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August 22, 2014

Mr. David Dietrich
139 Wilderness Road
Hampton, Virginia 23669

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

RE: NDAA Proclamation

Dear Mr. Dietrich:

I have responded to your e-mails regarding the above-referenced matter and have advised you that the City has no authority to prepare or draft any proclamation related to the National Defense Authorization Act for Fiscal Year 2012 (NDAA).

I am writing to you on behalf of City Council to restate Council's position that we have no authority to prepare or draft any proclamation relating to the provisions of the NDAA, specifically section 1021(b)(2) relating to the detention of certain covered persons suspected of providing substantial support to groups engaged in hostilities against the U.S., such as al-Qaeda and the Taliban respectively, and those who aided in the 9-11 attacks on the United States. This provision was inserted in the appropriations bill to affirm President Obama's use of the War Powers Act.

The issues addressed in the proclamation you have submitted have already been addressed by the Virginia General Assembly in Virginia Code §2.2-614.2:1. This code section already prohibits local and state law enforcement from participating with the armed forces in detaining any citizen if the assistance would place local and state law enforcement (including the Virginia National Guard) in violation of the U.S. Constitution, the Code of Virginia or the Virginia Administrative Code.

We have researched this matter and find that this type of enactment was prevalent as a protest against President Obama's use of the War Powers Act. Additionally, a federal court case entitled *Hedges v. Obama*. was filed January 13, 2012 against the Obama

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Administration and Members of the U.S. Congress by a group including former *New York Times* reporter and current Truthdig columnist Christopher Hedges challenging the NDAA.

The plaintiffs contended that Section 1021(b)(2) of the NDAA arms the U.S. military with the ability to imprison indefinitely journalists, activists and human-rights workers based on vague allegations.

The principal allegation made by the plaintiffs against the NDAA is that the vagueness of critical terms in the NDAA could be interpreted by the U.S. federal government in a way that authorizes them to label journalists and political activists who interview or support outspoken critics of the Obama administration's policies as "covered persons," meaning that they have given "substantial support" to terrorists or other "associated groups". The government took the position that the interpretation was incorrect and was conjecture.

A federal court in New York issued a permanent injunction blocking the indefinite detention powers of the NDAA but the injunction was stayed by the Second Circuit Court of Appeals pending appeal by the Obama Administration. On July 17, 2013, the Second Circuit Court of Appeals overturned the district court's permanent injunction blocking the indefinite detention powers of the NDAA because the plaintiffs lacked legal standing to challenge the indefinite detention powers of the NDAA. The Supreme Court declined to hear the case on April 28, 2014, leaving the Second Circuit decision intact.

The conclusion is that section 1021(b)(2) remains enforceable and constitutional.

Following the enactment of the NDAA in 2011 (effective fiscal year 2012), some state legislatures expressed opposition to the constitutional violations perceived in the NDAA section 1021. Some legislatures passed non-binding resolutions and others communicated their opinion to their congressmen. On April 28, 2012, the Commonwealth of Virginia enacted a law barring "any state agency or political subdivision or employees of the National Guard from "knowingly aid[ing] an agency of the armed forces of the United States in the detention of any citizen pursuant to the NDAA if the aid would knowingly place any state agency, political subdivision etc. in violation of the U.S. or Virginia Constitution..." Code of Virginia §2.2-614. 2.

In conclusion, the Virginia Legislature already responded to the NDAA section 1021(b)(2). Where the legislature has expressly addressed an issue, the local government is pre-empted from acting. Under Dillon's Rule, Virginia local governments have no authority to act where the legislature has already acted and has made no provision for any local enactments.

I understand that you may not agree with Council's position, but in accordance with Dillon's Rule, we cannot act where the General Assembly has already acted. As you will

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note, no other Virginia locality has enacted a resolution or proclamation addressing the NDAA section 1021(b)(2).

Respectfully,

George E. Wallace
Mayor

cc: Members of Council
Mary B. Bunting, City Manager
Vanessa T. Vallejuli, City Attorney