



# 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, September 9, 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 Captain Richard Sites

### 2. Invocation

Mayor Byrd 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)

Melinda See, 3243 Claudes Lane, shared her concern about the high euthanasia rate at the Rockingham Harrisonburg SPCA. Ms. See believes that this number is high due to the out-dated sheltering model being used.

Michael Ebbert, Rockingham County resident, stated everyone is aware of the incarceration problem we have in the country and feels that it is becoming a local problem. Mr. Ebbert would like the funds planned for the jail facility be used towards other programs. Mr. Ebbert questioned what other alternatives the City has looked into.

Stan Maclin, 2 South Main, stated he was here to protest the building of a new jail. Mr. Maclin stated he believes in public safety, but we need alternative programming. Mr. Maclin asked Council to never let this new jail happen and represent what is right within the community.

James "Bucky" Berry, 30 West Washington Street, stated he is planning to do 1000 Thanksgiving baskets with the help of George's who is donating the chicken. Mr. Berry stated the jail is overcrowded and he is scared for those who work within the facility. Mr. Berry is for alternative programs and would like the City to buy the Rosetta Stone property back and put a smaller facility in.

Mr. Ebbert also stated if you look at the statistics most of the inmates are low level non-violent offenders. Mr. Ebbert asked if Council had approached the legislature of Virginia about programs for release.

John Schuster, Harrisonburg resident, stated he remembers when the jail was built. Mr. Schuster stated he was upset with non-violent and/or child support offenders being locked away. Mr. Schuster stated his neighbor has been in jail for four months and hasn't been convicted.

Tammy Krausen, Dixie Avenue, stated there is an amazing resource known as the Community Mediation Center located in Harrisonburg. Ms. Krausen stated the Center has worked previously with the Commonwealth Attorney's Office to try and circumvent the jail from being over utilized with non-violent offenders. Ms. Krausen stated she feels that the Community Mediation Center and possibly other organizations could help with the current non-violent offenders and help eliminate building a new jail.

Dwayne Martin, 929 College Ave, spoke for mentally ill citizens. Mr. Martin stated 30 to 40 years ago they closed down the mental institutions and never built the centers to provide help for mentally ill individuals, which is why some are now in jail. Mr. Martin stated he would like to see money go towards helping these individuals by building centers that were planned years ago so they can get help.

Panayotis "Poti" Ginnakouros, 98 Emory Street, invited everyone to stay until the end of the meeting to listen to what work is being done by the City.

Michael Snellfeikema, 1174 Westmoreland Drive, feels that a less than adequate democratic process is taking place regarding the new jail. Mr. Snellfeikema stated a study is being done about whether or not a jail needs to be built or not, but showed concern toward the portion that a company has already been hired to design the building. Mr. Snellfeikema stated he doesn't feel that there is a serious commitment to community participation in respect to forming the community's response. Also, he feels like there isn't enough time to do that since we have a time frame to receive funding for the facility. Mr. Snellfeikema suggested taking time and listening to the resources and programs available. He also suggested doing it right and in the right way.

**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)**

**Approval of the Consent Agenda**

A motion was made by Vice-Mayor Chenault, seconded by Council Member Baugh, to approve the Consent Agenda with the amendment to 5g that at such time as James Madison University makes payment to the City for the closed streets and alleys. 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

**5.a.** Approval of minutes

**These Minutes were approved.**

**5.b.** Consider by-law changes for Transportation Safety and Advisory Commission

**This Ordinance was approved on second reading.**

**5.c.** Consider a supplemental appropriation for the Police Department in the amount of \$30,000

**This Supplemental Appropriation was approved on second reading.**

**5.d.** Consider a supplemental appropriation for the Main Street Streetscape Project in the amount of \$880,782

**This Supplemental Appropriation was approved on second reading.**

**5.e.** Consider a supplemental appropriation for the Department of Public Transportation School Transportation Fund in the amount of \$250,000

**This Supplemental Appropriation was approved on second reading.**

**5.f.** Refer a request to Planning Commission for the City to vacate a portion of 6th Street that currently is not in use and the 10 feet of alley that is directly behind 930 Lee Avenue

**This Planning case was referred.**

**5.g.** Consider ordinance to close a portion of Chesapeake Avenue (24,176 +/- sq. ft.), East Grace Street (50,429 +/- sq. ft.), a portion of South Mason Street (28,575 +/- sq. ft.), and a 10-foot alley located between South Main Street and South Mason Street (6,708 +/- sq. ft.)

**This Ordinance was approved on second reading with the amendment that at such time as James Madison University makes payment to the City for the closed streets and alleys**

**6. Public Hearings****6.a.** Consider CDBG 2013-2014 Consolidated Annual Performance Evaluation Report (CAPER)

Ande Banks, Director of Special Projects & Grant Management, gave a presentation on the Consolidated Annual Performance & Evaluation Report (CAPER), a document required by the U.S. Department of Housing & Urban Development (HUD) for the evaluation and review of the CDBG programs in fiscal year 2013-2014. He stated funding expenses aren't where they usually are at, but some projects take time to get

in place. Ongoing projects include \$267,310.78 in funds left unused to date for 2013-2014 projects. He explained that any unused funds will be added to a future year of funding which takes place through an amendment process. Mr. Banks added that the public hearing tonight will commence the 15 day public comment period, which will end September 25, 2014 at 9:00 a.m.

At 7:28 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 September 1, 2014.

Panayotis "Poti" Ginnakouros, 98 Emory Street, stated this program is an example of how to build a better community. Mr. Ginnakouros invited the community to look at the programs listed and start planning because their program could possibly be assisted through this program.

James "Bucky" Berry, 30 West Washington Street, stated he appreciated the new furniture that was delivered to the Salvation Army. Mr. Berry requested any left over money be used towards the homeless shelter. Mr. Berry stated this program got new sidewalks in front of his home and he is happy with them and he would like to see more money used towards the north end of town.

At 7:31 p.m., Mayor Byrd closed the public hearing and the regular session reconvened.

- 6.b.** Consider a request to amend multiple sections of the Zoning Ordinance to allow public uses to deviate from requirements of the Zoning Ordinance by approval of a special use permit

Stacy Turner, Director of Community Development, stated staff is proposing an amendment to several sections of the Zoning Ordinance in order to allow public uses to better conform to zoning regulations. Mrs. Turner stated in the recent history, we have relied on the fact that the City is not legally obliged to follow its own zoning regulations. However, recent discussion on Section 12.2-2232 of the Virginia State Code about reviewing for items not shown on the Comprehensive Plan has led staff to the conclusion that it is best for the City to follow zoning requirements. Public uses are permitted by right within all zoning districts; however, there are times when, in the best interest of providing services, the City cannot adhere to all the requirements of the Zoning Ordinance. Mrs. Turner stated staff is proposing the language "Public Uses which deviate from the requirements of Title 10, Chapter 3" be added as a subsection to the special uses within many zoning districts offering public uses the opportunity to request deviating from zoning regulations. The special use permit (SUP) would provide for a documented, public hearing process to allow public uses, which may not meet all the requirements of the Zoning Ordinance, to occur and still be in compliance. Mrs. Turner stated both staff and Planning Commission recommend approval of amendments to allow public uses to deviate from the requirement of the Zoning Ordinance by approval of a SUP.

At 7:35 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 Monday, August 25,

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2014 and Monday, September 1, 2014.

Panayotis "Poti" Ginnakouros, 98 Emory Street, reviewed what Mrs. Turner just presented about zoning and feels that it might create oversights. Mr. Ginnakouros stated it is up to citizens to make sure that the City doesn't create an exclusive community. Mr. Ginnakouros stated the City following zoning ordinances would affect the paper alley next to his house and he spoke on his concern about the lawn ordinance.

At 7:38 p.m., Mayor Byrd closed the public hearing and the regular session reconvened.

Council Member Baugh stated if the City is doing something contrary to the zoning ordinance there will at least be a public hearing for citizens to provide input. Council Member Baugh stated it doesn't mean the City can't approve it, but it does guarantee a public process to take place.

**A motion was made by Council Member Baugh, seconded by Vice-Mayor Chenault, that these Zoning Ordinances 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

- 6.c.** Consider a request from Farhad Koyee, Bahar Mikael, and Sabir Haji to rezone a 0.38-acre (16,553 +/- sq. ft.) portion of a 0.52-acre (22,600 +/- sq. ft.) parcel from R-2, Residential District to B-2C, General Business District Conditional

Mrs. Turner stated the property is located along the north side of Ashby Avenue but is addressed as 907 North Main Street. The parcel has 104 feet of lineal road frontage, where 40-feet of it is zoned B-2 and 64-feet is zoned R-2. Mrs. Turner reviewed the history of the property beginning in 1979 and the surrounding areas of the property. Mrs. Turner stated the applicants are requesting to rezone the split-zoned parcel. The request is to rezone the R-2 portion of the property, which is approximately 16,900 square feet in size, to B-2C. The remaining 6,000 square foot section of the property is already zoned B-2. Mrs. Turner stated the applicant also owns the corner parcel, which is zoned B-2. Mrs. Turner presented the following proffers that coincide with the current request: along the entire length of the western and northern property lines, where the adjacent property is zoned residentially, for a width of 10-feet, the existing vegetation (including all trees and shrubbery) shall be maintained to assist in providing a buffer between the property and the adjacent residentially zoned property. In addition, evergreen trees shall be planted and maintained within the 10-foot buffer zone with the intent to form a dense screen. The evergreen trees shall be three to four feet in height at the time of planting and shall be planted at no greater than 5-foot centers; and a six-foot solid, opaque fence shall be installed along the same boundaries as identified above. If approved, the above conditions would only be applicable to the approximate 16,900 square foot portion of the property. The fence may or may not be installed within the first 10-feet of the property lines, but must be

installed along the stated boundaries. The existing B-2 portion of the subject parcel would not be restricted to the submitted proffers. This is important to understand because there is a small section of residentially zoned property to the north of the existing B-2 portion of the parcel. Mrs. Turner reviewed the plans for vegetation and fence to be left or added to the property. Regardless of the property's zoning, a 30-foot minimum building setback must be applied along Ashby Avenue. Then, regarding side and rear yard setbacks, a 30-foot setback must also be applied along property lines that adjoin residentially zoned property; this includes the western and northern property lines. If property lines adjoin commercially zoned property, a 10-foot building setback may be applied. It is important to remember, however, these setbacks are for structures and that parking lots are not bound by the same setback requirements. Mrs. Turner stated the 10-foot setback would dissolve if the applicant develops the property like they plan to. Given the well-intended proffers and the fact that the City has planned for this parcel to contain commercial uses, staff and Planning Commission recommended approval rezoning the existing R-2 portion of the property to B-2C, General Business District Conditional.

At 7:45 p.m., Mayor Byrd closed the regular session and called the third public hearing to order. A notice appeared in the Daily News-Record on Monday, August 25, 2014 and September 1, 2014.

Panayotis "Poti" Ginnakouros, 98 Emory Street, stated he had connections with the property and is happy to hear that they will be leaving the vegetation. Mr. Ginnakouros stated natural spaces are very important to the site and he hopes it will help decrease alienation from each other and nature.

At 7:49 p.m., Mayor Byrd closed the public hearing and the regular session reconvened.

**A motion was made by Council Member Baugh, seconded by Vice-Mayor Chenault, that this rezoning be approved with the stated proffers on the 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

## **7. Special Event Application Requests**

### **7.a. Consider the Rocktown Fall Beer Fest for a special event request**

Katie Yount, Events Director for Harrisonburg Downtown Renaissance, stated the Rocktown Fall Beer Festival is planned to be held on Saturday, September 20, 2014 from 2:30pm - 8:00 p.m. at the Turner Pavilion and Municipal Parking lot. Mrs. Yount stated all city departments have signed off on the event.

**A motion was made by Council Member Degner, seconded by Vice-Mayor Chenault, that this Special Event Application be approved. The motion carried with a recorded roll call vote taken**

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as follows:

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

**No:** 0

## 8. Regular Items

### 8.a. Receive Planning Commission's findings, Park View Water Tank ("the Project")

Mrs. Turner stated that Planning Commission reviewed this project due to Section 15.2-2232 of the Code of Virginia and Section 10-1-6 of the City Code. Mrs. Turner provided the general and approximate location and surrounding area of the property. Mrs. Turner stated staff and Planning Commission believes the proposed project and site are substantially conforming to the Comprehensive Plan per the following goal, objective, and strategy: Goal 11; Objective 11.1; and Strategy 11.1.1. Mrs. Turner stated Eastern Mennonite University (EMU) has recently accepted the tank on their property and is currently working with the City. Mrs. Turner stated Mike Collins has stated that two main concerns leading this project are the old water tank and more water is needed in the Park View sector.

**A motion was made by Vice-Mayor Chenault, seconded by Council Member Baugh, to accept the findings from Planning Commission. 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.b. Consider a resolution to set the percentage of Personal Property Tax Relief for the Year 2014

City Attorney Brown stated this is an annual resolution to set the percentage of personal property tax relief pursuant to Article J of Title 4, Chapter 2 of the Harrisonburg City Code. The Commissioner of the Revenue has determined the final percentage for the tax year 2014 to be 31%. It was reported that we are currently at 37%.

**A motion was made by Vice-Mayor Chenault, seconded by Council Member Shearer, that this Resolution be approved to adopt the percentage of Personal Property tax rate at 31%. 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.c.** Report on the Emergency Communications Center power outage and generator failure

Larry Shifflett, Fire Chief, stated at approximately 5:52 p.m. on August 5, 2014, a tree limb fell across a power line on Crawford Avenue causing a power outage in the southeast part of the City. This power outage also affected the Emergency Communications Center (ECC) located in the Public Safety Building (PSB). The PSB has an 800-kw generator that is used to provide emergency power to the building anytime the power supply is interrupted. However, when this event occurred, the generator failed to start. This generator is covered by a 24 hour a day, seven days a week, 365 days a year, service contract. Scheduled service was performed on the generator just two weeks prior to August 5. The generator is started and allowed to run for about 45 minutes each week, and is run under a load once a month. When the generator failed to start, a service technician was called and arrived at the ECC approximately 30 minutes later. After troubleshooting the problem for about approximately 30 minutes, the technician got the generator to start and run properly. This was within minutes of the time that regular power was returned to the building. The technician returned the next day to recheck the generator to make sure everything was working properly. The technician replaced the voltage regulator on the generator, but is unable to determine the exact reason that the generator failed to start. After the action review meeting was held the following items took place: purchased rechargeable portable lights and installed lights in stairwells; more keys made available for opening of the windows; stagger the start of times of HVAC equipment; new procedure in place with Harrisonburg Electric Commission (HEC); and, more batteries to be added to the uninterrupted power supply. Chief Shifflett stated that the generator is a mechanical device and it has the potential to fail and he feels with these adequate provisions should this happen again the ECC will be better prepared.

**8.d.** Consider a resolution setting City taxi rates

City Attorney Brown stated during the August 26, 2014 City Council meeting, Council chose to eliminate a \$0.75 fuel surcharge and move it into the load fee charge.

**A motion was made by Council Member Degner, seconded by Vice-Mayor Chenault, that this Resolution be approved. 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

**9. Supplementals**

**9.a.** Consider two supplemental appropriations for Economic Development Department totaling \$70,000



City Manager Hodgen stated these are funds from the Harrisonburg Industrial Development Authority (IDA) to the Harrisonburg Business Loan Program to appropriate \$35,000 of grant funds received from the Virginia Department of Housing and Community Development for the new "What's Cooking" entrepreneurial program. City Manager Hodgen stated this is not new local money.

**A motion was made by Council Member Degner, seconded by Vice-Mayor Chenault, that these Supplemental Appropriations totaling \$70,000.00 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

**9.b. Consider a transfer of funds to the Health Insurance Fund**

City Manager Hodgen stated funds from the City and the School Board will be used to replenish the fund balance of the Health Insurance Fund. It is also requested that the transfer of funds be retroactive to Fiscal Year 2014 for audit report purposes. City Manager Hodgen stated once the funds increase again, the City will reimburse the fund gradually. Council Member Shearer stated this is one risk and/or downside of having a self insured insurance plan and it is being reviewed by the Finance Committee. City Manager Hodgen stated the City did increase both the employee and City share of the Health Insurance Program this year, so this transfer is not the only action the City has taken. It was noted there were many years that the City wasn't seeing increases.

**A motion was made by Council Member Shearer, seconded by Vice-Mayor Chenault, that this Supplemental Appropriation 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

**10. Other Matters**

Council Member Baugh reported a light agenda for the upcoming Planning Commission meeting.

Council Member Degner stated a Jail Task Force meeting was held last week and more data was received and available. Council Member Degner stated it doesn't answer all the questions that are out there, but it does answer some. He reported the trend data shows that in the last year to year and a half there has been a 30% increase in the jail population. Council Member Degner stated that the last bit of the

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increase is causing us to rent space at Middle River Jail. Council Member Degner stated more questions need to be asked. Council Member Degner stated issues need to be addressed now, because even if funding is approved it wouldn't be completed at least until 2019. He reported the Committee is benefiting from all the public input and hopes it continues. Council Member Degner stated there is potential of investment for some sort of tracking system.

Council Member Shearer stated that the data received isn't all the data that is needed, but it is important to have this and generates more questions that might have not been thought about.

#### 11. Boards and Commissions

No action was taken.

#### 12. Closed Session

A motion was made by Vice-Mayor Chenault, seconded by Council Member Degner 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 a discussion of the acquisition of real estate for a public purpose; Subsection 3 for a discussion of the disposition of publically held real estate; Subsection 5 for a discussion of one or more prospective businesses or industries where no previous announcement has been made of the businesses or industries interest in locating in the community; and Subsection 7 for consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel.

#### 13. Adjournment

At 9:32 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.

At 9:33 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

