

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

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

Call to Order by the Mayor:

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

10-101. General Business and Appearances

None.

10-102. Consideration of the Consent Agenda:

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

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

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

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

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

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

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

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

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

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

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

Liquor License and Tobacco Renewal Applications

Brook Hollow Productions, Inc 1st Class License for Cabaret
dba Savoy Theater, The
26 Main Street

Good Fortune Enterprises, Inc 1st Class License for Restaurant
dba House of Tang
114 River Street

Kismet, LLC 1st Class License for Restaurant
207 Barre Street

Kurrle Corp. Tobacco License
dba Kurrle Fuels
366 East Montpelier Road

Skinny Pancake – Montpelier, The LLC 1st Class License for Restaurant
89 Main Street

That's Life Ventures, Inc 1st Class License for Restaurant
dba That's Life Soup
41 Elm Street

ALSO ****CATERING PERMIT

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

Approval of Payroll and Bills

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

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

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

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

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

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

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

This item had been tabled at the last meeting.

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

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

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

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

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

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

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

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

Mayor Hooper said it has the potential for being substantial.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

City Manager Fraser reminded them that is private property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Elysha said she gets 8 percent.

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

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

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

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

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

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

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

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

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

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

Mayor Hooper said they are striking section 1408.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

City Manager Fraser replied no.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10-105 City Hall Arts Center Management – ordinance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Council Member Golonka suggested they check with their insurance carrier.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. In conjunction with this Council will consider:

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

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

Recommendation: Approve the policies and agreements as presented.

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

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

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

Mayor Hooper said they should be clear on that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dona Bate replied the use of the theater space.

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

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

Recommendation: Discussion, direction to staff.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Planning & Development Director Hallsmith replied they do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10-107 (A). Update on Railroad

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

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

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

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

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

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

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

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

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

Mayor Hooper said the property values would be impacted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10-108. Reports by City Council.

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

Council Member Jarvis requested the Council not receive color copies.

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

10-109. Mayor's Report

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

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

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

10-109. Report by City Clerk-Treasurer

None.

10-110. Status Reports by the City Manager

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

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

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

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

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

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

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

Adjournment:

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

Transcribed by Joan Clack

Attest: _____
Charlotte L. Hoyt, City Clerk