

MINUTES

The Lexington City Council held its regular meeting in the courtroom of the Lexington - Rockbridge Joint Facility on January 6, 2005.

PRESIDING: J.W. Knapp

OFFICERS: T.J. Ellestad, City Manager
L.A. Mann, City Attorney
C. Irby, Asst. City Clerk

MEMBERS: T. P. Golden
J. H. Page
M. M. Elrod
J. E. Gianniny
L. W. Broomall
R. W. Smith

There were 16 people present.

PUBLIC HEARING

To receive public comment on a proposal to subdivide the Stewart property located at the end of Marshall Street and fronting on Ross Road into two lots.

There was no comment.

To receive public comment on Ordinance 2005-1 amending and reenacting Chapter 4 of the City Code - Animals and Fowl.

Roger Clark, the animal control officer, expressed his desire that city council pass the ordinance. Lawrence Goodall, a board member of the SPCA expressed the SPCA's support of this ordinance as well.

City Attorney Mann made the following amendments to the ordinance:

Page 1, under Section 4-2.1, last paragraph should read "...to allow or permit any *of the* aforementioned animals or reptiles..."

Page 5, under Section 4-5, subsection (G), there is an erroneous comma in the second line of the last paragraph.

Page 6, under Section 4-5.1, the fourth line should read "... Police Department, which shall also be *so* authorized, to enter such vehicle..."

REGULAR MEETING

Mayor Knapp called the regular meeting to order at 8:04 p.m. and delivered the invocation.

APPROVAL OF MINUTES

Councilman Broomall made the following correction to the December 16th minutes:

Councilwoman Ellington's comments on the top of page 6 should be moved to page 7, following Councilwoman's Herrick's comments, reflecting the actual order of the comments.

Councilman Golden made note that an extra copy of page 8 had been inserted. The first page 8 should be struck.

Councilman Gianniny moved that the minutes of the December 16, 2004 meeting be approved as amended, Councilman Broomall seconded the motion and the following vote was recorded:

T.P. Golden	Aye	R. W. Smith	Aye
J.H. Page	Aye	J.E. Gianniny	Aye
L.W. Broomall	Aye	M.M. Elrod	Aye

The motion carried.

CITIZENS' REMARKS AND COMMENTS ON MATTERS NOT ON AGENDA

Lethia Hammond, of the Virginia Horse Center, appeared before council to provide a summary of their economic impact study, conducted by Dr. John L. Knapp.

John Scott, of the Virginia Horse Center also spoke to council about current operations.

Mayor Knapp requested a briefing sheet from the Ms. Hammond concerning the legislative agenda for their appearance before the General Assembly.

REPORTS AND COMMUNICATIONS

City Council Committees

FINANCE COMMITTEE

A meeting was scheduled for January 20, 2005 at 7:00 p.m. at the Regional Court Facility to discuss the audit report.

PHYSICAL SERVICES COMMITTEE

No report

SOCIAL AND ECONOMIC SERVICES COMMITTEE

No report

Boards and Commissions

PLANNING COMMISSION

Councilman Smith was recognized as the new council representative to the Planning Commission. Councilman Golden, former representative to the commission gave the report. He reported that the commission met on December 23, 2004. They took action on the proposed subdivision of the property located at 30 South Main Street and the subdivision of the property located at 17 South Randolph Street. Those are the two pieces of property needed for parking for the proposed court house on Main Street. They recommend those subdivisions.

The commission approved the application by Red Hammer, LLC, for a planned unit development, to construct twenty-six planned duplex units at the southeastern corner of Thornhill and Birdfield Roads.

The commission approved the site planning review for the construction of a new building at the Montessori Center for Children, located at 2 Dold Place.

Commission approved the request for a new sign at 204 East Washington Street, the Rockbridge Internists.

They discussed the utilization of the staff at the Central Shenandoah Planning District to assist in the development a new comprehensive plan.

Councilman Golden moved that city council follow the recommendation of the Planning Commission by approving the subdivision of the Stewart property on Marshall Street. Councilman Gianniny seconded and added that the construction of a new cul-de-sac would alleviate current traffic problems for both city vehicles and local residents. The following vote was recorded:

T.P. Golden	Aye	R. W. Smith	Aye
J.H. Page	Aye	J.E. Gianniny	Aye
L.W. Broomall	Aye	M.M. Elrod	Aye

The motion carried.

RAEDC

No report

CENTRAL SHENANDOAH PLANNING DISTRICT COMMISSION

No report

ROCKBRIDGE REGIONAL COMMUNITY SERVICES BOARD

No report

REGIONAL TOURISM BOARD

Mayor Knapp reported that Ms. Herrick has agreed to continue to serve her unexpired term on the Regional Tourism Board and will report to council periodically.

MAYOR

Mayor Knapp reported that Mary Harvey and Rosa Wiggins had been approached about serving on the Board of Zoning Appeals and both agreed. In the meantime, council has received another application from Thomas D. Goodwin, Jr. These three candidates are applying for two positions. Council agreed to review the applications and make recommendations at the next meeting. He also reminded council members of the statements of economic interests that will be due by the 15th of January.

CITY MANAGER

Consideration of Ordinance 2005-1, Chapter 4 of the City Code pertaining to Keeping of Animals and Fowl.

Councilman Broomall moved that the changes to the ordinance be approved. Councilman Gianniny seconded and the following vote was recorded:

T.P. Golden	Aye	R. W. Smith	Aye
J.H. Page	Aye	J.E. Gianniny	Aye
L.W. Broomall	Aye	M.M. Elrod	Aye

The motion carried.

ORDINANCE 2005 - 1

An Ordinance Amending Chapter 4 of the City Code Regarding the Keeping of Animals and Fowl.

Whereas, Chapter 4 of the City Code pertaining to animals and fowl is in need of updating.

Now Therefore, Be It Ordained and Enacted by the Mayor and Council of the City of Lexington, Virginia, that Chapter 4 of the City Code be amended and reenacted as follows:

Animals and Fowl

CHAPTER 4.

ANIMALS AND FOWL.

Article I. In General.

Sec. 4-1. Keeping fowl. Livestock. - - Generally.

(1/5) It shall be unlawful for any person to keep or raise fowl, poultry or livestock within the City.

Sec. 4-2. Same - - Keeping swine.

It shall be unlawful for any person to keep or raise pigs or hogs within the city. The term “pigs” shall also include pot bellied pigs. (Code 1958, § 4-2; 8-19-65; 1/05)

Sec. 4-2.1. Keeping reptiles, wild animals, generally.

It shall be unlawful for any person to keep or harbor any poisonous animal or reptile, non-human primate, wild animal, all non-domesticated cats, including but not limited to bobcats, lynx, ocelots, mountain lions, tigers, panthers, lions, and / or skunks, foxes, raccoons, crocodiles, alligators or caimans, without first having obtained a valid permit from the USDA. No permitted animal, wild animal, poisonous or non-poisonous reptile shall be permitted to be at large within the City.

All poisonous and non-poisonous reptiles and lizards shall be kept in locked escape proof cages or containers except when being handled. Reptiles and lizards shall not be handled or kept in a manner so as to be seen by the general public.

It shall constitute a misdemeanor for any person to allow or permit any of the aforementioned animals or reptiles to escape its container or permit such animal or reptile to roam at large within the city. (1/05)

Sec. 4-3. Maintenance of animal cages, runs and yard establishments.²

Every animal pen, run, cage or other yard establishment wherein any dog, cat or other animal is kept, or the inside of any residence structure or other building wherein any dog, cat or other animal is kept, shall be maintained in a manner so that no offensive, disagreeable or noxious smell or odor arises there from to the injury, annoyance or inconvenience of any neighbor or person. All animal manure, waste or feces accumulation wherein any animal is kept, shall be removed and disposed of in such a manner as to prevent the breeding of flies, mosquitoes or other parasites and the creation of any offensive, disagreeable or noxious smells or odors. (1/05).

2. As to health and sanitation generally, see ch. 11 of this Code.

Sec. 4.3.1. Regulation of hybrid canines.

(a) Definitions.

Hybrid canine. Any animal which either is or at any time has been or is permitted, registered, licensed, advertised or otherwise described or represented as a hybrid canine, wolf or coyote by its owner to a licensed veterinarian, law enforcement officer, animal warden humane investigator, officer of the department of health or compliance officer who is under the direction of the state veterinarian, or which is determined to be a hybrid canine by a licensed veterinarian, law enforcement officer, animal warden humane investigator, officer of the department of health or compliance officer who is under the direction of the state veterinarian.

(b) Permits required for hybrid canines.

(1) It shall be unlawful for any person to own, to be the owner or custodian of any hybrid canine unless he shall have obtained a valid hybrid canine permit within thirty days. No more than two hybrid canine permits shall be issued per residence. All permits must be renewed annually on or before January 1 and not later than January 31.

(2) Any person who is the owner of more than two hybrid canines as of the effective date of this section shall be permitted to keep such hybrid canines for as long as they shall live provided that the owner obtains a permit for each hybrid canine within thirty days of the effective date of this section.

(3) Violation of this section shall be a Class 3 misdemeanor for the first violation and a Class 1 misdemeanor for a second or subsequent violation. In addition, any person who violates this section shall be required to immediately surrender the hybrid canine for euthanasia in accordance with Virginia Code section 3.1-796.119.

(c) Application for hybrid canine permit and renewal of canine hybrid permits. All hybrid canine permits shall be issued by the city treasurer after approval by the animal control officer. All hybrid canine permits shall be renewed annually per subsection (b) of this section. In order to obtain a hybrid canine permit or renewal an applicant shall:

(1) Provide adequate proof that each hybrid canine will bear an identification tag immediately upon assuming possession. Failure to obtain or display such tag shall result in immediate revocation of hybrid canine permit(s) by the animal control officer;

(2) Provide adequate proof that each hybrid canine will be housed indoors on the property of its owner and/or provided with a pen with a fence eight feet high with an overhang constructed so that at least one foot of additional fence is leaning over the pen. Such fence shall be constructed of eleven gauge or equivalent chain link enclosure with a concrete pad, or concrete skirting, at least two feet in from the perimeter of the fencing, or like construction to provide an escape proof enclosure, providing a minimum of four hundred square feet of floor space for one animal (any owner of a hybrid canine, previously licensed under then applicable regulations, who has previously constructed an enclosure conforming to then applicable standards of less than four hundred square feet may continue to utilize said enclosure, provided that all other requirements of this section are complied with) and an additional two hundred square feet for two animals, that is securely enclosed and locked. Such fence shall either be: (I) constructed of material fine enough to prohibit a child from putting his or her fingers through the fence, or (ii) have such material attached to the fencing in a permanent manner, all to height of five feet, or (iii) constructed with a secondary fence no closer than three feet from the pen and designed to prohibit children from reaching into the pen. The structure shall be designed to provide each hybrid canine with shelter from the elements of nature. Such pen shall be constructed no closer than five feet from any adjacent property line.

When any hybrid canine is out of the pen or residence it must be muzzled and leashed with a chain leash so as to prevent it from biting any other person or animal, and under the control of its owner at all times. The muzzle shall not cause injury to the hybrid canine and shall not interfere with the animal's vision or respiration. Failure to comply with these requirements will result in immediate revocation of a hybrid canine permit by the animal control officer or any law enforcement officer;

- (3) Provide adequate proof of homeowner's insurance coverage which includes liability coverage and coverage for any injury by animals owned by the homeowner and which contains no exception to injury by animals owned by the homeowner. In the alternative, provide a bond in the amount of fifty thousand dollars in form acceptable to the city. Failure to maintain such insurance coverage or post such bond shall result in immediate revocation of the hybrid canine permit;
- (4) The permit application fee shall be fifty dollars for each permit sought;
- (5) Complete and submit an application for each hybrid canine permit sought to the animal control officer and provide proof of and keep current all appropriate vaccinations as determined by the animal control officer;
- (6) Provide adequate proof of written notice of the request for each hybrid canine permit sought to all adjacent property owners (for the purposes of this provision, "adjacent property owners" shall include those located directly across any alley or street);
- (7) Provide adequate proof of being eighteen years of age or older; and
- (8) Provide adequate proof that the residence is, and will continue to be, posted with clearly visible signs warning both minors and adults of the presence of hybrid canine(s) on the property.

Upon receipt of hybrid canine permit, the owner shall affix a uniformly designed tag to the hybrid canine's collar which tag shall be provided by the treasurer and the owner shall ensure that the hybrid canine wears the collar and tag at all times. Any person to whom a hybrid canine permit has been issued shall immediately notify the animal warden if the hybrid canine is loose or unconfined; bites a person or attacks another animal; is sold, given away or dies; or has been moved to a different address. (Rod. No. 97-12.)

Sec. 4-4. Dangerous or vicious animals.

- (a) Definitions.

The following words, terms and phrases, when used in this section, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

Dangerous dog. A canine or canine crossbreed which has bitten, attacked, or inflicted injury on a person or companion animal, other than a dog, or killed a companion animal.

Vicious dog. Any canine or canine crossbreed which has (1) killed a person; (2) inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health or serious impairment of a bodily function; or (3) continued to exhibit the behavior which resulted in a previous finding by a court that it is a dangerous dog, provided that its owner has been given notice of that finding.

- (b) Procedure for declaring a dog to be dangerous or vicious; keeping of dangerous dog; destruction of vicious dog.

(1) Any animal control officer who has reason to believe that a canine or canine crossbreed within the city is a dangerous dog or a vicious dog shall apply to a magistrate of the city for the issuance of a summons requiring the owner or custodian, if known, to appear before a general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matter at issue. The animal warden or owner shall confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harbinger of the animal to produce the animal.

- (2) If, after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall

order the animal's owner to comply with the provisions of this section. If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanised in accordance with the provisions of section 3.1-796.119 of the .Code of Virginia.

(c) Licensure of dangerous dog. The owner of any animal found by a court to be a dangerous dog shall, within ten days of such finding, obtain a dangerous dog registration certificate from the animal warden for a fee of fifty dollars in addition to other fees that maybe authorized by law. The local animal warden shall also provide the owner with a uniformly designed tag which identifies the animal as a dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times. All certificates obtained, pursuant to this subsection shall be renewed annually for the same fee and in the same manner as the initial certificate were obtained.

(d) Renewals. All certificates or renewals thereof required to be obtained under this section shall only be issued to persons eighteen years of age or older who present satisfactory evidence (1) of the animal's current rabies vaccination, if applicable; and (2) that the animal is and will be confined in a proper enclosure or is and will be confined inside the owner's residence or is and will be muzzled and confined in the owner's fenced-in yard until the proper enclosure is constructed.. In addition, owners who apply for certificates or renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence that (1) their residence is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property; and (2) the animal has been permanently identified by means of a tattoo on the inside thigh or by electronic implantation.

(e) Keeping of dangerous dogs; conditions. While on the property of its owner, an animal found by a court to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults, or other animals. The structure shall be designed to provide the animal with shelter from the elements of nature. When off its owner's property, an animal found by a court to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal.

(f) Notification. After the animal has been found by a court to be a dangerous dog the animal's owner shall immediately, upon learning, of same; notify the local animal control authority if the animal (1) is loose or unconfined; (2) bites a person or attacks another animal; (3) is sold, given away or dies; or (4) has been moved to a different address:

(g) Minor owners. If the owner of an animal found by a court to be a dangerous dog is a minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this section.

(h) Violations. The owner of an animal which has been found by a court to be a dangerous dog who willfully fails to comply with the requirements of this section shall be guilty of a Class 1 misdemeanor.

(i) Exceptions:

(1) No animal shall be found to be a dangerous dog or vicious dog if the threat, injury or damage was sustained by a person who was (A) committing, at the time, a crime upon the premises occupied by the animal's owner or custodian; (B) committing, at the time, a willful trespass or other tort upon the premises occupied by the animal's owner or custodian; or (C) provoking, tormenting or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused or assaulted the animal at other times.

(2) No animal which, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its' kennel, its offspring or its owner or owner's property, shall be found to be a dangerous dog or a vicious dog.

(3) No police dog which was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous or a vicious dog.

(4) No canine or, canine crossbreed shall be found to be a dangerous dog or a vicious dog solely because it is a particular breed, nor shall the local governing body prohibit the ownership of a particular breed of canine or canine crossbreed.

(j) Collection and distribution of fees. All fees collected pursuant to this section, less the costs incurred by the animal control authority in producing and distributing the certificates and tags required by this section, shall be paid into a special dedicated fund in the treasury of the city for the purpose of paying the expenses of any training course required under section 3.1- 796.105 of the Code of Virginia. (Code 1958, §4-3; Ord. No. 93-8; 1/05.)

Sec. 4-5. Cruelty to animals.

(A) Any person who (i) overrides, overdrives, overloads, tortures, ill-treats, abandons, or willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation, or cruelly or unnecessarily beats, maims, mutilates, or kills any animal, whether belonging to himself or another; (ii) deprives any animal of necessary food, drink, shelter or emergency veterinary treatment, (iii) carries or causes to be carried in or upon any vehicle, vessel or otherwise any animal in a cruel, brutal or inhumane manner, so as to produce torture or unnecessary suffering; (iv) causes any of the above things, or being the owner of such animal permits such acts to be done by another, shall be guilty of a Class 1 misdemeanor.

(B) Any person who has been within five years convicted of a violation of this section shall be guilty of a Class 6 felony if the current violation or any previous violation of this section resulted in the death of an animal or the euthanasia of an animal based on the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal.

(C) For the purposes of this section, the word animal shall be construed to also include birds and fowl.

(D) This section shall not prohibit authorized wildlife management activities or hunting or fishing as regulated under other titles of the Code of Virginia.

(E) In addition to the penalties provided for in this section, the court may, in its discretion, require any person convicted of a violation of this section to attend an anger management or other appropriate treatment program or obtain psychiatric or psychological counseling. The court may also impose the costs of such program or counseling upon the person convicted.

(F) Any person who (i) tortures, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation or cruelly and unnecessarily beats, maims or mutilates any dog or cat that is a companion animal whether belonging to him or another and (ii) as a direct result causes the death of such dog or cat that is a companion animal, or the euthanasia of such animal on the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal shall be guilty of a Class 6 felony. If a dog or cat is attacked on its owner's property by a dog so as to cause injury or death, the owner of the injured dog or cat may use all reasonable and necessary force against the dog at the time of the attack to protect his dog or cat. Such owner may be presumed to have taken necessary and appropriate action to defend his dog or cat and shall therefore be presumed not to have violated this section.

(G) Any person convicted of violating this section may be prohibited by the court from possession or ownership of companion animals.

The procedure for appeal and trial shall be the same as provided in article 4 (section 19.2-260 et seq.)

of chapter 15 of title 19.2 of the Code of Virginia. The case must be proved beyond a reasonable doubt.

The human investigator or animal control officer may provide for such animal until the owner is adjudged by the court able to adequately provide for such animal and a fit person to own the animal, in which case the animal shall be returned to the owner. If the owner is adjudged by the court unable to adequately provide for the animal or not a fit person to own the animal, then the court shall order that the animal be: (1) sold by the city; (2) humanely destroyed, or disposed of by sale or gift to a federal agency, state-supported institution, agency of the commonwealth, agency of another state, or a licensed federal dealer having its principal place of business located within the commonwealth; or 3) delivered to any local humane society, shelter, or to any person who is resident of the city and who will pay the required license fee, if any, on such animal. In no case shall the person adjudged unable to adequately provide for the animal or adjudged an unfit person to own the animal be allowed to purchase the animal at sale. The court may order any owner adjudged unable to adequately provide for his animal or not a fit person to own the animal to pay all reasonable expenses incurred in caring and providing for such animal from the time the animal is seized until such time that the animal is disposed of in accordance with the provisions of this section.

The court in determining whether the owner is able to adequately provide for the animal or is a fit person to own the animal may take into consideration among other things the owner's past record of convictions under this chapter or one similar thereto prohibiting cruelty to animals and the 'owner's mental and physical condition.' In the case of sale, the proceeds shall first be applied to the cost of the sale then next to the 'previously un-reimbursed expenses for the care and provision of the animal.

(H) Any person who abandons any dog, cat or other domesticated animal or any reptile, lizard or wild animal in any public place including the right of way of any public highway, road or street or on the property of another shall be guilty of a Class 3 misdemeanor. (Code of Va. 3.1-796.122, 1/05)

Sec. 4-5.1 Animals left in vehicle under dangerous weather conditions.

Whenever any animal is found confined in a motor vehicle in a public place under weather conditions that endanger its life as determined by the Animal Control Officer, such shall be a violation of this section. The Animal Control Officer is hereby authorized, with assistance, if necessary, from the Police Department, which shall also be so authorized, to enter such vehicle and rescue such animal and thereafter impound it in accordance with Section 4-26. A prominent written notice shall be left on or in such vehicle advising that the animal has been removed under the authority of this section and impounded at the Animal Shelter or Veterinary clinic authorized to hold such animals. (1/05)

Article II. Dogs Generally.⁴

Division 1. Generally.

Sec. 4-6. Running at large; impoundment and disposition.

It shall be unlawful for any dog to run at large in the city. For the purpose of this section, a dog shall be deemed to run at large while roaming, running or self-hunting off the property of its owner or custodian and not under its owner's or custodian's immediate control by leash, chain, rope or other restraining device securely attached to the dogs harness or collar.

Any dog not licensed, running at large in the city shall be taken in to custody by the enforcement officer and impounded and confined in a facility approved for such purposes. "Enforcement officer" shall include the game warden, animal control officer, director of public health for the city, police officers, their deputies and assistants, or any person duly authorized under the direction of the Chief of Police and /or City Manager. Any dog licensed, running at large in the city may be taken into custody as set forth above or, at the discretion of the enforcement officer returned to the owner.

If the dog is licensed, a summons or warrant charging violation of this section may be issued

against and served upon the person in whose name the license was obtained or custodian of the animal. For the purpose of charging violations of this section, the person in whose name the license tag is issued, regardless of qualifying designation, shall be conclusively presumed to be the owner of the dog. Any summons or warrant charging a violation of this section shall indicate upon its face the location of the facility where the dog is impounded.

The person in whose name any dog is licensed or any person who is able to prove ownership or an unlicensed dog may recover such dog by executing a receipt for the dog and by paying the custodian of the facility a reasonable charge for the keep of the dog during impoundment. The custodian of the impoundment facility shall not be required to release a licensed dog except to the person in whose name the license for such dog was purchased or, in the case of an unlicensed dog, to any person who is not able to. Establish to the satisfaction of the custodian that such person is the true owner. In no event shall the custodian of the impoundment facility release any animal to any person without such person executing a receipt for the dog.

An unlicensed dog which has been confined in the impoundment facility for a period of five days and has not been claimed by the owner thereof may be destroyed or may be delivered to any person who will pay the required license fee on such dog with the understanding that, should the legal owner claim the dog and prove his ownership the owner may recover such dog by paying to the person to whom the dog was delivered the amount of the license fee paid by such person and a reasonable charge for the keep of the dog while in his possession.

The receipt for the dog to be executed by the person in whose name a licensed dog is registered if delivered to an impoundment facility and by any person able to establish ownership of an unlicensed dog shall be in the following form:

RECEIPT

I, _____, do hereby certify that am the owner of a _____, bearing City Dog Tag Number _____, and am the person responsible for preventing violations of § _____ of the Lexington City Code.

I further acknowledge that said dog was recovered by me from the impoundment facility the _____ day of _____, 199____, and that the sum of _____ Dollars was paid for the keep-of the dog while in confinement.

Registered or Proven Owner

ATTEST :

Custodian of Impoundment Facility

Such release shall be executed in duplicate, one copy to be retained by the custodian of the facility, and one copy delivered to the person claiming the dog.

The court after hearing the charge involving a violation of this section may, upon presentation to the court a copy of the receipt, take into consideration the recovery of such dog by its owner and the payment of the requisite charge. (Code 1958, § 4-7; 5-15-65; 1-6-66; 2..2-67; 4-17-75; Ord.No. 93.7; 1/05)

Sec. 4-7. Removing collar or tag.

It shall be unlawful for any person, except owner or custodian, to remove a legally acquired license tag from a dog. (1-6-66.)

Sec. 4-8. Concealing dog.

It shall be unlawful for any person to conceal or harbor any dog on which the license tax has not been paid, or to conceal a mad dog to keep the same from being killed after being so ordered by the Court system. (1-6-66; 1/05)

Sec. 4-9. Animal Noise, generally.

It shall constitute a nuisance and be unlawful if any animal barks, whines, howls, bays, cries or makes any other noise excessively so as to cause annoyance, disturbance or discomfort to any individual provided that such noise lasts for a period of more than 10 minutes continuously or intermittent noise that continues for more than one half hour and is plainly audible from a distance of 50 feet or more from the premises where the animal is kept. It shall not be a violation of this section if the animal was barking, crying, or making any other noise due to harassment or injury to the animal or a trespass upon the premises where the animal is located.

A violation of this section shall constitute a misdemeanor.

Enforcement.

A summons may be issued directly to the owner or custodian or any animal found to be in violation of this section requiring an appearance in the General District Court for the City.

Seizure of Animal (s) – Noise Abatement.

Any Police Officer, Animal Control Officer or other officer charged with enforcement of this chapter may enter onto private property and seize any animal found in violation of this section, provided the following conditions are met:

- (A) There is a verified complaint of noise by a Police Officer, Animal Control Officer or other officer and that officer reasonably believes that the noise meets the criteria set forth in this section;
- (B) The owner or custodian of the animal (s) can not be readily located after a reasonable attempt or those attempts have failed or been ignored;
- (C) The seizure will involve forced entry into a private residence. Use of a passkey obtained from a property manager, property owner, landlord, innkeeper or other person authorized to have such a key shall not be considered as forced entry;
- (D) No other less intrusive means to stop the noise is available, and;
- (E) Written notice of the seizure is left in a conspicuous place if personal contact with the owner or custodian of the animal (s) is not possible. (1/05)

Sec. 4-10. Diseased dogs.⁶

It shall be unlawful for the owner of any dog with a contagious or infectious disease to permit such dog to stray from his premises if such disease is known to the owner. (1-6-66.)

Sec. 4-11. Disposal of dead animals.⁷

Dead animals shall be taken to the city landfill during working hours or otherwise buried or cremated by the owners. Failure to properly dispose of an animal within twenty four hours after its death shall be a violation of this article. (1-6-66; 1/05)

Sec. 4-12. Violations and penalties.

Any person who shall make a false statement in order to secure a dog license to which he is not entitled shall be fined not less than five dollars or more than one hundred dollars. Any person convicted of failure to pay the license tax required by this chapter prior to February 1 of any year, or as otherwise provided in this chapter, on any dog owner by him, shall be fined not less than the amount of the license tax required by law to be paid on such dog and shall be required to obtain the proper license forthwith; and, unless the fine and license tax is immediately paid, the general district court for the city may order the dog killed by the animal control officer or some other officer; but the killing of such dog shall not relieve its owner of the payment of the fine and the license tax already due. If a dog is found running and roaming at large in violation of the provisions of section 4-6 of this chapter, its owner shall be liable to a fine of not less than five dollars. If a dog is found running and roaming at large in violation of the provisions of section 4-19 of this chapter, its owner shall pay a fine as set by the General District Court for the City. Any other violation of this chapter, for which a specific penalty is not provided, shall be punishable by a fine not exceeding three hundred dollars. (1-666; 4-17-75; 1/05)

Sec. 4-13. Enforcement of article.

The provisions of this Chapter and all related articles shall be enforced by the City Animal Control Officer or by any other duly authorized persons under the direction of the Chief Of Police and City Manager. (1/05)

Division 2. License.⁸

Sec. 4-14. Required.

It shall be unlawful for any person to own a dog four months old or over that is not properly licensed as required by this article. (1-6-66; 1/05)

Sec. 4-15. Fees.

The license fee for dogs four months old or over shall be established annually by the city council at the time of adoption of the annual appropriation resolution. A delinquent fee to equal not less then or more then the amount of a license shall be assessed for any license that is not purchased within 30 days of the required date of licensure. No refund will be made for licenses for animals deceased or otherwise removed from the city during a period of licensure. Licenses are transferable from one person to other provided a fee of one half of the amount of the license is paid to the city treasurer. (1-6-66; 2-21-74; Ord. No. 97-7; 1/05)

6. As to health and sanitation generally, see ch. 11 of this Code.
7. As to health and sanitation generally, see ch. 11 of this Code.
8. As to licenses generally, see ch. 12 of this Code.

Sec. 4-16. Licensing procedure and requirements generally.⁹

The owner of a dog may obtain a dog license by making written application to the city treasurer accompanied by the amount of the license tax and a valid certificate of vaccination against rabies. Upon

receipt of proper application and certification of vaccination, the treasurer shall issue a license receipt on which shall be recorded the name and address of the owner, the date of payment, the year for which issued and the serial number of the tag, and the treasurer shall deliver the metal license tags or plates provided for by this article.

On or before January 1 and not later than January 31 of each year, the owner of any dog four months old or older shall purchase a dog license from the city treasurer.

If a dog shall become four months of age or come into the possession of any city resident between January 1 and November 1 of any year, then the owner of such dog shall forthwith purchase the dog license required by this article from the city treasurer.

If a dog shall become four months of age or come into the possession of any city resident between November 1 and December 31 of any year, the owner of such dog shall purchase a license from the city treasurer forthwith and such license shall protect from the payment of the license tax to the of the succeeding calendar year. (6/66; 4-17-75; 1/05)

Sec. 4-17. Payment of license tax subsequent to summons.

Payment of the license tax required by this article subsequent to a summons for a violation of this article shall not relieve such owner from the penalties provided for such violation. (1-6- 66)

Sec. 4-18. What license to consist of; disposal of expired and unsold licenses.

A dog license shall consist of a license receipt and a metal tag adopted by the council. The tag shall be stamped or otherwise permanently marked to show the sex of the dog and the calendar year for which issued, and it shall bear a serial number. License tags which have expired and remain unsold at the close of the calendar year stamped on such tags may be disposed of in any manner deemed advisable by the city treasurer who annually shall report to the city manager the number of unsold dog license tags and the method of disposal of such tags. (2-5-76; 1/05)

Sec. 4-19. License tags to be affixed to collar and worn by dog.¹

Dog license tags shall be securely fastened to a substantial collar by the owner or custodian and worn by such dog. (1-6-66; 1/05)

Sec. 4-20. Effect of dog not wearing collar as evidence.

Any dog not wearing a collar bearing a license tag of the proper calendar year shall prima facie be deemed to be unlicensed, and in any proceedings under this article the burden of proof of the fact that the dog has been licensed or is otherwise not required to bear a tag at the time shall be on the owner of the dog. (1-6-66)

Sec. 4-21. Duplicate license tags.

If any dog tag shall become lost, destroyed or stolen, the owner or custodian shall at once apply to the treasurer for a duplicate license tag presenting the original receipt. Upon affidavit of the owner or custodian before the treasurer that the original license tag has been lost, destroyed, or stolen the treasurer shall issue a duplicate license tag which the owner or custodian shall immediately affix to the collar of the dog. The treasurer shall endorse the number of the duplicate and the date issued on the face of the original receipt. The fee for a duplicate tag shall be established annually by the city council at the time of adoption of the annual appropriation resolution. Fee shall not be less than \$1.00. (1-6-66; 1/05)

9. As to proof of rabies vaccination at time of licensing, see § 4-27 of this Code.

Sec. 4-22. Displaying receipts.

Dog license receipts shall be carefully preserved by the licensees and exhibited promptly on request for inspection by any Animal Control Officer, Police Officer or any other officer charged with enforcing violations of this chapter. (1/1/66; 1/05)

Sec. 4-23. Repealed by ordinance enacted April 17, 1975.

Article III. Rabies Control.²

Sec. 4-24. Vaccination of dog required.

It shall be unlawful for any person to own, keep, hold or harbor any dog over four months of age within the city unless such dog shall have been properly vaccinated against rabies by a licensed veterinarian. The vaccination may be carried out by the use of a modified live virus, (Flury strain) within twenty-four months of the time of licensing. All vaccines used shall be of a type approved by the state department of health.

Any person transporting a dog into the city from some other jurisdiction shall be required to conform to the above regulation within thirty days from the day he brings such dog into the city if such dog is to be kept in the city or the county more than thirty days. (5-6-65; 1/05)

Sec. 4-25. Vaccination tag.

Vaccination tags shall be firmly attached to the dog's collar and shall be worn at all times when the dog is not on the owner's or custodian's property, or in the immediate control of some responsible person. (5-6-65.)

Sec. 4-26. Impoundment and disposal of unvaccinated dogs.

Any dog found in the city not vaccinated and not wearing an authentic vaccination tag as provided for in section 4-25 shall be impounded by the official charged with enforcing this article for a period of five days. The owner of any such dog may secure the release of his dog by producing proof of ownership and having such dog properly vaccinated, and paying the costs of impounding and caring for any such dog. At the expiration of such five day period any dog not so claimed by its owner or custodian may be disposed of by giving it into the possession of any person who may be willing to pay for the cost of vaccination and impounding and if not so disposed of, any such dog may be killed in a humane manner by the officer and/or holding facility enforcing this article. (5-6-65; 1/05)

Sec. 4-27. Proof of vaccination at time of licensing.

In order to effectuate the provisions of this article, any person making application for a dog license under the provisions of article II of this chapter shall be required to present to the official charged with the sale of dog licenses a certificate of rabies vaccination properly executed and signed by a licensed veterinarian certifying that the dog in question has been vaccinated in accordance with the provisions of this article, and when the dog license has been issued, the certificate of vaccination shall be so marked and returned to the applicant, provided however that if the treasurer has been provided with information provided by the animal control officer confirming that the rabies vaccination has not expired then no such certificate shall be required. (5-6-65; Ord. No. 03-3.)

2. For state law as to rabid dogs, see Code of Va., § 3.1-796.98. As to authority of city to adopt measures for control of rabies, see Code of Va., § 3.1-796.100. As to health and sanitation generally, see ch. 11 of this Code. As to communicable diseases generally, see § 11-9 to 11-11.

Sec. 4-28. Reporting animal bites.

All animal bites of human beings shall be reported to the health department and persons charged with enforcing articles of this chapter within twenty-four hours after their occurrence. Such report shall include the name and address of the person bitten, the owner of the biting animal, and a reasonable description of such animal. The responsibility of so reporting is mutually charged to attending physicians, veterinarians, owners of the biting animals, the person bitten, and any other persons who may have knowledge of this fact. (5-6-65; 1/05)

Sec. 4-29. Quarantine of certain animals.

All animals biting or otherwise injuring human beings or animals shall be immediately placed under quarantine for a minimal period of ten days. The area and conditions of quarantine shall be designated by the health director or his duly authorized deputy. When suitable quarantine cannot be maintained by the owner, the animal shall be removed to a suitable pound and there be quarantined at the expense of the owner. All animals bitten by rabid animals, or suspiciously rabid animals, shall either be destroyed, or if previously vaccinated in a manner satisfactory to the health director, may be held under quarantine for a minimal period of forty-five days. (5-6-65.)

Sec. 4-30. Rabies emergency.

When in the judgment of the health director an emergency shall be deemed to exist in the city or any part of the county due to a widespread rabies epizootic, for the protection of the public, the health director may declare a quarantine in the city and restrict all dogs to the owner's premises, and/or to the immediate custody of some responsible person for the duration of such emergency as is set forth in such order of quarantine. (5-6-65.)

Sec. 4-31. Certain provisions of article applicable to cats: exceptions: evidence of compliance.

The provisions of sections 4-24 through 4-29 shall be applicable to cats, except as follows:

(a) Collars, licenses and vaccination tags need not be displayed on cats, but any cat found off the premises of the owner and not under the owner's immediate control shall be presumed an unvaccinated stray and in violation of this article.

(b) Cats brought into the city from another jurisdiction for a period of not exceeding thirty days are exempt from this article, provided such cats remain confined at all times.

(c) The owner of a cat found off the owner's premises and not under the immediate control of the owner must display evidence of compliance with this article upon request of the animal control officer or any law enforcement officer or health official. (6-4-87.)

Adopted: _____

John W. Knapp, Mayor

Debbie Desjardins, Clerk

A work session was scheduled for January 25, 2005 at 4:30 p.m. to review Chapter 1-3 of the City Code.

A review session was scheduled for January 27, 2005 at 3:30 p.m. to discuss the FY 2006-2010 Capital Improvements Plan.

Councilman Gianniny moved that the Shenandoah Planning District Commission be retained to assist in the preparation of the comprehensive plan, subject to the Planning Commission's concurrence. Councilman Golden seconded and the following vote was recorded:

ROLL CALL

T.P. Golden	Aye	R. W. Smith	Aye
J.H. Page	Aye	J.E. Gianniny	Aye
L.W. Broomall	Aye	M.M. Elrod	Aye

The motion carried.

City Manager Ellestad reported that he has been in contact with Leslie Ayers, who is working with a group that has recently been formed to raise money for an indoor pool at the city pool site. They have asked if council is amenable to naming that pool after a large benefactor. Councilman Golden expressed the need for clarification concerning the costs involved and specific expectations of the city and county. Council expressed that the naming after a benefactor was acceptable, however, they would request that interested parties be asked to attend the next city council meeting to provide an update on their plan and to answer questions.

CITY ATTORNEY

City Attorney Mann stated that his report would be given during closed session.

UNFINISHED BUSINESS

None

NEW BUSINESS

None

MOTION FOR CLOSED SESSION

Councilman Gianniny moved that Lexington City Council convene in Closed Session in accordance with Section 2.2-3711, Subsection A, of the Code of Virginia, as amended, in order to discuss matters identified as exempt pursuant to Section 2.2-3711, Subsection A, Paragraph 3. The subjects to be addressed shall be the acquisition, disposition, or use of property. The motion was seconded by Councilman Broomall.

T.P. Golden	Aye	R. W. Smith	Aye
J.H. Page	Aye	J.E. Gianniny	Aye
L.W. Broomall	Aye	M.M. Elrod	Aye

The motion carried.

Council went into closed session at 8:49 p.m.

MEETING RECONVENED

Council reconvened in open session at 9:10 p.m.

RESOLUTION

WHEREAS, the Lexington City Council has convened a closed meeting on this date pursuant to an affirmative vote in accordance with the provisions of the Virginia Freedom of Information Act, specifically Section 2.2-3711, Subsection A, Paragraph 3, to discuss the acquisition, disposition, or use of property.

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by this City Council that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE BE IT RESOLVED by the Mayor and Council of the City of Lexington, Virginia, that the Council hereby certifies that, to the best of each member's knowledge, (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (2) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Lexington City Council.

ROLL CALL

T.P. Golden	Aye	R. W. Smith	Aye
J.H. Page	Aye	J.E. Gianniny	Aye
L.W. Broomall	Aye	M.M. Elrod	Aye

The motion carried.

ADJOURNMENT

The meeting adjourned at 9:12 p.m.