 8-40. Article requirements are in addition to other provisions relating to issuance of permits.

The requirements of this article are in addition to all other provisions of law relating to the issuance of permits for work involving land-disturbing activities.

(Ord. of 2-23-82, § 3.7) Secs. 8-41—8.50. Reserved.

ARTICLE IV. BOARD OF APPEALS APPEALS AND JUDICIAL REVIEW

Sec. 8-51. Established; composition; appointment and terms of members.

Any applicant under the provision of this ordinance who is aggrieved by any action of the City of Martinsville or its agent in disapproving plans submitted pursuant to this ordinance shall have the right to apply for and receive a review of such action by the Building Board of Appeals provided an appeal is filed within 30 days from the date of action. Any applicant who seeks an appeal hearing before the Building Board of Appeals shall be heard by the board and shall have at least 30 days prior notice. In reviewing the agent's actions, the Building Board of Appeals shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the Building Board of Appeals may affirm, reverse or modify the action. The Building Board of Appeals' decision shall be final, subject only to review by the Circuit Court of the City of Martinsville.

Final decisions of the City of Martinsville under this ordinance shall be subject to review by the City of Martinsville Circuit Court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in the land-disturbing activities.

A board of appeals for erosion and sediment control is hereby established. It shall consist of five (5) members, who shall be residents of the city and who shall be appointed by the city council. Members of the board of appeals shall be appointed for five-year terms, except that the original appointments shall be made for such terms that the term of one member shall expire each year. Members may be appointed to succeed themselves.

(Ord. of 2-23-82, § 4.1; Ord. No. 90-15, 11-27-90)

Sec. 8-52. Chairman and vice chairman.

Within thirty (30) days after the commencement of a term of office, the board of appeals shall convene at the call of the building official and shall elect from its membership a chairman and a vice chairman, who shall preside in the absence of the chairman. At meetings of the board of appeals, the chairman shall vote in the manner of other members.

(Ord. of 2-23-82, § 4.2; Ord. No. 90-15, 11-27-90)

Sec. 8-53. Rules of procedure; minutes; resolutions; quorum.

The board of appeals shall adopt such rules of procedure and regulations as it may consider necessary and consistent with ordinances of the city and general laws of the commonwealth. The board of appeals shall keep minutes of its proceedings in a book maintained for that purpose only, showing the vote of each member upon each question, or if any member is absent or fails to vote, an indication of such fact. Final disposition of appeals shall be by recorded resolution indicating the reasons of the board of appeals therefore, all of which shall be public record. No final action shall be taken on any matter unless a quorum be present. A quorum shall consist of three (3) members.

(Ord. 2-23-82, § 4.3; Ord. No. 90-15, 11-27-90)

Sec. 8-54. Appeals to board generally.

(a) The board of appeals shall have the power to hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the building official in the enforcement of this chapter.

(b) Any final decision of the building official under the terms of this chapter may be appealed to the board of appeals, provided an appeal is filed with the board of appeals within thirty (30) days of such decision.

(c) The board of appeals shall fix a reasonable time for a public hearing of an appeal. The hearing shall be advertised by publication of a notice of hearing once a week for two (2) successive weeks in a newspaper of general circulation in the city, with the hearing to be held not earlier than ten (10) days after the second publication. The party making the appeal to the board shall assume the expense of advertisement. The board of appeals shall give written notice by mail of such hearing to all parties known to be in interest. The board of appeals shall decide the matter within sixty (60) days from the date the notice of appeal was filed with the board.

(d) An appeal stays all proceedings in furtherance of the action appealed from, unless the building official certifies to the board of appeals, after the notice of appeal shall have been filed with him, that, by reason of facts stated in the certification, a stay would, in his opinion, cause imminent peril to life or property. In such case of peril, proceedings shall not be stayed other than by restraining order, which may be granted, upon due cause shown, by a court of record with written notice of such order to the building official.

(Ord. of 2-23-82, § 4.4, 4.5; Ord. No. 90-15, 11-27-90)

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Sec. 8-55. Grant of variances.

_____ (a) The board of appeals shall have the power to authorize, upon appeal in specific cases, such variances from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in undue hardship; provided, that the spirit of this chapter shall be observed and substantial justice done.

_____ (b) In considering all proposed variances to this chapter, the board of appeals shall, before making any findings in a specific case, first determine that the proposed variances will not materially diminish or impair established property values within the surrounding area nor in any other respect impair the public health, safety, morals and general welfare.

_____ (c) In authorizing a variance, the board of appeals may impose such conditions regarding the location, character and other features of the proposed land disturbing activity as it may deem necessary in the public interest, and may require further guarantee or bond to insure that there is being and will continue to be compliance with such conditions.

(Ord. of 2-23-82, § 4.5; Ord. No. 90-15, 11-27-90)

Sec. 8-56. Required vote for reversal of decisions, etc.

_____ The concurring vote of three (3) members of the board of appeals shall be necessary to reverse any order, requirement, decision or determination of the building official, to decide in favor of the applicant on any matter it is required to pass upon under this chapter or to effect any variance from the requirements in this chapter.

(Ord. of 2-23-82, § 4.6; Ord. No. 90-15, 11-27-90)

Sec. 8-57. Appeals from board of appeals.

_____ Any person aggrieved by any decision of the board of appeals may, within thirty (30) days after the filing of the decision of the board of appeals, but not thereafter, present to a court of record a petition duly verified, setting forth a claim that such decision is illegal, in whole or in part, and specifying the grounds of alleged illegality, whereupon such decision of the board of appeals shall be subject to review as provided by law.

(Ord. of 2-23-82, § 4.7; Ord. No. 90-15, 11-27-90)

_____ **State law reference**—Similar provisions, Code of Virginia, § 21-89-10.

On a motion by Gene Teague, seconded by Ron Ferrill, Council agreed to set a public hearing for May 27, 2008 for the purpose of receiving/interviewing citizens interested in appointment for two 3-year positions beginning July 1, 2008 and ending June 30, 2011 to the City's School Board. It was pointed out that only those citizens whose names are brought up during the Public Hearing on May 27 can be considered for appointment with appointments being made at Council's June 10, 2008 meeting.

On a motion by Ron Ferrill, seconded by Gene Teague, Council adopted the following resolution clarifying the Commissioner of Revenue's authority to implement tax exemptions:

Resolution

Whereas, the City Council has adopted a procedure for the granting of real and personal property tax exemptions for certain qualified organizations; and

Whereas the Commissioner of the Revenue is vested with the authority, pursuant to the Code of Virginia to determine the manner in which such exemptions shall be administered; and

Whereas the Attorney General of Virginia is of the opinion that property is not exempt from taxation if not specifically used for the purposes for which an organization is rendered tax exempt; and

Whereas the Council desires to eliminate confusion over the application of a taxation exemption program:

Now therefore be it resolved that the commissioner of the revenue shall be the sole arbiter for applying the City's tax exemption program, and

Be it further resolved that property which is determined by the Commissioner of the Revenue to be used for purposes other than that for which an organization is exempt shall not be exempt from taxation.

Esther Artis, Information Systems Manager, briefed Council on the online payments program advising that the cost to implement is \$12,875 with \$5,000 annual maintenance which is less than the quote in 2007 of \$20,000 to implement and \$10,000 for annual maintenance. Implementation has been tentatively scheduled for July, 2008 to coincide with update of the City's new website. The Bankserv application for e-checks will be completed by the Treasurer. The online payments program will

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allow citizens to inquire and make payments to real estate taxes, personal property taxes, and utility bills.

Mayor Reynolds opened the public hearing regarding the City's budget and tax rates FY2008-2009. Public comments included: Keith Shelton, 818 Olympia St.—sees great value in 3 year old program at Clearview Elementary; Pastor Willie Robinson, 704 E. Church St.—their church's monthly payment will go up about \$90 and will force them to cut their benevolent funds that have gone to helping those in their congregation who are unemployed; Pastor J. C. Richardson, corner Peters and W. Church St.—urged Council to give serious consideration to other options for revenue rather than the 17% increase to churches; Mark Price, 929 Bethel Lane-- feels the electric increase for businesses as well as churches is too much and he asked that Council find another way to raise the revenue; Sandy Carter, 29 E. Main St.—stated he owns a business Uptown and many Uptown businesses are struggling and the electric increase to businesses will not help in their efforts to keep their doors open; he asked Council to reconsider the increases to small businesses as well as to churches; Ted Balabanis stated the city needs to be more pro-business and additional strain on commerce will not attract businesses; city may need to consider downsizing; Lasonda Martin, 204 Arrowhead Trail, spoke in praise of school system and asked that Council fully support school budget requests; also she spoke against the electric rate increases which are tough on one income families; Monica Mitchell, 707 Beverly Way, Albert Harris teacher—spoke on behalf of using technology in the classroom stressing that technology is an integral part of every day and Council should strongly consider doing everything possible to keep technology in the city schools; Adele Boyle, Clearview teacher—pointed out the importance of the 3 year old program at Clearview and how it gives all students a smart start; she asked that Council please consider funding to increase the 3 year old program; Brad Johnson, who lives in the county, has a child at Patrick Henry—requested that Council restore budget funds to school budget stressing that all students need to have opportunity to be world class students and the importance of schools in attracting new business; Margie Eason, lives in county, but has students in city schools—asked that Council support school budget requests as education is the cornerstone to the community being successful; James Martin, 1002 Liberty—

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he is a woodworking business owner and thinks it is a bad idea to raise taxes on businesses and asked that Council look at other ways to raise money; Martha Rosales, has a business on Starling Avenue—she stated that if Council makes it too hard on businesses, then they will have no other choice but to shut down; John Martin, owns two furniture stores—asked that Council consider other cuts instead of increases on businesses; Yvonne Givens, 714 Indian Trail—asked for Council's support for school program funding; Greyson Givens, 714 Indian Trail—stated he is a product of the Martinsville school system and he wants to see his children get a quality education and asked that schools be level funded; Mack Waid, 920 Paul St., asked that Council reconsider raising rates on churches so more jails won't have to be built once all the churches close down; Pastor Lawrence Rorrer—bad idea to tax church and thinks that is absurd; Rob Magnus, teacher at Middle School—wants Council to consider adequate funding for schools. There being no further comments, the Mayor closed the public hearing.

Council then considered adoption, on first reading, of the ordinance establishing the City's budget and tax rates FY2008-2009. The Mayor stated Council will look at ways we can address the issues brought to Council's attention by the public and they will be looked at the next work session. Council member Teague suggested reducing the sanctuary increase from 17% down to 7% which would be \$24,000 in revenue and Council member Lawson stated she would like the sanctuary rate to go down to 5% which would probably be approximately \$27,000 to \$28,000. Council member Teague asked that the sewer tiered structure be looked at and Council decided to have further discussion on this issue. Council member Clark stated he agreed with the plight of the churches and thanked them for what they do in the community. He asked that school officials look at their budget to see what they can do to help with budgeting. Council member Ferrill asked for clarification on school budget and Dr. Kizner reported that he presented a budget to the school board last night at their May 12 meeting which meets the city's funding and the school board adopted it. Dr. Kizner asked that Council consider the schools' capital requests at their next budget work session. Council member Clark suggested as a means to help with electric rates that they increase ½ this year and ½ next year and use fund balance. Council will address more on electric rates at

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the next budget work session. On a motion by Gene Teague, seconded by Ron Ferrill, with the following recorded vote: Mr. Reynolds, aye; Mr. Clark, aye; Mrs. Lawson, aye; Mr. Ferrill, aye; and Mr. Teague, aye, Council approved, on first reading with following amendments, the ordinance establishing the City's budget and tax rates FY2008-2009:

The sanctuary electric rate changes to 5% instead of 17% along with the following amendments which were previously presented at 5/5/08 Council budget work session:

Adjustments to Proposed FY09 Budget

General Fund:

Line Item:	Recommended:	Revised:	Increase(Decrease)
Revenue Adjustments:			
01100901 411198 - Budget Real Estate	6,729,431	7,079,500	350,069
01100901 411409 - FY09 Pers Prop Tax	792,401	683,201	(109,200)
01100901 411509 - FY09 Mach/Tool Tax	212,790	179,800	(32,990)
01100901 411609 - FY09 Bus Equip Tax	1,119,200	1,007,280	(111,920)
01101917 442505 - HB599 Funds	983,000	1,000,553	17,553
01103937 451540 - Transfer from Electric*	154,326	241,494	87,168
*(net decrease from 16 fund revisions)			

Net Increase (Decrease) - Revenues **200,680**

Expenditure Adjustments:			
01413145 503185 - Street Maint - Paving	0	180,000	180,000
01413145 503186 - Street Maint - Overhead	80,000	126,406	46,406
01431162 505110 - City Hall Maint - Elec	210,000	190,000	(20,000)
01816244 505656 - Contribution to Library**	361,712	346,712	(15,000)
**(Library revised original request)			
01322105 506008 - EMS - Vehicle Maint	10,500	15,500	5,000
01311085 506008 - Police - Vehicle Maint	130,000	134,274	4,274

Total Expenditure Adjustments: **200,680**

Results produce a balanced budget of \$30,303,737.

Capital Reserve Fund:

Line Item:	Recommended:	Revised:	Increase(Decrease)
Revenue Adjustment:			
16103937 451540 - Transfer from Electric	967,271	880,103	(87,168)
Net Increase (Decrease) - Revenues (87,168)			
Expenditure Adjustments:			
16575365 508127 - Vehicles - Park Maint.	33,000	0	(33,000)
16591392 509110 - Loan Prin/Int	143,868	89,700	(54,168)

Total Expenditure Adjustments: **(87,168)**

Results produce a balanced budget of \$1,490,602.

Electric Fund:

Line Item:	Recommended:	Revised:	Increase(Decrease)
Expenditure Adjustments:			
14565340 509205 - Transfer to General Fund	154,326	241,494	87,168
14565340 509270 - Transfer to Capital Fund	967,271	880,103	(87,168)

Net Increase (Decrease) - Revenues **0**

No change in original proposed budget.

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Mayor Reynolds opened the public hearing for public comment on amending the zoning ordinance regarding Section V. General Dimension Requirement, Section XV, Off Street Parking & Loading, and Section II. Definitions. There being no public comments, the public hearing was closed. On a motion by Kathy Lawson, seconded by Ron Ferrill, with the following with the following recorded vote: Mr. Reynolds, aye; Mr. Clark, aye; Mrs. Lawson, aye; Mr. Ferrill, aye; and Mr. Teague, aye, Council approved adoption of the ordinance, on first reading, to amend the zoning ordinance regarding Section V. General Dimension Requirement, Section XV, Off Street Parking & Loading, and Section II Definitions.

Jeannie Frisco of Activate Martinsville-Henry County briefed Council on the Safe Routes to School program which is a 100% federally funded grant opportunity through the Department of Transportation to build safer access to schools and run education programs promoting walking and bicycling. Ms. Frisco and her staff will write the grant. On a motion by Gene Teague, seconded by James Clark, Council adopted the following resolution supporting the Safe Routes to School program:

Resolution in Support of the Safe Routes to School Program

WHEREAS, the City of Martinsville wishes to become part of the Safe Routes to School Program; and

WHEREAS, the Safe Routes to School program would take place during the 2008-2009 school year, with planning occurring in the spring of 2008 and sustainability activities taking place during the fall of 2009;

WHEREAS, to be a Safe Routes to School Program requires the formation of Teams at each School which can include parents, neighbors, and interested teachers, which will organize programs, contests and events, and which will identify and evaluate safer routes to schools for our children and present this to City and School District staff; and

WHEREAS, Safe Routes to School will be providing in-class education in each qualifying School and collecting evaluation data from parents and students, and

WHEREAS, in addition to helping to relieve morning traffic (which is at an all-time high), the City of Martinsville is excited about the potential for this Safe Routes to School Program because walking and bicycling increases the physical health of children; and

WHEREAS, there are several existing bicycle and pedestrian paths in our community, as well as sidewalks and bicycle lanes, which would be well used as school routes through more community education, cooperation, and promotion.

THEREFORE, the City of Martinsville is pleased to support the Safe Routes to School program.

Mayor Reynolds presented a proclamation to Jeannie Frisco recognizing Activate Martinsville-Henry County Initiatives declaring May as Bike Month after a motion by Ron Ferrill, seconded by James Clark with a unanimous vote. Ms. Frisco pointed out that Activate will be installing bike racks in the Uptown area.

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Mark Heath gave the monthly update from the Martinsville-Henry County Economic Development Corporation. He pointed out the EDC has just kicked off a new marketing campaign targeting high water users. At Council's July meeting, Mr. Heath will present the EDC Annual report and goals. There was discussion regarding retail/commercial growth and how it should be focused on more by the EDC. Mr. Heath indicated the closing on the RTI property is in the hands of the attorneys and should be completed within next two weeks.

The City Manager summarized the deer control report from the Police Department pointing out there were fewer vehicle accidents involving deer dropping from 26 to 2006 to 16 reported accidents in 2007, with only 2 accidents so far this year in 2008. Updates on number of deer harvested during the Special Urban Archery Season will be available after July. Corky Corcoran, 1914 Dundee Lane, spoke regarding the tremendous problem he is having with deer eating all his flowers and plants and he feels the problem needs to be attacked more aggressively and taken care of during the night when deer are active. Chief Rogers pointed out his concerns with safety regarding firing weapons at night in the city. A suggestion was made to consider using crossbows with a laser sight in open areas and Chief Rogers will look into that with the Department of Game & Inland Fisheries. Council member Ferrill suggested we do more promotion to solicit hunters to get more of them involved.

On a motion by Gene Teague, seconded by Ron Ferrill, Council approved the following consent agenda item accepting and appropriating budget adjustments FY08:

BUDGET ADDITIONS FOR 05/13/2008				
<u>ORG</u>	<u>OBJECT</u>	<u>DESCRIPTION</u>	<u>DEBIT</u>	<u>CREDIT</u>
FY08				
GENERAL FUND:				
01100909	490801	Recovered Costs - Senior Citizens		1,465
01100908	480420	Donations - Senior Citizens		200
01714212	506016	Senior Citizens - Program Supplies (trips/Bingo/Health Fair Donations)	1,665	
Total General Fund:			1,665	1,665
SCHOOL FUND:				
18100909	490104	Recovered Costs - Advanced/Recovered Costs		12,619
71001001	561153	HS Regular Instruction - Teacher Supplement	9,680	
71001001	562100	HS Regular Instruction - Social Security	600	
71001001	562150	HS Regular Instruction - Med FICA	131	
85001013	566035	Board Services - Computer Supplies	355	

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85001014	566001	Exec. Admin. Services - General Supplies	853	
89001020	566051	Pupil Transportation - Bus Fuel	878	
89001020	568100	Pupil Transportation - Vehicle & Powered Equipment (various reimbursements)	123	
18101917	418281	Categorical Other State - DMAS Reimbursements		5,476
85001009	563140	Project Healthnet - Contracted Service (DMAS Reimb)	5,476	
18102926	418297	Categorical Federal - NASA Program		31,250
65001050	561121	MS Secondary NASA Prog - Teachers S & W	10,000	
65001050	563140	MS Secondary NASA Prog - Contracted Services	5,000	
65001050	565503	MS Secondary NASA Prog - Travel	5,000	
65001050	566001	MS Secondary NASA Prog - General Supplies	1,250	
65001050	566013	MS Secondary NASA Prog - Instructional Materials (NASA Program)	10,000	
18103908	418286	Miscellaneous - E-Rate Reimbursements		68,618
85001014	568209	Exec. Admin. Services - E-Rate EDP Equipment (E-Rate Reimbursements)	68,618	
Total School Fund:			117,963	117,963
FEDERAL PROGRAMS:				
20100908	482912	Miscellaneous - VA Middle Mathematics Reimb		15,000
85003106	561120	VA Math Program - Salaries & Wages (Reimbursement from UVA)	15,000	
Total Federal Programs:			15,000	15,000

City Manager Clarence Monday updated Council on potential uses of the former Police Academy building, 605 Fourth Street, located at the corner of Fourth and D Streets, which included formal requests from the City's Housing Department and Human Resources to use the building for offices and employee training area. He stated he felt the money in the budget will do the minor modifications necessary. Cynthia Ingram spoke to Council on behalf of FAHI pointing out that FAHI was very interested in the former Police Academy building and she asked for Council's consideration of their request to use the building. Council member Ferrill pointed out we need to be supportive of FAHI and assist them in finding a space. The City Manager will contact Mr. Millner advising him no decision has been made at this point on the building and the city is supportive of FAHI and will assist them in finding a building.

On a motion by Gene Teague, seconded by Ron Ferrill, with the following recorded vote: Mr. Reynolds, aye; Mr. Clark, aye; Mrs. Lawson, aye; Mr. Ferrill, aye; and Mr. Teague, aye, Council approved on, first reading, amendments to the Property Maintenance Code as explained by City Attorney Eric Monday. Mr. Monday pointed out the amendments are in accordance with Council's goals and initiatives for property maintenance and blight abatement, with the following

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ordinance revisions for nuisances, inoperative vehicles and vacant property registration. Wayne Knox asked council to think about the positive and negative aspects of the amendments including the personnel required. He stated the amendments clarify the interpretation, but will take manpower to do a really good job. Council member Lawson pointed out these amendments set a good platform to work on to make rules more enforceable.

The Mayor asked for business from the floor. Leon Towarnicki updated Council on the Sam Lions Trail culvert repairs stating that it should be completed in 2 to 3 weeks. He pointed out that the Public Works Department will be stepping up a more aggressive inspection/repair schedule of infrastructure.

On a motion by Kathy Lawson, seconded by Gene Teague, Council adopted the following resolution declaring a local emergency:

RESOLUTION

CONFIRMING THE DECLARATION OF A LOCAL EMERGENCY AND CONFIRMING THE EMERGENCY POWERS OF THE CITY MANAGER AS DIRECTOR OF EMERGENCY MANAGEMENT

WHEREAS, the Council of the City of Martinsville, Virginia finds that a thunderstorm with heavy rain and strong winds, in the City of Martinsville, occurring on May 8-9, 2008, resulted in localized flooding, downed power lines and trees, collapse of a section of Sam Lions Trail, and various damages to water, sewer, and power lines, and other private property; and

WHEREAS, due to the nature of the emergency, the City of Martinsville activated essential personnel, and deployed resources for the purposes of public notification, preservation of public safety, and restoration of City infrastructure and; now, therefore

BE IT RESOLVED by the City Council of the City of Martinsville, Virginia, in regular session assembled May 13, 2008, that it concurs in the declaration of local emergency originally submitted by the City Manager under his authority as the City's Director of Emergency Management in accordance with Virginia Code Section 44-146.21; and

BE IT FURTHER RESOLVED by the City Council of the City of Martinsville, Virginia that the City Manager is authorized to execute necessary applications for Federal and/or State disaster recovery funding, if applicable, for reimbursement, repairs, and/or mitigation due to the aforementioned condition.

Comments from City Council: Council member Lawson inquired about information on the land swap regarding the West Church St. property and she was advised it is being worked on. She also pointed out that no trees have been planted at Academy Place yet and she asked that this be investigated to see what can be done to move it along. Council member Clark brought up the issue of people having better control over their dogs and the City Attorney pointed out the need for clarification on the leash law and this issue will be considered in the future.

In accordance with Section 2.1-344 (A) of the Code of Virginia (1950, and as amended) and upon a motion by Ron Ferrill, seconded by James Clark, with the following recorded vote: Mr. Reynolds, aye; Mr. Clark, aye; Mrs. Lawson, aye; Mr. Ferrill, aye; and Mr. Teague, aye, Council convened in Closed Session, for the purpose of discussing the following matters: (A) appointments to Boards and

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Commissions as authorized by Subsection 1; (B) 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 advice by such counsel, as authorized by Subsection 7; (C) a personnel matter as authorized by Subsection 1.

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 said Session. On a motion by Kathy Lawson, seconded by Ron Ferrill, with the following recorded vote: Mr. Reynolds, aye; Mr. Clark, aye; Mrs. Lawson, aye; Mr. Ferrill, aye; and Mr. Teague, aye, Council returned to Open Session. On a motion by Gene Teague, seconded by Ron Ferrill, Council appointed Kim Adkins, 1010 Sheraton Court, to a 4 year term on the Planning Commission beginning 7/1/08 and ending 6/30/12. On a motion by Kathy Lawson, seconded by Ron Ferrill, Council reappointed Dr. James Rountree, 1221 Mulberry Rd., to the Patrick Henry Community College Board for a 4 year term beginning 7/1/08 and ending 6/30/12. On a motion by James Clark, seconded by Ron Ferrill, Council reappointed Debra Poirier, 1810 Spruce St. #105, to the Piedmont Community Services Board for a 3 year term beginning 7/1/08 and ending 6/30/11. Council took no action on the other two items.

There being no further business, Mayor Reynolds adjourned the meeting at 11:02 PM.

Clarence C. Monday
Clerk of Council

Kimble Reynolds, Jr.
Mayor