

REGULAR MEETING

MAY 10, 2005

At a regular meeting of Council held this evening at 7:30 p.m., there were present: Mayor Larry 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; Hugh J. Lantz and George W. Pace; City Clerk Yvonne "Bonnie" Ryan, CMC/MMCA, and Chief of Police Donald Harper.

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

Council Member Chenault offered a motion to approve the consent agenda, including approval of the minutes and second reading of a Supplemental Appropriation for the Harrisonburg-Rockingham County Convention and Visitors Bureau and a school budget transfer. The motion also included amending and re-enacting Section 7-2-21 of the Harrisonburg City Code. The motion was seconded by Council Member Pace, and approved with a recorded roll call vote taken as follows:

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

Absent – None

City Manager Baker presented an appropriation of funds to capital projects. He said that these funds increases the appropriations to several capital project funds for interest and reimbursements that have been received.

At 7:38 p.m., Mayor Rogers closed the regular session temporarily and called the evening's first public hearing to order. The following notice appeared in the Daily News-Record on Monday, May 2, 2005.

NOTICE OF PUBLIC HEARING

City Council Chambers

Tuesday, May 10, 2005

7:30 p.m.

A Public Hearing will be held by the Harrisonburg City Council on Tuesday, May 10, 2005 at 7:30 p.m., in the Harrisonburg Municipal Building, 345 South Main Street, Harrisonburg, Virginia. The purpose of this public hearing will be to get citizen input concerning a proposed increase in the City's 2004-2005 budget in the gross amount of

\$3,794,051.06. These funds are in the proceeds from interest earned on bond funds, reimbursements from various sources and funds from the General Fund unappropriated fund balance.

The budget changes will be as noted below:

Revenue, etc:

General Fund:

Amount from fund balance	\$1,358,000.00
Total General Fund	1,358,000.00

General Capital Projects Fund:

Amount from fund balance	46,660.51
Interest earned	51,744.20
Reimb. from Rockingham Co.-Radio System	33,205.39
Reimb. from Rockingham Co.-ECC	1,036,138.58
Two way radio system	20,006.96
Transfer from General Fund	<u>1,000,000.00</u>
Total General Capital Projects Fund	<u>2,187,755.64</u>

Water Capital Projects Fund:

Amount from fund balance	12,370.74
Interest earned	52,122.43
Shenandoah Dam removal funds	85,000.00
Transfer from General Capital Projects Fund	<u>76,119.00</u>
Total Water Capital Projects Fund	<u>225,612.17</u>

Sanitation Capital Projects Fund:

Amount from fund balance	5,052.24
Interest earned	<u>17,631.01</u>
Total Sanitation Capital Projects Fund	<u>22,683.25</u>

Grand Total	<u>\$ 3,794,051.06</u>
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Expenditures:

General Fund

Expenditures of Sheriff, Courts, etc.	358,000.00
Transfer to General Capital Projects fund	<u>1,000,000.00</u>
Total General Fund	<u>1,358,000.00</u>

General Capital Projects Fund:

Public Safety Building	100,000.00
Stone Spring Road Improvement	250,000.00
Erickson Avenue Extension	750,000.00
Simms Building Renovation	43,616.04
Municipal Building repair and renovation	968,020.60
Transfer to Water Capital Projects Fund	<u>76,119.00</u>
Total General Capital Projects Fund	2,187,755.64

Water Capital Projects Fund:

Central Stores Building project	76,119.00
Eastern Source Development	85,000.00
Water Storage Tanks	<u>64,493.17</u>

Total Water Capital Projects Fund	225,612.17
Sanitation Capital Projects Fund:	
Rebuild Steam Plant	<u>22,683.25</u>
Total Sanitation Capital Projects Fund	<u>22,683.25</u>
Grand total	<u>\$3,794,051.06</u>

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

Roger D. Baker

City Manager

Mayor Rogers called on anyone desiring to speak for or against increasing the City's 2004-2005 budget. There being no one desiring to be heard, the public hearing was declared closed at 7:39 p.m., and the regular session reconvened. Council Member Pace requested clarification regarding the expense allocated for the Municipal Building repair and renovation. "If the entire amount is not spent on the building will it revert back to the General Fund?" City Manager Baker said any money left over from allocated funds will revert back to the General Fund. Council Member Pace offered a motion to approve this appropriation for a first reading, and that:

- \$1,358,000.00 chge. to: 1000-31010 Amount from fund balance
- 46,660.51 chge. to: 1310-31010 Amount from fund Balance
- 51,744.20 chge. to: 1310-31513 Interest earnings
- 33,205.39 chge. to: 1310-31919 Reimb. from Rockingham Co-Radio System
- 1,036,138.58 chge. to: 1310-31920 Reimb. from Rockingham Co-ECC
- 1,000,000.00 chge. to: 1310-34210 Transfer from General Fund
- 20,006.96 chge. to: 1310-310141-48610 Two Way Radio System
- 12,370.74 chge. to: 1321-31010 Amount from fund balance
- 52,122.43 chge. to: 1321-31513 Interest earnings
- 85,000.00 chge. to: 1321-31826 Shenandoah Dam removal funds
- 76,119.00 chge. to: 1321-34291 Transfer from General Cap Project Fund
- 5,052.24 chge. to: 1324-31010 Amount from fund balance
- 17,631.01 chge. to: 1324-31513 Interest earnings

- \$ 358,000.00 approp. to: 1000-910511-47070 Expenditure of Sheriff & Courts, etc.
- 1,000,000.00 approp. to: 1000-990111-49216 Transfer to capital projects fund
- 100,000.00 approp. to: 1310-910141-48606 Public Safety Building
- 250,000.00 approp. to: 1310-910141-48636 Stone Spring Road improvement
- 750,000.00 approp. to: 1310-910141-48637 Erickson Avenue Extension
- 43,616.04 approp. to: 1310-910141-48691 Simms Building Renovation
- 968,020.60 approp. to: 1310-910141-48698 Municipal Building repair and renovation
- 76,119.00 approp. to: 1310-910141-49216 Transfer to Water Capital Projects Fund
- 76,119.00 approp. to: 1321-910161-48630 Central stores building project
- 85,000.00 approp. to: 1321-910161-48654 Eastern Source Development
- 64,493.17 approp. to: 1321-910161-48657 Water storage tanks

22,683.25 approp. to: 1324-910142-48686 Rebuild steam plant

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

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

Absent – None

Planning and Community Development Director Turner introduced a request by Aaron, Melinda, Steve and Twila Yoder to close a portion of the City alley between 3rd Street and 4th Street. She said that the alley is located between two single-family houses located on 3rd Street. Portions of this block were reserved for alleys; however, none of the right-of-way within this block is presently maintained by the City or used for through traffic. They are considered “paper alleys”. The alley is an undeveloped grass area, which is being used as a side yard between the two houses. The applicants plan to purchase the alley and add into their lot area. A storm drain is located in the right-of-way, but lies just beyond the proposed closure. The Public Works Department would still have access to this drain from Virginia Avenue, Lee Avenue, or 4th Street for future maintenance. Mrs. Turner reviewed the surrounding uses in the area. She said that Planning Commission has recommended approval of the request.

At 7:41 p.m., Mayor Rogers closed the regular session temporarily and called the evening’s second public hearing to order. The following notice appeared in the Daily News-Record on Monday, April 25, and Monday, May 2, 2005.

**NOTICE OF INTENTION TO CLOSE
ALLEY BETWEEN 3rd AND 4th STREET
IN THE CITY OF HARRISONBURG
City Council Chambers
Tuesday, May 10, 2005
7:30 p.m.**

The Harrisonburg City Council will hold a public hearing on Tuesday, May 10, 2005 at 7:30 p.m., in the Municipal Building, City Council Chambers, 345 South Main Street, Harrisonburg, Virginia, to consider the application of Aaron L. Yoder and Melinda Yoder and Michael and Marcia Zook to close an alley between 3rd Street and 4th Street.

A copy of the recommendation of the City Planning Commission along with a copy of the plat showing the portion of the street to be vacated and closed are available at 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 the opportunity to express their views at this public hearing.

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
Roger D. Baker
City Manager**

Mayor Rogers called on anyone desiring to speak for or against this request. There being no one desiring to be heard, the public hearing was declared closed at 7:42 p.m., and the regular session reconvened. Council Member Chenault offered a motion to approve closing a portion of an alley between 3rd Street and 4th Street. The motion was seconded by Council Member Pace, and approved with a unanimous vote of Council.

Planning and Community Development Director Turner introduced a request from R.S. Monger and Sons for a special use permit. She said that the applicant has requested a special use permit to allow up to four unrelated individuals to occupy the dwelling located at 264 Old South High Street. The property is currently zoned R-2, Residential District, which allows two unrelated individuals or family to occupy a dwelling in the R-2 district by right. The Comprehensive Plan designates this area as Neighborhood Residential. She reviewed the surrounding uses in the area. The lot on which the house is located contains 11,591 square feet. There is sufficient space in the side yard to locate the required four off-street parking spaces. Old South High Street is a neighborhood with many large homes on small lots. The vast majority of these homes are rental properties. A staff survey of this street found only 6 of the 35 homes on this street were owner occupied. She said that staff has recommended approval with the following conditions. 1) Four off-street parking spaces shall be constructed as required by the Zoning Ordinance. 2) The property shall be inspected on an annual basis by appropriate City staff to ensure compliance with zoning and building requirements. This inspection is to take place when the dwelling is fully occupied (while school is in session). 3) The Zoning Administrator may revoke this special use permit if the inspection does not take place every 12 months. 4) The Zoning Administrator shall review all complaints against this property, and if warranted, bring violations to the attention of the Planning Commission for further action. The applicants have indicated that they are considering donating use of this property to a church group to allow people who are returning from mission trips to live at the house and may occasionally have a few meetings at the dwelling. She said that Planning Commission has recommended approval of the request.

At 7:49 p.m., Mayor Rogers closed the regular session temporarily and called the evening's third public hearing to order. The following notice appeared in the Daily News-Record on Monday, April 25, and Monday, May 2, 2005.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold public hearings on Tuesday, May 10, 2005, at 7:30 p.m., in the Municipal Building, City Council Chamber, 345 South Main Street, to consider the following:

SPECIAL USE PERMIT – 264 OLD SOUTH HIGH STREET

Public hearing to consider a request from R.S. Monger and Sons, with representative Jim Monger for a special use permit {per section 10-3-40 (7)} of the Zoning Ordinance to allow up to four unrelated individuals to occupy the house located at 264 Old South High Street. The property is zoned R-2, Residential District and can be found on tax map 25-H-17.

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
Roger D. Baker
City Manager

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

Jim Monger said he and his brother were able to buy the house and have been cleaning up the property. He said the family would keep ownership of the property, but would also like to donate the house to the Mennonite Missions Advisory Council to be used for missionary students. There being no others desiring to be heard, the public hearing was declared closed at 7:51 p.m., and the regular session reconvened. Vice-Mayor Eagle offered a motion to approve the special use permit. The motion was seconded by Council Member Lantz, and approved with a recorded roll call vote taken as follows:

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

Absent – None

Planning and Community Development Director Turner introduced a request from Terry and Dianne Fertitta to rezone 1530 Country Club Road from B-2C, General Business District Conditional to M-1C, General Industrial District Conditional. The Comprehensive Plan designates this area as commercial. This site currently contains a car accessory and detailing business; however, under the current B-2 Conditional Zoning this use is not allowed for outside repair of vehicles. The applicant wants to rezone this property to allow the use to continue. She reviewed the surrounding uses in the area. In 2000, this property was one of several properties

that were rezoned from M-1, General Industrial District to B-2C, General Business District Conditional to allow for an anticipated large-scale commercial development. However, that use did not materialize, but the property has been used for a variety of small uses. The nearby HSZ, LC property was included in the 2000 rezoning request from M-1 to B-2C; however, in 2003 they rezoned their property, removing the proffered use restrictions, to permit all B-2 uses. This applicant has requested to rezone this parcel to allow for a used car lot and a car accessory and detailing business that would require outside storage for the vehicles. Mrs. Turner reviewed the proffers submitted by the applicant. The City's Master Transportation Plan shows that Country Club Road will be improved at some point in the future. When the widening of Country Club Road takes place many businesses fronting the street will be impacted dramatically. Although this rezoning proposal to M-1C does not correlate with the Comprehensive Plan's Commercial land use designation, the proposed use of a small car sales and service facility is more characteristic of a B-2 zoning classification than of a more intense industrial use. She also said that everything on this site being repaired will have to be screened from view from adjacent properties with different zoning classifications and general public view. She said that Planning Commission recommended approval of the request.

At 7:59 p.m., Mayor Rogers closed the regular session temporarily and called the evening's fourth public hearing to order. The following notice appeared in the Daily News-Record on Monday, April 25, and Monday, May 2, 2005.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold public hearings on Tuesday, May 10, 2005, at 7:30 p.m., in the Municipal Building, City Council Chamber, 345 South Main Street, to consider the following:

REZONING – 1530 COUNTRY CLUB ROAD

Public hearing to consider a request from Terry and Dianne Fertitta to rezone .33 acres from B-2C, General Business District Conditional to M-1C, General Industrial District Conditional. The property is located at 1530 Country Club Road and can be found on tax map 13-C-2.

The Comprehensive Plan designates this area as Commercial. This designation states that these areas include uses for retail, wholesale, or service functions. These areas are found along major travel corridors and in the Central Business District of the City.

The Zoning Ordinance states that the B-2, General Business District is intended to provide sufficient space in appropriate locations for a wide variety of retail shopping, commercial, automotive, miscellaneous recreational, and service activities. No minimum lot size restrictions exist in the B-2, General Business District. The M-1, General Industrial District is intended primarily for manufacturing, processing, storage, and distribution activities, which are not properly associated with, nor compatible with, residential and institutional development. No minimum lot size restrictions exist in the M-1, General Industrial District.

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
Roger D. Baker
City Manager**

Mayor Rogers called on anyone desiring to speak for or against this rezoning request. There being no one desiring to be heard, the public hearing was declared closed at 8:00 p.m., and the regular session reconvened. Council Member Pace offered a motion to approve the rezoning request. The motion was seconded by Council Member Chenault, and approved with a recorded roll call vote taken as follows:

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

Absent – None

Planning and Community Development Director Turner introduced a request from Wetsel Seed Company, with representative Barry Kelley to rezone 56 West Gay Street from M-1, General Industrial District to B-1, Central Business District. She said that the building is currently owned by the Wetsel Seed Company and is used for storage and distribution activities. The three-story brick structure was originally constructed in 1908 and served as the City Produce Exchange. She reviewed the surrounding uses in the area. She said that the Comprehensive Plan designates this area as General Industrial. This property represents the northwest boundary of the City's new historic district. One of the basic principles of the B-1, Central Business District is that on-site parking is not required. The applicant/developer would like to renovate the building and convert the space into one and two bedroom apartments on the second and third floors. The 10,000 square feet on the first floor will be designed for professional offices. She said that staff feels it is important the developer provide as much on-site parking as the property will allow. The applicant indicated that it is their intention to provide on-site parking and are making arrangements with several adjoining property owners to allow for additional vehicular parking within close walking distance. Current plans suggest thirty spaces are achievable. This rezoning would allow the property to be in conformance and be rehabilitated for the intended use. She said that Planning Commission has recommended approval of the request.

At 8:03 p.m., Mayor Rogers closed the regular session temporarily and called the evening's fifth public hearing to order. The following notice appeared in the Daily News-Record on Monday, April 25, and Monday, May 2, 2005.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold public hearings on Tuesday, May 10, 2005, at 7:30 p.m., in the Municipal Building, City Council Chamber, 345 South Main Street, to consider the following:

REZONING – 56 WEST GAY STREET

Public hearing to consider a request from Wetsel Seed Company, with representative Barry Kelley to rezone one, .657 acre lot from M-1, General Industrial District to B-1, Central Business District. The property is located at 56 West Gay Street and can be found on tax map 34-D-9.

The Comprehensive Plan designates this area as General Industrial. This designation states that these areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development, and related activities.

The Zoning Ordinance states that the M-1, General Industrial District is intended primarily for manufacturing, processing, storage, and distribution activities, which are not properly associated with, nor compatible with, residential and institutional development. No minimum lot size restrictions exist in the M-1, General Industrial District. The B-1, Central Business District is intended as an urban and regional center for the conduct of commercial, financial, professional and governmental activities to which the public requires direct and frequent access. No minimum lot size or setback restrictions exist in the B-1, Central Business District.

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
Roger D. Baker
City Manager

Mayor Rogers called on anyone desiring to speak for or against this rezoning request. Barry Kelley, a resident of Harrisonburg, said he is one of the principals renovating the property. This building has historical significance in a historical district. There being no others desiring to be heard, the public hearing was declared closed at 8:05 p.m., and the regular session reconvened. Council Member Lantz offered a motion to approve this request. The motion was seconded by Vice-Mayor Eagle, and approved with a recorded roll call vote taken as follows:

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

Absent – None

Planning and Community Development Director Turner introduced a request from Margaret W. Sheridan to rezone 518 East Market Street from R-2, Residential District to R-3C, Multiple Dwelling Residential. The applicant has requested a 16,624 sq. ft. lot from R-2, Residential District to R-3C, Multiple Dwelling Residential District Conditional. The applicant currently lives in the large 2-story frame house and if approved the applicant would relocate her real estate office to this location. She said that the Comprehensive Plan designates this area as professional. She reviewed the surrounding uses in the area. The uses proffered by the applicant include any uses permitted by right in the R-1 and R-2 residential district, the unit may be occupied by a family or not more than 2 unrelated individuals, professional office uses or adult daycare use, accessory buildings and uses clearly incidental to the above and uses permitted by special use permit. If rezoned, this property would require a commercial entrance, which typically would be 30 foot wide. However, the City Engineer would allow the applicant to construct a 24-foot wide commercial entrance with reduced curb radiuses. The City's Zoning Ordinance requires this property to supply six parking spaces. The applicant's submitted drawing shows this requirement could be met. Since 1993 there have been six similar rezonings along this portion of the East Market Street corridor. She said that Planning Commission recommended approval of the request.

At 8:12 p.m., Mayor Rogers closed the regular session temporarily and called the evening's sixth public hearing to order. The following notice appeared in the Daily News-Record on Monday, April 25, and Monday, May 2, 2005.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold public hearings on Tuesday, May 10, 2005, at 7:30 p.m., in the Municipal Building, City Council Chamber, 345 South Main Street, to consider the following:

REZONING – 518 EAST MARKET STREET

Public hearing to consider a request from Margaret W. Sheridan to rezone one, 16,624 square foot lot from R-2, Residential District to R-3C, Multiple Dwelling Residential. The property is located at 518 East Market Street and can be found on tax map 27-B-2.

The Comprehensive Plan designates this area as Professional. These areas are designated for professional service oriented uses with consideration to the character of the area. These uses are found in the residential areas along major thoroughfares and adjacent to the Central Business District.

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.

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
Roger D. Baker
City Manager

Mayor Rogers called on anyone desiring to speak for or against this rezoning request. There being no one desiring to be heard, the public hearing was declared closed at 8:13, p.m., and the regular session reconvened. Council Member Pace offered a motion to approve this request. Council Member Lantz offered a motion to approve this request. The motion was seconded by Vice-Mayor Eagle, and approved with a recorded roll call vote taken as follows:

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

Absent – None

Mayor Rogers announced said that a scheduled public hearing to consider a rezoning request by Martin Eby to rezone 6.08 acres on South Main Street has been requested by Mr. Eby to be tabled.

Planning and Community Development Director Turner presented for Council's consideration amending the City Code to include issues relating to the operation of adult businesses. She said that Planning Commission has been working with the City Attorney and City staff on developing an ordinance dealing with adult businesses. The City Attorney has prepared two portions of the ordinance. The proposed amendments would define adult businesses, establish a permitting process and operational regulations for such uses, make adult businesses a special use within the B-2, General Business District, and create a 1,000 foot buffer between new adult businesses and sensitive land use such as parks, schools, public libraries, churches, and residential areas. Current businesses located outside these areas would be allowed to remain and operate as non-conforming uses. She said that Planning Commission has recommended approving these amendments to the City Code.

At 8:16 p.m., Mayor Rogers closed the regular session temporarily and called the evening's seventh public hearing to order. The following notice appeared in the Daily News-Record on Monday, April 25, and Monday, May 2, 2005.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold public hearings on Tuesday, May 10, 2005, at 7:30 p.m., in the Municipal Building, City Council Chamber, 345 South Main Street, to consider the following:

ORDINANCE AMENDMENTS – ADULT BUSINESS REGULATIONS

There will be a public hearing to consider amending the City Code to include issues relating to the operation of adult businesses. The proposed amendments would define adult businesses, establish a permitting process and operational regulations for such uses, make adult businesses a special use within the B-2, General Business District, and create a 1,000 foot buffer between new adult businesses and sensitive land uses such as parks, schools, churches, and residential areas.

Copies of the draft ordinances and maps showing the proposed 1,000 foot boundaries are available for review at the Department of Planning and Community Development, 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
Roger D. Baker
City Manager**

Mayor Rogers called on anyone present desiring to speak for or against these amendments. John Anderson, a resident of Harrisonburg, said that he represented Valley Family Forum, which is a network of 1,500 families that strengthen time-honored values making the Valley a special place. They work through the public policy process to build faith, family, and freedom and are closely associated with the Family Foundation of Virginia. He reviewed some of the goals of the Comprehensive Plan. The presence of these shops violates nearly every goal in the Comprehensive Plan. He then quoted the Comprehensive Plan's vision statement and goals and asked where sexually oriented businesses, porn shops, and pornography fits into this plan. He said they do not fit at all. It tears away at the foundation of families and our society. Pornography leaves a trail of infidelity, broken marriages, exploited women, abused and molested children, prostitution, disease and sometimes death. Studies have shown that porn shops lead to lower property values, increased crime, undesirable criminal elements that come from outside the area, and it presents a negative image for persons and businesses considering our City. They should never be permitted to operate as now within 1,000 feet of churches, public

libraries, residential areas, childcare centers, and a new children's museum. In closing he quoted Police Chief Colonel Harper with his permission, "Where ever I have worked and sexually oriented businesses came into the community, crime rose, drug activity, and violence increased. The criminal element followed that type of business and there was a negative impact on families and property values." He also said that Marcia Garst, the Commonwealth's Attorney, supports City ordinances that regulate adult businesses as well as the public display and sale of obscene material that is accessible and within sight for children. The Valley Family Forum strongly provides support to the new City ordinances that would regulate adult and sexually oriented businesses.

Howard Schulman representing Think Pink, Inc. said Mr. Julias is a small businessman and a lifelong resident of Harrisonburg. Recently Think Pink, Inc. became the proprietor of the Hole in the Wall and Pamela's Secrets. Mr. Julias's business is exclusively retail sales, has no on site entertainment, no live dancing, or video viewing booths. All purchases are taken off premises. No merchandise is visible from outside the stores. The business is built on discreetness and customers represent an entire cross section of the community. The first amendment allows people to express and communicate matters that aren't popular or which other people claim to have a majority vocal voice. These people have to tolerate our established system under the first amendment. This ordinance endangers the free speech right of others. "What did Mr. Julias's establishment do to warrant the owners licensing restrictions that are being placed upon him as a retail merchant? What did Mr. Julias's customers who frequent his establishments with no police incidents do to warrant their surveillance?" The Planning Commission's report divides the ordinances into two areas. One is the land use restrictions and regulations and the other referred to as operational restrictions. We are taking issue with licensing and surveillance restrictions. Quite clearly they are an invitation for trouble for the City and he urged Council to focus on the tried, true and tested means of regulating land use as opposed to the licensing restrictions particularly when applied to retail establishments and merchants. Mr. Schulman presented a 13-page letter setting forth in detail constitutional concerns expressed by his clients. There are certain areas within the letter, which maps out specific concerns. Certain portions of the licensing provisions as well as the surveillance restrictions are clearly unconstitutional. That invites litigation that can be potentially costly to the City. He reviewed attorneys' fees to the prevailing plaintiff in cases involving constitutional issues in federal court. The message of a previous speaker tonight is censorship using the zoning laws, using the operational restrictions, and licensing regulations to silence the message. The bottom line is that the City should consider not only the constitutional rights of its citizens, but also the pocketbooks of its taxpayers.

Jonathan Katz introduced exhibit, "A" which contains approximately 1,800 pages. We ask that this exhibit be kept with the minutes of the Council meeting. Scientific studies show there aren't more negative secondary effects from an adult oriented business than a non-oriented business. He said that he represented Harrisonburg Adult News (HAN), which is owned by Empire Machine Co., Inc. HAN has been in the community for many years. It is a retail business that includes the sale of erotic magazines, DVD's and video viewing booths. Because a DVD or video viewing box does not sufficiently tell the quality or content of the material, this enables consumers to pre-view such material to decide for themselves whether the product is worth the price charged. These businesses don't have problems other than personal opinion as to what they are doing. He asked Council to strongly consider having an amortization clause in the legislation

of at least 18 months to allow businesses to come into compliance with the law. The draft legislation is asking for my client to change the size of his video viewing booths. He said, "We don't want to go into litigation, but we are prepared to do that." He requested delaying any action on this legislation. Virginia is the cradle of the first amendment. The Supreme Court has confirmed that adult entertainment is speech.

Scott Rogers, a resident of the City, presented a summary of a variety of studies that have been done over the past decade as secondary effects of sexually oriented businesses. The studies refer to two secondary effects crime and property values. He said that the First Amendment does not require a City, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever the City relies upon is reasonably believed to be relevant to the problem that the City addresses.

George Ellis a member of the Valley Family Forum asked City Council to help establish a plateau from which the City can start climbing back. He described in his opinion how social deterioration is occurring. "I don't like the threat of the expense of litigation thrown in my face."

Dean Welty, a resident of Rockingham County, said this matter began almost two years ago when the Commonwealth Attorney charged and prosecuted 26 men for illegal sexual behavior at the Adult News Book Store. He said the courts do not look kindly on prevention, but have looked favorably if the record is clear on regulating the activities partially to the secondary effects. "Would it strengthen the ordinance to include a preamble resolution that sets forth the specific reasons for enacting this ordinance?"

Council Member Chenault, "I had planned to discuss this later, but of all the suggestions that I have seen or heard, a preamble resolution is the best because this ordinance has been through the City process for approximately two years." There has been ample statistical analysis and studies primary from other jurisdictions to support a legislative record that would support the enactment of this ordinance. However, it is important to establish through a preamble resolution or a part of an ordinance a summary that is consistent with some of the case law on these types of ordinances to establish a legislative record for it.

Dean Welty asked whether or not it would be possible to expand the list of protected uses? Are we conformable with the list that has been identified so far? Would it be possible to provide for a greater separation of the protected areas from sexually oriented businesses? Should the permit application be higher? Should substantial or significant portion of its stock-in-trade be more defined? Does the ordinance specify a time period within which non-conforming businesses are required to comply with time and manner of operations? Is there any consideration given to terminating all zoning exceptions when the businesses are sold or transferred?

Donald Ford, a resident of Harrisonburg, said earlier this year I was placed in a very difficult position in which personal beliefs and established federal law came into conflict. Instead of ignoring or violating the law, I choose to oblige by the law. I also resolved personally at that time to support in the future political candidates who will have the power and will to change laws in ways that not only are consistent with my beliefs, but which I believe are more representative of the values of our community. In our republic that is how we get laws changed.

Tonight I didn't plan to comment on the operation of adult businesses or any amendments that Council is considering to the City Code. But, as I sit in the audience I do feel compelled to speak to you as a City resident and not in any official capacity. I would say to you that I don't believe anyone here is interested in violating the first amendment or violating any other laws. But, I do think that it is important for you to exercise any authority which you legitimately have to regulate adult businesses within our City in a way that will minimize the detrimental impact such businesses will have on a community such as ours.

Janice Spitzer, a resident of Rockingham County, said that she has seen and worked with people visiting sexually oriented businesses. Although I am retired as a nurse, I have worked in sexually transmitted disease clinics and in 1956 it was very rare to see sexually transmitted disease patients. However, because of secondary effect it is very common now to see many patients. She encouraged Council to strengthen the regulations.

There being no others desiring to be heard, the public hearing was declared closed at 9:00 p.m., and the regular session reconvened.

City Attorney Thumma suggested tabling the first reading of these ordinances until the next meeting to allow time to work with Council Member Chenault and City staff to prepare a preamble resolution to go with the ordinances.

Council Member Chenault said that a preamble resolution should be included as part of the ordinances enacted because these are peculiar ordinances, which are somewhat new and rare in Virginia. The case law suggests there needs to be a finding by the legislative body that these regulated activities have a relationship to the conduct that is being addressed. It is important to establish this in the record. If we don't do this we might not be enacting a valid ordinance. Council Member Chenault offered a motion to table amending the City Code to include issues relating to the operation of adult businesses until the next meeting. The motion was seconded by Vice-Mayor Eagle, and approved with unanimous vote of Council.

Council Member Pace said, "My view is that pornography in our society for many individuals is addictive. In my opinion it is essentially a weapon in our society. I am supporting the restriction in the licensing portion of the ordinance. There is judicial appeal if a permit or license is revoked allowing the business owner to have another venue. In my opinion, the customer has already decided they don't care what the community thinks about whether they enter or exit these businesses. Why should they be concerned about being on a videotape? Businesses, which have been grandfathered into this, should have the necessary time to implement the required changes in a way that is reasonable so that they are not forced out of business because they had an unreasonable time frame. He also asked the City Attorney to review this particular issue with regards to what has happened in other Cities in Virginia.

The next item of business was amending City Code Section 11-7-11 (e) to expand downtown banner display area. Planning and Community Development Director Turner said that this section of the City Code was adopted in June, 2004 to permit banners to be installed in the downtown area, the area anticipated for banner installation was smaller than the area that has been recommended by Frazier Associates, a design firm working with the City in cooperation

with the Virginia Main Street Program. This amendment recommends enlarging that area bounded by Cantrell Avenue to the south, Kratzer Avenue to the north, Mason Street to the east and High Street to the west. Following further discussion and comments, Council Member Pace offered a motion to approve amending City Code Section 11-7-11 (e) for a first reading. The motion was seconded by Council Member Chenault, and approved with a recorded roll call vote taken as follows:

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

Absent – None

School Superintendent Donald Ford presented for Council's consideration model procedures for Massanutten Technical Center. He said that these model procedures are effective only for MTC. These model procedures had to be adopted in five areas by the MTC Board, Harrisonburg School Board, Harrisonburg City Council, Rockingham County School Board, and the Rockingham County Board of Supervisors. All of the approvals are necessary in order for MTC to participate in any proposals received under the Public-Private Education Facilities Infrastructure Act of 2002. Council Member Chenault offered a motion to approve the model procedures for Massanutten Technical Center. The motion was seconded by Vice-Mayor Eagle, and approved with a recorded roll call vote taken as follows:

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

Absent – None

The next item of business was approval of Annual Action Plan for 2005-2006 CDBG Program. Block Grant Coordinator Kim Alexander said that staff has completed the Annual Action Plan, required by HUD, as part of the City's participation in the CDBG Entitlement Community program. Two required public hearings have been held and the 30-day public comment period has ended. The plan and funding recommendations will be submitted to HUD for their final approval. Council Member Chenault offered a motion to approve the Annual Action Plan for 2005-2006 Community Block Grant Program. The motion was seconded by Council Member Pace, and approved with a recorded roll call vote taken as follows:

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

Mayor Rogers

Absent – None

City Manager Baker read the following resolution.

**BUSINESS APPRECIATION WEEK 2005
CITY OF HARRISONBURG**

WHEREAS, the City of Harrisonburg is fortunate to have a thriving base of business and industry to support the local economy; and

WHEREAS, these businesses provide essential employment opportunities for the citizens of Harrisonburg; and

WHEREAS, Harrisonburg's businesses provide local revenues from which the entire local citizenry benefit; and

WHEREAS, these businesses also make significant contributions in our community to promote educational opportunities for our children and promote a variety of activities which increase the quality of life in the Shenandoah Valley; and

WHEREAS, we truly appreciate these businesses and wish to take this opportunity to recognize their contributions to our City;

NOW, THEREFORE, we, the Harrisonburg City Council, hereby recognize our existing businesses, and by virtue of this proclamation give notice to our citizens that we are partnering with the Harrisonburg business community in "Planting Opportunity and Harvesting Success."

AND FURTHER PROCLAIMS that the week of May 15-21, 2005 shall be BUSINESS APPRECIATION WEEK in the City of Harrisonburg and the Commonwealth of Virginia.

Larry M. Rogers, Mayor

Attest:

Yvonne Ryan, CMC, City Clerk

Council Member Lantz offered a motion to support the Business Appreciation Week 2005 resolution. The motion was seconded by Vice-Mayor Eagle and approved with a unanimous vote of Council.

City Manager Baker presented the following resolution for Council's consideration.

**Resolution in support of “A Dream Come True”
By Harrisonburg City Council
City of Harrisonburg for the
Department of Parks & Recreation**

WHEREAS, the Department of Conservation and Recreation (DCR), provides funds to assist political subdivisions of the Commonwealth of Virginia in acquiring and developing open space and park lands; and

WHEREAS, there are urgent needs within the City of Harrisonburg to develop park land; and

WHEREAS, this area is deemed of high acquisition and development priority by the City of Harrisonburg and shall be referred to as “A Dream Come True”.

WHEREAS, in order to attain funding assistance from DCR, it is necessary that the City of Harrisonburg guarantee that a proportionate share of the cost thereof is available; and

WHEREAS, the proportionate project share \$190,000 is funded by the City of Harrisonburg. (City \$68,000, CDBG \$122,000)

NOW, THEREFORE, BE IT RESOLVED BY THE City of Harrisonburg that Assistant Director of Parks & Recreation, David S. Wigginton is hereby authorized to cause such information or materials as may be necessary to be provided to the Department of Conservation and Recreation (DCR) and to enter into such agreements as may be necessary to permit the formulation, approval and funding of “A Dream Come True” project.

AND BE IT FURTHER RESOLVED, the City of Harrisonburg gives its assurance that the funds needed as the proportionate share of the cost of the approved program will be provided up to \$190,000. (City \$68,000, CDBG \$122,000)

AND BE IT FURTHER RESOLVED, that the City of Harrisonburg gives its assurance that the General Provisions of the Land and Water Conservation Fund Act (L&WCF) and the Virginia Outdoors Fund Fiscal Procedures will be compiled with in the administration of this project.

AND BE IT FURTHER RESOLVED, that the City of Harrisonburg will operate and maintain the public recreation facility in good condition and will provide permanent project acknowledgement signs of the participating funding agencies and that this signage will clearly state that the said facility is a “public” recreational facility.

AND BE IT FURTHER RESOLVED, that the City of Harrisonburg shall dedicate the metes and bounds of “A Dream Come True” properties, in perpetuity, for public

outdoors recreational purposes in accordance with the Land and Water Conservation Fund Act.

AND BE IT FURTHER RESOLVED, that the City of Harrisonburg gives its assurance that all other applicable federal and state regulations governing such expenditure of funds will be compiled with in the administration, development, and subsequent operation of “A Dream Come True”.

AND BE IT FURTHER RESOLVED, that the Department of Conservation and Recreation is respectfully requested to assist in approval and funding of “A Dream Come True” project in order to enhance the standard of public recreational enjoyment for all our citizenry.

May 10, 2005

Voting on the motion was as follows:

AYES: Council Member Charles Chenault
Vice-Mayor Rodney Eagle
Council Member George Pace
Council Member Hugh Lantz
Mayor Larry Rogers

NAYES: None

ATTESTED BY AND NOTARIZED:

Yvonne Ryan, CMC, City Clerk

Parks and Recreation Assistant Director David Wigginton said this grant application to the Department of Conservation and Recreation requires a City Council resolution in support of this project, “A Dream Come True” playground. Council Member Pace offered a motion to approve the resolution. The motion was seconded by Council Member Chenault and approved with a unanimous vote of Council.

The next item of business was a resolution recognizing and rewarding employees of the Commissioner of the Revenue office and Treasurer office for attaining the Master Deputy Designation. Commissioner of the Revenue said that Treasurer’s of Virginia and Commissioner of the Revenue’s of Virginia have career development plans, which have been approved and funded by the General Assembly. As part of the program the Compensation Board has been given funding to reward Master Deputies a 9.3% salary increase should they attain the designation of Master Deputy. She requested that this money be passed on to the employees. The 9.3% increase would be applied to the state approved salary for the Treasurer and Commissioner Deputy positions. Since the Constitutional Officers are paid on the local pay plan the deputies do not receive the salary at the state level, but actually receive more than the approved salaries at the state level. She said that the Treasurer’s and Commissioner of

Revenue's office have two employees that are not state funded. They are full time employees and are deputized and eligible to participate in the Career Development Program; however, they do not have a funded position through the Compensation Board. We are asking that all eligible deputies and qualified Master Deputies be rewarded a salary supplement. Employees of the Commissioner of the Revenue and Treasurer of the City should receive a 2% salary supplement for each Master Deputy. This is a mechanism that allows the City to receive money from the state, which will be directed toward the employees who have qualified for those monies as Certified Master Deputy. Council Member Pace offered a motion to approve this resolution. The motion was seconded by Council Member Chenault and approved with a unanimous vote of Council.

The next item of business was amending Section 4-2-23 (4) and Section 4-2-25 of the Harrisonburg City Code. Commissioner of Revenue Hosaflook suggested several possible changes to the City Code regarding Tax Relief for the Elderly and Permanently Disabled for real estate taxes. These changes involve actual increases to the income and net worth eligibility limits in order for more people to gain access to tax relief for real estate.

Council Member Pace said Mrs. Hosaflook had provided for Council's review background material and a proposed recommendation on tax relief for the elderly and permanently disabled. There should be some relief for the elderly low-income citizens in the community. The proposals reflect an update from 1991. This documents will also help with some relief for many family bringing elderly family members into their homes to help with their care.

Commissioner of Revenue Hosaflook said that for all people living in the home her department must account for the income, which must fall below the income limit that is allowable. She said there are two exclusions including up to \$10,000 for relatives income or exclude all income of a relative that has moved into the house to care for the person. She reviewed procedures that will be used for qualifying. City Attorney Thumma will prepare an ordinance for the May 24th meeting.

Council Member Pace said that a War World II plaque honoring members of the community who died in service is displayed in a very nice encased brick structure in front of Memorial Park. An article had appeared in the Daily News-Record indicating that the plaque wasn't in an appropriate place. He said, "I believe it is in an appropriate place."

Police Chief Harper invited everyone to participate in the many events being held to observe National Police Week May 15-21, 2005.

Council Member Lantz expressed his concern with the City's traffic lights, traffic problems and general traffic flow. He requested having a presentation at the next Council meeting.

At 9:55 p.m., Council Member Lantz 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 Community College Board of Trustees and Industrial Development Authority,

exempt from public meeting requirements pursuant to Section 2.2-3711(A)(1) 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 Chenault
Vice-Mayor Eagle
Council Member Pace
Council Member Lantz
Mayor Rogers

Absent – None

At 10:40 p.m., the closed session ended and the regular session reconvened. City Clerk Ryan read the following statement 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 10:45 p.m., there being no further business and on motion adopted the meeting was adjourned.

CITY CLERK

MAYOR