

Town of Vienna

Charles A. Robinson Jr.
Town Hall
127 Center Street South
Vienna VA, 22180

Meeting Minutes Town Council Meeting

Monday, September 26, 2022

8:00 PM

Charles A. Robinson, Jr. Town Hall, 127 Center Street, South

Invocation: Reverend Connie Jordan-Haas, Vienna Presbyterian Church

Mayor Colbert called on Reverend Connie Jordan-Haas, Vienna Presbyterian Church to provide the evening's invocation

Pledge of Allegiance to the Flag of the United States of America

1. Roll Call

Present:

7 - Council Member Chuck Anderson, Council Member Ray Brill Jr., Council Member Nisha Patel, Council Member Steve Potter, Council Member Ed Somers, Council Member Howard J. Springsteen and Mayor Linda Colbert

2. Acceptance of the Minutes:

A. 22-3384

Acceptance of the Regular Meeting Minutes and Conference Session Minutes of September 12, 2022

Minutes of the Regular Council Meeting Minutes and Conference Session Minutes of September 12, 2022 were approved as presented

3. Receipt of petitions and communications from the Public that are not on the Agenda. (Limited to 3 minutes per issue and no formal action can be taken this evening)

Mayor Colbert called for comments from the public.

Inga Erickson, 105 Dogwood St., SW has been a licensed massage therapist for over thirty years. She has resided in Vienna for twenty years and owned her business for fifteen years. She is compliant with all standards and ethics set forth by the Commonwealth of Virginia, Board certified and she complies with all annual requirements set forth by her profession. Ms. Erickson stated that she reached out to several Council Members regarding the recently passed amendment to Chapter 22 of the Vienna Town Code. Council Member Brill recommended she come before Council. The newly enacted fees structure of \$500 per business plus \$150 per therapist represents an increase 18 times what she has paid in the past. She is angry, frustrated and outraged. The Town made this decision without consultation with any business owners, who only became aware after the Ordinance was approved and received a package by mail. Where was this communication when these regulatory changes were under discussion? Why were those effected not asked to come to the table? Significant changes have been approved including grouping licensed therapists with masseuse and masseurs rather than hospitals and clinics. As a therapist, her work is regulated by the Commonwealth, the American Massage Therapy Association, the National Certification Board, and various others and she is required to carry malpractice insurance. In all these ways a licensed therapists work is more in line with physical therapy, mental health fields, chiropractic and

osteopathic care givers. Ms. Erickson receives referrals from professionals in these fields. Her field is health care. She is outraged at the increase in business fees. The \$500 fee is unlikely to deter those engaged in criminal activity; it simply punishes those who have done nothing wrong. It is an affront and an insult. There are already laws that, when enforced, successfully deter unethical practices. Council Member Brill conceded that perhaps the fee was too high; maybe \$100 would be more appropriate. Is Council raising fees for other health care workers? Raising the fee on this one sector unfairly affects small business owners. It is punitive to those who follow the code of ethics that mandate the profession. There are bad apples in many of these fields, but regulations must be designed that don't punish the good people. "I urge you to reconsider the amendment to Chapter 22 by regrouping licensed massage therapists with other health care professionals and return the fee structure to its former rate".

4. Reports/Presentations

A. <u>22-3345</u> Honoring and Recognizing Business Employees

Mayor Colbert called on Jennifer Morrow, Chairman, Town Business Liaison Committee to present the inaugural Outstanding Service Awards to Ann Dunning, with Mitchell Eye Institute and Nancy Nichols with Fosters Grill.

B. 22-3362 Presentation of GFOA's Distinguished Budget Award

Mayor Colbert recognized Marion Serfass, Director, Finance and Staff for the 28th consecutive receipt of the GFOA Distinguished Budget Award.

A. Report and Inquiries of Council Members

Council Member Patel congratulated the Police Department on their 75th anniversary. She also noted the validity of comments brought forth by Inga Erickson regarding Chapter 22 Amendments, suggesting that Council may need to revisit this decision. She also congratulated the Outstanding Service Award recipients.

Council Member Springsteen thanked the Police for their 75 years of service to the Vienna community. He also thanked the Department of Public Works for completion of the sidewalks along Blackstone.

Council Member Anderson noted that he heard the comments made by Ms. Erickson and agrees that perhaps the Ordinance should be revisited.

Council Member Potter thanked Director Levy and the Department of Planning and Zoning for expediting the cleanup at 444 Maple Avenue.

Council Member Brill remarked on the success of the 75th anniversary celebration of the Police Department. He urged the community to reach out to any seniors who may be struggling due to the rise in inflation and recognized the bravery of the Ukrainians as they continue to fight for their freedom. He agreed with other Council Members that the newly enacted fee imposed through Chapter 22 may be too high. Finally, he congratulated the recipients of the Outstanding Service Award.

Council Member Somers noted that this is a week of atonement in the Jewish faith and wished all a Happy New Year. In that spirit he offered an apology to anyone who he may have offended or harmed in any way over the past year. In his role as Mayor Pro Tem, he attended the opening of the new Hope United Methodist Church,

noting that their decision to locate in Vienna was based in part on the fact that they believe Vienna to be a welcoming community.

B. Report of the Town Manager

Town Manager Payton noted that due to work on the elevator system, Council meetings through the end of 2022 will be relocated. Christine Horner, Interim Director, Public Works, stated that as of October 11, 2022, the elevator will be under repair. The three impacted Town Council meetings will be moved to the Community Center auditorium. Public notification will be made tomorrow.

Council Member Somers commended Town Manager Payton and Mayor Colbert for the smooth transition of the meetings to alternate locations, noting the importance of accessibility to all.

C. Report of the Mayor

Mayor Colbert indicated that the Town Hall doors have been equipped with push button controls. She was sorry to have missed the celebration for the Police Department on Saturday. Oktoberfest will be celebrated October 1, 2022 on Church St. Mayor Colbert stated that she would be unable to attend Oktoberfest because she will be at h VML's Mayor's Conference on Saturday and will be joined on Sunday by the remainder of Council to attend the Annual Conference of all Municipalities in Virginia. Council Member Brill reminded all of the Madison High School homecoming parade on Friday September 30, 2022.

D. Proposals for Additional Items to the Agenda

E. Closed Session

It was moved that the members of the Vienna Town Council be polled to affirm that a Closed Session was held on September 26, 2022 in accordance with Virginia Code, Section 2.2-3711.A.(1) for discussion or consideration of personnel matters specifically the interviewing of individuals for consideration of appointment and/or reappointment to Town Boards and Commissions.

It was further moved that the Certification Resolution be adopted in accordance with State Statutes, and that the Town Clerk is authorized to execute the Certification Resolution. And it was further moved that the Closed Session be continued to Monday October 10, 2022 at 7:00 PM in accordance with Virginia Code, Section 2.2-3711.A.(1), for discussion or consideration of personnel matters, specifically a discussion with the human resource director regarding the evaluation process of the Town Clerk and the Town Manager.

Motion, Council Member Somers; second, Council Member Patel. Motion carried unanimously.

It was moved to reappoint Michelle Kang to the Vienna Public Arts Commission for a two-year term. Said term shall retroactively commence June 16, 2022 and expire June 16, 2024.

It was moved to reappoint Peter Hartogs to the Transportation and Safety Commission for a two-year term. Said term shall retroactively commence September 1, 2022 and expire September 1, 2024. Motion, Council Member Somers; second, Council Member Anderson. Motion carried unanimously.

A motion was made by Council Member Ed Somers, seconded by Council Member Nisha Patel, that this item is approved. The motion carried by the following vote:

Aye:

 Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

5. Public Hearings

A. 22-3364 Public Hearing for Supplemental Adjustment to the 2022-23 General Fund Budget

Mayor Colbert called the Public Hearing to order at 8:38 PM. All Council were present.

Mayor Colbert called on Marion Serfass, Director, Finance to present the Item for consideration.

The total supplemental budget appropriation in this Item exceeds 1% of the Town's 2022-23 General Fund budget so a public hearing is required per the Code of Virginia, section 15-2-2507. This budget adjustment came about for two reasons:

1. Purchase Order Roll Forwards - purchase orders opened and expected to be completed in FY 2021-22. Due to extraordinary supply chain issues and staff shortages resulting from the COVD-19 pandemic, this list of items includes many of the vehicles ordered under the Vehicle Replacement Plan (VRP) and funds budgeted for asphalt paving and sidewalk construction that could not be completed in the last fiscal year.

Budgeted Carry Forwards - these are items identified by department heads that have come up since the 2022-23 budget was adopted and are necessary for the departments to complete their objectives in the current fiscal year. These are items that may have been on what was formerly known as the unfunded priorities list that were budgeted needs or are items that have come up in between the adoption of the budget and current conditions today.

Carry forward money is available because the Town had a surplus in FY 2021-22 of approximately \$720,000. The surplus is due to a combination of several General Fund revenues exceeding budget plus salary savings due to position vacancies during the year.

Town Manager Payton noted that, as is the Town's practice, half of the fiscal year surplus is put into the Unreserved Fund Balance (Rainy Day Fund) up to an amount that represents at least 18% of the subsequent year's budget (Rainy Day percent). The remainder has been earmarked for Carry Forward items.

Mayor Colbert opened the floor to Council for preliminary questions.

Council Member Springsteen indicated that he was unable to support adding positions at this time. It represents a prime example of "mission creep".

Director Serfass replied that the Finance department currently does not have the bandwidth to implement and enforce requirements of the recently adopted Chapter 22 Ordinance.

Christine Horner, Interim Director, Public Works, explained that the additional

Town owned building square footage (100,000 sq. ft. - 150,000 sq. ft.), the increased Police Station square footage and the Annex have created a need for more personnel to maintain these spaces.

Director Serfass, responding to a question by Council Member Somers, noted that the Rainy Day Fund currently holds approximately \$5.6M, which is 18% of the Town's \$30M budget. Best Practices states two months' worth of spending in reserve (equal to 17% for the Town). If all requested items are funded the reserve would remain at 18%. The Town also carries \$500,000 in a Revenue Stabilization Fund set aside for unseen economic conditions that may impact the budget. This fund was established based upon a recommendation from the Bond Rating Agency.

Council Member Brill requested information on what steps have been taken with T-Mobile to upgrade their service. Tony Mull, Director, IT indicated that signal issue problems were identified at the property yard. WYFY boost and additional antennas have not improved the situation. The intent is to test all carriers to determine who provides the best coverage. Council Member Brill urged following through with these test before making any changes.

Council Member Brill also questioned Director Horner regarding her request for additional personnel, questioning whether exit interviews were conducted with former employees. Director Horner responded that exit interviews were conducted and that a review of the past five years suggested the primary reason for maintenance worker departure was salary. Other reasons for leaving included a) multi job expectations due to the relatively smaller size of the Town, and b) new Federal requirements for obtaining a commercial license (four-five week training school at a cost of \$5000). Of the 44 new hires in the Town about half left over the last five years moving to positions with nearby jurisdictions. Human Resources Director Michelle Crabtree pointed out that the City of Falls Church raised maintenance worker compensation to \$52,000, the plan is to bring in new hires at \$55,000 then raise current workers up to match.

Mayor Colbert remarked that worker shortages are currently a problem throughout the region.

Council Member Potter concurred by emphasizing that the lack of CDL drivers is a nationwide problem reflecting a shortage in the six digits. The warehousing side has gone up because so many people have left the service market for better paying jobs with fixed hours and more benefits. Director Horner remarked that the Town currently employs a total of 31 drivers. Most hold a Class B license; however, a Class A license is required for any driver expected to tow over 26,000 lbs.

In response to questions by Council Member Anderson Director Serfass noted that the General Fund is accounted for on a modified accrual basis, which means it's "like cash". Expenses are recognized when the item is delivered; when vehicles, etc. are delivered in 2023 or later, payment will be made, until then a balance is reserved in the Rainy Day Fund for these purchases. So even though it is not expensed, it is taken out of the Rainy Day Fund and held in reserve.

Council Member Anderson further clarified that if in the prior year a purchase order was issued but the item not delivered, that money was never spent. Technically that means expenses are being shifted from the prior fiscal year, which also means there is a corresponding savings from the prior fiscal year. It won't show up in surplus because it is in reserve (not showing in the 18%). Director Serfass agreed and

emphasized that the current situation is extreme.

Council Member Patel pointed out that since it was suggested earlier in the meeting that the recently passed Ordinance under Chapter 22 should be reviewed, it would be premature to fund the request for an additional position. She further noted that asking for an additional \$60,000 for BPOL enforcement is like spending money to lose money. If enforcement covered expenses, it would make sense. Director Serfass replied that once Chapter 22 is revisited and rewritten, then this request can be considered. This is uncaptured business license revenue. In the past, every five years or so the Town has hired temporary staff to assist with enforcement at an estimated \$100,000 salary. The new hire would be tasked with designing the forms, creating and sending notification, conducting follow-up, education of new requirements, etc. as well as capturing delinquent business licenses.

Council Member Brill noted that about 1.5 years ago he drove around Vienna and identified over 40 massage parlors. Six months ago he identified 32. With a decrease in facilities he is unable to approve of an additional position tonight without data to justify it. Director Serfass replied that as the new ordinance was written it would be onerous to enforce. Mayor Colbert reminded Council that need for an additional FTE to assist with enforcement was mentioned as part of the Ordinance discussion.

A motion was made to close the public hearing.

Motion, Council Member Somers; second, Council Member Anderson

Mayor Colbert opened the floor for additional discussion. Council comments are summarized as follows:

- Concern with request for additional staff positions; remind Council there are currently only five staff to complete all Town maintenance;
- Urge Council to consider the added expectations placed on staff maintenance with acquisition of property and passage of new ordinance; Council decisions often have a fiscal impact;
- Consider different process for funding additional staff positions; should be addressed during budget process;
- Alternatively, presenting all budget requests together (additional FTE's and projects) allows for full overview;
- All unfilled positions should be filled prior to consideration of additional staff positions;
- Consider that corrective maintenance is three times costlier than preventative maintenance; lack of manpower to complete basic operations shortchanges the Town;
- Budget adopted annually; policy adopted throughout year that effects the budget; economic conditions change throughout the year that impact the budget; must be flexible;
- Recommend that any changes in items presented for funding should be discussed in a public forum.

It was moved to adopt the \$1,267,500 amendment to the FY 2022-23 General Fund budget as presented.

Motion, Council; Member Somers; second, Council Member Patel. Mayor Colbert requested additional justification from Directors identifying tradeoffs, etc.

An amendment was offered by Council Member Patel to adjust the request from

\$1,267,500 to \$1,127,500, removing the budgeted items Building Maintenance MWI and Temporary Staff Finance/DPZ/Economic Development.

Motion, Council Member Patel; second, Council Member Anderson.

Town Manager Payton noted that those dollars not expended will be moved to the Rainy Day Fund. Town Attorney Briglia confirmed that if Council is not amending the budget to add line items, that money remains in the Town's General Fund with no authority to spend.

A Scribner's correction was offered in the form of an amendment by Council Member Patel to correct her earlier amendment as follows: to adjust the request from \$1,267,500 to \$1,145,000, removing the budgeted items Building Maintenance MW1 and Temporary Staff Finance/DPZ/Economic Development.

Additional comments included the following:

- Suggest taking up discussion of additional FTE requests in a Conference Session;
- Extrapolating FTE's requested to allow for greater discussion;
- Allow Staff latitude to request additional personnel based upon Council decisions throughout fiscal year.

Mayor Colbert called for a vote on the amendment.

Amendment passed in a 5-2 vote.

Mayor Colbert called for a vote on the amended motion.

Amended motion passed unanimously.

A motion was made by Council Member Somers, seconded by Council Member Anderson, that the Action Item be approved. The motion carried by the following vote:

Ave:

7 - Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

6. Consent Agenda

Council Member Potter requested a Process Check stating that a consent agenda is designed to save time and discussion by allowing grouping of Items that are routine, noncontroversial, recurring, or have previously achieved consensus but still need a vote. Items 6a and 6c [of the offered Consent Agenda] are not routine nor recurring; there's no indication that they've been previously discussed with consensus. Town Manager Payton confirmed that 6a was indeed discussed earlier, but 6c was not. It was requested that Item 6c be removed from the consent agenda to be discussed individually. Council Member Potter then requested that moving forward Staff include the date each Item on a consent agenda reached net consensus. This will save time by eliminating unnecessary discussion and allow Council to exercise proper oversite by reviewing details that may have been forgotten. A hand vote passed this request.

Town Manager Payton stated that moving forward Staff will include the date of previous discussion on the cover page.

A motion was made to approve Items 6a and 6b of the Consent Agenda. Motion, Council Member Patel; second, Council Member Anderson. Motion carried unanimously. A motion was made by Council Member Nisha Patel, seconded by Council Member Howard J. Springsteen, that the Consent agenda be approved. The motion carried by the following vote:

Aye:

Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

A. 22-3339 Request approval with Presidio for the procurement of additional speakers and hardware to support extended use of the intercom system with the Town of Vienna VOIP system. Approved by Council January 24, 2022 Phase 1 ARPA funding.

B. 22-3360 Request approval for spending \$1,250,000 with Crown Construction Service, Inc. for water main improvements within the Town's water service area. Approved by Council January 24, 2022 Phase 1 ARPA funding.

..Body

EXPLANATION AND SUMMARY:

The Department of Public Works requests approval to spend \$1,250,000, utilizing IFB 22-06 for continued improvements throughout the Town's water service area. Improvements consists of new water main and meter installation, repairs to aging infrastructure (valves and hydrant), and provisions to increase functionality of the Town's water system. The Department of Public Works prioritizes improvements based on water main break data and in coordination with concurrent Town projects. Specific project locations, selected from among those on the attached list, will be posted to the Town's website, and all impacted customers will receive notification with additional information and points of contact prior to construction. Previous projects completed since FY 2020 are also included in the attached list.

Departmental Recommendation: Approve spending for water main improvements.

Finance Recommendation: Recommend approval.

Purchasing Recommendation: Recommend approval.

Town Attorney Recommendation: The Town has a contract with Crown Construction Services and the Town Council may approve the proposed expenditure of funds in its discretion.

Town Manager's Recommendation: I recommend the Town Council approve water main improvements with Crown Construction Service, Inc., as presented.

Cost and Financing: \$1,250,000

Account Number: 130-350-9511-39950-48803 and ARPA5-WT01

Decision Needed by This date: Sept. 26, 2022

PROPOSED/SUGGESTED MOTION

..Recommended Action:

"I move to approve water main improvements at a cost of \$1,250,000 with Crown Construction Service, Inc."

Or

Other action deemed necessary by Council.

7. Regular Business

A. 22-3357

Consideration of request to modify conditions of approved site plan for White Oak Tower, located at 301 Maple Ave. W, so as to remove the existing limitation on the amount of medical office, related to parking.

Mayor Colbert called on Kelley O'Brien, Director, Planning and Zoning to present the Item for consideration.

Based on the conclusion that parking capacity at 301 Maple Ave. W is no longer the challenge that it represented at the time of the 2005 approval and in accordance with the Town Code it was moved to approve the request to increase the percent of 301 Maple Ave. W up to 100%, which should be reevaluated after three years. Motion, Council Member Patel; second, Council Member Somers.

Town Attorney Briglia clarified that after three years should Council decide to alter their decision, then the last tenants would be required to vacate.

Council discussion is summarized as follows:

- Allowance up to 100% offers no room for error;
- Parking availability seems adequate;
- Other 100% parking capacity medical buildings exist in Town without parking issues;
- Building in question built under different parking standards than others throughout Town and received parking modification; Exception in place because could not meet parking standards use limitations imposed;
- Consider that building in question now has greater surrounding geographic density due to new builds such as Vienna Market;
- Reasonable to consider up to 75% for three years.

Council Member Somers offered an amendment as follows:

Based on the conclusion that parking capacity at 301 Maple Ave. W is no longer the challenge that it represented at the time of the 2005 approval, it was moved to approve the request to remove the condition established in 2005 that 301 Maple Ave. W would have no more than 50% of its space being used for medical offices.

Second, Council Member Patel. Amendment failed in a 4-3 vote.

Council Member Somers offered a second amendment as follows:

Based on the conclusion that parking capacity at 301 Maple Ave. W is less of a challenge than it was at the time of the 2005 approval, it was moved to increase the percentage of 301 Maple Ave. W that may be used for medical office use to 80%, which should be reevaluated after three years.

Second, Council Member Patel.

Motion carried in a 6-1 vote.

Vote on the original motion passed unanimously.

A motion was made by Council Member Patel, seconded by Council Member Somers, that the Action Item be approved as amended. The motion carried by the following vote:

Aye: 7 - Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

B. 22-3346 Request Approval for Spending with Capital Building Services, Inc. for cleaning services at Town-owned buildings. **General Fund Budget Item**

Mayor Colbert called on Christine Horner, Interim Director, Public Works to present the Item for consideration.

It was moved to approve the proposed expenditure of funds with Capital Building Services, Inc. in the amount of \$146,000.

Motion, Council Member Patel; Second, Council Member Potter. Motion carried unanimously.

A motion was made by Council Member Patel, seconded by Council Member Potter, that the Action Item be approved. The motion carried by the following vote:

Aye: 7 - Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

C. 22-3358 Award a Design Contract to Whitman, Requardt & Associates, LLP, for Moore Avenue SE Drainage Improvements. Approved in 2022 CIP

Mayor Colbert once again called on Director Horner to present the Item for consideration.

It was moved to award the design contract to Whitman, Requardt & Associates, LLP, in an amount not to exceed \$66,748.52.

Motion, Council Member Patel; second, Council Member Springsteen. Motion carried unanimously.

A motion was made by Council Member Patel, seconded by Council Member Springsteen, that the Action Item be approved. The motion carried by the following vote:

Aye: 7 - Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

D. 22-3359 Award a Design Contract to Whitman, Requardt & Associates, LLP, for Manvell Road SE Drainage Improvements. Approved in 2022 CIP

Mayor Colbert recognized Director Horner to present the Item for consideration.

It was moved to award the design contract to Whitman, Requardt & Associates, LLP, in an amount not to exceed \$118,582.25.

Motion, Council Member Patel; second, Council Member Springsteen. Motion carried unanimously.

A motion was made by Council Member Patel, seconded by Council Member Springsteen, that the Action Item be approved. The motion carried by the following vote:

Aye: 7 - Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

C. 22-3366 Parkwood Oaks Performance Bond reduction request. Subdivision approved December 7, 2020 - no associated funding

Mayor Colbert again recognized Director Horner to present the Item for consideration.

Motion, Council Member Springsteen; second, Council Member Patel. Motion carried unanimously.

A motion was made by Council Member Springsteen, seconded by Council Member Patel, that the Action Item be approved. The motion carried by the following vote:

Aye: 7 - Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

8. Meeting Adjournment

Aye:

Mayor Colbert called for a motion to adjourn the meeting at 10:45 PM. Motion, Council Member Springsteen; second, Council Member Patel.

8. Meeting Adjournment

7 - Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

THE TOWN OF VIENNA IS COMMITTED TO FULL COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT STANDARDS. TRANSLATION SERVICES, ASSISTANCE OR ACCOMMODATION REQUESTS FROM PERSONS WITH DISABILITIES ARE TO BE REQUESTED NOT LESS THAN 3 WORKING DAYS BEFORE THE DAY OF THE EVENT. PLEASE CALL (703) 255-6304, OR 711 VIRGINIA RELAY SERVICE FOR THE HEARING IMPAIRED.