

REGULAR MEETING

August 10, 2010

At a regular meeting held this evening at 7:00 p.m., there were present: Mayor Kai Degner; City Manager Kurt Hodgen; City Attorney Earl Q. Thumma, Jr.; Vice-Mayor Richard A. Baugh; Council Members David Wiens, Carolyn W. Frank and Ted Byrd; City Clerk Yvonne “Bonnie” Ryan, MMC; and Police Captain Dan Claytor. Absent: Police Chief Donald Harper.

Council Member Frank gave the invocation, and Mayor Degner led everyone in the Pledge of Allegiance.

Bucky Berry gave his support for the Lucy Simms Center and the shower usage. He would like us to utilize the building for the community, but screen those who are able to use the showers.

Council Member Byrd offered a motion to approve the consent agenda, including approval of the minutes and the second reading of a supplemental appropriation for the Police Department and re-appropriation of encumbrances outstanding at June 30, 2010. The motion also included enacting Section 16-4-19 of the Harrisonburg City Code. The motion was seconded by Council Member Wiens and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank
Council Member Byrd
Council Member Wiens
Vice-Mayor Baugh
Mayor Degner

Absent – None

The next item of business was approving a State Performance Contract for the Community Services Board. City Manager Hodgen said that the Code of Virginia calls for a formal vote on this contract. However, if no action is taken by September 30, 2010, it is considered approved. Council Member Frank offered a motion to approve the FY 2011 State Performance Contract for the Harrisonburg-Rockingham Community Services Board. The motion was seconded by Vice-Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank
Council Member Byrd
Council Member Wiens
Vice-Mayor Baugh
Mayor Degner

Absent – None

Mayor Degner presented the following resolution for Council's consideration of approval:

**RESOLUTION OF THE CITY OF HARRISONBURG, VIRGINIA
REGARDING THE PURCHASE OF THE HISTORIC COMPONENT
OF THE LUCY F. SIMMS CONTINUING EDUCATION CENTER**

WHEREAS, the City of Harrisonburg, Virginia (the "City"), in cooperation with the Harrisonburg Redevelopment and Housing Authority (the "Authority"), the Boys & Girls Club of Harrisonburg and Rockingham County (the "Boys & Girls Club"), and the Harrisonburg-Rockingham Association For Retarded Children, Inc. ("ARC") has assisted in the renovation of the original, historic portion of the Lucy F. Simms Continuing Education Center (the "Historic Component"); and

WHEREAS, the City sold the Historic Component to Lucy F. Simms, L.P. (the "Partnership") pursuant to a purchase agreement entered into between the City and the Partnership on January 20th, 2005 (the "City Purchase Agreement") so that the Partnership could utilize the Historic Component as a community education center in order to promote life-long learning and to enhance the health, safety, and welfare of the citizens of the Harrisonburg/Rockingham County community; and

WHEREAS, a portion of the purchase price of the Historic Component was paid in the form of a promissory note by the Partnership to the City (the "Partnership Note"). Payments of principal and interest on the Partnership Note were deferred for twenty years, and such Partnership Note is still outstanding and owed to the City. The remainder of the consideration paid by the Partnership to the City is set forth in the City Purchase Agreement; and

WHEREAS, the City has the option to purchase the Historic Component back from the Partnership pursuant to an option agreement with the Partnership dated January 20th, 2005 (the "Option Agreement"); and

WHEREAS, the City has decided to exercise the Option Agreement in order to purchase the Historic Component from the Partnership; and

WHEREAS, the Authority is the Manager of the General Partner of the Partnership and Michael G. Wong, Executive Director of the Authority, has been vested with the Authority's powers as Manager of the General Partner and has undertaken the duties of the Manager on behalf of the Authority; and

WHEREAS, the City has guaranteed certain obligations of the General Partner pursuant to an agreement dated January 20th, 2005 (the "Simms Guaranty Agreement").

WHEREAS, two of the limited partners of the Partnership wish to withdraw from the Partnership and a new limited partner will join the Partnership prior to the sale of the Historic Component to the City pursuant to an Agreement for Admission, Withdrawal and

Redemption of Interest dated August 26, 2010 (the “Withdrawal Agreement”), the substantially final form of which has been presented to this meeting.

WHEREAS, because of the Simms Guaranty Agreement and for other reasons set forth in the Withdrawal Agreement, the City must consent to and be a party to such Withdrawal Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Harrisonburg, Virginia that:

1. The City approves the foregoing recitals, which are incorporated in, and deemed a part of, this Resolution as if fully set forth herein.

2. The City shall exercise the Option Agreement and purchase the Historic Component, as further described in the City Purchase Agreement, on such terms as described in the Option Agreement and as are deemed satisfactory to the City Manager, Mayor or Vice-Mayor, any of whom may act. Such purchase consideration shall include but is not necessarily limited to the forgiveness of the debt evidenced by the Partnership Note and may include the City’s agreement to pay a portion of the Developer Fee owed by the Partnership to the Harrisonburg Redevelopment and Housing Authority. Such Developer Fee is as defined in the Agreement of Limited Partnership dated January 20, 2005.

3. The City approves the signing of the Withdrawal Agreement relating to such sale, and authorizes and directs the City Manager, Mayor or Vice-Mayor, any of whom may act, to execute and deliver the Withdrawal Agreement in substantially the form submitted to the City, with such changes and additions as may be approved by the City Manager, Mayor or Vice-Mayor, any of whom may act.

4. The City authorizes and directs the City Manager, Mayor and Vice-Mayor, any of whom may act, to take all actions necessary to perform the tasks and achieve the objectives set forth in this Resolution. Such authorization and direction includes but is not limited to: (a) exercising the option set forth in the Option Agreement and effectuating the purchase of the Historic Component from the Partnership, (b) taking such actions as are necessary to ensure that the Withdrawal Agreement is executed and enforceable, (c) accepting the release of the Partnership Note as partial or full payment to the Partnership for the Historic Component and providing such other consideration to the Partnership as is necessary in their judgment to obtain the Historic Component, including but not limited to assuming the obligation for the City to pay a portion of the Developer Fee (d) signing a Closing Agreement and/or other agreements concerning the purchase of the property and (e) signing a Certificate and Affidavit of Satisfaction or other document releasing the Partnership Note.

5. The City Manager, Mayor and Vice-Mayor, any of whom may act, are also authorized to take such other actions and to execute such other documents as are necessary to achieve the purposes set forth in this Resolution.

6. The Resolutions passed by the City Council on March 25, July 22, September 23, November 11 and November 25 of 2003 and June 22 and November 23 of 2004 shall continue in full force and effect, as modified by this Resolution.

This Resolution shall take effect immediately upon its adoption.

READ AND ADOPTED: August 10, 2010

CERTIFICATE

Record of the roll-call vote by the City Council of the City of Harrisonburg, Virginia, upon reading of a resolution titled "RESOLUTION OF THE CITY OF HARRISONBURG, VIRGINIA REGARDING THE PURCHASE OF THE HISTORIC COMPONENT OF THE LUCY F. SIMMS CONTINUING EDUCATION CENTER," taken at a regular meeting of the City Council held on August 10, 2010:

	AYE	NAY	ABSTAIN	ABSENT
Kai Degner, Mayor	X			
Richard Baugh, Vice Mayor	X			
Ted Byrd	X			
Carolyn Frank	X			
David Weins	X			

Dated: August 10, 2010

By: _____

**Mayor or Vice Mayor,
City of Harrisonburg, Virginia**

(SEAL)

**ATTEST: _____
Clerk, City Council of the City of
Harrisonburg, Virginia**

Michael Wong, Executive Director, of the Harrisonburg Redevelopment and Housing Authority, spoke in regards to the transfer of the Lucy Simms Center. He provided a City Resolution regarding the purchase of the historic component of the building, Agreement for Admission, Withdrawal and Redemption of Interest, (the "Withdrawal Agreement"), the Simms Guaranty Agreement, a Closing Agreement, Deed, and Certificate of Affidavit and Satisfaction. The Resolution provides that the Withdrawal Agreement is to be presented at the City Council meeting in its substantially final form. A blank is in the Withdrawal Agreement concerning a cost reimbursement to the withdrawing limited partners to be paid by Lucy F. Simms, L.P. that will be filled in prior to its being signed.

Council Member Frank offered a motion to approve the resolution of the City of Harrisonburg, Virginia regarding the purchase of the Historic Component of the Lucy F. Simms Continuing Education Center. The motion was seconded by Council Member Byrd and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank
Council Member Byrd
Council Member Wiens
Vice-Mayor Baugh
Mayor Degner

Absent – None

Mayor Degner presented an agreement allowing Our Community Place to have use of the shower facilities at the Lucy Simms Center.

City Manager Hodgen spoke on behalf of a request the Parks and Recreation Department has received from Ron Copeland of “Our Community Place” (OCP) to formalize an agreement with the City to continue allowing the use of the shower facilities at the Simms Center by OCP clients. OCP was allowed to utilize the facility while it was under the ownership/direction of the Harrisonburg Redevelopment and Housing Authority. There are specific provisions in the agreement for supervision of those clients using the facilities by OCP staff. As this request involves the use of public facilities by a private entity, the City Attorney has recommended that the agreement be presented for Council approval.

Council Member Byrd offered a motion to approve the agreement allowing Our Community Place to have use of the shower facilities at the Lucy Simms Center, with the hours at the discretion of the Parks and Recreation Department. The motion was seconded by Council Member Wiens and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank
Council Member Byrd
Council Member Wiens
Vice-Mayor Baugh
Mayor Degner

Absent – None

City Manager Hodgen presented a request to increase the General Fund and Water Capital Projects Fund budgets. The City received an Energy Efficiency Conservation Block Grant. The funds in the general fund will be spent on the completed energy audit that was done by Linc Services and energy efficiency improvements at the Community Activities Center. Funds in the Water Capital Projects will be spent on a pump optimization study and efficiency improvements to the Tower Street and Garber’s Church Road water pump stations. Council Member Byrd offered a motion to approve this request for a first reading, and that:

\$184,200.00 chge. to: 1000-31010 Amount from Fund Balance
22,000.00 chge. to: 1321-31010 Amount from Fund Balance

\$ 12,000.00 approp. to: 1000-430221-43100 Professional Services
172,200.00 approp. to: 1000-710471-48181 Buildings & Grounds
22,000.00 approp. to: 1321-910161-48635 Watermain Upgrades

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

Vote: Yes - Council Member Frank
Council Member Byrd
Council Member Wiens
Vice-Mayor Baugh
Mayor Degner

Absent – None

City Manager Hodgen presented for Council's consideration in amending and re-enacting Section 7-3-81 and enacting Section 7-4-1(f) of the Harrisonburg City Code for Council's consideration of approval. The attached ordinance changes are in support of pending and potential "green/environmental" projects. The amendment to Section 7-3-81 allows the director of public utilities to grant an exception for environmental projects ("green water") intended to utilize storm water and surface water for non-potable uses such as sanitary conveyance. Under arrangements where "green water" is used in conjunction with water supplied from the city system, all conditions of the ordinance shall apply except that the metered non-potable "green water" shall be billed a specific water rate that has been determined to provide the city with sufficient revenue to fund typical fixed costs, but to also provide the customer with a reduced rate. Appropriate backflow prevention shall be required to prevent the cross connection of "green water" with potable city water. A "blackline" and "clean" copy of this ordinance change was included in Council agenda materials so the changes would be easier to note. The second amendment, to Section 7-4-1(f), establishes "green water" rates and charges.

Michael Collins, Public Utilities Director, explained further that this ordinance is being considered to help Public Utilities in the future to help the "green world". James Madison University (JMU) came to them with an idea of using rain off the roof to use in flushing of toilets in one of their new buildings. The Public Utilities Department bills by water and not by sewer, and the accuracy limits and the requirements that AWWA recommends for metering are very strict. To overcome the technical side of things the water that is being put in will have to be measured by a water meter. The current policy for water and sewer ordinances is that if you want water you also take sewer. For this ordinance Public Utilities will give credit for when you are able to use "green water", but still have a charge to the remainder of the City water when unable to produce "green water". This way we can reduce their costs by what we save when they use "green water", but we are able to cover the fixed costs of the assets to have access for them when they need water. JMU is the first to try and use "green water", but Public Utilities Director Collins sees more "green water" users in the future.

Council Member Byrd offered a motion to approve this ordinance; the motion was seconded by Vice Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank
Council Member Byrd
Council Member Wiens
Vice-Mayor Baugh
Mayor Degner

Absent – None

Mayor Degner presented the following resolution for Council's consideration of approval:

**RESOLUTION OF THE
CITY COUNCIL OF THE CITY OF HARRISONBURG, VIRGINIA**

WHEREAS, Rockingham Memorial Hospital, a not-for-profit Virginia nonstock corporation ("RMH"), owns and operates hospital facilities in Rockingham County, Virginia;

WHEREAS, Rockingham Health Care, Inc., a not-for-profit Virginia nonstock corporation ("RHC" and together with RMH, the "Corporations") is the corporate parent of RMH;

WHEREAS, the Industrial Development Authority of the City of Harrisonburg, Virginia (the "Authority"), has previously issued its revenue bonds for the benefit of the Corporations to finance the costs of acquiring, constructing and equipping a replacement hospital facility for the Corporations containing approximately 234 beds located on 254 acres along Port Republic Road, between Reservoir Street and Boyers Road, in Rockingham County and related equipment and capital improvements (collectively, the "New Hospital");

WHEREAS, the Corporations have requested that the Authority issue additional revenue bonds (the "Bonds"), pursuant to the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the "Act"), in one or more series, in an amount not to exceed \$75,000,000;

WHEREAS, the proceeds of the Bonds will be used to finance or refinance (1) costs to complete the New Hospital and related projects, (2) costs of routine capital expenditures, (3) all or a portion of the costs of issuance of the Bonds, (4) the cost of credit enhancement, if any, for the Bonds, (5) interest on the Bonds for the period of acquisition and construction of the projects financed with the proceeds of the Bonds and for up to one year thereafter, and (6) a debt service reserve fund for the Bonds (collectively, the "Project");

WHEREAS, the Authority, on August 5, 2010, held a public hearing on the issuance of the Bonds;

WHEREAS, Section 147(f) of the Internal Revenue Code, as amended (the “Code”), and Section 15.2-4906 of the Act require that the governmental unit on behalf of which the Authority will issue the Bonds approve the issuance of such bonds;

WHEREAS, the Corporations have requested the City Council of the City of Harrisonburg, Virginia (the “Council”), approve the issuance of the Bonds to comply with Section 15.2-4906 of the Act and Section 147(f) of the Code;

WHEREAS, a copy of the Authority’s resolution of August 5, 2010, approving issuance of the Bonds, a record of the public hearing and a fiscal impact statement with respect to the issuance of the Bonds have been filed with the Council; and

WHEREAS, the Authority has recommended that the Council approve the issuance of the Bonds to comply with Section 147(f) of the Code and Section 15.2-4906 of the Act.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HARRISONBURG, VIRGINIA:

1. The Council hereby approves the issuance of the Bonds by the Authority for the benefit of the Corporations, as required by Section 147(f) of the Code and Section 15.2-4906 of the Act.

2. The approval of the issuance of the Bonds does not constitute an endorsement of the Bonds or the creditworthiness of the Corporations. The Bonds shall provide that neither the City of Harrisonburg, Virginia, nor the Authority shall be obligated to pay the Bonds or the interest thereon or other costs incident thereto except from revenues and moneys pledged therefore, and neither the faith and credit nor the taxing power of the Commonwealth of Virginia, the City of Harrisonburg, Virginia, or the Authority shall be pledged thereto.

3. All acts and doings of the officers and members of the Council that are in conformity with the purposes and intent of this resolution shall be, and the same hereby are, in all respects approved and confirmed.

4. This resolution shall take effect immediately upon its adoption.

CERTIFICATE

The undersigned Clerk of the City Council of the City of Harrisonburg, Virginia (the “Council”), hereby certifies that the foregoing is a true, correct and complete copy of a resolution adopted by a majority of the Council present and voting at a regular meeting duly called and held on August 10, 2010, in accordance with law.

WITNESS the following signature and the seal of the Council this ____ day of August, 2010.

**Clerk of the City Council of the City of
Harrisonburg, Virginia**

Council Member Byrd offered a motion to approve the issuance of revenue bond on behalf of Rockingham Memorial Hospital by the Industrial Development Authority of the City of Harrisonburg, Virginia. The motion was seconded by Council Member Wiens and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank
Council Member Byrd
Council Member Wiens
Vice-Mayor Baugh
Mayor Degner

Absent – None

Mayor Degner presented the following resolution for Council's consideration of approval:

**A RESOLUTION SEEKING ACTION BY THE
GENERAL ASSEMBLY AND GOVERNOR
TO PROHIBIT ALL PREDATORY, USURIOUS LENDING PRACTICES
IN THE COMMONWEALTH OF VIRGINIA**

WHEREAS, the Harrisonburg City Council, represents the citizens of Harrisonburg, Virginia; and

WHEREAS, the Council believes the citizens of Harrisonburg remain concerned over what are perceived to be predatory, usurious lending practices in the City and elsewhere in the Commonwealth, including practices that can exploit dedicated, brave women and men called to serve in the United States armed services;

WHEREAS, the Council shares these continuing concerns and intends through this Resolution to express the collective sentiments and will of Harrisonburg citizens that the General Assembly and Governor of Virginia need to take action to prohibit all predatory, usurious lending practices; and

WHEREAS, it is essential that the General Assembly and the Governor of Virginia address this matter as a high priority at the next legislative session, leading to enactment of laws strictly prohibiting and deterring all predatory, usurious lending practices in the Commonwealth of Virginia.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Harrisonburg, Virginia that, at the next legislative session, the General Assembly and the Governor of the Commonwealth of Virginia are hereby requested to enact laws strictly prohibiting and

detering all predatory, usurious lending practices, including but not limited to provisions that would:

- 1. Impose an interest rate cap of thirty-six percent (36%), calculated as an effective annual percentage rate including all fees or charges of any kind, for any consumer credit extended in the Commonwealth of Virginia;**
- 2. Prohibit a creditor's use of a personal check or other device as a means, directly or indirectly, to gain access to a consumer's bank account; and**
- 3. Incorporate into the Virginia Code the protections regarding consumer credit to military personnel as reflected in the Military Lending Act, 10 United States Code Section 987.**

Adopted this ____ day of _____, 2010

BY: _____

Kai Degner, Mayor

ATTEST: _____

Yvonne H. Ryan, MMC, City Clerk

Mayor Degner accepted brief comments on this resolution.

John Whitfield: He is a citizen of Staunton, but has a law practice here in Harrisonburg. He is urging Council to adopt this resolution to help protect citizens who are overwhelmed by the debts that come from these lenders.

Grant Penrod: Local attorney and native of Harrisonburg. He is urging Council to adopt this resolution to help those who become trapped under payday loans. The people that are getting caught in these loans are hardworking and honest people who want to pay their bills off and that is how the lenders get this much interest out of them. He also stated that passing this resolution could have a real impact and help move some of the lending companies out of our city and hopefully state.

Stan Farthing: He came to speak as a citizen of the Commonwealth and a Representative of the Virginia Interfaith Center for Public Policy of which he serves as a board member. The demand for loans is high but alternatives like small loan programs that have been provided and offered to state employees through their Credit Union have proved a more reasonable outcome. He also noted that these "Predatory" Lending Practices are located outside of the Commonwealth and taking the money elsewhere. He also is urging Council to adopt this resolution and encourage the General Assembly to act.

After further comments from the Council, Council Member Frank offered a motion to approve the resolution seeking action by the General Assembly and Governor to prohibit "Predatory" Lending Practices. The motion was seconded by Council Member Wiens and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank
Council Member Byrd
Council Member Wiens
Vice-Mayor Baugh
Mayor Degner

Absent – None

City Manager Hodgen presented a request for supplemental appropriations for the Police Department. Vice-Mayor Baugh offered a motion to approve the supplemental appropriations as presented to Council in agenda items thirteen through sixteen for the first reading, and that:

The funds were received from a Federal grant through Rockingham Memorial Hospital for drug/alcohol enforcement.

\$1,803.67 chge. to: 1000-31901 Recoveries/rebates

\$1,803.67 approp. to: 1000-310231-41020 Salaries/wages OT

The funds were received from an Alcoa grant. Some of the funds were used in the FY 2008-2009 budget and the remainder will be spent in the FY 2010-2011 budget.

\$2,570.00 chge. to: 1000-31010 Amount from fund balance

\$2,570.00 approp. to: 1000-48211 Machinery and equipment

The funds were received from state asset seizure money and will be used to purchase advanced tasers for the Police Department.

\$4,049.75 chge. to: 1000-31010 Amount from fund balance

\$4,049.75 approp. to: 1000-310631-46100 Police supplies

The funds were received through the Federal Justice Assistance Grant. The funds will be used to purchase license plate readers for the Police Department.

\$23,808.00 chge. to: 1000-31010 Amount from fund balance

\$23,808.00 approp. to: 1000-310631-48111 Machinery and equipment

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

Vote: Yes - Council Member Frank
Council Member Byrd
Council Member Wiens

Vice-Mayor Baugh
Mayor Degner

Absent – None

City Manager Hodgen provided an update about the intersection of Chicago Avenue and Mt. Clinton Pike. The Public Works Department has a General Services Consultant who will do engineering studies of varying degrees at our request. We are planning to do a study on Chicago Avenue and we can incorporate the intersection as well.

City Manager Hodgen invited the City Council members to the Erickson Avenue & Stone Spring Road project's ribbon cutting on August 18, 2010 at 10:30 a.m.

Vice-Mayor Baugh offered a motion that Elizabeth Gallon Howley, 138 Lynden Place, be appointed to a term on the Rockingham/Harrisonburg ASAP to expire on December 31, 2015. The motion was seconded by Council Member Byrd and approved with a unanimous voice vote.

At 8:05 p.m., Vice-Mayor Baugh offered a motion that Council enter into a closed session for discussion and consideration of the disposition of real estate, exempt from public meeting requirements pursuant to Section 2.2-3711(A)(3) of the Code of Virginia, 1950, as amended. Discussion and consideration of personnel, exempt from the public meeting requirements pursuant to Section 2.2-3711(A)(1) of the Code of Virginia. The motion was seconded by Council Member Byrd and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank
Council Member Byrd
Council Member Wiens
Vice-Mayor Baugh
Mayor Degner

Absent – None

At 9:00 p.m., the closed session ended and the regular session reconvened. City Attorney Thumma 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 requirement 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 9:05 p.m., there being no further business and on motion adopted, the meeting was adjourned.

CITY CLERK

MAYOR