



**CITY OF
MONTPELIER
MONTPELIER,
VERMONT**

Agenda for City
Council Meeting
Wednesday, April
28, 2010
07:00 P.M.

- 1) Call to Order by the Mayor
- 2) 10-101. General Business and Appearances
- 3) 10-102. Consideration of the Consent Agenda:
 - a. Consideration of the minutes from the City Council's April 14, 2010 Regular Meeting.
 - b. Summary Budget Report by Finance Department for General Fund and Detailed Budget Status Reports for General Fund, Water Fund, Sewer Fund, Cemetery Fund, Parks Fund, Parking Fund and Senior Center Fund for a eight-month period beginning July 1, 2009, and ending March 31, 2010.
 - c. Consideration of Approval of "Amendment #4" revising the Cooperative Agreement (CA) between the City of Montpelier and the State of Vermont for the purpose of altering the allocations of the two primary funding arrangements (95% federal roadway and 100% federal roundabout) for the reconstruction of the US2/302 intersection (roundabout - Project #Montpelier FEGC 028-3(34)S). This will further amend the agreement approved by City Council on May 7, 2002. A Cooperative Agreement provides for the funding and project development relationship with the delegation of responsibilities between the State of Vermont and the City of Montpelier. The project is now complete but federal reimbursements are still pending. The Public Works staff requested amendment #4 to the CA because all funds allocated to the 95% federal roadway category were expended leaving insufficient funds available for all authorized expenditures. However, there are excess

funds available in the 100% federal roundabout category. To address the imbalance, a shift between the two funding arrangements was requested and has been approved by Federal and State authorities. The total project cost will be less than the overall project budget established by Amendment #3.

Recommendation: Approval of Amendment #4 to the Cooperative Agreement and authorization for the City Manager to execute the amendment document on behalf of the City Council as it's duly authorized agent.

- d. Consideration of awarding of bid for hardware and labor proposal received from Tech Group for the replacement and installation of a domain control at a cost of \$12,140. This was a FY 2010 budgeted item.

Recommendation: Authorize City Manager to execute the documents with Tech Group.

- e. Consideration of becoming the Liquor Control Commission for the purpose of acting on Tobacco and Liquor licenses: Annual renewal of Tobacco and Liquor Licenses. (City Clerk will distribute list of applications at the meeting.)
- f. Approval of Payroll and Bills

4. 10-103. Discussion of ANR enforcement action regarding Wastewater Treatment Plant.

- a. In the fall of 2008, ultraviolet lights at the WWTP briefly flickered off resulting in some discharge of treated but not finally disinfected wastewater.
- b. Due to an internal error, this discharge was not immediately reported to the State. A similar error had been made earlier in the same year.
- c. The City has corrected both the operations discharge problem and the internal communications system. No further problems have occurred.
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initiated an enforcement action and proposed fines. The City Manager and Attorney Stitzel have been in negotiation with ANR since the Spring of 2009 about this matter. The issue has not been resolved.

- e. Attorney Steve Stitzel was present on April 14, 2010 to brief the council on the issue and outline the choices for the council.
- f. Attorney Stitzel has had conversations with ANR attorneys since the last meeting and the City Manager has sent a letter to the DEC Commissioner. Attorney Stitzel will not be present for this meeting

Recommendation. Review issue. Decide whether to accept the Assurance of Discontinuance.

5. 10-104 Second public hearing to consider proposed amendments to the City's Vendor Ordinance.

- a. City Council first began discussing these proposed amendments at their March 10th meeting; they'd received a memo from Montpelier Alive Executive Director Suzanne Eikenberry, outlining some changes they'd like to see incorporated before the 2010 summer vending season.
- b. This subject was revisited at the Council's March 24th meeting. At that time, Council instructed staff to invite a group of interested vendors and business owners to meet and discuss their concerns and suggestions; the City Manager held this meeting on April 7th. At the April 14th the council approved the proposed changes including those made by the Police Chief regarding enforcement and moved to second reading.
- c. A copy of the revised ordinance based on the first reading has been provided.

Recommendation: Conduct the second public hearing. Adopt the ordinance.

6. 10-105 City Hall Arts Center Management - ordinance.

- a. First Reading of proposed revisions to Article VIII of the City ordinances concerning use of City Hall.
- b. The City Manager has proposed amendments to the ordinance which more accurately reflect current practices and which allow changes to rental policies and fees without requiring future ordinance amendments.

Recommendation: Conduct first reading, set second reading for May 12, 2010.

7. 10-106 City Hall Arts Center Management - policies and agreements.

- a. In conjunction with this Council will consider
 - 1) Revised Rental Management Agent with Lost Nation Theatre.
 - 2) Revised use Rental Agreement with Lost Nation Theatre.
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- b. The City Manager has proposed the above policies and agreements which are consistent with the proposed ordinance amendment and which reflect current practices.

Recommendation: Approve the policies and agreements as presented.

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- a. Decisions or determinations by the Zoning Administrator may be appealed to the Development Review Board. These include determinations of whether a permit is needed, approval of permits, determinations of whether a variance is

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9. 10-108. Reports by City Council

10. 10-109. Mayor's Report

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ARTICLE XIV. VENDORS.

Sec. 9-1400. LICENSE REQUIRED.

~~It shall be unlawful for any vendor to sell, display or offer for sale any food, beverage, goods or merchandise within the city of Montpelier without first obtaining a vendor's license therefor as provided herein.~~

Sec. 9-1401. DEFINITIONS.

(a) "Vendor" shall mean any person, including an employee or agent of another, who sells or offers to sell food, beverages, personal services, goods or merchandise on any ~~public~~ street or sidewalk from ~~in~~ a stand, motor vehicle or from his or her person, or one who travels by foot, wagon, motor vehicle, pushcart or any other method of transportation from house ~~to house~~ or street to street selling or offering to sell food, beverages, personal services, goods or merchandise.

(b) "Stand" shall mean any newsstand, table, bench, booth, rack, handcart, pushcart or any other fixture or device which is not required to be licensed and registered as a motor vehicle, used for the display, storage, promotion or transportation of articles or personal services, offered for sale by a vendor.

(c) "Public Street or Sidewalk" shall include all areas legally open to public use as public streets, sidewalks, roadways, highways, parkways, alleys, public parking spaces and any other public way.

(d) "Designated location" shall mean those locations within the designated downtown of the City of Montpelier that have been approved as vending locations.

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Sec. 9-1402. APPLICATION.

The application for a vendor's license shall be submitted to the City Clerk for approval by the City Council on forms provided therefor and contain all information relevant and necessary to determine whether a vendor's license may be issued, including but not limited to:

(a) Proof of the identity and business address of the applicant.

(b) A brief description of the nature, character and quality of the food, beverages, personal services, goods or merchandise to be sold.

(c) If employed by another, the name and business address of the person, firm, association, organization, company or corporation.

(d) If a motor vehicle is to be used in the conduct of a vending business, a description of the vehicle together with the motor vehicle registration number and the license number; provided, however, that no vendor shall conduct business from any public parking space.

(e) A description of the proposed location(s) of the vending business and the proposed days and hours of operation ~~length of time during which it is proposed that the business shall be~~

~~conducted~~ at each location. If the location(s) is/are located outside of the designated downtown, then the applicant shall obtain signatures from the property owner, the Police Chief and any designee the Police chief names. In cases where the vendor is seeking to do business in a City of Montpelier park, then the signature of the Parks Commissioner must also be obtained.

1 -

9-XIV

(f) Proof of a valid and current state license for the type of business activity for which a license under this ordinance is sought.

(g) Acknowledgment that issuance and maintenance of a vendor's license by the vendor shall be subject to review by the Chief of Police and Health Officer.

Sec. 9-140X. DESIGNATED LOCATIONS

Designated locations shall apply to the designated downtown district.

The City Manager shall maintain a list of designated locations for vendors wishing to locate in the designated downtown. If a vendor wishes to locate in a space not on the list of designated locations, then the vendor may apply to the City Manager to add or move a space. Any spaces that the City Manager approves shall conform to the guidelines in Sec.9-1406 (a). Additionally, the property owner shall submit written approval for use of the location for vending with space limitations clearly defined. In the event that the application is for a space on property belonging to the City of Montpelier, the City Manager shall decide whether or not to grant permission to use the space.

The City Manager shall set area limits on any additional locations beyond the initial ones approved by City Council.

Sec. 9-1403. FEES.

An applicant for a license under Sec. 9-1402 shall pay an annual license fee of two hundred fifty dollars (\$250.00) per vendor.

Sec. 9-1404. INSURANCE.

No vendor's license shall be issued to an applicant unless the applicant furnishes proof to the City Clerk of a public liability bond or insurance policy in an amount not less than \$100,000 for property damage and injuries, including injury resulting in death, caused by the operation of the vending business and naming the city as an additional insured.

Sec. 9-1405. LICENSES.

The license issued to a vendor shall be ~~carried with~~ displayed by the vendor while he or she is engaged in the business of vending.

Sec. 9-1406. RESTRICTIONS APPLICABLE TO ALL VENDORS.

(a) Stands. Vendor's stands shall not:

(1) Exceed eight feet in length, three feet in width, or eight feet in height;

(2)(1) Impede pedestrian or vehicular travel, or access to the entrance of any adjacent building or driveway;

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- (3)(2) Occupy more than half of the available sidewalk width or four feet of such sidewalk, whichever is less; Formatted: Bullets and Numbering
- (4)(3) Locate within five feet of a crosswalk, fire hydrant, fire escape, bus stop, loading zone, driveway, or entrance of any building; or Formatted: Bullets and Numbering
- (4) Locate within fifty feet of any ~~other vendor or~~ business establishment offering for sale goods or merchandise ~~in the same class of substantially the same type~~ as that being offered for sale by the licensed vendor ~~(food, arts, crafts clothing, etc.)~~. Fifty feet shall be measured as the shortest distance between the cart and any street-facing property owned or rented by the similar business. Formatted: Bullets and Numbering
- (5) Provide tables and seating for customer use. Formatted: Bullets and Numbering
- (6) Impede access to or egress from cars parked in legal parking spaces. Formatted: Bullets and Numbering
- (b) Stands located outside of the designated downtown shall:
- (1) Not exceed eight feet in length, three feet in width, or eight feet in height;
- (+)(2) Shall not locate on any property, public or private, without the landowner's written approval. Formatted: Indent: Left: -0.5"
- (b)(c) Stands located inside the designated downtown shall: Formatted: Bullets and Numbering
- (1) locate in a location that is on the City of Montpelier's list of designated locations, or seek an amendment to the list of designated locations from the City Manager. Formatted: No bullets or numbering
- (2) Shall not use more space in total than allowed for the permitted space. Space usage includes the cart, plus any umbrellas, coolers, signboard, and other items connected to the business. Formatted: Bullets and Numbering
- (5) Formatted: No bullets or numbering
- (b) Hours of Operation. Vendors shall be allowed to engage in the business of vending only between 7:00 A.M. and 10:00 P.M., except that those vendors who conduct their business by going door-to-door shall be allowed to operate only between 9:00 A.M. and 5:00 P.M.. All vending stands must be removed from public property during non-vending hours.

2 -

9-XIV

- (e) Accessible Handicapped Areas. No vendor shall conduct business within five feet of any accessible Formatted: Bullets and Numbering
- (c) handicapped parking space or access ramp. Formatted: Font color: Red
- (d) Removal of Trash. All trash or debris accumulating within fifty feet of any vending stand shall be collected by the vendor and deposited in a trash container. Formatted: Font: 11 pt
- Sec. 9-1407. SUSPENSION OR REVOCATION OF LICENSE. Formatted: Font: 11 pt, Underline, Font color: Red
- (a) Any license issued under this ordinance may be suspended or revoked by the City Council after due notice to the licenses and hearing, for any of the following reasons: Formatted: Font: 11 pt
- Formatted: Level 1, Indent: Left: 0.38", Hanging: 0.5", Outline numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 2 + Alignment: Left + Aligned at: 0" + Indent at: 0"
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- (1) Fraud or misrepresentation in the application for the license.
- (2) Fraud or misrepresentation in the course of conducting the business of vending.
- (3) Conducting the business of vending contrary to the conditions of the license.
- (4) Conducting the business of vending in such a manner as to create a public nuisance or breach of the peace, or constitute a danger to the public health, safety or welfare.

(b) Upon suspension or revocation, the City shall deliver written notice to the licensee(s) stating the action taken and the reasons supporting such action. The written notice shall be delivered to the licensee's place of business or mailed to the licensee's last known address.

Sec. 9-1408. APPEALS.

Persons who are denied licenses or whose licenses have been suspended or revoked may appeal by filing a written notice of appeal with the Washington Superior Court. The appeal must be filed within thirty (30) days after receipt of the notice of denial, suspension or revocation.

Sec. 9-1409. RENEWALS.

Application for renewal of licenses issued under Sections 9-1405 or 9-1412 shall be made to and received by the City Clerk within fifteen (15) days prior to the expiration of such license. The City Clerk shall review each application for renewal to determine that:

(a) The applicant is in full compliance with the provisions of this ordinance.

(b) The applicant has a currently effective insurance policy naming the City as an additional insured in the minimum amount provided for in Section 9-1404. If the City Clerk finds that the application meets the above requirements, the City Clerk shall issue a new permit.

Sec. 9-1410. EXCEPTIONS.

(a) The provisions of this ordinance shall not apply to a vendor who sells or offers for sale, in person or by his employees or agents, newspapers.

(b) The provisions of this ordinance shall not apply to sales made by manufacturers, merchants and dealers for resale only.

Sec. 9-1411. RELIGIOUS, CHARITABLE, EDUCATIONAL AND SERVICE ORGANIZATIONS.

Authorized representatives of religious, charitable, educational or service organizations desiring to solicit money, to sell products of the land, or to distribute literature shall be exempt from the payment of any fee hereunder, but shall be required to submit in writing to the City Clerk the name and purpose of the cause for which such activity is sought, the name and address of the immediate director of such activity, and the period during which such activity is to be carried on in the city of Montpelier. If the City Clerk, after investigation, shall find that the organization is a bona fide charitable, religious, educational or service organization, the Clerk shall issue, free of charge, a license to carry on such activity. Such license shall cover all persons engaged in the activity for which the license was issued. Organizations designated as religious or exempt under Sections 501(c), 501(d), 501(e), 521, 527 or 528 of the Internal Revenue Code of 1986, or subsequent enactments, shall be exempted from the payment of the fee imposed under Section 9-1403, provided that no license issued hereunder shall be of a duration in excess of fifteen (15) consecutive days. Organizations not found to be exempt as defined above shall be responsible for the full fee.

Sec. 9-1412. SPECIAL EVENT LICENSE.

(a) The City Council may issue special vendor's licenses to be used in conjunction with a special event. Such licenses shall be valid for no more than three (3) consecutive days designated for the event by the City Council.

(b) The fee for a special vendor's license shall be twenty-five dollars (\$25.00) for each day for which it is valid, provided that any organizations in Section 9-1411 shall be exempt from the payment of any fee imposed hereunder.

(c) The City Council shall require the sponsor of any special event to administer all applications for multiple special vendor's licenses under this section.

Sec. 9-1413. SPECIAL TRANSIENT VENDOR LICENSE.

In lieu of the license required under Section 9-1400, the City Clerk may issue a thirty (30) day license to a person selling or offering for sale or soliciting orders for the sale of services, goods or merchandise from premises occupied temporarily as a tenant, lessee, guest or invitee. Such license shall be valid only between the dates specified thereon, and the person applying for such a license shall comply with and be subject to all the provisions of Sections 9-1402, 9-1404, 9-1405, 9-1407, 9-1408 and 19-1410. An applicant for a license under this section shall pay a license fee of fifty dollars (\$50.00). As used in this section, the term "merchandise" shall include plants and other agricultural or forest products.

Sec. 9-1414. LOUD NOISES AND SIGNS.

No vendor or transient vendor, nor any person on their behalf, shall shout, make any cry out, blow a horn, ring a bell, or use any sound device, including any loud speaking radio or sound amplifying system upon any of the streets, alleys, parks or other public places of this city or upon any private premises in the city where a sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks, or other public places, or parade with a sign or placard, for the purpose of attracting attention to any goods, wares or merchandise which such license proposes to sell. If any ~~signs or displays~~ are put up, they shall be removed. All signs, including sign boards, must comply with City regulations.

Sec. 9-1415. VENDING MACHINES.

No vending machine or other dispensing device shall be placed or maintained, either permanently

or temporarily, upon any City property, including any street, highway or sidewalk, without the prior approval of the City Council. In considering and acting upon a request for the placement of and maintenance of such vending machine or dispensing device, the City Council may impose reasonable fees, conditions and standards.

CHARTER REFERENCES: T. 3, Sec. 17(I); T. 3, Sec. 17(IV), 1955 Charter.

STATE LAW REFERENCES: Peddlers, V.S.A., T. 32, Sec. 9301 et seq.; itinerant vendors, V.S.A., T. 32, Sec. 9201 et seq.

Sec.9-1416. ENFORCEMENT

Enforcement of vending permit violations under Article XIV shall be investigated by the Montpelier Police Department and will be handled administratively. Any other violations of Montpelier City Ordinances or Vermont State law will be investigated and prosecuted by appropriate authority.

The permit holder agrees to abide by all conditions and ordinances set forth in the issuance of the vendor permit. Any violation of those conditions will result in a warning and corrective action plan for the first violation. The warning and corrective action plan will be issued by a sworn officer of the Montpelier Police Department.

Any second violation of vending permit conditions during the operational date of the permit will result in an immediate suspension/revocation of the vending permit.

Any appeal of a vending permit suspension or revocation shall be submitted to the City Council pursuant to Sec. 9-1407.

This ordinance shall be enforced by sworn officers of the City of Montpelier Police Department.

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Sec's. 9-~~1416~~ 1417 to 9-1499. Reserved.

Enacted September 13, 1972.

Amendment enacted July 28, 1976 [Sec. 9-1405 rewritten]. Date of Publication: 8/02/76. Effective Date: 8/09/76.

Amendment enacted October 11, 1978 [Sec's. 9-1405 and 9-1407 rewritten]. Date of Publication: 10/18/78. Effective Date: 10/24/78.

Amendment enacted May 27, 1981 [Sec. 9-1409 added]. Date of Publication: 6/03/81. Effective Date: 6/09/81.

Amendment enacted May 26, 1982 [Sec. 9-1405, fee increased]. Date of Publication: 6/09/82. Effective Date: 6/16/82.

Amendment enacted January 12, 1983 [Sec's. 9-1410 and 9-1411 added]. Date of Publication: 1/18/83. Effective Date: 1/25/83.

Amendment enacted March 14, 1984 [Sec. 9-1412 added]. Date of Publication: 3/24/84. Effective Date: 3/31/84.

Amendment enacted April 9, 1985 [Sec. 9-1405, rate increased]. Date of Publication: 4/15/85. Effective Date: 4/22/85.

Amendment enacted October 23, 1985 [Sec. 9-1413 added]. Date of Publication: 10/31/85. Effective Date: 11/06/85.

Amendment enacted October 11, 1989 [Article XIV repealed and replaced]. Date of Publication: 10/17/89. Effective Date: 10/23/89.

Amendment enacted May 12, 2004 [Sec. 9-1412, fee increased]. Date of Publication: 5/27/04. Effective Date: 6/02/04.



City of Montpelier, Vermont
"The Smallest Capital City in the United States"

DATE: April 22, 2010

TO: Mayor and City Council Members

FROM: Sandra Gallup, Finance Director

SUBJECT: SUMMARY BUDGET REPORT BY DEPARTMENT FOR GENERAL FUND AND DETAILED BUDGET STATUS REPORTS FOR GENERAL FUND, WATER FUND, SEWER FUND, CEMETERY FUND, PARKS FUND, PARKING FUND AND SENIOR CENTER FUND FOR A NINE MONTH PERIOD BEGINNING JULY 1, 2009 AND ENDING MARCH 31, 2010.

Enclosed please find budget reports for the above reference funds.

For the General Fund, please note that 101.5% of revenues budgeted have been received (compared to 99% last fiscal year) and 82% of expenditures budgeted have been expensed for this time period (compared to 84% last year). This represents 75% of the budget year completed.

GENERAL FUND NOTES AND PROJECTIONS:

Revenue: Revenue projections continue to be higher than budgeted by \$47,000. Please see last month's report for a more detailed breakdown in variances in revenue for FY10.

Expenditures: Expenditures should be in line with the budget when we factor in expected savings in employee health insurance costs. I say "expected" savings because it is now (and always will be) difficult to predict the health insurance costs now that the City is self-insuring the high deductible health plan. The mild winter may provide additional savings in the DPW Streets and DPW Fleet. Also, when we took a look at this year's legal costs we saw that much of them were Scott Construction and Berlin Pond issues. These legal expenditures were moved to the Water Fund which improved the General Fund's bottom line. (See last month's report for a more detailed breakdown in variances in expenditures.)

I am projecting that the General Fund should be able to end the year with a positive financial position.

PARKING FUND: Parking Fund revenue is almost identical to the previous year. 72.5% of parking fund revenue has been received. Expenditures are up over last year due to increases in salaries (we are fully staffed in the Police Department) and parking lot lease fees. Expenditures are 72% of the budget as compared to 71% last year. The parking fund should end the year with the projected \$28,000 surplus

WATER AND SEWER FUNDS: Third quarter billing information is not yet available. The Water and Sewer Rate Committee will be meeting in April/May to review the current year's financial information and propose rates for FY11.

The Budget Reports are scheduled for the City Council Consent Agenda for April, 28, 2010.



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The project is now complete but federal reimbursements are still pending. The Public Works staff requested amendment #4 to the CA because all funds allocated to the 95% federal roadway category were expended leaving insufficient funds available for all authorized expenditures. However, there are excess funds available in the 100% federal roundabout category. To address the imbalance, a shift between the two funding arrangements was requested and has been approved by Federal and State authorities. The total project cost will be less than the overall project budget established by Amendment #3.

Recommendation: Approval of Amendment #4 to the Cooperative Agreement and authorization for the City Manager to execute the amendment document on behalf of the City Council as it's duly authorized agent.

- d. Consideration of awarding of bid for hardware and labor proposal received from Tech Group for the replacement and installation of a domain control at a cost of \$12,140. This was a FY 2010 budgeted item.

Recommendation: Authorize City Manager to execute the documents with Tech Group.

- e. Consideration of becoming the Liquor Control Commission for the purpose of acting on Tobacco and Liquor licenses: Annual renewal of Tobacco and Liquor Licenses. (City Clerk will distribute list of applications at the meeting.)
- f. Approval of Payroll and Bills

4. 10-103. Discussion of ANR enforcement action regarding Wastewater Treatment Plant.

- a. In the fall of 2008, ultraviolet lights at the WWTP briefly flickered off resulting in some discharge of treated but not finally disinfected wastewater.
- b. Due to an internal error, this discharge was not immediately reported to the State. A similar error had been made earlier in the same year.
- c. The City has corrected both the operations discharge problem and the internal communications system. No further problems have occurred.
- d. The state of Vermont Agency of Natural Resources has initiated an enforcement action and proposed fines. The City Manager and Attorney Stitzel have been in negotiation with ANR since the Spring of 2009 about this matter. The issue has not been resolved.
- e. Attorney Steve Stitzel was present on April 14, 2010 to brief the council on the issue and outline the choices for the council.
- f. Attorney Stitzel has had conversations with ANR attorneys since the last meeting and the City Manager has sent a letter to the DEC Commissioner. Attorney Stitzel will not be present for this meeting

Recommendation. Review issue. Decide whether to accept the Assurance of Discontinuance.

5. 10-104 Second public hearing to consider proposed amendments to the City's Vendor Ordinance.

- a. City Council first began discussing these proposed amendments at their March 10th meeting; they'd received a memo from Montpelier Alive Executive Director Suzanne Eikenberry, outlining some changes they'd like to see incorporated before the 2010 summer vending season.
- b. This subject was revisited at the Council's March 24th meeting. At that time, Council instructed staff to invite a group of interested vendors and business owners to meet and discuss their concerns and suggestions; the City Manager held this meeting on April 7th. At the April 14th the council approved the proposed changes including those made by the Police Chief regarding enforcement and moved to second reading.
- c. A copy of the revised ordinance based on the first reading has been provided.

Recommendation: Conduct the second public hearing. Adopt the ordinance.

6. 10-105 City Hall Arts Center Management - ordinance.

- a. First Reading of proposed revisions to Article VIII of the City ordinances concerning use of City Hall.
- b. The City Manager has proposed amendments to the ordinance which more accurately reflect current practices and which allow changes to rental policies and fees without requiring future ordinance amendments.

Recommendation: Conduct first reading, set second reading for May 12, 2010.

7. 10-106 City Hall Arts Center Management – policies and agreements.

- a. In conjunction with this Council will consider

- 1) Revised Rental Management Agent with Lost Nation Theatre.
- 2) Revised use Rental Agreement with Lost Nation Theatre.
- 3) Revised City Hall Arts Center Rental Policy and Rate Sheet.
- 4) Revised City Hall Arts Center Rental Contract

- b. The City Manager has proposed the above policies and agreements which are consistent with the proposed ordinance amendment and which reflect current practices.

Recommendation: Approve the policies and agreements as presented.

8. 10-106 Discussion of continuing the \$75 Zoning Appeals fee.

- a. Decisions or determinations by the Zoning Administrator may be appealed to the Development Review Board. These include determinations of whether a permit is needed, approval of permits, determinations of whether a variance is needed, enforcement decisions and many other determinations.
- b. Appeals to the DRB include a \$75 fee paid by the appellant.
- c. A citizen recently questioned whether this fee was appropriate in all cases, particularly when the appellant was not the person seeking to make changes to their property.

Recommendation: Discussion, direction to staff.

- 9. 10-108. Reports by City Council
- 10. 10-109. Mayor's Report
- 11. 10-110. Report by City Clerk-Treasurer
- 12. 10-111. Status Reports by the City Manager
- 13. 10-112. Agenda Reports by the City Manager

Adjournment

On Wednesday evening, April 28, 2010, the City Council Members met in the Council Chamber.

Present: Mayor Hooper; Council Members Weiss, Sheridan, Golonka, Sherman, Jarvis and Hooper; also City Manager Fraser.

Call to Order by the Mayor:

Mayor Hooper called the meeting to order at 7:00 P.M.

10-101. General Business and Appearances

None.

10-102. Consideration of the Consent Agenda:

Consideration of the minutes from the City Council's April 14, 2010 Regular Meeting.

Summary Budget Report by Finance Department for General Fund and Detailed Budget Status Reports for General Fund, Water Fund, Sewer Fund, Cemetery Fund, Parks Fund, Parking Fund and Senior Center Fund for a eight-month period beginning July 1, 2009, and ending March 31, 2010.

Consideration of Approval of "Amendment #4" revising the Cooperative Agreement (CA) between the City of Montpelier and the State of Vermont for the purpose of altering the allocations of the two primary funding arrangements (95% federal roadway and 100% federal roundabout) for the reconstruction of the US2/302 intersection (roundabout – Project #Montpelier FEGC 028-3(34)S).

This will further amend the agreement approved by City Council on May 7, 2002. A Cooperative Agreement provides for the funding and project development relationship with the delegation of responsibilities between the State of Vermont and the City of Montpelier.

The project is now complete but federal reimbursements are still pending. The Public Works staff requested amendment #4 to the CA because all funds allocated to the 95% federal roadway category were expended leaving insufficient funds available for all authorized expenditures. However, there are excess funds available in the

100% federal roundabout category. To address the imbalance, a shift between the two funding arrangements was requested and has been approved

by Federal and State authorities. The total project cost will be less than the overall project budget established by Amendment #3.

Recommendation: Approval of Amendment #4 to the Cooperative Agreement and authorization for the City Manager to execute the amendment document on behalf of the City Council as it's duly authorized agent.

Consideration of awarding of bid for hardware and labor proposal received from Tech Group for the replacement and installation of a domain control at a cost of \$12,140. This was a FY 2010 budgeted item.

Recommendation: Authorize City Manager to execute the documents with Tech Group.

Consideration of becoming the Liquor Control Commission for the purpose of acting on Tobacco and Liquor licenses: Annual renewal of Tobacco and Liquor Licenses. (City Clerk will distribute list of applications at the meeting.)

Liquor License and Tobacco Renewal Applications

Brook Hollow Productions, Inc dba Savoy Theater, The 26 Main Street	1 st Class License for Cabaret
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Good Fortune Enterprises, Inc dba House of Tang 114 River Street	1 st Class License for Restaurant
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Kismet, LLC 207 Barre Street	1 st Class License for Restaurant
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Kurrle Corp. dba Kurrle Fuels 366 East Montpelier Road	Tobacco License
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Skinny Pancake – Montpelier, The LLC 89 Main Street	1 st Class License for Restaurant
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That's Life Ventures, Inc 1st Class License for Restaurant
dba That's Life Soup
41 Elm Street

ALSO *****CATERING PERMIT

Consideration of a catering permit for Vermont Hospitality Management dba
New England Culinary Institute to cater a reception at Hopkins House at
National Life on May 4, 2010 from 4:00 P.M. to 6:45 P.M.

Approval of Payroll and Bills

Payroll Warrant dated April 15, 2010, in the amount of \$107,444.82 and \$28,053.62.

General Fund Warrant dated April 21, 2010, in the amount of \$240,554.94 and
\$956.50.

Motion was made by Council Member Sheridan, seconded by Council Member
Hooper to approve the consent agenda with the added catering permit. The vote was
6-0, motion carried unanimously.

10-103. Discussion of ANR enforcement action regarding Wastewater Treatment Plant.

- a. In the fall of 2008, ultraviolet lights at the WWTP briefly flickered off resulting in some discharge of treated but not finally disinfected wastewater.
- b. Due to an internal error, this discharge was not immediately reported to the State. A similar error had been made earlier in the same year.
- c. The City has corrected both the operations discharge problem and the internal communications system. No further problems have occurred.
- d. The state of Vermont Agency of Natural Resources has initiated an enforcement action and proposed fines. The City Manager and Attorney Stitzel have been in negotiation with ANR since the Spring of 2009 about this matter. The issue has not been resolved.
- e. Attorney Steve Stitzel was present on April 14, 2010, to brief the council on the issue and outline the choices for the council.

f. Attorney Stitzel has had conversations with ANR Attorneys since the last meeting and the City Manager has sent a letter to the DEC commissioner. Attorney Stitzel will not be present for this meeting.

Recommendation. Review issue. Decide whether to accept the Assurance of Discontinuance.

This item had been tabled at the last meeting.

Motion was made by Council Member Weiss, seconded by Council Member Sheridan to remove this agenda item from the table. The vote was 6-0, motion carried unanimously.

City Manager Fraser review the letter he had sent to the DEC commissioner and the response he had received. He had provided the council with copies of both letters.

Council Member Golonka asked Mayor Hooper and the City Manager if they had any knowledge about the supplemental environmental process.

City Manager Fraser replied they would propose it to the group involved and then they would approve it.

Mayor Hooper said the City Manager has expressed the deep disturbances they all share that having spent over a million dollars to bring this plant up to a higher level of treatment to protect the waters of the state, and then upon understanding that there were issues with the improved treatment the city was providing having spent another \$44,000 to upgrade the system so it would not experience any further problems, to be asked now to pay a fine, we are not disputing the facts, and in fact there were two failures where a very small amount of water did not receive the tertiary treatment and escaped the final treatment level of disinfection in which no one was harmed, it really is very disturbing that we are being asked to pay a fine. It only hurts the rate payers of the city and accomplishes absolutely nothing from protecting the environment or improving the treatment plant. She is deeply bothered that partners in watershed protection and environmental protection are taking what she regards as a rather shortsighted view of this situation. She was pushing for the Council to take this to a higher level but perhaps they shouldn't go to court on principle. The question is, should we accept the fine or should we pursue this further?

Council Member Hooper asked the City Manager if he had spoken with Attorney Stitzel regarding his letter.

City Manager Fraser said not about this letter but he spoke with him about conversations we had pursuant to this letter. He told him then that he was going to send one final letter from the city directly to the Commissioner and see what happened.

Council Member Jarvis said she would remind the Council that even if we take the action to court and win we do not get our attorney's fees and costs refunded.

Mayor Hooper said it has the potential for being substantial.

City Manager Fraser said it would be in the range of \$8,000 to \$10,000.

Council Member Sheridan said he hasn't changed his mind from the last time. He wants to pay the fine and be done with it.

Council Member Weiss said if that is a motion he would second it.

City Clerk Hoyt reminded the council there was a motion already on the floor from the last meeting, which was made before they had gone into executive session. .

Mayor Hooper said made by Council Member Weiss was to accept the recommendation of Attorney Stitzel and that we accept the resolution in the amount of \$17,000. The Council has taken the motion off the table and it is before the Council for action now. It has been noted to that it is not the recommendation of Attorney Stitzel but it is the issue before us.

Council Member Golonka said he thinks it is an unfortunate situation but it is also a distraction. We are bound to pay at least \$20,000 plus if we take this to court and he doesn't think it is worth it. That is why he supports paying the fine and putting it behind them.

Mayor Hooper called for a vote on the motion. The vote was 6-0, motion carried unanimously.

10-104 Second public hearing to consider proposed amendments to the City's Vendor Ordinance.

City Council first began discussing these proposed amendments at their March 10th meeting; they'd received a memo from *Montpelier Alive* Executive Director Suzanne Eikenberry, outlining some changes they'd like to see incorporated before the 2010 summer vending season.

This subject was revisited at the Council's March 24th meeting. At that time, Council instructed staff to invite a group of interested vendors and business owners to meet and discuss their concerns and suggestions; the City Manager

held this meeting on April 7th. At the April 14th the council approved the proposed changes including those made by the Police Chief regarding enforcement and moved to second reading.

A copy of the revised ordinance based on the first reading has been provided.

Recommendation: Conduct the second public hearing. Adopt the ordinance.

Mayor Hooper opened the public hearing at 7:13 P.M.

City Manager Fraser said the warning changes were very minor. The substantive changes from the last meeting were only a few. They did talk about the requirement that they pick up their own trash and provide a trash barrel for their customers. They had moved the newsstands out and it will show as deleted.

Mayor Hooper said for the Council's information she proposed a couple of wording changes. On the first page under license requirement there was some archaic language. On the third page near the bottom you'll see an accessible handicapped area is struck out. The intent of that language is moved up to the top where it says locate within 5 feet of accessible parking space or access ramp.

Mayor Hooper said they received an e-mail from Tim Azarian who had two questions.

Council Member Jarvis said one was what happens if a restaurant moves into a space that is within 50 feet of where a vendor is already located. The other one is whether they can move for a special events permit.

City Manager Fraser said those are just policies. In the past if someone had a season's long vendor license and they wanted to operate during a special event, did they still have to buy a special event permit?

Ms. Eikenberry said the way it is handled for Independence Day is that if they already have a year-long vendor's license they don't pay an extra \$25 for the special events permits to the City. There is a fee that is paid for vendor space within the designated area.

City Manager Fraser said the question was that if they have a permit now and they are assigned to space #1, and now they want to move on July 3rd up to the State House, he doesn't see a problem with that.

Suzanne Eikenberry from Montpelier Alive said she doesn't see a problem with that, either. She doesn't think that was the intent. It is the same procedure for all of the events. Whoever organizes the special event is supposed to coordinate the vendors' licenses and anybody who doesn't have a year-long license is supposed to pay a \$25 special events fee to the City, but it doesn't address spaces or locations at all.

George Estes said his question is there is a special event put on by the state such as the Seat Belt Crash Program. Does he need another permit even though he has a permit with the city?

Mayor Hooper said it wouldn't be the city's special event. They were referring to the 4th of July and some of the events we issue permits for.

Ms. Eikenberry said when special events happen it is the organizer of the special events' responsibility to coordinate whatever vendors they have. The city requires that the vendor either have a year-long city vendor's license or pay a \$25 special events fee per day. The organizers of the event can then also charge an additional fee and controls the space, who is there and who is not there.

Council Member Jarvis said all they need to do is put an exception into our rule that the city's decisions on special events supersede all the locations of the vendors. Designated locations don't apply. This will give the organizer some control over where people are located.

Mr. Estes said he used to do the Alzheimer's and Parkinson's fundraising events, and that is exactly what they did. They would come to the city for a special permit and charge him.

City Manager Fraser said under the section of the designated location, it says: "In the designated downtown districts vendors can only vend in pre-approved locations established by the City Manager except for city approved special events."

Council Member Hooper said if he is hosting a special event that is about local foods, does someone who is vending hot dogs have a right to vend?

City Manager Fraser replied not if he doesn't let them in. He is basically saying he wants to reserve the area.

Council Member Jarvis asked how do vendors know when you have a special event that they aren't invited.

Mr. Estes said he has done a couple of events and concerts. He did the Phish Concert and you had to talk to the concert organizers. At the Lamb Abbey they do special events and they are in charge of the security, the vendors they have on site. If you show up and you weren't invited they ask you to leave.

City Manager Fraser reminded them that is private property.

Council Member Jarvis said maybe they should have a list of vendors who need to be contacted. If we are having a special event and you come to the city for approval and we tell the City Manager to deal with the vendors.

Mayor Hooper reminded people the Council is conducting a public hearing on the second reading of the vendor ordinance.

Elysha from Rhapsody said they are doing the city a service by being an agent for Greyhound Bus. The Greyhound Bus doesn't make them money. It is a service they do, and they do it because they believe in public transportation. They love buses and they also felt they could get some more business in Rhapsody to do this. If they put two food vendors in front of City Hall there is no point in them continuing with Greyhound? Financially it isn't viable. Her question is if Greyhound is in front of City Hall for two years she would request that the city not put any food vendors in front of City Hall for at least two years. This is an exception because the city wants to have Greyhound Bus in town, too.

Council Member Golonka asked how many patrons of Greyhound does she have per day. How many people come in for Greyhound specifically? How many tickets for Greyhound does she sell per day?

Elysha said she asked Greyhound to give her the franchise for two years. They personally get 3 to 5 people in per day. This is the bad season now, and the good season is coming.

Council Member Golonka said she is asking the Council to basically close down City Hall for the whole community for an action that may be a limited scope. What is the traffic she is trying to prevent from having other food choices in the City Hall area?

Elysha said they can go to Samosa Man or anywhere else, but if it is raining they will come in to Rhapsody and eat something. If there is a food vendor here on sunny days then Rhapsody isn't getting the benefit. She feels the Council needs to

understand the responsibility that there needs to be healthy competition in town. If they pay \$26,000 a year for rent and they serve lunches between 11:00 and 3:00, especially in the summer, and then the city gives somebody a license for \$250 for a whole summer season, it is not a healthy competition. They have more empty spaces in town this way. They need support and recognition that they do work for the city. In the several months they have done this they have made \$500 a month with Greyhound. That is not what they promised us; it is much less.

Mayor Hooper said she feels the need to make the distinction between the fact that you are an agent for Greyhound, and she totally agrees that she did step forward and they understand her commitment to public transportation. They are very appreciative that Rhapsody was willing to do this. You are doing it for the community, but you are not doing it for the City of Montpelier. She wants to make that distinction. She would suggest they do not have a legal obligation or they don't have a claim against the city for having that happen. She wants that on the record so in the future if there is ever a problem there is not a legal arrangement or the city did not ask her specifically to do that. She understands her point that she is doing it on behalf of the community of Montpelier.

Elysha said they cannot say that it is not part of her business, either. She thinks it is everybody's business they do that. It doesn't have to be a rule but a two-year thing. They could put other vendors there instead of food vendors.

Mayor Hooper said specifically she is asking that the city treat her business differently.

Council Member Jarvis said she is asking that we treat in front of City Hall as part of her business.

Elysha replied yes, as part of the 50 foot rule.

Council Member Jarvis asked if she was actually paid to be an agent of Greyhound.

Elysha said they are only paid by the tickets they sell, which doesn't include internet sales.

Council Member Golonka said if they do designate spots in front of City Hall would she be leasing that space. They aren't in the business of determining who goes where. They are trying to set up designated spots in the city. It puts him in an awkward position in that one business is asking the Council to give a special treatment because we have allowed her to do Greyhound buses as a benefit to the city. He understands her concern, but it also sets up a precedent.

What if the Savoy comes along and they say they no longer want to do the Green Mountain Film Festival one year?

Elysha said she did not ask Greyhound to be here. Greyhound is not her bus station. It is not for her benefit to have Greyhound but for the whole town. They have no idea how many people call her up to tell her how grateful they are that Greyhound is here. She has asked Greyhound for numbers of how many people come in and out of the bus here. There are a lot of people.

Council Member Golonka asked if she received benefit from tickets sold online.

Elysha said is 2 percent of 8 percent, or 50 cents per ticket.

Council Member Golonka said he was under the impression that when they first came to us that Rhapsody was going to be the exclusive vendor for tickets in Montpelier and she would receive a percentage of any tickets sold.

Elysha said she gets 8 percent for the tickets she sells, but she doesn't get any money for phone calls which are much more work than the ticket selling. They have the Greyhound phone along with the Rhapsody phone, and they receive phone calls for both all day long, and they don't get paid for that.

Council Member Golonka said for people who go online to Greyhound.com to buy tickets leaving Montpelier she doesn't receive anything.

Elysha said she gets 8 percent.

Mayor Hooper said they are conducting a public hearing on the second reading of the municipal ordinance dealing with vendors.

Paul McLeod, a vendor here for the last five years, runs Hot Diggity Dogs Plus. He sees people from all over the world come to Montpelier; they love it and they love all the different vendors and different restaurants. There are 40 plus restaurants. Vendors don't have it as great as everybody thinks they do. For the last two years it has rained and the season is really short. He thinks there was three days of summer last year. You are lucky if you can get 100 days of vending. The people he has seen in the last five years love the choices Montpelier has put out for them. The ones with more money or families go to big restaurants, and people without as much stop at a cart of their choice.

Erica Huffleys who works at Uncle Mike's Deli wanted say that if they put two vendors in front of City Hall where the bus stops that is where they will stay.

If they are hungry that is where they will eat. They aren't going to walk around town to see the other places or even the other vendors. Not only does it affect Rhapsody but it also affects whether they are going to disperse throughout the town. The rain affects them, too. They are there rain or shine.

Mayor Hooper closed the public hearing at 7:40 P.M.

City Manager Fraser said he wanted to be clear that this isn't a zoning ordinance so the Council is not required to have another hearing. They can substantially change and amend the ordinance tonight and pass it if they wish.

Council Member Golonka thanked the City Manager and Suzanne Eikenberry for drafting the vendor's ordinance. He knows that originally Suzanne had recommended the \$250 fee be increased. We are hearing commentary from people that it is too low, and he thinks it is too low. We may not be able to raise it this year, but he personally thinks it should be higher. People pay taxes. There is an equity issue. A gentleman just said they have 100 days - \$250 is only \$2.50 per day. He doesn't think that is fair to people who are long time paying taxpaying citizens of the city of Montpelier. Where it talks about the 50 feet, we changed it to in the same class. We should add in there as determined by the City Manager because if we say in the same class and don't give the City Manager the authority to make that determination. He doesn't think it should be the Council's job to police those types of decisions, and it should be an administrative function.

Relating to enforcement it basically says the warning and corrective penalty issued by the city should be administrative. If someone had their second violation the administrator would take their license, and if they wanted to argue about that they could come to the next Council meeting or else it should be revoked by the City Manager.

Mayor Hooper said she wonders if that is a matter of law. Is there something in the statute that requires that a license issued by a municipality is appealed to Superior Court?

Council Member Jarvis said you would think there would have to be a body above the Council, but it would make sense first that it would come to the City Council.

Mayor Hooper said they are striking section 1408.

Council Member Sherman said she had a comment about (c) also and they discussed that it would be very hard to set prices for various locations to have

an auction of different locations, and if at all possible to include that provision somewhere under fees that for the 2011 summer vendor season we would be holding an auction to determine the fee. Even if that doesn't go into the ordinance that be understood that it will be changed.

City Manager Fraser said the fee is set in the ordinance. They could say that fees will be set by resolution of the Council and then you would have to amend the ordinance every time it changes.

Mayor Hooper said there is a proposal to substitute for § 9-1403 which sets the fees that the City Council would set it by resolution on or before a certain date before the licenses come due.

City Clerk-Treasurer Hoyt said it would be best if they set the fees during the middle of January because they start coming in during February.

Mayor Hooper told Council Member Sherman that would enable the Council to get at what she is proposing.

City Manager Fraser said they wouldn't be amending the ordinance today so you could say applicants for license under §9-1402 shall be a license fee to be determined annually by the City Council in January.

Mayor Hooper said the fees for this year are what they are. We have already issued all of our licenses so we are talking about the future on this.

Council Member Golonka said if they are amending the fee provision there are a couple of other references to fees. Should they be consistent and keep the same message. § 9-1412 special events permit is \$25 fee and then in § 9-1413 the special transient vendor license. Then, we won't have to change the ordinance from year to year.

Clerk-Treasurer Hoyt said they have to make sure that somehow it says after this year because people will still be coming in for permits.

Mayor Hooper said it is clearly the Council's intention that the existing fees remain as they are.

Council Member Weiss moved approval of the city's vendor ordinance as amended with the resolution of the fees. Council Member Sheridan seconded the motion. The vote was 6-0, motion carried unanimously.

City Manager Fraser said they did not respond to the question about what if a restaurant moves into a designated space.

Council Member Jarvis asked if a vendor could keep a restaurant out.

City Manager Fraser replied no.

Mayor Hooper said she would assume if they had their designated space that it is their space for that period of the vendor's license.

City Manager Fraser said when that vendor moves out and that space becomes vacant it might not be renewed as a food space for the following year.

Ms. Eikenberry said regardless of the restaurant question there may be other reasons why a space that was grandfathered one year becomes ineligible the following year because of the way parking spaces are situated. The grandfathering has to be dependent upon legitimate spaces being set because there are many reasons why a space might not be renewed for the following year.

Council Member Jarvis said she would really caution the Council. If a business wants to come into town and locate downtown we should do whatever we have to do to get that business in to an empty storefront, and if it means moving a vendor to a different site that is what it means. We wouldn't be voiding it. We would tell them they have their designated space and unless and until something comes up because empty storefronts are one of the top concerns of so many residents in Montpelier, and is certainly one of hers. If a restaurant wants to come in and sees a food cart is located right there and will probably stop people from coming in to the restaurant, there's not a question in her mind.

Council Member Sheridan said he agrees with Council Member Jarvis because restaurants to him are more of an anchor to our town than vendors.

Council Member Golonka said he agrees and it comes to the fact that our permits aren't permitted. He doesn't agree with the grandfather anyway, and he thinks every year should be an auction or bidding process and subject to the whims of the Council.

Mayor Hooper said she believes what she hears Sarah saying this is the consequence. I buy a vending permit. I am doing my thing, been there for months as a hot dog vendor and a business opens there I lose my space. Council Member Jarvis is saying that vendor would jeopardize the ability of that restaurant to be successful. She would say if they are that marginal that you shouldn't be opening a restaurant.

Council Member Jarvis said she would be careful about saying that because she thinks there are a lot of people downtown that are very marginal.

Mayor Hooper said she appreciates these are difficult times and people are struggling for foot traffic, but if you are opening a new business and your business plan is shaken by that sort of competition, she agrees with the notion that when the season is up and when the new vending licenses are being issued that we consider that then. It is no longer a food space and applies the ordinance as it is written. She thinks the vending carts add a great deal of liveliness and vitality to our streets. She doesn't want to put out an opposition to them. She doesn't see how this is a big threat to a new business opening up, or if it is she is concerned about them opening up.

Council Member Sheridan said start up is hard. Start up is the time where it is the hardest. People expect start up to be a failing venture for awhile.

Chip Hart from City Center said fortunately he thinks it would be a rare circumstance. There is an equitable issue. The concern they should have, which he sees as a landlord, is whether the cart would be a deterrent to getting a new tenant in a vacant space that may have been vacant for a month or six months. Their history has been fairly good but not everybody's has. There is sort of a hierarchy of values here, and the ultimate one is the one that Sarah recites, which is not to pick on vendors because he also agrees with the Mayor because it adds vitality, a color and another thread in the fabric of downtown. But, ultimately, it should always be filling vacant spaces. He is sympathetic to the concept. You might for a year or two delegate to the City Manager some authority to try to make things work. If a vendor likes a spot that is in front of a vacant space if he understood there was a risk to it you have dealt with some of the equitable issue that he is at risk and that you as a city would make the best effort to move him to another spot if there was a competition issue. If you couldn't at the very least refund his fee for the year. The concern he has is that at the start of the season, you are coming out of the winter, and for a startup time all this timing can become very critical. If the space doesn't get leased hypothetically by early fall, and it is principally a likely restaurant, it could go into the next season before it got opened. He isn't that familiar with what the velocity of turnover is here, but these are tender times.

Mayor Hooper said she would suggest that we would be very fortunate to have a vendor in front of an empty space because otherwise it is a notably empty blank spot on the walk where people might choose to walk that entire length of sidewalk and other businesses around it could suffer. A vending cart has its own startup fees and expenses. They are certainly nothing compared to what people have who are moving into a space, but they are buying equipment and making

commitments to our downtown in a similar way. She would suggest that if they are willing to do that for a period of time that we would allow them to be there for that season and then evaluated again for the following season following the rules of the ordinance. She senses hostility towards vendors.

Council Member Jarvis said absolutely vendors lend a huge amount of vitality and it is wonderful to have people outside and talking to each other, meeting downtown, etc. There are other issues we need to focus on.

Council Member Weiss said this does not include exceptions to the rules. There is an equity issue here and the vendors have a very high priority. They are entering into a contract with the city for a space for a certain amount of time for a certain amount of dollars and we need to honor that. He doesn't see how at this point without reopening the ordinance that we can go back and say we are going to put a provision in your agreement that if x happens y will occur. He doesn't see any need for this discussion.

Council Member Jarvis said she sees the opposite because of the 50 foot rule for restaurants.

10-105 City Hall Arts Center Management – ordinance.

- a. First Reading of proposed revisions to Article VIII of the City ordinances concerning use of City Hall. :
- b. The City Manager has proposed amendments to the ordinance which more accurately reflect current practices and which allow changes to rental policies and fees without requiring future ordinance amendments.

Recommendation: Conduct first reading, set second reading for May 12, 2010.

Mayor Hooper said the Council is conducting their first reading of the city ordinance related to the use of City Hall.

City Manager Fraser said in their packets a week ago there were five documents sent out that Dona Bate and Kim Bent who worked very diligently for several weeks. In the fall there was a situation where a question came about a fee waiver but also other fees being assessed and what the ordinance said as well as what the policy was. There were some discrepancies between the various governing documents. They started looking at the ordinance and worked their way through creating a series of documents that established the role that Lost Nation Theater

would play as a rental agent and recognizing that some time in the future the city might wish to change them as a rental agent but still have them are performing. There is a separate agreement for their performing and then there is the policy and attached fee schedules.

They looked first at the ordinance that had been crafted back in the early 90's which still referred to the Onion River Arts Council. It set specific fees and had a lot of processes that are no longer being used. They sought to drastically shorten that up and have it be an ordinance that the Council or other agent shall administer and have the ability to rent it and that an agent may receive a percentage of the fees and/or space or other consideration. It authorizes that arrangement. It basically says the Council will set a resolution and a policy for the use of the building and that can be updated from time to time without having to redo the ordinance. That is what the amendment to the ordinance is. While they were in that section it also included fees for the Memorial Room and others and they also converted that to resolution by the Council. They did set up an appeal process. If you go through the policy they allowed the agent to reduce the fee for certain activities but if someone wanted to reduce it further or waive it they have to come before the Council. The ordinance requires two formal readings.

The second document is taking the rental agreement to the agent agreement with Lost Nation. This is an attempt to articulate what is happening now and make sure it matches the current practice and requirements so it clearly states what their responsibilities are as rental agents. Then, there was an agreement with them which the Council adopted some years ago, which was an open ended agreement for them to use the theater space. They tried to talk about the times and again recognize the practice that was happening.

They realized that having an open ended agreement they weren't sure what happened if someone wanted to get out of it. They set the rental agent agreement with a 90-day notice saying if they aren't doing their job managing our space we might want to do it ourselves or hire somebody else to be the agent booking the space. In terms of their season we simply set as a contract with no end date but a 12 month notice so they certainly could complete their theater season and possibly get a second theater season. Conversely, it may also be they may need to terminate and that might be their last season. It was meant with the intent for a long term arrangement but it did have a termination clause, and that 12 months could be changed to longer if needed. It is included that the parties could agree upon a different time, so if they decided 18 months or 24 months would be better to get a season in we could do that.

With regard to the rental policy they tried to make very clear what the different fees were for different things because in addition to use fees there are tech fees, equipment, personnel fees and cleanup. They specifically went around this provision that said if you are having beer and wine and can't get a fee waiver they drafted one instead with a security deposit. They would determine the size and nature of the event and have an appropriate security deposit, and then if the Council still wishes to waive the fee because it is for the public good they can. Our building is protected and their costs are protected because we have a deposit. If people are responsible and clean it all up then they will receive their security deposit back.

One major change in the rates was the rates used to talk about if you were a nonprofit agency or a for profit agency. There were different prices whether you were a private business or a nonprofit agency. Instead of going by who the entity is who is renting the facility but what is the nature of the event so if National Life wanted to hold a charitable event in City Hall the event would be considered charitable and get the lower fees and the cost savings whereas if a nonprofit agency wanted to hold a holiday party for their employees that would be a private event and not for charity so they would pay the private event fee. They decided to go away from who it was and more about what it was. That made a lot more sense in terms who we would be charging the lower fee.

They also talked about there being a single person contact. For instance, the concert to raise money for Haiti was sponsored by an ad hoc group that got together. In that case there wasn't a single individual sponsoring the event. At other times with a group of folks or committee it was hard to know who was responsible to make sure it was cleaned up, who is responsible to see the fee gets paid and who is responsible to make sure that the technical elements are taken care of. Somebody has to sign the document and say they are the responsible party and the person they will communicate with.

They tried to look at the fees and looked at the Barre Opera House as the nearest public type of space, and they looked at the Capitol Plaza as the nearest private location that had events and what their fees were realizing they weren't the Plaza or the Opera House. Most of the other rules are similar.

The last document, which he doesn't think the Council has to approve, is the rental contract. That shows what the renter sees and it is consistent with our policies. The final page is simply the rate sheet so that any cost anybody would have is right there in front of them and there is no hidden cost. People felt there were hidden costs being tacked on. If you are considering renting City Hall and you get a copy of the contract the rate sheet is included as well as the rental policy.

Council Member Golonka said he had a couple of questions about liability insurance. In the special City Hall Arts Center rental agreement it is provided that Lost Nation Theater is going to provide \$300,000 for occurrence and \$600,000 in the aggregate. It seems a little low. What is the current city liability policy? He thinks they would want to have coverage of at least a million dollars.

Dona Bate replied that most organized organizations have \$1 million for each occurrence and \$2 million for the aggregate. That is what the standard is.

Council Member Golonka said this seems very low to him so he would review that. Secondly, on the Montpelier City Hall Center rental policy it says liability insurance will not be required for classrooms, workshops and concerts. Whose liability insurance does cover that if something happens? Is it Lost Nation Theater's umbrella policy listed in the Special City Hall Arts Center or is it Montpelier's policy? He would like clarification on that in terms of liability insurance.

Dona Bate said the thing about the minimum is that there are groups that don't have insurance. They go out and get a specific certificate for that event and hence it is the lower requirement. It wasn't their determination about classrooms. That was in the previous policy so they continued it, but both the city, Lost Nation Theater and the group because a lot of educational workshops come from groups that have their own insurance.

Council Member Golonka said they are saying here that it is on a case by case basis that they may not require it. If they don't require it and somebody doesn't have it, which covers it, the city's policy or Lost Nation's policy?

Ms. Bate said the rental contract is not Lost Nation requiring it but the city requiring it. It is a city requirement; the Lost Nation Theater is only the agent. If the city wants to change it, that's fine, but they didn't see a need to change it.

Mayor Hooper said there is an underlying question about who has to carry the liability.

Dona Bate said the rental policy and the reason they use the word agent, it is an agent and as an agent there are certain liabilities that under the function and responsibility of Lost Nation, but with the rental group the city has their ultimate responsibility of actually owning the facility.

City Manager Fraser said what Tom is saying is that maybe we should just take out the line that says insurance coverage will be determined on a case by case

basis and say it will be required for all events. They can take out the line that says readings, rehearsals, workshops and classes may not require insurance.

They don't require insurance for people using the Memorial Room for meetings.

Ms. Bate said it may have more to do with the numbers than anything else.

Council Member Golonka suggested they check with their insurance carrier.

Council Member Weiss said on page 2 of the City Hall Arts Center Management document, sub (a) reads that all other provisions of this ordinance shall be administered by the Manager. Yet, there are other places within the document in which different people appear to have some administrative responsibilities. Where do we know what the other provisions are?

Mayor Hooper asked if his question had to do with the ordinance language.

Council Member Weiss said in Article 8, the Use of City Hall, and Section 2-80(a)(1). There are responsibilities given to the Clerk and responsibilities given to Lost Nation.

City Manager Fraser said they tried to take out all of the Clerk responsibilities. When this first came up everything went through the Clerk's Office. He talked with Charlotte and she said they aren't really involved with it now and they didn't want her involved in resolving disputes. He thought they had taken out any other reference to the Clerk except for elections and official municipal meetings.

Council Member Weiss said subsection (a) reads: "All other provisions shall be administered by the Manager." What are the other provisions?

City Manager Fraser said whatever there might be. It was a catchall meaning if it wasn't clear who had to make a decision. There is a decision about appropriate use. It was meant to clearly identify that if there was something unanticipated that it would fall with the City Manager. The existing ordinance current says all other provisions shall be administered by the City Clerk, and they simply changed clerk to manager. He doesn't think they gave a lot of thought to what those other provisions might be.

Council Member Weiss said his next concern is on page 2, Rental Fees for Memorial Room. At the end it says must be paid in advance to the City Clerk.

City Manager Fraser replied that is correct. They are talking about the Memorial Room on this floor and not the upstairs rental. Lost Nation Theater has nothing to do with renting Memorial Room. Someone comes in and books it through the Manager's Office and get told it is a \$25 fee. They come in and make a check out to the City of Montpelier and they give it to the City Clerk.

Council Member Weiss said in (c), the same page, 805(a), "The Manager is granted the right to waive any rental fee." Yet, there are provisions elsewhere in the agreement about rental fee waiver.

City Manager Fraser said this specifically applies to the Memorial Room.

Council Member Jarvis said she has a question about the rental agreement for Lost Nation. Part of the reason we don't charge rent is because they act as the city's agent. Is that correct?

City Manager Fraser said that is partly true, although they were actually here functioning as a theater without rent before they took on that responsibility. That is one of the things they do for us in exchange, and that is why the ordinance said that was a consideration that could be given. It was also because they felt having the theater in downtown was important. There had been a provision that any event above 250 tickets sold that the city received 25 cents from each ticket, and it had never been collected so they took that out.

Council Member Jarvis moved first reading of the ordinance and set the second public hearing for May 12th. Council Member Weiss seconded the motion. The vote was 6-0, motion carried unanimously.

10-106 City Hall Arts Center Management – policies and agreements.

a. In conjunction with this Council will consider:

- 1) Revised Rental Management Agent with Lost Nation Theater.
- 2) Revised Use Rental Agreement with Lost Nation Theater.
- 3) Revised City Hall Arts Center Rental Policy and Rate Sheet.
- 4) Revised City Hall Arts Center Rental Agreement

b. The City Manager has proposed the above policies and agreements which are consistent with the proposed ordinance amendment and which reflect current policies.

Recommendation: Approve the policies and agreements as presented.

The liability insurance on the rental agreement is changed to \$1 million and \$2 million.

Mayor Hooper said she thinks they can move all fee rates together.

Council Member Weiss said under the base rates for one day he can't figure out the \$25 for each additional 25 people attending. How do you calculate that as compared to the \$75 for each 100 persons attending?

Mayor Hooper said they should be clear on that.

City Manager Fraser said if there is \$25 for each additional 25 people that would be \$100, but then it is only \$75 for each 100.

Ms. Bate said it goes by layers. It is \$250 up to the first 100 people and \$25 for each additional. Up to 200 people you are going to pay \$350. We need to add up to \$350.

Council Member Weiss said on that page at the very bottom it says no fees will be waived without approval of the City Council. The other pieces of this document give Lost Nation Theater and/or the Manager has the right to waive the fee.

City Manager Fraser replied it isn't a total waiver but a reduction. The final waiver has always been with the Council. There is a base rate and a reduced rate. If he comes in for his base rate and says he has a charitable event. Lost Nation on their own can determine if it is a charitable event and drop you down to the reduced rate. If you then want to go further than that, you can come to the City Council and ask for either a further reduction or a complete waiver.

Council Member Golonka said any changes to these fees would then have to be approved by the City Council.

Mayor Hooper said there is the event rate which is discussed on the document they are looking at that says rental policy. In addition, the next document is a rental contract which we have the rate sheet for the technical services and equipment. She presumes that is in addition to renting the facility for the rates that are described on the prior document she is going to be required to hire people by our agent to manage and supervise. In other words, for using their equipment people need to pay for that service.

Council Member Jarvis said where it says rates for events on the first page they should say plus applicable rates for technical services and equipment.

City Manager Fraser said right above that in rental fees, "In addition to renting space renters will be responsible for the following pieces: mandatory facility preparation, preservation fee, planning and technical fees. See rate sheet."

Mayor Hooper said when folks are looking at the rental policy with the rates for events there are other rates that would apply there. If she is renting the hall for the day she is also paying \$200 to \$300 more to hire people to be there.

Council Member Golonka asked what would facilitate a one-way facility configuration for \$400.

Ms. Bate said they want the seats and platforms set up.

Kim Bent said the small theater configuration which is up from April through October.

Ms. Bate said the room is empty when they rent it. When you put the chairs up, depending upon what type of configuration, the platform goes in and the chairs go up and get bolted; it is a huge amount of labor.

City Manager Fraser said if the theater is set up like it is now through fall and someone wants to have an event in that configuration they don't get charged the fee.

Ms. Bate and Mr. Bent said no because it is already set up.

Council Member Sherman said when someone like the Co-op does an annual meeting there and it is an open space and they stack the chairs at the end, what sort of facility configuration fee would they pay?

Mr. Bent replied there is none. It is just a basic rate for the management of the space. If it is skilled labor it is \$20 per hour; if it is just manual labor it is \$14 per hour.

Ms. Bate said the spreadsheet was just to let you know what the average rent is. The average rent for 10 events was \$98. The average bill for this space was a total of \$360, so out of \$360 with \$200 being for rent you are talking about the average less than \$200 and personnel, lights, equipment, chairs and tables.

Mayor Hooper said Council Member Golonka is not necessarily questioning how much the fee is, but the process for deriving it. He said it seems complicated.

Mayor Hooper said the Council's plan is to hold a second hearing on the 12th of May, and at that second hearing there will be a little more information about insurance at which point they will adopt the associated policies.

Council Member Weiss said going back to the ordinance it now reads that the agent may receive a percentage of the rental fee approved by the Council. At the next meeting he would like to hear a range of what percentage would be. The old percentage was 20 percent.

City Manager Fraser said what they were doing here was to simply empower future Councils without having to make an ordinance arrangement to allow for this. They don't get any percentage right now. In the future let's say it wasn't Lost Nation Theater and Alan Weiss Ticket Agency decided to take over management and said they would do it for 20 percent of the sales. That empowers the Council to make that arrangement without having to amend the ordinance.

Council Member Weiss asked what reimbursement does Lost Nation get for the services they provide.

Dona Bate replied the use of the theater space.

10-107 Discussion of continuing the \$75 Zoning Appeals fee.

- a. Decisions or determinations by the Zoning Administrator may be appealed to the Development Review Board. These include determinations of whether a permit is needed, approval of permits, determinations of whether a variance is needed, enforcement decisions and many other determinations.
- b. Appeals to the DRB include a \$75 fee paid by the appellant.
- c. A citizen recently questioned whether this fee was appropriate in all cases, particularly when the appellant was not the person seeking to make changes to their property.

Recommendation: Discussion, direction to staff.

Mayor Hooper said the Administrative Officer's decision can be appealed to the Development Review Board. If they are appealed the appellant is required to pay a \$75 fee. We had a question raised about whether or not this is a fair or an equitable arrangement. It has been suggested, for example, that an individual who lives adjacent to a property and the adjacent property owner does something and then the individual wishes to appeal because it is not in compliance why should they have to pay a fee to bring this essentially to the attention of the city.

City Manager Fraser said there are three reasons why appeals come up. In the first case he is the applicant. He wants to do something with his property and he either gets denied or told he needs a variance, or gets some determination from the Zoning Administrator about where his application should go and he doesn't agree with that. He appeals. He should have been granted this or I don't need a variance. He can appeal that decision that he meet a certain requirement or that he shouldn't have been denied. He is the applicant and goes to the DRB and pleads his case. If they don't agree with him then he can appeal it to the court. That is where he is the person that is wanting to do the project. He is the applicant and initiating the whole process and he doesn't think there is much question that person pays the fee because they are the one who is putting the burden on the system.

The next case is his neighbor wants to do a project and they receive approval and he doesn't like it. He wants to appeal because they should have been denied. Clancy administratively approved it and it should have gone to the DRB and required a site plan or variance, and he appeals. The notion is he was minding his own business and his neighbor wants to do something he doesn't agree with and he has to pay to stick up for his rights. The counter argument to that has been that we don't want frivolous appeals and people just filing because of spite or whatever. Particularly in downtown where there are several business owners who abut each other in several different locations could always do this, but maybe not so much in a residential neighborhood.

The third case which prompted this in the first case is that also what is appealable is enforcement actions, and even that goes to a neighbor or not. If he complained about his neighbor and the Zoning Administrator said there is no violation he can appeal that if he wants, but he is the one who filed the complaint.

But if I'm the neighbor and someone complains or just on our own the city says we think you are violating the zoning ordinance we send a zoning violation

letter. I receive it and say I'm not violating anything, and they determine that I am and hit him with a fine or a corrective order. I say no and go to the DRB and plead my case and say that I'm right; you weren't doing anything wrong but thanks for your \$75. That's a different case.

Part of it is you have to isolate why they are appealing, why are they there, etc. Those are the issues. There was a case of an enforcement and the person didn't agree with it and was told he could appeal if he didn't like it and it costs \$75. It was suggested to him that he just get rid of the fee. He said it was beyond his authority. Fortunately, he did check and the ordinance does not set the fee but a fee is set by the Council. This is really a policy question for the Council. During the course of the discussion he made a commitment to the individual that he would bring it to the Council for discussion.

Mayor Hooper said one other piece of information to consider is regardless of why an individual may be before the DRB there is a cost to the city for doing this work. We have staff, notices, lawyers, and this probably in no way recoups the cost of actually doing this. Also, where individuals are initiating this on their own it creates a second thought as to whether or not they will go down that road.

Council Member Sheridan said if they win the appeal then the city made the mistake. Why should they have to pay for the city's mistake? If we said they were wrong, and they appeal it and find out the city was wrong, why should they have to pay?

Council Member Jarvis said they should break this out and talk about it in a different way.

Council Member Sheridan said he is only interested in talking about the enforcement case and the city initiated the action. By us initiating the action and turning out to be wrong, that's our mistake.

City Manager Fraser said that is the one that he is the most sympathetic to as well except he would note that the reason that the statutes and ordinances are set up for the Development Review Board is because it contemplates that. That is what that is there for. Nobody is perfect. We have a complicated zoning ordinance and people could read it differently. We have all seen cases where DRBs have interpreted the ordinances way differently. Part of it is to create a second chance to get a community standard on it and another set of eyes.

Mayor Hooper said she would like to give Gwen Hallsmith an opportunity to weigh in on it since it is her office that deals with this on a daily basis.

Gwen Hallsmith, Director of Planning and Community Development, said she would like to speak to the process and to the cost. The process they use for enforcing the zoning is what you might describe as a fairly gentle one. If they were issuing zoning enforcement letters on a daily basis to people all over the community willy-nilly on the basis of very skimpy evidence she would think this type of refund might be appropriate, but in fact they don't issue violations as a first step at all. They usually send a letter saying that something has come to their attention that might indicate there is a violation and they give them an extended period of time to provide them with additional information that can change their minds about that. They only issue a violation if they refuse to do that or if the evidence comes in that shows us that there really is a violation. That has been the standard practice in the Planning Office for a long time. In fact, they have that first avenue of redress before the violation is issued in every single case. In most cases the issue of coming into compliance is much less expensive than the appeals fee. With the case in question a \$35 zoning application would have cured the violation instead of needing to have a \$75 appeals fee.

The other issue, of course, is the one of cost, both in terms of staff time and in terms of real dollars that is spent out of city offices to pay for these cases. They have to put ads in the paper, make lots of copies, often have to hire attorneys if there is an appeal. The \$75 on the average probably does not cover the cost of the appeals. Since they don't take them without first giving the applicant plenty of time to show them why they shouldn't be issuing a violation she really doesn't see the inequity in enforcement action they take. Sure enough, the DRB can still overturn the Zoning Administrator, but it's not as if the Zoning Administrator, which is ultimately her, takes any of these actions with any speed or lack of careful consideration.

Council Member Golonka asked how many appeals are they talking about on a yearly basis.

Ms. Hallsmith said not that many appeals in general but of this type maybe only one or two.

City Manager Fraser replied that most of the appeals are appeals of a variance approval or a determination that something needs a variance, or in the case of Charlie-O's outdoor serving it went to court after the Council approved it.

Planning & Development Director Hallsmith replied that a lot of the appeals now, because of the way the DRB is set up, go to court. There aren't many of the Zoning Administrator's actions that are appealed.

City Manager Fraser said if it is a DRB decision the next stop is the environmental court.

Planning & Development Director Hallsmith said if it is the Zoning Administrator's decision, then the next stop would be to the DRB. In both cases an appeal cost \$75.

Council Member Weiss said his point of view is that every year the citizens vote a budget for all of the expenses for the City of Montpelier. Why are we charging somebody an additional fee for money that has already been paid for or budgeted for by the taxpayers?

City Manager Fraser said when they figure out how much tax dollars are going to be raised they deduct out revenue from these kinds of fees so it has been figured in as revenue. Secondly, in part because while the general planning services in the community, at a given time when he is building or proposing something he is individually putting a burden on the system so he is creating a unique cost that is independent from the general service he receives as a community member. Let's say we are billing for ambulance. We pay the general taxes to have the ambulance there for all of us. When it comes to your house you are the one incurring the cost of that call.

Council Member Sheridan said revenues are a guess we make. We might be wrong in that guess. It isn't necessarily anyone's fault but ours if we make the wrong revenue guess.

City Manager Fraser said in theory they have been deducted out of the taxes we raise.

Planning & Development Director Hallsmith said that is so every citizen doesn't pay the full cost of the Planning Department. Every citizen pays the full cost minus what they collect in fees from people that put more of a burden on the Planning Department than others.

Mayor Hooper asked the City Manager to explain the three categories.

City Manager Fraser said there are infinite possibilities. Basically, he is an applicant, has a determination he doesn't like about his project so he goes to

the DRB. He has already paid the application fee in the first place to the Zoning Administrator but he doesn't like that he can't approve his project.

The second one is that he is the applicant and he gets a decision from the DRB that his neighbor doesn't like so they appeal the determination that he got so now there is an interested person but not the applicant. That could go both ways. It could be that the Zoning Administrator said he didn't need a permit and the neighbor said yes, they do need a permit.

Then, there is the enforcement where either somebody has complained or we on our own observed that there is a possible enforcement, and that is when we send the letter that says please tell us what is going on. He goes in to convince them there is no violation. His neighbor can still appeal that determination there is no violation, and in that case his neighbor would pay the fee instead of him. Conversely, he gets accused of doing something and he says he isn't he can appeal.

Mayor Hooper asked if the fees also serve as a deterrent effect to frivolous appeals of decisions of the Planning Office.

Planning & Development Director Hallsmith replied they do.

Mayor Hooper said that is an important issue to think about. If we didn't charge she could be coming in on a daily basis complaining about everything and insisting the city take an enforcement action.

Planning & Development Director Hallsmith said the Planning Office would be inundated if they didn't charge for appeals. The question at hand is do they get it back if they are overruled in an enforcement action? She would invite anybody who thinks people shouldn't pay fees to come and spend a week in the Planning Department because there are a lot of tensions between neighbors and they are their first place to come a lot of the time. People are always calling them to resolve disputes between their neighbors, and if they didn't charge the fees they would be inundated.

Council Member Sheridan said he is doing photography in his home and he comes to the Planning Department to say he isn't. They decide to come after him and it turns out he doesn't have photography in his home. He doesn't mind paying the fee to prove he is right, but he feels he should get it back if there was nothing there in the first place. What you are setting up is that people who have a grudge against people can go after each other.

Planning & Development Director Hallsmith said in the first instance where they approach him the first thing they do is not issue the violation. It is to ask you to come and talk about it.

City Manager Fraser said there would have to be real evidence and not on what someone says. If you had a sign on your door that said "Jim Sheridan Photography" they might ask what the sign was for and ask him to get a sign permit.

Planning & Development Director Hallsmith said it is real evidence they use to determine the violation.

City Manager Fraser said in the case they are talking about there was a business address listed with a phone number at that address registered with the Secretary of State and advertised on the web.

Planning & Development Director Hallsmith said to this date they haven't resolved the case because they say the main point of operation is in Ferrisburg. There is no business by that name listed in Ferrisburg and she has asked for the subsequent address and contact information, which has not been provided. She has chosen not to take on this battle because there is way too much other work to do at the moment. There is no determination and nothing to appeal at this point.

Council Member Weiss said a while back at a Council meeting it was suggested that the council members be provided with a list of every committee, board, and commission that exists in this city with specific information as to what the costs are of that operation, how it is used, and other information so the Council can make decisions as to how relevant they are. Do we need all of them? Now in terms of a policy question, he doesn't want to be in a policy question on one applicant for one board without having a real understanding of all of the boards, commissions and committees that operate in the city.

City Manager Fraser said other than the formal permit process none of the other committees really have fees.

Council Member Weiss said his point was they are being subsidized and he doesn't know where the equity is, and if they are going to get into policy he wants to see the whole picture.

Mayor Hooper said she believes the consensus of the City Council is that at this point we're satisfied with the current administration of the fees and do not choose to delve into that for the time being.

Council Member Golonka said at any point somebody could ask for a waiver, couldn't they?

Planning & Development Director Hallsmith said the Development Review Board actually does have the ability to waive some things but not the appeals process.

City Manager Fraser said the only question he would have is whether someone truly had a financial hardship and were clearly destitute and the neighbor is doing something and his house has lost its value but he can't afford the \$75 fee they would probably try to waive it.

Planning & Development Director Hallsmith said she supposed there would be another case where an individual could come and ask the City Council for a waiver. If it were so egregious that it would ruin a neighbor's property value there is probably also not just one neighbor, but it would still be up to City Council.

Mayor Hooper asked for the Council's consent to put another item on the agenda which is the discussion of the railroad. She would like the Council to take voting action. The consensus of the council was to add the item.

10-107 (A). Update on Railroad

Mayor Hooper said the city has been having an ongoing conversation with the Agency of Transportation over the increase in rail traffic and the proposal to locate a siding somewhere near the downtown. The City Manager and Tom McArdle had a meeting with Secretary Dill and other members of the staff. It was a productive and interesting meeting. The City Manager requested the state write to him and answer his questions in writing. The two letters are on the Council's desks now. If you look at Secretary Dill's letter her conclusion is that aside from the individual answers to the questions he is saying they are not going to build a siding on Stone Cutters Way but if they do build a siding it is going to be on Stone Cutters Way and they are going to do it really fast. There is no decision they have made that can be appealed, but they will be making a decision soon. It is clear they are going through with the decision making process. Tom McArdle did a wonderful job of presenting them with an alternative location. She has raised this with the House Transportation Committee but it has already gone over to the Senate side and they have since spent more of their time talking with Senator Scott, who is the Vice Chair of the Senate Transportation Committee, and Senator Mazza, who is the Chair, trying to get their attention to this issue. They believe they are going to have a

hearing on this tomorrow. They have also said they will not put this in a bill. Our specific request has been for them to forbid AOT to build a siding on Stone Cutters Way, and they have said they will not do that. Senator Mazza acknowledged that this was bad policy they were proposing and was willing to bring AOT in and tell them they thought it was bad policy and to provide some guidance.

If we do have a hearing before the Senate Transportation Committee she would like to be able to say to them, or have the City Manager say to them, that the City Council is on record as being opposed to the siding being located on Stone Cutters Way, and we have not taken an action with regard to that. That is one thing she would like the Council to consider.

The second thing is they will recall when Trini Brassard was before the Council from the Agency of Transportation that Tom McArdle specifically asked her where do you appeal the decisions of AOT with regard to this and she named the Surface State Transportation Board. Guess what? There may be a state board that has responsibility, which would be the State Transportation Board. In addition she would like to ask City Council to raise this issue with the State Transportation Board. The problem is that AOT has said we haven't done anything, so where do we get in there? We need to get in there because it is very clear that they are on a path and we need to slow them down or sidetrack them.

Council Member Golonka asked about the issue of payback. How much money is it first of all? And who is saying we would have to pay it back? We have to take some legal action both against the state and against the railroad.

City Manager Fraser said it is Rock of Ages contract with the railroad and the rail is demanding this. Rock of Ages made no representations as far as Stone Cutters Way is concerned, but the state railroad did. This was built with their signoffs and agreements so they are the ones we need to focus on. There is state, federal and local monies in that project. We were actively involved with the Senate Institutions Committee, which included Senator Mazza. The bulk of the money came from a HUD special purposes grant. We don't know if that will be required to pay back. That is one potential risk. The state's argument will be that all of the leases and all of the agreements subject to the operating rights of the railroad and they reserve the right to do whatever they need to do and everybody knew that. When 535 Stone Cutters Way and the Hunger Mountain. Coop were built, we received financing tenants leased their spaces and did so knowing that this was a possibility. He just doesn't believe that. He thinks people were relying on the good faith and good will of the State of Vermont, and with the railroad to a lesser degree, and the state was going to look out for their interest. When people invested privately in that area they were not anticipating there was going to be an

active rail siding with trains idling. They are talking about a mile long siding crossing Granite Street all the way down to Ibey's. This lends itself to the Mayor's comments because they say they don't want to do this on Stone Cutters Way and it is their least possible location and they are looking at other locations. But then if you ask them

where along that rail line do they own and control a mile long worth of right-of-way there is no other place. It seems clear to him that if they have to suddenly do a siding fast there is only one place they can do it fast.

Now they are saying in this letter that if the road has to be moved that the city would have to pay to relocate the road in order to provide access. In order to put a rail siding in basically we have to get rid of the bike path or the parking, or possibly both. If they slide the road over a little bit you could still keep a roadway so cars could get to the businesses and almost certainly the bike path would be gone. The ambience and whole character of the place would change.

Mayor Hooper said the property values would be impacted.

City Manager Fraser said what is interesting is they would give us the turntable and we would control our destiny and not be subject to their leases and we would own it outright. Then, later on, they were talking about acquiring land and because it is the rail's land they can condemn it in 14 days. How are we protected under that circumstance?

The city, state and railroad entered into a partnership to redevelop this area to create private location and it was all understood and very clear.

Council Member Golonka asked what they needed to do to get a hearing before the State Transportation Board.

City Manager Fraser said part of the problem is an appeals action against AOT and they really don't have jurisdiction. One suggestion is the city file a notice with them anyway saying based on this correspondence and information we are concerned.

Mayor Hooper said she would like the Council to authorize Bill to get the expertise to get our best shot before the State Transportation Board and do whatever we need to prepare to fight whatever may be happening, even understanding it may be a fishing expedition or not a clear path to appeal before the State Transportation Board. It gives us an option and it is a public statement about how seriously we are taking this.

Council Member Sheridan said they are right in a way. Everybody knew that the rail might come back and take that land. He never liked the decision to do Stone Cutters Way because that was money that should have gone into the downtown. He thinks the Council made a big mistake in those days to even go down there.

Council Member Golonka said going forward in terms of our liability there is potentially millions of dollars to protect the interests of the City of Montpelier he thinks they owe it to themselves to hire a lawyer potentially to prepare ourselves. If they are trying to do this as a land shift to avoid a lease term that seems sneaky.

City Manager Fraser said ultimately he isn't sure that avoids anything because they still have control of the area. We are starting hopefully with them getting called in to the Senate Transportation Committee tomorrow or Friday and them being told by the board that oversees them don't do it.

Mayor Hooper said she has two requests. One is to go on the record in opposition to the proposal for the State of Vermont to allow a siding to be built on Stone Cutters Way. Secondly, to pursue appealing the decisions of the AOT to the Transportation Board. Those are the two voting actions she would like the Council to take. Thirdly, we just need to start being loud and noisy about this because she believes that is the way you back AOT off.

Council Member Golonka said a third motion should be authorizing Bill to hire an attorney that specializes in railroad law to help us protect downtown Montpelier.

Council Member Sherman said with regards to opposition of the siding we want to appeal the AOT decision to the State Transportation Board and for Bill to hire a lawyer.

Council Member Golonka moved that the City Council opposes the placement of a potential rail siding in downtown Montpelier and Stone Cutters Way. Council Member Jarvis seconded the motion. The vote was 6-0, motion carried unanimously.

Council Member Golonka moved to authorize the City Manager to pursue investigating options to engage the State Transportation Board and the Federal Transportation Board. Council Member Hooper seconded the motion. The vote was 6-0, motion carried unanimously.

Council Member Golonka moved to authorize the City Manager to hire a lawyer who specializes in railroad law to defend the City of Montpelier against injurious actions regarding Stone Cutters Way and all other railroad issues in downtown Montpelier. The motion was seconded by Council Member Sherman. The vote was 6-0, motion carried unanimously.

Council Member Weiss said he recommends that this be an agenda item for our next meeting, not at the end but at the beginning where we received a status report.

Mayor Hooper said they will also communicate it to the public and the property owners on Stone Cutters Way from Granite Street out to Main Street.

10-108. Reports by City Council.

Council Member Sherman said Tom McArdle made a proposal in front of the Transportation Advisory Committee for a traffic study of Gallison Hill and Route 2, and it looks like it will get funded with \$12,000 through excess funding in the transportation grant.

Council Member Jarvis requested the Council not receive color copies.

Council Member Golonka said he like to inform the Council in regards to the Library. Years ago the Montpelier Library gave away their endowment to the Vermont Community Foundation. The issue is the Board determined that was an incorrect thing to do and have asked for the money back. They gave away \$2 million of the endowment to the Vermont Community Foundation for the benefit of the Library so they get the income. Unfortunately, it is on a very expensive way to manage money and they really have no control over their investments other than a pooled fund, and it is inappropriate for the Library. At one point the Vermont Community Foundation does not give money back. He may ask the Council to review it and give a supportive statement of some sort that the Library wants their money back period. With the Vermont Community Foundation there has to be a unanimous vote of their board to give the money back. There are 15 members on that board. If it does come to that point it would be nice to have support from the Council.

10-109. Mayor's Report

Mayor Hooper said at the last time she reported she thought the Wood Art Gallery was on a nice trajectory and hopeful that good things were happening.

She is no longer hopeful at all and is really discouraged. They they need to figure out another location for their collection and how to close their doors because they are really not figuring this out.

All Species Day is this Sunday. Green Up Day is Saturday and Memorial Day is on Memorial Day. The first outdoor Farmer's Market is on Saturday. The Health Rally with Bernie Sanders is on Saturday.

10-109. Report by City Clerk-Treasurer

None.

10-110. Status Reports by the City Manager

City Manager Fraser said they have received copies of the decision on Berlin Pond of the preliminary injunction. There still will be additional steps. He thinks they will make a case for summary judgment. There will be a decision. Whether there will be a final injunction or not and also an action against the individuals for punitive relief, we have been asked to drop the requested fines. We won't talk about that until they agree with the injunction. That is moving forward. If you read the decision it was a good decision on behalf of the city. It not only said we have the likelihood of success on the merits but then panelized the argument and said yes there is the health order. He has asked for and outlined with the city's attorneys about the next steps not only legally but the steps we ought to be taking about whether that means strengthening our ordinance, meetings with the Board of Health to issue a new health order from the city since the health order was issued back in 1920 so it would be a 2010 health order based on the current set of facts. They are going to outline some steps for us to take. There are ordinances about it. But, for example, it doesn't prohibit boating and they are fishing from the boats, which is the activity they were doing. This is still our drinking water. He was pleased with the decision and he thought our legal representation was excellent and did a great job in court that day and really hit a lot of difficult to grasp issues regarding changing charters back to 1955 and explaining why those authorities carried forward. The Judge understood that.

Speaking of health orders, he reminded the Council that they set Wednesday, May 19th for our appeal of the Vermont Compost issues. We will be receiving some guidance from Steve Stitzel about how to conduct the hearing, rules of evidence. There have been some objections filed by Vermont Compost about whether we should be having the hearing, etc. The Council conducts the hearing, takes their objections and listen to them and take them under advisement and conduct the

hearing, then issue rulings on everything. We are allowed to go into deliberative session and issue a written decision. There will be some clear guidance about how to conduct that hearing. It is different from a Council meeting. We are sitting in a judicative session and listening to evidence about whether the Health Officer erred in his determination.

They met with the Police Department yesterday for their second round of union negotiations and they resolved many, though not all, issues. They agreed to meet weekly for the next few weeks on wages and health insurance. They took notice of the proposal they put on the table.

The School Department has received an information technology grant. They have some specific things they want to do but it also involves linking in the city's web site and other community web sites. It seemed like a good idea so he signed a letter of support for it on behalf of the city. He signed another letter of support for receiving some federal funds for some additional mental health staff at Central Vermont. They are also pursuing an energy grant for improvements to city buildings. It isn't a huge grant, but it's a regional planning grant for \$20,000 to provide energy improvements to municipal buildings. They were thinking about 58 Barre Street and maybe help pay for the solar panels.

Council Member Weiss said when the Council gets the briefing on May 19th make sure there is some discussion about the differences between an executive session and deliberative session because there are some things they cannot do in a deliberative session.

Mayor Hooper said Chief Facos sent out a note that the Montpelier and Barre Police Departments were applying for a grant for mental health. Burlington has done this with great success over the last few years. They would combine forces for a trained social worker to work with the two police departments for a shared service. For example, with the issue that Barre had with the woman who got tazed it was a mental health client. They could have had an additional resource to call. A lot of our police time is spent dealing with those issues and it would be 100 percent funded with no city money. It is something that both communities are struggling with and worth pursuing.

Adjournment:

After motion was duly made and seconded by Council Members Weiss and Sheridan, the council meeting adjourned at 9:49 P.M.

Transcribed by Joan Clack

Attest: _____
Charlotte L. Hoyt, City Clerk

On Wednesday evening, April 14, 2010, the City Council Members met in the Council Chamber.

Present: Mayor Hooper; Council Members Sherman, Weiss, Sheridan, Hooper and Jarvis; also City Manager Fraser. Council Member Golonka was absent.

Call to Order by the Mayor:

Mayor Hooper called the meeting to order at 7:00 P.M.

Mayor Hooper said a good friend and colleague, Sandy Pitonyak, who works in the Manager's Office suffered a tragic loss last week with the death of one of her sons. Our hearts have been aching and have been with Sandy through this past week. We mourn her loss and offer our deepest condolences to her whole family.

10-086. General Business and Appearances:

Pastor Johnson Tata said he had moved from the state of Indiana to Vermont in 2008. He has been here as a missionary and educator. He would like to open an international school in the city of Montpelier. He got involved in missionary work and education as a teacher in the state of Indiana in the city of Indianapolis. He discovered that with the immigrant children that are coming from Africa they are having problems with culture shock. They are mostly children and copied negative things from the school and have high drop out rates. The school would be middle school through Grade 12 and it would involve members who are immigrants with the same culture. He is proposing a dormitory and boarding school. He thinks that will bring a big diversity into the city of Montpelier.

Mayor Hooper said she would urge him to speak with either the Manager's Office or the Planning Office who would be very happy to work with him and might have some interesting ideas and direction for him.

10-087. Consideration of the Consent Agenda:

A) Consideration of the minutes from the City Council's March 10th and 24th, 2010 Regular Meetings.

B) Summary Budget Report by Department for General Fund and Detailed Budget Status Reports for General Fund, Water Fund, Sewer Fund, Cemetery Fund, Parks Fund, Parking Fund and Senior Center Fund for a eight-month period beginning July 1, 2009, and ending February 28, 2010.

C) Consideration of awarding the FY 10-FY 12 audit services contract to Love, Cody & Co., CPA's proposal and authorizing the City Manager to sign a contract for these services.

D) Consideration of a "Petition & Order For Pole & Wire Locations" submitted by Fair Point Communications seeking permission to replace and relocate a utility pole within the Kent Street highway right-of-way at #25 Kent Street. The purpose of the replacement is to meet service requirements and maintenance needs originating from a customer (owner of 25 Kent Street) via Green Mountain Power. The subject pole to be replaced is currently positioned within the public sidewalk and is in poor condition. The new pole location will be 23' southerly of the existing pole and placed in the lawn about 1' from the back edge of the sidewalk. The Department of Public Works reviewed the petition and supports approval in the interest of removing the pole from the public sidewalk. The adjacent property owner was contacted by Public Works and obtained confirmation of approval of the proposed new pole location.

E) Consideration to accept the proposal submitted by Live View GPS, Inc. of Valencia, California, for thirty (30) GPS vehicle trackers and including the monthly subscription fee for the Public Works Department, and to authorize the City Manager to make the purchase in the amount of \$11,968.50.

F) Consideration of authorizing and approving the submittal of two grant applications for financial assistance from the Vermont Agency of Transportation through the "Town Highway Class 2 Roadway and Town Highway Structures" grant programs.

G) Consideration of becoming the Liquor Control Commission for the purpose of acting on the following:

a. Ratification of the issuance of a Catering Permit to Yebba, Inc., d/b/a The Abbey Pub & Restaurant, for a Cocktail Reception held on Thursday, March 8th, 2010, from 3:00 to 7:00 P.M. at the State House.

- b. Application for an Outside Consumption Permit from Royal Dragon, Inc., d/b/a The Royal Orchid Thai Restaurant, in order for them to serve alcohol on their front deck at 38 Elm Street (12' x 14' with seating capacity of 8-10 only).
 - c. Application for an Outside Consumption Permit from Scott Connor and Wes Hamilton of the Three Penny Tap Room for an event they hope to hold under a tent in the lot between the back of their business and Andrew Brewer's building (on Langdon Street) on Saturday, May 1st, from approximately 1:00 to 8:30 P.M. There will be music which will end at 8:30 P.M.; the main entrance for the fenced-in area will be from Langdon Street, leaving the alleyway open for emergency vehicles, etc. The organizers have notified neighboring tenants and business owners, as a courtesy, and they will be in attendance this evening to answer any further questions that City Council Members have. Also, attached to this agenda are comments from the Police Chief, Fire Chief and Public Works Director.
 - d. Annual renewal of Liquor Licenses. (City Clerk will distribute list of applications at the meeting.)
 - e. Annual renewal of Tobacco Licenses. (City Clerk will distribute list of applications at the meeting.)
- H) Approval of Payroll and Bills.

General Fund Warrant dated March 24, 2010, in the amount of \$506,871.95 and \$1,000.00

Payroll Warrant dated April 1, 2010 in the amount of \$107,185.57 and \$26,162.53.

General Fund Warrant dated April 7, 2010 in the amount of \$476,896.16, \$4,713.06 and \$80.00 and Community Development Agency Funds in the amount of \$50,000.00

Motion was made by Council Member Jarvis, seconded by Council Member Hooper to approve the consent agenda. The vote was 5-0, motion carried unanimously.

- 10-088. Consideration of appointments to Montpelier's Tree Board.

- a) All terms on this board are 3-year terms; John Snell's and Carole Naquin's both expire this month.
- b) Staff advertised and as of the deadline, noon on April 8th, had only received e-mails from John and Carole who would both like to be reappointed.
- c) Recommendation: Appoint John Snell and Carole Naquin to another 3-year term.

Motion was made by Council member Sheridan, seconded by Council Member Sherman to reappoint John Snell and Carole Naquin to the Montpelier Tree Board for a three year term. The vote was 5-0, motion carried unanimously.

10-089. Discussion of possible ANR Enforcement action regarding Wastewater Treatment Plant with Attorney Steve Stitzel

- A) In fall of 2008, ultraviolet lights at the WWTP briefly flickered off resulting in some discharge of treated but not finally disinfected wastewater.
- B) Due to an internal error, this discharge was not immediately reported to the state. A similar error had been made in June of the same year.
- C) The city has corrected both the operations discharge problem and the internal communications system. No further problems have occurred.
- D) The State of Vermont Agency of Natural Resources has initiated an enforcement action and proposed fines. The City Manager and Attorney Stitzel have been in negotiation with ANR since spring of 2009 about this matter. The issue has not been resolved.
- E) Attorney Steve Stitzel will be present to brief the Council on the issue and outline the choices for the Council.
- F) Recommendation. Review issues with Attorney Stitzel, provide direction.

Attorney Stitzel had provided the City Manager with a 5-page memo summarizing the history and unlawful discharge that occurred back in May of 2008. It involves a very brief interruption in the UV disinfection system at the city's main wastewater treatment facility. This occurred because of a low flow

condition experienced at the treatment plant. The design and setup of the plant, which is typical of UV systems, provides that in the event there is low flow or no flow in a UV disinfection channel the bulbs are turned off to prevent them from burning out, which is what would happen if they remained illuminated for an extended period of time with no wastewater flowing past them. It is important to understand that these were brief shutoffs of minutes and not hours. The first notice and then reported event occurred in May of 2008. When that occurred the plant operator promptly put into motion steps to prevent this from occurring in the future, to identify exactly what happened and what would be an appropriate course of action to prevent it from occurring again. He is to be commended on his diligence after identifying it and moving forward to prevent it from occurring again. He believes because of the extremely brief duration of the shutoff and the fact that it was a resolvable problem without a great deal of modification at the facility that he simply did not report it within the 24 hours that is required in the discharge permit to the Agency of Natural Resources. Under the city's discharge permit any time there is a discharge of undisinfected wastewater into the Winooski River there is a requirement that a report be lodged with the Agency of Natural Resources. The city acknowledges that was not done. The city acknowledged, and has from the outset, that the discharge did occur. During the summer months modifications were made to the facility. They are discussed in the memo he prepared. The modifications to the best of the city's knowledge have in fact prevented a reoccurrence of the event that did occur in May of 2008 and were the appropriate measures to prevent reoccurrence. The total expenditure by the city for the various improvements made over the summer months, and in the months after, is approximately \$44,000. The improvements that were made to the facility not only addressed this type of low flow situation at the treatment facility but also provided enhancements. This was a low flow event that occurred because the total volume of wastewater going to the treatment plant had dropped way below what had been the design parameters for the treatment plant. Other low flow events occurred as the city performs routine maintenance operations from time to time. What was discovered as a result of this low flow event was that the actual equipment at the plant would not readily accommodate performing some of the necessary routine maintenance materials without again resulting in this low flow event that would trigger a shutoff. What has happened as a result of this one event is that improvements have been put in place that are designed to prevent the reoccurrence of that type event but also enhance the routine operation and maintenance of the facility over time.

Unfortunately, in September of 2008 a second undisinfected discharge occurred again for a very brief period of time. The improvements that were put in place over the summer of 2008 was a coordinated effort between the

plant operators and the manufacturer of the UV lighting equipment and the representatives of the manufacturer were making visits to the facility as this was occurring and made a visit to the facility in September of 2008. The Chief Operator of the facility was not present during the time of the visit and the Calgon representative made a change in some operational parameters which unfortunately did not get communicated to the Chief Operator. The Chief Operator had the facility working in the way that had been determined necessary for the proper operation of the plant and the Calgon representative was not aware of that change, made a modification and again there was a very short term discharge. That discharge was in fact reported to the Agency of Natural Resources, and they believe within the 24 hour period, but it was not a report from the Chief Operator. It did not come through the channels that the discharge permit contemplated.

All told the Agency has informed the city that it is looking for payment of fines of \$23,000 for the discharges that occurred in May and September and the two failures to provide timely reports they have agreed in the interest of attempting to resolve the matter to reduce that fine to \$17,000. The purpose of his memo was to summarize for the Council in more detail some of the more specific facts that come to bear on this particular matter.

The assurance of discontinuance that is identified as the specific item for the consideration by the Council this evening is a document in which the city admits that these violations did occur, that it will do what it can to see that they do not occur in the future, and that it will agree to make payment of the agreed upon penalty amount in a resolution of this matter. Upon payment of that an execution of the assurance of discontinuance the Agency will not further pursue enforcement proceedings against the City of Montpelier. If the city declines to execute the assurance of discontinuance the Agency has indicated it will commence civil proceedings much like a zoning enforcement proceeding by the city against a land use violator in the Vermont Environmental Court. In those proceedings the Agency will be seeking the full amount of fines, not the reduced amount of fines.

In terms of additional specific corrective action by the city the Agency has not indicated in any of our discussions with the Agency that it will be seeking further corrective actions by the city. The purpose of the enforcement proceeding would be to recover payment of the fines for the discharge and reporting violations.

Council Member Jarvis asked if the Agency of Natural Resources would commit to the fact they won't require additional action or requirements.

Attorney Stitzel said the assurance of discontinuance contains nothing further. He is certain he could get a commitment, but the assurance of discontinuance does not require any further corrective actions by the city.

Council Member Jarvis said it doesn't include a promise by the Agency of Natural Resources that they will not issue any additional requirements.

Attorney Stitzel said for these violations it will constitute full disposition. It does not preclude them if there is a further violation in the future from seeking some other remedial action. He would point out that at this point based on the engineering review of the facility conducted by the city's engineers in cooperation with Calgon there is nothing specific that has been identified as a further enhancement that could be installed within the reasonable design parameters of the facility to address low flow conditions. In one of his letters not provided to the Council but provided to the Agency there was discussion at one point of what is called a recirculating pump. This is an enhancement at the facility that would in fact pump already treated wastewater back into the flow stream solely for the purpose of increasing the volume of flow at the facility to basically increase the flow above the amount that is naturally flowing through the facility based on the volumes being treated at the time. That is an extremely expensive enhancement. It also is something that based on discussions with the manufacturer and our design engineer is nonstandard. It is nothing that the manufacturer has recommended or had installed at its UV disinfection system installations. It is nothing that he is aware of as part of any UV disinfection system that exists elsewhere in the state of Vermont. It apparently was an enhancement that was observed by ANR personnel at a facility in New Hampshire. Upon further investigation it was discovered that it was something installed by the operators of that facility on their own initiative and not as a recommendation of the manufacturer. It is unclear exactly why that was installed at that facility. The Agency has not at this point recommended or requested that the city undertake installation of that enhancement.

Council Member Sherman asked if it was possible that Calgon might bear some of the responsibility for the fines from the state.

Attorney Stitzel said it is certainly a discussion the city can have with Calgon, and he would only be able to leave it at that level at this point. He would rather not comment more specifically on the nature of the exchange that occurred in the September event.

Council Member Hooper said it sounds like an unintended consequence of the CSO project that reduced our volume overall and perhaps reduced our bottom end of flowing as well.

Attorney Stitzel said they suggested to the Agency of Natural Resources that one possible cause of the low flow condition that was observed first in 2008 was a result of the CSO project. The original flow estimates for the design of the facility ended in 2004 so they were looking at the volume of the flow through the facility in a two-year period ending in 2004. After 2004, the city was doing further sewer separation to remove certain storm flows through the sewer. During the warmer months of the year the storm flows can in fact elevate volumes of water that is flowing through the sewer. The design low flow was 1.1 million gallons per day and the reported averages in the month of May 2008 were .8 million gallons per day. That is 300,000 gallons per day below what were the original estimated parameters.

The other thing that was observed was that it is not just a question of the volume of flow but the speed with which the volume can fluctuate. There are periods of the day when the flows drop dramatically and quickly so there was not built in sufficient time for an alarm to go off notifying an operator that we have a low flow event and allow an operator to then report to the plant and identify what is exactly occurring and take appropriate action to correct it.

Mayor Hooper said it is arguable that in fact this event happened because the city was complying with other expectations of the Agency.

Attorney Stitzel said just understand the first rule of government – no good deed goes unpunished.

Mayor Hooper said the two events that triggered this action were the failure of the UV light which provides tertiary treatment of the effluent. She would note that in fact the effluent is treated. It is the final disinfection.

Attorney Stitzel said it had been through the entire treatment process. If you were to observe what is there it looks like drinking water, although he wouldn't recommend drinking it. This is the final treatment step before the discharge into the Winooski River. The sole purpose is to reduce bacteriological contaminants in the water, primarily ecoli.

Mayor Hooper said it is a fairly new system to us. Many years ago we weren't doing this sort of treatment at all.

Attorney Stitzel said the state has strongly encouraged communities to move away from what have been the chlorination systems as the final disinfectant step in wastewater treatment for health and environmental reasons. UV disinfection has no residual in the effluent when it is finally discharged.

Council Member Weiss said he would like to make a motion that the Council accept the recommendation of Attorney Stitzel and that we accept the resolution in the amount of \$17,000 and other considerations. Council Member Sheridan seconded the motion.

Pastor Johnson said on the academic line he happened to make a dissertation on wastewater treatment in the city of Indianapolis which he explained. His suggestion is there should be a committee to look into this matter, look at the present population in the city and make a projection of 10 years and bring a facility for wastewater treatment that can last a long time.

Attorney Stitzel said there are several specific considerations in terms of the amount that is involved here. We are in open session and typically he would have this discussion in executive session. If the matter goes to court the amount being sought is \$23,000 in total fines. He would represent without being more specific that he does not believe the Agency would recover that amount in enforcement proceedings in the Environmental Court. He believes the Agency would recover a fine of some amount in enforcement proceedings. If they would like a more specific analysis he would prefer to have that discussion in executive session.

Any enforcement proceeding with the Agency of Natural Resources is a matter that the city needs to prepare for properly and will involve, given the factual history of this matter and scientific or technical side of this case, expert witnesses. Therefore, the case becomes more complicated in preparation and more expensive in presentation. They are easily looking at something upwards of \$5,000 and probably approaching \$10,000 to \$12,000 in litigation expense to pursue a competent defense of this enforcement proceeding. He said he would throw that out as a rough estimate for the Council to weigh against the issue of settlement for \$17,250.

A final factor should be considered. Penalties that are recovered from municipalities by the Agency may be applied to fund supplemental environmental projects. Instead of it being at least in the first instance a contribution to the General Fund of the state it is a payment which is escrowed and then may be expended over a year or two by the community itself on other projects within the community that positively impact the same watershed. The community cannot spend the money on constructing improvements at the

wastewater treatment plant. It can, however, and what typically occurs is that the money is paid to some group performing environmental enhancement work within the community, to accomplish some work which is of benefit to the watershed. Such things as stream bank restoration projects have been funded, studies of what might be necessary to do stream bank stabilization or other water quality enhancements in the watershed have been funded with the money that is paid. In considering payment of the amount and a decision whether to litigate or not they should be aware of that as an option. He doesn't know right now whether the city is aware of potential projects of the relevant water shed.

Council Member Hooper said there is a limitation on this for repeat violators. He wonders if these two violations constitute one occurrence or the second one is counted.

Attorney Stitzel said they are aggregating everything. Were this to occur again, then it is a real penalty.

Council Member Sheridan inquired whether a flood project would qualify.

City Manager Fraser said the city would make a recommendation and they would decide if it qualified. We don't know if they would consider a flood project or not.

Mayor Hooper said she was thinking of Friends of the Winooski.

Attorney Stitzel said that is exactly the type of organization that typically receives the funds and becomes the conduit to have certain work performed.

City Manager Fraser said he appreciates Steve Stitzel's guidance in this and his analysis is dead on and we do have to look at the practical considerations and weigh the options that are currently available to the city. One reason this has been delayed in coming to the Council is because they have been talking to the Agency of Natural Resources for an extended period of time. He strenuously objected to this and their whole approach. One, we switched out of the dangerous system of putting chemicals in the system to the UV system. That was an improvement. It was a safety factor and a water quality factor. This all came about because we were making an expensive change. We bore the cost of the project and were doing the right thing by the environment and by the water quality. Secondly, there has been no alleged or documented environmental degradation. Yes, we fully acknowledged that this treated but undisinfected water frequently went into the Winooski with no dead fish, no dead plants and no issues of anybody getting ill. There was no allegation at any time that there

was any kind of environmental hazard as a result of this. He knows we are allowed under heavy rain conditions to have our sewers overflow into the river, and that is considered permissible with raw sewage. That happens on rare occasions. We are trying to correct that through the CSO but under the CSO order those events happen with no penalty. Having two short brief instances of treated but undisinfected wastewater going into the river they charged us a \$23,000 penalty. Third, the goal of any enforcement is compliance. We all know from our own activities here with zoning we try to get the people to stop the problem. The city has completely and fully cooperated with the state. We spent \$44,000 to correct the issue and have worked on all of their communications issues. There have been no reoccurrences. We understand the reporting requirements. We took this on. He wrestled to address this issue when we have fully complied. The city has done what they would want for enforcement. We have made all of the improvements. We even proposed additional improvements with a circulating pump which is another improvement that our engineer recommended. The state declined that offer. The city has not contested any of the facts. The city hasn't argued with them. We provided them the information. They were concerned in fact that if there was a fine or any kind of penalty that was being paid by the ratepayers and we asked if they had concerns and they had not followed procedure, and they said no there was not going to be any actions against the operator. They couldn't find anything wrong in that regard. He considers it punitive and he doesn't consider it good government. He is really disappointed in the state on this. He doesn't understand why they are pursuing the case.

City Manager Fraser went on to say we accept this proposal and seek to negotiate a different settlement with them. We have fought very hard at times to keep us at civil discourse. You shouldn't feel that your city officials weren't on the ball or they were negligent. We have done everything that could be expected of us in this situation.

Mayor Hooper said the motion is that we pay the proposed settlement.

Attorney Stitzel told Council Member Weiss that in terms of the wording of his motion which was to accept his recommendation he did not include in his material a specific recommendation for that. He would be prepared to make a recommendation to the Council, but that he would ask for an opportunity for an executive session because whatever the Council decides in this case is what he will need to pursue on behalf of the city. Having publicly disclosed a particular disposition he believes that might prejudice the city's ability to pursue whatever course of action it pursues.

Council Member Jarvis questioned how that would work logistically.

Council Member Jarvis moved that the Council go into executive session at 7:47 P.M., in accordance with Title 1 V.S.A. Sec. 313(a)(6) that a premature general public knowledge would clearly place the municipality at a substantial disadvantage in our negotiations with the state and that City Manager Fraser and Attorney Stitzel be included in the executive session. Council Member Hooper seconded the motion. The vote was 5-0, motion carried unanimously.

Present: Mayor Hooper; Council Members Hooper, Jarvis, Sherman, Weiss and Sheridan; also City Manager Fraser and Attorney Stitzel.

After motion duly made by Council Member Jarvis, seconded by Council Member Sherman, the council came out of executive session at 8:02 P.M. in accordance with Title 1 V.S.A., Sec. 313 (a)(6) that a premature general public knowledge would clearly place the municipality at a substantial disadvantage in our negotiations with the state. The vote was 5-0, motion carried unanimously.

Motion was made by Council Member Sherman, seconded by Council Member Jarvis to table this agenda item. The vote was 5-0, motion carried unanimously.

10-090. First public hearing to consider proposed amendments to the City's Vendor Ordinance.

- A) City Council first began discussing these proposed amendments at their March 10th meeting; they'd received a memo from *Montpelier Alive* Executive Director Suzanne Eikenberry, outlining some changes they'd like to see incorporated before the 2010 summer vending season.
- B) This subject was revisited at the Council's March 24th meeting. At that time, Council instructed staff to invite a group of interested vendors and business owners to meet and discuss their concerns and suggestions; the City Manager held this meeting on April 7th and will outline what resulted from that discussion.
- C) Recommendation: Conduct the first public hearing; possible further direction to staff; set the date of the second public hearing for April 28th, with or without further amendments.

Mayor Hooper said the next item is the conducting of the first public hearing to consider amendments to the vendor ordinance. Mayor Hooper opened the public hearing at 8:05 P.M.

City Manager Fraser noted that there is a draft on their desk which is the same draft they talked about at the last meeting except on the very last page is the proposed redraft of the enforcement section which is administrative enforcement. There have been a couple of informal discussions about this and once staff finds out the Council's direction they will reword everything.

Mayor Hooper said she would like to begin with City Council Members.

Council Member Weiss said he doesn't support the concept of the Council getting involved in private commercial business and let the vendors and restaurant people compete as anybody else would. However, if we are going to have an ordinance, then in terms of the process his strong recommendation is sometime in January of each year we have an RFP, which is a Request for Proposal, and anybody who wants to be a vendor applies and decisions are made based upon the quality of the RFPs and you make your first choice and second choice. He is not happy with the whole concept. If we are going to have an ordinance, then let's do it very businesslike and set it up as a Request for Proposal and everybody submit at the same time to meet the deadline and a committee will make the decisions.

City Manager Fraser said the goal of an ordinance from the city's perspective has never been to select or regulate which vendors or which services or goods are being sold. It is strictly to deal with the fact that they are on city property. It is regulating the use of city space and how that will be apportioned in a way that provides safe traffic and access for the public. He doesn't think it has ever been the Council's consideration to attempt to dictate which businesses. The ordinance did talk about the proximity of like businesses.

Council Member Sherman said given the criteria that the City Manager needs to follow in creating the list of designated locations we are going to have a limited number of licenses and it would be on a first come first serve basis. Applications will have a start date and there are 20 people for 12 spaces. How do we manage that?

City Manager Fraser replied that is currently what happens now. There haven't been that many applications so there hasn't been a problem, but in practical reality even if we don't designate spaces there are only so many spaces that meet the dimensional requirements in the ordinance now. There are approximately 8 or 9 that have been identified as designated spaces. If there were 20 vendors now, the first 9 that got there any given morning would be the 9 out there for the day. Conceivably, if 20 people paid for a vending license they would be racing each other for spots in the morning with no additional assigned spaces. The suggestion is that once people are assigned their slots

people would be on a waiting list and as a spot opened up they could accept the spot they are offered or not. People would move up the waiting list.

Council Member Sherman said they wouldn't issue more licenses than there are spaces.

City Manager Fraser said in the designated downtown but people could also try to find spaces that meet the criteria in other locations. The ordinance says they can only be in designated spaces. It says the City Manager will assign the spaces so he was explaining how they would do that as an administrative matter. It would be irresponsible to sell a license to somebody who didn't have a space.

Mayor Hooper said there are 10 spaces and 10 vendors, are we tying vendor #1 to space #1?

City Manager Fraser replied that has been the proposal from the beginning.

Council Member Sheridan reminded members that some of the spaces are non-food spaces.

City Manager Fraser said if the ordinance passes in this form we would have to write up a policy and establish clear guidelines for vendors to follow.

Council Member Sheridan said there has been talk about the value of spaces. Is that a consideration by the Council still?

City Manager Fraser said he provided members a summary of the conversation they had. The thought at that point that because it is April already that to think about how to price spaces differently might be unwieldy this time around and perhaps we should just go with assigned spaces and reevaluate it in the fall. The recommendations of the working group are that folks who had been there last year in a certain location would be given a priority to return to their location. When people completed their form they would request their first, second and third choices. If there were a tie breaker the tie breaker first would be somebody who had been there before and the second tie breaker would be who had applied first. Let's say there is a scenario where there are 9 spaces and 15 vendors. In his view 10 through 15 applicants would be put in the order they had been received and when a spot opened they would go to #10 and say spot #5 is open and they might not want spot #5 or might not be eligible because it is a food space or non-food space. They can also be outside of the designated downtown if they meet the criteria.

Mayor Hooper said what they are doing right now is trying to explore the broad policy parameters.

Council Member Hooper said he agrees with Council Member Weiss about not trying to micro-manage how business is done. He thinks an RFP process is unwieldy right now. In looking at restrictions on vendors, in section 1406 almost all of the wording about maintaining public access to the public right-of-way except for sections 4 and 5 about competition, the 50 foot rule and tables and seating for customer use rule, he accepts that section 4 is well accepted.

City Manager Fraser said that is the current regulation right now.

Council Member Hooper said he would suggest they not implement section 5 allowing tables for customer use so long as it meets the space requirements for public access. He would strike 5 and allow tables and chairs as long as it meets the requirement for access.

Council Member Sherman said she isn't in favor of that. She thinks the access to city sidewalks is important. Even if you have the table and chairs next to the cart people need the space to get up and around. It adds traffic congestion to the sidewalks. If a lot of vendors decided to use table and chairs it would make a major impact on the sidewalks.

Council Member Jarvis said she too would not be in favor of striking that provision but for a different reason. She thinks it is more of an equity issue. There are a lot of restaurants in town that would like to have tables and chairs and are not allowed to under our current regulations. Those businesses pay property taxes and are here during the lean months of the year when we need them. It is really important that we try to be equitable to everyone who is trying to do business in Montpelier.

City Manager Fraser said with regard to current restaurants that are not allowed to have tables and chairs the city regulates them on the sidewalks in the same way we regulate carts who have sufficient space. Restaurants that don't have indoor seating aren't regulated by a city regulation but a state health rule states that if you don't have a restroom for their customers you cannot have any tables inside or out.

Council Member Jarvis said under state rules a vendor can have a table and chairs and doesn't need to have a restroom.

City Manager Fraser said tables are an open question.

Mayor Hooper said they are generally in agreement with the notion of having designated spaces. She has a concern about trash. Our existing ordinance states that all trash and debris accumulating within 50 feet shall be collected by the vendor and deposited in a trash container. She doesn't think they need to pick up other peoples' trash but she would expect them to carry away their trash and not place it in the city's trash barrels. That is a policy issue she would request that vendors cart away their own trash. She would like to hear from the public about policy issues.

Timothy Azarian, a food vendor, said he started last year with his wife. They are both passionate cooks and wanted to do this for a long time. They tried it in Thailand but the streets were too crowded to make it work. They wanted to do a Thai food cart in Montpelier. They like having a nice street atmosphere where you can walk outside and get food on the street and then enjoy the food by sitting down at a table and chair. In a lot of countries there are cafes. In Thailand they are just little plastic tables and chairs that people bring out just for the lunch hour and then take them away. They were excited when they read in the Vermont Health Department rules they were allowed up to 16 seats. He wanted to address two of the main issues brought up by Council Members Sherman and Jarvis, and this was also something brought up by Suzanne from Montpelier Alive. The two main issues against tables and chairs is an equity issue and it isn't fair to other restaurants in town because some of those restaurants do not have a public restroom and are not allowed to have a table and chair out on the street. It is a very small percentage of restaurants in town that do not have a restroom. He knows of two, Mr. Mike's and Pinky's. In terms of equity, there is a huge list of benefits that restaurants have over vendors. A few would be that they are opened all year long. They get their breakfast, lunch and dinner crowd if they so choose. Vendors only have a crowd during the lunch hour. It's not worth it to stay there all day hour after hour because there is no traffic. In the evening people are probably going to want to sit down and go to a restaurant. There are just a couple of hours out of the day they are really going to have vending traffic downtown. This issue to him is applying to only a small percentage of the restaurants that for some reason the state made a determination that if they don't have a public restroom they can't have a table and chair out front. To summarize his point about equity he doesn't think it is fair to pick out one thing and say it is an equity issue when the vendors can come up with a long list of disadvantages they have compared to having an established restaurant in town. It is a much smaller business for them.

The other issue is the space issue. He brought some photographs to show the Council. The photo was the space in front of the courthouse. There is 8 feet of sidewalk to the left and the little brick areas are close to 4 feet, so roughly

there is 20 feet from curb to curb. He doesn't see a space issue there, especially considering the tables will be there for approximately 2 to 3 hours a day for a few days a week and then packed up and brought home. At lunch hour they will bring out some temporary seating and then take it back. On the second page is Rhapsody. They have tables and chairs out and you will see only the sidewalk space. He doesn't know if people have complained about this, but if tables and chairs can fit in this space without people complaining he would say their space certainly meets the requirements of not blocking the sidewalk.

He sees possibly an issue with some other vendor spots. They might not have enough room to have tables and chairs; some do. All of the spaces have different advantages over other ones. They aren't all equal so this just doesn't bump one over the equity line for other vendors. No other vendors have advocated for this issue. They don't seem to be interested in tables and chairs but more interested in more quick food and to go items. He doesn't see the city being overrun with tables and chairs. Right now there are a lot of restaurants in town that could have tables and chairs out front that do not.

He said he wanted to talk about the benefits that tables and chairs bring to Montpelier. The number one reason is the atmosphere. A very important reason is the environmental reason. When they have tables and chairs for people to sit down they provide them with the plates and bowls and they can sit down at a table. You can't stand up on the street with a plate and bowl, and if you offer a plate and bowl it is nice to offer people a place to sit down. They aren't talking about a whole park full of tables and chairs but two small tables and chairs. They sit down for 15 minutes, and then they are on their way. This cuts down on a lot of environmental waste they would have with to go containers. It also creates a very nice social atmosphere for Montpelier for people to sit outside on a summer day for a few minutes at lunch time. Complements came constantly to them about their tables and chairs. They were encouraged because it was so successful. It makes the town more colorful and more welcoming when you have people out on the street instead of taking their sandwiches and food back to their offices. It adds an atmosphere of engaging and liveliness to the town. He thinks it is important. He doesn't think the issue that the town will be overrun with tables and chairs. He doesn't think it is an issue now that needs to be severely restricted. The State Health Department made these rules and regulations and they aren't asking the city for any special privilege. They are just asking the city to preserve this rule that is in the state books. He has no problem if they want to restrict it or modify it. He thinks it is a little severe to eliminate them completely for the reasons that have been mentioned. Competition is good for Montpelier. He thinks people will ultimately go to the restaurant for what they want that day. Some people will want Thai food and some will want sandwiches.

In case the City Council or other people are worried that the city will be overrun with tables and chairs, first limit the number of tables and chairs so people can't take advantage of that rule and set up a mini restaurant downtown. They should limit the space to no more than half the sidewalk, or 4 feet or less, which is the same as a cart. The privilege should be linked to environmental

reasons. If you are a vendor and want to provide your customers with real plates and bowls, then you would be allowed to have tables and chairs. He thinks there won't be an explosion of tables and chairs because many people are not interested in the extra amount of work it takes to make it happen.

Council Member Sheridan said he is intrigued by his last comment. He might be interested in tables if people want to reduce the carbon footprint of trash. We have talked about having a sustainable city with reducing our carbon.

Elizabeth Dodge, a resident of Montpelier, said when she goes downtown and goes to a vendor she doesn't expect to do anything except to eat off a paper plate. She doesn't expect to sit down. That's not the purpose of it.

Terri Allen said she was a customer at the Thai food stand last summer, and it was such a pleasure. She works at home and can't afford to go a restaurant for lunch, but she could go downtown and meet people in the street and have a really pleasant meal, and she could sit. She is too old to stand up eating. It's all right if it is a hot dog, but if you want good healthy food it is the kind of food you want to sit down and enjoy. The town should be accommodating to both elderly populations and young populations. She spoke about the people who can't afford to go to a restaurant every day but who wants to have a social life in Montpelier. It is a very lovely way to have a social life. The atmosphere around the cart was great. Every time she would go she would see people she hadn't seen for years. She really encourages this because the atmosphere it brought to Montpelier.

Mary Alice Bisbee, a fairly new resident in Montpelier, who moved here from Waitsfield and the Valley where they have all kinds of vendors. She would love to have a place to sit down because she has a very bad leg and as an elder in this community it would be nice. She likes the idea of getting rid of trash and having real plates.

Paul McCloud said he has been a vendor here for the last five years in the same spot. He never really saw too many other vendors. Some would come and then they would leave. As the economy got worse you saw more vendors. He asked if it was their position that the vendor who has had his spot, and renewed it every year, gets to keep the same spot?

Council Member Hooper said that's not part of the ordinance. That is a policy that would go along with the ordinance. The city really didn't have a problem with the regulations until last year because there weren't that many vendors. Will there be enforcement on the 50 foot limit this year, and by whom?

City Manager Fraser said that is one of the things being taken out. Instead of having the 50 foot rule between carts there will be designated spaces, and some of those spaces might be within 50 feet of each other. They just wouldn't be within 50 feet of a like business. That piece of the ordinance would be changed.

Mr. McCloud said possibly when they do redraft the ordinance the number of vendors that will be allowed in the city of Montpelier will be limited.

City Manager Fraser said it is by default. The ordinance basically took the existing criteria and found spaces that meet that criteria so really they aren't restricting any spaces that aren't already legal, but there are only so many now that exist. We just haven't had enough vendors to fill all of the spaces, but there are a finite number of spaces. Whether you designate them or not they need to meet the requirement. What the ordinance proposes to do is simply designate the spaces and someone gets a license for that space so there is no question that your space is yours and not somebody else's. Hopefully, they won't have to go measure the 50 feet between everybody because if they are in this space it will be a legal space. There might only be 10 spaces. It also allows for someone to find a new space that meets all of the dimensional requirements the Council can approve it as an additional space. At some point they will run out of spaces, but that is no different than what exists now.

Mayor Hooper replied that it is for the designated downtown. Outside of that core area a different set of standards applies.

Chris said he is a full time student currently. However, during the summer he works full time in the city of Montpelier and he takes advantage of a lot of the street vendors. He has been to the Thai vendor and hopes he will be seeing them this summer. It is important that all of the vendors have a fair chance and post when the deadline is so everyone has a fair chance of getting their application in on time. He also thinks it is fair to limit the amount of vendor spaces there are in the city so there isn't a vendor every 50 feet. He thinks seating might be nice because as it is right now he gets his food and goes back to his employment. But if there was seating he would take advantage of it, especially if there was reusable dinner ware because he thinks saving the environment is important.

George Estes said he has been a vendor here locally for years. On the designated spots and the church where he and Paul have been, that is church designated space. They own that property. How is the city controlling what they do with that property? If they let him in there and he still has to get a city permit, but if they designate a spot and for some reason they don't want someone pre-existing who has been there and they want somebody new, is that one of the designated spots?

City Manager Fraser said it is the church's property so the city would have to work with them. They obviously have some say as to who is on their property and the city would have to defer to them on that.

Elysha from Rhapsody said she believes in fair competition. Having vendors on the street with tables and chairs is not fair because they as a restaurant had to build two bathrooms to have 50 chairs. They have a high rent in town and have to be in the buildings in the winter and they need to have the business from the summer. Their sales were down 30 percent last summer because of the vendors. She isn't against vendors at all. She wants to have a fair competition. There are so many restaurants in town with sit down spaces. There is so much competition within restaurants and to have vendors on top of this it is tough. She is not in favor of tables and chairs for vendors. They are the Greyhound Bus Station for the city and they receive many phone calls. They spend hours and make \$20 a day from Greyhound in ticket sales because most people buy their tickets online. It is bad pay for what they do because they receive 20 or 30 phone calls a day. They did the Greyhound because they hoped the people would come to their restaurant and they would get some business out of them. If the city puts two food carts in front of City Hall it will be very bad for them. Her proposal is that the vendors in front of City Hall can be non-food vendors and it will be considered as within 50 feet from Rhapsody because they do the Greyhound business.

Carol Marold said she and her husband own Uncle Mike's. With her was Erica Humphreys who works full-time at Uncle Mike's. Mrs. Marold said she finds herself in a position where she agrees with the vendors and actually would like tables when she is out dining. However, they are not able to have tables out on the sidewalk so they have tried to get benches. They hold a commercial caterer's license which is exactly what the vendors have and the stipulation is they can't have seating because they are open more than six months of the year. It doesn't seem fair that just because she is open all year she can't have seating. She advocates for seating, too, if she could have it. She wonders if there is a possibility she could have benches.

Erica Humphreys said if they become an entity within themselves it becomes unfair to the point where they are allowed to grow and have tables and chairs while they are here all year through the lean months fighting for essentially what is the same business. While they might all sell different things they are fighting for the same customers. If they are allowed to grow their businesses and bring in things to attract new customers, they can't. Even though they are open year round and even if they had a bench it would be useless in the winter. When summer comes around it really is a time to make up for the lack of business they all experience in the winter. She lives in Montpelier; she works in Montpelier. Carol works and lives in Montpelier. When business is down her hours go down. This is her only job, and if there are no hours for her she can't live in the city she loves. It has a spiral effect with less people coming in, less money coming in and less hours coming in.

Mrs. Marold said they had significant decreases last year. Some of it was the recession, but their numbers which had been very straight all of a sudden it was a dip. She also asked the Council to look at the state guidelines for using recyclable dishes. She doesn't know that is allowed. They have very strict guidelines on how you do dishes and how they are washed and stored.

Mayor Hooper said with her question about the benches she would direct her to Montpelier Alive which has helped with the placement of benches on the street. At Uncle Mike's location it is so narrow there isn't enough room for people to pass safely. She could certainly talk with Montpelier Alive about the possibility of benches.

Mrs. Marold asked if they could get benches would they be allowed in front of their store.

City Manager Fraser replied if there was enough space.

Council Member Sheridan said of course there is enough space because there is a bench in front of his building which is no different than what is there. If she wants to buy a bench and donate it to Suzanne and say that is where it goes it would be okay.

Mayor Hooper said unless there are new thoughts she would like to begin to draw the public hearing to a close.

Chip Hart said he really appreciates the effort that is going into this. The public officials he has dealt with in connection with this issue, Suzanne and Montpelier Alive have made a great effort and done some very good work. His interactions with the City Manager and the Chief of Police have been terrific

and the meeting last week was an excellent meeting where they had reached consensus. The significant issue was the tables issue for the one vendor and possibly the discussion of the Greyhound business in front of City Hall.

George Estes said in a 4 foot area if you have a cart that is 4 feet, and you have a designated 4 foot space. There is a person that stands approximately 18 to 24 inches back from the cart. If there is somebody in a wheelchair they cannot go by. By state code and by state law you need a 5 foot right-of-way. There has to be a 5 foot radius. When you are saying a 4 foot setback on the sidewalk you are crowding it.

Mayor Hooper closed the public hearing at 8:57 P.M. and brought the discussion back to Council Members. She has a lot of editorial changes she will give to the City Manager.

Council Member Sheridan said it seems like the main contention is the tables at this point. He doesn't see anything else in the ordinance that anybody has a problem with.

Council Member Jarvis said she would point out that there are actually a lot of places to sit downtown. She spoke of the area graciously offered to the public in Christ Church park which is right across the street from where the pictures were taken. There is City Hall Park. Back to the issue of equity, she doesn't dispute that vendors bring vibrancy to the downtown. She absolutely agrees. It is wonderful to have the vendors. She certainly buys food from them when she can, especially when it is a beautiful day and she wants to be outside. She very often picks up a sandwich and eats in Christ Church Park when she can. Downtown businesses spend a lot of money to promote downtown and to keep downtown vibrant. Those who own property do have property taxes and those who pay rent do as well. The businesses that belong to the Montpelier Business Association and contribute to Montpelier Alive support things like the flower barrels that go out to keep downtown beautiful. There is a lot of money spent by the businesses that are permanently located in the downtown and the vendors don't make those kinds of contributions. They take advantage of them because they are in this great downtown that has been made right by the folks who are committed to staying here. She really takes issue with what Tim is saying about how inside businesses have advantages over vendors. If you are in a place permanently you do get business throughout the year. As you heard from Rhapsody times are tough for downtown businesses. Rents are very expensive in the downtown. Keeping the downtown vibrant and keeping the businesses that are here, helping them and supporting them to keep them in the downtown is one of the most important things they as a Council can do. Why

does two tables seem like a big deal? She really thinks it is important for the Council to take a stand and promote our local businesses.

Council Member Sheridan said he agreed with Council Member Jarvis. Although he liked Tim Azarian's argument about the biodegradable dishes and the environment.

Council Member Sherman said she agrees with Council Member Jarvis.

Mayor Hooper said she has not been bothered by the notion of tables and chairs. She thinks it is a self limiting opportunity. She would suggest that in other places where they talk about what the vendor's stand can and cannot do, which is section 1406, we also need to talk about some of the associated activity to make sure that the vendors and their associated activities are not spreading over into the sidewalk and pathways impeding traffic. She thinks that is what their real interest is here, is assuring the clear pathways and folks can walk unimpeded. There are very few places in the designated downtown that lend themselves to something beyond the cart and the individual standing there selling items from the cart. There are one or two spots where that may work and she thinks it adds an enormous amount of difference to our community. She thinks it would be terribly unfortunate if we had 10 or 15 hot dog carts lined up down the street. What has been pretty fabulous is the interesting mix of businesses that has happened as a result of people seeing the business opportunities. If we go down that path, then maybe we should say we should only have two carry out sandwich shops and three sit down stores of this nature, and then we would be going where we don't want to go which is regulating the flow of commerce. She isn't uncomfortable with it because she thinks it is self limiting. She would be very sad to see what she thinks is just a wonderful lively addition and she doesn't think it is going to blossom so we will have picnic benches lining the road. That would be her argument on the tables and chairs. We should be very clear about the designation of the space and people can't slop over. If they do slop over they lose their license to do that. We are going to be tough on the enforcement about this to make sure it works. At some point we are going to set this for the next hearing, but let's get a straw poll for the staff as to what to do with the tables and chairs. Who wants to allow tables? Council Member Hooper is in but no one else wants them.

Council Member Sherman said there was also a comment about the distance between Rhapsody and City Hall and how many places would be in the designated space at the plaza given the role that Rhapsody plays beyond the restaurant with the bus station. She thinks that is an important consideration.

Council Member Sheridan asked if she was saying they should have the bus spot as part of their restaurant.

Council Member Sherman replied no.

Council Member Sheridan said that is what she asked for.

Council Member Sherman said there should be some accommodation that is a special arrangement.

Council Member Sheridan asked if she was saying no food vendors in the City Hall Plaza.

Council Member Sherman said she doesn't want to see two.

Mayor Hooper said with all due respect to what has been testified to they are so grateful that Rhapsody chose to take the Greyhound bus on but that is something she agreed to do. The city did not require you to do it or expect that be done, and if it isn't working out for her then she shouldn't do it. She doesn't think the city becomes beholden to a business owner because of that service they are providing to all of us. She doesn't see an obligation on the city's part to any property owner that chooses to engage in that way. She was excited about the notion of carts being allowed in the City Hall Plaza because it really lacks something. It needs some liveliness and excitement and needs to be drawing people in. That is one of the reasons why she likes the Greyhound Bus stop because we have people beginning to recognize that it is a good place to go and sit and enjoy. That is one of the ideal places to allow two vendors carts. It is one of the larger more open areas and it would be unfortunate to limit a use there. She likes the notion of having the activity on City Hall Plaza.

Council Member Sheridan said there are three nods on this.

Council Member Jarvis said she agrees but just feels because the Greyhound bus is definitely a service provided by Rhapsody. It isn't just an issue of how much she is being paid by Greyhound because it is a service she is providing for the city as well.

Mayor Hooper said with the nods around the table there are more yes's to allowing two spots in City Hall Plaza. No one objected to her notion of vendors taking away trash. Are there any other substantive changes Members would like to propose?

Council Member Weiss said he has a question within the ordinance itself. If you look at the definitions in Section 9 a stand shall mean any news stand. If you look at Section 9, 14-10, which is at the end of the document, it says the provisions of this ordinance shall not apply to a vendor who sells or offers for sale in person or by its employees or agents newspapers. Do we have a conflict?

Council Member Hooper said there is, absolutely.

Council Member Weiss said if there is a conflict, as we get into the various readings of this ordinance we need to change it.

Council Member Sheridan said they should strike those exceptions.

City Manager Fraser asked if section b refers to when somebody puts their dresses and garments out on the sidewalk for sale.

Motion was made by Council Member Sheridan, seconded by Council Member Weiss to approve first reading with the changes proposed and set the second public hearing for April 28th. Council Meeting. The vote was 5-0, motion carried unanimously.

A question was asked when the ordinance would become effective.

City Manager Fraser responded that the ordinance when approved after second reading becomes effective six days after publication in the local newspaper.

- 10-091. Update from 58 Barre Street Working Group and consideration of proposed development plan.
- A. The City Council directed a working group which included the Montpelier Housing Authority, Central Vermont Community Land Trust and the City Planning & Development Department to prepare a land plan for the renovation and use of 58 Barre Street.
 - B. The group has developed a plan which is outlined in a proposed development option.
 - C. The group will review their work to date and summarize the proposal.

D. Recommendation. Approve the proposed option agreement between the City of Montpelier and the Capital City Housing Foundation, Inc.

Jeff Kantor and Garth Genge were present to update the City Council on the proposed development plan.

Garth Genge, Community Development Specialist said they have a proposal to present to the Council. The Montpelier Housing Authority has agreed to partner with the city on the development of the project doing the housing portion. They met with the committee last week and they reviewed all of the information. It would basically be a condominium development with the housing being one portion and the Montpelier Senior Center being owned by the city and occupied by the Senior Center. There is a pro forma that shows projected funding sources and costs. There are different options for funding. These are some of the most promising and there will be more continued development as it goes along. There is an Option Agreement that would need to be signed and they are asking the Council to consider that tonight. Once that agreement is signed they would be able to go forward with the housing portion applications they need to have for legal control of the site. In the Option on 13-A where it talks about coming forward with a feasibility study the city is actually doing the feasibility study with all of the funding they have received from different sources for grants. This proposal is what is coming from the Montpelier Housing Authority. They are having new construction estimates done once the preliminary plans by Gossens Bachman are developed. When they get the construction numbers if they come in with a very large variance then they would come back to the Council. If they come within the expected range, then they are expecting that this is the proposal that would be accepted by the Council. This is the proposal they are putting forward as being the best option for the building.

The donation of the space to the housing portion would be one way to make it financially feasible to do the project. That is a big portion of being competitive for all of the different grant applications. They have a list of different places we would be applying for and none are fixed in the sense that if one doesn't work there aren't alternatives. When he worked with CVCLT they had one project with 17 funding sources. These things develop over time. There are going to be various progressions of this in terms of the funding sources. On a regular basis they would meet with the committee that has been formed just to get an update and they would bring anything they felt was a major variation from this proposal to the Council.

One of the other real variables is the insurance payment. The number they put in there was the highest number he felt it could come to. What they

understand is they would come to whatever the real cost would be to fix the building. He is asking Gossens Bachman to do a separate estimate of what the impact of the fire would be and what the cost would be. The Vermont League of Cities and Towns is developing their own. Some of these numbers can vary fairly dramatically, but they would come to the committee with anything they felt would jeopardize the prospects of it being successful.

Council Member Weiss asked if there would be additional feasibility studies, and if so who will pay for them.

Community Development Specialist Genge said they are still in the process of the one they are doing now. They haven't gone through all of the pieces. They haven't gone to the Recreation Center piece which is again developing the Montpelier Senior Center facility's needs is part of the proposal that is still up in the air. We have to really define what they are going to need now, what we can do at 58 Barre Street, what their future possibilities might be. That is going to be a fairly drawn out proposal, but they are budgeting on a conservative basis so they can cover the immediate expenses. They may not be able to meet all of the needs for the Senior Center now and going into the future in that location, but we can put them back in there with a much better facility than they had before and the potential with a good plan over the long term for them to have more options.

Jeff Kantor said on the housing side the city has already done a majority of the work that they will need for the feasibility of the housing portion. There is a small amount of work done, but the additional \$10,000 they are applying to VHCB for will cover those needs.

Council Member Weiss said his second question deals with what they call a draft. Is the \$3 million one pocket and then the Senior Center at \$1.8 million another pocket of money?

Community Development Specialist Genge replied that was correct.

Council Member Weiss said the total would be in the \$5 million range.

Community Development Specialist Genge said the insurance is probably as high as it could go, and could end up being much less. The numbers are very conservative. They would rather come back later and say they are going to 5 or 10 percent less than to say it is going to be 15 to 20 percent more.

Council Member Weiss said on the Senior Center side when he looks at the bottom called sources the total there equals the total of the expenditures. Therefore, there will be a capital campaign of \$290,000.

Community Development Specialist Genge said that is the capital campaign/city contribution and that is a fairly open option. They will be pursuing other sources. There is grant money from different places they will be pursuing. There will be a gap between what the cost from the insurance and what the other funding sources are. Right now they are estimating that at about \$290,000 and the capital campaign/city contribution is just a title. They are hoping to close it even more with other sources.

Council Member Weiss said of the total of roughly \$5 million, how much of it has to be available before the housing people can start on their side?

Community Development Specialist Genge said all of the funders request that other sources of funds be committed before they commit their funds so you really have to show you have all of the money you need to proceed. They are agreeing to develop this with the housing portion so the city has the responsibility of meeting its side of the development also. Sources can change and applications can be rejected and sometimes come back with less money. The best guess is that it would be June 2011 before they would be breaking ground on the project.

Council Member Weiss asked if the housing portion would pay rent to the city.

Community Development Specialist Genge said it would be a condominium so each space would pay their share of the expenses to the condominium association.

Council Member Jarvis said the city is not going to own it. That is what the Option Agreement is, to give the housing portion to this entity.

Mr. Kantor said they would own their portion and pay taxes and water and sewer fees to the city.

Community Development Specialist Genge said the city would own the other section. They haven't come up with the best solution for the ownership of the playground. There might be a third component that is a separate piece for the playground.

Mayor Hooper asked if they had done an analysis of the Senior Center's ability to carry the costs of their share of the building.

Community Development Specialist Genge said they are working on having a development of the Senior Center future with not just the activity center but the other components in the senior community and how to partner with the different components. What the facility needs will be and what their expenses will be will be part of the ongoing costs.

Mr. Kantor said through the renovation their operating costs should go down just because the energy use is a huge factor. All of the energy needs will be addressed.

Community Development Specialist Genge said they are talking about having a very cost effective location for them. They think this is probably one of the best solutions in terms of putting them in a place that is as cost effective as anything that could be provided.

Council Member Jarvis said whatever ends up being the city's contribution would that be a bond vote?

Community Development Specialist Genge replied that could be a possibility. It will be easier once they settle with the insurance company and have some hard figures so they will know what the gap is and the size of it will determine whether it is worth a bond vote or not.

Council Member Jarvis said the timing is important because if they were to have a bond vote it would have to be in November of this year in order to have funding in place for July of 2011.

Community Development Specialist Genge said he was thinking the timeline would be March if they were to have a bond vote. His idea would be that the capital campaign would end in December and find out what the gap would be by then. They would be pursuing other options during that time so they might find some funding sources that could close it out without a bond vote.

Mayor Hooper said she would hope that a bond vote is not a default assumption and that every effort is made to raise the funds some other way.

Motion was made by Council Member Sheridan, seconded by Council Member Jarvis to approve the proposed Option Agreement between the City of Montpelier and the Capital City Housing Foundation, Inc. The vote was 5-0, motion carried unanimously.

- A. Planning Director Gwendolyn Hallsmith will provide an update on the District Heat/Energy Project.
- B. Council Members have been provided with a feasibility study and work summary.
- C. Recommendation. Discussion and direction to staff as necessary.

Planning & Development Director Gwen Hallsmith said joining her tonight is David Maribelli from Veolia Energy, the consultant on the project, and Dick Saudek from Cheney, Brock and Saudek who is the lawyer for the city on this project. She is going to give a quick overview of the project as a whole. The city has been considering district energy for over 10 years now. They had hoped a long time ago to hook up with the state plant when the state expanded their plant and had a bond vote back in 2003 for \$250,000 to run the pipe from City Hall to the new plant. The new plant hasn't materialized yet and doesn't seem likely given the high capital cost of the facility and the other competing demands for state capital money. Two years ago after the Energy Town Meeting we reconvened the District Energy Committee and had been looking at developing our own plant independent of the state and looked quite awhile at those options. Last spring we re-voted the bond that had originally been voted for running the pipe from City Hall to the new plant to allow us to use that bond for the feasibility study, design and permitting of a new facility. The funding for the study the Council will be looking at now came from both the city bond and from a grant we received from the Clean Energy Development Fund from the State of Vermont. They are moving forward very seriously considering the idea of building a district energy plant. This was helped enormously in January when the US Department of Energy awarded the city an \$8 million grant to pursue these plans for the plant. They have conducted the feasibility study around the parameters of that grant.

When the grant opportunity came up it occurred to any number of us that it would be a more competitive application and if instead of continuing to pursue our own facility the city teamed up with the State of Vermont and proposed a local/state private partnership to build the facility and the State of Vermont agreed to go in with the city to apply for the grant and continue our explorations. We have a feasibility study for the city working with our private partner and the state to essentially reconstruct the state energy plant on its current site which is off Taylor Street behind the Department of Motor Vehicles building. The main focus of this stage of the exploration is if it is economically and technically feasible and to examine some of the risks we expose ourselves to and look into all of the different facets of the partnership that we are developing with the state and private entities.

The summary of what they found is that it is economically and technically feasible. There are still some open questions they have raised about the study. With that introduction she would like to turn it over to David to walk the Council through it briefly and she will explain where she thinks they need to go from here.

David Mirabelli said the existing state plant currently provides steam to 550,000 square feet. That facility is actually below the floodplain. It is beyond its life expectancy. It was built in 1946 and is in need of replacement. What they are looking at here would do two things. One would replace that plant with a new plant that would be bio mass fired and they would also be able to expand and run distribution piping into the city to make it a full energy district for the whole city of Montpelier. What they are talking about is an 11,500 square foot facility that would have both bio mass in terms of the primary fuel and oil backup in the event that there was an issue with the fuel supply. They are talking about roughly a little over two miles of piping that would stretch out and tie in with the existing city facilities, schools, City Hall complex, the Fire Department complex as a start in terms of Phase 1. They would also go in the west direction over to the high school.

Council Member Hooper asked if they would replace the existing steam piping as well.

Mr. Mirabelli replied no. It would be bio mass fired with a power element which would mean they could make power with the steam, and then the exhaust off the turbine would be put into the pipes and sent over to the state's buildings for the steam system. Simultaneously you would be taking some of the steam and turning it into hot water and sending it out to the system for the city.

Mr. Mirabelli said Gwen was referring to the revenue portion. The crux of the matter is that essentially the state would become a customer of the city. The city potentially would own the plant and the state would become a customer. There would have to be a bond vote in order to raise the funding. Depending on the configuration of the plant they are looking at between \$250,000 and \$400,000 per year of net revenue to the city. Some of the things that affect the building of the system is the fact that it is in a floodplain. As a result of the EPA presenting a new flood zone and new floodway the existing building is actually sheered. The new floodway actually cuts a portion of the existing facility into a section, so that would affect where they would put the footprint of this particular plant. The first phase would be to build the backup boiler system, the oil system. Once that is constructed then the existing plant would be demolished and the new bio mass system would be put up. Essentially, you

would be building the new oil backup system during the summer, putting it online and then the following spring you would be building the new facility and having it ready for the following heating system.

Planning & Development Director Hallsmith said there are some next steps we need to take and ultimately the end point of the process. The steps she is recommending they take next are three.

First, we need a project manager. This is a full-time job. DOE calls her every day. There is an enormous amount of paperwork to keep managing just because of the grant alone. The report is in and has been accepted with no errors. We have the money for a project manager out of the grant that will help us move this forward with the speed with which we are expected to do it. The reason DOE calls her every day is because they are eager to get this money out of the door.

The other piece of the project that people aren't as aware of is that in addition to building the plant, partially to make the grant more competitive and partially because we as a city want to be more energy efficient and have more renewable energy deployed they included the project description to DOE the fact that we would be establishing a clean energy assessment district, which is a new type of energy district that was enabled by state legislation last year. It enables people to borrow money from the city and make improvements on their buildings, either energy efficiency improvements or renewable energy improvements, and pay those improvements back over the life of the improvements. Essentially, it would be like the water and sewer district we have but only for energy. The people who would pay for the district are the people who make the improvements so not everybody in the city would have a new energy bill if they don't have any improvements. If you want to insulate your attic, add a solar panel or put in a pellet stove, some of the things they would issue as qualified renewable energy efficiency strategies you could get the money and it would be paid back like a property tax over 20 years or over the life of the improvement. That means you wouldn't be responsible necessarily for paying it off before you sold your house because it would go with the house just like the water and sewer bills do, and it would also enable people to have more favorable loans or systems in place for making those improvements. That is another piece of the project that needs to be worked on and it will be another piece of whatever funding they raise to complete the project.

The second recommendation is they appoint a standing committee to oversee the project. So far they have had the District Energy Committee that grew out of the Energy Town Meeting they had back in 2007 and that has worked very well. We have an excellent group of people who are interested in this project in

the community, but as it gets closer to reality we need people who are going to make a commitment to sitting on this committee and coming up with recommendations for moving forward. So far they have been very good at being an advisory board and she has taken their advice and brought it to the Council, but she really thinks that the time has come to solidify that group.

The third recommendation is that we issue an RFP for the environmental assessment that needs to be commenced relatively quickly. The environmental assessment is required by the federal government before you spend federal funds, and they have been using Epsilon Associates which have been affiliated with Veolia to do the feasibility study but Epsilon is not that familiar with Vermont law and Vermont environmental regulations. She has talked to DOE and they are willing to let us issue an RFP for a contractor that is more familiar with the regulatory hurdles we have in Vermont for this type of facility because even though it may add a little time now it will save us time when we get to Act 250 and Act 248 and all of the other environmental regulations we need to follow. We want this plant to be a model facility.

Those are the three recommendations at this point. There are still some questions they want to explore in the final report for the feasibility study to pin down a few of the issues a little more closely. Once that is done they will come back to the Council with further recommendations.

City Manager Fraser said he thinks the main thing is to let the Council know what they are doing and see if there are any concerns with going ahead. It is all part of the grant and part of the plan.

Council Member Jarvis said Gwen said there were three recommendations, but where does the clean energy assessment district come in?

Planning & Development Director Hallsmith said that is something else the project manager will have to work on. There is a committee, a project manager and an environmental assessment.

Council Member Jarvis asked what is the pot of money that the homeowners will be drawing upon to make these improvements?

Planning & Development Director Hallsmith said in order to do the plant as we have described it the city needs to issue a bond vote in November for a fairly substantial amount of money. It is likely to be around \$20 million. It is a revenue bond as opposed to a general obligation bond, and that is the important part of looking at the feasibility study now because we won't be asking the taxpayers to pay that money back. The money to pay it back will

come from the revenues from the plant. When we vote for that bond we are also going to need to vote for the money to put into that pot of money that citizens would take from to make those energy improvements. We are going to need to vote to establish the Clean Energy Assessment District itself because that does require a vote of all of the citizens that would be affected by it, and we are probably going to need to have a minor charter amendment to allow us to sell energy in the same way that we sell water and sewer services. The charter enables us to set up water and sewer districts but doesn't really talk about energy. The enabling legislation at the state enables us to do that, but that is a question we have to figure out.

Council Member Jarvis said the voters have to vote to put money in that pot. From where? From the general fund?

Planning & Development Director Hallsmith said it would be part of the bond.

Mayor Hooper said the large portion of the bond, which will be for the plant, will be paid back from the revenues from the plant. The small portion for the Clean Energy Assessment District would be paid back by citizens who make improvements.

Council Member Weiss said one of the things she told them this afternoon is that if all of this goes through as planned that in within 11 1/2 years that bond will be paid in full. The return on the investment is good.

Planning & Development Director Hallsmith said the figures are included in the report.

Mayor Hooper said there are a number of communities around us who have also been looking at creating clean energy assessment districts, and there has

been some discussion that we should all throw in together to consolidate the administrative costs. She thinks that means that everybody would like Montpelier to administer this for them. There are neighboring communities who would like to consider and be part of a clean energy assessment district.

Planning & Development Director Hallsmith said she understands Senator Sanders has managed to come up with about \$100,000 from the federal government to draw up all of the paperwork that is needed for these districts. Burlington has already voted it and they are moving forward.

Mayor Hooper said she thinks everybody is interested in this issue statewide. What they were trying to do is to look for Burlington to establish the model

and then we would be able to take the boiler plate from them to use in the process for establishing Montpelier's.

Planning & Development Director Hallsmith said in the grant they identified the Vermont Energy Investment Corporation as the entity they would work with to establish the district. That is also a possibility. Nancy Wasserman is working on it with Burlington.

Mayor Hooper asked Council Members if they were comfortable with them hiring a project manager, setting up the advisory group and issuing the RFP for the environmental assessment. Members of the council were in consensus to move ahead.

10-092. Carr Lot/Transit Center Update.

The Carr Lot was designated as a floodway by the FEMA process last fall. The city has appealed that designation on the Carr Lot, and they don't yet know what the results of that appeal will be. She has been assuming the worst and trying to figure out what their options might be if the appeal is denied. We don't really have enough money in the budget for another environmental assessment because the way these federal budgets work you spent that money on the existing site. If we move to a completely new virgin site where we would be developing land we would need to do another environmental assessment that we don't have the money for. There really are two options. One is to put the transit center in an existing building because by doing that we could get by with what they call a categorical exclusion from the FEMA process. Or we could put the transit center with another facility that needs to have an environmental assessment done. It turns out that is what is happening with the energy plant so she has been exploring the regulatory feasibility of combining the energy plant with the transit center so we could add a waiting

room, bus ticket sales, visitor center and a bathroom on to one side of the building. The energy plant is a way of creating a kind of interesting visitor center in the community and a bus stop.

She has had conversations with the DOE and the FTA with both on the phone and have approval from both DOE and FTA that the environmental assessment they are doing on the energy plant could actually serve FTA purposes. It could actually be a model for the rest of the federal government. She was told that nobody had ever asked this question before. They have been very cooperative and very helpful. At least from a regulatory feasibility side we could go ahead and try to combine them. For now it is actually keeping the

FTA project alive. They have been threatening to pull that funding because of the floodway issue. With the Council's approval she will continue to pursue that. What we would need to do next is to do a technical feasibility study with some design work to see what it would look like and see how many more parking spaces from the state we will eat up.

Council Member Sherman asked what the state's view of this was.

Planning & Development Director Hallsmith said all they have done is mention it in a meeting with Jerry Myers at this point. We do have language in the capital bill now to help him move forward with us on the energy plant. That might be another avenue, to add the transit center to the capital bill.

City Manager Fraser said they have been involved in the transit center all along. They didn't say no. They don't want to give up their own parking, but in this case it is already going to displace parking and we may need to use some of the Carr Lot to relocate some of the parking.

Planning & Development Director Hallsmith said conceivably if we ever obtain the Carr Lot we could still use the federal highway money that we have in the project to make the improvements we had planned there. It is just going to be a lot easier if we are not trying to build a building in the floodway so she thinks it is worth pursuing. She doesn't think they would go to any kind of extended process to obtain the land to do a parking lot and a bike path, but there are some other things in the works that might make that possible.

Mayor Hooper said when they received the different pots of money for the transit center, bike path, etc.; one of the things they had to do was an analysis of replacement parking. Now we aren't losing any so we don't have to worry about it. There was a whole thing about where you sited the building and how far people would walk. It was many years ago. There was this careful analysis when we were looking for where they could put the center. They looked at a variety of different places and part of that was how far people would be willing to go.

City Manager Fraser said in the original feasibility analysis there were a lot of downtown locations in terms of providing bus services. A lot of them were ruled out because the state initially said no state properties so they all got knocked down.

Planning & Development Director Hallsmith said typically the transportation analysis is part of the environmental assessment so we need to look at those questions. Where will people be coming from to use the facility? How will

they get there? Where will they park? What will the traffic impacts be? All of that is part of the assessment they have to do.

10-094. Consideration of an application for a Municipal Planning Grant

- A. The Planning Commission unanimously approved the following motion:
“to apply for a planning grant to do a study of our boundaries, the growth center boundaries, the potential TIF District boundaries and our current zoning boundaries with an eye toward correcting any mistakes in the growth center boundaries, identifying potential areas for a TIF District and answering the question of whether we want to continue with Euclidian [boundary based] zoning or move into a new form.”
- B. Recommendation. Approve the application as requested by the Planning Commission.

There are now copies of the Draft Master Plan. Many of the recommendations in the Master Plan look toward changing our zoning and changing the way the zoning works because the kind of zoning we have right now, which is boundary based zoning with high density residential, medium density residential, a design control district, lines on the map, is based on an era where there was real concern about the mix of industrial, residential and commercial uses. That was the 20th century. The 21st century is an era where increasingly people are working from their homes and having small businesses in their homes that are part of the creative economy, a part of our engineering and architectural services that the city offers. When homes turn into work places there is also more need for more distributive services, such as restaurants on the corner or more shops in the area than would be in the form of zoning we have now. It is her opinion and one of the recommendations in the plan that we look to a couple new kinds of zoning – form based codes and performance zoning. Both of those are not so reliant on the prescriptive boundary based zoning of the past, although boundaries may come into play. Certainly, the growth center designation will be important and a historic area would be important. We are getting away from the suburban/industrial era and moving into the 21st century. We need help doing that. We need help looking at why our boundaries are where they are now. Some of them are based on the 850 foot contour line because once upon a time that was how far the water could get in the community without needing to be pumped. Those days are gone. There have been water towers that have been built above that line and it doesn't apply any more, but meanwhile that is the basis for a lot of our zoning configuration and the basis for our growth center boundary.

You might remember as we went through the growth center process there was a lot of consternation about where those boundaries were. Because the growth center right now is based on our existing zoning we had already made the decisions around where we wanted medium density residential develop to go, so why not stick with that for now. The grant they are talking about would take a look at those issues – boundaries and new forms of zoning, making recommendations for how to move that forward and also make sure where we have identified the growth center is the right area. It would also be looking at where some appropriate areas for tax increment financing might be. That is a little trickier because of course in order for tax increment financing applications to work you do need concrete development proposals that are on the table that you can do a financial analysis of and show the state what the tax implications will be and show ourselves how we are going to pay the investment we need to make in the infrastructure, etc. We are not in a position, maybe with the exception of the district energy plant, to do that right now because we do not have any concrete proposals in front of us that would make that necessary or possible. Preparing and doing some of the preliminary work on that would make it a lot easier for us to do it when one of those comes through.

The grant application is due on April 30th and they are just looking for the Council's approval.

Council Member Sherman moved that the Council approve the application for the planning grant in the amount of \$15,000.. Council Member Sheridan seconded the motion.

Mayor Hooper said when they were talking about the tax increment financing districts and pursuing an analysis of that we said the \$15,000 planning grant wasn't enough to do just that, and now we are talking about doing three things. Looking at the Euclidian zoning is a \$100,000 project conceivably. How are they going to do all three things with \$15,000?

Planning & Development Director Hallsmith said they did a lot of the work on that before because she has some studies around it that show some analysis of the neighborhoods. She isn't sure if they will move in the direction of form based codes, and that is part of the reason they are doing the grant.

Mayor Hooper said her larger question is that all three of those are very large projects and each one would require more than \$15,000 plus. Are we trying to do too much?

Planning & Development Director Hallsmith said she believes she is right, that they would be trying to do too much if we were going to assume they would

make a TIF application after this project. That's not going to happen. If we assumed that we would come up with a completely revised zoning ordinance, which we won't be able to do. It really started with looking at our boundaries because the boundaries need work. As we are looking at our boundaries let's start to consider how the new form of zoning will fit with the landscape of the city. Maybe it needs new boundaries to go with a different kind of zoning. Maybe it needs scrapping the boundaries all together and working with a couple of larger concepts, which is right now what you will see in the Master Plan as the future land use map. We have the big growth center; we have the historic area. Everything else is low density rural with the exception of the office park area in which we called the future growth reserve which isn't currently in our growth center but could be in the future.

The way the form based codes and the performance zoning works is that instead of having highly prescriptive standards in the zoning you shift the burden of proof of it to the proposal and ask them to demonstrate how it meets your city goals rather than telling them in painstaking detail how they have to meet the city goals. It gives a lot more flexibility and also gets away from some of the more problematic elements of our very prescriptive zoning that are frankly outdated.

Mayor Hooper said with regard to the TIF analysis her description was fair that we don't have a partner of a project that is ready to go. The Trust for Public Lands has said to her, which she believed she conveyed to the Council, that they are looking for the city to step up in terms of what it is we are going to do to assist them with their development. They always said it was based on the City pursuing a TIF to do the improvements at the intersection at Barre and Main Streets. That area has been identified as the impediment to the development of Sabin's Pasture. They do not believe they can get a development partner unless that piece is taken care of. We don't have a partner to do a TIF, but we can't do a TIF without a partner. Way back when we have always talked about Sabin's as being the area where we wanted to focus the housing growth for the next step. She is struggling how we get over this barrier.

Planning & Development Director Hallsmith said she didn't really mean a partner exactly but a development proposal, something we would be doing like putting in streets and water and sewer to serve these houses that a developer had proposed to do. We would have a strong enough sense of the size and value of those houses to understand what the tax implications would be. She raised an important issue which is the intersection of Main and Barre Streets, which is actually an impediment to a lot. It is a real bottleneck for a lot of things. The Capital District Master Plan talks about putting the Barre Street

Extension through that area and having the street actually cross the North Branch River and connect to Taylor Street so there would be two ways through town. Let's say that is the project we want to do with tax increment financing. One of the challenges would be, where would you identify the boundaries of the district that would benefit from that improvement and what would the tax implications within those boundaries be? Let's say the bridge on the Barre Street Extension costs \$25 million to put through. If the city was to spend \$25 million to reconnect those streets, and we understand that it would benefit the downtown and all the way out to Sabin's Pasture, so arguably we could try to create a TIF district that included those properties and we would still be relying on the incremental increased taxable value of all of those properties in the district based on that improvement to pay off the \$25 million. That is the part they might have a hard time proving when it came to the actual TIF district. Maybe that would be a good project for a TIF district. The question then would still be the boundaries and what would the tax implications within those boundaries be if we chose that project. The state law around TIFs is another real barrier to this because let's say we decided that is what we are going to do with the TIF forever because with TIFs you have to do it once, and you have to do it once for 20 years. You aren't going to have a chance to come back. That could be our once. She thinks it would be challenging without the proposal articulated clearly enough on Sabin's to show how we could pay it off.

Council Member Weiss indicated he didn't think this conversation was germane to the motion.

Mayor Hooper called for a vote on the motion. The vote was 5-0, motion carried unanimously

- 10-095. Consideration of the City's continued participation in the "Regional Services" process.
- A. Several City Council Members and Assistant City Manager Bev Hill attended a "Public Safety Committee" Meeting held at the Central Vermont Chamber of Commerce Office Building on March 18th.
 - B. A report from that meeting was previously shared with the City Council.
 - C. Each community was asked to review the report and indicate whether they wished to continue working on the process.
 - D. Recommendation. Discussion and direction to staff.

Council Member Weiss said he didn't want to make a presentation; that's been done at previous meetings. He moved that the Montpelier City Council continue its participation in the Regional Public Services Committee. Council Member Sheridan seconded the motion.

City Manager Fraser said he would note for the record that there is an attachment with a recommended motion.

Council Member Jarvis said she doesn't think the recommended motion was necessary for the work to continue.

Council Member Weiss said he knows Council Member Golonka and he would be willing to continue to serve and having the three of us, including Council Member Sheridan, made a very good working relationship.

Mayor Hooper said her thoughts are that until they get down to the question of quality of services, response time, training, supervision she isn't sure what the point of this is. The fundamental questions are what are we getting for it and how is it going to be managed?

Council Member Sheridan said that is what the next step is.

Council Member Jarvis said the discussions they have had everybody was saying it all comes down to costs, but that is the next step for the committee to look at costs because for a lot of communities that is the make or break.

City Manager Fraser said over the years the city has seen people move away from the city's ambulance service for lower costs, even though they were getting a reduced service. When the former Fire Chief and he went to each of the towns to talk to them about that service the Select Boards told them flat out that it was all about the dollars and cents. That was their key driver.

Council Member Sheridan said they have to consider that three people are willing to put their time in. The other communities will either opt in or out at some point and we may waste our time because of them.

Mayor Hooper called for a vote on the motion. The vote was 5-0, motion carried unanimously.

- 10-096. Consideration of recent court decision in Cheney vs. Montpelier concerning damages resulting from broken water line.

- A. A city water line broke resulting in damages to a private property.
- B. The matter was forwarded to the VLCT Property & Casualty Insurance Fund (PACIF) who denied the claim based on long standing practice and precedent.
- C. The individual brought the matter to court, where the decision was that the city and/or PACIF was liable for the damages which opens a new area of financial exposure for municipalities.
- D. The PACIF Board has authorized an appeal of this matter.
- E. Recommendation. Support PACIF's recommendation to appeal on behalf of the city.

City Manager Fraser said the Council has received the information about the *court decision and received the recommendation from the Vermont League of Cities and Towns* PACIF fund and their attorney. We discussed this briefly at the goal session and decided that we didn't want to provide a specific decision on a legal case at a workshop meeting.

Motion was made by Council Member Sheridan, seconded by Council Member Hooper to support PACIF's recommendation to appeal on behalf of the city.

Mayor Hooper said she wanted to be clear that the Council's decision to pursue this further in court has nothing to do with individual but it is to the larger issue of wanting to protect the city's interest. She wanted to say that in a public meeting so that would be clear because this is a much larger issue for the community. We have an obligation to stand up.

Mayor Hooper called for a vote on the motion. The vote was 5-0, motion carried unanimously.

10-097. Reports by City Council.

Council Member Sheridan said he would like to put on the next agenda a discussion of signs in the downtown and the possibility of making it an administrative action. It refers to the signs that people might put on the side of their building. People want to do it, but they don't want to pay. It's about the health of the city. He wants to exempt people from our sign ordinance.

Mayor Hooper asked if they had the authority to do that. We would have to change the zoning ordinance.

Council Member Sheridan said people want to put the signs on the outside so they are more visible. It is a disincentive to do the right thing.

Council Member Weiss said National Public Works Week is to be held May 16-27, and this is the 49th Annual Public Works Week Celebration. He doesn't know whether or not Montpelier has ever done anything in recognizing our Public Works Department in conjunction with this national week.

City Manager Fraser said he isn't sure if they have or not. At various points they have recognized different groups on those kinds of weeks.

Council Member Weiss said if it is appropriate it would be nice if they could do that with a resolution or something.

Council Member Jarvis told City Manager Fraser she appreciated his letter to the Secretary of Transportation outlining all of the rail issues and also the update on REACH. She wants to remind the Council and the public that this Thursday, April 15th from 6:00 to 8:00 P.M. at the Bethany Church the Montpelier Housing Task Force is convening a community conversation on homelessness. There will be housing advocates and people from area churches and it should be a very interesting evening and she would urge everyone to attend.

10-098. Mayor's Report.

Mayor Hooper said at some point she needs to understand what the city's position with regard to Sabin's Pasture is and she was trying to figure that out with the discussion she was trying to have with Gwen. She thought the Council had said that the development of housing was of a highest priority to the city and we would focus specifically on that yet we keep floating away from the opportunities to push that forward. She finds this really frustrating. She keeps trying to find creative ways of solving this problem and she isn't getting there. She would like some support.

10-099. Report by City Clerk-Treasurer.

City Clerk & Treasurer Hoyt had nothing to report this evening.

10-100. Status Reports by the City Manager.

Agenda Reports by the City Manager

City Manager Fraser said in line with what Council Member Weiss just said, this week is actually National Telecommunications Professionals Week and last year they did have their emergency dispatchers in. He would like to recognize them and just simply point out that they are the real vital cog to our emergency services and are people that people often don't see. They see the police officers responding, firefighters and ambulance responding, but the one who they don't see is that friendly voice at the other end of the 911 call and who is coordinating all of the efforts, calling in support and micro managing many facilities. Our fire trucks and ambulances cover around 24 communities. We handle our own police and other emergency services. They are rotating around the clock all of the time filling in each others' shifts. It is a much appreciated position and they do a great job at all times.

There was a status conference on Berlin Pond earlier this week and a full hearing on Friday at 4:00 P.M. on the matter. The state did come to the court and their attorney represented that as far as they were concerned the jurisdiction of Berlin Pond had to do with the rules promulgated by the Water Resources Board. That was the agency and not the Fish and Wildlife Division or Game Wardens who were saying they could fish on the pond. It was the Water Resources Board that produced a set of rules that the state has adopted from the Water Resources Board. They have each body of water in the state itemized and what the rules are for that body of water. The state has some general regulations for Berlin Pond and the footnote says it may be subject to additional regulations as a state or local Board of Health restricting recreational use or protecting public water supplies. They basically said as far as the city is concerned the city is within its rights to restrict the use. They don't have an issue and think this is fine. That was the attorney for the Agency of Natural Resources representing who spoke for the state. The attorney for the other parties basically said they were hearing different things and he has subpoenaed some Fish and Wildlife officials to come. The judge would not dismiss the state out of the case on Tuesday and said they need to be sure they have spoken to everyone in the Agency of Natural Resources. There will be a hearing. He has been subpoenaed. He doesn't know why because he isn't an expert on water treatment. None of our regulations were promulgated while he was here so he can't give the reasons why. In terms of factual information as to what is in the charter he doesn't know why they need him to testify for that. He was subpoenaed by the attorney from the other side.

They have been in discussions with the parties involved with the Vermont Compost issue. At some point they thought that perhaps they weren't going to go ahead with the appeal, but they are. We need to schedule a hearing and he has suggested it will either be May 12th or a special hearing night on May 19th. It would be his recommendation to have it on a special night. He suspects there will be objections. They have already received written objections.

City Manager Fraser said they had their first substantive Collective Bargaining session with the Police Department on Tuesday. It was brief and they exchanged proposals and agreed they would read them over and respond to each other at the next meeting.

Adjournment:

After motion duly made and seconded by Council Members Hooper and Sheridan, the council meeting adjourned at 10:44 P.M.

Transcribed by: Joan Clack

Attest: _____
Charlotte L. Hoyt, City Clerk

Consent Agenda Item for City Council Meeting of April 28, 2010

The budget for 2010 contains funds for the replacement and upgrade of a network domain controller server. This project was put out for proposals from three separate groups: The Tech Group, SymQuest and Network Performance. The Tech Group and SymQuest were the only responses.

All three firms are out of South Burlington. The two bids are fairly close in cost, as well as, similar in professional experience and competence.

I am asking the Council to "Authorize City Manager to sign a Hardware and labor Proposal with the Tech Group for the replacement and installation of a domain control," *at a cost of \$12,140.* *FS*

Fred Skeels – Technology Services

A handwritten signature in cursive script, appearing to read "Fred Skeels".

MPDC1 Replacement
to
MPDC2

Tech Group

HP Proliant DL360	4185	Hardware	Software/Lic.	Labor	\$12,140.00
Host BUS Adapter SCSI Controller	205				
File OS					
MS Server 2008	550				
MS Server User CALs 150	3450		\$4,000.00		
Battery Backup UPS 2200VA	990	\$990.00			

Labor	9				
Installation	9				
Migration	9				
Printers	4				
BU and AV	5				
Travel	29				
		3250		\$3,750.00	
		500			
		3750			

SymQuest

HP Proliant DL360	4500	Hardware	Software/Lic.	Labor	\$13,252.00
Host BUS Adapter SCSI Controller	0	\$4,252.00	\$4,100.00	\$4,900.00	
File OS	0				
MS Server 2008	0	\$0.00	\$625.00		
MS Server User CALs 150			\$3,475.00		
Battery Backup UPS 2200VA					

Labor	35				
Installation	35				
Migration	35				
Printers	300				
BU and AV	3925				
Travel	300				
	8150				
		3625		\$3,750.00	

**Hardware/Labor Proposal for
City of Montpelier**

39 Main Street
Montpelier, Vermont 05602

Phone (802) 222-9514 Ext. 21
Fax (802) 223-9529

Attention – Fred Skeels
April 9, 2010

John Lyons
Director of Business Development
Phone: (802) 862-1197 ext 101
Fax: (802) 862-6980
Toll Free: (800) 639-1532
jlyons@tgv.net



the human side of IT

I. File Server (WSCA HP Gov't Pricing/Order Through HP Direct)

HP Proliant DL360 G6 SATA 1U Rackmount Server **\$ 4,185.00**

- Quad Core Intel Xeon 5506 (2.13GHz 800MHz) Processor
- HP 12GB Fully Buffered PC3-10600R Memory
- (4) HP 146GB 3G SAS 15K Hard Drives
- ATi ES1000 32 MB Integrated Graphics Controller
- DVD ROM Drive
- (2) HP 460W 12V Hot Plug Power Supply
- HP Hot Plug Redundant Fan DL360 G6
- Integrated Lights-Out 2 (ILO) Management
- 4 Year Limited Onsite Warranty

II. Host Bus Adapter (WSCA HP Gov't Pricing/Client Will Order HP Direct)

HP SC11Xe Single Channel Ultra 320 SCSI Controller **\$ 205.00**

*****Additional cable may be required dependent upon Autoloader make & model*****

III. File Server Operating System

Microsoft Server 2008 Standard Edition License **Client Will Order**

Microsoft Server 2008 User License Cal **Client Will Order**
Quantity: 150 User License Cals

Estimated Labor and Conditions

Configuration & installation of new server to include installation of Windows Server 2008 OS, does NOT include the installation of specialized software

Update domain/forest functional levels, update AD Schema, promote to domain controller, and migrate FSMO roles

Update and test logon scripts

Printers will be installed and shared for models with 64bit and 32 bit drivers. Printers that do not have Server 2008 64 bit drivers available will need to be installed on a different server. The 32 bit operating systems will need to have the driver configured on each individual computer (unless the printers are installed and shared from a different 32 server). Printers will be assigned to users using Server 2008 Group Policies based on user or computer groups. Old printers will be removed using Server 2008 Group Policies based on user or computer groups.

Migrate Citrix licensing

Install Symantec Backup Exec 2010

Install Symantec Antivirus System Center on to another server

Fixed Labor Rate: 35 hours

Please Note the Following:

All rack related hardware required to install new equipment to be provided by the client. All Domain Controllers must have the latest Microsoft Security and Critical Updates installed by the client prior to server installation taking place. Client must run dcdiag.exe and netdiag.exe tools (available in the Server 2003 resource kit) to verify proper network and domain functionality prior to server installation taking place. Group Policy Client side extensions must be installed by client on all Windows XP, Vista and Server 2003 computers (KB943729) prior to server installation taking place. Client must create Printer Security groups for each printer and add users to those groups (Tech Group can help with creating the groups, several may already exist). Client is also responsible for migration of user data.

Senior Level Standard & Bulk Hour Rates

Senior Level Standard Rate	\$135.00/hr
Between 25-50 hours	\$130.00/hr
Between 51-100 hours	\$125.00/hr

Tech Group Hardware and Software Terms

Terms for products being purchased from The Tech Group will require a 50% deposit prior to order being placed with remaining balance due on delivery of product. Terms on all labor will be net 15. All pricing and availability are subject to change at manufacturer's discretion. Pricing does not include shipping/handling and taxes, lease options are available upon request.

March 16, 2010



City of Montpelier
39 Main Street
Montpelier, VT 05602

Fred Skeels (802) 223-9514 fskeels@montpelier-vt.org

Fred Anderson
802-658-9813

Quote: 176335

fanderson@symquest.com

Technology Pricing Estimate

Qty	Description	Price	Ext
Base Server Hardware			
1	DL380 G6 Quad-Core Xeon E5520 (2.26 GHz 8MB L3 Cache 80W DDR3-1066) 1P 4GB (2 x 2GB UDIMMs) DVDRW P410i (256MB RAID 0/1/1+0/5/5+0) 1 x 460W	\$2,415.00	\$2,415.00
2	2GB HP RAM	\$72.00	\$144.00
3	2RX8PC3-10600E-9 KIT	\$293.00	\$879.00
1	146GB 10K RPM SAS 2.5IN DP HDD	\$272.00	\$272.00
1	460W HE 12V HOTPLG AC PWR SUPPLY KIT	\$17.00	\$17.00
1	1.83M 10A C13-UL POWER CORD	\$428.00	\$428.00
1	SMART BUY 3YR UPG WARR ONSITE 13X5 4HR FOR PROLIANT DL38X	\$97.00	\$97.00
1	PRE-CONFIGURATION SERVICES		
Sub-Total Hardware			\$4,252.00
Tape Drive			
1	SMARTBUY 400/800GB LTO3 920 H SAS 1DR/2BAY 1U RM/HBA/CBL BUNDLE	\$2,292.00	\$2,292.00
1	1PK LTO3 ULTRIUM 400/800GB TAPE CARTRIDGE	\$38.00	\$38.00
1	1PK LTO ULTRIUM UNIVERSAL CLEANING CARTRIDGE	\$85.00	\$85.00
1	3YR UPG WARR ONSITE NBD 1U TAPE ARRAY	\$717.00	\$717.00
Sub-Total Hardware			\$3,132.00
Software			
1	MS WINDOWS SVR STD ED 2008R2 GOVT OLP	\$600.00	\$600.00
1	MS WINDOWS SVR STD ED 2008R2 1 USER CAL GOVT OLP	\$25.00	\$25.00
Sub-Total Hardware			\$625.00
Total Product			\$8,009.00
Labor Est			\$4,900.00
Total			\$12,909.00
Deposit Due on Order			TBD

Prices subject to change
TERMS: Invoices Due Upon Receipt
Shipping Charges and Sales Tax (if applicable) are billed unless otherwise specified

Accepted by _____ Date _____

Fax back to 802-658-9801 to accept

CITY OF MONTPELIER
Council Meeting
Consent Agenda
April 14, 2010
Liquor License and Tobacco Renewal Applications

10 Gems, LLC
The Black Door
44 Main Street

1st Class License for Restaurant

Antonio M. Inc.
dba Angeleno's
15 Barre Street

1st Class License for Restaurant

Hunger Mountaint Co-Op, Inc
623 Stone Cutters Way

2nd Class License

Julio's Cantina, LLC
54 State Street

1st Class License for Restaurant

Langdon Street Pub Company
dba McGillicuddy's Irish Pub
14 Langdon Street

1st Class Cabaret License

Montpelier Lodge of Elks #924 Inc
203 Country Club Road

1st Class License for Club

Pinky's On State , LLC
14 State Street

2nd Class License

Positive Pie, Inc
24 State Street

1st Class License for Restaurant

Danielle & John Sevigny
dba DJ's Convenience Store

2nd Class License
Tobacco License

ARTICLE XIV. VENDORS.

Sec. 9-1400. LICENSE REQUIRED.

~~It shall be unlawful for any vendor to sell, display or offer for sale any food, beverage, goods or merchandise within the city of Montpelier without first obtaining a vendor's license therefor as provided herein.~~

Sec. 9-1401. DEFINITIONS.

(a) "Vendor" shall mean any person, including an employee or agent of another, who sells or offers to sell food, beverages, personal services, goods or merchandise on any ~~public~~ street or sidewalk from ~~on~~ a stand, motor vehicle or from his or her person, or one who travels by foot, wagon, motor vehicle, pushcart or any other method of transportation from house ~~to house~~ or street to street selling or offering to sell food, beverages, personal services, goods or merchandise.

(b) "Stand" shall mean any newsstand, table, bench, booth, rack, handcart, pushcart or any other fixture or device which is not required to be licensed and registered as a motor vehicle, used for the display, storage, promotion or transportation of articles or personal services, offered for sale by a vendor.

(c) "Public Street or Sidewalk" shall include all areas legally open to public use as public streets, sidewalks, roadways, highways, parkways, alleys, public parking spaces and any other public way.

~~(d) "Designated location" shall mean those locations within the designated downtown of the City of Montpelier that have been approved as vending locations.~~

Sec. 9-1401. LICENSE REQUIRED.

~~It shall be unlawful for any vendor to sell, display or offer for sale any food, beverage, goods or merchandise within the city of Montpelier without first obtaining a vendor's license therefor as provided herein.~~

Sec. 9-1402. APPLICATION.

The application for a vendor's license shall be submitted to the City Clerk for approval by the City Council on forms provided therefor and contain all information relevant and necessary to determine whether a vendor's license may be issued, including but not limited to:

(a) Proof of the identity and business address of the applicant.

(b) A brief description of the ~~nature, character and quality~~ type of the food, beverages, personal services, goods or merchandise to be sold.

(c) If employed by another, the name and business address of the person, firm, association, organization, company or corporation.

(d) If a motor vehicle is to be used in the conduct of a vending business, a description of the vehicle together with the motor vehicle registration number and the license number; provided, however, that no vendor shall conduct business from any public parking space.

(e) ~~A description of the~~ The proposed location(s) of the vending business and the proposed days and hours of operation ~~length of time during which it is proposed that the business shall be~~

~~conducted~~ at each location. ~~If the location(s) is/are located outside of the designated downtown, then the applicant shall obtain signatures- written permission from the property owner, the Police Chief and/-any designee the Police chief names or designee.~~ In cases where the vendor is seeking to do business in a City of Montpelier park, then the signature of the Parks ~~Commissioner-Director~~ must also be obtained.

(f) Proof of a valid and current state license for the type of business activity for which a license under this ordinance is sought.

(g) Acknowledgment that issuance and maintenance of a vendor's license by the vendor shall be subject to review by the Chief of Police and Health Officer.

Sec. 9-140X. DESIGNATED LOCATIONS

~~Designated locations shall apply to-~~In the designated downtown district vendors may only vend in preapproved locations established by the City Manager.

The City Manager shall maintain a list of designated locations for vendors wishing to locate in the designated downtown. If a vendor wishes to locate in a space not on the list of designated locations, then the vendor may apply to the City Manager to add or move a space. Any spaces that the City Manager approves shall conform to the guidelines in Sec.9-1406 (a). ~~Additionally If the area involves private property, the property owner shall submit~~ written approval- ~~from the property owner shall be submitted~~ for use of the location for vending with space limitations clearly defined. In the event that the application is for a space on property belonging to the City of Montpelier, the City Manager shall decide whether or not to grant permission to use the space.

~~The City Manager shall set area limits on any additional locations beyond the initial ones approved by City Council.~~

h

Sec. 9-1403. FEES.

An applicant for a license under Sec. 9-1402 shall pay an annual license fee of two hundred fifty dollars (\$250.00) per vendor.

Sec. 9-1404. INSURANCE.

No vendor's license shall be issued to an applicant unless the applicant furnishes proof to the City Clerk of a public liability bond or insurance policy in an amount not less than \$100,000 for property damage and injuries, including injury resulting in death, caused by the operation of the vending business and naming the city as an additional insured.

Sec. 9-1405. LICENSES.

The license issued to a vendor shall be ~~carried with~~displayed by the vendor while he or she is engaged in the business of vending.

Sec. 9-1406. RESTRICTIONS APPLICABLE TO ALL VENDORS.

(a) Stands. Vendor's stands and associated activity shall not:

(1) Exceed eight feet in length, three feet in width, or eight feet in height;

(2)(1) Impede pedestrian or vehicular travel, or access to the entrance

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of any adjacent building or driveway;

~~(3)~~(2) Occupy more than half of the available sidewalk width or four feet of such sidewalk, whichever is less;

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~~(5)~~(3) Locate within five feet of a accessible parking space, access ramp, crosswalk, fire hydrant, fire escape, bus stop, loading zone, driveway, or entrance of any building; or

(4) Locate within fifty feet of any ~~other vendor or~~ business establishment offering for sale goods or merchandise in the same class of substantially the same type as that being offered for sale by the licensed vendor (food, arts, crafts clothing, etc.). Fifty feet shall be measured as the shortest distance between the cart and any street-facing property owned or rented by the similar business.

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(5) Provide tables and seating for customer use.

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(6) Impede access to or egress from cars parked in legal parking spaces.

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(b) Stands located outside of the designated downtown shall:

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(1) Not exceed eight feet in length, three feet in width, or eight feet in height;

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(+)(2) Shall not locate on any property, public or private, without the landowner's written approval.

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~~(b)~~(c) Stands located inside the designated downtown shall:

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(1) locate in a location that is on the City of Montpelier's list of designated locations, or seek an amendment to the list of designated locations from the City Manager.

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(2) Shall not use more space in total than allowed for the permitted space. Space usage includes the cart, plus any umbrellas, coolers, signboard, and other items connected to the business.

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~~(6)~~

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(b) Hours of Operation. Vendors shall be allowed to engage in the business of vending only between 7:00 A.M. and 10:00 P.M., except that those vendors who conduct their business by going door-to-door shall be allowed to operate only between 9:00 A.M. and 5:00 P.M.. All vending stands must be removed from public property during non-vending hours.

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~~(c)~~
~~(e) Accessible Handicapped Areas. No vendor shall conduct business within five feet of any accessible~~

~~(d) handicapped parking space or access ramp.~~

~~(d)~~(e) Removal of Trash. All trash or debris accumulating within fifty feet of generated by any vending stand shall be collected by the vendor and deposited in a trash container removed. This trash may not be deposited in public trash containers. Vendors must provide a trash receptacle for use by their customers.

Sec. 9-1407. SUSPENSION OR REVOCATION OF LICENSE.

(a) Any license issued under this ordinance may be suspended or revoked by the City Council after due notice to the licensee and hearing, for any of the following reasons:

- (1) Fraud or misrepresentation in the application for the license.
- (2) Fraud or misrepresentation in the course of conducting the business of vending.
- (3) Conducting the business of vending contrary to the conditions of the license.
- (4) Conducting the business of vending in such a manner as to create a public nuisance or breach of the peace, or constitute a danger to the public health, safety or welfare.

(b) Upon suspension or revocation, the City shall deliver written notice to the licensee(s) stating the action taken and the reasons supporting such action. The written notice shall be delivered to the licensee's place of business or mailed to the licensee's last known address.

Sec. 9-1408. APPEALS.

Persons who are denied licenses or whose licenses have been suspended or revoked may appeal by filing a written notice of appeal with the Washington Superior Court. The appeal must be filed within thirty (30) days after receipt of the notice of denial, suspension or revocation.

Sec. 9-1409. RENEWALS.

Application for renewal of licenses issued under Sections 9-1405 or 9-1412 shall be made to and received by the City Clerk within fifteen (15) days prior to the expiration of such license. The City Clerk shall review each application for renewal to determine that:

(a) The applicant is in full compliance with the provisions of this ordinance.

(b) The applicant has a currently effective insurance policy naming the City as an additional insured in the minimum amount provided for in Section 9-1404. If the City Clerk finds that the application meets the above requirements, the City Clerk shall issue a new permit.

~~Sec. 9-1410. EXCEPTIONS.~~

~~(a) The provisions of this ordinance shall not apply to a vendor who sells or offers for sale, in person or by his employees or agents, newspapers.~~

~~(b) The provisions of this ordinance shall not apply to sales made by manufacturers, merchants and dealers for resale only.~~

Sec. 9-1411. RELIGIOUS, CHARITABLE, EDUCATIONAL AND SERVICE ORGANIZATIONS.

Authorized representatives of religious, charitable, educational or service organizations desiring to solicit money, to sell products of the land, or to distribute literature shall be exempt from the payment

of any fee hereunder, but shall be required to submit in writing to the City Clerk the name and purpose of the cause for which such activity is sought, the name and address of the immediate director of such activity, and the period during which such activity is to be carried on in the city of Montpelier. If the City Clerk, after investigation, shall find that the organization is a bona fide charitable, religious, educational or service organization, the Clerk shall issue, free of charge, a license to carry on such activity. Such license shall cover all persons engaged in the activity for which the license was issued. Organizations designated as religious or exempt under Sections 501(c), 501(d), 501(e), 521, 527 or 528 of the Internal Revenue Code of 1986, or subsequent enactments, shall be exempted from the payment of the fee imposed under Section 9-1403, provided that no license issued hereunder shall be of a duration in excess of fifteen (15) consecutive days. Organizations not found to be exempt as defined above shall be responsible for the full fee.

Sec. 9-1412. SPECIAL EVENT LICENSE.

(a) The City Council may issue special vendor's licenses to be used in conjunction with a special event. Such licenses shall be valid for no more than three (3) consecutive days designated for the event by the City Council.

(b) The fee for a special vendor's license shall be twenty-five dollars (\$25.00) for each day for which it is valid, provided that any organizations in Section 9-1411 shall be exempt from the payment of any fee imposed hereunder.

(c) The City Council shall require the sponsor of any special event to administer all applications for multiple special vendor's licenses under this section.

Sec. 9-1413. SPECIAL TRANSIENT VENDOR LICENSE.

In lieu of the license required under Section 9-1400, the City Clerk may issue a thirty (30) day license to a person selling or offering for sale or soliciting orders for the sale of services, goods or merchandise from premises occupied temporarily as a tenant, lessee, guest or invitee. Such license shall be valid only between the dates specified thereon, and the person applying for such a license shall comply with and be subject to all the provisions of Sections 9-1402, 9-1404, 9-1405, 9-1407, 9-1408 and 19-1410. An applicant for a license under this section shall pay a license fee of fifty dollars (\$50.00). As used in this section, the term "merchandise" shall include plants and other agricultural or forest products.

4 -

9-XIV

Sec. 9-1414. LOUD NOISES AND SIGNS.

No vendor or transient vendor, nor any person on their behalf, shall shout, make any cry out, blow a horn, ring a bell, or use any sound device, including any loud speaking radio or sound amplifying system upon any of the streets, alleys, parks or other public places of this city or upon any private premises in the city where a sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks, or other public places, or parade with a sign or placard, for the purpose of attracting attention to any goods, wares or merchandise which such license proposes to sell. If any ~~signs or~~ displays are put up, they shall be removed. All signs, including sign boards, must comply with City regulations.

Sec. 9-1415. VENDING MACHINES.

No vending machine or other dispensing device shall be placed or maintained, either permanently or temporarily, upon any City property, including any street, highway or sidewalk, without the prior approval of the City Council. In considering and acting upon a request for the placement of and maintenance of such vending machine or dispensing device, the City Council may impose reasonable fees, conditions and standards.

CHARTER REFERENCES: T. 3, Sec. 17(I); T. 3, Sec. 17(IV), 1955 Charter.

STATE LAW REFERENCES: Peddlers, V.S.A., T. 32, Sec. 9301 et seq.; itinerant vendors, V.S.A., T. 32, Sec. 9201 et seq.

Sec.9-1416. ENFORCEMENT

Enforcement of vending permit violations under Article XIV shall be investigated by the Montpelier Police Department and will be handled administratively. Any other violations of Montpelier City Ordinances or Vermont State law will be investigated and prosecuted by appropriate authority.

The permit holder agrees to abide by all conditions and ordinances set forth in the issuance of the vendor permit. Any violation of those conditions will result in a warning and corrective action plan for the first violation. The warning and corrective action plan will be issued by a sworn officer of the Montpelier Police Department.

Any second violation of vending permit conditions during the operational date of the permit will result in an immediate suspension/revocation of the vending permit.

Any appeal of a vending permit suspension or revocation shall be submitted to the City Council pursuant to Sec. 9-1407.

This ordinance shall be enforced by sworn officers of the City of Montpelier Police Department.

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Sec's. 9-~~1416~~ 1417 to 9-1499. Reserved.

Enacted September 13, 1972.

Amendment enacted July 28, 1976 [Sec. 9-1405 rewritten]. Date of Publication: 8/02/76. Effective Date: 8/09/76.

Amendment enacted October 11, 1978 [Sec's. 9-1405 and 9-1407 rewritten]. Date of Publication: 10/18/78. Effective Date: 10/24/78.

Amendment enacted May 27, 1981 [Sec. 9-1409 added]. Date of Publication: 6/03/81. Effective Date: 6/09/81.

Amendment enacted May 26, 1982 [Sec. 9-1405, fee increased]. Date of Publication: 6/09/82. Effective Date: 6/16/82.

Amendment enacted January 12, 1983 [Sec's. 9-1410 and 9-1411 added]. Date of Publication: 1/18/83. Effective Date: 1/25/83.

Amendment enacted March 14, 1984 [Sec. 9-1412 added]. Date of Publication: 3/24/84. Effective Date: 3/31/84.

Amendment enacted April 9, 1985 [Sec. 9-1405, rate increased]. Date of Publication: 4/15/85. Effective Date: 4/22/85.

Amendment enacted October 23, 1985 [Sec. 9-1413 added]. Date of Publication: 10/31/85. Effective Date: 11/06/85.

Amendment enacted October 11, 1989 [Article XIV repealed and replaced]. Date of Publication: 10/17/89. Effective Date: 10/23/89.

Amendment enacted May 12, 2004 [Sec. 9-1412, fee increased]. Date of Publication: 5/27/04. Effective Date: 6/02/04.

ARTICLE XIV. VENDORS.

~~Sec. 9-1400. LICENSE REQUIRED.~~

~~It shall be unlawful for any vendor to sell, display or offer for sale any food, beverage, goods or merchandise within the city of Montpelier without first obtaining a vendor's license therefor as provided herein.~~

Sec. 9-1401. DEFINITIONS.

(a) "Vendor" shall mean any person, including an employee or agent of another, who sells or offers to sell food, beverages, personal services, goods or merchandise on any ~~public~~ street or sidewalk from a stand, motor vehicle or from his or her person, or one who travels by foot, wagon, motor vehicle, pushcart or any other method of transportation from house ~~to house~~ or street to street selling or offering to sell food, beverages, personal services, goods or merchandise.

(b) "Stand" shall mean any newsstand, table, bench, booth, rack, handcart, pushcart or any other fixture or device which is not required to be licensed and registered as a motor vehicle, used for the display, storage, promotion or transportation of articles or personal services, offered for sale by a vendor.

(c) "Public Street or Sidewalk" shall include all areas legally open to public use as public streets, sidewalks, roadways, highways, parkways, alleys, public parking spaces and any other public way.

~~(d) "Designated location" shall mean those locations within the designated downtown of the City of Montpelier that have been approved as vending locations.~~

Sec. 9-1401. LICENSE REQUIRED.

~~It shall be unlawful for any vendor to sell, display or offer for sale any food, beverage, goods or merchandise within the city of Montpelier without first obtaining a vendor's license therefor as provided herein.~~

Sec. 9-1402. APPLICATION.

The application for a vendor's license shall be submitted to the City Clerk for approval by the City Council on forms provided therefor and contain all information relevant and necessary to determine whether a vendor's license may be issued, including but not limited to:

(a) Proof of the identity and business address of the applicant.

(b) A brief description of the ~~nature, character and quality~~ type of the food, beverages, personal services, goods or merchandise to be sold.

(c) If employed by another, the name and business address of the person, firm, association, organization, company or corporation.

(d) If a motor vehicle is to be used in the conduct of a vending business, a description of the vehicle together with the motor vehicle registration number and the license number; provided, however, that no vendor shall conduct business from any public parking space.

(e) ~~A description of the~~ The proposed location(s) of the vending business and the proposed days and hours of operation length of time during which it is proposed that the business shall be

~~conducted~~ at each location. If the location(s) is/are located outside of the designated downtown, then the applicant shall obtain signatures- written permission from the property owner, the Police Chief and/ any designee the Police chief names or designee. In cases where the vendor is seeking to do business in a City of Montpelier park, then the signature of the Parks ~~Commissioner~~ Director must also be obtained.

(f) Proof of a valid and current state license for the type of business activity for which a license under this ordinance is sought.

(g) Acknowledgment that issuance and maintenance of a vendor's license by the vendor shall be subject to review by the Chief of Police and Health Officer.

Sec. 9-140X. DESIGNATED LOCATIONS

~~Designated locations shall apply to~~ In the designated downtown district vendors may only vend in preapproved locations established by the City Manager.

The City Manager shall maintain a list of designated locations for vendors wishing to locate in the designated downtown. If a vendor wishes to locate in a space not on the list of designated locations, then the vendor may apply to the City Manager to add or move a space. Any spaces that the City Manager approves shall conform to the guidelines in Sec.9-1406 (a). Additionally If the area involves private property, the property owner shall submit written approval- from the property owner shall be submitted for use of the location for vending with space limitations clearly defined. In the event that the application is for a space on property belonging to the City of Montpelier, the City Manager shall decide whether or not to grant permission to use the space.

~~The City Manager shall set area limits on any additional locations beyond the initial ones approved by City Council.~~

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Sec. 9-1403. FEES.

An applicant for a license under Sec. 9-1402 shall pay an annual license fee of two hundred fifty dollars (\$250.00) per vendor.

Sec. 9-1404. INSURANCE.

No vendor's license shall be issued to an applicant unless the applicant furnishes proof to the City Clerk of a public liability bond or insurance policy in an amount not less than \$100,000 for property damage and injuries, including injury resulting in death, caused by the operation of the vending business and naming the city as an additional insured.

Sec. 9-1405. LICENSES.

The license issued to a vendor shall be ~~carried with~~ displayed by the vendor while he or she is engaged in the business of vending.

Sec. 9-1406. RESTRICTIONS APPLICABLE TO ALL VENDORS.

(a) Stands. Vendor's stands and associated activity shall not:

(1) Exceed eight feet in length, three feet in width, or eight feet in height;

(2)(1) Impede pedestrian or vehicular travel, or access to the entrance

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of any adjacent building or driveway;

~~(3)~~(2) Occupy more than half of the available sidewalk width or four feet of such sidewalk, whichever is less;

~~(4)~~(3) Locate within five feet of a accessible parking space, access ramp, crosswalk, fire hydrant, fire escape, bus stop, loading zone, driveway, or entrance of any building; or

(4) Locate within fifty feet of any ~~other vendor or~~ business establishment offering for sale goods or merchandise ~~in the same class of substantially the same type~~ as that being offered for sale by the licensed vendor ~~(food, arts, crafts clothing, etc.)~~. Fifty feet shall be measured as the shortest distance between the cart and any street-facing property owned or rented by the similar business.

(5) Provide tables and seating for customer use.

(6) Impede access to or egress from cars parked in legal parking spaces.

(b) Stands located outside of the designated downtown shall:

(1) Not exceed eight feet in length, three feet in width, or eight feet in height;

~~(4)~~(2) Shall not locate on any property, public or private, without the landowner's written approval.

~~(b)~~(c) Stands located inside the designated downtown shall:

(1) locate in a location that is on the City of Montpelier's list of designated locations, or seek an amendment to the list of designated locations from the City Manager.

(2) Shall not use more space in total than allowed for the permitted space. Space usage includes the cart, plus any umbrellas, coolers, signboard, and other items connected to the business.

~~(5)~~

(b) Hours of Operation. Vendors shall be allowed to engage in the business of vending only between 7:00 A.M. and 10:00 P.M., except that those vendors who conduct their business by going door-to-door shall be allowed to operate only between 9:00 A.M. and 5:00 P.M.. All vending stands must be removed from public property during non-vending hours.

~~(c)~~

~~(c) Accessible Handicapped Areas. No vendor shall conduct business within five feet of any accessible~~

~~(d) handicapped parking space or access ramp.~~

~~(d)~~(e) Removal of Trash. All trash or debris ~~accumulating within fifty feet of~~ generated by any vending stand shall be collected by the vendor and ~~deposited in a trash container removed.~~ This trash may not be deposited in public trash containers. Vendors must provide a trash receptacle for use by their customers.

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Sec. 9-1407. SUSPENSION OR REVOCATION OF LICENSE.

(a) Any license issued under this ordinance may be suspended or revoked by the City Council after due notice to the licensee and hearing, for any of the following reasons:

- (1) Fraud or misrepresentation in the application for the license.
- (2) Fraud or misrepresentation in the course of conducting the business of vending.
- (3) Conducting the business of vending contrary to the conditions of the license.
- (4) Conducting the business of vending in such a manner as to create a public nuisance or breach of the peace, or constitute a danger to the public health, safety or welfare.

(b) Upon suspension or revocation, the City shall deliver written notice to the licensee(s) stating the action taken and the reasons supporting such action. The written notice shall be delivered to the licensee's place of business or mailed to the licensee's last known address.

Sec. 9-1408. APPEALS.

Persons who are denied licenses or whose licenses have been suspended or revoked may appeal by filing a written notice of appeal with the Washington Superior Court. The appeal must be filed within thirty (30) days after receipt of the notice of denial, suspension or revocation.

Sec. 9-1409. RENEWALS.

Application for renewal of licenses issued under Sections 9-1405 or 9-1412 shall be made to and received by the City Clerk within fifteen (15) days prior to the expiration of such license. The City Clerk shall review each application for renewal to determine that:

- (a) The applicant is in full compliance with the provisions of this ordinance.
- (b) The applicant has a currently effective insurance policy naming the City as an additional insured in the minimum amount provided for in Section 9-1404. If the City Clerk finds that the application meets the above requirements, the City Clerk shall issue a new permit.

~~Sec. 9-1410. EXCEPTIONS.~~

~~(a) The provisions of this ordinance shall not apply to a vendor who sells or offers for sale, in person or by his employees or agents, newspapers.~~

~~(b) The provisions of this ordinance shall not apply to sales made by manufacturers, merchants and dealers for resale only.~~

Sec. 9-1411. RELIGIOUS, CHARITABLE, EDUCATIONAL AND SERVICE ORGANIZATIONS.

Authorized representatives of religious, charitable, educational or service organizations desiring to solicit money, to sell products of the land, or to distribute literature shall be exempt from the payment

of any fee hereunder, but shall be required to submit in writing to the City Clerk the name and purpose of the cause for which such activity is sought, the name and address of the immediate director of such activity, and the period during which such activity is to be carried on in the city of Montpelier. If the City Clerk, after investigation, shall find that the organization is a bona fide charitable, religious, educational or service organization, the Clerk shall issue, free of charge, a license to carry on such activity. Such license shall cover all persons engaged in the activity for which the license was issued. Organizations designated as religious or exempt under Sections 501(c), 501(d), 501(e), 521, 527 or 528 of the Internal Revenue Code of 1986, or subsequent enactments, shall be exempted from the payment of the fee imposed under Section 9-1403, provided that no license issued hereunder shall be of a duration in excess of fifteen (15) consecutive days. Organizations not found to be exempt as defined above shall be responsible for the full fee.

Sec. 9-1412. SPECIAL EVENT LICENSE.

(a) The City Council may issue special vendor's licenses to be used in conjunction with a special event. Such licenses shall be valid for no more than three (3) consecutive days designated for the event by the City Council.

(b) The fee for a special vendor's license shall be twenty-five dollars (\$25.00) for each day for which it is valid, provided that any organizations in Section 9-1411 shall be exempt from the payment of any fee imposed hereunder.

(c) The City Council shall require the sponsor of any special event to administer all applications for multiple special vendor's licenses under this section.

Sec. 9-1413. SPECIAL TRANSIENT VENDOR LICENSE.

In lieu of the license required under Section 9-1400, the City Clerk may issue a thirty (30) day license to a person selling or offering for sale or soliciting orders for the sale of services, goods or merchandise from premises occupied temporarily as a tenant, lessee, guest or invitee. Such license shall be valid only between the dates specified thereon, and the person applying for such a license shall comply with and be subject to all the provisions of Sections 9-1402, 9-1404, 9-1405, 9-1407, 9-1408 and 19-1410. An applicant for a license under this section shall pay a license fee of fifty dollars (\$50.00). As used in this section, the term "merchandise" shall include plants and other agricultural or forest products.

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9-XIV

Sec. 9-1414. LOUD NOISES AND SIGNS.

No vendor or transient vendor, nor any person on their behalf, shall shout, make any cry out, blow a horn, ring a bell, or use any sound device, including any loud speaking radio or sound amplifying system upon any of the streets, alleys, parks or other public places of this city or upon any private premises in the city where a sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks, or other public places, or parade with a sign or placard, for the purpose of attracting attention to any goods, wares or merchandise which such license proposes to sell. If any ~~signs or~~ displays are put up, they shall be removed. [All signs, including sign boards, must comply with City regulations.](#)

Sec. 9-1415. VENDING MACHINES.

No vending machine or other dispensing device shall be placed or maintained, either permanently or temporarily, upon any City property, including any street, highway or sidewalk, without the prior approval of the City Council. In considering and acting upon a request for the placement of and maintenance of such vending machine or dispensing device, the City Council may impose reasonable fees, conditions and standards.

CHARTER REFERENCES: T. 3, Sec. 17(I); T. 3, Sec. 17(IV), 1955 Charter.

STATE LAW REFERENCES: Peddlers, V.S.A., T. 32, Sec. 9301 et seq.; itinerant vendors, V.S.A., T. 32, Sec. 9201 et seq.

Sec.9-1416. ENFORCEMENT

Enforcement of vending permit violations under Article XIV shall be investigated by the Montpelier Police Department and will be handled administratively. Any other violations of Montpelier City Ordinances or Vermont State law will be investigated and prosecuted by appropriate authority.

The permit holder agrees to abide by all conditions and ordinances set forth in the issuance of the vendor permit. Any violation of those conditions will result in a warning and corrective action plan for the first violation. The warning and corrective action plan will be issued by a sworn officer of the Montpelier Police Department.

Any second violation of vending permit conditions during the operational date of the permit will result in an immediate suspension/revocation of the vending permit.

Any appeal of a vending permit suspension or revocation shall be submitted to the City Council pursuant to Sec. 9-1407.

~~This ordinance shall be enforced by sworn officers of the City of Montpelier Police Department.~~

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Sec's. 9-~~1416-1417~~ to 9-1499. Reserved.

Enacted September 13, 1972.

Amendment enacted July 28, 1976 [Sec. 9-1405 rewritten]. Date of Publication: 8/02/76. Effective Date: 8/09/76.

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Amendment enacted October 23, 1985 [Sec. 9-1413 added]. Date of Publication: 10/31/85. Effective Date: 11/06/85.

Amendment enacted October 11, 1989 [Article XIV repealed and replaced]. Date of Publication: 10/17/89. Effective Date: 10/23/89.

Amendment enacted May 12, 2004 [Sec. 9-1412, fee increased]. Date of Publication: 5/27/04. Effective Date: 6/02/04.

Article 11. ENFORCEMENT.

1101. ADMINISTRATIVE OFFICER.

The Administrative Officer shall be appointed by the City Manager to administer the Zoning Regulations, as provided for in 24 V.S.A. 4448 and subject to approval of the City Manager. The Administrative Officer shall literally enforce the provisions of these Regulations and in so doing shall inspect developments, maintain records and perform all other necessary tasks to carry out the provisions of these Regulations.

1102. VIOLATIONS.

1102.A. Development without Proper Permits.

It shall be a violation of these Regulations for any person to commence any development, including signs or changes in use, for which an approval or permit is required under Article 2 without first obtaining such approval or permit.

1102.B. Development Not According to Approved Plans and Conditions.

It shall be a violation of these Regulations for any person to fail to comply with all requirements, representations and conditions of any approved plan or permit granted under the provisions of these Regulations.

1102.C. Development after Expiration of Permits.

It shall be a violation of these Regulations for any person to commence development if the permit authorizing the development has expired.

1102.D. Sale or Offer to Sell without Subdivision or Planned Development Approval.

It shall be a violation of these Regulations for any person to sell, transfer or offer to sell any land in a subdivision or land development unless a final plat has been prepared and filed in full compliance with these Regulations. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the seller or transferor from this violation.

1103. SCHEDULE OF FEES.

1103.A. Development Review Board and Administrative Permits.

The fees for Conditional Use, Variances, Planned Developments, Appeals of Administrative Decisions, Subdivisions, Site Plan Approval, Sign Permits, advertised Public Hearings, publications, or administrative review shall be as set from time to time by the City Council and published on a Schedule of Fees. No application shall be considered by the Development Review Board unless submitted with payment of the fees.

1103.B. Technical Assistance.

Fees required by the Development Review Board for technical or expert assistance, as provided in Article 2 and 24 V.S.A. Section 4407(17) must be paid by the applicant to the City prior to the completion of the Board's review of the application.

1104. PENALTIES—ENFORCEMENT.

1104.A. Notice of Violation.

The Administrative Officer shall issue a written "Notice of Violation" to any person believed to be in violation of any provision of this Ordinance. Such Notice of Violation shall:

1. Describe the activity which violates this Ordinance;
2. Identify the provisions of this Ordinance which have been violated;
3. State the specific action required to cure the violation;
4. State that if the violation is not cured within seven days of the Notice of Violation, the City of Montpelier may institute court proceedings to obtain a court order directing compliance with the Ordinance and awarding fines up to the legal maximum as prescribed by Vermont Statutes for each day that the violation continues from the date of the notice; and
5. State that the Notice of Violation may be appealed to the Development Review Board in accordance with the procedures of Article 10 of these Regulations.

1104.B. Court Action.

Upon failure of any person to cure a violation of the provisions of this Ordinance after receipt of a Notice of Violation, the Administrative Officer shall institute an appropriate court action on behalf of the City.

1104.C. Penalties.

Any person commencing or undertaking development in the City of Montpelier without first complying with the provisions of these regulations, including the payment of any impact fee imposed hereunder, shall be subject to a penalty of not more than \$100.00 per day for each day a violation of this ordinance continues in existence, to be recovered in a civil action commenced by and prosecuted in the name of the City. The penalty imposed in this section shall be in addition to any other penalty imposed by general law or ordinance, and shall not be in lieu thereof. In addition to the penalties provided for herein, the City shall have the power to enjoin and abate any violations of these Regulations.

Any person who violates these regulations as described in Section 1102.D by selling, transferring, agreeing to sell any land in a subdivision or land development without proper permits does so at the risk of property transfer, title or other transfer of property ownership being declared null and void upon determination that such action was in violation of these Regulation.

1104.D. Floodplain Enforcement.

If the structure is still noncompliant after the opportunity to cure has passed, the Administrative Officer shall submit a declaration to the Administrator of the NFIP requesting a denial of flood insurance. Section 1316 of the National Flood insurance Act of 1968, as amended, authorizes FEMA to deny flood insurance to a property declared by a community to be in violation of their flood hazard area regulations. The declaration shall consist of:

- a. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location,

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- b. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation or ordinance,
 - c. a clear statement that the public body making the declaration has authority to do so and a citation to that authority,
 - d. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance, and
 - e. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

Article 10. APPEALS AND VARIANCES.

1001. PURPOSE.

It is the purpose of this article to provide for review of all questions arising out of or with respect to the implementation of this ordinance. Except as specifically provided herein, the Development Review Board may not amend, alter, invalidate or affect any development plan or bylaw or the implementation or enforcement thereof, or allow any use not permitted by any zoning regulations or other bylaw.

1002. AUTHORITY.

These regulations are enacted under the provisions of 24 V.S.A. Subchapter 11.

1003. DEFINITION OF INTERESTED PERSONS

For the purposes of this Article, an interested person means any of one of the following:

1. A person owning title to property affected by a by-law who alleges that such regulation imposes on such property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
2. If the Montpelier plan or by-law is at issue, the City of Montpelier or any municipality which adjoins the City.
3. A person owning or occupying property in the immediate neighborhood of a property which is the subject of any decision or act taken under this ordinance, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, who alleges that the decision or act, if confirmed, will not be in accord with policies, purposed or terms of the plan or bylaw of the City.
4. Any ten persons who may be any combination of voters or real property owners within the city or an adjoining municipality who, by signed petition to the Development Review Board in any appeal brought under these regulations, allege that any relief requested by a person under this article, if granted, will not be in accord with policies, purposes or terms of this plan or bylaw of the city. This petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.
5. Any department and administrative subdivision of the State of Vermont owning property or any interested therein within the city or an adjoining municipality, and the Vermont Agency of Development and Community Affairs.

1004. APPEALS TO DEVELOPMENT REVIEW BOARD.

1004.A. Deadline for Appeal.

An appeal taken with respect to the decision or act of an Administrative Officer must be filed within 15 days of the date of such decision or act.

1004.B. Eligible Appellants.

An appeal from any final order or decision of the Administrative Officer or, where provided by these regulations, the Planning Director, may be taken to the Development Review Board by any interested person as defined in Section 1003.

1004.C. Filing an Appeal.

An appeal is initiated by filing with the Administrative Officer a written notice of appeal. Such notice of appeal shall include the following:

1. name and address of the appellant,
2. a brief description of the property with respect to which the appeal is taken,
3. reference to the regulatory provisions applicable to that appeal,
4. a statement of the relief requested by the appellant and the alleged grounds why such requested relief is believed proper under the circumstances, and
5. the appropriate filing fee.

A notice of appeal shall be considered filed with the Administrative Officer and the Development Review Board when delivered to the Department of Planning and Community Development, and the date and time of filing shall be entered on the notice by the Department staff.

The Administrative Officer shall notify the Development Review Board of the appeal. If the appeal pertains to an act or decision of the Planning Director, the Administrative Officer shall provide the Planning Director with a copy of the Notice of Appeal.

1004.D. Assignment for Hearing.

1. Applications or appeals shall be assigned for hearings in the order in which they are received. All hearings shall be held within 60 days of the filing of the Notice of Application or Appeal. Public notice shall be mailed to the applicant and shall be provided in accordance with Section 206 including provisions of notice both at least 15 days before the hearing date.
2. The Board may reject an appeal or request for reconsideration without hearing and render a decision, which shall include findings of fact, within 10 days of the date of filing of the notice of appeal, if the appropriate municipal panel considers the issues raised by the appellant in the appeal have been decided in an earlier appeal or involve substantially or materially the same facts by or on behalf of that appellant. The decision shall be rendered, on notice given, as in the case of a decision under 24 V.S.A. 4464(b)(3), and shall constitute a decision of the Development Review Board for the purpose of an appeal to the Environmental Court.

1004.E. Conduct of Hearing.

1. Hearings on appeals shall be conducted according to the Development Review Board's adopted Rules of Procedure. At a minimum those rules shall provide that when an appeal is taken to the Board in accordance with this section, the Administrative Officer shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall then have the burden of persuasion.

2. Any person or body empowered by section 1003 above to take an appeal with respect to that property at issue may appear and be heard in person or be represented by an agent or attorney at the hearing.
3. Any hearing held under this section may be adjourned by the Board from time to time; provided, however, that the date and place of the adjourned hearing shall be announced at the hearing. All hearings under this section shall be open to the public and the rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in 3 V.S.A. 810.

1004.F. Decisions.

Within 45 days after the final hearing on an appeal, the Board shall act to approve or disapprove the application. The Board's decision shall include findings of fact. The Administrative Officer shall send the appellant, by certified mail, a copy of the decision. Copies of the decision also shall be mailed to every person who appeared and was heard at the hearing. A copy of the decision shall be filed with the Administrative Officer and the Clerk of the municipality as part of the public record.

If the Board fails to render an oral or written decision within the 45 day period, on the 46th day the decision shall be deemed to have been rendered in favor of the appellant.

1004.G. Conditions Imposed in the Board's Decision

Any conditions imposed as part of the Board's decision on an appeal shall be considered to be part of any permit granted as a result of that decision.

1005. STAY OF ENFORCEMENT

1005.A. Requests for Stay of Enforcement.

Any interested person filing an appeal to the Development Review Board may file a request for stay of enforcement of the regulatory provisions referred to in the notice of appeal. The request shall include a sworn statement that irreparable damage will directly result if such stay is not granted.

1005.B. Development Review Board Action.

The Development Review Board shall hold a public hearing on the request and act to approve or deny the request and notify the appellant through certified mail or direct notice within 15 days of the filing of the notice of appeal. The approval by the Development Review Board of the request may include such terms and conditions, including without limitations, a bond to be furnished by the appellant, as the Board deems appropriate.

1005.C. Public Notice.

Public notice shall be provided for the public hearing at least 15 days before the hearing through a newspaper advertisement and posting according to Section 206. The Board may give abbreviated notice where in its judgment circumstances require prompt action.

1006. VARIANCES

1006.A. Filing and Review Process.

