

## REGULAR MEETING

July 10, 2007

At a regular meeting of Council held this evening at 7:00 p.m., there were present: Mayor Rodney Eagle; City Manager Kurt Hodgen; City Attorney Earl Q. Thumma, Jr.; Vice-Mayor George W. Pace; Council Members Charles R. Chenault; Carolyn W. Frank, and Ted Byrd; City Clerk Yvonne “Bonnie” Ryan, MMC, and Police Major Wilfong.

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

Council Member Byrd requested that, Item #5c on the consent agenda, be removed and considered as a separate item.

Council Member Chenault offered a motion to approve the consent agenda, including approval of the minutes and a second reading of a supplemental appropriation for the Community Policy and Management Team. The motion was seconded by Council Member Frank, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd  
Council Member Frank  
Council Member Chenault  
Mayor Eagle

Abstained - Vice-Mayor Pace

Absent – None

Council Member Chenault offered a motion to refer an alley-closing request by Ted and Tammy Brown to the Planning Commission. 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 Chenault  
Mayor Eagle

Abstained – Vice-Mayor Pace

Recused – Council Member Byrd

Absent – None

Kim Alexander, Director of Special Projects and Grants Management, presented for Council’s consideration the FY 2008 through FY 2012 Consolidated Plan for Community Development Block Grant Program. She presented an overview of the funding

recommendations in the Strategic Plan and 2008 Action Plan. Many aspects of the Plan remain unchanged from 2004 because there is no new Census data available. Some of the needs identified in the plan include rehabilitation of public housing units, transitional housing, removing accessibility barriers for the elderly and disabled, health care services, sidewalk improvements and pedestrian infrastructure, parks and playgrounds and disabled services. She reviewed special needs and housing objectives met by proposed projects. She also reviewed community development objectives met by proposed projects. Projects being recommended for funding this year include Harrison Heights renovation, renovation of the Hillandale Comfort Station, several City sidewalks, administration costs, Community Foundation, VAIL pharmacy services at the Free Clinic, Pleasant View disability access, New Bridges, VPAS, Big Brothers/Big Sisters, Valley Aids Network, and the Arc-Op Shop day program. Today's public hearing begins the 30 day HUD public comment period. A Consolidated Plan will be presented at the August 14<sup>th</sup> Council meeting for approval.

At 7:08 p.m., Mayor Eagle 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 Friday, June 29, 2007.

**CITY OF HARRISONBURG  
CONSOLIDATED PLAN / ACTION PLAN  
PUBLIC HEARING/COMMENT NOTICE  
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

**The City of Harrisonburg will hold a public hearing on Tuesday, July 10, 2007, at 7:00 p.m. in the Harrisonburg Community Development Building, City Council Chambers, 409 South Main Street, in order to receive citizen input regarding the 2008-2012 Consolidated Plan and FY 07-08 Action Plan for the Community Development Block Grant (CDBG) Program. Citizen participation is essential to the City's involvement in the Federal Department of Housing & Urban Development's (HUD) CDBG Program. Citizen participation and comments on the Consolidated Plan and annual Action Plan will assist the City in the finalization of the required Consolidated Plan. The Consolidated Plan serves as the planning document for addressing overall community development and housing needs that will utilize the \$546,881 annual entitlement of CDBG funding available to the City to meet those needs. Projects selected to receive funding will be included in the annual Action Plan.**

**All citizens and organizations are invited to attend the public hearing to comment orally or in writing on the Consolidated Plan and annual Action Plan. The City of Harrisonburg will make reasonable accommodations and services necessary for sensory-impaired and disabled citizens at the public hearing. Additionally, translation services may be offered upon request and availability. Persons requiring such accommodations/services should contact the City at least three working days in advance of the hearing. Please contact Heather M. Cox, at [heatherc@ci.harrisonburg.va.us](mailto:heatherc@ci.harrisonburg.va.us) or 540-432-8926 with questions. Written comments may also be mailed to Heather M. Cox, Management Analyst, Office of City Manager, 345 South Main Street, Harrisonburg, VA 22801. Copies of the Consolidated Plan and annual Action Plan will be available at the City Manager's Office.**

**Public comments regarding the Consolidated Plan will be accepted until 9 a.m. on August 10, 2007, the end of the 30-day public comment period.**

Mayor Eagle called on anyone desiring to speak for or against this plan.

Bruce Dellinger representing VAIL thanked Council for providing CDBG funds.

Karen Barnes, Executive Director of Community Resource Center, thanked City Council for previous CDBG funding support. She reviewed services provided in the community by the Community Resource Center.

Mike Fiore representing Community Foundation thanked Council for providing CDBG funds. There being no others desiring to be heard, the public hearing was declared closed at 7:16 p.m., and the regular session reconvened.

City Attorney Thumma presented for Council's consideration an ordinance revoking the open wireless broadband network franchise awarded to World AirWaves, LLC. City Attorney Thumma said that he has filed copies of documents, franchise agreement, original proposal, and a summary of transpired correspondence with the Clerk of City Council. He said City Manager Hodgen has received an email from Mark Bayliss stating he would like to terminate the wireless franchise with the City.

At 7:31 p.m., Mayor Eagle 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 Friday, June 29, and Friday July 6, 2007.

**NOTICE OF PUBLIC HEARING TO CONSIDER  
THE REVOCATION OF THE  
OPEN WIRELESS BROADBAND NETWORK FRANCHISE  
WITH WORLD AIRWAVES, L.L.C.  
BY THE CITY OF HARRISONBURG**

**The Harrisonburg City Council will hold a public hearing on July 10, 2007 at 7:00 P.M. in the City Council Chambers located at 409 South Main Street, Harrisonburg, Virginia, concerning the revocation of the open wireless broadband network franchise that was awarded to World AirWaves, L.L.C., a Virginia limited liability company by the City Council on January 24, 2006.**

**All persons interested will have an opportunity to express their views at this public hearing.**

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

**CITY OF HARRISONBURG  
Roger D. Baker,  
City Manager**

Mayor Eagle called on anyone desiring to speak for or against revoking the wireless franchise. Mark Bayliss, CEO of World AirWaves, said that his company never received proper notice regarding termination of this franchise. He acknowledged that his company technology and development stages have not met the City's time frame. He presented an overview of the broadband wireless system that was developed in the City. The company has discovered problems in its system and is working on solutions. There being no others desiring to be heard, the public hearing was declared closed at 7:30 p.m., and the regular session reconvened. Council Member Chenault offered a motion to accept the termination of the franchise agreement. The motion was seconded by Vice-Mayor Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd  
Council Member Frank  
Council Member Chenault  
Vice-Mayor Pace  
Mayor Eagle

Absent – None

The next item of business was holding a public hearing to obtain citizen input on establishing railroad quiet zones.

At 7:31 p.m., Mayor Eagle 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 Friday, June 29, and Friday July 6, 2007.

**NOTICE OF PUBLIC HEARING TO OBTAIN  
CITIZEN INPUT ON THE ESTABLISHMENT OF  
RAILROAD QUIET ZONES IN THE CITY OF HARRISONBURG**

**The Harrisonburg City Council will hold a public hearing on July 10, 2007 at 7:00 P.M. in the City Council Chambers located at 409 South Main Street, Harrisonburg, Virginia, concerning the possibility of establishing railroad quiet zones within the City of Harrisonburg.**

**All persons interested will have an opportunity to express their views at this public hearing.**

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

**CITY OF HARRISONBURG  
Roger D. Baker,  
City Manager**

Mayor Eagle called on anyone desiring to speak for or against railroad quiet zones.

Ralph Geddis complained about the cost of establishing a quiet zone in the City.

Matt Trost encouraged Council to continue consideration of a quiet zone. Mr. Trost who lives a block from the train tracks said the noise has awakened the family in the middle of the night many times.

Martha Shifflett and Ray Shifflett said the train whistle serves no useful purpose at railroad crossings that have gates. She questioned how other communities can create quiet zones and Harrisonburg can't do anything. Mr. Shifflett reviewed information received from other localities having quiet zones and asked Council to consider establishing quiet zones.

Michael Stoloff supported the idea of a quiet zone. The federal rule that trains must blow their horn at every intersection is an example of federal regulations not taking into account local conditions. People in Harrisonburg are losing sleep over this and it has a negative impact on both health and productivity. We don't let people play loud music in the middle of the night. We should take back local control of this issue and decide what makes sense for train safety in Harrisonburg.

Ronald Winco said train whistles have affected my life. He said, "Almost every morning I am woken up at 5:00 a.m. every day of the week. I want City Council to do something about it".

Phil Whickline said he is concerned with the noise, which detracts from downtown renovations.

Joanne Bruster said the train whistles are having a negative impact on resident sleep. The negative impact of poor sleep quality is very well documented. "My sleep is distributed by trains almost every night. I kept a log for 19 days of the many times I have been woken up by trains. During the 19 days, I was woken up 17 nights from 11:30 p.m. until 7:10 a.m. During a recent night between 12:30 a.m. until 2:45 a.m., the train whistle blew 98 separate times". There being no others desiring to be heard, the public hearing was declared closed at 7:51 p.m., and the regular session reconvened.

Council Member Chenault presented an overview of Virginia's updated law and regulations related to quiet zones. The Federal Railroad Administration has promulgated the rules for establishing quiet zones in conjunction with the fact that they require trains to blow their horns at intersections for certain intervals. There are two ways to basically qualify a train crossing for quiet zone designation. One is through supplementary safety measures and the other is through alternative safety measures. The supplementary safety measures would shield the City from possible lawsuits. There are four ways to qualify a railroad crossing as a quiet zone eligible crossing; however, only two will work for the City of Harrisonburg. He gave Maryland Avenue as an example because it is a two-way street with one lane going in each direction. The railroad considers this street to be a four quadrant railroad crossing. Most of the City's crossings are gated on at least one side. This is a requirement to keep cars from cutting through the gates trying to beat the train. The City currently does not have any crossings that meet the qualification. "I am requesting that Ms. Branche and the Public Works Department provide information on whether the City can extend the current gates with a longer crossing arm to cover both lanes. Also, whether installing two more crossing gates at every intersection would be less expensive. I would also like to know whether the City could qualify an intersection by using the yellow barriers at our existing gate system. Do intersections have to have a constant warning circuitry device?"

Transportation Planner Donovan Branche reviewed four qualifying crossings on a section of South Main Street and West Grace Street. The Public Works department has been researching which intersections will need the constant warning sign circuitry system. There are two crossings on Gay Street to Reservoir Street that will need the constant warning signs. These two sections will cost the City approximately \$500,000. The City has applied for funding grants to update two crossings per year.

The following questions by Council Members included: Will the \$500,000 amount include longer gates? Is there a change in the frequency of train whistles? Will a change in the liability policy occur? Is grant funding available? How does the number of crossings in Harrisonburg compare to other cities with quiet zones? Does JMU have any concerns regarding the noise?

Following further discussion and comments, Council asked the Public Works Department to provide more information before making a decision regarding establishing quiet zones in the City.

Planning and Community Development Director Turner presented a request from Rocktown Partners LC, for a special use permit to allow an educational use within the M-1, General Industrial District. The property is located at 779 Massanutten Street and can be found on tax map parcels 40-N-14 thru 21, 42 and 42A. Mrs. Turner reviewed the surrounding uses in the area. The school plans to purchase the property and move into the existing building located on site. At full capacity they anticipate no more than 60 students and 40 employees. School hours are planned to be from 8:00 a.m. to 4:30 p.m. Staff had some concerns regarding the mixing of different uses. The site would be redesigned with a grassed, fenced play area to the south of the building and new paved areas for updated parking arrangements. She said that Planning Commission recommended the request be approved with the condition that the play area is fenced in by the school.

At 8:20 p.m., Mayor Eagle 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, June 25, and Monday, July 2, 2007.

### **NOTICE OF PUBLIC HEARING**

**The Harrisonburg City Council will hold public hearings on Tuesday, July 10, 2007 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:**

***Special Use Permit – 779 Massanutten Street (Minnick Education Center)***

**Public hearing to consider a request from Rocktown Partners LC, with representative John Serrell for a special use permit per Section 10-3-97 (9) of the Zoning Ordinance to allow an educational use within the M-1, General Industrial District. The property is located at 779 Massanutten Street and can be found on tax map parcels 40-N-14-21, 42, & 42A.**

**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  
City Manager**

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

Betsie Michael said that she was available to answer any questions.

John Serrell representing Rocktown Partners said they will donate an additional parcel to the school for parking.

Gary Wilburn, Director of Operations for Minnick Education Center of Roanoke, said the private based school serves children ages six through 22 that are categorized as special education children. They all have a disability of some sort. Since we have outgrown our current space this facility will meet our needs. There being no others desiring to be heard, the public hearing was declared closed at 8:24 p.m., and the regular session reconvened. Vice-Mayor Pace offered a motion to approve this request as presented. The motion was seconded by Council Member Frank, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd  
Council Member Frank  
Council Member Chenault  
Vice-Mayor Pace  
Mayor Eagle

Absent – None

Planning and Community Development Director Turner presented a request from EZ Mart LLC for a special use permit to allow a taxicab and limousine service within the B-2 General Business District. The property is located at 953 South High Street and can be found on tax map parcel 19-C-11. The Comprehensive Plan designates this area as Low Density Residential. She reviewed the surrounding uses in the area. The applicant is requesting a special use permit for a transportation service facility within the B-2 zoning classification. Currently on the site is a Texaco Foodmart business, which is operated by the proposed taxi service applicant. This business will continue along with the taxi service. A limousine service is projected to be coupled with the taxi service at a later date. The taxicabs will be parked in the rear of the property behind the Foodmart building. She said that Planning Commission recommended the request be approved with the condition that fencing would be installed to separate the R-1 Residential from the taxi service.

At 8:30 p.m., Mayor Eagle 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, June 25, and Monday, July 2, 2007.

### **NOTICE OF PUBLIC HEARING**

**The Harrisonburg City Council will hold public hearings on Tuesday, July 10, 2007 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:**

*Special Use Permit – 953 South High Street (Taxicab and Limousine Service)*

**Public hearing to consider a request from EZ Mart LLC, with representative Nadeem Afridi for a special use permit per Section 10-3-91 (11) of the Zoning Ordinance to allow a taxicab and limousine service within the B-2, General Business District. The property is located at 953 South High Street and can be found on tax map parcel 19-C-11.**

**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 City Manager**

Mayor Eagle called on anyone desiring to speak for or against this special use permit request. There being no one desiring to be heard, the public was declared closed at 8:31 p.m., and the regular session reconvened. Council Member Frank offered a motion to approve this request as presented. The motion was seconded by Vice-Mayor Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd  
Council Member Frank  
Council Member Chenault  
Vice-Mayor Pace  
Mayor Eagle

Absent – None

Planning and Community Development Director Turner presented a request from W.P. Thompson to subdivide five parcels, totaling 6.34 acres located at 1046 Moore Street into 75 townhouse lots with a variance. The property can be found on tax map 42-D-3A, 4, 5, 13 & 14. The Comprehensive Plan designates this area as Medium-Density Mixed Residential. In July 2005, City Council approved a request to rezone the subject parcels from R-2, Residential



District to R-3C, Multiple Dwelling Residential District Conditional. The applicant is now requesting to preliminarily plat 75 townhouse lots on the property. They are requesting a variance to allow the units to not front on public streets. The subject parcels are located between Moore Street and a right-of-way extension from Emerson Lane. The development would be among several different housing types, which include Beacon Hill's duplexes and townhouses to the north and east of the properties, Northfield Court and Park Crest's townhouses and duplexes to the south, and single-family homes fronting Moore Street to the west. At each intersection of these streets a private street would begin. Moore Street would be improved with curb and gutter and widening. Holly Hill Drive Extension (a private street) would run the entire length of the property from Moore Street to Emerson Lane, and then smaller private streets/parking areas would be constructed from the street to each individual townhouse lot. A wooden fence would be constructed as proffered behind the units parallel to Northfield Court and a recreational area would be provided near the center of the subdivision. There will be no City services provided within this development. She said that Planning Commission recommended the request be approved as presented. Vice-Mayor Pace offered a motion to approve this request as presented. The motion was seconded by Council Member Byrd, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd  
Council Member Frank  
Council Member Chenault  
Vice-Mayor Pace  
Mayor Eagle

Absent – None

The next item of business was adopting the proposed R-3 Zoning Ordinance Amendments. City Manager Hodgen said Planning Commission has recommended approval of these proposed amendments. A public hearing was held in April 2007.

Council Member Chenault suggested continuing the discussion of the proposed R-3 Zoning Ordinance amendments until July 24, 2007. He requested that the Community Development Department provide an existing zoning map of the entire City displaying the eligible parcels.

The following discussion by Council Members included: It would helpful to identify how many parcels are eligible for R-5? The number one priority is to protect established neighborhoods prior to 1982 annexation of the City. The proposal has been studied for a long time. Concern regarding the three year window.

Council was reminded by City Attorney Thumma that as long as the R-3 language as it exists in the current ordinance is not changed it will not be necessary to hold another public hearing.

Council Members agreed to wait until July 24<sup>th</sup> for further discussion and comments after receiving the requested maps.

Dr. Christie Joy Brodrick presented an overview of the ICLEI-Local Governments for Sustainability project. In November 2006, a collaborative project was proposed to develop a baseline emissions and greenhouse gas inventory for the City. Data has been collected, but a report is not available at this time. She reviewed information shared at workshops with other localities regarding ICLEI.

The next item of business was a brief overview of the City's General Obligation Refunding Bonds. Ted Cole of Davenport and Company, the City's financial advisor, said his firm has been reviewing the possible refinancing of several outstanding City bonds. Information was shared in April 2007 regarding a preliminary opportunity to refinance some of the City's existing debt including bonds issued in 2000, 2002, 2003 and possibly some new money related to road projects. In April, the market analysis was producing for the bonds issued in 2002 and 2003 approximately \$38,000 to \$40,000 a year in debt service savings. However, following discussions with City staff market interest rates have moved upward and have deteriorated the savings level associated with the refinancing. Because interest rates have moved up and down, the approximately current debt service savings is \$19,000 to \$20,000. Mr. Cole suggested that his firm continue monitoring the interest rates, keeping City staff informed while not exposing the City to any financial obligation in terms of legal or underwriting fees.

Vice-Mayor Pace offered a motion to approve FY 2008 State Performance Contract for the Harrisonburg-Rockingham Community Services Board. The motion was seconded by Council Member Byrd, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd  
Council Member Frank  
Council Member Chenault  
Vice-Mayor Pace  
Mayor Eagle

Absent – None

Vice-Mayor Pace offered a motion to approve a request by residents of Collicello Street for a neighborhood gathering on National Night Out, August 7, 2007. The motion was seconded by Council Member Byrd, and approved with a unanimous vote of Council.

Council Member Chenault offered a motion to approve a request by Rockingham County Public Schools for "Celebrating Character Counts" on Court Square on October 4<sup>th</sup> from 5:30 until 8:30 p.m. The motion was seconded by Council Member Byrd, and approved with a unanimous vote of Council.

Council Member Byrd offered a motion to approve the Liberty Park transfer from the Harrisonburg Redevelopment and Housing Authority to the City for \$100,000. The motion was seconded by Vice-Mayor Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd

Council Member Frank  
Vice-Mayor Pace  
Mayor Eagle

Abstained - Council Member Chenault

Absent – None

Police Major Wilfong presented a request for the Police Department. He said these funds, which were received from state asset seizure money will be used to build a K-9 area at the new police training facility. Council Member Chenault offered a motion to approve this request for a first reading, and that:

\$10,000 chge. to: 1000-31010 Amount from fund balance

\$10,000 approp. to: 1000-310631-48211 Machinery/equipment

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

Vote: Yes - Council Member Byrd  
Council Member Frank  
Council Member Chenault  
Vice-Mayor Pace  
Mayor Eagle

Absent – None

Council Member Frank announced that the Harrisonburg High School Boys Track Team won the state championship. She suggested that the track team should be recognized by placing a decal on the water tower on Washington Street.

At 9:32 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 Social Services Advisory Board, exempt from the public meeting requirements to Section 2.2-3711(A)(1) of the Code of Virginia. Discussion and consideration of the disposition 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 Byrd, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd  
Council Member Frank  
Council Member Chenault  
Vice-Mayor Pace  
Mayor Eagle

Absent – None

At 10:15 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 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 10:16 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