

## SPECIAL MEETING

OCTOBER 17, 2001

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

Mayor Frank called the special meeting to order. The meeting was called under Section 2-2-6 of the Harrisonburg City Code by Council Members Hugh Lantz and Joseph Fitzgerald. The purpose of this meeting is to consider action on the charter amendments on the November 6<sup>th</sup> ballot.

✓ Council Member Fitzgerald offered a motion to engage the services of the firm of Litten and Sipe represented by Donald Litten to represent the City in this matter until its conclusion. Following further discussion and comments, City Council Members agreed to table the motion until the closed session has ended.

At 7:35 p.m., Council Member Fitzgerald offered a motion that Council enter a closed session for the purpose of discussion of matters relating to probable litigation. A closed session is permissible for this purpose pursuant to Section 2.2-3711.A.7 of the Code of Virginia (1950), as amended (the Code). The recorded roll call vote was taken as follows:

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

Absent – None

At 8:18 p.m., the closed session ended and the regular session reconvened. The following statement was read and agreed to with a unanimous recorded vote of Council: I certify to the best of my knowledge and belief that (1) only public matters lawfully exempt from open meeting requirement pursuant to Chapter 37 of Title 2.2 of the Code of Virginia, 1950, as amended, and (2) only such matters as were identified in the motion by which the closed meeting were convened, were heard, discussed or considered in the closed session by the City Council. The recorded roll call vote was taken as follows:

Vote - Council Member Rogers  
 Vice-Mayor Peterson  
 Council Member Fitzgerald

Council Member Lantz  
Mayor Frank

Absent – None

Attorney Donald Litten read and presented the following resolution for Council's consideration of approval:

**A RESOLUTION RESCINDING THE COUNCIL'S ACTION OF  
AUGUST 28, 2001,  
CONCERNING CERTAIN CHARTER PROPOSALS**

*Whereas*, on August 28, 2001, this Council passed a motion (the "August 28 Motion") requesting that the Circuit Court of Rockingham County order a referendum concerning three proposed charter amendments (the "Charter Proposals"), and

*Whereas*, in furtherance of the council's action, the City Attorney filed such a request with the court, including the text of the proposals referred to in the August 28 Motion, as well as summaries prepared for use on the referendum ballots, and

*Whereas*, one of these Charter Proposals (the "Ordinance Referenda Proposal," or "ORP"), was intended to allow for referenda in which citizens could reject or affirm certain ordinances and resolutions, and

*Whereas*, the Ordinance Referenda Proposal, as referred to in the August 28 Motion, misstated the council's intent by providing that a majority of the "registered voters residing in the City" would be required to affirm or reject a resolution or an ordinance, while the Council intended that a majority of those *voting on the issue* would be required, and

*Whereas*, the summaries prepared for use on the ballots correctly stated the Council's intent, and

*Whereas*, in an order dated September 4, 2001, the Court ordered a referendum concerning the Charter Proposals, specifically directing that the proposed summaries be placed on the November 6, 2001 election day ballot, and

*Whereas*, after discovering the error in the August 28 Motion, the Council directed the City Attorney to request that the Court order all three Charter Proposals removed from the November 6, 2001 ballot, and

*Whereas*, on October 16, 2001, after hearing the City Attorney's request, the Court declined to order the removal of the three Charter Proposals from the ballot, and instead order *nunc pro tunc* that the ORP summary for the ballot be revised to conform to the text referred to in the August 28 Motion,

Now, therefore, be it resolved by the Council of the City of Harrisonburg, Virginia that after due investigation, this Council finds that

1. At no time did this Council intend for the ORP to require a majority of *all* registered voters to affirm or reject an ordinance or resolution. In many elections, only a minority of registered voters actually cast ballots, so if such a requirement were implemented by the General Assembly, many council actions could be neither affirmed nor rejected.
2. Instead at all times, this Council's intent was for the ORP to state that in a referendum concerning an ordinance or resolution, a majority of the voters actually casting ballots should control.
3. After reviewing the Council's procedures on August 28, 2001, the Council finds the August 28 Motion to be *ultra vires* under §56 of the City Charter, because the August 28 Motion was not in the form of an ordinance or resolution, as prescribed by §2-1-1 of the City Code.
4. The State Board of Elections is of the opinion that the Court's *nunc pro tunc* order cannot be complied with at this late date, because absentee ballots are already circulating. Additionally, the Council's original misstatement, followed by the court order and the second, corrective order would surely cause significant voter confusion concerning all three Charter Proposals. Any election results would bear the taint of this confusion.
5. Under Virginia Code §15.2-201, this Council is vested with the authority to determine whether referenda should be held concerning proposed charter amendments. Given the uncertainty and confusion which surround this issue, this Council does *not* desire any such referenda to be held for the Charter Proposals on November 6, 2001.

*Be it further resolved that*

1. This Council requests that the Circuit Court of Rockingham County vacate its order of September 4, 2001 and its *nunc pro tunc* order of October 16, 2001.
2. Though the Council finds the August 28 Motion to be *ultra vires* and void *ab initio*, to the extent it has any validity, the motion is hereby vacated, repealed, and extinguished.
3. The Council requests that the Electoral Board of the City of Harrisonburg and the State of Board of Elections reprint ballots so

that the Charter Proposals are not referred to. To the extent that the ballots cannot be reprinted, the Council requests that no results be certified from the Charter Proposals.

The City Manager is directed to take any measures necessary to implement this resolution, including without limitation the retention of Litten & Sipe LLP to make appropriate filings and arguments before the judiciary.

*Resolved* this 17<sup>th</sup> day of October, 2001.

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Mayor

#### CLERK'S CERTIFICATE

I certify that I am the Clerk of the City of Harrisonburg, Virginia, and that the foregoing is a true copy of a resolution adopted by unanimous vote (5-0) of the City Council at a special meeting duly called on this 17<sup>th</sup> day of October, 2001.

The recorded roll call vote was taken as follows:

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

**Absent - None**

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Clerk

Council Member Fitzgerald offered a motion to adopt this resolution as read. The recorded roll call vote was taken as follows:

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

**Absent - None**

Council Member Lantz moved to resolve that the City reimburse the local Electoral Board for legal costs that they may incur concerning this legal matter over the City's proposed charter amendments. The recorded roll call vote was taken as follows:

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

Absent - None

At 8:30 p.m., there being no further business and on motion adopted the meeting was adjourned.

*Yvonne Ryan Omelmmca*  
CITY CLERK

*Carolyn W. Frank*  
MAYOR