



City of Harrisonburg

409 S. Main Street
Harrisonburg, VA 22801

Meeting Minutes - Draft City Council

Mayor Christopher B. Jones
Vice-Mayor Richard Baugh
Council Member Ted Byrd
Council Member Kai Degner
Council Member Abe Shearer

Tuesday, March 8, 2016

7:00 PM

Council Chambers

1. Roll Call

Present: 5 - Mayor Christopher B. Jones, Vice-Mayor Richard Baugh, Council Member Ted Byrd, Council Member Kai Degner and Council Member Abe Shearer

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

2. Invocation

Mayor Jones offered the invocation.

3. Pledge of Allegiance

Mayor Jones 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)

Michael Wong, Harrisonburg Redevelopment and Housing Authority Executive Director, invited council and the community to the grand opening of Thomas Village on March 22, 2016, from 2:00 p.m. until 4:00 p.m. Mr. Wong stated Thomas Village is a 30 unit permanent housing project. Mr. Wong reported that all the units should be leased by the end of this month.

Holly Kinkaid & Laura Thompson, art teachers from Skyline and Thomas Harrison Middle Schools, stated March is Youth Art Month and invited council to come see the students' artwork at the local library and thanked them for their continued support.

Jimmy Flynn, 699 John Tyler Circle, apologized for how he conducted himself over the last few weeks when he had been frustrated trying to begin a small business. Mr. Flynn thanked staff and Adam Fletcher for their help.

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)

A motion was made by Vice-Mayor Baugh, seconded by Council Member Shearer, to approve the Consent Agenda. The motion carried with a recorded roll call vote taken as follows:

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

No: 0

5.a. Minutes

These minutes were approved on the Consent Agenda.

5.b. Joint School Board and City Council meeting minutes

These minutes were approved on the Consent Agenda.

5.c. Council Planning Work Session minutes

These minutes were approved on the Consent Agenda.

5.d. Request for Supplemental Appropriation in the amount of \$10,334 for the Harrisonburg-Rockingham Social Services District.

This Supplemental Appropriation was approved on second reading.

5.e. Refer a request to Planning Commission for the city to vacate an alleyway located at the southern end of Red Oak Street

This request was referred to the Planning Commission.

6. Public Hearings

6.a. Consider amending and reenacting sections 4-2-89 and 4-2-92 (e), the Meals Tax Ordinance of the Harrisonburg City Code

City Attorney Brown spoke on all three public hearing ordinance amendments together.

City Attorney Brown stated that the city treasurer's office, the commissioner of the revenue and he started reviewing some of the tax ordinances about a year ago during the beginning stages of implementation of new software for those departments. City Attorney Brown stated that they realized there were a couple of things in these ordinances that made it more difficult to switch over to the new software with the main thing being the interest rate. City Attorney Brown stated that the interest rate for all three ordinances didn't begin until one month after the taxes were due and unpaid with a 1% interest due per each additional month the taxes were delinquent. City Attorney Brown stated that per state law, interest should accrue the day after taxes are due, if not paid and should be 10% per year. City Attorney Brown stated that the way the interest rate was set up originally, it didn't calculate properly with new system, which lead to the opportunity for a comprehensive review of the tax section. City Attorney Brown stated the ordinances hadn't been reviewed in several years and this was an opportunity to make them consistent with state code.

City Attorney Brown noted the following changes:

Changes to all tax ordinances listed: changed interest from 1% per month beginning one month after taxes are due and unpaid to 10% per year beginning one day after taxes are due and unpaid; clarified penalties for not paying and to be consistent with state law; since all are trust taxes, where an individual pays the business and the business pays the city, if a business doesn't pay the trust tax, any individual who works for the business and is responsible for the payment of these taxes that willfully does not pay are guilty of a class 1 misdemeanor; and, businesses that use point of sale software or other electronic manipulation to falsify any of the returns is also guilty of a crime. Although the city hasn't had any problem with this, the General Assembly has given us authority to make it a class 1 misdemeanor.

Meals tax: changed the exemptions and brought to compliance to state law.

Transient tax: changed the returns due date from each quarter of the year to each calendar month, which will make it easier for reporting and budgetary tracking.

Admissions tax: changed the exemptions and brought to compliance to state law and reorganized the collections tax and renumbered classes that are exempt per state code.

Council Member Degner asked if any of the changes proposed were not required by state law. City Attorney Brown stated that the monthly/quarterly change is not state required, but most localities do monthly reporting and state law provides that council can set an interest rate of up to 10%.

At 7:14 p.m., Mayor Jones closed the regular session and called the first public hearing to order. A notice appeared in the Daily News-Record on Saturday, February 27, 2016 and Saturday, March 5, 2016.

There being no one desiring to be heard, Mayor Jones closed the public hearing at 7:15 p.m., and the regular session reconvened.

A motion was made by Council Member Shearer, seconded by Vice-Mayor Baugh, to amend and reenact the Meals Tax Ordinance as presented. The motion carried with a recorded roll call vote taken as follows:

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

No: 0

6.b. Consider amending and reenacting sections 4-2-80, 4-2-81, and 4-2-85, the Transient Occupancy Tax Ordinance of the Harrisonburg City Code

Agenda item 6.b. and 6.c. were discussed along with 6.a.

A motion was made by Council Member Shearer, seconded by Vice-Mayor Baugh, to amend and reenact the Transient Occupancy Tax Ordinance as presented. The motion carried with a recorded roll call vote taken as follows:

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

No: 0

- 6.c.** Consider amending and reenacting sections 4-2-97, 4-2-97, 4-2-106, and 4-2-107, the Admissions Tax Ordinance of the Harrisonburg City Code

Agenda item 6.b. and 6.c. were discussed along with 6.a.

A motion was made by Council Member Shearer, seconded by Vice-Mayor Baugh, to amend and reenact the Admissions Tax Ordinance as presented. The motion carried with a recorded roll call vote taken as follows:

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

No: 0

7. Regular Items

- 7.a.** Receive Planning Commission's 2015 Annual Report

City Manager Hodgen stated tonight was just the receiving of the Planning Commission's 2015 Annual Report and stated that it indicated the number of rezoning approved, special use permits and everything that came to council from the Planning Commission that was approved.

Council Member Degner stated that the planning staff does a lot of work with the applicant prior to it reaching council, and by the time it reaches council, lots of things have been worked out.

Mayor Jones acknowledged the good work the Planning Commission does. Vice-Mayor Baugh acknowledged the group does a great job vetting issues before it reaches council.

- 7.b.** Consider repealing Section 16-6-59, Prohibition of pedestrians soliciting rides, contributions, etc, of the Harrisonburg City Code

City Attorney Brown requested council to consider repealing Section 16-6-59 of the City Code as the first amendment laws which applies to localities is in a bit of a state of flux. City Attorney Brown stated that last year the Fourth Circuit Court of Appeals struck down an ordinance, very similar to ours, in Henrico County. City Attorney Brown stated that although there are some differences in our ordinance versus Henrico County's, a couple of things have happened since then. City Attorney Brown stated the United States Supreme Court handed down a case about six months ago regarding signs in the town of Gilbert, Arizona and the

indication was that courts are going to start looking at ordinances that affect First Amendment rights such as panhandling and signs under the "strict scrutiny test", instead of looking at it under the "intermediate scrutiny" as in the past. City Attorney Brown stated that "strict scrutiny" states ordinances must be a compelling governmental interest and the government has to fashion its ordinance so that it is as narrowly tailored as possible to address the danger involved. City Attorney Brown noted under that interpretation, he believes the current ordinance has some real problems. City Attorney Brown noted the city of Waynesboro also has a very similar ordinance, were sued a few months ago, decided it wasn't worth fighting the legal battle, and are changing their ordinance. City Attorney Brown noted after speaking with several other area attorneys, it became clear that our ordinance would not survive and there are lawyers that are actively seeking plaintiffs to challenge many localities, including Harrisonburg. City Attorney Brown stated the danger of these types of law suits is that it normally awards attorney fees to the plaintiff's attorney, as in the previous case against Charlottesville where they paid over \$150,000 in attorney's fees to the plaintiff's attorney. City Attorney Brown stated he feels that in good faith he cannot recommend this ordinance section to remain waiting for a challenge that the city would most likely not prevail. City Attorney Brown stated he will work with Chief Monticelli and Officer Langhans to draft an ordinance that provides the safety to the pedestrians and the traffic without infringing on First Amendment rights, concentrating on conduct, as well as review what traffic ordinances and laws are already on the books, and to look at the least restrictive way to accomplish the goals. City Attorney Brown stated that the aggressive panhandling ordinance that was approved several years ago seems ok, but the buffer zones, etc. are being reviewed carefully to make sure they would survive any type of suit. City Attorney Brown stated that the current sign ordinances are being re-written due to the Gilbert, Arizona case previously mentioned, which showed that the US Supreme Court made almost every sign ordinance in the country unconstitutional. City Attorney Brown stated the Local Government Attorneys of Virginia formed an ad hoc committee and a template for a sign ordinance was created that they are convinced would survive constitutional scrutiny. It is currently being reviewed by our Community Development department prior to being sent to Planning Commission.

Council Member Degner noted he appreciated the background, the context, and being proactive with changes that are happening outside of the city. Council Member Degner asked if the aggressive panhandling ordinance had been used.

City Attorney Brown is unsure if there have been a lot of charges, Officer Langhans might be able to answer that, but after the city passed it a lot of the behavior the city was seeking to remedy by this ordinance went away. City Attorney Brown reiterated that he believes the aggressive panhandling ordinance aspect is fine and will remain.

Officer Langhans stated that no charges, as of yet, have been filed. It acted as more of a deterrent on issues that were happening prior to the passing of the aggressive panhandling ordinance.

Vice-Mayor Baugh stated he would prefer to amend this ordinance rather than repeal, but since Section 16-6-60 of the City Code is still in place, City Attorney Brown's point is well taken and understands the request for the repeal.

A motion was made by Council Member Degner, seconded by Vice-Mayor Baugh, to repeal Section 16-6-59 of the Harrisonburg City Code. The motion carried with a recorded roll call vote taken as follows:

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

No: 0

7.c. Update on 2016 General Obligation Bond issue

City Manager Hodgen provided an update of the process for the bond issuance. City Manager Hodgen stated that the total amount of the six listed projects is around \$45 million, but in actuality should show \$40M. City Manager Hodgen stated that the public hearing notice will reflect \$45M in case issuance costs involved an increase due to unforeseen costs prior to closing. City Manager Hodgen stated that the intent of the issuance was to fund the projects in the amounts previously discussed. City Manager Hodgen stated that \$30.6M is for the elementary school and pre-k facility, \$4M for the Thomas Harrison HVAC improvements, \$2.1M for the road improvements and the bike and pedestrian infrastructure, and \$3M to reimburse the city for the previously expended A&E fees for the project, in addition with any issuance costs and other things associated with the bond issue. City Manager Hodgen noted that they had conference calls with the city's financial advisors and the two primary rating agencies, to have the bonds rated in advance of the actual sale. City Manager Hodgen expects to receive the ratings by next week, from both of the agencies, and notes that worst case scenario is that we would stay where we are in terms of the ratings, and best case scenario would be that we would be rated a bit higher, which would have a positive impact on the interest rate that would be paid for the bonds. City Manager Hodgen noted that on March 22, 2016 a public hearing will be held on the bond issuance, a preliminary offering statement will be offered and posted notice of sale the following day, the following week the bonds will be priced, and then two weeks after that they will close on the bonds. City Manager Hodgen stated the debt service projection is at \$2.7M per year, which equates to \$0.0675 on the real estate tax rate.

Council Member Byrd stated that he felt the ten percent overage is a bit high. He would feel more comfortable with \$42M, which is just a five percent overage, which would provide plenty of coverage. Council Member Shearer concurred, and was surprised to see such a large contingency, stating five percent sounds more reasonable.

Council Member Degner asked if the numbers have been shared with the School Board and Liaison Committee and is consistent. Council Member Shearer stated that \$30.6 million had been in the budget since March. City Manager Hodgen stated they had those discussions last week. Mayor Jones stated after those discussions everyone was in agreement and that the increase of \$9M for the pre-k requested could not be done.

Council Member Degner asked if the \$1.5M match for the grant is included in the \$2.1M for road improvements, etc. Mayor Jones stated it was.

Mayor Jones stated it was a very good meeting with the school board, possible and creative solutions were addressed for the pre-k facility and this will be good for the students, parents, and is fiscally sound.

8. Supplementals

- 8.a. Consider a supplemental appropriation for the Police Department in the amount of \$29,592.00 for the purchase of Lexipol policy creation software

Police Chief Monticelli stated the requested money would be used for a two year contract with the Lexipol System software, plus a one-time fee for a legal review of our current policy manual. Police Chief Monticelli stated Lexipol provides regular updates in response to legislative mandates, care law, and evolution in best practice. Police Chief Monticelli stated this will take the burden off of existing staff and city attorney to research, write and review all policies. He stated 365 days a year officers are supplied with a training bulletin with test questions and eventually tested over the entire policy manual.

Council Member Shearer asked if the system would pay for itself by efficiency. Police Chief Monticelli agreed and added it is also for liability purposes. Police Chief Monticelli noted that all the accreditations are already included in the policy manual that will help with the city's accreditation process.

Council Member Shearer noted police officers recently spoke at Lucy Simms School and were speaking about the policies and ordinances police have to know, which is a significant amount.

A motion was made by Vice-Mayor Baugh, seconded by Council Member Degner, that this Supplemental Appropriation be approved as presented. The motion carried with a recorded roll call vote taken as follows:

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

No: 0

Police Officer positions

Mayor Jones invited Police Chief Monticelli to comment about the status of officer recruitment. Police Chief Monticelli noted several universities were invited the tour

the police department and they had 35 participants. Police Chief Monticelli noted that there are eight individuals going through the Police Academy and stated there are seven positions still open.

Mayor Jones stated he knows Police Chief Monticelli is in favor of community policing and encouraged citizens to apply.

Mayor Jones noted those interested in testing for a police officer position on Saturday, March 26, 2016, must register on the city's website by March 17, 2016.

9. Reallocations

- 9.a. Consider a budget reallocation for the Public Works Department in the amount of \$166,000 for the East Market Street Stormwater Improvement project.

Jim Baker, Director of Public Works, requested a budget reallocation of \$166,000 from the Sampson Park Stormwater Capital Project to the East Market Street Stormwater Improvement Capital Project. Mr. Baker stated these funds were originally budgeted for Lucy Simms School, but the state grant the city applied for was not awarded. Mr. Baker stated the project is still on the books and staff plans to apply again next year for the grant. Mr. Baker stated these funds could enhance the project already being worked on and noted that the project is still in the design process. Mr. Baker noted that the East Market Street project has a grant that is being used toward the project. Mr. Baker stated this project is to enhance the stormwater quality not quantity so we can meet our MS4 permit requirements. Mr. Baker stated the city hopes to be under contract in May 2016. Council Member Byrd brought attention to the cost remaining low per pound. Mr. Baker stated they are paying attention to the price details and trying to keep the cost between the \$32,000 and \$35,000 range per pound.

A motion was made by Council Member Byrd, seconded by Council Member Degner, that this Reallocation be approved. The motion carried with a recorded roll call vote taken as follows:

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

No: 0

10. Other Matters

Mayor Jones noted that the Heritage Oaks Golf Course is still seeking food vendors and request for proposals are due March 17, 2016 at 3:00 p.m.

Mayor Jones noted those interested in testing for a police officer position on Saturday, March 26, 2016 must register by March 17, 2016. Mayor Jones stated all job postings for the city can be found on our website.

Mayor Jones noted registration is now open for Blacks Run Clean-Up Day that will be held on Saturday, April 9, 2016.

Mayor Jones reminded citizens of the Smithland Road Dog Park rules, announced Parks and Recreation will be holding a movie night featuring the *Lego* movie on March 12, 2016, noted the Shamrock 5K Trail Run on March 19, 2016, and the Easter Egg Hunt on March 26, 2016.

Mayor Jones noted the household hazardous waste collection that will take place on April 16, 2016.

Mayor Jones announced that his church would be leading a Prayer Walk on April 16, 2016 beginning at 11:00 a.m. in front of City Hall and walking down to Court Square for a ceremony that should conclude by 12:15 p.m.

City Attorney Brown stated after the fire department made several trips down to Richmond they got the Virginia Municipal League (VML) and a few legislators interested in the city's mulch ordinance and the importance of it. The legislation ended up becoming Section 1 legislation, which isn't a part of the Virginia Code. City Attorney Brown stated after reviewing what the Governor signed, the city's ordinance will need minor changes and stated the ordinance will be brought back before council and another public hearing will be scheduled.

11. Boards and Commissions

No action was taken.

12. Closed Session

At 7:51 p.m., a motion was made by Council Member Shearer, 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 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 Jones, Vice-Mayor Baugh, Council Member Byrd, Council Member Degner and Council Member Shearer

No: 0

13. Adjournment

At 8:02 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 8:03 p.m., there being no further business and on motion adopted, the meeting was adjourned.

CITY CLERK

MAYOR