

# CITY COUNCIL OF ALEXANDRIA, VIRGINIA

**Regular Meeting**  
**Tuesday, April 28, 2009 - - 7:00 p.m.**

\*\*\*\*\*

Present: Mayor William D. Euille, Vice Mayor Redella S. Pepper, Members of Council Ludwig P. Gaines, K. Rob Krupicka, Paul C. Smedberg, and Justin M. Wilson.

Absent: Member of Council Timothy B. Lovain.

Also Present: Mr. Hartmann, City Manager; Mr. Spera, Acting City Attorney; Ms. Evans, Deputy City Manager; Mr. Jinks, Deputy City Manager; Mr. Castrilli, Communications Director, City Manager's Office; Ms. Blackford, Communications Officer, City Manager's Office; Mr. Gates, Assistant City Manager; Police Captain Ogden; Police Sgt. Weinert; Ms. Boyd, Director, Citizen Assistance; Ms. Triggs, Director, Finance Office; Mr. Johnson, Chief Financial Officer; Mr. Touhill, Office of Management and Budget; Mr. Baier, Interim Director, Recreation, Parks and Cultural Activities; Ms. Carrel, Recreation, Parks and Cultural Activities; Ms. Colton, Recreation, Parks and Cultural Activities; Fire Chief Thiel; Mr. Trobridge, Deputy Director, Office of Information Technology; Ms. Savukas, Information Technology; Ms. Baker, Interim Director, Transportation and Environmental Services; Mr. Lambert, Transportation and Environmental Services; Dr. Gilmore, Director, Mental Health/Mental Retardation and Substance Abuse; Dr. Kaplowitz, Director, Health Department; and Mr. Lloyd.

Recorded by: Jacqueline M. Henderson, City Clerk and Clerk of Council

## OPENING

1. Calling the Roll.

The meeting was called to order by Mayor Euille, and the City Clerk called the roll; all the members of Council were present, with the exception of Councilmember Lovain, who was absent.

2. Moment of Silence and Pledge of Allegiance.

City Council observed a moment of silence and recited the Pledge of Allegiance.

3. Reading and Acting Upon the Minutes of the Following Meetings of City Council:

- (a) The Special Public Hearing Meeting Minutes of April 13, 2009; and
- (b) The Regular Meeting Minutes of April 14, 2009; and
- (c) The Public Hearing Meeting Minutes of April 18, 2009.

**WHEREUPON**, upon motion by Councilman Gaines, seconded by Vice Mayor Pepper and carried 6-0, City Council approved the special public hearing meeting minutes of April 13, 2009, the regular meeting minutes of April 14, 2009 and the public hearing meeting minutes of April 18, 2009. The voting was as follows:

Gaines	"aye"	Krupicka	"aye"
Pepper	"aye"	Lovain	absent
Euille	"aye"	Smedberg	"aye"
	Wilson	"aye"	

**RECOGNITION OF YOUTH BY MEMBERS OF CITY COUNCIL**

- 4. Viewing of iM2 Movie Mentors Video and Clips from the Film Festival and Recognition of Mentors and Alexandria Youth Participants.

City Council recognized the mentors and youth participants.

**PROCLAMATIONS**

None.

**REPORTS AND RECOMMENDATIONS OF THE CITY MANAGER**

**CONSENT CALENDAR (5-14)**

**(Resignations and Uncontested Appointments)**

- 5. Receipt of the Following Resignations From Members of Boards, Commissions and Committees:

- (a) Alexandria Community Services Board  
Terence J. Everitt

(A copy of the above resignations is on file in the Office of the City Clerk and Clerk of Council, marked collectively as Exhibit No. 1 of Item No. 5(a); 4/28/09, and is incorporated as part of this record by reference.)

- 6. Uncontested Appointments to Boards, Commissions and Committees:

- (a) Alexandria Archaeological Commission  
1 Member-at-Large
- (b) Alexandria Citizen Corps Council  
1 Citizen Member

(A copy of the above appointments is on file in the Office of the City Clerk and Clerk of Council, marked collectively as Exhibit No. 1 of Item No. 6(a-b); 4/28/09, and is incorporated as part of this record by reference.)

**(Reports and Recommendations of the City Manager)**

- 7. Consideration of a Grant Application to the Virginia Department of Criminal Justice Services to Implement a Crisis Intervention Team Within the Alexandria Police Department.

(A copy of the City Manager's memorandum dated April 17, 2009, is on file in the Office of the City Clerk and Clerk of Council, marked as Exhibit No. 1 of Item No. 7; 4/28/09, and is incorporated as part of this record by reference.)

- 8. Receipt of the Alexandria Commission for the Arts Annual Report for FY 2008.

(A copy of the City Manager's memorandum dated April 14, 2009, is on file in the Office of the City Clerk and Clerk of Council, marked as Exhibit No. 1 of Item No. 8; 4/28/09, and is incorporated as part of this record by reference.)

- 9. Consideration of a Renewal Grant Application to the Virginia Department of Motor Vehicles for a Police Department Aggressive Driving/DUI Interdiction Program in FY 2010.

(A copy of the City Manager's memorandum dated April 21, 2009, is on file in the Office of the City Clerk and Clerk of Council, marked as Exhibit No. 1 of Item No. 9; 4/28/09, and is incorporated as part of this record by reference.)

- 10. Consideration of Authorization of Recommended Capital Project Allocations and Planned Expenditures.

(A copy of the City Manager's memorandum dated April 22, 2009, is on file in the Office of the City Clerk and Clerk of Council, marked as Exhibit No. 1 of Item No. 10; 4/28/09, and is incorporated as part of this record by reference.)

- 11. Receipt of the Monthly Financial Report for the Period Ending March 31, 2009.

(A copy of the City Manager's memorandum dated April 23, 2009, is on file in the Office of the City Clerk and Clerk of Council, marked as Exhibit No. 1 of Item No. 11; 4/28/09, and is incorporated as part of this record by reference.)

12. Consideration of Application for a \$15,000 One-Time Special Funds Grant From the Virginia Department of Criminal Justice Services for Three Initiatives in the Alexandria Court Service Unit.

(A copy of the City Manager's memorandum dated April 23, 2009, is on file in the Office of the City Clerk and Clerk of Council, marked as Exhibit No. 1 of Item No. 12; 4/28/09, and is incorporated as part of this record by reference.)

13. Consideration of a Federal Stimulus (ARRA) Grant Application for Funding from the Edward Byrne Memorial Justice Assistance Grant Program for Public Safety Projects in the Court Service Unit, the Police Department and the Office of Sheriff.

(A copy of the City Manager's memorandum dated April 17, 2009, is on file in the Office of the City Clerk and Clerk of Council, marked as Exhibit No. 1 of Item No. 13; 4/28/09, and is incorporated as part of this record by reference.)

14. Consideration of Application for United States Department of Health and Human Services Grant Funds for an Additional Sober Living Unit in the Alexandria Detention Center.

(A copy of the City Manager's memorandum dated April 23, 2009, is on file in the Office of the City Clerk and Clerk of Council, marked as Exhibit No. 1 of Item No. 14; 4/28/09, and is incorporated as part of this record by reference.)

- 14.1 Consideration of Grant Application to the Virginia Department of Fire Programs, Conference and Education Assistance Program, for Fire Department-Sponsored Equity and Diversity Conference.

(A copy of the City Manager's memorandum dated April 23, 2009, is on file in the Office of the City Clerk and Clerk of Council, marked as Exhibit No. 1 of Item No. 14.1; 4/28/09, and is incorporated as part of this record by reference.)

- 14.2 Consideration of a Grant Application to the Department of Health and Human Services to Strengthen Treatment Services for Safe Haven Residents.

(A copy of the City Manager's memorandum dated April 23, 2009, is on file in the Office of the City Clerk and Clerk of Council, marked as Exhibit No. 1 of Item No. 14.2; 4/28/09, and is incorporated as part of this record by reference.)

## **END OF CONSENT CALENDAR**

**WHEREUPON**, upon motion by Councilman Gaines, seconded by Vice Mayor Pepper and carried 6-0, City Council approved the consent calendar, with the removal of items #8, 9 and 10, which were considered under separate motions. The City

Manager's recommendations were as follows:

5. City Council accepted the following resignation with regret: (a) Terence J. Everitt, Alexandria Community Services Board.

6. City Council made the following appointments to boards and commissions:(a) reappointed Lillie Finklea as the one member-at-large to the Alexandria Archaeological Commission; and (b) appointed Diane Worrell as the one citizen member to the Alexandria Citizen Corps Council.

7. City Council: 1. authorized MH/MR/SA to submit a grant application for \$39,400 to the DCJS for the creation of a CIT program within the Alexandria Police Department; and 2. authorized the City Manager to execute all the necessary documents that may be required.

11. City Council received the monthly financial report for the period ending March 31, 2009.

12. City Council authorized staff to: 1. submit a grant application to the Department of Criminal Justice Services in the amount of \$15,000 to fund (1) an upgraded video system to respond to police arrest calls after hours, (2) expand the Space of Her Own program in the West End area and (3) contract to train probation officers and mental health staff in the research-based parent education program for parents of court-involved youth. These grant funds come from the FY 2009 Virginia DCJS competitive grants allocation and are not connected to stimulus funds. The grant application is due May 14, 2009. No local match is required for these funds; and 2. execute all necessary documents that may be required.

13. City Council authorized staff to: 1. submit a grant application (due May 18, 2009) to the United States Department of Justice for \$323,939 in federal stimulus funding under the Byrne Justice Assistance Grant Program for the list of public safety projects; and 2. executed all necessary documents that may be required.

14. This item was deferred.

14.1. City Council authorized staff to: 1. submit a grant application (due May 1, 2009) to the Virginia Department of Fire Programs for \$5,000 in funding under the Conference and Education assistance Program for support to the Fire Department in sponsoring the annual Equity and Diversity Conference; and 2. execute all necessary documents that may be required.

14.2. City Council: 1. authorized the Alexandria Department of Mental Health, Mental Retardation and Substance Abuse to submit a grant application for \$400,000 to Substance Abuse and Mental Health Services Administration (SAMHSA) to strengthen behavioral health care services at Safe Haven (the grant application has already been submitted contingent on Council approval, since notification of the opportunity came too

late for prior Council approval); 2. authorized the funding of a transferred position to the Safe Haven project (1.0 FTE Residential Counselor) and the creation of a new half-time (0.5FTE) Management Analyst I, both of which will be fully supported by SAMHSA grant revenue; 3. the Safe Haven is scheduled to open in FY 2010. Because of severe City budget constraints affirm that no City funds would be available to fund this program in FY 2010 or future years; and 4. authorized the City Manager to execute all the necessary documents that may be required.

The voting was as follows:

Gaines	"aye"	Krupicka	"aye"
Pepper	"aye"	Lovain	absent
Euille	"aye"	Smedberg	"aye"
	Wilson	"aye"	

8. Receipt of the Alexandria Commission for the Arts Annual Report for FY 2008.

(A copy of the City Manager's memorandum dated April 14, 2009, is on file in the Office of the City Clerk and Clerk of Council, marked as Exhibit No. 1 of Item No. 8; 4/28/09, and is incorporated as part of this record by reference.)

Ms. Pat Miller, chair, Alexandria Commission for the Arts, along with Interim Director of Recreation, Parks and Cultural Activities Baier, Office of the Arts Director Carrel and Acting Director of the Durant Center Lawrence, presented the Commission on the Arts Annual Report.

**WHEREUPON**, upon motion by Vice Mayor Pepper, seconded by Councilman Smedberg and carried 6-0, City Council received the annual report from the Alexandria Commission for the Arts and thanked the Commission for its efforts on behalf of the City. The voting was as follows:

Pepper	"aye"	Gaines	"aye"
Smedberg	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	absent
	Wilson	"aye"	

9. Consideration of a Renewal Grant Application to the Virginia Department of Motor Vehicles for a Police Department Aggressive Driving/DUI Interdiction Program in FY 2010.

(A copy of the City Manager's memorandum dated April 21, 2009, is on file in the Office of the City Clerk and Clerk of Council, marked as Exhibit No. 1 of Item No. 9; 4/28/09, and is incorporated as part of this record by reference.)

Police Captain Ogden responded to questions of Council regarding the due date of the application, noting that it is due May 1.

**WHEREUPON**, upon motion by Councilman Smedberg, seconded by Vice Mayor Pepper and carried 6-0, City Council: 1. approved the grant application to the Virginia DMV in the amount of \$54,750, which will provide funds to the Police Department to operate a DUI/aggressive driving interdiction program in the City; 2. authorized the City Manager to execute all necessary documents that may be required; and 3. because of severe City budget constraints, affirm that no additional City funds would be available to fund this program in FY 2010 or future years. The voting was as follows:

Smedberg	"aye"	Gaines	"aye"
Pepper	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	absent
	Wilson	"aye"	

10. Consideration of Authorization of Recommended Capital Project Allocations and Planned Expenditures.

(A copy of the City Manager's memorandum dated April 22, 2009, is on file in the Office of the City Clerk and Clerk of Council, marked as Exhibit No. 1 of Item No. 10; 4/28/09, and is incorporated as part of this record by reference.)

Chief Financial Officer Johnson responded to questions of Council, noting that they make sure there is still a need for the activities and projects before they are put on the report each month.

**WHEREUPON**, upon motion by Councilman Smedberg, seconded by Councilman Krupicka and carried 6-0, City Council authorized the capital project allocations and planned expenditures for the capital projects as detailed in the Capital Improvement Expenditure Summary. The voting was as follows:

Smedberg	"aye"	Pepper	"aye"
Krupicka	"aye"	Gaines	"aye"
Euille	"aye"	Lovain	absent
	Wilson	"aye"	

## **CONTESTED APPOINTMENTS**

15. Alexandria Human Rights Commission  
2 Citizen Members

(The following persons volunteered for appointment to the above Commission)

NAME:

Bridget Allen

John Ates  
Christina Doty  
Sonya Sacks  
Nancy Turner

(Material pertaining to the above appointment is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 15; 4/28/09, and is incorporated as part of this record by reference.)

**WHEREUPON**, ballots were distributed, tellers were appointed and the ballots were tallied with the following results: City Council reappointed John Ates and Nancy Turner as the two citizen members to the Alexandria Human Rights Commission. The voting was as follows:

Euille	-	Ates, Turner
Pepper	-	Ates, Turner
Gaines	-	Ates, Turner
Krupicka	-	Ates, Turner
Lovain	-	absent
Smedberg	-	Ates, Turner
Wilson	-	Ates, Turner

**NEW BUSINESS ITEM NO. 1:**

**WHEREUPON**, upon motion by Vice Mayor Pepper, seconded by Councilman Krupicka and carried 6-0 by roll-call vote, City Council closed the executive session related to the selection of the city attorney and adopted the resolution previously circulated to the City Council. The voting was as follows:

Pepper	"aye"	Gaines	"aye"
Krupicka	"aye"	Lovain	absent
Euille	"aye"	Smedberg	"aye"
Wilson	"aye"		

The resolution reads as follows:

**RESOLUTION NO. 2331**

WHEREAS, the Alexandria City Council has this 28<sup>th</sup> day of April 2009, recessed into executive session pursuant to a motion made and adopted in accordance with the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the city council that such executive session was conducted in accordance with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the city council does hereby certify that, to the best of each member's knowledge, only public business matters that were identified in the motion by which the executive session was convened, and that are lawfully exempted by the Freedom of Information Act from the Act's open meeting requirements, were heard, discussed or considered by council during the executive session.

**WHEREUPON**, upon motion by Councilman Krupicka, seconded by Vice Mayor Pepper and carried 6-0, City Council hired James L. Banks as the new City Attorney for the City of Alexandria, according to the terms and conditions agreed to in executive session. The voting was as follows:

Krupicka	"aye"	Gaines	"aye"
Pepper	"aye"	Lovain	absent
Euille	"aye"	Smedberg	"aye"
	Wilson	"aye"	

City Council thanked Acting City Attorney Spera for his hard work over the last several months as Acting City Attorney. City Council also welcomed Mr. Banks, who was in the audience, to the City government.

#### **REPORTS AND RECOMMENDATIONS OF THE CITY MANAGER FOR DISCUSSION**

16. Report on Possible Short Term Parking for Motorcoaches.

(A copy of the City Manager's memorandum dated April 24, 2009, is on file in the Office of the City Clerk and Clerk of Council, marked as Exhibit No. 1 of Item No. 16; 4/28/09, and is incorporated as part of this record by reference.)

Interim Director of Recreation, Parks and Cultural Activities Baier, along with Bicycle and Pedestrian Coordinator Lambert, made a presentation on the report and responded to questions of City Council.

**WHEREUPON**, upon motion by Councilman Smedberg, seconded by Vice Mayor Pepper and carried 6-0, City Council moved the recommendation from the Traffic and Parking Board (3540 Wheeler Avenue.) The voting was as follows:

Smedberg	"aye"	Gaines	"aye"
Pepper	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	absent
	Wilson	"aye"	

#### **REPORTS AND RECOMMENDATIONS FROM BOARDS, COMMISSIONS AND COMMITTEES**

None

## **ORAL REPORTS BY MEMBERS OF CITY COUNCIL**

**and**

## **ORAL PRESENTATIONS BY MEMBERS OF CITY COUNCIL**

(a) Health Department Director Kapowitz, along with Assistant Superintendent of Schools John Porter and Fire Chief Thiel, made a presentation on the swine flu and the City's pandemic flu plan and they responded to questions of City Council.

(b) Mayor Euille noted that he will be travelling to Saudi Arabia through the U.S. Conference of Mayors to be a guest of the Saudi government and will gone May 7-14, and he noted that no City funds will be spent on the trip. Mayor Euille said he will miss the May 12 City Council meeting.

(c) Councilman Gaines said he will be out of town with family the week of May 26, so he will miss that Council meeting.

(d) Councilman Wilson said he serves as one of the vice chairs of the Human Services and Public Safety Policy Committee of the Council of Governments and they have finalized the homeless enumeration report that COG does every year. He said the City is one of only two jurisdictions in the region that saw a decrease in homeless over the five year period . The bad news is that the City's decrease was single homeless, but they have seen increases in family homelessness, as well as employed homeless. There will be another enumeration in January 2010.

(e) Councilman Wilson requested that staff look into an additional fee for those making payments at City Hall for tax payments that otherwise could be made in other automated payment methods and to come back with a staff recommendation in the coming months.

## **ORAL REPORT FROM THE CITY MANAGER**

(a) Interim Director of Transportation and Environmental Services Baker made a status report on the Monroe Avenue Bridge opening, noting the negotiations between Potomac Yard Development, Dominion Power, the Water Company and Shirley Contracting.

Council asked staff to be sure to over-communicate and notify the neighbors, civic associations and citizens of the information.

## **ORDINANCES AND RESOLUTIONS**

17. Final Passage of an Ordinance to Amend the Zoning Ordinance to Extend

Validity Periods of Approved Site Plans and Development Special Use Permits.  
(#10, 4/14/09, #14, 4/18/09) **[ROLL-CALL VOTE]**

(A copy of the informal memorandum explaining the ordinance is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 17; 4/28/09, and is incorporated as part of this record by reference.

A copy of the ordinance referred to in the above item, of which each Member of Council received a copy not less than 24 hours before said introduction, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item No. 17; 4/28/09, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon motion by Councilman Wilson, seconded by Councilman Krupicka and carried 6-0 by roll-call vote, City Council adopted an ordinance to amend the Zoning Ordinance to extend validity periods of approved site plans and development special use permits. The voting was as follows:

Wilson	"aye"	Pepper	"aye"
Krupicka	"aye"	Gaines	"aye"
Euille	"aye"	Lovain	absent
	Smedberg	"aye"	

The ordinance reads as follows:

**ORDINANCE NO. 4588**

AN ORDINANCE to amend and reordain Section 10-106 (ISSUANCE AND EXPIRATION OF CERTIFICATES OF APPROPRIATENESS OR PERMITS), under Section 10-100 (OLD AND HISTORIC ALEXANDRIA DISTRICT), and Section 10-206 (ISSUANCE AND EXPIRATION OF CERTIFICATES OF APPROPRIATENESS OR PERMITS), under Section 10-200 (PARKER-GRAY DISTRICT), of Article X (HISTORIC DISTRICTS AND BUILDINGS), and Section 11-418 (TIME OF VALIDITY), under Section 11-400 (SITE PLAN), and Section 11-506 (DURATION OF VALID PERMIT), under Section 11-500 (SPECIAL USE PERMITS), of Article XI (DEVELOPMENT APPROVALS AND PROCEDURES) of the City of Alexandria Zoning Ordinance, in accordance with the text amendment heretofore approved by city council as Text Amendment No. 2009-0001.

WHEREAS, the City Council finds and determines that:

1. In Text Amendment No. 2009-0001, the planning commission, having found that the public necessity, convenience, general welfare and good zoning practice so require, approved an application to extend the validity period of approved site plans and development special use permits, along with associated permits or plans;

2. The City Council in adopting this ordinance expressly adopts, ratifies,

affirms and concurs in the finding and action of the Planning Commission above stated;

3. All requirements of law precedent to the adoption of this ordinance have been complied with; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 10-106 of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended to read as follows:

10-106 *Issuance and expiration of certificates of appropriateness or permits.*

(A) *Issuance.*

(1) Upon approval by the Old and Historic Alexandria District Board of architectural review of any erection, reconstruction, alteration or restoration, a certificate of appropriateness, signed by the secretary of the board and bearing the date of issuance, but subject, however, to the provisions of section 10-107, shall be made available to the applicant.

(2) Upon approval by the Old and Historic Alexandria District board of architectural review of any application to move, remove, capsulate or demolish in whole or in part, a permit for same, signed by the secretary of the board of architectural review and bearing the date of issuance, but subject, however, to the provisions of section 10-107 shall be made available to the applicant.

(3) In instances where the city council on appeal approves any erection, reconstruction, alteration or restoration, or where the city council on appeal approves the moving, removing, capsulating or demolition in whole or in part of, a certificate of appropriateness or a permit to move, remove, capsulate, or demolish in whole or in part, bearing the date of issuance but subject, however, to the provisions of section 10-107(B), shall forthwith be signed by the mayor and made available to the applicant.

(B) *Expiration* . Any certificate of appropriateness issued pursuant to section 10-106(A) and any permit to move, remove, capsulate or demolish in whole or in part in the Old and Historic Alexandria District issued pursuant to section 10-106(B) shall expire of its own limitation 12 months from the date of issuance if the work authorized thereby is not commenced and diligently and substantially pursued by the end of such 12 month period; and further, any such certificate and permit shall also expire and become null and void if such authorized work is suspended or abandoned for a period of 12 months after being commenced and

diligently and substantially pursued. Any period or periods of time during which the right to use any such certificate or permit is stayed pursuant to this article X shall be excluded from the computation of the 12 months. In the case of a certificate or permit for a project that requires a development special use permit or site plan under section 11-400 of this ordinance, the period of validity shall be coincident with the validity of the development special use permit or site plan as determined pursuant to section 11-418 of this ordinance.

Section 2. That Section 10-206 of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended to read as follows:

10-206        *Issuance and expiration of certificates of appropriateness or permits.*

(A)        *Issuance.*

(1)        Upon approval by the Parker-Gray District board of architectural review of any erection, reconstruction, alteration or restoration, a certificate of appropriateness, signed by the secretary of the board and bearing the date of issuance, but subject, however, to the provisions of section 10-207, shall be made available to the applicant.

(2)        Upon approval by the Parker-Gray District board of architectural review of any application to move, remove, capsulate or demolish in whole or in part, a permit for same, signed by the secretary of the board of architectural review and bearing the date of issuance, but subject, however, to the provisions of section 10-207, shall be made available to the applicant.

(3)        In instances where the city council on appeal approves any erection, reconstruction, alteration or restoration, or where the city council on appeal approves the moving, removing, capsulating or demolition in whole or in part, a certificate of appropriateness or a permit to move, remove, capsulate or demolish in whole or in part bearing the date of issuance but subject, however, to the provisions of section 10-207(B), shall forthwith be signed by the mayor and made available to the applicant.

(B)        *Expiration.* Any certificate of appropriateness issued pursuant to section 10-206(A) and any permit to move, remove, capsulate or demolish in whole or in part issued pursuant to section 10-206(A) shall expire of its own limitation 12 months from the date of issuance if the work authorized thereby is not commenced and diligently and substantially pursued by the end of such 12-month period; and further, any such certificate and permit

shall also expire and become null and void if such authorized work is suspended or abandoned for a period of 12 months after being commenced and diligently and substantially pursued. Any period or periods of time during which the right to use any such certificate or permit is stayed pursuant to this article X shall be excluded from the computation of the 12 months. In the case of a certificate or permit for a project that requires a development special use permit or site plan under section 11-400 of this ordinance, the period of validity shall be coincident with the validity of the development special use permit or site plan as determined pursuant to section 11-418 of this ordinance.

Section 3. That Section 11-418 of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended to read as follows:

11-418 *Time of validity* .

(A) A site plan or development special use permit approved pursuant to the provisions of this section 11-400 shall expire and become null and void as to any uncommenced construction and any uncompleted construction, unless substantial construction of the project approved in such plan is commenced within 36 months after initial planning commission approval of the plan, or council approval in case of appeal, and such construction is thereafter pursued with due diligence; provided, that upon petition by the plan applicant, property owner or any successor in interest, filed with the director of planning and zoning prior to the expiration of the period herein limited, including expiration occasioned by any interruption in substantial construction activity on a building of more than 12 consecutive months and, in case of a multi-building project, any interruption in substantial construction activity of more than 24 consecutive months between the substantial completion of one building and the commencement of substantial construction of another building, and after notice and public hearing, the planning commission may, for good cause shown, enlarge the period in which construction must be commenced or amend the requirement for due diligence in the pursuit of construction. As used in this ordinance, due diligence means action characterized by the steady, earnest, attentive, energetic and successful or productive marshalling and application of all necessary resources and efforts in order to construct and complete an approved project.

(B) Notwithstanding any contrary provision of this ordinance, the period of validity of any other permit or plan associated with such site plan or development special use permit and approved pursuant to this ordinance shall be extended to run and expire concurrently with the site plan or development special use permit.

(C) The amendment extending site plan or development special use

permit validity to 36 months in subsection (A) and the provisions of subsection (B), above, shall apply to all site plans and development special use permits approved on and after April 1, 2009.

(D) In addition and notwithstanding the provisions of subsections (A), (B) and (C) above, any site plan or development special use permit that has received approval prior to April 1, 2009, and remains in valid force and effect on such date shall expire and become null and void as to uncommenced or uncompleted construction unless substantial construction is commenced on or before March 31, 2012, and thereafter pursued with due diligence. Any other permit or plan approved pursuant to this ordinance and associated with a site plan or development special use permit extended by this subsection shall likewise be extended to run and expire concurrently with such site plan or development special use permit.

(E) During the period of validity established by this section, the property subject to the site plan or development special use permit, including all buildings existing or under construction, on which substantial construction work is not actually proceeding, shall be maintained in good order and repair, in compliance with all applicable provisions of this ordinance and the city code, and in addition shall be maintained so as to prevent blight or other substantial detrimental impacts on surrounding property.

(F) Evidence that substantial construction activity is proceeding on a building without any interruption of 12 or more consecutive months and, in the case of a multi-building project, is proceeding without interruption of 24 or more consecutive months between the substantial completion of one building and the commencement of substantial construction of another building shall constitute prima facie evidence of due diligence. Such evidence of due diligence may be rebutted by evidence that the work is not in fact steady, earnest, attentive, energetic and successful or productive. Evidence that substantial construction activity on a building has been interrupted for more than 12 consecutive months or, in the case of a multi-building project, has been interrupted for more than 24 consecutive months between the substantial completion of one building and the commencement of substantial construction of another building shall constitute prima facie evidence of a failure to maintain due diligence. Evidence of such failure may be rebutted by evidence that the interruption in substantial construction activity is proximately caused by a change in circumstances or mistake. Such change in circumstances shall be limited to a change which substantially affects the ability of the applicant, owner or any successor in interest to maintain due diligence and which could not reasonably have been anticipated at the time of site plan approval, and shall without limitation encompass change in the economic factors which

affect the development of land (e.g., availability of financing, interest rates, market absorption). Such mistake shall be limited to an error or omission in the material facts or assumptions regarding the land or its physical conditions relied upon by the applicant at the time of site plan approval, which mistake substantially affects the ability of the applicant, owner or any successor in interest to maintain due diligence. Mistake shall not encompass errors in judgment, and the applicant and any successor in interest are charged with all knowledge reasonably attainable at the time of site plan approval.

(G) When the director of planning and zoning makes a finding that a site plan has become null and void by operation of the provisions of sections 11-418 (A) through (E), he shall notify the applicant by mail at his last known address, and likewise notify any known successor in interest and the owner of the property as determined from the real estate assessment records of the city. The applicant, owner or any successor in interest who is aggrieved by, and desires to contest, such finding shall file a petition with the director of planning and zoning specifying the grounds of such contest within 30 days after the mailing of such notice. Thereafter, the planning commission shall proceed to decide, after notice and public hearing, whether the site plan has become null and void under the provisions of sections 11-418(A) through (E). In any such proceeding, the petitioner shall have the burden of proving the continuing validity of the site plan approval. In the event no such petition is timely filed, the director of planning and zoning's finding shall become final and shall not be subject to further review.

(H) Any person aggrieved by a decision of the planning commission made under section 11-418 (A) or section 11-418 (G) may appeal the decision to the city council, provided that the appeal is filed in writing, stating the reasons therefor, with the city clerk, within 15 days after the planning commission decision is announced. The appeal shall be accompanied by the fee established pursuant to section 11-104. In the event an appeal is filed, the city council shall schedule at least one public hearing on the matter. The council may affirm, reverse or modify the decision of the commission, or return the matter to the commission for further consideration.

(I) Fees and contributions paid by the applicant to the city in connection with a project, except application and on site inspection fees, shall be proportionately refunded if a site plan or development special use permit expires under the provisions of this section.

Section 4. That Section 11-506 of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended to read as follows:

11-506 *Duration of valid permit.*

(A) *Revocation and suspension.* After notice and a public hearing, the city council may revoke or suspend any special use permit approved by it upon proof that the holder of the permit has failed to comply with any law, including, without limitation, the conditions subject to which the special use permit was granted.

(B) *Termination of use .* A special use permit shall cease to be valid if the use for which such permit is granted is not operated for a continuous period of two years or more.

(C) *Commencement of use required.*

(1) *Use without new construction .* A special use permit granted under this section 11-500 that does not involve new construction shall become void unless operation of the use is commenced within a period of 18 months from the date that the permit was approved and is thereafter diligently pursued. If an application to extend a special use permit is filed with the director prior to the expiration of its term, and after compliance with the notice and hearing requirements for an original special use permit application, the city council may grant an 18 month extension of the permit.

(2) *Use with new construction.*

(a) *Construction to begin within 36 months.* A special use permit approved pursuant to the provisions of this section 11-500 that involves new construction shall expire and become null and void as to any uncommenced construction and any uncompleted construction, unless substantial construction of the project approved in such permit is commenced within the period established pursuant to section 11-418 of the ordinance unless the permit is one that involves more than seven acres and the applicant requests and council approves a different time period.

(b) *Extension of time allowed under certain conditions.* An extension of time may be permitted by city council under the same conditions and procedures as those provided for in section 11-418(A).

(c) *Evidentiary standards for "substantial construction" and "due diligence."* As used in this section 11-506, the terms "substantial construction" and "due diligence" shall have that meaning provided in section 11-418(E).

(d) *Finding that permit has expired.* The procedures by which the director may make a finding that a special use permit has expired and by which that finding may be challenged shall be those provided in section 11-418(G).

(e) *Application to site plans approved as part of special use permit .* The provisions of this subsection shall control the validity of all site plans, preliminary, final or combined, approved as part of a special use permit, and no such site plan shall continue in force and effect beyond the expiration of the special use permit by which such site plan was approved.

(f) *Refund of fees.* Fees and contributions paid by the applicant to the city in connection with a project, except application and on-site inspection fees, shall be proportionately refunded if a special use permit expires under the provisions of this section.

(3) *"New construction" defined .* For purposes of this section 11-506(C), the term "new construction" shall mean that construction, development or improvement which requires the approval of a site plan pursuant to section 11-403.

(4) *Application to previously issued permits.* The provisions of this section 11-506(C) shall apply to all special use permits approved after April 1, 2009, and to any application for an extension of a special use permit, regardless of when approved, properly filed after April 1, 2009.

Section 5. That the director of planning and zoning be, and hereby is, directed to record the foregoing text amendment.

Section 6. That Sections of the City of Alexandria Zoning Ordinance, as amended by this ordinance, be, and the same hereby are, reordained as part of the City of Alexandria Zoning Ordinance.

Section 7. That for each site plan and/or development special use permit approved after April 1, 2009, the City Council shall receive a written report on the project status no later than eighteen (18) months after initial Planning Commission and/or Council approval. For projects covered under 11-418 (D) as modified herein, a report shall be submitted on October 1, 2010 regarding each project that has not proceeded to substantial construction. Reports shall be prepared by applicants and forwarded to Council by staff.

Section 8. That this ordinance, adopted on April 28, 2009, shall become effective on April 1, 2009, *nunc pro tunc*, and shall (1) apply to all applications for land use, land development or subdivision approval provided for under the City of Alexandria Zoning Ordinance which are subject to the provisions of this ordinance and are pending on April 1, 2009 before any city department, agency or board, or before city council, (2) shall apply to all such applications which may be filed after April 1, 2009, and (3) shall in addition apply to all such applications approved prior to April 1, 2009, to the extent expressly provided in this ordinance.

**OTHER**

18. Consideration of City Council Schedule.

(A copy of the City Manager's memorandum dated April 24, 2009, is on file in the Office of the City Clerk and Clerk of Council, marked as Exhibit No. 1 of Item No. 18; 4/28/09, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon motion by Councilman Smedberg, seconded by Vice Mayor Pepper and carried 6-0, City Council adopted the following schedule: 1. begin the Tuesday, May 26 work session on the Matrix Study of the Department of Recreation, Parks and Cultural Activities at 5:00 p.m. instead of 5:30 p.m. and add Fort Ward Museum and Park issues as a work session topic; 2. scheduled a joint work session with the Planning Commission on the King Street Retail Study on Monday, June 22 at 7:00 p.m. in the Council Work Room; and 3. received the revised calendar, which includes: the 11th annual Bike to Work Day on Friday, May 15 from 6:30 a.m. to 8:30 a.m. on Market Square; the annual Flora Krause Casey Public Health awards reception on Monday, May 18 at 6:00 p.m. in the Vola Lawson Lobby; two additional public forums on the City's Waterfront Plan on Thursday, April 30, from 6:30 p.m. to 9:00 p.m. at The Lyceum, 201 South Washington Street and on Saturday, June 27 from 9:00 a.m. to 3:00 p.m. (location TBD); the ribbon cutting ceremony celebrating the official opening of the Four Mile Run Trail and the Washington and Old Dominion Trails on Saturday, May 30 at 10:00 a.m. at 27th Road South and South Four Mile Run Drive in Arlington; and the annual employee service awards ceremony on Thursday, June 4 at 3:00 p.m. at the Lee Center, 1108 Jefferson Street (exact room to be determined.) The voting was as follows:

Smedberg	"aye"	Gaines	"aye"
Pepper	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	absent
	Wilson	"aye"	

**EXECUTIVE SESSION**

19. Consideration of Convening an Executive Session Closed to the Public to Discuss Pending Litigation with Legal Counsel.

**WHEREUPON**, upon motion by Vice Mayor Pepper, seconded by Councilman Smedberg and carried 6-0, at 8:52 p.m., City Council convened in Executive Session, pursuant to Section 2.2-3711(A)(7) for the purpose of consulting with legal counsel regarding pending litigation. The voting was as follows:

Pepper	"aye"	Gaines	"aye"
Smedberg	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	absent
	Wilson	"aye"	

**WHEREUPON**, upon motion by Vice Mayor Pepper, seconded by Councilman Smedberg and carried 6-0, at 9:24 p.m., City Council reconvened the meeting. The voting was as follows:

Pepper	"aye"	Gaines	"aye"
Smedberg	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	absent
	Wilson	"aye"	

**WHEREUPON**, upon motion by Vice Mayor Pepper, seconded by Councilman Smedberg and carried 6-0 by roll-call vote, City Council adopted the resolution pertaining to the Executive Session. The voting was as follows:

Pepper	"aye"	Gaines	"aye"
Smedberg	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	absent
	Wilson	"aye"	

The resolution reads as follows:

#### RESOLUTION NO. 2332

WHEREAS, the Alexandria City Council has this 28<sup>th</sup> day of April 2009, recessed into executive session pursuant to a motion made and adopted in accordance with the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the city council that such executive session was conducted in accordance with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the city council does hereby certify that, to the best of each member's knowledge, only public business matters that were identified in the motion by which the executive session was convened, and that are lawfully exempted by the Freedom of Information Act from the Act's open meeting requirements, were heard, discussed or considered by council during the executive session.

\* \* \* \* \*

**THERE BEING NO FURTHER BUSINESS TO BE CONSIDERED**, upon motion by Vice Mayor Pepper, seconded by Councilman Gaines and carried 6-0, the City Council meeting of April 28, 2009, was adjourned at 9:30 p.m. The voting was as follows:

Pepper	"aye"	Krupicka	"aye"
Gaines	"aye"	Lovain	absent
Euille	"aye"	Smedberg	"aye"
	Wilson	"aye"	

APPROVED BY:

\_\_\_\_\_  
WILLIAM D. EUILLE    MAYOR

ATTEST:

\_\_\_\_\_  
Jacqueline M. Henderson, CMC, City Clerk