

CITY COUNCIL MEETING SPECIAL MEETING & PUBLIC HEARING JANUARY 20, 2011

On Thursday evening, January 20, 2011, the City Council Members met in the Council Chamber.

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

11-024. Call to Order by the Mayor:

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

11-025. General Business and Appearances:

None.

11-026. Consideration of the Consent Agenda:

a) Consideration of leasing three updated digital imaging systems:

- 1) Due to incentives that are currently being offered by digital imaging system providers, the City has the opportunity to have newer digital imaging equipment with added functions and save money when compared to our current costs.
- 2) We recommend accepting OCE's proposal for a five-year lease for three digital servicing systems at the monthly cost of \$1,150.00. This proposal includes consolidating and improving the printing, copying, scanning and faxing functions in the Finance, Planning and Clerk/Treasurer's Offices. (See memo from Finance Director dated January 14, 2011.)

b) Acting as the Liquor Control Commission, City Council Members may now consider the following permits:

- 1) Consideration for a Catering Permit from the New England Culinary Institute for a reception at the Vermont College of Fine Arts, T.W. Wood Art Gallery, on February 1, 2011 from 8:00 to 9:30 P.M.

- 2) Consideration for a Catering Permit from the New England Culinary Institute for a graduation dance for the VCFA at the Alumni Gym on February 4, 2011 from 9:00 P.M. to 1:00 A.M.
 - 3) Consideration for a Catering Permit from the New England Culinary Institute for a graduation at the T.W. Wood Art Gallery on February 5, 2011 from 7:15 to 9:00 P.M.
 - 4) Consideration for a Catering Permit from the New England Culinary Institute for a reception for the Vermont College of Fine Arts in Noble Lounge on February 7, 2011 from 5:00 to 7:00 P.M.
- c) Approval of Payroll and Bills

Mayor Hooper said they had received a note from Finance Director Gallup that she would like the Council to remove from consideration the leasing of the digital imaging system.

Motion was made by Council Member Sheridan, seconded by Council Member Sherman to approve the consent agenda after removing the item on the digital imaging system. The vote was 6-0, motion carried unanimously.

11-027. Appointments to Montpelier's Conservation Commission:

- a) On January 22nd, two 2-year terms expire; on February 1st three 3-year terms expire. Staff advertised and received the following responses:
 - 1) Seeking reappointment for 2-year term: Christopher Hilke and Erik Esselstyn
 - 2) Seeking reappointment for 3-year term: Roy Schiff, William Finnegan and Kris Hammer.
- b) Also, the three Ex-Officio Youth Members' seats are only 1-year terms; staff advertised and Conservation Commission Chair Kris Hammer notified the students currently serving. To date, only one student, Caitlin Paterson, has responded and would like to be reappointed.
- c) Recommendation: Appointments, including the Ex-Officio Youth Member.

Motion was made by Council Member Sherman, seconded by Council Member Weiss to move the reappointments, including the Ex-Officio Youth Member. The vote was 6-0, motion carried unanimously.

11-028 Continued Discussion on Taser Policy

- a) This is a continuation of the discussion held at the Council's January 12th meeting.
- b) Police Chief Facos will be in attendance to provide any further information and answer additional questions that Council Members and concerned citizens may have.

Mayor Hooper said last Wednesday was a very snowy night and there was a concern some folks weren't able to attend due to the bad weather. There were also a number of questions.

Police Chief Facos said he is going to run through some quick responses to questions that the Council has asked. He asked for tasers in 2007 and again with this current budget. What has changed? Why did he reintroduce such a controversial issue here in Montpelier?

Since he presented last he did find out new information. The Vermont State Police do in fact have the tasers and they are going to be rolling them out from lieutenant on down. They are trained and instructed right now at the Police Academy and it is anticipated they may be on line in March or April of this year. When he spoke last week they were temporarily on hold pending the new commissioner's review.

The policy he presented, which goes to Councilor Golonka's question about public input on policy development is the policy he is recommending if we choose to go with tasers here in Montpelier. That policy is based on law with wording from the 2nd Circuit, the 11th Circuit and Best Practices. That is why the wording is very specific.

Councilor Jarvis asked for clarification. They talked about active resistance as well as active aggression. What is the difference? Active and passive resistance have been defined by the federal appellate courts. Active aggression is not legally defined.

He did consult with a lawyer who is the primary author of the policies they will be potentially adopting. There are some jurisdictions and he gave him one that

just had the active aggression level. What that basically means is when you are being assaulted. One of the benefits and plusses to wanting the taser as a fourth option is to hopefully bring something to deescalate a situation if need be by force if other methods are unsuccessful or inappropriate they will have that option available to them. That is why their policy has the active/passive threshold which goes back to the cornerstone of their policy which is a federal U.S. Supreme Court case on Gram v. Connor.

This is different up in Canada. If you look at the Brightwood Study, which was a commission done to look at taser use in Canada, they do have a different threshold, but even in that study they do say that the taser does have a place. They also cite good training, mental health and substance abuse; that training is critical if you are going to have these weapons in your police departments. This is something they have demonstrated they do have in Montpelier.

They aren't talking about a force continuum; they aren't talking about a lateral force. These are force options so they do the best they can to deescalate a situation and bring it hopefully under a safe resolution and conclusion. Active resistance is also defined in that policy.

Council Member Jarvis said he has defined aggression. She isn't sure he has answered the question about active resistance because her reading of it includes walking away.

Gram v. Connor is a three-prong Supreme Court decision and the three elements in that case that guide our current use of force across the country is what is the seriousness of the crime, what is the level of threat to the officer and individual, and what is the risk of flight? As the officer has to make those decisions it is not a bright line rule. For example, if somebody went into Rite-Aid and stole a can of Diet Coke and then ran from the officers. That would not be an appropriate use of that level of force to prevent flight. Let's say a juvenile is molested violently in a library and they get a call and as the officers are responding to that violent crime the librarian or complainant points out it is the person running that is a different level of force they would use to prevent that flight because of the potential further risk. It is a balance of those three aspects that are spelled on in Gram v. Connor.

In referring to their proposed policy active resistance is defined where a subject actively resists when you take affirmative action to defeat an officer's ability to take him into custody. That could be when you go hands on with them and they violently pull away from you. They do not present themselves and they are not complying with you or you can't get handcuffs on them without using additional force. It could be a stunning strike with a knee, an impact from their hands to

get that compliance, or by policy could also in a stun mode if they had a taser. It is responding to whatever level of resistance when they are trying to take somebody into custody when they are making a definite movement or action to prevent that from occurring.

Council Member Jarvis said the three pronged test he mentions is not spelled out in the policy and that would be her concern. She believes that is the issue in Barre. People keep saying they reviewed this guy's actions and they decided it fit within the policy because the definition is so vague. You have active resistance where there is a felony crime or have these things really spelled out.

Police Chief Facos said when you take somebody into custody and they are resisting you physically and preventing you from taking them into custody, paraphrasing from Gram v. Connor was a tense, rapidly evolving dynamic situation. He can't even begin to count how many times he has personally been in a situation where he has tried to take somebody into custody and it goes south very quickly. One of the main reasons to have a device that can help immobilize the situation rapidly when it starts escalating is that you don't have to worry about the foot chase or throwing punches back and forth.

Mayor Hooper said she thinks they have identified an area in the policy that needs some clarity.

Police Chief Facos said they do train currently in their use of force training on Gram v. Connor specifically.

Mayor Hooper said she thinks there is going to be a lot of conversation about what the policy says and they need to be flagging where there needs to be clarity in the policy and not try to rewrite the policy right now.

Police Chief Facos said Councilor Weiss asked about what was the real cost. He put in the budget that the cost for the actual acquisition of 14 units would be around \$11,400. There will also be training costs, and that includes purchasing training cartridges for deployment. The cost of those cartridges is roughly \$19 to \$20 per cartridge. He would envision at least two of those cartridges per officer for training session. They might be able to get tuition for a course which would be another \$350.00. They might be able to find free training to get a certified taser instructor. He would advocate having an instructor in-house even though other departments with instructors have offered that if the decision is that we have the tasers they would provide the training for us. They found it more effective for their training environment here in Montpelier. It is nice having everything under one umbrella so they definitely want their own trainers on site. To some extent there will be overtime costs as is with any of their training,

whether it is a legislative mandated 8-hour training for domestic violence. They estimate that would be around \$3,000.00.

According to the manufacturer these units have very little to no maintenance within a 5-year period. They also utilize the same battery that they use in auto weapons, and according to Sergeant Cochran have a life of about 195 fires or approximately 4 years. Every time you start your shift there is a test fire that is done to make sure the device is operating correctly. The units would be downloaded once a month so they could see the data to make sure that every device, all 14 units, could tell us when they were test start or deployed how long was the deployments time dated and stamped and they can make sure that is consistent with use of force incidents. It is a unique accountability feature that no other weapon system can currently do.

The Vermont ACLU was very clear that they feel the taser is at the lethal force level. The taser is designed and by practice and statistics is a less lethal weapon system. Deadly force is something that has substantial risks of causing serious bodily injury, death, dismemberment or organ damage. This device does not have that track record. He is going back to the Bozeman Study that did qualify that because at one point he did some contract work with Taser International. However, it is the definitive medical study on taser, and that is the one that 1,201 subjects with an injury rate of less than .75 percent. That was mostly based on secondary injury.

City Manager Fraser asked Chief Facos to repeat that definition and say where it came from.

Police Chief Facos said it is the wording from the 11th Circuit about the deadly force that says substantial likelihood that it is going to cause death and/or serious bodily injury. That is the definition of lethal force.

Police Chief Facos said he wanted to touch briefly on force options. On OC Spray, which is basically pepper spray, and they have it in two forms, both in the aerosol spray that is on all of their duty belts as well as the pepper ball launchers. It looks like a paint ball and it has a powder version of the irritant. They have had a couple of deployments of OC Spray and one deployment late last year with a pepper ball launcher which was their first and only deployment where they actually engaged a subject with a pepper ball launcher. OC also has a lot of risk. This debate that is happening with the taser also occurred two years ago when they went from tear gas to the pepper spray. When he first started in Montpelier Police Department and they had the tear gas in their belts instead of the pepper spray product. Some people can be allergic to that and have very serious reactions to tear gas. One officer we had actually ended up with second degree

burns. Especially when people have been fighting for awhile and they are getting exhausted they might be in a mentally altered state, a lot of times those people start to become hypoxic. He also spoke of an incident at a hospital with a combative subject and the inability to use OC spray in that environment.

Why do we need that here in Montpelier? What happens here? Last year they had 7 officers assaulted in the line of the duty and the year before it was seven. Things do happen here and our officers do a wonderful job in using whatever resources they do have as safely as they can to try to bring many of these incidents to a safe resolution.

He is going to run down some quick instances in the last two years here in Montpelier. A couple of years ago there was a restaurant called The Black Door. It was a medical call only. The subject needed medical assistance. Montpelier ambulance personnel responded. While there the subject became belligerent and combative and they called for the Police to assist them with that. The first officer that arrived on scene tried to assess the situation because additional backup was also arriving, was immediately assaulted by this individual. They were on the third floor of The Black Door in the office in very closed quarters. That officer ended up in a very rapid fist fight. His testicles were grabbed with full force as described in the affidavit. During all of that he was trying to kick one of the firefighters and one of the firefighters ended up with an injured hand. The sergeant arrived on the scene and another officer, and even when they handcuffed the individual he was still combative.

In another incident at The Three Penny Taproom their officer arrived because an individual had just put his head through the glass door. The officer rolls up to render assistance. Again, the officer is immediately attacked and didn't have a chance to grab any of the tools off his belt, ends up in a fist fight, gets pinned up against the car. They are throwing punches. Luckily these officers are very well skilled, but you can only go so far and anybody can have a bad day, and that bad day can have extreme consequences. Just because somebody has a mental disorder or some substance abuse problem at that time, or criminal intent to hurt, that is why it is called response to resistance. It is going to hurt just the same for the police and they need to respond appropriately to that.

These incidents are very frightening and challenging for the officer as well as for the person who watches this. That is why again he is very proud of the work done by the Act 80 Group and personally he thinks that should be mandatory training for law enforcement.

Police Chief Facos spoke about other incidents that had taken place on Wilder Street and Cummings Street.

Last week after hearing everyone speak he heard a lot of talk about the creep factor that they would use these things more and more, and yet that is not the evidentiary trend across the country. As a matter of fact, the Burlington Police Department has been very clear about how those cases are actually decreasing.

The use of force, for the most part, the 4th Amendment rules. This is the law that they are governed by. As far as the accountability it is in the current policy as well as the proposed policy how they investigate use of force, how they document use of force and how they review the use of force to make sure their officers are in compliance. Also, it identifies training needs that they need to address as well as the accountability. If something is really out of policy it is a crime potentially, and that is governed by Title 13 – Criminal Law

Today there were two other police officers killed in the line of duty down in Miami. So far that makes 10 police officers year to date killed. It doesn't count a sergeant from the Toronto Metropolitan Police Services that was murdered by an emotionally disturbed person when he saw a snow plow and pinned the sergeant against his cruiser killing him. Tim Derry, who is the Deputy Chief of Toronto Metro, is somebody he knows. He is a fellow colleague from the FBI National Academy. They spoke about a lot of these issues when he was here in 2009. There are roughly 900,000 police officers in this country. Statistics show in the last 10 years that a police officer is killed in the line of duty in approximately every 53 hours. Of those 900,000 police officers roughly 58,000 of those are assaulted every year. Of the 58,000 approximately 16,000 of those assault do result in injury.

Vermont is still the safest state in the country for police officers and he is going to do the best he can to keep Montpelier as safe as possible.

Mayor Hooper pointed out the rules for the hearing on tasers this evening. She would ask that everyone listen thoughtfully and courteously to all of the testimony we hear and not express a point of view.

Zachary Hughes, a resident from Prospect Street, said the jury is still out in his head about taser use but what the jury is back on is last night he watched e-mails coming in showing U-Tube videos but he wasn't laughing at the tasers. He was laughing at the fact that almost every tazed event on the U-Tube video showed the person quite disobedient to a point where the officer had no choice. How many of you have called the Police Department and how many would be lost without the police here? That is what we are talking about. He has heard people

say that tasers are not good in anyone's hands, but he will ask this question as well – would you prefer to be shot with a gun and possibly killed or would you prefer tasing? Neither is an answer because the police officer does not have that option. If they had determined it is necessary, it is necessary. They are certified. If folks want to ask questions about why they are being asked to stop, that is what the courts are for. If the cops tell you to stop, you stop! How many people does it take to do this? He was told to stop once, and he stopped, and that wasn't even for use of force. He did it out of respect. On the U-Tube videos he sees people asking questions that are fightable in a courtroom. He asks people to consider the alternative of gun shot. He would also ask the Police Department to take the following concerns into play. The mental health population sometimes does not have the capacity to obey so there has to be a way. Montpelier Police has a reputation for doing what they can. It has been termed as patience but he is terming it as what should be done. If you can talk a subject down, that's great, but as Chief Facos said anything goes. How many of the audience are certified as a police officer? The use of tasers with children also should be closely checked. Thank you.

Thomas Weiss, a resident of Liberty Street, said it is his recollection is that when tasers were first introduced they were introduced as an alternative to the use of the firearm and were introduced not to be in situations where a firearm was not going to be used. If the city decides to acquire tasers and as they develop the policy they should keep that in mind.

Roger Ormiston a resident of the Lane Shops on Mechanic Street said he came to Vermont because it was much more peaceful than where he was in New York. Years ago he was a policeman and they were trained. They made mistakes but he learned quickly to work as a team, and sometimes they had to back off until they could reconsider the situation. He does believe in teamwork and rules. They had no tasers. There were situations when they would tell their sergeant they didn't want to do this but they said we were trained and that was our job. They had to apprehend people under many circumstances. Also what came in very handy for us was a police dog and they also learned how to separate people, even on a third floor. He is against tasers and the fact that the image of tasers themselves in this city is negative.

Vicki Lane of Berlin Street said her jury is still out on the tazer use. She firmly believes the man in Bennington or Brattleboro would still be alive if we had tasers. She thinks the city should try them.

Corinna Jordan, a resident of Barre, said she is living at Another Way this evening. Her partner and she have had domestic problems in Montpelier. She apologized to Chief Facos because he is one of the policemen who have come

over to mediate. Relationships aren't easy for her and conflict isn't easy for her to deal with. There have been times when she has gotten really angry. She isn't a particularly violent person and isn't violent in public. She has a lot of empathy with people who are feeling imperiled by situations they are in. She went through a difficult time when she was 19 in Montpelier where she was held by the police in protective custody and was sent to the State Hospital and had to undergo an EE which was extremely frightening because the State Hospital didn't have a good reputation in 1995. Her experience in recent years has been that whenever she has asked for help the police have been kind. She hopes she never gets tased. Maybe tasers could be an alternative to guns. She doesn't believe this is something that police should use to prevent on the job injuries.

Donna Youngblood said she owes the police a great debt. She said she would like to actually experience a taser. Secondly, she would like to see a committee of people from all different professions to work with the police. These are very difficult times. The job of being a police officer is rough; it is a tough job. Our behavior right now isn't optimum because of the times. She would like to include a unique person, Nicholas Hecht, who often helps out in difficult situations. Sometimes a person can interrupt a sequence of events to prevent a difficult situation. Steven Morgan who runs Another Way would be good. Becca Clark and the Trinity Methodist Church starting in February is going to open their doors for people who don't have a place to go starting at nine o'clock going to four or five to be in a warm place in case you don't have any place to be, which is the case for a lot of people. She won't make a deliberate evaluation of tasers until she is tased. She thinks they need to help each other right now. She is a little afraid for people with pacemakers because this could kill them in certain circumstances. We do want to support the police. They are in a tough position.

Laura Ziegler from Plainfield said she has been involved with a committee. In response to the City Manager's statement that a clear policy for use of force, including tasers, has been prepared by the Chief using a model policy drafted in conjunction with the Vermont League of Cities and Towns and the Commission for Law Enforcement agencies, the draft response to a resistance policy put forward does not appear to have been drafted locally. It is copyrighted to the Legal and Liability Institute and the section on electronic control devices was taken almost word for word from the Legal and Liability Management Institute's policy on electronic control devices. While it is reasonable for the City of Montpelier to adopt policies that enable effective law enforcement and protect the city from liability, these are not the only public policy interests at stake. Setting the bar at the lowest point the law allows may be optimal for manage and liability but does it reflect the correct values of Montpelier residents? Were the interests of those residents effectively represented in the development of the

draft? She asks that partly from her experience with the Act 80 Group when you have a collective process that includes different perspectives and they have a very different product. She did ask Chief Facos if any advocates had been involved in the development and her understanding is they had not. How clear is the draft policy? It prohibits using tasers on passive resisters. It says electronic control device development shall not be considered for use on passive resister subjects. Active resistance or active aggression shall be required. The entire definition of “active resistance” – a subject actively resists when they take affirmative action that to negate an officer’s ability to take them into custody. That doesn’t address people who are bystanders who can also get tasered. There is no definition of active aggression nor is there any definition of passive resistance. Last November the Second Circuit issued a decision in *Crowell v. Kirkpatrick* which characterized the immobile Brattleboro protestors “actively resisting their arrest.” Far from distinguishing Montpelier from Brattleboro the VLCT draft policy could be read to endorse taser deployment in such situations. In the section on electronic control devices the Legal and Liability Management Institute on small policy language was subsequently modified in two places by adding language allowing tasers to be used on a handcuffed subject who poses a threat to an officer through physical conduct. In the original language it limited who are actively resistant and control cannot be otherwise accomplished, which effectively makes it a last resort, by omitting language including subjects who are very frail among those who would be more dramatically impacted by taser, and then by admitting the following language. “Additionally, officers shall consider the type of area where tasers can be deployed, i.e., railroad tracks, grass, etc. Some agencies have been criticized as well as sued for use on pregnant women, the very young and the elderly and where the method has been used photographs are extremely important due to the increased potential for this method to cause scarring. Her feeling is that this is a somewhat sanitized version only because language that is graphically presented as potential risky or scarring has been taken out. Otherwise it is unchanged from what came out of this national organization. It wasn’t developed on the ground in Montpelier or in Vermont.

She has some material she acquired from the Vermont State Police through a public records request after two months or so of stonewalling that made it clear that four out of the six incidents that a taser was deployed on a mental health subject that one of those incidents was fatal. Both a taser and a gun was deployed and the person died. That was Joseph Fortunati. It doesn’t necessarily save anyone’s life and sometimes it can cause death.

She would agree with the California Court which made it clear that there is a continuum of less lethal, that there is not a monolith and maybe we should tailor those folks that this is so expedient and safe but rather that it isn’t as dangerous

as a gun. It may not even be as dangerous as being hit on the head with a baton but it still poses some significant risks.

Maybe they aren't substantial but are significant. Also, the issue of excruciating pain and what that says about the role of law enforcement, especially toward people who are more disruptive than dangerous. She has material she wants to make available to the Council that she received from the State Police. She would hope they can rely on substance, and objective substance, rather than spin.

Diane Derby, a resident at 23 College Street, said she thinks they all want to trust local officials to deal with this. She would suggest that should the Council decide it wants to adopt a taser policy it might appoint a group of citizens to work with the Chief and maybe file reports every time a taser is used and maybe have a review committee at some point. Hopefully, if they are adopted they won't have to be used at all.

Mayor Hooper said she would like to thank everybody who came this evening as well as last week. Clearly, this is an issue that the community feels passionately about. She particularly would like to thank the City Manager and Police Chief Facos in trying to bring us information. There is a lot we don't know about our community when we are just going about our daily business and there is a lot more we are going to need to learn about how devices work and when these devices are appropriately used and how they should be used. Last week she had some suggestions and she repeated those in an e-mail to the Chief and Manager.

Clearly, we need to have solid robust community engagement. What we have had right now is a statement of positions and thoughts and opinions, but we need to have a good conversation in the community. She feels that way and finds it interesting that both the Vermont Attorney General and the Maryland Attorney General say that is one of the tests we should have. There should be a good robust community conversation about why are devices like this are necessary and when, where and how. We haven't had that. We need to have that and it needs to involve issues around training, policy and oversight, and it needs to be very public.

Council Member Jarvis was raising questions about assault and how that is understood. That needs to be abundantly evidence in the policy so that needs to be clarified. She is sure there are many other issues that other members will see and look at that need to be clarified.

Mayor Hooper said she would like to see standards for reporting and they have heard some suggestions for how that would be done. That should be in the policy. There should be a timeframe for recertification around training in order to make sure we have folks up to speed as much as possible. That should be in

the policy. There should be standards for reporting requirements and she would include that when a taser is displayed. Generally, there should be general independent oversight and reporting requirements.

She doesn't know what that all looks like and they aren't going to write a policy this evening that does that. She comes back to the notion of having a community group that would help us through this sort of process. That would be her recommendation to the City Council for how to proceed. She believes there are instances where it would be appropriate to use tasers, and if we believe in our community that those instances happen then our police officers should have those tools. Let's get them. Let's have that sort of conversation so the appropriate tools are available to the appropriate people at the appropriate time, and she doesn't believe they are there yet. She would also say it should be separated from the budget.

Council Member Weiss said his pleasure is to support the position that the Mayor is stating. His position is that before any committee is formed, and he thinks we need one, that the so-called objectives of that committee be established and approved by the Council, and that the membership on this open group be structured in such a way as to be representative of all of the clientele within the city. He would move that as a motion.

Council Member Sherman seconded the motion.

Council Member Golonka said the one thing that wasn't included in the motion is what happens if it is implemented. If we do go down the road and implement a taser policy and get tasers you talk about oversight. Did you talk about penalties? Are we formalizing the process? He would like that to be considered as well. There are so many questions in his mind about it he isn't ready to keep it in the budget at this point. He would support having a committee and maybe report back to the Council in the summer.

Council Member Hooper said he thinks a committee is necessary if this is going to happen. He is curious as to whether the Chief had any thoughts he would like to add in before the Council moves forward with voting on creating a committee to help with the policy.

Police Chief Facos said it was his job as Chief of Police to look at how he runs the department and provide public safety. He made a recommendation based on the information he had. Certainly, it is the Council's decision to decide what they want to do, how they want to proceed. A lot of times when they have groups and different opinions they can resolve a lot of things. This is an important issue, and he does recognize that. He also made it very clear to the City Manager

that although this was technically the appropriate time to raise this issue he was also deeply concerned because of a difficult budget process and was respectful of that. A lot of things that were just mentioned briefly are in the policy, such as the recertification. Just like any of our weapons that are currently in force are included. There is recertification every two years, and that is in the policy anyway. We'll make it work.

Mayor Hooper said one of the things she is grateful that was brought out much more strongly this evening is the conversation around our obligation as good leaders within our community to the personnel who work for use. She doesn't think there was really a clear discussion the last time they met around the threats that the folks who serve this community face on a daily basis and they are willing to go out and serve this community in that way.

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

11-029. Conduct Second Public Hearing on Proposed FY'12 Municipal Budget

- a) The City Manager presented a recommended budget on December 8, 2010.
- b) The Council conducted "budget workshops" as part of their meetings held on December 8th, December 15th, and December 22, 2010; and January 5, 2011.
- c) The First Public Hearing was held on January 12, 2011.
- d) The proposed budget requires a two cent increase in the municipal tax rate (one cent for Capital Improvements and one cent for Equipment Purchases).
- e) Recommendation: Conduct Second Public Hearing; provide direction to staff as necessary.

Mayor Hooper thanked the Superintendent of Schools Mark Mason and Cindy Rossi, School Business Manager for being present.

Mark Mason, Superintendent of Schools, said he wanted to go through some highlights about both the financial aspects of their budget as well as the problematic aspects of their budget. They are present to answer any questions the Council may have. He wanted to call their attention to the last one under programs which is that the Montpelier Public Schools will maintain high quality programs to sustain and continue in their statewide prominence. The proposed

General Fund budget for FY'11 is \$14,931,575. This is an increase of \$216,000 or 1.47 percent increase over the FY'11 current fiscal budget of \$14,715,484. The proposed General Fund budget is \$46,086,775, representing a decrease of \$395,000 which is a result primarily due to our funds which came from Washington to sunset on June 11 of this year. K-12 enrollment for Fiscal Year 2012 is projected to be relatively flat, which he thinks is good news for all of us in this industry. Total salaries for the district are down 2.66 percent.

With regards to programming, they will enhance the mathematics programming at the elementary school, increase professional development for both credentialed and non-credentialed staff. They are going to integrate language arts and social studies to improve literacy instruction at the Middle School. They have, unfortunately, had to reduce credentialed staff by 3.8 FTE and they have reduced 3.3 non-credentialed staff district wide. He said he would affirm to the Council that this budget will allow them to maintain serious and competitive programming in this region.

Today they learned through the U.S. News & World Report as well as Newsweek has identified our high school as one of the top achieving high schools in the country once again.

Council Member Weiss asked Superintendent Mason if the state had made a decision yet as to what it is going to do with the \$19 million that came through the federal government that is supposed to go to the schools.

Superintendent Mason said in truth they have not. However, the recommendation seemed to be coming out that they will turn that money over to the municipalities and Montpelier is due to receive about \$200,000. It might be wise to take that money, where they do have a budget in place providing it is approved, because they are anticipating a very lean year to put that into a savings account and use that funding for next year.

Council Member Golonka said last week they had brought up an issue last fall about Article 8 which talks about the unaudited fund balance that is carried over year to year in the school. It is the only item on our ballot that doesn't have a dollar amount. Could they give some detail in terms of what that amount is? What is it expected to be? What has it been in the past couple of years? Also what are other towns doing? It was stated that it is more common to see the proposition that it not exceed a certain amount so it would give a little more clarity to the voters. What amount is that?

Cindy Rossi said the audited fund balance for FY'10 was around \$400,000. They are putting \$267,000 towards the FY'12 budget so the difference is about

\$135,000. City Attorney Giuliani wrote the language for the Article. The reason they have that Article is because of Act 68. They have to get voter approval for any fund balance to be reserved. Otherwise it all goes towards the next budget you are working on. The FY'10 audited fund balance would go towards FY'12. He wrote that language for them as well as Washington Central. They don't know the amount of next year's. They are voting through June 30, 2011 so they don't know the amount to be reserved. It gives the Board a way to put the amount towards the budget to reduce taxes or to reserve it for expenditures.

Council Member Golonka asked about any reserved fund left from the Recreation Department. That is totally separate. How do they handle their reserve funds? Does that roll over? That isn't covered by any Article. He said that would automatically come back to the city. How does that work?

School Business Manager Rossi said the Recreation Department doesn't fall under Act 68 so they don't have to have a vote, just like the city doesn't for their fund balance and you manage that as the Council.

Council Member Golonka said he is talking about them being in compliance with the Charter in regards to how they handle the money. What should they be voting on or putting on the ballot to authorize that in order to comply with the City Charter?

Superintendent Mason said a point for clarification is that the School Board has voted those Articles and he wonders if that would disrupt that program.

School Business Manager Rossi said the estimated tax rate for FY'11 the educational residential tax, which is the CLA, was \$1.37; next year it is estimated to be \$1.297 so it is a decrease of about 8 cents. The Common Level of Appraisal is going up to 98.2 percent which definitely helps in our Act 68 tax calculations. That is the result of the reappraisal.

Council Member Sherman said in support of clarity and not confusing the voters she thinks introducing this new information about a reserve, which has been there for years and years and has not been abused, to suddenly bring that up in a press release just before budget time does not help voters and it does not add clarity. She doesn't think the Council should do that to the school budget. She doesn't think the city needs to talk about the school's reserve.

Council Member Golonka said he thinks they should. The Charter does say that the City Council holds all reserve balances in the city.

Mayor Hooper said that both the City Manager and the Superintendent in our Annual Report comment on the budget. There will be that explanation in the Annual Report.

At this time Mayor Hooper called for a short break.

The meeting reconvened at 9:00 P.M.

City Manager Fraser did a visual presentation for the Council and members of the viewing public. A printed copy will be attached to the permanent minutes.

Mayor Hooper reminded folks the Council is conducting a public hearing on the proposed budget and inviting comments from the public.

Zachary Hughes, a resident at 3 Prospect Street, said he commended the Council for coming up with the budget and he hopes for the best.

Terry Sudol, a resident at 58 Liberty Street, said what prompted her to attend was last week she saw an article in the Times Argus about median family income declines. It says for the second consecutive year it has declined setting family income back to its 2001 level. She works for the State of Vermont and as a state employee they had their pay cut in July by 3%. Because of the reappraisal she pays over \$200 more a quarter in property taxes and that is really difficult to swallow when you have taken a 3% cut in pay. She would hate to ask anyone else to take a pay cut. Even though she is really happy to have a job with good benefits it is still a struggle when you receive a pay cut. She feels that anyone who is now being funded by taxpayers should be sensitive to this and should not be getting pay increases at this point in time. It is hard for her to support any budget that does include pay increases for employees. It is hard because it doesn't feel fair to her.

Vicki Lane, a resident from Berlin Street, she said she feels similar to what Terry Sudol just said. She doesn't know where the Council stands on the 1 percent increase and the increase in the Councils' stipends. She wants to remind them that anybody that is dependent on Social Security in any form for their income the federal government has determined for two years in a row that the cost of living has not increased. She wants to remind those people who are considering giving cost of living increases to certain employees that the federal government has already determined that there has been no cost of living increase. Whether she agrees with that or not is beside the point. She is one of those people you saw who is a recipient of a prebate because she doesn't have much income but she did see her taxes increase. She saw even though there was no cost of living increase determined by the federal government she has seen her benefits go

down because our prescription coverage goes up. There are a lot of people out there that aren't seeing any increase in their income for the second year in a row but have seen increases in their expenses regardless of what the federal government feels is cost of living or not.

Diane Derby, a resident of 22 College Street, said she has heard from a lot of neighbors and a lot of people in town with concerns that after the reappraisal was done that their values went up and like their values went up their taxes went up. In addition to their taxes going up there is a real concern about young people moving in and the inability of young people to buy homes because of not only the price of the home but sustaining the tax rate. The City Manager showed the tax rate going up incrementally in what looks to be small numbers but if you take all of those small numbers over time and many of us have seen their bills go up, and some say they have doubled. It is an impressive presentation at face value and she applauds the Council. They work very hard. She doesn't deny they are due the stipend increase they are asking for; it is a very small number. But it opens a broader discussion of how do we attract young people to Montpelier? How can we keep it sustainable for years to come? She doesn't know how we engage the community in that discussion.

Vicki Lane from Berlin Street said she just wants to plead with the Council that this year, for the first year as long as she can remember, the tax rate might go down because of the school. It will also be the first year that she will vote positively for the school.

Mayor Hooper said she isn't going to close the public hearing right now in case other folks would like to comment.

Council Member Jarvis asked about the petitions they received from the Center for Independent Living.

Mayor Hooper said there were a number of petitions being passed around and three groups have met the requisite 5 percent. The Clerk's Office counted and there were 320 plus names who were valid voters. One of the petitions is to see if the voters of the City of Montpelier will exempt from taxes for 10 years the property of the Central Vermont Memorial Civic Center located at Gallison Hill Road in Montpelier. Note if the city voters vote to exempt this the taxes are still paid but they are paid by the remaining voters in the city.

Council Member Jarvis said there is a loss of revenue and there is an increased payment.

City Manager Fraser said it's about \$4,000 local tax and roughly \$7,000 school tax.

Mayor Hooper said the next item is, Shall the City of Montpelier appropriate the sum of \$40,000 for the creation of a year round bus route within the city of Montpelier. This \$40,000 will match approximately \$120,000 from GMTA to fully fund specific stops. Service will be determined jointly by the city and the Green Mountain Transit Authority with input from the public. The third petitioned article which successfully met the threshold of voters is, Shall the City of Montpelier vote to raise and appropriate and expend a sum of \$5,000 for the support of the Vermont Center for Independent Living to provide services to the residents of Montpelier? There is also Article 10. There are four petitions that were put on and the first one is Article 10. Shall the voters appropriate the sum of \$5,000 to be used by the Central Vermont Council on Aging for the next fiscal year.

City Manager Fraser said we do have currently \$1,000 in the budget for that. They didn't know they were coming in with a petition so that is an article.

Mayor Hooper said the other items that are on the warning that the appropriation for the Mayor and the Council Members' salaries be increased. She thinks they put them up too much so she would request the Council reconsider that action.

Council Member Weiss said customarily according to Roberts Rules of Order you cannot reconsider something which has been adopted, so that is out. However, Roberts Rules allows you to rescind a motion that was originally made. In order to do that, because it has not been previously warned, if a motion is made to rescind the contents of Article 5 it would take a motion to second it and a unanimous vote. In that case there are no numbers left in Article 5. Then, another motion would be appropriate to insert a number. His reading is at this time you cannot adjust the numbers in it without rescinding it first.

Council Member Jarvis asked if a motion to rescind have to be made by someone.

Council Member Weiss replied it does not. It can be made by anybody who voted, whether they voted on the for or against side.

Council Member Sherman said she wasn't sure they voted on it.

Council Member Jarvis said they did because Alan and she voted against it.

Mayor Hooper said upon the advice of our parliamentarian and despite her plea to pay attention to the needs of people and to make some gesture towards compensation for the goal of good democracy and the benefit of the community, nevertheless, to rescind the vote to increase our pay by so much.

Council Member Weiss said they would have to vote yes to get it on the table and see if there is a second. He moved that the Council rescind Article 5 and 6. Council Member Jarvis seconded the motion. The vote on the motion was 4 to 2 with Council Members Golonka and Sheridan voting no. The vote has to be unanimous so the motion died. Council Member Golonka said he would vote yes, but Council Member Sheridan did not.

Mayor Hooper said she is concerned it will be voted down and then there will be no compensation.

Council Member Weiss said according to the budget book they had and some other materials he has been working with a different figure than appears in Article 2, which is \$6,800,000. He has been working with a number that is in the \$7 million range. He is wondering why between the big budget book they started with and what is on the warning is roughly a million dollars difference.

Finance Director Sandy Gallup said \$7 million includes the Library.

Mayor Hooper said at the Council's last meeting Council Member Weiss indicated he would not vote in support of this budget. He has been consistently saying he has been looking for another \$240,000 to be cut out of the budget. We also learned at the last meeting that Council Member Sheridan was not supporting this. He is looking for a 1% reduction.

Council Member Sheridan said he doesn't want any raise to anybody outside of the Council Members. He would like to see any member of the public come up and say they haven't had a raise in 28 years.

Mayor Hooper said the Council has resisted saying to him what would it take to reduce the budget. If we were to take another \$100,000 out of the budget, what would it be? What is the amount that is represented in salary increases?

City Manager Fraser said the 1% total is \$26,700 but in the General Fund it is \$18,027. The rest is in the water and sewer fund.

Mayor Hooper said the budget that has been presented to the Council has been presented as a bare bones budget necessary to maintain the current service level and we haven't heard from anybody to reduce our service levels. In order to cut

out of the budget we are either cutting core services or we are going to cut the funding for the outside agencies or community enhancements.

She would suggest it would be breaking a promise to look at the outside agencies because we committed to them a number of months ago to maintain them at the current service level if they didn't ask for more. Some have petitioned in because they want more but she would suggest it wouldn't be good to go after that when they have no opportunity to petition at this late date. The only place she can think to go to reduce the budget is to the community enhancements.

Council Member Golonka said for most years he wouldn't recommend this and he asked about the amount of the fund balance.

Finance Director Gallup said within the next week they hope to have a full audit draft so things are moving. She gave an \$820,000 number but the accountants see that as the end of 2010 and with the reappraisal there was a \$45,000 deficit. That is because they funded the \$70,000 over three years but the reappraisal cost didn't follow that exactly. They took the \$45,000 and said we needed to take it off our bottom line. If you take \$45,000 off the \$820,000 that is what the audit report will show for an unrestricted fund balance as of the end of June 30, 2010.

Council Member Golonka asked what has been the trend since June.

Finance Director Gallup said nothing too troublesome has happened except for the health insurance rates did go up 20 percent and they had budgeted a 13 percent increase. It's winter and it can go \$200,000 either way with a couple of storms.

Council Member Golonka said he brought that up because he is willing to explore the reserve funds. In years where we have done very well we should reward the taxpayers in difficult times.

Zachary Hughes asked what we value as a city. What do we value because if you are looking for money you are going to have to take some values away, and that isn't an easy thing.

Council Member Weiss said according to the presentation that the City Manager made he believes he suggested that there will be a \$.177 tax increase and that would be about \$140,000. At a previous meeting of the Council it was suggested that we take a 1% across the board deduction for all of the departments. That 1% equals \$83,946. To come back to the question, you asked the Manager if the Council were to approve keeping in the 1% for equipment and 1% for capital improvement and deduct 1% by taking out \$83,946 he would support it.

Don Marsh from Liberty Street said it seems peculiar to him that there would be a process for which your parliamentary procedures prohibit the Council from having an action that would respond to the second half of the public hearing. If you are having a public hearing today and saying we can't affect what you did last week, then why have a public hearing? It doesn't make any sense. With Articles 5 and 6, apparently if you had 1,000 people in here that opposed those because you made a decision last time you couldn't do anything about it. His understanding with most parliamentary procedures would allow you to suspend the rules by two-thirds vote and then go back and revote the issue they did just a little while ago. You don't have to have a majority.

Council Member Jarvis said she had that discussion with Council Member Weiss because that can't be the case in the context of a budget hearing. When we have two public hearings on a budget where each hearing is basically starting from scratch and everything is on the table it can't be that you are bound by your first public hearing when you go into your second public hearing. It defies logic.

Mayor Hooper said she thought that the process was that a person who voted in the affirmative had to bring it up for reconsideration and then there would be no threshold that had to be met.

Council Member Sheridan said he would change the vote so it would be unanimous so they could discuss it.

Council Member Hooper moved to rescind Articles 5 and 6. Council Member Jarvis seconded the motion. The vote 6-0, motion carried unanimously.

Vicki Lane said she has a question for Council Member Sheridan. His comments about the low income people not being able to serve as Councilors because of the stipend not being very high she isn't sure she understands why. It has always been her sense, and she doesn't think she is unusual, in that when she serves on a committee for the city she isn't doing it for financial gain. She is doing it because that is what she was brought up to do and she wishes to serve the community she lives in. The City Council certainly isn't sitting here because of the massive pay they are getting. We all do it because we have a desire to give back to our society. She isn't sure she understands why a low income person wouldn't be able to serve. She is a low income person and she has served on committees.

Council Member Sheridan said first of all he didn't say that was the only reason. He said it was an impediment. He is a low income person and he has served for 12 years, but he made the point that he is the only low income person that has ever served on the Council in his 12 years.

Vicki Lane said he also said he would challenge anyone from the community to say they haven't gotten a raise in 28 years and she would said that in 28 years her income has gone down to half.

Council Member Sheridan said serving on a committee is way different than serving on the Council because serving on the Council is really a negative cash flow for you. He documented it in his two most busiest years and kept track of the hours. Not just serving on the Council but calls and people stopping him on the street it was 1,000 hours which is very close to a half time job. That is way different than a committee. He sits on a lot of committees and sitting on the Council is a negative hit to anybody who serves on the Council in a number of ways. It is way beyond serving on a committee. His point is they aren't getting people in the races. There are too many elections where there is only one person. Why is that? One of the reasons is that people don't want to do this much any more. He is looking for ways to get more people to want to serve and if there is a little more money in it they

might. People have to have babysitters sometimes. It's a losing proposition. Get on the Council and find out.

Mayor Hooper said she wants to spend an appropriate amount of time on big decisions as well as the small ones. They have rescinded Articles 5 and 6. She would like to know if there is a motion to provide alternatives for Articles 5 and 6.

Council Member Sherman said she would like to propose an alternative motion. She would propose that Council Members receive \$1,200 each, which is \$100 a month, and the Mayor get a slight increase to \$3,600. Council Member Weiss said for discussion purposes he would second the motion.

Mayor Hooper said this is important in telling the community the value of the service, etc.

Council Member Sherman said it would be \$300 a month for the Mayor and \$100 a month for Council Members.

Mayor Hooper said she would like to suggest that it not be that large of an increase. Currently the Mayor is at \$2,700 and she would put it at \$3,000.

Council Member Golonka asked the City Manager if he had given them numbers that were the CPI adjustments from the 28 year period, and that would be more his suggestion as to a dollar amount.

City Manager Fraser said it went to \$1,000 in 1989. There has been a 78.9 percent in inflation since then so that would be \$4,830.

Council Member Golonka said he would make an alternate motion of \$1,750 and \$4,850 just to keep in line with the CPI. That is what he would think would be more reasonable.

Mayor Hooper said she isn't hearing people accepting that as an alternate motion. The motion on the table is \$1,200 for each Council Member, which is \$100 a month, and \$3,000 for the Mayor.

The vote on the motion was 3-3, with Council Members Jarvis, Golonka, and Hooper voting against the motion. Mayor Hooper voted in favor of the motion to make the fourth vote. .

Council Member Golonka said he would like clarifying language in terms of the articles. Can we add clarifying language like they do for the Library? For example, for the Library in Article 9 we write this amount is requested by the Library Board as an addition to the \$45,000 for the bond payment included in the City General Fund budget. He would like to add clarifying language to Article 11 that says this results in a \$10,000 increase to the taxpayer expense. Article 12 this amount is requested by petitioners as an addition to the \$29,371 for GMTA included in the City General Fund budget in Article 2. He thinks clarifying language is important on those two articles. They are misleading and they have always tried to be consistent in our approach.

Council Member Weiss asked Council Member Golonka if he also wanted to include the bus with a 3-year contract.

Council Member Golonka said the article says scheduled service and details will be determined by the city and GMTA. It doesn't bind the city for three years.

Mayor Hooper said the first question asked if they wanted to add clarifying language to Articles 11 and 12. They are both the same question. Is there agreement we should do that? Let's go to Article 11 and talk about what that language ought to be.

Council Member Golonka said this would vote in an approximate cost to the city of about \$10,000 from the General Fund.

Don Marsh from Liberty Street and also as a Board Member and Treasurer of the Civic Center said he didn't think they could change a petition. The item is there and is before the voters. The voters signed a petition with specific

language on it and he doesn't think they have the statutory authority to change it. He doesn't believe they have the statutory authority to do anything other than put a petition that has 5 percent of the voters on the ballot. In an explanatory item somewhere else or in the city report, wherever you can do that, but this is a petition and the statute is very clear that it goes on the ballot. In addition, it is not a loss of revenue. This is something that really is fulfilling a promise that your predecessors made that just until this year the Tax Assessor has changed the rules. When the Civic Center was constructed 13 years ago the city said if you build it here you will be tax free. That lasted until this year. To go further and try to amend it is inappropriate and you don't have the statutory authority to do it. The statute doesn't support changing a petition item.

Council Member Golonka said Paul Giuliani had told the Council in the past that we could have a Council recommendation on all ballot items, that they could say the Council supports this item or the Council does not support this item. We could go that route if they wanted to do it this way. He doesn't want to do it that way. He wants clarifying language in different areas, whether it is through Bill's report or whether it is through some type of recommendation from the Council. He thinks it is deceiving if they don't inform the public about the tax impact of any of these balloted items. Maybe we could get Paul Giuliani's opinion on how to do that. He is only asking that the voters understand the impact of voting yes on any of these items. He thinks that is only fair to the voters of Montpelier.

Finance Director Gallup said in the Annual Report she will have a page that has listed the articles and the dollar amount, estimated or real, and what it means to the taxpayers with different property values.

Council Member Weiss said the warning is a separate article on tonight's agenda and we were starting to discuss the budget. Can we please go back to the budget?

Mayor Hooper reminded folks they are conducting the public hearing on the city's proposed budget.

City Manager Fraser said the action the Council took on Articles 6 and 7 they reduced \$9,200 and they took the \$1,000 from VCIL so that will be \$10,200 in reductions.

Council Member Golonka moved they take use \$53,000 from the fund balance. Council Member Weiss seconded the motion.

Council Member Hooper said he is not going to vote on this. He believes in maintaining a healthy reserve fund and not using it for what will be ongoing expenses like a reasonable highway road maintenance budget and a reasonable equipment budget? On the other hand, as Tom and he have discussed, if we don't spend down our reserve some other Council will.

Council Member Golonka said they have spent a lot of money over the past four years on this flood mitigation and it has prevented us from doing the one-time things and it has prevented us from taking money from parking. Because of that he is willing to look at it.

Mayor Hooper said the motion is to take \$53,000 from the fund balance. The vote was 4 to 2 with Council Members Jarvis and Hooper voting no.

Council Member Weiss moved that the Council adopt a budget with the following provisions: One percent for capital improvements be included; One percent for equipment be included; the \$14,000 for tasers be removed; and One percent cut across the board for each of the departments. Council Member Sheridan seconded the motion.

Council Member Jarvis said the taser money is now money that is allocated for video equipment for the Police Department.

Council Member Golonka asked what 1% cut across the board would mean in dollars.

Council Member Weiss replied \$83,946, and every department according to his calculation with a 1% cut would still get a little more money than it had in the current budget.

Mayor Hooper asked if his proposal was on top of taking the \$53,000 from the fund balance.

Council Member Weiss replied yes.

Council Member Golonka asked if that would take us below zero to the taxpayers. Would that be a flat budget?

Council Member Sheridan said he had never seen the Council vote a negative budget.

Mayor Hooper said she would remind the Council that in all of the presentations we received that the budget which was presented to them was essentially bare bones before and there was no more room for reduction within those departments and the consequence of that is she doesn't think the staff found a way to find that additional money. If that is the goal of the Council we need to say what we want to cut out of the budget.

Council Member Jarvis said she thinks they are advocating our responsibility if we just say the departments cut 1 percent. It is the Council's job as policy leaders to say we need to cut the budget so let's get rid of this particular thing. She doesn't think they are doing anybody a service by saying 1 percent cut across the board. She would also point out that 1 percent affects different departments in very different ways.

Council Member Golonka said he has been part of this process for the past three months and he isn't willing to just delegate that. If you can come up with \$83,000 in individual cuts we can talk about he would be interested in it, but he is more in favor of taking it out piece by piece.

Mayor Hooper called for a vote on the motion. The vote was 4-2, with Council Member Jarvis and Hooper voting against the motion.

Council Member Golonka moved to remove the taser money of \$11,400 out of the budget. Council Member Weiss seconded the motion.

City Manager Fraser said he wanted to make an observation here. They had set a goal of raising the equipment plan by a certain amount of money and the tasers were included in the proposal. The proposal was either use the money on tasers or for the second half of the video system.

Council Member Golonka said his concern is that he wants to separate the budget from the taser discussion. Leaving the money in is a little disingenuous. He thinks they need an affirmative motion to take it out right now pending our decision and then we are in a much better shape to defend the idea that it isn't included if they change their minds.

Council Member Hooper said he thinks it is fairly clear that we are not deciding tasers at this point. They have had a very good discussion and spoken about how it is going to go forward. For those who don't know that now they can be convinced that it is essential for the people of Montpelier that this budget is not including tasers. It is just taking it from the equipment fund.

Council Member Jarvis asked about a friendly amendment to transfer the \$11,400 from the taser line to the digital video equipment for the Police Department equipment budget.

Mayor Hooper said they aren't reducing the equipment budget but just eliminating the line that deals with tasers. All those in favor of the motion that you decrease the equipment budget by the amount of the tasers. The vote was 4-2, motion carried.

Council Member Jarvis moved they transfer the \$11,400 from the taser line for the police digital in car video line. Council Member Hooper seconded the motion. The vote on the motion was 5 to 1 with Council Member Weiss voting against the motion.

Council Member Jarvis moved the Council approve the budget as amended today. Council Member Sherman seconded the motion.

Brad Weeks who lives on Gould Hill called in and reminded the Council of the very limited incomes that some folks have, fuel prices are rising, and the Council should consider not taking an increase in their pay and we also need to look out for the lower income population.

Mayor Hooper said she would note in the past they have had City Councilors, regardless of what the ballot said chosen not to take pay. They have just done that very quietly.

There is a motion and a second to pass the budget. Are you ready for the question?

Council Member Weiss replied no. They are going to increase the budget by \$90,000, which is about a penny and he went on to explain why.

Council Member Sheridan asked if the raise for city employees was still included in the budget.

Finance Director Gallup replied yes.

Council Member Sheridan said he won't vote for the budget then.

Council Member Jarvis said they have contracts.

Council Member Sheridan said he is talking about the raise for non-union employees.

Mayor Hooper called for a vote on the motion. The vote was 4-2, with Council Members Weiss and Sheridan voting against the motion.

Council Member Weiss explained why he had voted against the budget.

Mayor Hoper closed the public hearing on the budget at 10:10 P.M.

- 11-030. Conduct Second Public Hearing on Warning for the March 1, 2011 Annual City Meeting.
- a) Council conducted the First Public Hearing on January 12, 2011; this hearing is the deadline for all petitioned ballot items.
 - b) Recommendation: Conduct the Public Hearing; provide direction to staff as necessary.

The Council has amended Articles 5 and 6 so that the compensation proposed for Mayor is \$3,000 and the compensation proposed for Council Members is \$1,200. There was a proposal to add additional language to some of the articles that came in by petition. There was also discussion about other ways to provide information to the voters with regard to the cost of those items.

City Manager Fraser said they also need to get the correct number for Article 2.

Mayor Hooper spoke about adding addition language to Article 11.

Don Marsh said he thinks they are uncomfortable with adding additional language. They absolutely agree with Council Member Golonka in terms of making sure that the voters know what the implications are. He doesn't think the warning item is the place to put it. They need to do it and the public needs to know. He doesn't think the Council has the ability to modify language in the warning.

Council Member Golonka said in Article 12 it is more important to add language because we have Green Mountain Transit in the budget already. It is very similar to the Library. The language they put in Article 9 for the Library is appropriate for Article 12.

Council Member Jarvis said if they are adding clarifying language they should for all articles. They are asking the School Board for a figure for their reserve fund. We want to be as clear as we possibly can so people know the impact of what

they are voting on and a lot of people don't pay attention to the information that is out there until they get to the ballot box and vote. More information is better.

Mayor Hooper said they could consider alternative language. We could get legal advice. We aren't editing the petition language.

Council Member Sherman said if they add language of explanation in Article 12 that there is other money in the budget for other GMTA services so they don't think they are paying for the same thing twice. This money is requested by petition and is in addition to the \$29,371 for other GMTA services in the General Fund budget included in Article 2.

City Manager Fraser said he believed they should get a legal opinion because people can draft a petition that is misleading or incorrect.

Mayor Hooper said she believes there is agreement on the bus. What they are talking about is contingently accepting the language on Article 12 with the additional of a parenthetical statement that says it is in addition to the \$29,371 for other GMTA services included in the city's General Fund budget.

Council Member Jarvis said to look at the Secretary of State's web site, which is an interpretation of the statute. They are looking at 17 V.S.A. §66 regarding improper influence. "Neither the warning, the official voter information cards nor the ballot itself shall include any opinion or comment by any town body or officer, or other person, in any matter to be voted on." The Vermont League of Cities and Towns says that doesn't apply to petitions though. This is their interpretation of the state statute so they need to reply on the opinion of the city's legal counsel. For Article 11 it should say this will result in a net increase in the city budget.

City Manager Fraser said the issue is we would be forgiving municipal taxes on some amount and we would actually be assuming paying the state a certain amount. This will cost the city x amount of dollars.

Finance Director Gallup said they could say what we estimate their tax bill to be next year.

Mr. Marsh said the complicated thing is that heretofore there has been no state tax charged to anybody, city or otherwise, because up until three years ago they were exempt. There was a lawsuit and three civic centers similar to this around the state were determined to be taxable. The Legislature has waived that on a year by year basis. What is confusing here is if the Legislature were to act by then, which is unlikely, and waive it then this makes it very misleading. If the

Legislature doesn't waive it the city has to pay it then it is more accurate. The city tax figure of \$3,400 is pretty clear.

Mayor Hooper said if the Legislature fails to act then we know what the value of the exemption would be. If they do act it doesn't matter because it doesn't exist. If the Legislature continues to exempt the Civic Center it doesn't matter because we aren't subsidizing it.

Mr. Marsh said just the implication to the voter is if you are talking about \$3,400 or \$10,000. The current law is an exemption so they aren't paying property taxes.

City Manager said they are asking the city attorney if they can add any parenthetical comments at all, including by petition, in addition to some other amount included in the budget and how to handle the tax exemption question.

Mayor Hooper said they aren't going to try to find some specific language to the Civic Center as they did with Article 12.

Finance Director Gallup said they are going to have to sign the warning so you will need a special meeting.

City Manager Fraser suggested they get the legal opinion and circulate the wording and there could be a special meeting to sign the warning.

Mayor Hooper asked if they figured out the language for Article 2.

Finance Director Gallup said they are balancing back to a penny so instead of the \$6,899,500 it is \$6,759,570; that is \$64,425 down this is \$10,000 for the Council reduction and \$53,000 from the fund balance.

Mayor Hooper said they are not going to set the warning for this evening but pick a date for a special meeting. The Council has accepted Article 1, 2, 3, 4 and changed Articles 5 and 6. They have accepted Articles 7 and 8 and 9 and 10 and looking for revised language on Articles 11 and 12; they have accepted Article 13.

Discussion followed on setting a date for a Special Council Meeting to finalize the warning. The date of Monday, January 24, 2011 at 8:30 A.M. was chosen.

11-031. Update on District Heat Project

Planning & Development Director Hallsmith said they are still meeting with the state and there is no recommendation yet.

11-032. Council Reports.

None.

11-033. Mayor's Report.

Mayor Hooper said she has a note from Harris Webster about getting information about who to contact when there are issues about sidewalks. We were going to put a contact number on the web site. That is Public Works Department.

She met with the Central Vermont Economic Development Corporation this morning and asked them to think about local options taxes. She also said she wanted to talk with other organizations about it.

The Rail Council is meeting sometime next week and she has asked to be on their agenda because she thought there was some misinformation about Montpelier's attitude towards the proposed train and she wanted them to hear what the city's concerns were.

11-034. Report by the City Clerk-Treasurer.

City Clerk-Treasurer Charlotte Hoyt said she would remind people that today are the first day they can file a petition if they are running as a candidate for office and the last day was January 31st.

11-035. Status Reports by the City Manager.

City Manager Fraser said the Rail Council is meeting Wednesday, January 26th at 1:00 P.M. He is meeting with Secretary Stowell tomorrow morning to talk about rail issues.

There is a phone conference call on district energy tomorrow afternoon and another meeting with the Commissioner of Buildings and General Services staff on Monday at noon. In the Council's e-mail inboxes there were 13 proposals from consultants and they are all waiting to hear how we are going to proceed in evaluating the process and timing. They want to know when the Council is going to authorize them to start.

Adjournment:

After motion was duly made and seconded by Council Member Sheridan and Hooper, the council meeting adjourned at 10:38 P.M.

Transcribed by: Joan Clack

Attest: _____
Charlotte L. Hoyt, City Clerk