



City of Harrisonburg

409 S. Main Street
Harrisonburg, VA 22801

Meeting Minutes - Final City Council

Tuesday, July 23, 2019

7:00 PM

Council Chambers

1. Roll Call

Present: 5 - Mayor Deanna R. Reed, Vice-Mayor Sal Romero, Council Member Richard Baugh, Council Member Christopher B. Jones and Council Member George Hirschmann

Also Present: 4 - City Manager Eric Campbell, City Clerk Pam Ulmer, City Attorney Chris Brown and Police Chief Eric English

2. Invocation

Mayor Reed offered the invocation.

3. Pledge of Allegiance

Mayor Reed led the Pledge of Allegiance.

4. Consent Agenda (any item placed on the consent agenda shall be removed and taken up as a separate matter, if so requested by any member of Council, otherwise all items will be voted on with one (1) motion)

Mayor Reed announced this meeting we will have our first interpretation service available to those requiring language assistance in Spanish. She stated this service will also be available for future City Council and Planning Commission meetings provided requests have been sent to the city clerk at least four days prior to the meeting. She thanked Vice Mayor Romero for this idea and seeing it through.

A motion was made by Council Member Baugh, seconded by Council Member Jones, to adopt the consent agenda as presented. The motion carried with a recorded roll call vote taken as follows

Yes: 5 - Mayor Reed, Vice-Mayor Romero, Council Member Baugh, Council Member Jones and Council Member Hirschmann

No: 0

4.a. Minutes from the July 9, 2019 City Council meeting

These minutes were approved on the consent agenda.

4.b. Consider Zoning Ordinance Amendments to Modify Civil Penalties (Section 10-3-13) and Remove Registration Requirements for Short-Term Rentals (Section 10-3-204).

This ordinance amendment was approved on second reading

- 4.c.** Consider a request from Henry P. Deyerle, Trustee to rezone a property located at 60 Carpenter Lane property from B-2, General Business District to M-1, General Industrial District.

This rezoning request was approved on second reading

- 4.d.** Consider a request from the City of Harrisonburg to rezone a +/- 60 acre site located adjacent to I-81 and between Boxwood Court and East Kaylor Park Drive from R-5C, High Density Residential Conditional to B-2, General Business District.

This rezoning request was approved on second reading

5. Regular Items

- 5.a.** Consider a refund for a portion of the 2019 Business, Professional and Occupational License (BPOL) tax

Chris Brown, city attorney, stated he is presenting on behalf of the Commissioner of Revenue and it is a request for a refund of Business, Professional and Occupational License (BPOL) tax. He stated the applicant notified the Commissioner of Revenue that the business was sold in March and a refund was due. He stated the new buyer will assume responsibility for the BPOL tax and has already paid their portion.

A motion was made by Council Member Baugh, seconded by Council Member Jones, to approve the request as presented. The motion carried with a recorded roll call vote taken as follows:

Yes: 5 - Mayor Reed, Vice-Mayor Romero, Council Member Baugh, Council Member Jones and Council Member Hirschmann

No: 0

- 5.b.** Consider a request from David Lee for a special use permit per Section 10-3-34 (7) to allow for a short-term rental on the 19,000 +/- square feet property at 1159 Nelson Drive and identified as tax map parcel 84-E-16.

Council Member Baugh stated the Virginia State and Local Conflict of Interest Act requires that he make the following disclosure to be recorded in the city records on any matter from which he is prohibited by law from participating:

The transaction involved is the item taken up on July 23, 2019 Agenda as Item 5(b), a request to approve a special use permit allowing short term rentals; his personal interest in the transaction relates to the ethical requirements to which he must adhere as a licensed member of the Virginia State Bar; he affirms he will not vote or in any manner act on behalf of city council on this matter.

Adam Fletcher, director of Planning and Community Development, stated he does not have a formal presentation, however he can answer any questions Council may have and the PowerPoint presentation is loaded if needed.

Mayor Reed stated this was an item that we had at the July 23, 2019 Council meeting and was tabled in order to allow this body to ask Vice Mayor Romero any questions since he sits on the Planning Commission.

Council Member Jones asked for a brief synopsis of the Planning Commission meeting in which this item was discussed from Vice Mayor Romero.

Vice Mayor Romero stated he reviewed the minutes from the Planning Commission, reviewed his personal notes, reviewed some of the conditions that were added by the applicant and noted after the meeting and further review he is not comfortable approving this request. He stated the fact that the property is not owner occupied is the main reason he does not support approving the request, also that it will remove the opportunity for the home to be available for owner occupied homeowners. He stated Planning Commission unanimously voted to deny the request. He stated there was a very similar application presented to the Planning Commission, which was also recommended for denial, and the applicant withdrew before it reached Council. He stated the additional conditions added by the applicant still do not address the main concern of Planning Commission: that it is not owner/operator occupied. He stated there were comments from neighbors sharing the fact that the owner of the property is seldom there. He stated he does not feel comfortable supporting the approval of the application and he doesn't want to set a precedent for non-owner occupied short term rentals.

A motion was made by Vice Mayor Romero, to deny the special use permit request.

Council Member Hirschmann asked if there is a stipulation that property must be owner/operator occupied. Council Member Jones stated it was in the guidelines that Council suggested but since these are special use permit requests, that can be changed. He stated we approved one request but there was a rental tenant (operator) that would be on the property at all times. He asked if council plans to always deny those requests when there is no owner/operator occupied. Council Member Hirschmann stated Council should be consistent. Vice Mayor Romero stated the consistency is that we don't approve. Mayor Reed stated she agrees that the owner/operator should live there.

Mr. Brown stated there is nothing in our ordinance that requires an owner to live on site and the nature of a special use permit request is that it will be reviewed individually, but if council wants to have a blanket rule to not allow short term rentals if property is not owner occupied then it should be addressed by amending the ordinance.

Mr. Fletcher stated if we amend the ordinance to reflect the owner/operator must be present then a special use permit would need to be created to do the opposite, it can be done but would be odd and confusing to do it that way.

Mayor Reed asked if the main reason for staff and Planning Commission recommended denial is because the property is not owner/operator occupied. Vice Mayor Romero confirmed and noted it is also that they do not have an operator. Mr. Fletcher stated as the applications come in and precedent is set by Council, the decision is really based on location of the property. Council Member Hirschmann asked if the owner could reapply if he had an operator on the site. Council Member Jones stated every one of these short-term rental requests that have been approved had an owner/operator on site. Vice Mayor Romero stated there was an application, very similar to this one, for property located on Shenandoah Avenue and it was denied by Planning Commission and the applicant withdrew prior to reaching Council.

Council Member Jones stated he likes the idea of being able to reduce the amount of nights of rental allowed for this application and puts him in favor of approving this request. He stated at worst the rental will be on the weekends.

Vice Mayor Romero reiterated the concerns of the Planning Commission that approving this would take it out of the housing stock.

Mayor Reed stated there was no second to Vice Mayor Romero's motion and the motion failed for lack of a second. She asked if there are any other motions. No response.

A motion was made by Vice Mayor Romero but failed due to a lack of a second motion.

- 5.c.** Consider a resolution appointing Michael E. Parks, Director of Communications, as the Freedom of Information Act (FOIA) officer for the city of Harrisonburg

Chris Brown, city attorney, stated staff has nominated Michael Parks, director of communications, as the city's Freedom of Information Act (FOIA) officer, and asked council to approve the resolution appointing him to that position. He stated under state law every locality must designate a FOIA officer and that position has been held by Wesley Russ in an interim capacity who is more than happy to transfer it to Mr. Parks.

A motion was made by Council Member Baugh, seconded by Council Member Hirschmann, to approve the resolution as presented. The motion carried with a recorded roll call vote taken as follows:

Yes: 5 - Mayor Reed, Vice-Mayor Romero, Council Member Baugh, Council Member Jones and Council Member Hirschmann

No: 0

- 5.d.** Consider approving an ordinance authorizing the City Manager to enter a new Shenandoah Valley Chief Elected Officials Consortium Agreement for the operation of the local Workforce Development Area.

Brian Shull, director of Economic Development, stated this request in regard to the Shenandoah Valley Workforce Development Board (SVWDB) on which Vice Mayor Romero is the Council's representative. He stated this is an agreement that all local

governments involved in the SVWDB along the Shenandoah Valley are asked to enter into in accordance with federal guidelines. He stated the agreement has been drawn up by an attorney and the city attorney has reviewed it as well. He stated Joan Hollen, data and communications specialist of the SVWDB, is present if Council has any questions.

A motion was made by Council Member Baugh, seconded by Council Member Hirschmann, that this Ordinance be adopted. The motion carried with a recorded roll call vote taken as follows:

Yes: 5 - Mayor Reed, Vice-Mayor Romero, Council Member Baugh, Council Member Jones and Council Member Hirschmann

No: 0

5.e. Consider enacting Ordinance - Title 6, Chapter 1, Article F of the City Code, "Small Cell Wireless Facilities in the Public Right-of-Way."

Chris Brown, city attorney, stated this request is something that staff has been working on for quite some time. He stated up until very recently, rights-of-way in the city belonged to the city and it was up to City Council through the Franchise Act and the Virginia Constitution to decide who could use those rights-of way. He stated in 2017 and 2018 the Virginia General Assembly enacted some laws that greatly affect Council's rights with its rights-of way as it relates to small cell wireless facilities and took almost all discretion away from the local governments. He stated in September of 2018 there was a Federal Communications Commission (FCC) ruling that also greatly limited the localities ability to determine where, when and under what circumstance a small cell wireless facility could be placed. He stated the small cell wireless facility is a small antenna that must be contained in a box that is no more than six cubic feet. He presented a few photos of what small cell wireless facilities look like. He stated the companies do have to provide to the city renderings, photographs, engineered surveys etc. so we know exactly where they are going. He stated it is not as bad a full cell towers, but localities have very little discretion. He stated the ordinance presented governs the placement of these facilities on public property and co-locations on existing governmental structures such as electric poles, light poles, water tanks etc. He stated these small cell wireless facilities cannot interfere with other communications facilities or affect public safety or public utilities. He stated we have a little bit of power as to aesthetics of these small cell wireless facilities, it has to look like other poles or facilities in the neighborhood. He stated we can strive to have as many co-locations as possible, there will be an application process, and the new ordinance which follows the Virginia law places some very tight timeframes on staff. He reviewed some of the requirements and fees associated with the application process.

A motion was made by Council Member Jones, seconded by Council Member Hirschmann, to approve the ordinance as presented. The motion carried with a recorded roll call vote taken as follows:

Yes: 5 - Mayor Reed, Vice-Mayor Romero, Council Member Baugh, Council Member Jones and Council Member Hirschmann

No: 0

6. Other Matters

6.a. Comments from the public, limited to five minutes, on matters not on the regular agenda. (Name and address are required)

Eric Olsen-Getty, director of development and administration for Our Community Place (OCP), stated over the last three weeks OCP has been accommodating outdoor space for those individuals that have no place to go in the evening without breaking the law for a bit of respite. He stated the OCP's board approved these accommodations through July 29, 2019, and with additional resources they could continue in a more limited and controlled program. He stated they have not been able to secure the resources needed and in order to have any sort of indoor overnight service they need to find another location. He asked Council where people can be sent when OCP closes its facilities after the 29th of July. He stated this is not just a city government issue, it is also a county government issue and a community issue.

Steele Dunn, resident, stated he is in support of what OCP has been doing which he feels is essential to the community, the right to sleep is a fundamental human right and deprivation of sleep is a violation of human rights. He stated before OCP opened their temporary shelter Harrisonburg Police were going downtown waking people up and telling them to go somewhere else. He stated the problem is that if there is nowhere else to sleep then we are depriving people of something that is fundamental to their ability to live with the dignity of a human being. He stated we spend over \$1M on a golf course and spend more on Harrisonburg Downtown Renaissance (HDR) than we do giving assistance to these frontline services. He feels that rather than facilitating meetings in the most expensive restaurant in town for business owners to decide what kind of draconian measures they would like to see the police take to deal with the issue of homeless people and panhandlers on the street, we should find a way to use our resources to protect peoples' basic needs. These people are vulnerable, and the drivers of these problems are not the powerless, desperate and poor, they are being driven by people who are wealthy, well-fed and powerful and he hopes the interest of the City Council will be aligned with people that are vulnerable and in need rather than the powerful.

Michael Snellfeikema, 1174 Westmoreland Drive, stated he is in support of OCP for responding to the needs of the homeless in the community. He stated it is obvious there is an awareness of a need for a low barrier shelter during the times when Open Doors isn't operating. He stated something has to happen and get done; people in the city are watching to see what our city officials will do to respond to the need. He stated there is an immediate need and a long term need and we would like to see concrete steps being taken by our city officials to do their part. He stated it is a human necessity to sleep. He stated there have been rulings in other states by the

courts that have stated to deny someone the opportunity to do what they have to do and then criminalizing those actions is a form of cruel and unusual punishment. He asked if we as a community want to allow a situation that involves cruel and unusual punishment. He stated perhaps an emergency task force, with dates and commitments needs to come from our government officials.

Mary Kay Gayne, 841 Old Furnace Road, asked if there is a plan to renew the Immigration and Customs Enforcement (ICE) contract at the Shenandoah Valley Juvenile Center (SVJC). She stated per USA Spending.gov stated the existing contract is due to expire on January 31, 2020. She stated the contract has been renewed three times, the first one for 2011-2013 the SVJC for the residential services for unaccompanied children received a grant for over \$9M, a second grant in the amount of \$11.6M for 2013-2017 and two grants in the amount of \$11M from 2017-2020. She reviewed vacancy at the SVJC in which ICE was able to rent beds for the unaccompanied children in 2017 and 2018. She stated she thinks it is important to look into whether this contract is under consideration and if it is she request City Council indicate to the people of the city whether we support the continued collaboration with ICE and the SVJC in dealing with the southern border crisis.

Bruce Lundeen, 275 Newman Avenue, stated he spoke at previous meetings regarding the needs for public restrooms. He stated the OCP has placed a portable toilet on their property. He stated the OCP is in need of resources to continue as a location with a bathroom facility. He stated the Daily News Record (DNR) published an article discussing the need for \$23,000 to allow OCP to carry on with that program and extend beyond July 29, 2019. He stated he feels this would be a great opportunity for the city to see how this type of program would work and thinks the city and county should contribute to the resource needs of OCP. He stated he feels disbursing people creates issues of monitoring, where if they are all in one place it's easier to monitor. He asked Council to commit themselves to an Emergency Committee and action so OCP can get a commitment from the city.

Jim Orndoff, 22 E Market, commended the city for something they have been involved in over the last week, Camp L.I.T. He stated 15 young women were able to participate, he sees the worth of the program and commends the Fire Department of both the city and county. He stated he would like to encourage a similar type of cooperation/program with law enforcement for a camp for youth.

Bruce Busching, 561 Sunrise Avenue, asked council if it would be possible to issue OCP a special use permit to get around the zoning restrictions so they can carry on their desire to house people inside the building.

Pamayotis "Poti" Giannakaouros, resident, stated the recent panic of the downtown businesses was grounded in just a handful of incidents, he had previously suggested to not panic as these things work themselves out, and since then some of these small

handful of specific issues did work through. He stated Mr. Dunn raised an issue of the right to sleep and Mr. Snellfeikema stated there were court rulings in the west, and it has reached Virginia as well. He stated on July 16, 2018 there was a ruling on habitual drunkenness, which was struck down on 8th Amendment reasoning, as people cannot be criminalized, only action. He stated we are seeing in our experiences that it is good to not overreact, not to be hostile against our fellow human beings, and he stated we shouldn't be leading with our gut, as it is not good governance. He stated these thin rights that we have are very important, they can protect our lives. He noted there was an incident at the last Planning Commission where one member stated the commission must be respected or a request may be denied, the director of Community Development stated he didn't feel comfortable with that, and the city attorney's office backed him up. It was noted by the city attorney's office that we must have input from the public in case we are mistaken for finding facts. He referenced the recent ordeal in Tennessee where individuals did not answer their doors per guidance from supporters in order to avoid being deported. He stated there are many in the city who are vulnerable in similar ways who are not on the street yet, it would be great if we as council and city staff go back to the middle ground of having rational and reasonable rules for sustaining our full community and not the business district as they may feel in the marketing moment, not the homeowners associations that doesn't like a particular neighbor but realizing that we have 50,000 people, most of whom are struggling. He stated the tone that we set is important, WHSV was really good in recognizing that with a story on the Red Summer of 1919, they have been seeing the threats nationally, and we must be very careful of the messages we send. He stated he hopes to meet with some council members to go over a few ordinances to send more positive messages before things get to the level of people being on the street.

6.b. City Council and Staff

Mayor Reed stated what is going on in our city is personal to her, she has been working with shelter services and executive directors to try to figure out solutions. She stated there have been several meetings with the shelter directors, staff has walked the premises of OCP to see if they could handle being an overnight shelter, and unfortunately, they cannot as they are not up to code, they have no sprinkler systems etc. She stated OCP is aware this cannot happen in a matter of days. She stated we cannot give funds to an organization for a facility that is not up to code. She stated she has been working on these issues for over a year and will continue to work on finding solutions.

Eric Campbell, city manager, stated staff has been working for the past several months with the various stakeholders in the community to look at the broader continuum of care that we have, trying to identify the gaps in the service delivery to the homeless in the community, and we have identified the gaps. He stated the challenge is what to do with the gaps we have identified, conversations need to continue, he agrees with the comment that an ongoing coalition needs to be established that will break down many of the silos that have occurred in our service delivery area. He

stated this is not a city issue, it is a community issue and we need all of the stakeholders and the community around the table where we can maximize our resources. He stated he feels we are on the right track and having the right conversations, it is now at the point where we can sit down and start figuring out how to strengthen the continuum and fill in the gaps.

Council Member Jones stated this is not something that is solvable, it will be a continuous continuum of people revolving through various stages and classes throughout our life. He stated unfortunately there have always been people with a lot less and a lot more and the goal is to try to make sure folks have their basic needs met, and those with resources are working to help those that don't. He stated he is curious as to how the boards of the various organizations handle their fundraising efforts as he hasn't seen anything on that. He hasn't had anyone say they have raised a certain amount or working on a project or in the process etc. He stated he would like to start having a conversation with any of the board members of those organizations, because the philosophical debates and opinions on the homeless issues will always vary.

Council Member Hirschmann stated he agreed with the city manager, that it is a community problem and the decision should come from the community. He asked if there has been a call to the community to address the situation, on what can be done, what goal, what help is needed. He asked if they have identified the possible lanes of action so that a price tag can be provided to allow for fundraising. He stated he has not seen the call. He stated is the need for a place to sleep more pressing or is more attention needed to mental health and facilities, and once this is determined, and the organizations can come together, those in need may get help to improve their own existence and help themselves improve. He stated he has not heard the call for the community to come together.

Vice Mayor Romero stated it would be important to consider moving the public comment to the beginning of the meeting considering the length of our meetings in the past and would like to bring this request up again. Council Member Jones stated he has seen it both ways, just as we want to hear from those during public comment, the agenda is set with presenters and are just as important and may have taken much more time to prepare, to delay the business meeting and delay those invited is not right, as anyone that wants to speak can contact a City Council member and be added to the agenda. He stated he feels it is insulting to the individuals that have prepared, been invited or are being paid (staff) to present to Council. Mayor Reed stated some people think it was a punishment, it wasn't, it was because some people took advantage of Public Comment period and our business meeting didn't start until 8:30pm. She stated the county doesn't offer any public comment period. Vice Mayor Romero has seen this body listen to presentations and not ask one question, that is disrespectful. He stated the Board of Education had a structured public comment period and it worked fine. He stated he thinks 5 minutes is too long and feels those that sit for four hours and then go home and cannot speak is a disservice. Council

Member Jones stated if he doesn't ask a question during a presentation it just means his questions were answered with the presentation, it is not disrespectful to not have a comment it is more a kudos to the presenter. Vice Mayor Romero stated public comment may not necessarily be abused now. Council Member Baugh stated it comes down to choosing who will wait. Further discussion took place on instances during public comment.

Mayor Reed thanked everyone who came out and supported the Harrisonburg Fire Department fundraiser on Saturday at O'Neill's Grill. Together we raised \$4,500, which will pay to send four campers to the Mid-Atlantic Burn Camp for Kids; National Night Out is Tuesday, August 6. The event will kick off at Valley Mall from 10 a.m. to 2 p.m., and then will visit neighborhoods across Harrisonburg. Find out more about the event and stops at our website; Movie Night will take place Friday, July 26, at 8 p.m. at Westover Pool. There is no cost to attend, so bring your family out to enjoy the movie "Small Foot"; And please don't forget, Spanish interpreters are now available for City Council and Planning Commission meetings for those who request an interpreter at least four days in advance. You can learn more, and request an interpreter, at our website.

Mr. Campbell stated there were external technical issues of broadcasting the meeting live over the government channel.

7 Boards and Commissions

7a. Economic Development Authority

A motion was made by Council Member Jones seconded by Council Member Baugh, to reappoint Mr. Marc Lemmond and Dr. Usman Chaudhri to the Economic Development Authority. The motion carried with a unanimous voice vote.

7b. Economic Development Advisory Committee

A motion was made by Council Member Jones, seconded by Vice Mayor Romero, to reappoint Ms. Edna Reed and appoint Mr. Chance Ebersold to the Economic Development Advisory Committee. The motion carried with a unanimous voice vote.

7c. Harrisonburg Rockingham Community Policy and Management Team (CPMT)

A motion was made by Council Member Jones, seconded by Council Member Hirschmann, to reappoint Kira Newman to the Harrisonburg Rockingham Community Policy and Management Team. The motion carried with a unanimous voice vote.

7d. Metropolitan Planning Organization Technical Advisory Committee (TAC)

A motion was made by Council Member Jones, seconded by Council Member Baugh, to appoint Tom Hartman, appoint Jakob zumFelde as his alternate and appoint Erin Yancey to the Metropolitan Planning Organization Technical Advisory Committee. The motion carried with a unanimous voice vote.

8 Adjournment

At 8:33 p.m., there being no further business and on motion adopted, the meeting was adjourned.

CITY CLERK

MAYOR

NOTE TO THE PUBLIC:

El servicio de interpretación de idiomas en español está disponible para las reuniones del Ayuntamiento. Para asegurarse de que haya intérpretes disponibles en la reunión, las personas interesadas deben solicitar el alojamiento al menos cuatro (4) días calendario antes de la reunión comunicándose con el Secretario Municipal al (540) 432-7701 o enviando una solicitud en línea en:

[https : //www.harrisonburgva.gov/interpreter-request-form](https://www.harrisonburgva.gov/interpreter-request-form)