

On Wednesday evening, July 8, 2009, the City Council Members met in the Council Chamber.

Present: Mayor Hooper; Council Members Hooper, Sheridan, Weiss, Jarvis and Sherman; also City Manager Fraser. Council Member Golonka arrived later in the meeting.

Call to Order by the Mayor:

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

09-167. General Business and Appearances:

None.

09-168. Consideration of the Consent Agenda:

V.A.

Approval of the Minutes from the June 24<sup>th</sup>, 2009 Regular City Council Meeting.

Consideration of awarding the contract for FY 2010 Maintenance of the Public Works Building on Dog River Road to low bidder A+ Touch Custodial Service of Northfield Falls. (The City has contracted with A+ in the past, and their bid price of \$5,700 came in under budget.)

Consideration of accepting the bid submitted by Gateway Motors of White River Junction, Vermont, for two (2) latest model cab & chassis for the Public Works Department, and to authorize the City Manager to make this purchase in the amount of \$64,410.

Consideration of accepting the bid submitted by Poirier Guidelines of Athol, MA, for Line Striping and Stencil Marking on city streets, and authorize the City Manager to sign all pertinent contracts and paperwork.

Consideration of authorizing the Mayor to sign, on behalf of the City Council, a letter of support and commitment for the City of Montpelier's application for grant funding through the Community Innovations for Aging in Place Grant.

Application for a Vendor's License from David Cousins, 14 Plateau Drive, Berlin, in order to sell lunches from a vending cart in the downtown area.

Application for a Vendor's License from Penni Brink, 35 Hebert Road – Unit #3, in order to operate a hotdog cart in the downtown area.

Approval of payroll and bills:

General Fund Warrant dated June 30, 2009, in the amount of \$556,325.80, \$362,056.85, \$2,172.28 and \$235,058.63.

Payroll Warrant dated July 9, 2009, in the amount of \$136,351.62.

Consideration of becoming the Liquor Control Commission for the purpose of reviewing the following:

Ratification of the issuance of a Catering Permit issued to Vermont Hospitality Management, d/b/a New England Culinary Institute, for a Corporate Reception on Wednesday, July 8<sup>th</sup>, from 3:30 to 6:00 P.M. at the Wood Art Gallery.

Applications for Catering Permits from Vermont Hospitality Management, Inc., d/b/a New England Culinary Institute for the following events: Corporate Dinner on Monday, July 13<sup>th</sup>, from 6:00 to 9:00 P.M. at the National Life Guest House; Reception on Friday, July 17<sup>th</sup>, from 7:00 to 11:00 P.M. at the Wood Art Gallery; Reception on Saturday, July 18<sup>th</sup>, from 8:00 P.M. to 12:00 midnight at Noble Hall; Reception on Monday, July 20<sup>th</sup>, from 3:30 to 6:30 P.M. at the Wood Art Gallery; Wedding Reception on Saturday, July 25<sup>th</sup>, from 6:00 to 10:00 P.M. at Alumni Hall; and Wedding Reception on Saturday, July 25<sup>th</sup>, from 4:00 to 6:00 P.M. on the portion of Vermont College Green near the Chapel.

Application from Inndeavors, Inc., d/b/a The Inn at Montpelier, for a First Class Liquor License (Hotel) for their business at 147 Main Street.

Motion was made by Council Member Sheridan, seconded by Council Member Hooper to approve the consent agenda.

Council Member Weiss requested that the following items be removed from the consent agenda and be considered separately. The bid by Gateway Motors, vendor application from David Cousins and the vendor application from Penni Brink.

Mayor Hooper called for a vote on the motion after removing the three items requested by Council Member Weiss. The vote was 5-0, motion carried unanimously.

09-168A.

Consideration of accepting the bid submitted by Gateway Motors of White River Junction, Vermont, for two (2) latest model cab & chassis for the Public Works Department, and to authorize the City Manager to make this purchase in the amount of \$64,410.

Council Member Weiss said he would like to know how the figure of \$64,410 was determined.

City Manager Fraser replied it was based on bids.

Council Member Jarvis said she thinks it was the bid price with trade plus the warranty and upgrade.

Council Member Weiss asked what was the difference using the \$64,410 figure between Cody Chevrolet and Gateway Motors. If there is a small percentage of difference, does the Council have a policy which gives preference to somebody who is local as compared to someone who is not, considering the service and maintenance of the vehicle?

Mayor Hooper said it sounds like they need more information from the Public Works Department.

City Manager Fraser said the city doesn't have an official policy for local preference. They have on occasion gone with a slightly higher bidder if it was a local business.

Mayor Hooper said it is her understanding they make sure that all of the local businesses know about the city's bid process.

09-168B.

Application for a Vendor's License from David Cousins, 14 Plateau Drive, Berlin, in order to sell lunches from a vending cart in the downtown area.

Council Member Weiss said relating to David Cousins' application for a vending permit that it is an incomplete application because he failed to put down the policy limits. The question applies to where they are going to be operating, city owned public property, state property or private property. It makes a difference in the granting of a license.

City Clerk-Treasurer Charlotte Hoyt said it will be on the city sidewalk.

City Manager Fraser said they can actually move them as long as they leave adequate room. They don't need to be in a certain space.

Council Member Weiss said he wants to be sure they are going to be on public sidewalks as opposed to somebody's private lawn or yard.

City Clerk-Treasurer Hoyt said they were granting permission to be located on the sidewalk. If they have permission from a private owner they can locate there.

Council Member Weiss said the technicality is if they have permission from a private owner, then it is a zoning problem. Regarding his liability policy limit they tell them they need to have commercial liability insurance and he has provided that.

Motion was made by Council Member Jarvis, seconded by Council Member Sherman to grant the two vendor licenses. The vote was 5-0, motion carried unanimously.

09-169.

Continuing as the Liquor Control Commission, further consideration of the Application for an Outside Consumption Permit from Great American Enterprises, Inc., d/b/a Charlie-O's, to allow alcoholic beverages to be served within an approved seating area at 70 Main Street, V.A.

This item was tabled from the June 24<sup>th</sup> meeting because the City's Development Review Board had not handed down their decision; Council Members wanted more time to review and discuss their Findings of Fact; *therefore, a motion needs to be made to remove it from the table for discussion and action.*

A representative of the Vermont Department of Liquor Control has been invited to attend this evening's meeting.

Recommendation: Further discussion; direction to staff.

Mayor Hooper said she thought before they took additional testimony or had further conversations with the City Council that it would be useful to hear from the Liquor Control Commission employee with regard to their jurisdiction, authority and roles they play in considering this. In addition, perhaps Police Chief Facos could give the Council an overview of generally how things are working in the city of Montpelier over the past year.

Motion was made by Council Member Sheridan, seconded by Council Member Weiss to take this item off the table for consideration. The vote was 5-0, motion carried unanimously.

Martin Provost, Investigator from the Vermont Liquor Control Commission said he was going to refer to Title 7 which contains the laws pertaining to the sale of alcohol in the state of Vermont. §166 gives the City Council the authority as a local liquor control board to go into a liquor session, and without reading the next section, which is §167 regarding the duty of the local commissioners, it basically says you have the same jurisdictions imposed, same conditions and regulations and enforce the exact same laws with the same sanctions. With that being said, it historically has been a local commission that would set conditions and

regulations. If it got past the Council and to the State Liquor Control Board, if he saw something he thought was a public safety issue he would bring it to the attention of his board for their consideration. Keep in mind when you set a condition or stipulation on a license you ask why you are doing it. What they look at is the public safety issue. Is this a public safety issue that needs to be addressed? Historically, the City Manager and Police Chief have told us they had a situation and needed the state's input. Yesterday they did a walking visit of the site. He had been contacted by the Manager at Charlie-O's months ago and told them it was a doable thing and what his concerns were. He believes those issues have been addressed. The Council has the ability right now to set reasonable conditions that will protect the public, the city's interest and hopefully protect the interest of the establishment. That can be anything from hours of operation, size of the outside area, what kind of requirements you want on it for boundaries. They have a requirement that it have some sort of physical barrier and they leave it up to the municipality to decide how much of a barrier they want, whether it is 2 feet high, 6 feet high or 4 feet wide. When it comes to the State Liquor Control Commission if it doesn't pose a public safety issue they would not go and enforce anything more than what is there. If it presents to them what they perceive as a public safety issue or possibly an enforcement issue they wouldn't be able to control, then they might want to go a step further and take them before the state's commission.

Mayor Hooper asked if he could give some examples of what public safety issues are.

Mr. Provost said if they don't have adequate boundaries or barriers, there is the risk of uninvited patrons consuming alcohol on that premise and becoming a public issue of underage drinking, over serving and no way to control the coming and going. Is it in a spot where it is going to be a distraction to the traffic and cause accidents? This probably is not the case. This isn't a major corner where there are cars going by 40 mph. Is this a good fit for the type of business that is there? Certainly, we aren't infringing upon their right to do business, but is this a good fit for public safety? They don't deny a lot of licenses for outside consumption. There is one in Burlington very similar to this arrangement where it is not exactly adjacent to the property. It did get addressed and the City of Burlington is happy with the way it went, and they have been operating for a few years without an incident to his knowledge.

Police Chief Facos said the city collectively has a fair amount of activity at night with all of the licensed establishments but they don't have a "problem bar." If there was a problem they could very quickly resolve that. All of the bar management's cooperate with one another and the police which is the best he could ask for. Downtown is really getting busy. We haven't even hit with those really nice warm summer nights yet. The reason Sergeant Cochran is here is because he is the 4:00 P.M. to midnight sergeant right now. If there are any questions about the activity he can address those. The good thing is they are not getting bar fights. They are not throwing drunks out of the bars or having fights on the streets, which we used to have quite regularly years ago. A lot of that credit goes to good bar management, and he applauds that.

Police Chief Facos said the challenge he has is the departments staffing. Part of the effective management of this night life is a police presence. That is just a known strategy in policing, and it works and has been very effective. They have seen it last year specifically with their overall reduction in general disturbance complaints throughout the city. His concern is not to penalize any particular establishment, but if there are two to three officers on duty after midnight they need to focus on downtown. It is going to be a challenge. They still want to touch base randomly with what is going on in the neighborhoods. There are also businesses and other activities going on outside of the core downtown. He isn't going to ask for more police officers at this point. He spoke with Sergeant Cleveland this morning, the midnight to 8:00 A.M. sergeant, and talked to him about the upcoming meeting and to get his thoughts. As far as the bars are concerned if they were regularly over serving or had drug problems that is an easy one to fix. In any emergency they can always shut down an establishment, but generally they do what they need to during the evening hours and work very closely with the Department of Liquor Control.

Mr. Provost said if the Council sets a condition or an ordinance on any of the city's establishments they as a state cannot enforce the local ordinance or condition. It gets taken care of by the city's liquor board.

Mayor Hooper said they also need a state permit and the state sets hours.

Mr. Provost said they would defer to the city first. The state will go along with the city's conditions. The city sets them as opposed to the state. Not entirely, but they would come to the city first and ask if they wanted to enforce this. The State Liquor Control Commission didn't set up the conditions so they won't have the same views as the city does. They are not going to understand the city's isolated reasons for setting certain conditions.

Council Member Weiss asked Police Chief Facos if he had heard back from the federal COP Program. He applied for three more policemen.

Police Chief Facos said he had only applied for one more to get back to the 17. He has not heard back and in his last discussion with the Justice Department several weeks ago on that grant was them saying they will announce the awards prior to September 30<sup>th</sup>.

Council Member Hooper asked if there were any concerns they found on their site visit the Council should be concerned about.

Police Chief Facos said from what the staff at Charlie-O's have told them is that only folks who are 21 will be allowed into the outside area. They just want to make sure they don't have folks sneaking in who are underage or shouldn't be there at all. With regards to the physical area, his concern is that it is a staffing issue. They have a plan. Their license rests on that plan, and he hopes they will be successful. The only technical question would only be the actual property lines between the Shouldice access and the Jacobs' property. That is a minor technicality and it doesn't really affect his concerns.

Council Member Hooper said this is an extension of the existing license so if there was a violation in the beer garden it would affect the entire establishment.

Police Chief Facos replied that was correct.

Council Member Jarvis asked Mr. Provost if the Council would have the authority in terms of limiting hours, number of people in the area and staffing requirements.

Mr. Provost replied that was correct.

Mayor Hooper said the limit of the Council's jurisdiction as a Liquor Control Commission relates to public safety.

Mr. Provost replied no, that was their main focus. That is what his board's view is right now. It is the first and most important question they ask is whether this is a public safety issue and of course applicable law. That is how they look at it today, but ten years ago that is not how they looked at it. The common denominator they are seeing when they go before their board is they are asking what the public safety risk here is. That seems to be the priority.

Mayor Hooper asked what the statutes say in terms of the jurisdiction of the board.

Mr. Provost said it has the jurisdiction to make and regulate laws pertaining to the service of alcohol in the state of Vermont.

Council Member Jarvis said they have to be careful of case law in terms of what limits the Council's authority, not so much the statute itself.

Mr. Provost said he could tell them a quick example of what they see statewide. Although he has covered Washington County for ten years he now covers the state as a licensing investigator. He licenses from border to border. He is seeing a lot of diverse conditions come out on some licenses and quite frankly out of Burlington. They set hours, what kind of barriers, what kind of staffing requirements. To him the staffing requirement gets directly tied back into public safety. If you have 200 people and one person it is unreasonable that one employee is going to be able to watch and control 200 people. Do you need a one to one ratio? No, absolutely not. It depends certainly on the environment, the type of business it is, etc. He sees them setting things like no outside amplified music because it is disturbing to the neighbors. That one is located in Waitsfield. Out in rural Waitsfield they will not allow you to have amplified music. In some cases they limit it to a time, like no later than 9:00 P.M. Staffing requirements is huge in Burlington. With Fire Marshal regulations you can go and put fencing up all around but if it doesn't have the proper gate to get out you are in violation of fire ordinances. They look at the whole gambit of things. He believes Charlie-O's is willing to say they will work with the Council on anything reasonable.

Mayor Hooper said perhaps representatives of Charlie-O's may have additional information they want to present to the Council.

Jennifer Rollins, the Manager of Charlie-O's, and Kevin Casey, the Property Manager for Jeffrey Jacobs, appeared before the Council.

Ms. Rollins said what she first wanted to comment on is the Council's responsibility to manage the town and the guidelines that Mr. Provost was talking about and the decisions they have to make about every business that is going to serve alcohol that will appear before the Council on a case by case basis. She is wondering if in the last month they have asked what about the Black Door building a new deck and having music outside, or the Skinny Pancake that wants to set up outside consumption in front of the City Center. If they want to consider what Charlie-O's outdoor seating might mean to Montpelier and they start limiting hours and saying 11:00 o'clock or 10:00 o'clock, are they going to start doing that for every business that comes before the Council, or is Charlie-O's going to be the exception? Charlie-O's is 35 years old, and this is a different time than it was 35 years ago. What happened at Charlie-O's when she was 5 or 6 years old she isn't responsible for. What has happened at Charlie-O's in the last few years she is directly responsible for. She said when Council Member Hooper asked if the liquor license inside Charlie-O's was going to be affected by what happens outside, absolutely. Is she taking a risk? Yes. Does she want a project that is going to succeed? Absolutely. Does she think she can do it? She certainly does. All of these things have been very well thought out. If they are going to start saying to her they are going to start talking about hours of operation, it's a different game for her. She has to start asking herself is this is going to be economically viable. When does she serve? How much staff does she need to pay? How many people need to watch this area? All of the things she has thought out very well which she has presented over the last several weeks, if her record isn't going to stand she wants to address that.

Mayor Hooper said the Council does set hours for all of the businesses.

Ms. Rollins asked if the outside consumption permit at the Black Door do they have the same hours of operation outside as they do inside.

Mayor Hooper said they talked about the Skinny Pancake and had a conversation about when they could serve and not serve, which is the most recent one.

Ms. Rollins said she is talking about nighttime outside consumption. Did that come up with the Black Door?

They just built a new deck and serve outside. They are in a residential area and a stone's throw from Charlie-O's. The next question the Council needs to ask themselves is they going to do this with the next project that

comes along. Are they going to do this a year from now, two years from now? The precedent is in the Council's hands. That is where she is coming from.

Ms. Rollins said she thinks this has taken on a little bit of a life of its own. It has gotten a little bit bigger than what she had originally thought. She is the applicant here and the one asking for this. She spoke of the letters to the editor in the Times Argus.

Mayor Hooper said the Council is not responsible for anything beyond what happens in here and the question before them as a Liquor Control Commission is whether they should grant the outside consumption permit and what are the conditions that are associated with that. They need to focus on that. It is unfortunate when things do take on a life of their own.

Mayor Hooper asked Ms. Rollins to remind the Council what the specific requests are. It is for an outside consumption. What are the hours they are proposing? How are they planning to staff it and to manage it? And for how many people?

Ms. Rollins said the capacity of the lot is not what they asked for. The capacity of the lot was stated to them as 140 people; that's not what they asked for. She asked for seating for 80. It would be staffed by two people so there would be one person out there continuously. There will be a barrier 6 feet high so there couldn't be pass-throughs and people couldn't see through the fence. It would be open in the front so if the police were sitting across the street they would have a clear line of sight into the lot. There would be two doorways and two forms of egress if there was an issue. When the outdoor seating wasn't being used there would be a lockable gate. It would be locked, closed and no one could come in and set up their own little picnic. Would it be economically feasible to pay for two people to staff this at 7:00 P.M. when people are all done with their dinner and going home? Would it be economically feasible for her to pay for more staff outside when she is already paying for live entertainment, bartenders and door people inside? What could kill this is the weather. What could kill this is the summer. It's outdoor seating. In practice they have to see what would happen. She also reminded the Council that what Police Chief Facos was talking about and Investigator Provost was talking about is that a problem bar is weeded out quickly. If there are issues it's taken care of quickly. If they were a bad neighbor they would be found out quickly. It would have to resolve itself and have to stop because she certainly wouldn't jeopardize the liquor license inside for people misbehaving outside.

Council Member Jarvis asked what hours she proposed.

Ms. Rollins said the operating hours of Charlie-O's are within the entire legal operating limits of their license which is carried over the whole state of Vermont, which means they can serve until 2:00 A.M. and all liquor must be cleared by law by 2:30 A.M. She had asked at the Development Review Board for 11:00 P.M.

Mayor Hooper said on the outside consumption permit the requested hours were 11:00 A.M. to 2:00 A.M. t.

Ms. Rollins said it would be 12:00 noon to 11:00 P.M. The form is based on what their current license is. For the Development Review Board she adjusted that.

Discussion followed on the requirement for a noise variance.

Mayor Hooper said there was some confusion she may have created. There hasn't been an application for a noise variance. They were assuming one might be needed.

Mayor Hooper said the noise variance for the Positive Pie shouldn't be on the agenda, either. The Liquor Control Investigator reminded us that noise can be an item the city can consider because it relates to our jurisdiction for liquor control.

Kelly Soule said she is a resident at 4 State Street and spoke about the impact on the residents and the need for the council to consider the residents as well as the businesses.

Candy Moot, the owner of the property at 12 State Street, said she understands Kelly is a tenant of Dave Kelley's and she has just left her apartment at the end of the month because of this. She wants to respond to a couple things that Jennifer Rollins said. Regarding the Skinny Pancake and The Black Door, a big difference is they are not opposite residential properties where apartments are. That is a big difference. Plus, they serve meals and Charlie-O's serves no food. She would respectfully submit there are very significant problems with Charlie-O's clientele today. They come to her building and vomited in her building. One of Charlie-O's patrons wrote a Letter to the Editor and said she could lock her building, but then her tenants don't have a free coming and going of guests and friends at night. She is the one who pays to have the carpets cleaned from vomit. Whether it is 80 people or 140 people, the best behaved even non-drunk people sitting around and laughing and talking and having a good time is going to be incredibly noisy. She doesn't care how well behaved they are. She worries about Montpelier's perception. This has grown into having a life of its own, and she worries about a slippery slope. It's really tough to put that genie back into the bottle once you go down there. If the Council does grant a consumption permit her hope would be that they would start off really conservatively. Give it a 9:00 P.M. time and see how it goes. If everything goes well and smoothly, go with a 9:00 or 10:00 o'clock closing. On behalf of her tenants she would request they would go conservatively with the number of people and the hours. She heard Inspector Provost say that the City Council can set reasonable conditions that will protect the public, and one is hours.

Melody Ashford, a resident at 12 State Street, said what she wants to present to the Council today is a visual. She wants them to all think about their front and back yards of their homes, and she wants them to vision a 12 foot wall, a barricade, right in front of your living room, and outside your kitchen door is 20 smokers hollering loudly, a door opening up to music and closing, and opening, and closing, all night long until 2:00 A.M. She wants the Council to remember that because that is what the people in their building are looking at and listening to. She has nothing against what they want to do, but it needs to be under control. She doesn't think there needs to be 80 people. For the record, she is a felony DWI. Her first DWI was coming out of Charlie-O's.

Mayor Hooper said about 12 years ago this City Council on behalf of the City of Montpelier said how are we going to make Montpelier a more lively and inviting 18-hour sort of city. When she moved here 30 years ago the sidewalks rolled up at 5 o'clock. The city has worked very, very hard to create an atmosphere that invites us downtown and that creates opportunities that welcome people into the community. When she now tells people about Montpelier she says there are people you can hear music 5 to 7 nights a week, that there are always people on the streets and it's lively, fun and exciting. How do we make residents welcome in our community and have a lively downtown because we have residents living here? The way we have been managing these opportunities is we have a Development Review Board that looks at land use issues and says what we can and can't do. It isn't the Council's jurisdiction except for the zoning bylaws and they administer them. The Council as a Liquor Control Commission look at each one individually and set what we think are reasonable limits on it. In the future the Council may want to think about another way of managing the downtown so that all of the members of the community are taking responsibility for all of the things that are happening here. She has heard about one bar does this, or another bar does that, but in fact we asked our Police Department if there is any record of Charlie-O's specifically doing x or y and we didn't see that information. She would suggest that all of the restaurants in the community need to be getting together to think about how to manage the entire community to make sure this is working well for everybody. We started working really hard to create what in fact we have created in this community, which is a fun and interesting place to visit 18 hours a day. She is proud, and she thinks it has worked really well.

Council Member Sheridan said he is speaking as a City Counselor and he takes his role as a liquor commissioner very seriously. Even before he was on the Council he worked in the state liquor store in Montpelier and Investigator Provost tried to sting him three times. He is known as a bar fly who doesn't

drink. He goes around to all of the establishments, hang out outside and inside, and he is there to watch. He is watching for two things – how do people behave, and how the management handles their job? He has probably spent every single night since their last meeting out either in Charlie-O's or in front of it, and he is talking about hours here, probably 20 hours in all. He doesn't always go inside because it can be said if they see him in there they will be on their best behavior; sometimes he just stays outside so he can watch the people coming out. He also shared with the council how some of the bartenders in Charlie O's had handled different situations. Every single night he was in there and every single night he was outside there he never saw anything that alarmed him. He was thoroughly impressed with what he saw inside and outside. For the record, the Black Door has people living right beside it, and actually much closer than anybody in Candy Moot's building and his building next to Charlie-O's. They have windows right on the deck. He ran into his neighbor a month ago and she said she was bothered by the noise so she was thinking about getting out, and this was long before any of them knew about the Charlie-O's Beer Garden.

Council Member Sheridan said he was out there doing the research and putting in the time. He doesn't know where other people are getting their stories from, but he is actually at ground zero right in the trenches putting in his time and this is what he is seeing. It is one of the best run bars in the city and he is thoroughly impressed by it.

Council Member Weiss said he moves that as a Liquor Control Commission that the application for an outside consumption permit for the Great American Enterprises d/b/a Charlie-O's to allow alcoholic beverages to be served in an appropriate seating area at 70 Main Street be approved with a provision that the Montpelier Development Review Board's Findings of Fact be included. Council Member Sheridan seconded the motion.

Council Member Sherman said she is glad to hear that things work downtown. It seems worthy to her when she is downtown around midnight, but if it works she doesn't see why they have to expand it. We have enough bars. We have enough noise. Maybe we need more enforcement of the noise ordinance, but if we add the beer garden outside we will add more noise, and she doesn't think we need that. We aren't having families and residents show up here, but they certainly would have some views on this. If we do approve this it needs to be very limited in scope like to 20 or 25 people. That's a lot of noise if all of those conversations are going on until 11:00 P.M. She is not in favor of this. She thinks we have a vibrant downtown and we need more families and sidewalk conversation that doesn't have to generate around the bars. Opening Charlie-O's back door numerous times to take in drinks, that is really going to add to the noise. Great that Charlie-O's has live loud music inside, but we don't need to share it all over downtown. That goes for the other bars as well. There is a noise issue we need to address.

Council Member Jarvis said she assumes the DRB's findings will have a decision about barriers. She is assuming the decision probably won't have anything about staffing. She would propose an amendment to Council Member Weiss' motion regarding staffing, that the area be staffed with two people, one of whom stays in the area. She would also propose an amendment that the number of people be limited to 50 and the hours be as Jennifer suggested to the DRB of 11:00 to 11:00 P.M. with a reminder there is no variance for the noise ordinance so after 9:00 P.M. the noise ordinance will be in effect regardless whether there are people present.

Council Member Sheridan asked Council Member Jarvis why she picked 50 people.

Council Member Jarvis said there was a sketch showing ten tables and she was imagining five people per table.

Council Member Sheridan said he would just like to ask the applicants if they thought that could work.

Ms. Rollins said that isn't a number that will be economically viable at all. That would kill the proposal.

Discussion continued and Ms. Rollins said she didn't know if she could limit herself to 50 right now, but 80 would work fine. Rather than going the other way and limit her hours or limit her capacity, go for the later hours and larger capacity and see if it works. If it doesn't work, they will find out really quickly. Why don't they give her a chance to find out if she can make it work?

Mayor Hooper said the problem is having an effective mechanism that will accomplish that. She thinks the city needs to figure out what that mechanism is. She doesn't think they have it right now. She would suggest they start out somewhat smaller and figure out if she can make it work with the smaller number. If that works, grow the capacity.

Council Member Jarvis said she would like the Council to set her up for success rather than for failure. The hours are the ones she suggested. Her amendment didn't limit the hours. She asked for 11:00 to 11:00.

Mayor Hooper said she could have seating for 80 but no more than 50 people. The number of people that would be in the outside seating would be limited to 50 people. However she accommodates them is her business. There would be two people stationed there with one person there always and hours would be 11:00 to 11:00.

Ms. Rollins said she has to talk from a manager's point. If you get 50 people in one spot in Montpelier you are lucky.

Mr. Casey said in this instance you are saying they are limiting Charlie-O's business to just this number. Just 50 people; that's your cutoff. He is less comfortable with the moving up approach because he feels that will never happen. Moving down would be easier. In the bar business you control your bar, and the way you do it is start kicking people out. You start limiting people. You start actually controlling your crowd. Mr. Jacobs has owned this business for 37 years. What other business has been in town for 37 years outside of a bank or insurance company?

Council Member Weiss said this application specifically says outside consumption. It has nothing to do with what is inside. What we are talking about right now is 50 people outside and it has nothing to do with what is inside.

Mr. Casey said he is less comfortable with limiting that number to 50. The Development Review Board approved it for 80.

Council Member Jarvis said they had different concerns than the City Council has. They are not looking at responding to residents. They are concerned about monitoring. The Council has concerns about enforcement, etc.

Mr. Casey asked if they were setting a precedent of ratios. When this comes up in the future, not necessarily just Charlie-O's, are we prepared to say that as a town we are going to put these extremely strict rules on.

Council Member Jarvis said they have never really dealt with this issue before.

Ms. Rollins said they are a test case then?

Council Member Jarvis said they are.

Ms. Rollins went on to say she also understands how they don't want it to be complaint driven whether something is working or not. The frustrating thing for her this entire time is she has been willing to work with everyone she needed to and taken all suggestions and changed some of their ideas based on that. Because she has shown she wants to work with people in the town to be a good neighbor because a couple of

people say she isn't a good neighbor is going to limit her to the point that it might not happen rather than say let's give this person a chance. She has stuck out as being a problem bar manager. Come July 30<sup>th</sup> it will be ten years at that one establishment.

City Manager Fraser said the issue from the Council's perspective is that any place there is outside seating there isn't a place that large. They are talking about an open lot that used to house a whole building. At the Black Door and other places they have a deck with a couple of tables on it so they are talking about a big lot.

Ms. Rollins asked if it would be the same question if it were a restaurant.

Mayor Hooper said it is not Charlie-O's. She feels very confident in knowing her colleagues, and it's not about Charlie-O's.

Council Member Weiss reminded the Council that the discussion is not germane to the motion and amendments made.

Council Member Sheridan said he is thinking about at least 60.

Mayor Hooper asked if Martin Provost could offer the Council any guidance in terms of proper ratios.

Mr. Provost said they don't have a ratio. What they tell the licensees is that it is their responsibility to control the conduct of their patrons and to have adequate manpower to do so. If they can do it with one person and they don't have any complaints then they are meeting that requirement.

Ms. Moot said she wanted to know if the eleven o'clock meant that people could then sit out until midnight or 1:00 A.M. with their drinks.

Mayor Hooper said they will close that area at eleven o'clock.

Ms. Rollins said she testified on the record that it would be locked at 11:00 P.M. and no one could come into that area once it is locked.

Tino O'Brien, a resident of Montpelier, said if this is truly an issue of financial viability, rather than shooting numbers around the room a simple business plan could demonstrate they have done their homework and say 80 people is exactly it with so many drinks per hour. He sees the City Council working very hard to accommodate good citizens and good business downtown, but there may be a couple of missing pieces of data here.

Council Member Sheridan suggested they take out the 50 and put it in the rest of the season. We're almost to the halfway point of summer. Give them this season for a test. He will be right there watching this. He is taking this very seriously because he is putting his reputation on the line speaking up for what he has seen from these people.

Mayor Hooper said right now the motion on the floor is for 50 people, 2 staff, 11:00 to 11:00.

Council Member Sheridan said he agreed with everything Sarah said but it should go back to the 80 for one season experiment. That would give them three months. They have an appeal period they have to wait for.

Council Member Hooper seconded the amendment.

Council Member Weiss asked what the amendment was.

Council Member Hooper said the amendment is two staff with one always present, hours are 11:00 A.M. to 11:00 P.M. with a limit of 80 people with the review of license at the end of October.

Council Member Weiss said he couldn't accept that amendment.

Council Member Sheridan asked Council Member Weiss what his objection was to his amendment.

Council Member Weiss said he doesn't want to start now screening them out. A license is a license and they all come up for review next year, and he thinks that is adequate. He doesn't think it is good to limit it to one season. It's not a good business plan to spend all of that money, get the property up to date, and then only have until October for surety.

Council Member Sheridan said they will review it when their license is renewed anyway.

Council Member Weiss said the main motion on the floor is as presented with the Findings of Fact from the Development Review Board. That was seconded by Council Member Sheridan.

The vote on the original motion was 4-1, with Council Member Sherman voting against the motion.

09-170. Consideration of a request from Great American Enterprises, Inc., d/b/a Charlie-O's, for a Variance of the City's Noise Ordinance as well. V.A.

Great American Enterprises, Inc. d/b/a Charlie O's did not make this request.

09-171. Again, continuing as the Liquor Control Commission ... consideration of an application for an Outside Consumption Permit from *Positive Pie 2* to allow the serving of alcoholic beverages within a small area (for 2 tables) directly in front of their business at 22-24 State Street. V.A.

Carlos Rivetto from Positive Pie 2 said he is proposing to have four tables and ten seats in front of the restaurant. In his original proposal he proposed serving until 2:00 A.M. Inspector Provost came by yesterday and it made sense to want to stop serving sooner. His proposal would be to stop serving at 11:00 P.M., so his hours for outside consumption would be from 11:00 A.M. to 11:00 P.M. He is going to have a double rope barrier, and that was a recommendation by the visually impaired group.

Council Member Weiss said he went before the Development Review Board on Monday night.

Council Member Jarvis said they appeared for design review and not for site plan review.

Council Member Weiss asked if this application required findings of fact.

Council Member Jarvis replied no. She spoke with someone on the DRB and there is a decision coming out.

Council Member Golonka arrived at 8:35 P.M.

Mayor Hooper said she was a little concerned about how they were going to fit everybody in.

Mr. Rivetto said they are little tables. For a business like his he thinks it would be a good addition in town to have a little café appeal. It would help his business a lot because a lot of times people walk away because they don't have that option. Front seating like that encourages people to come into the restaurant, and it

looks like a restaurant. Right now it just looks like a big glass window. He wants to make it appear to be more restaurant like.

Mayor Hooper said a concern she has is that it not migrate closer to the street. With all of the sandwich boards and bicycles we park on the street our streets are getting narrower and narrower.

Motion was made by Council Member Sheridan, seconded by Council Member Jarvis to approve the application of Positive Pie 2 for an outside consumption permit. The vote was 6-0, motion carried unanimously.

09-172. Consideration of a request from *Positive Pie 2* for a Variance of the City's Noise Ordinance as well. V.A.

A variance of the City's Noise ordinance was not requested.

09-173. Second public hearing to consider an amendment to the City's Code of Ordinances, Chapter 10, Article VII, LIMITED PARKING, and TOW-AWAY ZONES, as they relate to providing a bus stop (for public transportation coaches) in front of City Hall. V.A.

Sec. 10-717. LIMITED PARKING.

*New Sub-section:*

(ii) Main Street. For the establishment of a bus stop zone for the loading and unloading of passengers, parking is restricted daily to bus use only (public transportation coaches) on the easterly side of Main Street and located in front of City Hall beginning at the intersection of Blanchard Court and extending northerly for a distance of seventy-two feet.

Sec. 10-715D. TOW-AWAY ZONES.

*New Sub-section:*

(i) Main Street - Within the bus stop zone located on the easterly side of Main Street in front of City Hall as described in Sec. 10-717, sub-section (ii).

A lengthy discussion ensued at the First Public Hearing conducted on June 24<sup>th</sup>; giving up three prime parking spaces (45-60 foot area) in front of City Hall and the fact that it takes away parking for those who want to do business with City Hall were just two of the concerns raised.

Staff was requested to find out details as to how many buses per day come into Montpelier (where they come from and where they head to); approximately how long each stop takes; would the picking up and dropping off of packages be an issue; and is ADA compliance with this proposal achievable?

Staff used the MDCA's e-mail address book, and attached a copy of the agenda, to notify affected property owners and businesses of these public hearings.

Recommendation: Conduct the second Public Hearing; approve the amendments, with or without further amendments; or direct staff to pursue other options.

Mayor Hooper said as many folks know, the Greyhound Bus Station has been on Taylor Street and that option is no longer open to Greyhound. A number of months ago they began looking for another place to locate their services. They have considered a wide variety of places. They have come down to a request to allow on-street provision of a loading for the Greyhound bus service. The city staff has said very clearly to us that in their opinion the best place to load is on Taylor Street, but some of us have been concerned about wanting to make this work so they can support the Greyhound service because we think it is very important to the community to have the city transit options so they have considered other place. The first place they considered was in front of M & M and the City Council wasn't comfortable with that. They opened up another number of opportunities and held a public hearing on a proposal to eliminate three parking spaces in front of city Hall. There were concerns about that. We were fortunate to have Greyhound bring their bus up and park it in front of City Hall and drive it around town and park it in many other places. Counselors have on their desks pictures of that happening. They noticed in this driving around in considering other places that it is possible to create a loading zone on Main Street in front of TD Banknorth, which is where the tour buses load and unload during the tourist season. That would also work for Greyhound. Someone could make a motion that be considered and we table the consideration of eliminating the parking spaces and creating a tow away zone for Greyhound in front of City Hall.

Council Member Sherman inquired about the ticket sales at Rhapsody and the importance of being close to the ticket source.

Mayor Hooper said she didn't believe this changes that in any way.

Council Member Sherman said TD Banknorth is a block away.

City Manager Fraser said it was closer than Taylor Street.

Mayor Hooper said the bus would come into town past Rhapsody, drive by City Hall, go up to the roundabout and stop in front of TD Banknorth and load there. To be clear it's not ideal. What would be ideal would be to have a dedicated bus station to accommodate this, and from a traffic standpoint none of the options we have considered would work. We know it is not convenient for users of the system, but we have tried to put something together that will work until they can create a permanent system for people.

Tom Stone from Greyhound Bus said some of the members of the Council were a little surprised when they saw the size of the bus. You see them all of the time going up and down the highway but when you bring them into town and start going around some of the streets you realize there are some constraints on making turns. He would like to have Rhapsody and the bus stop closer, but under the circumstances this will still work for them, and it is a good compromise. It serves everybody's purpose. He doesn't think anybody in town will have trouble finding the bus stop. It's active day and night and a safe place and well lit.

Mayor Hooper opened the public hearing at 8:45 P.M.

Tom McArdle, Assistant Director of Public Works, said this is a right turn lane and that is the most important point to make about this. It's not a bus stop with a pull out or a designed bus stop location that has the tapers for the approaches for entering and departing. This is a right turn lane that will be obstructed by the bus. However, it is a right turn lane that has limited access. It has a failing because the access to the right turn lane is partially obstructed by parked vehicles, so it is a very short right turn lane and it doesn't serve to the full capacity that it could. Consequently, there is some efficiency issues with Main Street south bound. However, that will stay that way for the foreseeable future because to change it would affect parking.

Because of that the use of a right turn lane has minimal impact on traffic flow and the duration of the bus stopping there is five to ten minutes. The bus physically can't make the right turn to State Street and depart Montpelier through State Street so it would continue down Main Street. That is a through movement from a right turn lane. There is a question in his mind and Police Chief Facos' mind as to how that is actually accomplished legally. Bill suggested today that would be a matter of record that it is a permitted movement for this bus stop from a right turn lane and proceeding southerly into the through lane. That is the primary failing of this location. However, they believe that is not an unsafe action, that it is a technicality that can be approved by City Council.

The second question is that with bus stops there is parking demands associated with bus stops for bring people to and picking up people from the bus stop. That site would not have any dedicated parking as does Taylor Street. That is another reason why the Traffic Committee continues to support Taylor Street as the ideal location from a bus siting stop perspective. That is probably the second failing of this particular site. However, it does not take away parking and it doesn't affect businesses. After he left the meeting this morning he neglected to contact the bank. Having an office right next to the street he has some familiarity with the tour buses that pile into the spot for about three weeks every year, which is the reason they thought that might be viable location.

Carl Etnier, a resident of East Montpelier and who is employed in Montpelier, said he depends upon the Montpelier Greyhound for some of his travels. He appreciates the Council's support for the continued Greyhound bus service in Montpelier. Sometimes when he takes Amtrak he parks there. The distance walking from the parking lot there into the station is quite a long distance, comparable to parking right next to the current station on Taylor Street and walking to TD Banknorth. It is a closer option to park in the parking garage here in Montpelier and walk to that corner. He understands from his conversations with the folks at Rhapsody that they are not taking on the package service that Greyhound formerly had, or at least not in the beginning. Having this site at the TD Banknorth building, what is that going to do for the possibility of Greyhound taking up the package service? The times he has taken the bus from Montpelier before that seemed to be a service that was often used.

Mr. Stone said they would like to resume the package service. However, it is problematic right now. They are going to see how this bus stop works, see what the timing is, and if it works out right then he can have somebody from Rhapsody meet the bus when it comes in with small packages. They do want to reserve the small package service as long as they can.

Mayor Hooper closed the public hearing.

Council Member Jarvis said the motion would be to table the issue of amending the city ordinances to allow the bus to stop on Main Street and then to grant permission to Greyhound to use the right turn lane in front of TD Banknorth on Main Street for the loading and unloading of passengers with the understanding that the movement from the right hand turn lane proceeding southerly into the through lane is a permitted movement from the Council's standpoint. She would also ask that the pending notice be made to TD Banknorth and if there is any major objection from them the Council would reconsider the issue. Council Member Sherman seconded the motion. The vote on the motion was 6-0, motion carried unanimously.

Mayor Hooper and City Manager Fraser thanked Greyhound for working with the City of Montpelier to come up with a solution to continue bus service. Mayor Hooper also thanked the Traffic Committee and all of the city departments for being fully engaged with this.

09-176. Consideration of a formal request from the respective contractors of the Roundabout Project and the Paving Project to allow additional night construction. V.A.

With significant traffic problems being experienced, the City Council held a Special City Council Meeting on Wednesday, July 1<sup>st</sup>.

The City expects to receive updated contract information that will also include the request for permission to do additional night work.

Recommendation: Discussion; opportunity for questions from the audience; direction to staff and contractors.

Mayor Hooper said she was very grateful they had the good and productive meeting they had last week. She appreciated everybody being engaged with that. She was a little disappointed after the meeting to be told that traffic is just something that happens with these sorts of projects because she thinks what they have been trying to express was that there was something extraordinary going on that had failed to be addressed because of lack of communication and good coordination. It was just on that evening that the city staff received the plan for what the work was going to be on the paving project. The City of Montpelier has been trying very, very hard to make this work and to make it work right. It has not been for lack of effort on the part of the city's staff to make this project work well. The work zones are shorter and traffic controllers have been there. They very much appreciate people working with them. The final piece to continue seeing good traffic control, short work zones and good communication is the consideration of night work. She wants to be clear on what the city's authority is if we saw gridlocks like they had seen prior to that meeting. She wants to see what the city's authority is to shut down the project. We now know what that authority is on that, and she hopes they don't have to use it.

Tom McArdle, Assistant Director of Public Works, handed out the answer he received from J.A. McDonald on the roundabout project, which is the project he can speak to regarding the night time paving request. The state AOT representatives are present and can follow him with his presentation about what has transpired with Pike. The discussion between J. A. McDonald, who is the general contractor and their subcontractor Pike has resulted in some preliminary numbers. The cost increase is about 15% overall which is \$6,000 to \$10,000 of additional costs. The cost is attributed to the premium price they pay for night work in overtime, the additional equipment necessary, lights, and traffic control. With J.A. McDonald they have an agreement with Pike as part of the roundabout project. It does not include night work presently, so this is a negotiated alteration to their contract. Should it be approved by the Council and VTrans through their local transportation facilities program it would result in a change order and the fees will be finalized. Part two of the note is the estimate of number of nights that will be needed. It is a total of 3 to 5 night time periods. They are not sure of the production they can actually achieve. That would start one night next week. Mayor Hooper mentioned the traffic conditions have been better, and he would point out that is because there is no paving currently. The primary culprit in holding up traffic is paving operations and the work zones do become extended. The work zones today are short packages and are adequately separated, so that is a big improvement. With paving operations they are primarily limited to how quickly the asphalt cools enough to allow traffic on it and when the back roller can begin working the asphalt and finish rolling. That extends the work zone. With the roundabout the very nature of roundabouts, which is one of the negatives of this type of intersection, is that construction is tremendously disrupted. It essentially shuts them down. In a signalized intersection they can maintain through traffic and divert traffic around the work area. It doesn't have the restrictive splitter islands and curbing elements that a roundabout has. The first night would be to pave the roundabout only. There is one lift of pavement on the roundabout now and two more are needed to finish the total amount of asphalt. They will be ready to do that next week, so the first night proposed would be Wednesday weather permitting. After that it would be the finish paving of the final lift in the roundabout and the top coarse for the rest of the project, remembering the roundabout project limits extend all the way back to Pioneer Street and include paving within that intersection also. That would follow some other utility work. There are manholes to adjust to final grade and some other guardrail work to be done. With the exception of one trench that needs to be dug for railroad activity, the majority of the utility work is done in the roundabout project. The lights are up. The landscaping is coming. All of the underground work is now completed. The next step is the curbing and the sidewalk. The sidewalk is being extended from Pioneer Street to the roundabout. When that is all done they

will be ready for final paving which coincides with the paving schedule of Pike on the Class 1 paving project. That will happen at the end of the month and they would need 2 to 4 night time periods for the roundabout project. He understands with the city's paving of the roundabout that will coincide with some shimming that still needs to be done on the Class 1 project on Route 2 and the East Montpelier Road and Route 302 on River Street from the roundabout out to the Wayside at the Berlin town line.

Assistant Public Works Director McArdle said the request is for approval for the night construction based on this schedule. For next Wednesday he can accomplish the notices to the residents within the roundabout. For the roundabout area the impact is primarily to residents next to Walker Motors. There is an apartment house and another cluster of apartments, but it is otherwise a relatively uninhabited area. The only complaints or concerns they received while the night work was taking place on the Class 1 projects from Pioneer Street back to the High School had to do with the staging area. That is something they have discussed with J.A. McDonald. They have use of the Grossman's lot. However, they are a tenant of that site by permission so they are not at full liberty to grant access to a sublet. In this case Pike is their subcontractor so it is within their purview to say Pike can use their site. They are also open to allowing some limited space they have available at Irving, so the idea right now is to move the staging area of Pike to one of those two spots. He also understands there may be another area that is also removed from the residential area.

John Zicconi, from the Vermont Agency of Transportation said he wanted to thank the Council for dealing with the Greyhound Bus issue and being diligent in making sure that service stays in Montpelier. They agree that is a critical link to the greater ability for Vermont to do what it needs to do. With regard to the staging area, all of the equipment has been moved from the original staging area. They have had conversations about the Grossman's lot as well as the Harvest Equipment lot across from Agway which is also not close to any residences. They are on board with trying to stage back there and believe that will help with some of the residential issues.

Mr. Zicconi said from a timing standpoint they do have more extensive paving to do than the city project does with the roundabout. He is requesting that the Council grant the state fifteen nights. He doesn't think it is going to take that long, but he would rather have a cushion where if things were to happen and rain cut nights short they will have that time. He would encourage the city to put a cushion into their own paving program for similar reasons because they can only do what they are allowed. The work they need to do is primarily the paving. Aside from the paving there is some striping and other things that need to be done. That is why they want the cushion to pick and choose spots in order to stay out of traffic as much as they can.

Council Member Jarvis said she isn't sure why the nights have to be in addition and why the night time work can't happen. She realizes it is an issue of scheduling, but why can't the Council grant a total number of nights to be used by either project.

Mr. Zicconi said the city has work to do that doesn't involve the state. Tom mentioned the roundabout itself and that doesn't involve the work the state does. They are coordinating the work to do the paving as efficiently as possible. Any overlap from their project into the city's work that can be done together they want to do, but there are times when they need to do work that doesn't involve the city.

Assistant Public Works Director McArdle said if they think of it in number of total hours to do a job they are separate projects so in 40 hours of paving work needed and theirs at 150 hours it is the total number of hours to do the work that is required, which is based on rates of production. They are looking at one paver and one fleet of trucks feeding the paver.

Mayor Hooper said it is the same contractor doing the whole job.

Assistant Public Works Director McArdle said if this does coincide you might see that paver if they are doing one lane eastbound, instead of turning around and coming back they would continue with their project. It comes down to a matter of money with the city as well. They do not have a local share in the Class 1 project but do have a local share in the roundabout. The roundabout has been a very complex project and there have been a lot of things that have added additional costs to the project. In fact, the state just approved a \$16,000 change order today so the city is using up its contingency rather rapidly. How much the city will have to pay of the additional \$6,000 to \$10,000 of taxpayer dollars is not yet known. If the Council wished they could make the approval subject to how we would handle the money if we had to pay for it all.

City Manager Fraser asked what the total project cost was.

Assistant Public Works Director McArdle said it was \$2.5 million with about \$500,000 in contingency, for a total of \$3 million.

Council Member Jarvis said if the Council considers what they might invest in terms of helping businesses in Montpelier it's not a lot of money.

Mr. Zicconi said in terms of the Class 1 project there is no local share for the city in the state's cost. They still have to meet with the Federal Highway Administration, but they are committed to making it work.

Council Member Hooper said he recognizes the schedules are rather fluid on this project, how much warning are neighbors going to receive before night time work happens? How far in advance do we try to schedule?

Assistant Public Works Director McArdle replied they are looking at the middle of next week. Notices will go out tomorrow. As soon as they have dates they think are reliable because they can't actually guarantee a specific date because of the weather, as soon as the state has a final answer on that they will send those notices out giving them the range those 15 days will occur. He said he had a significant e-mail list and they will also put letters in the mail as they did with the first project. There will be one notice for that entire package of night construction unless the Council instructs them to do something else. The State of Vermont through Pike has a public relations person, Francine Perkins, who also has a mailing list. They do a weekly notice.

Bob Suckert, the resident engineer for VTtrans, said Francine Perkins is the public relations person working for Pike for the state project. There was one property owner the first set of nights they worked who was real concerned about her sleep and Francine sent her an e-mail every day saying where they would be located. She kept the lady well informed.

Mr. Zicconi said part of their flexibility is that as they get to something that e-mails would keep people abreast of that as quickly as possible.

Mr. McArdle said the letter would direct the residents to that other source of information.

City Manager Fraser said part of the condition for approval could be that there be adequate notice to the residents.

Mayor Hooper said one of the other questions raised is the provision that if this is so disturbing to people that they have the opportunity to go to a hotel that the city has to be clear about how that works and where they go.

Mr. McArdle said that did come up as the first round of night work came up. It was a city offer.

City Manager Fraser said it is a prearranged case by case basis based on unusual need.

Council Member Weiss inquired whether they needed two motions. These are two separate projects.

City Manager Fraser said they could make one motion.

Council Member Golonka moved that the City Council authorize up to 7 nights for the roundabout project and up to 15 nights for the state project for night paving with the understanding that notice to residents will be provided. Council Member Jarvis seconded the motion. There will be a provision that there will be a variance to the noise ordinance. The vote was 6-0, motion carried unanimously.

The following was omitted from the minutes. Permission to revise the minutes to include this item.

Mayor Hooper called for a short break at 9:25 P.M. and reconvened the meeting at 9:30 P.M.  
The council return to agenda item 09-168A.

09-168A. Consideration of accepting the bid submitted by Gateway Motors of White River Junction, Vermont, for two (2) latest model cab & chassis for the Public Works Department, and to authorize the City Manager to make this purchase in the amount of \$64,410.

Motion was made by Council Member Weiss, seconded by Council Member Sheridan to approve the recommendation accepting the bid submitted by Gateway Motors of White River Junction, Vt. as written in the consent agenda. The vote was 6-0 motion carried unanimously.

09-174. Conduct a Public Hearing for the purpose of reviewing and discussing a ballot item being put before the voters at a Special City Meeting scheduled for July 14<sup>th</sup>, 2009. V.A.

The legal voters of the City of Montpelier are hereby warned to meet in the City Hall Council Chambers/Memorial Room on Tuesday, July 14<sup>th</sup>, 2009, between the hours of 7:00 A.M. and 7:00 P.M., to cast their ballot on the following item:

*ARTICLE I. Shall bonds or notes of the City of Montpelier in an Amount not to exceed Seven Hundred Six Thousand Dollars (\$706,000), contingent upon and subject to reduction from available state and federal grants-in-aid and other financial assistance, be issued for the purpose of completing sewer system improvements authorized at the 2009 Annual City Meeting, and for the purchase of a rodder/vacuum truck?*

Ballots are now available in the City Clerk's Office if legal voters would like to vote early ... or are going to be away on the 14<sup>th</sup>.

Recommendation: Conduct the Public Informational Hearing, providing an opportunity for discussion and questions from citizens regarding the July 14<sup>th</sup> Special City Meeting ballot item.

Mayor Hooper opened the public hearing at 9:32 P.M.

City Manager Fraser said these are funds that were approved in the last budget, but because of the way the city needs to structure the financing in order to be eligible for stimulus money the city needs to take on the legal debt for the entire amount and not just the city's share. The city's share was approved in the budget. It is really a technical correction in order to provide matching funds. Because it is a bond it can only be approved by voters.

Mayor Hooper said this enables the city to bring in \$645,500 in federal money.

Finance Director Gallup said the city had approved \$585,000 at the March meeting. The city is adding \$706,000 and will be receiving \$645,000 in stimulus money which is 50% loan forgiveness for the project. The city will borrow and then pay back. The approval of this question will not increase the property tax rates.

Mayor Hooper closed the public hearing.

09-177. Consideration of setting the Municipal Tax Rate.

V.A.

The recommended Municipal Tax Rate for FY '10 is \$1.4056. With Education Taxes and Sewer Charges added, the total Residential Tax Rate is \$3.6623 and the Non-Residential Tax Rate is \$3.8161.

A draft table from the City's Finance Director reads as follows:

Real Estate	\$	514,434,550
Personal Property		<u>21,716,093</u>
TOTAL	\$	536,150,643

Voter Approved Municipal Spending	\$	7,523,620
-----------------------------------	----	-----------

TAX RATES:

Residential	\$	3.6623
Non-Residential	\$	3.8161

Recommendation: Following discussion with staff, set the Municipal Tax Rate as noted above.

Finance Director Gallup said the city lodged their abstract grand list and it was up .8%, which is higher than they expected and higher than last year. When we passed the budget you believed you added 2.7 percent increase in the municipal rate, and it is actually 4.5 cents which is up 3.7 percent. It is easy to pinpoint this year; it's the library. The educational rates were right on the money from what was given out, so actually the projections are holding. It is 1.4056 dollars, which is the new municipal tax rate. That is what she is asking the Council to set along with the education taxes and sewer charges. The total tax rate will be \$3.6623, and the nonresidential tax rate will be \$3.8161. That is a 6.4 percent increase in the residential rate, but a lot of people receive money to help with that with the homestead income sensitivity. The nonresidential rate is up 5.7 percent from last year.

Mayor Hooper asked what the increase was in the residential rate.

Finance Director Gallup said the residential was 6.4 percent. Also, in response to a wish to have the Washington County tax out separately, when they set the rates it will be included but on the tax bill they will ask if the programmer can set it out.

Mayor Hooper said the motion that needs to be made is to set the municipal tax rate is the following: Move to approve the recommended municipal tax rate of \$1.4056 for the fiscal year 2010 with education taxes and sewer charges added. The total residential tax rate will be \$3.6623, and the nonresidential tax rate will be \$3.8161.

Motion was made by Council Members Sherman, seconded by Council Member Sheridan to make the motion as read by Mayor Hooper. The vote was 6-0, motion carried unanimously.

09-178. Consideration of Water and Sewer Rates.

V.A.

The Water and Sewer Committee (City Councilors Sarah Jarvis and Jim Sheridan) met with the City Manager, the Finance Director and the Director of Public Works to review the financial reports, capital needs, rate history, revenue needs for future budgets and rate increase impacts on users.

The Committee faces challenges in both the Water and Sewer Funds due to accumulated financial deficits and loss of revenue due to user conservation.

The Water and Sewer Funds reviewed a multi-year plan to bring the funds into positive financial positions. At the May meeting, the Committee confirmed the need in FY10 for a 5% increases in metered rates and a 5% increase in fixed cost (readiness-to-serve) charges. These recommended rate increases are to be effective July 1, 2009.

Recommendation: Accept Report of the Water and Sewer Rate Committee; review the amended FY '10 Water and Sewer Budgets; and adopt the FY '10 Water and Sewer Rate Resolution.

Finance Director Gallup said last month she had brought before the council for their consideration a 5% increase in rates. She had structured it mostly so that the 5% was metered rates and only 5% on fixed costs. They asked her to go back and change it so that the fixed cost was half of the money generated and the metered rates be half. That is very understandable considering our consumption goes down and has left us short for the last three years. The meter rates go up 3% and the fixed costs for water goes up 22%. The impact on a residential user with 44 gallons per year is an additional \$28 per year, or \$7 per quarter. For the sewer rates the metered rate goes up 3% to \$8.22 and the fixed rate goes up 15% to \$120 annually. This affects an average family of \$27 per year, or \$6.75 per quarter.

Motion was made by Council Member Hooper, seconded by Council Member Golonka to approve the resolution to set the water and sewer rates.

Council Member Golonka said he doesn't really like the steps. We have excess capacity. The only thing that is going to get us out of this hole is if we get a big user, and no big user in their right mind is going to come to us with our step pricing schedule. Do we have any flexibility? He sees us limiting ourselves. He knows they are trying to encourage conservation, but it is causing us to get deeper and deeper in the hole. He knows we are encouraging conservation but in reality we don't need to and probably shouldn't be.

Finance Director Gallup said there is a water and sewer rate committee and that is where we talk about this.

City Manager Fraser said the biggest user is the State of Vermont. The original question was whether we have flexibility and the answer is yes, right now there are only three tiers.

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

09-179. Presentation from District Energy Committee regarding a "District Energy Partner".

V.A.

The City Council will receive a recommendation from the District Energy Committee for a partner in the development of a combined heat and power facility, with the completion of a feasibility study as the first contracted task.

Recommendation: Receive presentation; opportunity for discussion; direction to staff and District Energy Committee.

Harold Garabedian, Garth Genge and Kamallesh Doshi said were three members of a larger group that has been looking at the proposals which have come in. Mr. Garabedian said they are a subset of a larger group that has been looking at the idea of district energy project in town for some time now. The Council has a couple of memos from Gwen Hallsmith that overview this. They have received five proposals in response to the RFP. As a committee they have set criteria to interview them and have reduced it to three proposals. They had some follow up questions with them to understand their proposals, and of those three they are prepared to make a recommendation on how to move forward on this project.

The project, by way of background, is the idea of building a biomass plant that would provide district energy. There are some choices still to be made, but the concept is centrally located energy distributed to large consumers within the central business district. One of the outstanding questions, which is something that will be looked at through their next phase, is to understand whether it is just heat energy or also be a combined heat/power plant so it would be heat energy plus electrical energy. They will let the feasibility study answer that question.

Mr. Garabedian said they looked at the three proposals. Veolia is one of them. In reviewing them, it was pretty clear to the review committee that Veolia had the best package. What they saw in Concord and NRG was they complemented each other in their strengths. They just didn't provide the same full and comprehensive service as they saw in Veolia. Veolia answered their questions clearly and in a very complete way. In Concord and NRG they could see their strengths, but their strengths weren't as complete as Veolia. The recommendation doesn't commit them to anything but the next step. What they see as the next step is scoping feasibility. Some studies on this project in the past just need to keep sharpening the calculations with all of the things that have changed over time and understanding what the scope of this project will be. Where are the risks? Who is willing to take the risks? What's the ownership structure? Those are things for the Council to be processing, but at this point it is really looking at what is the technical feasibility. Their recommendation is to go forward with Veolia and go forward with a feasibility study.

Mayor Hooper asked if we select Veolia for this phase, does that then say we will select them for the future phases.

Mr. Garabedian replied no, not at all. They are doing this in a sequential way. They think the way to do it is with them. They like their work. They offer additional services, but that is a future decision.

Mayor Hooper said Alan Weiss served on the review committee.

Council Member Weiss said it has been an excellent committee. They had Lucia Bragg, a high school student, serve on the committee as well. All of the processes have been exceedingly well done and the recommendation is valid.

Council Member Jarvis said she wonders if someone has looked into the legal barriers if the city decides to own and/or operate a plant. She knows there is case law of a municipality owning a gravel lot.

Mr. Garabedian said he didn't know the answer to that question specifically. He understands if the city is to own the power generation facility it will require a charter change. He doesn't know anything that precludes us.

Mr. Genge said since the city already operates as a public utility with water and sewer that the heat would fall under that.

Mayor Hooper said there would need to be Public Service Board approval.

Mr. Garabedian said certainly there would be Public Service Board approval.

Council Member Jarvis asked how it would work financially when we take the next step.

Mr. Garabedian said the finances is a question. The feasibility work is estimated to be at \$156,500, and that is money that currently is available through the bond that was passed. Actually, the original bond was passed several years ago, and we have redone it which allows it to cover these costs. There is also a grant from the Clean Energy Development Fund. He believes that grant is committed for other work. They need to double check with Gwen Hallsmith to see if any of that would be available for this. We have the ability to pay for it through the bond.

Mayor Hooper asked when it will begin and how long before it is done.

Mr. Garabedian said he is thinking several months, and from that they can have a better understanding of what the timeline would be. They are saying the feasibility scoping is what should be the next step and that effort is probably on the order of 3 to 6 months. A model out there would be is that the city might own and operate the distribution network where a private entity might actually own and operate a power generating station.

Council Member Sherman said at one point National Life was to be a partner.

Mr. Garabedian said at one point that was true. He thinks at this point National Life isn't going to be in this project. They are currently looking at some projects on their own in terms of supplying their own needs because they have a need now. Adding them to this really adds cost.

Council Member Sherman said she assumes the state would be a partner.

Mr. Garabedian said he wouldn't assume that. That's an old question, and an important question. It has its pros and its cons. The pro is that they are a large energy consumer. The con is that their system is old and in place and its steam which has some advantages and some technical challenges, which translates into costs. A lot of this feasibility is going to look at choices and optimizations.

Mayor Hooper asked if the Council needed to make a motion to accept this recommendation and enter into a relationship with Veolia for up to \$156,500.

Mr. Garabedian said the recommendation is that they would only engage in steps 1 and 2, which is scope and feasibility.

Council Member Golonka said if they get into step 2 and the feasibility study is indicating that it isn't working out, are we going to keep moving along with the permissions and permitting? Is there a point here where you could cut it off?

Mr. Garabedian said they see it as a sequential process, but they think it is reasonable. All of the work that has been done on this project says it should go forward. They wouldn't be doing it if it wasn't reasonable. The detailed engineering would come last.

Mayor Hooper said if they look at the packet from Veolia, on the second page are follow up questions from the city. She understands they are going to be starting with some of that work.

Council Member Golonka said he is concerned that we get \$150,000 into the project and won't have these substantial discussions.

Garth Genge said there will be coordination with the city staff so everybody will have an idea of where they stand.

Council Member Sherman moved the Council accept the report by the biomass district energy group to partner with Veolia on the scope and feasibility study in the amount up to \$156,500. The motion was seconded by Council Member Jarvis. The vote was 6-0, motion carried unanimously.

Council Member Weiss said we have a city charter and this would be an appropriate time for the Council to authorize a review by the Council with knowledgeable people to see what, if any, changes are going to have to be made to the charter. It can take up to two years to revise a charter. He would like the committee to know as early as possible whether or not there have to be charter revisions.

Mayor Hooper said she would be happy to ask for revisions to the charter to see what we need to do. Does the Council want to make any other changes to the charter at this time? It would be terrific if we could get this done and in place for the next legislation session.

09-175. Consideration of appointments to form an *Americans with Disabilities Act (ADA) Committee*. V.A.

Kim Brittenham, Community Access Specialist for the Vermont Center for Independent Living, met with staff regarding the reinstatement of an ADA Coordinator and Committee.

Staff advertised and as of the deadline, Thursday, July 2<sup>nd</sup>, had received e-mails/letters of interest from the following:

Cinci Zullo  
180 Berlin Street

Ann Wilson  
6 Cedar Street - Apt. #1

Kim Brittenham  
34 Marvin Street

Paij Wadley-Bailey, MA, M.Ed  
155 Main Street - #209

Martha Roberts  
52 Northfield Street

Recommendation: Opportunity to meet applicants; opportunity for questions possible Executive Session in accordance with Title I, Section 313, Subsection (a) for the purpose of reviewing these applications; return to regular session and make the appointments to form a 5-7 Member Americans with Disabilities Act (ADA) Committee.

Council Member Sheridan asked if there were any members of the Council who would want him to step down during this agenda item. He is currently in the process of going through disability to get Social Security and has a disability placard for his car. Consensus of the council did not feel it was necessary for him to step down.

Council Member Golonka asked what city staff was leading this committee.

City Manager Fraser said Tom McArdle is going to start but he has made clear that his expertise deals with traffic. When we did the overview we are required to do a transition plan with obtaining a coordinator, and

the goal of the committee is to assist in selecting who that person was, whether it is a city staff person or someone from another agency, and how they would then draft the plan.

Council Member Sheridan volunteered to be the Council representative on the ADA Committee.

Council Member Golonka asked if this committee was going to be assisting Tom McArdle.

City Manager Fraser said Tom will work on the traffic portion. There are building pieces and a whole list of things.

Council Member Weiss said the members should have staggered terms if this is a continuing committee so they don't all go off at once.

Mayor Hooper said there will be real policy issues. In addition to the five members who submitted a letter of interest to serve on the committee, Council Member Sheridan will serve as Chair.

Motion was made by Council Members Golonka, seconded by Council Member Hooper to appoint the five interested persons to serve on the Americans with Disabilities Act (ADA) Committee, with Council Member Sheridan to serve as Chair. The vote was 6-0, motion carried unanimously.

09-180. Bike Path Update.

Council Member Weiss moved that the Council table the bike path discussion this evening and move it up to an earlier start at the July 22<sup>nd</sup> meeting. The bike path discussion was tabled until the July 22<sup>nd</sup> meeting.

09-181. Report by City Council

Council Member Sheridan said despite the weather the Independence Day Parade was great. He didn't hear of any incidents so he thinks they had another successful event. Maybe we should talk about the fireworks a little bit because he thought they were kind of lame. They were very spaced out. Either have it shorter with more action or talk about the budget for them. We've had the same budget for about 10 years. He would rather see a 15-minute show continuously than to stretch it out over 30 minutes with long gaps. This is the "biggest day" in Montpelier of the whole year. No day brings in more people to the city than the Independence Day celebration.

Assistant City Manager Hill said the businesses in town will tell you, other than the restaurants, that the fireworks don't help them. Raising the money for the fireworks was hard this year. They even reduced the budget and still didn't make it up.

Council Member Sheridan asked if the Council could start preparation for a November meeting to recognize the Housing Task Force on their 10<sup>th</sup> anniversary. They started in November of 1999 and it would be nice if this November we could have a resolution drawn up.

09-182. Mayor's Report:

Mayor Hooper said she was up at the Vermont College of Fine Arts Master's of Writing Program graduation this afternoon. This was for the Fine Arts in Writing for fiction for adults and there were 26 who graduated. As part of the graduation ceremony they read parts of their work they had produced over the past two years, and it was extraordinary. It was very moving to hear the words that were written because of the folks who are

up there. They were in the chapel at Vermont College and the room was filled. They had a reception, which the Council approved, and the room was filled. She was just reminded of the talent and interesting things that go on up there, but also what that college attracts to this community and what it creates downtown because they come here for two weeks twice a year. There will be another graduation ceremony in two weeks for the Children's Writing Program, and it will probably be equally amazing.

Sabin's Pasture is moving along through the Act 250 process. We will probably need a conversation in August about the city's participation when they will know a little bit more about the Act 250 process and where they are.

Mayor Hooper reported that she and the City Manager are attending an award ceremony for all of the CBDG grants that will be distributed. It was held at the Recycle North Facility in Barre. The City of Montpelier received about a \$200,000 grant for the Home Share program that the city has been the lead agency on for several years ago and they have asked the city to be a lead agency again. They are expanding their scope of coverage. They have brought in Williamstown from Orange County and Morristown from Lamoille County. That was originally targeted towards older folks who live in big old homes who have some extra room. It is a very diverse group of people who choose to participate in the program and not just who their original targeted audience was. It is doing exactly what they had hoped to do and growing.

The Times Argus in their Reader's Choice Poll have chosen Hubbard Park as the best park category and the best place to walk your dog. They have invited the Council to have their picture taken at 8:00 A.M. on July 14<sup>th</sup> at the State House.

On Monday she and Gwen Hallsmith are going to a meeting in Burlington to learn more about the Special Assessment Districts and how to move that forward. She hopes they can put this on the March ballot. She talked with someone today who is familiar with both the federal and state energy legislation and he is suggesting that a really interesting opportunity may exist with municipalities to put up alternative energy systems so we could take advantage of the standard offer. Not only could we go with a district heating system, but we could put solar collectors on all of our buildings.

09-183. Report by the City Clerk-Treasurer::

City Clerk Hoyt reminded everyone about voting on Tuesday, July 14<sup>th</sup>. The ballots are available to vote early. There have been a lot of calls from people asking when the tax bills will be going out and they hope to have them out by the end of next week.

09-184. Status Reports by the City Manager:

City Manager Fraser said in reading the minutes he noticed the Council was talking about looking for some stimulus funding. The city has been awarded \$168,000 for the Vine Street Bridge so we can widen and replace it. He was contacted by Senator Sanders' Office and they have been contacted by the League of Cities and Towns so it is possible we can sneak a few more projects in.

Mayor Hooper inquired about replacing all of our street lights and replacing them with energy efficient ones.

City Manager Fraser said that they are mostly working off the list already submitted by the city.

City Manager Fraser said between July 22<sup>nd</sup> and September there is only one Council meeting. There is one bid that they are aware of that has to do with the CSO project. The bid is for some engineering and construction work. It might be helpful if we could get that done before the 19<sup>th</sup> of August.

City Manager Fraser told the Council Members they might see something in the newspaper or television about a law suit between the Conservation Law Fund and the City of Montpelier and State. Basically, the Conservation Law Fund sued to prevent the city from getting a renewed permit for the waste water treatment plant. It isn't because of anything the city did but because they believe the state had not properly applied the standards in renewing our permit. CLF prevailed in that law suit, so technically the city lost the law suit. We are still allowed to operate our waste water treatment plant. The state needs to do a proper analysis. It is up to the state as to whether they appeal this or not. The city's only concern is that it will set a higher standard at some point in the future and he hopes the state and federal governments are going to be prepared to provide some money for the upgrades we will need. The permits are renewed every five years. The city's was renewed last year. We received the renewal of the permit and then the Conservation Law Fund appealed the renewal. The issue is not the city's operation of the waste water plant. Basically the state was supposed to commission a study and they didn't. CLF said they should have done the study.

City Manager Fraser reminded the council that the Brown Bag Series starts in Pocket Park at Christ Church tomorrow. Rusty Romance would be performing.

Agenda Reports by the City Manager:

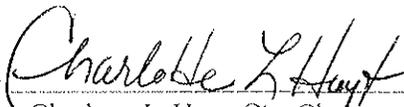
09-185. No further items as of "press time".

Adjournment:

After motion duly made and seconded by Council Members Sheridan and Hooper the council meeting adjourned at 10:40 P.M.

Transcribed by Joan Clack

Attest:

  
Charlotte L. Hoyt, City Clerk