

REGULAR MEETING

MAY 27, 2003

At a regular meeting of Council held this evening at 7:30 p.m., there were present: Mayor Joseph Gus Fitzgerald; City Manager Roger Baker; Assistant City Manager Kurt Hodgen; City Attorney Thomas H. Miller, Jr., Vice-Mayor Larry M. Rogers; Dorn W. Peterson; Council Member Hugh J. Lantz; City Clerk Yvonne Bonnie Ryan, CMC/MMCA, and Chief of Police Donald Harper. Absent: Council Member Carolyn W. Frank.

Council Member Lantz gave the invocation and Mayor Fitzgerald led everyone in the Pledge of Allegiance.

Council Member Peterson offered a motion to approve the consent agenda as amended, including approval of the minutes and the second reading approval of a Supplemental Appropriation for the Police Department, and the Public Works Department. The motion also included amending and re-enacting Sections 7-4-22, 7-2-1, 7-2-10, 7-3-3, 7-3-64, 7-3-48, 12-1-7, 12-1-9, and 16-6-58 of the Harrisonburg City Code. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

Absent Council Member Frank

Transportation Planner Drew Williams presented the following resolution for Council's consideration.

RESOLUTION ENDORSING ESTABLISHMENT OF

**A TRANSPORTATION ENHANCEMENT PROJECT FOR THE
PORT REPUBLIC ROAD BIKEWAY AND PEDESTRIAN FACILITY PHASE II**

WHEREAS, in accordance with Commonwealth Transportation Board construction allocation procedures, it is necessary that a request by resolution be received from the local government or state agency in order that the Virginia Department of Transportation program a transportation enhancement project in the City of Harrisonburg.

NOW, THEREFORE, BE IT RESOLVED, that the City of Harrisonburg, requests the Commonwealth Transportation Board to establish a project for the Port Republic Road Bikeway and Pedestrian Facilities Phase II to construct bicycle and pedestrian facilities on Port Republic Road from Devon Lane South to the City limits.

BE IT FURTHER RESOLVED, that the City of Harrisonburg hereby agrees to pay a minimum of 20 percent of the total cost for planning and design, right-of-way, and construction of this project, and that, if the City of Harrisonburg subsequently elects to cancel this project the City of Harrisonburg hereby agrees to reimburse the Virginia Department of Transportation for the total amount of costs expended by the Department through the date the Department is notified of such cancellation.

Adopted this 27th day of May, 2003 in Harrisonburg, Virginia.

Mayor

Attest:

City Clerk

Transportation Planner Drew Williams explained that the application and resolution is for the second phase of the Port Republic Road Bikeway and Pedestrian Facility Project. Harrisonburg submitted an application for this project last year, but it was not funded. He noted that the application is only an endorsement of the project and no final decisions have been made on the details. This project includes installation of sidewalks and bike lanes on each side of Port Republic Road from the south side of Devon Lane to the City limits.

Should the grant be approved, City staff would work very closely with all the departments to facilitate the needs of the City.

Following further discussion and comments, Council Member Peterson offered a motion to approve the resolution as presented. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

Absent Council Member Frank

Transportation Planner Drew Williams presented the following resolution for Council's consideration.

**RESOLUTION SUPPORTING JAMES MADISON UNIVERSITY'S
APPLICATION FOR TRANSPORTATION ENHANCEMENT FUNDING FOR THE
MAIN STREET PEDESTRIAN SAFETY IMPROVEMENTS PROJECT**

WHEREAS, James Madison University intends to make application for Transportation Enhancement funding for pedestrian safety improvements on portions of Main Street and other City streets that adjoin University property; and

WHEREAS, the City of Harrisonburg supports the ongoing efforts by James Madison University to provide a safer environment for pedestrian and vehicular traffic both on and off campus;

NOW, THEREFORE, BE IT RESOLVED, that the City of Harrisonburg, hereby supports and endorses James Madison University's application to the Commonwealth Transportation Board for Transportation Enhancement Funding for the Main Street Pedestrian Safety Improvements project.

Adopted this 27th day of May, 2003 in Harrisonburg, Virginia.

Mayor

Attest:

City Clerk

Transportation Planner Drew Williams presented an application for Transportation Enhancement funding for pedestrian safety improvements on portions of Main Street and other City streets that adjoin the University property. He explained that Council is also being asked to endorse James Madison University's application to the Commonwealth Transportation Board for Transportation Enhancement funding for the Main Street Pedestrian Safety Improvements project. The JMU project involves pedestrian safety improvements along Main Street and several of the side streets. Fire Chief Shifflett came to the podium and said that he still had a concern about this project. He said that he was concerned about the raised median proposed in the project between Patterson Street and Grace Street. This raised median will seriously impede the ability of emergency vehicles to go north on Main Street and increase the response time of those vehicles for anything North of Grace Street. The area is routinely congested during the day, which makes emergency vehicles have to use the center turn lane to get around stationary vehicles. He asked that he be included in discussions concerning this project. Following further discussion and comments, Council Member Peterson offered a motion to approve the resolution as presented. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

Absent Council Member Frank

Transportation Planner Drew Williams presented a brief overview of traffic calming measures in the Purcell Park Neighborhood. He said that a Neighborhood Traffic Calming Program meeting was held May 6th with residents of the Purcell Park area. Issues discussed at the neighborhood meeting related to traffic included cut-thru traffic and speeding traffic. He said that City staff is aware of the unique situation, as the immediate neighbor is a public City Park, which is an asset to the community. It was explained to the residents that the City cannot preclude anyone from driving through the neighborhood; however, we can control the speeds and manner in which they drive. The City would like to enhance the park ambiance on Monument Avenue by installing speed tables/humps at intersections to hopefully lower speeds and limit cut-thru traffic. Also, orange placards will be placed over the speed limit signs. Mr. Williams said it was made clear any changes would affect residents as well as everybody else. Vice-Mayor Rogers offered a motion to support the traffic-calming program for the Purcell Park Neighborhood. The motion was approved with a unanimous vote of Council Members present.

The next item of business was discussion concerning an accident involving a City recycling truck. Council Member Peterson said that a City recycling truck backed into a citizen vehicle before he could blow the horn or get out of the way. The City's insurance company said that the recycling truck is part of the City's trash pick-up department and comes under Harrisonburg's sovereign immunity. Dr. Peterson said, I have a real problem with the City making the same claim with respect to a truck driver being negligent and there is no consequence for a mistake on the City's part. I hope the citizen is not forced to sue the City to get reasonable compensation. He said that the Harrisonburg Police Department ticketed the City employee for illegal backing resulting in a conviction by the court.

City Attorney Miller said it is not that the insurance company is not required to pay the claim; the City has no liability and will not pay the claim for the accident. He said that paying this claim could set a precedent opening the door for other claims. It is a policy issue. Mr. Miller said, I don't have a full answer in my mind on whether we can waive sovereign immunity on the situation.

The following discussion by Council Members relative to the accident included: Questioned if sovereign immunity could be waived; legally reimburse the citizen; setting a precedent; whether paying the \$2,000 claim would give up the protection of sovereign immunity; and enacting an ordinance. Following further discussion and comments, Council agreed to table the discussion and requested that City Attorney Miller get more information on sovereign immunity and present a report at the June 24th Council meeting.

Planning and Community Development Director Turner introduced a request to subdivide 73 townhome lots from a 6.97-acre tract, with variances to the Subdivision Ordinance. The property is zoned R-3 Multiple Dwelling Residential District and is located at 2300 Reservoir Street. The Comprehensive Plan designates this area as medium density residential. She reviewed the surrounding uses in the area. Phase I of Avalon Woods was platted in 1999. Since that time, a majority of the 64 townhomes of the first phase have been platted and constructed. Phase II of Avalon Woods would create 73 new townhomes in the area immediately to the south of the current development. The developer is asking for variances to the requirement that all lots front on a public street. The second variance requested to the Subdivision regulation is a requirement for the utilities easements for the side and rear lot lines. Design plans call for a gazebo structure to be located on the

property line facing Reservoir Street. This structure would serve as a bus shelter and mailbox center for the townhomes. To allow for this encroachment into the thirty-foot setback a variance will need to be obtained from the Board of Zoning Appeals. She said that Planning Commission recommended approval of the request. Following further discussion and comments, Council Member Peterson offered a motion to approve this request. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

Absent Council Member Frank

Planning and Community Development Director Turner introduced a request to subdivide a 15,525 square foot parcel from a 2.715-acre tract at 101 Burgess Road. She explained that this is a preliminary subdivision plat involving a request for variances. She explained that the property was rezoned from M-1, General Industrial District to B-2C General Business District (conditional) on November 27, 2001. The request will subdivide out lot 1D-1B (15,525 sq. ft.) within tax map parcel 14-P-3 (134,910 sq. ft.). The division would occur along the setback requirements for structures constructed in the B-2, General Business District (30 ft. front, 10 ft. sides and rear). The plat would create a lot, which would not have road frontage, which is required under Section 10-2-42(d), all lots shall front on a public street . However, the overall concept and intent for the shopping center is to have common management for shared parking and services in the development, while allowing individual businesses to maintain ownership of their lot. She said that Planning Commission recommended approval of the request. Council Member Peterson offered a motion to approve this request. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

Absent Council Member Frank

City Manager Baker presented for Council's consideration a request for tax-exemption from Our Community Place. He explained that in past years, it required action on the part of the General Assembly to grant tax exempt status to certain organizations. A request on behalf of Our Community Place had been forwarded by the City to the General Assembly, but had been returned due to pending changes to statutory law that would place granting such exemptions in the hands of the local governing body. It is recommended that a public hearing be scheduled for the June 10th Council meeting to consider adoption of an ordinance granting tax-exempt status to Our Community Place. The taxes paid by Our Community Place for 2002 were \$505.92. Council Members present agreed to schedule a public hearing for June 10th.

The next item of business was a recommendation on City/County Radio System Upgrade. City Manager Baker said that a report included in Council's packet reviewed various options and alternatives. This report and its recommendations contained a lot of detail as the results of many years of discussion, research, and planning. Management pointed out that a joint power ordinance needed to be adopted by both governing to determine how projects costs would be shared.

The following discussion by Council Members relative to Radio System Upgrade included: Consultant estimates and recommendations, time-frame for bids; questioned keeping two other channel systems in addition to the trunk system; cost sharing of the towers; splitting the cost of nine radio towers; cost for the radio infrastructure; public safety concern; large amount of money; full Council not present; City/County has applied for grants; budget containing approximately \$2 million for the project; county receiving more benefits than City in the 50/50 split; and having a good long-term relationship with the county on many projects. Following further discussion and comments, Council Member Lantz offered a motion to proceed with preparing the design specifications of the project; however, but not approving the ordinance until further clarification can be provided concerning the 50/50 split. The motion was approved with a unanimous vote of Council. Council also directed City Manager Baker to arrange a joint work session between the City and Council.

Council Member Peterson presented a request to amend Section 15-3-2 of the Harrisonburg City Code. He said that an ad-hoc committee has been reviewing and revising the proposed ordinance, which was originally submitted last fall. Revisions to the original ordinance include a criterion of two convictions, rather than three summons, clarification of the City's responsibilities to notify landlords and clarifications of landlord responsibilities.

George Rontopoulos, a resident of 65 East Market Street, said that this ordinance would make an adversarial atmosphere between the tenants and landlords. Perhaps it will make absentee landlords more responsible.

Kevin Williams, General Manager of Forges Development, said that the ordinance should not apply only to landlords. It is for all property owners in the City. He suggested property owners should be included in the title of the ordinance.

Glenn Loucks, a resident of 915 North Main Street, applauded everyone for all the work involved in making changes to the ordinance.

Stephanne Byrd, a resident of 238 Campbell Street, expressed her appreciation for all the work on the ordinance. She questioned if this ordinance would make a difference based on historical convictions.

Colonel Harper, Harrisonburg Police Chief, said not a large number of people are convicted, but the conviction rate is about 85%.

Pauline Hensley, a resident of 134 North High Street, requested clarification between unit and an individual receiving a conviction.

Marshall Ross, a resident of 267 Franklin Street, thanked Dorn Peterson and Tom Miller for an excellent job of working on this ordinance.

Ralph Geddes, a resident of 395 Franklins Street, said it was a good ordinance.

Council Member Peterson offered a motion to approve Section 15-3-2 of the Harrisonburg City Code for a first reading. In addition, the motion included changing the words in the title to read, Property Owners Permitting Nuisances, effective for leases commencing July 1, 2004. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

Absent Council Member Frank

The next item of business was a request for a street closing for Valley 4th. Robin Iten, representing the Arts Council of the Valley, said an event is planned for the fourth of July in downtown Harrisonburg. She requested that streets be closed for a parade and evening musical performances. Closing will take place no later than 4:00 p.m., to accommodate the 5:00 p.m. parade. The parade route will be from Campbell Street to the County Administration Building. West Market Street will also be closed from Liberty to Federal while Water Street will remain open to allow access to the parking garage. As part of the request, permission is also requested to hang a banner prior to the event across Main Street from the light post to the A & N Building. Permission has been received from A & N to install a bracket on their building. She also said that Harrisonburg Electric Commission has granted permission to hang the banner on its pole. The Council is also requesting permission on behalf of First Night (New Year's Eve) and the Harrisonburg Museum & Galley Walk (October 11th), to hang banners promoting their upcoming events. Council Member Peterson offered a motion to approve this request. The motion was approved with a unanimous vote of Council Members present.

The next item of business was adding a new ordinance to the City Code levying a cigarette tax. City Attorney Miller distributed and reviewed copies of the new cigarette tax ordinance. He indicated that it might be impossible to implement the ordinance until August 1 or later because of existing cigarette packs do not contain stamps and merchants have to acquire stamps. Following further discussion and comments, Council Member Lantz offered a motion to approve this ordinance for a first reading, but requested that the second reading not be placed on the consent agenda. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

Absent Council Member Frank

The next item of business was consideration of amendments to Sections 4-2-77 and 4-2-87 of the Harrisonburg City Code. Mayor Fitzgerald said that the transient occupancy tax and meals tax will be raised from five (5) percent to six (6) percent. Amending these sections to the City Code had been discussed during the budget process. Council Member Lantz offered a motion to approve these ordinances as amended for a first reading. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

Absent Council Member Frank

The next item of business was consideration of rescinding the water moratorium for Rockingham County. The Planning Commission has reviewed the ordinance changes associated with this and approved lifting the moratorium. Public Utilities Director Collins requested that rather than setting a flat rate fee to cover time and expenses of processing applications changing the words in paragraph (f) to read (the Director may charge a reasonable fee to cover time and expenses of processing the application). Council Member Peterson offered a motion to approve Section 7-2-4 of the Harrisonburg City Code for a first reading with the changes. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

Absent Council Member Frank

The next item of business was consideration of ordinance changes affecting the schedule of rates and charges for water and sewer service. The water and sewer fees will be raised by 3%. These changes were discussed and approved during the budget process. Council Member Peterson offered a motion to approve amending and re-enacting Section 7-4-1 of the Harrisonburg City Code for a first reading. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

Absent Council Member Frank

School Superintendent Ford presented a request for a supplemental appropriation for the School Board. These funds are composed of School Construction Funds and one half of School Lottery Funds. No new City dollars are required from City Council for the school division to receive these transfers. Council Member Lantz offered a motion to approve this request for a first reading, and that:

\$370,621.50 chge. to: 1000-34281 Transfer from School Fund

370,621.50 chge. to: 1000-34210 Transfer from General Fund

\$370,621.50 approp. to: 1111-111114-40673 Transfer to General Fund

370,621.50 approp. to: 1000-990111-49220 Transfer to School Fund

The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

Absent Council Member Frank

Fire Chief Shifflett presented a request for a supplemental appropriation for the Fire Department. These funds were received from recovered money received from donations and costs recovered for providing various services throughout the year. Council Member Lantz offered a motion to approve this request for a first reading, and that:

\$6,952.79 chge. to: 1000-31809 Donations

8,895.94 chge. to: 1000-31914 Cost Recovery

2,959.15 chge. to: 1000-32537 Comm. Disaster Plan Operation

4,000.00 chge. to: 1000-33537 Federal Disaster Plan Operation

\$ 4,000.00 approp. to: 1000-350532-46140 Haz Mat Supplies

18,807.88 approp. to: 1000-320132-41010 Salaries

The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

Absent Council Member Frank

Mayor Fitzgerald announced that City Council would continue receiving and reviewing applications for a vacancy on the Planning Commission until June 10th. Interviews will be scheduled for June 24.

Council Member Peterson offered a motion that Brian Shull be appointed to a term on the Shenandoah Valley Partnership Board of Directors to expire on June 30, 2005. The motion was approved with a unanimous vote of Council Members present.

At 10:20 p.m., there being no further business and on motion adopted the meeting was adjourned.

CITY CLERK

MAYOR