



# City of Harrisonburg

409 South Main Street  
Harrisonburg, VA 22801

## Meeting Minutes - Final City Council

*Mayor Ted Byrd*  
*Vice-Mayor Charles Chenault*  
*Council Member Kai Degner*  
*Council Member Richard Baugh*  
*Council Member Abe Shearer*

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Tuesday, July 22, 2014

7:00 PM

Council Chambers

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### 1. Roll Call

**Present:** 5 - Mayor Ted Byrd, Vice-Mayor Charles Chenault, Council Member Richard Baugh, Council Member Kai Degner, and Council Member Abe Shearer

**Also Present:** 5 - City Manager Kurt Hodgen, Assistant City Manager Anne Lewis, City Clerk Erica Kann, City Attorney Chris Brown, and Police Chief Stephen Monticelli

### 2. Invocation

Vice-Mayor Chenault offered the invocation.

### 3. Pledge of Allegiance

Mayor Byrd led the Pledge of Allegiance.

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

Barry Kelley, CEO Matchbox, asked Council to return to the negotiation table regarding the proposed hotel and conference center with all parties involved. Mr. Kelley stated James Madison University (JMU) Foundation is borrowing the money, not the City, so residents will not pay for the construction. Mr. Kelley stated once the conference center is paid for, future taxes will go toward City.

Patricia Dunn, 367 East Gay Street, spoke on behalf of the Northeast Neighborhood Association supporting the "Ban the Box" campaign to help ex-felons get job interviews. Ms. Dunn asked the City of Harrisonburg to remove the question from the City's application. Ms. Dunn stated employers would still have the right to run background checks as well as ask questions during the interview process.

James "Bucky" Berry, 30 West Washington, provided an update about the Brent Berry Food Drive. Mr. Berry complimented JMU for contributing food and thanked the City for their support since 2010.

Karen Thomas, 158 East Johnson Street, also spoke in support of the "Ban the Box" campaign.

**5. 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)**

City Attorney Brown stated staff has been working with parties involved in both agenda items 5b and 5c and they have requested the items be removed and carried over to the next meeting.

**A motion was made by Vice-Mayor Chenault, seconded by Council Member Shearer, to approve the Minutes on the Consent Agenda.**

**5.a. Approval of minutes**

**These Minutes were approved on the Consent Agenda.**

**5.b.** Consider a request from Northside, LLC and Joseph and Linda Moore with representative Balzer & Associates, Inc. to rezone 6.69 +/- acres of property from R-2, Residential District to B-2C, General Business District Conditional

**5.c.** Consider an ordinance closing and vacating 61,635.5 square feet located in the northern portion of the City of Harrisonburg.

**6. Unfinished Business**

**6.a.** Consider a request from Erica Lynn Dorsey for a special use permit to allow a Major Family Day Home within the R-1, Single Family Residential District. Major family day homes can have from six to 12 children under the age of 13, exclusive of any children who reside in the home. The property is located at 1214 Windsor Road.

**Council Member Baugh offered a motion to approve the SUP as presented. The motion failed due to a lack of a second.**

Vice-Mayor Chenault stated he was opposed to the request due to the land use issue and within an R-1 commercial uses should not be allowed. Vice-Mayor Chenault stated he has consistently opposed these types of SUPs in the past.

Council Member Shearer stated he looked at the SUP as a home occupation permit. He stated since we aren't allowed to view other businesses for these purposes, he is going to follow the standards for other businesses.

Council Member Baugh stated there were numerous reasons why he supported this SUP and they were as follows: access to quality childcare, which is always needed; unanimous approval from Planning Commission and no additional information has come to light other than additional approval from emergency personnel; most living on Windsor are in favor of the proposal; the street is adequate by safety standards, but if it was built today it wouldn't be and if we turn this down for that reason, maybe we should be making it a priority; not the first SUP being approved and in the past there has been more opposition and concerns; surrounding property owners are better protected because the applicant is regulated by both the City and State; and due to circumstances, the applicant has special needs experience.

Council Member Degner stated after hearing Council Member Baugh he can compromise with the number being reduced to ten. Council Member Baugh stated the application plans on eight children, but when her own children have friends over they count too.

Vice-Mayor Chenault stated he has opposed the last four and he has concerns with the legislation on this matter.

Mayor Byrd stated this is the first applicant that is going through the correct steps and not coming to ask for forgiveness. Mayor Byrd shared the same concerns with the legislation, but since Council hasn't chosen to change it, he has to apply those existing to the situation. Mayor Byrd stated the applicant is allowed five more which equates to ten trips from a land use perspective.

**A motion was made by Council Member Baugh, seconded by Council Member Degner, that this SUP be approved by Planning Commission with the additional stipulation that the number of children be reduced to ten. The motion carried with a recorded roll call vote taken as follows:**

**Yes:** 3 - Mayor Byrd, Council Member Baugh, and Council Member Degner

**No:** 2 - Vice-Mayor Chenault, and Council Member Shearer

## 7. Public Hearings

- 7.a. Consider a resolution approving the sale and acceptance of real estate and authorizing the City Manager to execute a deed to Neighborhood Renaissance, L.L.C.

City Attorney Brown stated Neighborhood Renaissance L.L.C. owns a couple parcels in the city on Norwood Street and Hawkins Street. City Attorney Brown reviewed the two parcels and stated usually we would direct the owner to the Board of Zoning Appeals to apply for a variance, but Norwood Street takes a significant piece of the corner and the side yard of the property. During staff review, it is believed Norwood Street was intended to go straight and then at some point someone decided to turn it. City Attorney Brown stated the resolution being presented is to convey Neighborhood Renaissance L.L.C. a small strip of land in the front on each of the parcels and they would grant the City with an easement of 1,029 square feet and 434 square feet for our roadway.

Council Member Baugh recused himself.

At 7:35 p.m., Mayor Byrd closed the regular session and called the first public hearing to order. A notice appeared in the Daily News-Record on Monday, July 14, 2014.

There being no one desiring to be heard, Mayor Byrd closed the public hearing at 7:36 p.m., and the regular session reconvened.

**A motion was made by Vice-Mayor Chenault, seconded by Council Member Degner, that the sale and acceptance of real estate as shown on the plat and to authorize the City Manager to execute a deed to Neighborhood Renaissance, L.L.C for its share of the conveyance. The motion carried with a recorded roll call vote taken as follows:**

**Yes:** 4 - Mayor Byrd, Vice-Mayor Chenault, Council Member Degner, and Council Member Shearer

**No:** 0

**Abstain:** 1 - Council Member Baugh

- 7.b.** Consider a request to amend Section 15-3-2 of the Harrisonburg City Code by expanding subsections containing definitions and specific prohibitions to further define excessive noise and noise violations.

City Attorney Brown reviewed the history of the noise ordinance and stated in 2009 Council passed the current noise ordinance in response to a Virginia Beach case that made its way to the Virginia Supreme Court. The current ordinance calls for the noise levels to be measured by sound level meters, but they have been ineffective, due to low frequencies. City Attorney Brown stated staff has reviewed and this ordinance seeks to increase the flexibility of the noise ordinance by allowing officers to determine if a noise is plainly audible a certain distance from its source. This maintains an acceptable level of objectivity while decreasing Harrisonburg Police Department's (HPD) reliance on the ineffective noise meter. City Attorney Brown reviewed the changes and stated he suggested keeping the sound levels and measurement by the decimal meter in the ordinance to cover the unforeseen issues not listed in the ordinance.

Officer Pollard stated this is an ordinance to enforce not to necessarily punish and to help modify certain behaviors. Officer Pollard stated statistically in 2013, HPD answered 1296 noise violations and were able to only issue ten citations with the current ordinance. On average, these calls require two officers and take approximately 45 minutes per call. Officer Pollard stated with this ordinance it would offer the officers tools needed to change offenders' behavior and provide a public service for those being disturbed. Officer Pollard reviewed the social gatherings and parties section of the ordinance. Officer Pollard stated times weren't pulled from when the noise complaints were received, but typically they are after 10:00 p.m.

At 7:50 p.m., Mayor Byrd closed the regular session and called the second public hearing to order. A notice appeared in the Daily News-Record on Saturday, July 19, 2014.

Roberta Fernandez, 95 Campbell Street, stated she supported adoption and enforcement of the ordinance. Mrs. Fernandez stated many from the old town neighborhood have partnered with city offices, HPD, JMU and landlords. If approved, those involved plan to inform students through JMU offices and landlords.

Lisa Matthews-Elsworth, Coordinator Off Campus Life JMU, stated she also supported the ordinance and it would help their office hold students accountable for their actions.

Panayotis "Poti" Ginnakouros, 98 Emory, stated he would like to see more data and urged Council to consider potential unintended consequences of the regulations. Mr. Ginnakouros stated he felt the City has experienced this with the lawn ordinance that had been changed. Mr. Ginnakouros suggested a warning to be given prior to charges.

At 7:55 p.m., Mayor Byrd closed the public hearing and the regular session reconvened.

The following was discussed: police officers have the discretion to provide a warning; a tool is needed; if found necessary, adjustments can be made; tenants would be accountable; parties can be registered with the emergency communications center

(ECC) and a warning call would be made prior to sending an officer; education is provided by HPD during freshman orientation; if a warning is required, it could be a hinderance; and it was noted for dogs barking it needs to occur constantly for over ten minutes.

**A motion was made by Vice-Mayor Chenault, seconded by Council Member Shearer, that this Ordinance be approved on first reading. The motion carried with a recorded roll call vote taken as follows:**

**Yes:** 5 - Mayor Byrd, Vice-Mayor Chenault, Council Member Baugh, Council Member Degner, and Council Member Shearer

**No:** 0

## **8. Special Event Application Requests**

### **8.a. Consider the JMU Block Party in the Burg 2014 for a special event request.**

Katie Yount, Director of Events, Harrisonburg Downtown Renaissance, stated that this is the 4th year for the event and it would be held on August 23, 2014, from 7:00 p.m. through 10:00 p.m. This event is expecting around 4,500 student participants.

**A motion was made by Vice-Mayor Chenault, seconded by Council Member Shearer, that this Special Event Application be approved. The motion carried by a voice vote.**

### **8.b. Consider the Turkey Trot run to be held on Thanksgiving Day for a special event request**

Ms. Yount stated the next event is a request from Virginia Momentum and stated the model being used for this event has been used by other Thanksgiving runs. This event will occur on the morning of Thanksgiving from 8:00 a.m. through 11:00 a.m. This event will close down Main Street and expand out to other locations.

**A motion was made by Council Member Degner, seconded by Council Member Shearer, that this Special Event Application be approved. The motion carried by a voice vote.**

## **9. Regular Items**

### **9.a. Consider an extension of the Water Agreement with the Town of Dayton for Silver Lake.**

Vice-Mayor Chenault stated an employee at the law firm he works for is an at-will employee who represents the Town of Dayton and accordance with the state statue he can vote on this matter.

City Attorney Brown stated for the past several months, staff and representatives from the Town of Dayton have been working on a new agreement regarding the Town's use of water from Silver Lake. Staff efforts in preparing the new agreement have been focused on implementing a pricing formula which accounts for the City's depreciation of water-related assets and which provides an appropriate rate of return, as well as

providing the Town with various options to purchase water from the City. Staff and representatives from the Town have not finalized the new agreement. The existing agreement technically terminates on August 2 of this year. The agreement presented to Council is a six month extension of the existing water agreement (but at a payment rate more favorable to the City) in order to keep an agreement in place while staff finalizes a new agreement to present to Council.

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

**Yes:** 5 - Mayor Byrd, Vice-Mayor Chenault, Council Member Baugh, Council Member Degner, and Council Member Shearer

**No:** 0

#### **10. Other Matters**

City Manger Hodgen stated the County/City have hired a consultant who is engaged in the Community Corrections Plan and Facilities Study. The consultant wants to hold a listening session on Monday, August 11, 2014 at 7:00 p.m., and asked to use Council Chambers. City Council showed no objection and tentatively Council Members Baugh and Degner plan to attend.

#### **11. Boards and Commissions**

#### **12. Closed Session**

**At 8:13 p.m., a motion was made by Council Member Shearer, seconded by Council Member Baugh, to enter into closed session as Authorized by the Virginia Freedom of Information Act, Virginia Code Section 2.2-3711(A), under: subsection 3 for the discussion and consideration of disposition of publicly held real property and subsection 7 for consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel. The motion was approved by the following roll call vote:**

**Yes:** 5 - Mayor Byrd, Vice-Mayor Chenault, Council Member Baugh, Council Member Degner, and Council Member Shearer

**No:** 0

#### **13. Adjournment**

At 9:00 p.m., the closed session ended and the regular session reconvened. City Attorney Brown read the following statement, which was agreed to with a unanimous recorded vote of Council: I hereby certify that to the best of my knowledge (1) only public business matters lawfully exempted from open meeting requirements under Chapter 37 of Title 2.2 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 meeting was convened were heard, discussed or considered in the closed meeting by the City Council.

Following closed season, Mayor Byrd led a brief discussion about a potential contribution to the Rockingham County Fairgrounds.

At 9:05 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