

## REGULAR MEETING

OCTOBER 12, 2004

At a regular meeting of Council held this evening at 7:30 p.m., there were present: Mayor Larry M. Rogers; City Manager Roger Baker; Assistant City Manager Kurt Hodgen; City Attorney Earl Q. Thumma, Jr., Vice-Mayor Rodney L. Eagle; Council Members Charles R. Chenault; Council Member Hugh J. Lantz; George W. Pace; City Clerk Yvonne "Bonnie" Ryan, CMC/MMCA, and Chief of Police Donald Harper.

Council Member Chenault gave the invocation and Mayor Rogers led everyone in the Pledge of Allegiance.

Mayor Rogers announced that a request to use the Municipal Building for a Haunted House has been withdrawn. He also announced that a public hearing to consider a request by Betty Forkovitch has been withdrawn.

Parks and Recreation Director Forester announced that six staff members of the Parks and Recreation Department staff attended the Virginia Parks and Recreation Society Annual Conference September 26-28, 2004. At the conference the Westover Skate Park received the best new facility award in the state of Virginia among Parks and Recreation agencies in the 25,000 through 50,000 population category. He said that the idea for this facility was conceived in 2002 and became a reality in 2003 and he thanked City Council for its support and encouragement.

Eliza Williams Hoover a resident of the City said the residents in the neighborhood believe the rezoning request by Betty Forkovitch would be a dangerous precedent because there are a lot of nonconforming properties throughout the City. If one request is granted how can the next request be denied. The Northeast neighborhood has been designated as a stressed and challenged neighborhood, but is changing because of the renovated Simms School, and the Weed and Seed program. She said that the residents of the neighborhood wanted to request denying any increased density in the area.

Brent Yoder, a resident of the City, said he has been an investor in the Northeast community, but also a resident during the past 10 years. He said that he lives and invests in the community and changes in zoning can be discouraging for people who believe in building up the community and taking a financial risk to make the neighborhood a better place. He presented a petition with 100 signatures supporting that the Forkovitch request be denied.

Council Member Chenault offered a motion to approve the consent agenda, including approval of the minutes and the second reading of a Supplemental Appropriation for the Harrisonburg Police Department. The motion was seconded by Council Member Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Lantz

Vice-Mayor Eagle  
Council Member Chenault  
Council Member Pace  
Mayor Rogers

Absent - None

Planning and Community Development Director Turner introduced a request by Hoover Penrod Law firm for a special use permit. She said that the applicant has requested that the building located at 342 South Main Street be granted a special use permit to allow a reduction in the required 10-foot side yard setback. If a special use permit is granted, the applicant will place the building's addition within 2 feet 3 inches of the property line. She reviewed the surrounding uses in the area. The proposed addition would create 1,000 square feet of office space and storage on the north side of the existing law office. The City has no plans to improve the Ash Tree Lane existing alley and staff is not concerned with allowing this structure to encroach the side yard setback along the northern property line. She said that Planning Commission has recommended approval of the request.

At 7:55 p.m., Mayor Rogers closed the regular session temporarily and called the evening first public hearing to order. The following notice appeared in the Daily News-Record on Monday September 27, and Monday, October 4, 2004.

#### **NOTICE OF PUBLIC HEARING**

**The Harrisonburg City Council will hold public hearings on Tuesday, October 12, 2004, at 7:30 p.m. in the Municipal Building, City Council Chamber, 345 South Main Street, to consider the following:**

#### **SPECIAL USE PERMIT- 342 SOUTH MAIN STREET**

**Public hearing to consider a request by Hoover Penrod Law Firm for a special use permit {per Section 10-3-91 (9)} to allow for a reduction in side yard setbacks for the property located at 342 South Main Street. The property can be found on tax map 26-K-3.**

**Maps and other information are available for review in the Community Development Department, 409 South Main Street, Monday through Friday, 8:00 a.m. to 5:00 p.m. All persons interested will have an opportunity to express their views at these public hearings.**

**Any individual requiring auxiliary aids, including signers, in connection with the public hearing shall notify the City Manager at least five (5) days prior to the date of the meeting.**

**CITY OF HARRISONBURG  
Rogers D. Baker  
City Manager**

David Penrod said that he was one of the principals in the law firm that occupies the building. He said he was available to answer questions. There being no others desiring to be heard, the public hearing was declared closed at 7:56 p.m., and the regular session reconvened.

Council Member Chenault commented that this house is known as the Blair Conrad House. Mr. Conrad was one of the first great attorneys to practice in Harrisonburg. Lawrence Hoover, another great attorney, bought this house because of his respect for Mr. Conrad and desire to keep the house and its use intact. The law firm has done a tremendous job keeping the house in the same character and has always been willing to make alterations to the house rather than moving to another area. This property helps the downtown area maintain a historical stature.

Council Member Pace offered a motion to approve this request as presented. The motion was seconded by Vice-Mayor Eagle, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Lantz  
Vice-Mayor Eagle  
Council Member Chenault  
Council Member Pace  
Mayor Rogers

Absent - None

Planning and Community Development Director Turner introduced a request by Janice Scaglione to rezone 4.632 acres from R-2, Residential District to R-3C, Multiple Dwelling Residential District Conditional. The property is located along West Mosby Road. She reviewed the surrounding uses in the area. The Comprehensive Plan designates this area as Medium Density Residential. When the original request was presented to Planning Commission they were skeptical of approving a rezoning request without any assurance of what would be developed. The applicant has since resubmitted a rezoning request, this time with a proffered plan of development showing a layout of 90 dwelling units. The plan also shows two connections onto West Mosby Road that would provide ample access and traffic flow for this development. The owner and contract purchaser makes the following proffers in connection with the pending rezoning: 1) The subject property would be developed in substantial conformity to the existing property under development by contract purchaser lying directly east to the subject property along West Mosby Road for condominium units. 2) The 4.6 acre subject property would be developed for condominium units in no greater density than that shown on the preliminary master plan, which shows 90 dwelling units. She said that Planning Commission has recommended approval of the request.

At 8:01 p.m., Mayor Rogers closed the regular session temporarily and called the evening second public hearing to order. The following notice appeared in the Daily News-Record on Monday September 27, and Monday, October 4, 2004.

## NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold public hearings on Tuesday, October 12, 2004, at 7:30 p.m. in the Municipal Building, City Council Chamber, 345 South Main Street, to consider the following:

### REZONING – WEST MOSBY ROAD PROPERTY

Public hearing to consider a request by Janice Scaglione, with representative Henry Clark to rezone 4.632 acres from R-2, Residential District to R-3C, Multiple Dwelling Residential District Conditional. The property is located along West Mosby Road and can be found on tax map 7-A-6.

The Comprehensive Plan designates this area as Medium-Density Residential. This designation states that these areas are near major thoroughfares or commercial areas. They contain a variety of housing types such as single-family, duplex, and two or three story apartments and densities can range from 1 to 15 units per acre.

The Zoning Ordinance states that the R-2, Residential District is intended for medium-density, single-family and two-family residential development. The residential density ranges for R-2 are single-family, 7,000 sq. ft. minimum and two-family, 5,500 sq. ft./unit. The R-3, Multiple Dwelling Residential District is intended for medium- to high-density residential development and other uses intended to respect the residential character, which are aesthetically compatible within the district by means of architectural expression, landscaping, and restrained traffic flow. The residential density ranges for R-3 are single-family, 6,000 sq. ft. minimum; two-family, 4,000 sq. ft./unit; multi-family, 3,000 sq. ft. minimum per unit; townhouses, 2,000 sq. ft. minimum per unit; and other uses, 6,000 sq. ft. minimum.

Maps and other information are available for review in the Community Development Department, 409 South Main Street, Monday through Friday, 8:00 a.m. to 5:00 p.m. All persons interested will have an opportunity to express their views at these public hearings.

Any individual requiring auxiliary aids, including signers, in connection with the public hearing shall notify the City Manager at least five (5) days prior to the date of the meeting.

**CITY OF HARRISONBURG**  
**Rogers D. Baker**  
**City Manager**

Mayor Rogers called on anyone desiring to speak for or against this request.

J.R. Copper a partner in the firm contracting to purchase the property reviewed the history of the property. He said that the plan is to develop condominiums to sell individually. It will also provide another opportunity for home ownership in the City. There being no others desiring to be heard, the public hearing was declared closed at 8:08 p.m., and the regular session reconvened. Vice-Mayor Eagle offered a motion to approve this rezoning request. The motion was seconded by Council Member Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Lantz  
Vice-Mayor Eagle  
Council Member Chenault  
Council Member Pace  
Mayor Rogers

Absent – None

Mayor Rogers presented the following resolution for Council’s consideration of approval:

**RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF  
GENERAL OBLIGATION SOLID WASTE DISPOSAL SYSTEM  
REFUNDING BOND, SERIES 2004, OF THE CITY OF  
HARRISONBURG, VIRGINIA AND PROVIDING FOR THE  
FORM, DETAILS AND PAYMENT THEREOF**

**The City of Harrisonburg, Virginia (the “Locality”) is a public body politic and corporate and political subdivision of the Commonwealth of Virginia.**

**Pursuant to the Constitution and statutes of the Commonwealth of Virginia, including the Public Finance Act of 1991, as amended (Chapter 26, Title 15.2, Code of Virginia of 1950, as amended) (the “Act”), the Locality is authorized to contract debts and to issue, as evidence thereof, obligations payable from ad valorem taxes to be levied without limitation as to rate or amount on all property subject to taxation and a pledge of the full faith and credit of the Locality. Such obligations may be issued to refund obligations previously issued by the Locality and to pay the costs of issuing such refunding obligations.**

**On December 28, 1995, the Locality issued its \$6,000,000 General Obligation Solid Waste Disposal System Bonds, Series 1995 (the “Refunded Bonds”), the current outstanding principal balance of which is \$4,055,000. The proceeds of the Refunded Bonds were used to finance the acquisition, construction, development and equipping of an expansion (the “Project”) to the Locality’s solid waste disposal and resource recovery facility (the “Facility”) and to pay the costs of issuing the Refunded Bonds. The Locality now desires to take advantage of lower interest rates prevalent in the capital markets by issuing its General Obligation Solid Waste Disposal System Refunding Bond, Series 2004, in an original principal amount not to exceed \$4,600,000 (the “Local Bond”) to refund the Refunded Bonds maturing on October 1 in the years 2005 through 2015 and to pay the costs of issuing the Local Bond.**

**The Refunded Bonds were sold to the Virginia Resources Authority (the “VRA”). To provide funds to purchase the Refunded Bonds, the VRA issued its \$6,000,000 Solid Waste Disposal System Revenue Bonds (City of Harrisonburg) 1995 Series B (the “Refunded VRA Bonds”), the current outstanding principal balance of which is \$4,055,000.**

**The Facility is a waste-to-energy resource recovery facility. The Facility burns municipal solid waste, among other fuels, to generate steam and chilled water. The**

steam and chilled water provide heating and cooling for James Madison University's College of Integrated Science and Technology campus.

The VRA has indicated that it is willing to purchase the Local Bond from the Locality. The Locality and the VRA intend to agree that the Locality will issue, and the VRA will purchase, the Local Bond and that the proceeds of the Local Bond will be used to refund the Refunded Bonds and to pay the costs of issuing the Local Bond.

The Locality is authorized under the Act to enter into contracts and agreements to secure its bonds and notes issued under the Act and to provide for the rights of the holders thereof.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Harrisonburg, Virginia (the "Council") as follows:

1. It is hereby determined that the Locality shall contract a debt by issuing its General Obligation Solid Waste Disposal System Refunding Bond, Series 2004, in an original principal amount not to exceed \$4,600,000 (the "Local Bond") pursuant to the Act to refinance the Project by refunding the Refunded Bonds and by paying the costs of issuing the Local Bond.

The Refunded Bonds maturing on October 1, 2005 will be paid from the proceeds of the Local Bond at maturity. The Council hereby calls for the optional redemption on October 1, 2005 (the "Redemption Date") of the Refunded Bonds maturing on October 1 in the years 2006 and 2015 at a redemption price equal to 102% of the outstanding principal amount thereof plus accrued interest to the Redemption Date. The principal amount of the Local Bond does not exceed the amount necessary to retire the Refunded Bonds and to pay the costs of issuing the Local Bond.

2. After consideration of the methods of sale of the Local Bond, it is hereby determined that it is in the best interest of the Locality to accept, and the Locality does hereby accept, the offer from the VRA to purchase the Local Bond. The Local Bond is hereby sold to the VRA in accordance with the terms and provisions set forth in (A) the Financing Agreement tentatively dated November 1, 2004 (the "Financing Agreement"), between the VRA and the Locality and (B) a Local Bond Sale Agreement to be dated such date as will be specified by the VRA (the "Local Bond Sale Agreement"), between the VRA and the Locality. Forms of the Financing Agreement and the Local Bond Sale Agreement were made available to the members of the Council prior to the adoption of this Resolution. The VRA will obtain the funds to purchase the Local Bond by issuing its bonds (the "VRA Bonds").

3. The Local Bond shall be dated no later than the date of its delivery, shall be in an original principal amount not to exceed \$4,600,000, shall be issued as a registered bond without coupons, shall be numbered R-1, shall bear interest at the rates to be set forth therein, shall be subject to prepayment on the terms to be set forth therein and shall be registered initially in the name requested by the VRA, as will be provided in the Local Bond. Principal of the Local Bond shall be payable on the dates and in the amounts to be

set forth in the Financing Agreement and the Local Bond over a period not to exceed thirteen (13) years, and with a weighted average maturity of no more than seven (7) years, or such lesser period as provided in the Local Bond or the Financing Agreement. The true interest cost on the Local Bond shall not exceed 7.00% per year. The principal of and premium, if any, and interest on the Local Bond shall be payable as set forth in the Local Bond and the Financing Agreement. The Locality may, at its option, redeem, prepay or refund the Local Bond upon the terms set forth in the Financing Agreement. Interest on the Local Bond shall be computed on the basis described in the Financing Agreement and the form of the Local Bond.

Following the pricing of the VRA Bonds, the Mayor, the Vice Mayor or the City Manager of the City of Harrisonburg (the "City Manager") shall evidence his approval of the final terms and purchase price of the Local Bond by executing and delivering to the VRA the Local Bond Sale Agreement, which shall be in substantially the form made available to the members of the Council prior to the adoption of this Resolution, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the Mayor, the Vice Mayor or the City Manager. The actions of the Mayor, the Vice Mayor or the City Manager in determining the final terms and the purchase price of the Local Bond shall be conclusive, and no further action shall be necessary on the part of the Locality.

The Locality shall also pay a late payment charge as provided in the Financing Agreement if any installment of principal or interest on the Local Bond is not paid within ten days after its due date. Further, the Locality shall pay certain Supplemental Interest and other costs and expenses, as described in Article VI of the Financing Agreement. If the VRA acts under Section 11.7 of the Financing Agreement, the Locality also agrees to make the payments, including interest, described in that Section 11.7.

The Local Bond is payable as provided in the Financing Agreement in lawful money of the United States of America.

The Mayor, the Vice Mayor and the City Manager, any one of whom may act, are each hereby authorized to approve the final terms and purchase price of the Local Bond, within the parameters provided above, such approval to be evidenced conclusively by the execution of the Local Bond Sale Agreement.

4. The Local Bond will be secured by the full faith and credit of the Locality. For the prompt payment of the principal of, premium, if any, and interest on the Local Bond as the same shall become due, the full faith and credit of the Locality are hereby irrevocably pledged. Pursuant to Virginia Code Section 15.2-2624, there shall be levied and collected an annual tax upon all taxable property in the Locality subject to local taxation sufficient to provide for the payment of the principal of, premium, if any, and interest on the Local Bond as the same shall become due, which tax shall be without limitation as to rate or amount and shall be in addition to all other taxes authorized to be levied in the Locality to the extent other funds of the Locality are not lawfully available and appropriated for such purpose.

5. The Locality shall cause books for the registration and transfer of the Local Bond to be kept at the principal office of the City Manager, and the Locality hereby appoints its City Manager as its registrar and transfer agent to keep such books and to make such registrations and transfers under such reasonable regulations as the Locality may prescribe.

Upon surrender for transfer or exchange of the Local Bond at the principal office of the City Manager, the Locality shall execute and deliver in the name of the transferee or transferees a new Local Bond having an equal aggregate principal amount with the Local Bond surrendered and having the same security, subject in each case to such reasonable regulations as the Locality or the City Manager may prescribe. Any Local Bond presented for transfer, exchange or payment shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and substance reasonably satisfactory to the City Manager, duly executed by the registered owner or by its duly authorized attorney-in-fact or legal representative. The Local Bond may not be registered to bearer. No charge shall be made for any exchange or transfer of the Local Bond, but the Locality or the City Manager may require payment by the bondholder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto.

The new Local Bond delivered upon any transfer or exchange shall be a valid obligation of the Locality, evidencing the same debt as the Local Bond surrendered, shall be secured by this Resolution and the Financing Agreement and shall be entitled to all of the security and benefits hereof to the same extent as the Local Bond surrendered. The City Manager shall treat the registered owner as the person exclusively entitled to the payment of principal of the Local Bond and to the exercise of all other rights and powers of the owner thereof.

6. If the Local Bond has been mutilated, lost or destroyed, the Locality shall execute and deliver a new Local Bond of like date and tenor in exchange and substitution for, and upon cancellation of, the mutilated Local Bond or in lieu of and in substitution for the lost or destroyed Local Bond; *provided* that the Locality shall so execute and deliver new a Local Bond only if the holder has paid the reasonable expenses and charges of the Locality in connection therewith and, in the case of a lost or destroyed Local Bond, (a) has filed satisfactory evidence with the Locality and the City Manager that the Local Bond was lost or destroyed and (b) has furnished to the Locality and the City Manager satisfactory indemnity.

7. The Local Bond may be in typewritten form and may be exchanged for a Local Bond in printed form if the VRA later requires that the Local Bond be in printed form. Appropriate variations, omissions and insertions may be made in the Local Bond with the approval of the Mayor or the Vice Mayor, to facilitate the printing of the Local Bond. The typewritten Local Bond surrendered in exchange for the printed Local Bond shall be canceled.

8. The Financing Agreement, the Local Bond and the Local Bond Sale Agreement shall be in substantially the forms made available to the members of the Council, which are hereby approved, with such completions, omissions, insertions and changes (including changes of dates of documents and changes necessary to evidence the final terms of the Local Bond within the parameters provided in Section 3) as may be approved by the Mayor, the Vice Mayor or the City Manager, his execution of the Local Bond Sale Agreement to constitute conclusive evidence of his approval of any such completions, omissions, insertions and changes.

9. The Local Bond shall bear the manual signatures of the Mayor or the Vice Mayor and the City Clerk or the Deputy City Clerk, and the Mayor, the Vice Mayor, the City Clerk and the Deputy City Clerk, and other appropriate officials of the Locality, are hereby authorized and directed to take all proper steps to have the Local Bond prepared and executed in appropriate form in accordance with Section 3, the Financing Agreement and Exhibit A thereto and to deliver the Local Bond to the VRA upon the terms set forth in the Financing Agreement.

10. The Mayor, the Vice Mayor or the City Manager, any one of whom may act, is hereby authorized and directed to execute the Financing Agreement and the Local Bond Sale Agreement and to deliver them to or for the benefit of the VRA.

11. The Mayor, the Vice Mayor, the City Clerk, the Deputy City Clerk, the City Manager and other appropriate officials of the Locality are hereby authorized to execute and deliver all other certificates, instruments and documents in the name and on behalf of the Locality, including the NonArbitrage Certificate and Tax Compliance Agreement to be dated on or before the date of the issuance of the Local Bond, between the Authority and the Locality, and to take all such further action (a) as they may consider necessary or desirable to carry out the intent and purpose of this Resolution, the issuance of the Local Bond, the refunding of the Refunded Bonds or the execution, delivery and performance of the Financing Agreement or the Local Bond Sale Agreement, or (b) as may be reasonably requested by the VRA in connection with any of the foregoing.

12. All other actions of officials of the Locality in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Local Bond, regardless of whether such actions occurred before or occur after the adoption of this Resolution, are hereby ratified, approved and confirmed.

13. The Locality hereby appoints the law firm of Troutman Sanders LLP, Richmond, Virginia, as bond counsel to supervise the proceedings and approve the issuance of the Local Bond.

14. The City Clerk or the Deputy City Clerk is hereby authorized and directed to cause a certified copy of this Resolution to be filed with the Circuit Court of the County of Rockingham, Virginia.

15. This Resolution shall be in force and effect upon the date of its approval. All other ordinances or resolutions, or parts thereof, in conflict herewith are hereby repealed.

Adopted: October 12, 2004

**CERTIFICATION**

The undersigned City Clerk of the City of Harrisonburg, Virginia hereby certifies (1) that the foregoing constitutes a true, correct and complete copy of a Resolution adopted by the City Council of the City of Harrisonburg, Virginia at a regular meeting duly called and held on October 12, 2004, with the City Council members present and absent and voting on the Resolution as set forth below; (2) that such meeting was duly convened and held in all respects in accordance with law; and (3) that the foregoing Resolution has not been repealed, revoked, rescinded or amended.

<u>NAME</u>	<u>ATTENDANCE</u>		<u>VOTE</u>	
	<u>PRESENT</u>	<u>ABSENT</u>	<u>AYE</u>	<u>NAY</u>
Larry M. Rogers, Mayor	<u>  X  </u>	<u>      </u>	<u>  X  </u>	<u>      </u>
Rodney L. Eagle, Vice Mayor	<u>  X  </u>	<u>      </u>	<u>  X  </u>	<u>      </u>
Charles Chenault	<u>  X  </u>	<u>      </u>	<u>  X  </u>	<u>      </u>
Hugh J. Lantz	<u>  X  </u>	<u>      </u>	<u>  X  </u>	<u>      </u>
George W. Pace	<u>  X  </u>	<u>      </u>	<u>  X  </u>	<u>      </u>

**WITNESS, my hand and the seal of the City of Harrisonburg, Virginia this \_\_ day of October, 2004.**

**CITY OF HARRISONBURG, VIRGINIA**

By \_\_\_\_\_  
**Name: Yvonne Ryan**  
**Title: City Clerk**

It is requested that City Council authorize the refunding of the City's Series 1995B Solid Waste Disposal System Bonds. The savings resulting from refunding these bonds will be channeled to JMU, since they actually reimburse the City for the debt service on these bonds. JMU has agreed to pay all cost associated with this refunding and resulting debt service payments. Council Member Lantz offered a motion to approve refunding the bonds. The motion was seconded by Council Member Chenault, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Lantz  
Vice-Mayor Eagle  
Council Member Chenault  
Council Member Pace  
Mayor Rogers

Absent – None

The next item of business was a request to consider adopting Procedures for Requests Made Pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002. Economic Development Director Shull said that in 2002 the Virginia General Assembly passed this Private-Public Education Facilities Act, which gives local government the opportunity to enter into private-public partnerships for being more effective in creating public use facilities in the localities. Each local government needs to adopt these procedures to take advantages of this act and be able to utilize it. Council Member Lantz offered a motion to adopt the procedures for a first reading. The motion was seconded by Vice-Mayor Eagle, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Lantz  
Vice-Mayor Eagle  
Council Member Chenault  
Council Member Pace  
Mayor Rogers

Absent – None

The next item of business was a request to close City streets for Generation Crossing 5K Run/Walk. City Manager Baker said that Generations Crossing has partnered with First Night to sponsor a fund raising run/walk on New Years Eve. He reviewed the route. Staff is recommending that the request be approved, but want to discuss final details and a more workable route with Generations Crossing. Council Member Pace suggested that the route be altered to avoid the feed mill schedule on a Friday afternoon for safety reasons and also that the run/walk should perhaps start prior to 3:00 p.m., to keep the area clear for First Night activities. Council Member Pace offered a motion to approve this request. The motion was seconded by Vice-Mayor Eagle, and approved with a unanimous vote of Council.

City Attorney Thumma presented for Council's consideration an ordinance amending and re-enacting Section 16-8-51 (b) of the Harrisonburg City Code. He said the City's open container ordinance did not comply with the state law and amending the code will bring it into compliance. Council Member Chenault offered a motion to approve amending and re-enacting Section 16-8-51 (b) of the Harrisonburg City Code for a first reading. The motion was seconded by Vice-Mayor Eagle, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Lantz  
Vice-Mayor Eagle  
Council Member Chenault  
Council Member Pace  
Mayor Rogers

Absent – None

City Attorney Thumma presented for Council's consideration an ordinance enacting Section 4-2-17 (b) of the Harrisonburg City Code. He said that this ordinance establishes guidelines for granting tax exemption for designated real property and designated personal property for certain non-profit organizations. Council Member Pace offered a motion to approve enacting Section 4-2-17 (b) of the Harrisonburg City Code for a first reading. The motion was seconded by Council Member Lantz, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Lantz  
Vice-Mayor Eagle  
Council Member Chenault  
Council Member Pace  
Mayor Rogers

Absent – None

City Manager Baker presented a request for a supplemental appropriation for the Fire Department. He said that these funds were received from the state through the Fire Program Fund and needed to be included in the Fire Department budget. Council Member Lantz offered a motion to approve this request for a first reading, and that:

\$24,666.88 chge. to: 1000-32512 Fire Programs Fund

\$24,666.88 approp. to: 1000-320232-48203 Fire Programs Fund

The motion was seconded by Vice-Mayor Eagle, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Lantz  
Vice-Mayor Eagle  
Council Member Chenault  
Council Member Pace  
Mayor Rogers

Absent – None

City Manager Baker presented a request for a supplemental appropriation for the Public Works Department. He said these funds will be used to cover the cost of consultant services for a Harrisonburg-Rockingham Train Safety Enhancement project. The City, County, and JMU entered into a partnership contract in July 2004 with Harrisonburg acting as fiscal agent. The cost of the project is divided proportionally to the amount that was originally pledged from each political entity. Harrisonburg will pay \$47,487, James Madison University will pay \$94,974 and Rockingham County will pay \$15,829.

Council Member Pace said it would be terrific to move the railroad from the current situation to another area. Conducting an engineering study would be appropriate to determine if the project

is feasible. If the railroad company is not interested in funding the ultimate cost of this engineering study and unless Federal funds are available it is a waste of City money.

City Manager Baker said the engineering firm is working very closely with the railroad company. Congressman Goodlatte has assured everyone involved that he will make Federal monies available to help move the railroad if it is shown that it is feasible.

Council Member Pace offered a motion to approve this request for a first reading, and that:

\$110,803 chge. to: 1000-31921 Reimbursement Train Safety Project  
47,487 chge. to: 1000-31010 Amount from Fund Balance

\$158,290 approp. to: 1000-410241-43100 Professional Services

The motion was seconded by Vice-Mayor Eagle, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Lantz  
Vice-Mayor Eagle  
Council Member Chenault  
Council Member Pace  
Mayor Rogers

Absent – None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He said these funds were received from a reimbursement grant from the Virginia Department of Health. These funds will be used to purchase bicycle helmets. Council Member Lantz offered a motion to approve this request for a first reading, and that:

\$489.30 chge. to: 1000-33540 Health Department grant

\$489.30 approp. to: 1000-310231-46140 Other operating supplies

The motion was seconded by Council Member Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Lantz  
Vice-Mayor Eagle  
Council Member Chenault  
Council Member Pace  
Mayor Rogers

Absent – None

Council Member Pace said that he wanted to commend Rebecca Neal and the treasurer's staff for receiving an unqualified audit opinion on the department results for the past fiscal year. He also commended Michael York, General Manager of Harrisonburg Electric Commission, and his staff for receiving an unqualified audit opinion for the past fiscal year.

Mayor Rogers said that he has been receiving a lot of telephone calls from citizens complaining about how loud the train whistles are in the early morning. "Maybe this is something we should look into."

Assistant City Manager Hodgen stated that railroad officials have advised him that they are required by law to blow the whistle. However, if the City wanted to adopt an ordinance requiring them to not blow the whistle the City can do that, but in the absence of a City ordinance specifying that they have to blow the whistle. Engineers have told him they prefer to sound the whistle at all crossings.

Vice-Mayor Eagle questioned if there is a time limit on how long the whistle can be blown. "It seems they give it either a long blast or just a short bleep. There is no consistency to it."

Following further discussion and comments, Council directed City Attorney Thumma to prepare an ordinance to be presented at the next Council meeting.

Council Member Lantz announced that a Deer Task Force meeting will be held either November 22<sup>nd</sup> or 29<sup>th</sup>. The date will be confirmed once all members of the task force have been notified. The meeting will open to the general public.

City Council decided not to take any position on changing the date of Halloween on October 31, 2004.

City Manager Baker said an attorney has advised him that the new owner of Adelphia Cable will have to negotiate a franchise with the City.

City Manager Baker said that the cap on personal property tax will not have an effect on the City until fiscal year 2007.

City Manager Baker said that staff was asked to look at the possibility of forming a Gang Task Force, which would be similar to the Drug Task Force. It has been estimated that \$480,000 would be needed for the start-up process.

Police Chief Harper said that if a regional task force is formed between Harrisonburg and Rockingham County three people from each locality will be needed. It will cost the City \$215,858 for the start-up cost for three new investigators.

At 8:50 p.m., Council Member Chenault offered a motion that Council enter a closed session for discussion and consideration of personnel and prospective candidates to be appointed to the Blue Ridge Disability Services Board, Social Services Advisory Board, Harrisonburg Board of Zoning Appeals, Harrisonburg Electric Commission, Harrisonburg Redevelopment and Housing Authority, Harrisonburg Parking Authority, Building Code Board of Appeals, Parks and Recreation Commission, and Harrisonburg Planning Commission exempt from public meeting requirements pursuant to Section 2.2-3711(A)(1) of the Code of Virginia. Discussion concerning a prospective business where no previous announcement has been made of the business' interest in locating within the City, exempt from public meeting requirements pursuant to Section 2.2-3711(A)(5) of the Code of Virginia. Discussion and consideration of the acquisition of real estate to be used for public purposes, exempt from public meeting requirements pursuant to Section 2.2-3711(A)(3) of the Code of Virginia, 1950, as amended. The motion was seconded by Council Member Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Lantz  
Vice-Mayor Eagle  
Council Member Chenault  
Council Member Pace  
Mayor Rogers

Absent - None

At 9:20 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 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 closed session was convened, were heard, discussed or considered in the closed session by the City Council.

At 9:25 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

