

SPECIAL MEETING

REGULAR MEETING

OCTOBER 28, 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; Council Member Carolyn W. Frank, Dorn W. Peterson, Hugh J. Lantz; City Clerk Yvonne Bonnie Ryan, CMC/MMCA, and Chief of Police Donald Harper.

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, including approval of the minutes and the second reading approval of a Supplemental Appropriation for the Police Department, and Public Utilities Department. The motion also included the second reading amending Section 14-1-1, 14-1-16, 14-1-33, and 14-1-42 of the Harrisonburg City Code. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank

Council Member Lantz

Vice-Mayor Rogers

Council Member Peterson

Mayor Fitzgerald

Absent None

City Manager Baker presented a request by the Convention and Visitors Bureau to be a Bike Virginia Host Community. The event will be held June 18-23, 2004. Cyclists will spend one night in the City. Biking will be in Harrisonburg and Rockingham County. City emergency services will be notified of the upcoming event. Council Member Peterson offered a motion to approve supporting this event. The motion was approved with a unanimous vote of Council.

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The next item of business was a brief overview on the Rockingham/Harrisonburg Alcohol Safety Action Program. Pam Simmons, Director of the Rockingham/Harrisonburg ASAP, said the policy board has five members from the City and five members from the County. She said that ASAP receives referrals from the court system and DMV for alcohol and drug offenders. Probation services are provided to the offenders. An assessment is determined to make sure offenders receive proper treatment. She reviewed the Rockingham/Harrisonburg ASAP report and highlighted a few of 2003 accomplishments. Rockingham/Harrisonburg ASAP is user funded and is operated without the use of tax dollars.

Glenn Weatherholtz, read the following statement: Pornography is not only a public nuisance; it is a threat to public safety. The Commonwealth Attorney's office has stated that out of 5,000 crimes committed in Rockingham County last year, 70 percent had elements of pornography associated with them.

As Sheriff of Rockingham County for 24 years, and as a member of the Militia, Police and Public Safety Committee in the Virginia House of Delegates, I can attest to the truth of these facts:

Pornography exploits and degrades women and children.

It endangers the most vulnerable of our citizens who cannot defend themselves against sexual predators who continually feed themselves on a steady diet of smut.

Merchants of sexually explicit material drive down property values and foster an increase in crime especially domestic crimes.

It's time to shut down the merchants of smut and tell them Not in our town. This is a 1<sup>st</sup> Amendment issue. No one has a constitutional right to be obscene or promote obscenity. No one has the right to degrade women. No business has the right to profit by feeding the perverted lusts of pedophiles and other criminals.

The United States Supreme Court has determined that the ability to regulate the distribution of pornography, and even the definition of what pornography is, depends on the standards of the community. The Harrisonburg City Council has a role in expressing what the community determines those standards to be. While I cannot myself make any blanket determination as to which publications are themselves pornographic, I would advocate a mechanism to allow input from all the citizens of the community to make those determinations.

Over 3,500 people in our community have signed a petition calling for higher standards of community decency. Consequently, the City Council of Harrisonburg and the Rockingham County Board of Supervisors should hear the desires of their constituents and enact ordinances that prohibit the sale of smut in our community.

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I wholeheartedly endorse and support the efforts of community groups like the Valley Family Forum to promote higher standards of decency and protect our families. I want to join my voice with theirs and encourage you to kick the sale of smut out of our community.

Cynthia Gillette, A JMU English teacher, said that the valley group supporting a resolution to ban pornography was a violation of the First Amendment. She said that The Advocate a national news magazine provides information on films, the arts, law, and it should be available to people in the community.

Eric LaFreniere expressed his concern that perhaps City Council might become a rubber stamp for the Valley Family Forum. He said the Valley Family Forum is an organization claiming to uphold conservative values while at the same time petitioning the government to interfere in the private lives of citizens to limit their personal choices. It hides behind the word family in claiming its efforts are for the children. It pretends to champion the best interest of the whole community.

Ben Fordney said, Valley Family Forum has asked Council to consider a resolution calling for area businesses to refrain from the display of sexually oriented materials particularly within eyesight and reach of minor children. The forum has also asked the Planning Commission to consider zoning restrictions on sexually oriented businesses. He believes it would be in the public's interest to place adult businesses in a section of the City away from schools. It is a legitimate function of City government to follow such zoning. He does not believe that City Council can regulate what the citizens of the community can read or look at. He urged City Council to not get involved in censorship.

Joyce Viscomi, a resident of 1852 Park Road, said October is National Domestic Violence Awareness Month. The first amendment gives everybody freedom of expression to petition the government, but when those rights intrude on citizens' right to live in a safe community, then somebody has to speak out to protect the children.

George Ellis, a resident of Bridgewater, reviewed essays and articles written by several historians.

Jeanette Kidd, a resident of Rockingham County, said comments by elected officials about pornography seemed dismissive, unimportant and of no consequence. Women are not objects and magazines showing women, only a cut above nudity, are denigrating, cheapening, and unbecoming.

Matt Chaucey, a resident of Bridgewater, quoted language from the First Amendment and said law is an imposition of mortality.

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Robert Dismore, a resident of 1136 Sharpes Drive, said, He is for baseball, apple pie, and Chevrolet. He is against pornography, rape, robbery, murder, drug addicts, and thieves. It is real easy to be for something or against something. He also said that he owns Blue Ridge Comic and has spent 13 years trying to build a family business.

Ben Butcher, a resident of Broadway, said that he was attending the Council meeting for a government project. He said whether people thought pornography was wrong or okay was irrelevant. Also, whether a person is gay or straight was also irrelevant. He said trying to force religion and its moral standards upon people are why our ancestors came to America.

Matt Nichols, a resident of 217 Franklin Street, said the real issue was whether Council should take a position on what kind of standards the community should have. He compared it to tobacco and whether children should have access to it. He said it is the same with pornography.

John Alexander Golden, a resident of 1226 Mt. View Drive, said he was offended with some of the magazine displays in the City. Everybody should have the same right. Freedom of speech is one of the things this country was founded upon. Ending pornography will not stop violence in Harrisonburg.

Annlee Ray, a resident of 1323 South Main Street, said people have a right to petition the Council. She said she didn't like Como magazine. However, businesses have a right to sell all magazines. However, she suggested using common sense and not placing certain magazines within eyesight and reach of minor children.

David Briggman, a resident of Keezletown, said tonight's meeting was opened with a prayer for the family that suffered at the hands of an arsonist. He doesn't believe government should intervene in what people believe. He believes more pornography comes into the City via the Internet than from the bookstores. If you don't like certain material in a bookstore than don't patronize that bookstore.

Kim Sandum, a resident of Rockingham County, clarified certain language exchanged at a recent meeting, which had been misquoted in the Daily News-Record.

Brook Hefner, a resident of 811 Port Republic, said she helped to establish an emergency fund for a JMU professor family because of a recent incident. There is tension in the community.

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Dean Welty, a resident of 3456 Issac Walton Drive, said there is a lot of tension in the community. He said that it was not Valley Family Forum role to censor magazines. The group was asked by reporters what magazines were appropriate or inappropriate for children. The group is trying to express its position with regard to what is appropriate and not appropriate for minor children on display racks in any store. The resolution is non-regulatory in nature. Mr. Welty read the following paragraph from the resolution: We hereby call on all businesses located within the City of Harrisonburg to refrain from the display and sale of sexually oriented materials, particularly those within eyesight and reach of minor children. The group is going on public record against pornography accessible to children.

Phil Long, a resident of 1246 of Old Wind Mill Circle, said several Valley Family Forum members have stated they are not trying to censor the local businesses from selling adult oriented materials. However, they are asking City Council to take a position on an issue based on mortality urging businesses to not sell this material. That is censorship.

Steven Kelly, a resident 1270 Devon Lane, quoted passages from the Bible.

Christine Robinson, a resident of Bridgewater, said this resolution is not only interested in defining sexually oriented material, but defining any kind of literature that caters to sexual identity.

Janet Spitzer, a resident of Timberville, said pornography could be very addictive. Everybody should be interested in providing the best area for our children and grandchildren to live.

Council Member Peterson said that he has a strong philosophical opposition to Council recommending a resolution that does not do anything. He doesn't think we should be determining what stores can display on its shelves. It's a self-regulating problem. He believes we should be letting the free market deal with things like this. Planning Commission will look at this issue very carefully.

Council Member Frank said that she supported the resolution provided by Valley Family Forum. She said she based her opinion on evidence that pornography can be related to crime and other problems occurring in the City.

Mayor Fitzgerald reviewed three paragraphs in the resolution. WHEREAS, studies have concluded that pornography contributes to broken homes and many other problems. WHEREAS, members of the Harrisonburg community and the surrounding area have expressed growing concern about the proliferation of sexually oriented businesses and public displays in the City. THEREFORE, we the Members of the City Council of Harrisonburg do hereby call on all businesses located within the City of Harrisonburg to refrain from the display and sale of sexually oriented materials, particularly those within eyesight and reach of minor

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children. Part of the problem is that phrasing and definitions are changed in the resolution. Pornography is mentioned in the beginning of the resolution. In the conclusion of the resolution Council is asked to pass a resolution talking about sexually oriented materials. He is not 100% sure what that refers to or what Council is being asked to believe that it refers to. Harrisonburg can regulate those businesses according to the Supreme Court through zoning regulations. Because the resolution is so vague, interruption could become a problem.

Council Member Lantz said that the resolution is very general. It just says we ask you not to display sexual material, but they can do darn well whatever they want to. He would add some more words to the resolution for clarification. He doesn't have a problem with the resolution. Isn't freedom of speech a wonderful thing?

Vice-Mayor Rogers said City Council is part of the legislative branch of the government making laws and policies. Members of Council have disagreements, but agree on the core value of this country. He has a problem with supporting this resolution.

Following further discussion and comments, Vice-Mayor Rogers offered a motion to table this resolution until City Council can hear about zoning recommendations from the Planning Commission. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Lantz

Vice-Mayor Rogers

Council Member Peterson

Mayor Fitzgerald

No - Council Member Frank

Absent None

The next item of business was a report on traffic management for the Reservoir Street Corridor. Transportation Planner Drew Williams presented a brief overview on traffic management for the Reservoir Street corridor that would enhance turning movements, lane reconfigurations, signal timings and long-term planning strategies. He said traffic counts have been conducted at three intersections along Reservoir Street regarding traffic flow, recent and future development of the area. The Public Works Department is trying to

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maximize efficiency along the corridor. The department is trying to determine what measures can be taken now and what can be planned for the future. He reviewed an overview of a traffic count taken at Neff Avenue and Reservoir Street; University Boulevard and Reservoir Street; and Evelyn Byrd Avenue and Reservoir Street during peak hours in the morning and afternoon. He said there are 22 vacant properties in the area containing approximately 74 acres. As these properties develop more traffic will be added to the Reservoir Street corridor. He reviewed several concepts that can enhance traffic movements and noted that the department will continue to study other concepts.

Public Works Director Baker reviewed concepts being considered including reviewing traffic signal cycles, moving traffic out of congested area, under ground utilities, purchasing additional land, and coordination as development occurs for traffic improvements.

The next item of business was a resolution stating Council's position on Interstate 81 widening proposals. City Manager Baker said Council had directed staff to prepare a resolution for the October 28<sup>th</sup> meeting incorporating answers to VDOT's questions, expressing support for rail alternatives, noting Council's general support for the Fluor plan as opposed to the STAR plan, and including language in the resolution protecting the area's gas tax revenues. Following further discussion and comments, Council Member Frank offered a motion to adopt the resolution with the changes suggested by Council. The following resolution has been corrected according to motion adopted by the Harrisonburg City Council. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank  
Council Member Lantz  
Vice-Mayor Rogers  
Council Member Peterson  
Mayor Fitzgerald

Absent None

A Resolution Expressing the City of Harrisonburg's Position Relative to  
Interstate 81 Improvements

WHEREAS, the City Council of Harrisonburg recognizes the importance of Interstate 81 as a corridor for the entire east coast and is important for the national economy and national defense and believes that a multi-state

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approach to improvements are necessary; and

WHEREAS, it is acknowledged that any improvement project will ultimately help mitigate the present congestion existing on Interstate 81; and

WHEREAS, it must also be recognized that any method of improvement selected will significantly impact residents, businesses and institutions along the Interstate 81 corridor in addition to the interstate users; and

WHEREAS, the City Council has heard presentations from representatives of Fluor Virginia, Inc., Star Solutions and RAIL Solutions, and has solicited public comment at several City Council meetings; and

WHEREAS, the City Council believes that any portion of the project constructed near or within the City's corporate limits should be reviewed for compatibility with the City's Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED, as follows:

1. That the City Council of the City of Harrisonburg supports the concept of improvements to Interstate 81.
2. That the Council prefers that the Virginia Department of Transportation explore the feasibility of adding a stronger rail component to the project in order to divert as much truck traffic as possible from the interstate.
3. That any portion of the project constructed near or within the City's corporate limits should be reviewed for compatibility with the City's Comprehensive Plan.
4. That the stated desire for improvements does not constitute approval of or agreement with the proposed method of financing the project through tolls, which could affect the distribution of State Fuel Tax Revenues.

**ADOPTED THIS 28th DAY OF October, 2003.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Joseph G. Fitzgerald, Mayor

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Attest: \_\_\_\_\_

City Clerk

The next item of business was amending Sections 2-3-3 (City Council; Agenda Development), 2-3-4 (City Council; Council Administrative Procedure), 2-4-1 (City Council; Refusal/Reduction of Council Pay), 3-1-6 (City Administrator; Budget Submission) of the Harrisonburg City Code and considering adopting Memoranda of Council Administrative Procedures. One item adopting amendment to Section 7 (Mayor; Vice-Mayor) of the Harrisonburg City Code will have to be delayed in order to advertise for a public hearing. Council agreed to table these items until the November 11<sup>th</sup> Council meeting.

Ralph Geddes, a resident of 395 Franklin Street, encouraged everyone to vote and complained about putting tolls on I-81. He also complained about traffic on other streets in the City.

Mayor Fitzgerald requested the unanimous consent of Council to change the agenda by adding approval of a Veterans Day Parade on November 9<sup>th</sup> at 2:00 p.m. Council Member Peterson offered a motion to approve the request to hold the Veterans Day Parade. The motion was approved with a unanimous vote of Council.

At 10:02 p.m., Council Member Peterson offered a motion that Council enter a closed session for the purpose of discussion of prospective business or industry where no previous announcement has been made of the business or industry s interest in locating in Harrisonburg. A closed session is permissible for this purpose pursuant to Section 2.2-3711.A.5 of the Code of Virginia (1950), as amended (the Code). The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank

Council Member Lantz

Vice-Mayor Rogers

Council Member Peterson

Mayor Fitzgerald

Absent None

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At 10:40 p.m., the closed session ended and the regular session reconvened. City Clerk Ryan read the following statement which was agreed to with a unanimous recorded vote of Council: I certify to the best of my knowledge and belief that (1) only public business 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 closed meeting was convened, were heard, discussed or considered in the closed meeting by the City Council.

At 10:42 p.m., there being no further business and on motion adopted the meeting was adjourned.

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CITY CLERK

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MAYOR