

## REGULAR MEETING

JANUARY 28, 1997

At a regular meeting of Council held this evening at 7:30 p.m., there were present: Mayor Rodney Eagle; City Manager Steven E. Stewart; Assistant City Manager Roger Baker; City Attorney Earl Q. Thumma, Jr.; Vice-Mayor Hugh J. Lantz; Council Members John H. Byrd, Jr., Walter F. Green, III, and Larry M. Rogers; City Clerk Yvonne Bonnie Ryan and Chief of Police Donald Harper.

Vice-Mayor Lantz delivered the invocation and Mayor Eagle led everyone in the Pledge of Allegiance.

Council Member Rogers offered a motion to approve the consent agenda, including approval of the minutes, and the second reading of an ordinance amending and re-enacting Section 6-1-22 of the Harrisonburg City Code. The motion also included the second reading of a supplemental appropriation for the Fire Department and Treasurer's Department. The motion was seconded by Council Member Green, and approved with a unanimous recorded vote of Council.

At 7:35 p.m., Mayor Eagle closed the regular session temporarily and called the evening's public hearing to order. The following notice appeared in the Daily News-Record on Tuesday, January 14, and Tuesday, January 21, 1997.

**NOTICE OF PUBLIC HEARING**

**City Council Chambers  
Tuesday, January 28, 1997  
7:30 P.M.**

**The Harrisonburg City Council will hold a Public Hearing on Tuesday, January 28, 1997, at 7:30 p.m., in the City Council Chambers, Municipal Building, 345 South Main Street, Harrisonburg, Virginia.**

**The Harrisonburg City Council will receive the views of citizens regarding the proposed use of funds paid under the Local Law Enforcement Block Grant as it relates to the Harrisonburg Police Department's entire budget. At this hearing, persons shall be given an opportunity to provide written and oral views to the City Council about the Department's budget and the relation of the Grant to the entire budget.**

**STEVEN E. STEWART  
City Manager**

Mayor Eagle called on anyone present desiring to speak for or against the local Law Enforcement Block Grant.

Colonel Don Harper stated that the local Law Enforcement Block Grant is issued by the United States Department of Justice to assist localities in improving public safety. A public hearing must be held in order to receive these funds which will be used to purchase radio equipment replacing mobile units in some of the police cars. There being no others desiring to be heard, the public hearing was declared closed at 7:37 p.m., and the regular session reconvened. Council Member Rogers offered a motion to approve block grant funding as presented. The motion was seconded by Council Member Byrd, and approved with a unanimous vote of Council.

Margaret Nichols, Administrator for the Virginia Municipal League Insurance Programs, presented an outstanding Safety Performance Award for the year July 1, 1994 until June 30, 1995 to the City of Harrisonburg by the Virginia Municipal Liability Pool. She said the Virginia Municipal Liability Pool is a non-profit group self-insurance association sponsored by the Virginia Municipal League. The pool provides general liability and damage insurance for more than 100 local governments. The safety awards are presented annually to "encourage and recognize improvement in loss control performance". Mayor Eagle thanked Ms. Nichols for the award and said that he hoped the City could receive the award again.

Dr. J. W. Good, Superintendent of Harrisonburg City Schools, presented a resolution from the Harrisonburg School Board requesting authorization to file an application with the Virginia Public School Authority for up to \$11,600,000 in general obligation school bonds. He explained that the City has made significant investments in Keister, Spotswood, and Waterman Elementary Schools and that the School Board wants to continue the wise use of City funds in extending the life of these facilities a minimum of 20-25 years. The School Board and staff have thoroughly studied the needs addressed by the renovations and are committed to the simultaneous completion of the projects. Schools officials reiterated that they believed the best way to make the improvements was to proceed with the bond issue to shorten the period of time of construction, lessen disruption to the education process and be more cost efficient.

Walter Kurt stated that he did not want taxes increased to cover the cost of issuing the bonds and questioned whether any other bonds would be issued in the next five years. He said that he was concerned about future bond indebtedness. City Manager Stewart explained that there is nothing currently in the adopted Capital Improvement Program to issue any debt over the next five years.

Carolyn Perry, attorney with the law firm of Wharton, Aldhizer and Weaver, explained that the Virginia Public School Authority requires a governing body to approve the submission of an application. It does not commit the Council to proceed forward, but only is a preliminary step in the application process. Council Member Green explained that although he was against any more capital indebtedness, he was not against the schools. He explained that he had requested figures on the City's indebtedness since 1987 when renovations and additions began at Thomas Harrison Middle School, Harrisonburg High, Waterman Elementary, and Stone Spring Elementary. The interest fee the City has paid during this time period has been \$9 million. At the end of this fiscal year the City will still owe \$32 million in school bonds including interest and principal. To issue another \$11.6 million in bonds will require raising taxes or seeking another source of income. He encouraged phasing in these improvement projects from budgeted amounts rather than through borrowing. He also mentioned that the City has several large projects plus a reduction in income from HEC. Mayor Eagle reiterated that he was concerned about the debt, but some of the problems at these schools are maintenance problems. He said, "I am from the school of pay-as-you-go. If there is a way we can

do it and still get the job done I think that is the way to do it and I would be the first to say that I would not be opposed to a tax increase if that's what it takes and that's what we need". Discussion included using literary funds, interim Industrial Development financing or other alternate affordable ways for funding these projects. Vice-Mayor Lantz stated that he thought the School Board understood that City Council would like to phase these projects in over some time instead of taking on more debt. Council Member Green reminded Superintendent Good and the School Board Members that he had requested other alternative methods be considered before issuing any more bonds. He said, "I am very surprised that you cannot state how much it would cost to repair a cafeteria or a roof at any of these schools". Vice-Mayor Lantz commented that perhaps bids should be encouraged from local contractors on the small projects. Following further discussion and comments, Council Member Rogers offered a motion not to grant the School Board permission to apply for the \$11,600,000 general obligation school bond and he encouraged the School Liaison Committee to offer an alternative plan. The motion was seconded by Council Member Green, and approved with a unanimous recorded vote of Council.

*Pursuant to the recent discussion concerning the "Two In-Two Out" rule, Fire Chief Shifflett read the following memorandum addressed to the City Manager:*

*In my previous report to you concerning "Two In-Two Out", I identified the problem currently faced by this department in relation to this issue. The problem is that due to this regulation the level of customer service provided to the citizens of this community will be affected by OSHA's requirement to have two firefighters outside a structure anytime you commit firefighters to an interior fire attack. The impact of this regulation was listed as follows:*

- 1. Fewer usable firefighters on the fire ground.*
- 2. Delayed fire attack.*
- 3. Longer burn time for the structure.*
- 4. More frequent, and more severe firefighter injuries.*
- 5. Higher fire loss.*
- 6. Lower level of customer service.*
- 7. Adverse public opinion due to firefighters not performing as before.*

*The report also lists eight questions which were posed to help determine how we needed to address this situation. All of these questions focused on customer service issues. Also, the first paragraph of the last page of the report indicates that we have taken the necessary steps to immediately comply with this issue, however, our commitment to comply with existing manpower levels is completely inadequate in terms of providing services to the public, and providing a reasonable level of risk to our firefighters. Nothing in this report indicates our need to comply with this issue out of fear of OSHA fines.*

*Since this situation was made public, the Daily News-Record has published several articles on this subject. The article published on January 23, 1997 titled "False Alarm" states, four different times, that OSHA does not impose fines on local governments for OSHA violations. The article does not dispute the fact that this regulation is a valid OSHA regulation. The underlying message in this article appears to be that, even though we have a valid OSHA regulation, it is acceptable for the City to break the law, because, even if we get caught, they can't do anything about it? This article has changed the focus of this issue from one of a customer service issue for the citizens of Harrisonburg, to one of, is it acceptable to break the law if you won't be penalized. There*

is a statement in the article which says that Harrisonburg officials said that violations would carry penalties. Neither myself, nor to my knowledge, any City official, have addressed the issue of OSHA penalties, as the focus of our efforts have been on customer service, and not on fines or penalties. My first report to you on this subject contains no mention of OSHA penalties for non-compliance, nor is it listed as one of the impacts to the City contained in that report.

The article states that, according to Mr. Tom Seymore, Director of Safety and Industrial regulation for OSHA, in Washington, D.C., these regulations have been in effect since 1971. The implication with this statement is that these regulations have been in existence for 26 years, and the fire department is just now citing them. I spoke with Mr. Seymore at approximately 3:30 p.m., Friday, January 24, and asked him about his comment. Mr. Seymore stated that his comments were not as were written in the newspaper article. He indicated that the regulations which were adopted in 1971 were part of a standard adopted by the American National Standards Institute (ANSI), which dealt with the use of respirators, and the need for personnel standing by during hazardous operations, in industry, and did not apply to firefighters. According to Mr. Seymore, it was not until sometime in 1995 that the International Association of Firefighters inquired as to how OSHA intended to apply their standards to the issue of interior firefighting. In May of 1995 Mr. James Stanley, Deputy Assistant Secretary of Labor, issued a memo to regional and state OSHA offices providing instructions that NFPA 1500, which was amended in July 1993 (see attachment), and which contains the "Two In-Two Out" requirement, should be referenced in relation to enforcement of OSHA regulations involving interior firefighting operations. A copy of Mr. Stanley's memo was included as part of the original "Two In-Two Out" memo, and contains a May 1, 1995 date. Virginia OSHA (VOSHA) notified Virginia fire departments early in 1996 that this was an issue we would have to address, and this department began to address the issue in August of 1996.

An editorial published on January 24, 1997, again states that there are no penalties or fines associated with this regulation and again seems to foster the attitude that it is acceptable for the City to ignore this regulation. It also only very casually mentions the fact that the only penalty for violation may result "where accidents may occur, prompting civil litigation". Civil litigation which finds fault with the City for willful non-compliance with this issue would dwarf many times over any fines which may have been imposed by OSHA.

Since the January 23 "False Alarm" article, I have spoken to three attorneys in relation to this issue, as to whether or not this is an issue which the City could, or should ignore. On January 23, and January 24, I spoke with Mr. Bruce Morris, former Commonwealth's Attorney for Rockingham County, and now Deputy Secretary for Public Safety for the State of Virginia. Mr. Morris stated that this was an issue, as with any OSHA issue, which should not be ignored. Although there are no penalties issued through OSHA, in the event of serious injury, or death, if willful non-compliance can be proven, civil penalties may occur, and if the result is death, wrongful death charges could be placed.

On Thursday, January 23, I spoke with Mr. Russell Stone, of the Virginia Attorney General's office who stated that these regulations "needed to be complied with", and cited the possibility of the same civil and criminal penalties as Mr. Morris.

On January 24, I spoke with Mr. Robert Fields, who in an Agency Management Analyst Senior, with VOSH. In my conversation with Mr. Fields, I informed him of the attitude expressed by the newspaper article that this was an issue that, because there are no fines, we should choose to ignore, with his response being "that's not exactly what we would say". He went on to cite the possibility of civil and criminal penalties for willful non-compliance, just as Mr. Morris, and Mr.

Stone had. When asked for his advice he responded "I think you should do two in - two out anyway you can".

Two of the three attorneys to whom I spoke received a fax of the "False Alarm" news article. When asked their opinion of the article, both attorneys described it as "totally irresponsible".

In closing this report, I stress the following issues:

1. This was not an issue for which the fire department went looking. As stated previously, Virginia fire departments were notified by VOSHA in early 1996 of the need to begin planning as to how to comply with these regulations.
2. The ability of OSHA to levy fines for non-compliance is not the issue, nor has it been cited as being a part of the issue. The issue is the level of customer service the City Council, and the public, expects from the fire department. As stated in the original report, the fire department currently complies with this regulation, however, that compliance means that we must wait for three companies to reach the scene of a fire before interior fire attack can begin. When this issue was presented to City Council, the impact of these regulations was discussed, as was the need to wait for three companies to arrive on the scene before making an interior attack. One of the first comments from any of the councilmen was "the public will not stand for that", and that, not OSHA fines, is what this issue is about.
3. The "False Alarm" article included the information that these regulations were prompted by firefighter unions. While that may have startled some readers of the paper, that information was also discussed with council when the report was presented.
4. As stated before, the "False Alarm" newspaper article has succeeded in changing the focus of this issue from one of customer service, to one of monetary penalties. If monetary penalties is the basis on which the out-come of this issue is decided, then we should turn our attention to the possibility of monetary penalties imposed by civil litigation and criminal prosecution, rather than OSHA's ability to levy fines.
5. This is an OSHA regulation. If we can ignore this regulation, then we can ignore every other OSHA regulation with every City department complies, such as the need to wear hard hats, the need to shore or slope ditches to prevent cave-ins, the need to provide shields on grinding wheels in mechanical shops, etc.
6. It is my impression that the "False Alarm" article was written by a reporter who did not understand the issues. This is evidenced by the conversation which I had with the reporter on the afternoon before the article appeared in the paper in which he stated that he "had not read Mr. Mellott's notes", and proceeded to ask "why don't you just send more trucks to the fire"? When I explained that our normal response to a residential structure fire is three engines and the ladder truck, he asked "why don't you just put more people on the trucks"? His lack of understanding would also explain the discrepancy concerning Mr. Seymore's remarks that these regulations had been in effect since 1971.

This lack of understanding of the issue has managed to shift the focus of attention away from the real issues, and irresponsibility suggest that because OSHA will not levy fines against a locality, that the City should ignore the law. The end result is that the reporter who wrote the story, wrote only half of a story. That half of a story generated a terrific headline, but failed the community, in that the reporter chose not

3-16-09

PAGE 188 + 189  
OF BOOK T

DISCOVERED 2  
MISSING PAGES

Yvonne Ryan  
City Clerk

to address the real issues, issues such as delayed fire attack, increased personal loss due to fire, reduced levels of customer service, and increased hazards to our fire personnel.

That half a story also damaged the credibility of the Fire Chief, in that it leaves the impression that the Fire Chief tried to pull a "fast one", and the City Manager and City Council were gullible enough to let him do it.

7. Regardless of what has transpired concerning this issue, the issue is still unresolved. To ignore this OSHA regulation is not a viable option. As stated before, the Fire Department is in compliance with this issue. However, our compliance is based upon three fire companies arriving at the scene before interior fire attack begins. To do nothing more means that we have chosen Option 1 as listed in the original report, which is, "Do nothing. Accept the situation as it is. Accept the higher fire losses. Accept the delayed fire attack. Accept the reduction in available fire ground personnel. Accept the increased hazard, and the possibility of more frequent, and more serious injuries for our firefighters. Accept the lower level of customer service, and the adverse public opinion".

Tom Moffett, a resident of the City and a firefighter, stated that Fire Chief Shifflett had presented a very thorough reply to an uncomfortable set of circumstances that firefighters have faced in the field. He noted that Fire Chief Shifflett had pushed for a three man engine company for the safety of the firefighter before the 1971 "Two In-Two Out" rule. If we have to wait and are questioned by a citizen about the waiting time, then it is a customer service issue that will have to be addressed. He said that after listening to the School Board requesting additional funding everybody wants a piece of the pie. By the nature of the work, firefighters face very dangerous circumstances and have requested three men on an engine company to improve safety. Council Member Rogers commented that Council is aware of the safety issue concerning the "Two In-Two Out" rule and supports it. City Manager Stewart commented that Harrisonburg will continue with the current policy while continuing to look at other cost-effective options including whether to add additional firefighters. He said that he wanted to do what was appropriate and best for the City while protecting firefighters, property and citizens, but recommended proceeding cautiously. Fire Chief Shifflett commented that the City is in compliance with the rule but they do have to wait for three fire companies to arrive before any interior action can be taken. Volunteer firefighters, if properly

trained are counted in the "Two In-Two Out" rule, however, due to competition for an individual's time, the City does not have a lot of volunteers.

Mayor Eagle presented a request from Judge Paul to relocate the Lower Courts Facility. He stated that he, Council Member Byrd, Roger Baker, and Steve Stewart, had been on-site to review the proposal. However, he expressed some concerns with the projected higher costs to renovate the office space, but said there is a definite need for the larger facility. Further discussion included the higher per square foot cost, a need for the space including more privacy, receiving controlled cost bids for the project, and whether there was a need for a lounge or extra bathroom. Council Member Green offered a motion to proceed with the request to provide office space for the Lower Courts Facility and recommended that the cost should not exceed \$100,000. The motion was seconded by Vice-Mayor Lantz, and approved with a unanimous recorded vote of Council.

Public Works Director Baker presented a brief report on median strips. He explained that VDOT had received a request from Rockingham County Board of Supervisors concerning a median strip located on South High Street between Erickson Avenue and Dayton town limits. The Staunton District office will review this request and a recommendation will be made in several weeks. He said that he also reviewed median strip removals on East Market Street, Old Furnace Road, Vine Street and Country Club Road area. He noted that the left turn lanes are very short in these areas and the median strips are protection creating a barrier to separate the traffic. If the median was removed in some of these areas, it would cause the traffic to back up resulting in a safety issue. He suggested leaving the median strips in place because of the volume of traffic and the many citizens using the intersections.

City Manager Stewart presented for Council's consideration an amendment to the City Code concerning the Transportation Safety Committee. He explained that the Transportation Safety Commission had made a presentation to Council on November 26, 1996 and another request was made on January 14 for the amendment change, but was tabled. Again, Council Member Green suggested that any action be postponed until he could study the proposed change and talk to members who have served on the Transportation Safety Commission.

City Manager Stewart presented a request for a supplemental appropriation for the Transportation Department. These funds, which are in excess of the state and federal budgeted amount, will be used to purchase two (2) transit buses. No additional local funds are required. Vice-Mayor Lantz offered a motion to approve this request for a first reading, and that:

\$22,680.00 chge. to: 2013-32518 Transit - Cap Grant State Funds  
 1,566.00 chge. to: 2013-32518 Transit - Cap Grant State Funds  
 37,531.00 chge. to: 2013-32519 Transit - FTM State  
 216,000.00 chge. to: 2013-33305 Transit - Capital Grant Federal  
 20,890.00 chge. to: 2013-33305 Transit - Capital Grant Federal  
 43,250.00 chge. to: 2013-33306 Transit - Operating Federal

\$314,990.00 approp. to: 2013-872081-48253 Transit Buses  
 10,000.00 approp. to: 2013-812081-41020 Salaries & Wages - O/T  
 16,927.00 approp. to: 2013-812081-44200 Central Garage

The motion was seconded by Council Member Green, and approved with a unanimous recorded vote of Council.

City Manager Stewart announced that a meeting with Congressman Goodlatte has been scheduled for January 30, 1997 at 4:00 p.m., in Council Chambers.

At 9:55 p.m., Vice-Mayor Lantz offered a motion that Council enter an executive session for discussion and consideration of personnel and prospective candidates to be appointed to the Industrial Development Authority, exempt from the public meeting requirements pursuant to Section 2.1-344(A)(1) of the Code of Virginia. Consultation with the City Attorney and briefings by staff members pertaining to an existing contract and a new contract requiring the provision of legal advice by the City Attorney, exempt from the public meeting requirements pursuant to Section 2.1-344(A)(7) of the Code of Virginia. The motion was seconded by Council Member Rogers, and approved with a unanimous vote of Council.

At 12:10 a.m., the executive session was declared closed and the regular session reconvened. The following statement was read and agreed to with an unanimous recorded vote of the Council: I hereby certify to the best of my knowledge and belief that (1) only public matters lawfully exempt from open meeting requirements pursuant to Chapter 21 of title 2.1 of the Code of Virginia, 1950, as amended, and (2) only such public business matters as were identified in the motion by which the executive or closed meeting were convened were heard, discussed or considered in the executive session by the City Council.

At 12:11 a.m., there being no further business and on motion adopted the meeting was adjourned.

  
\_\_\_\_\_  
CLERK

  
\_\_\_\_\_  
MAYOR