

WORK SESSION AND EXECUTIVE SESSION – April 13, 2010

Mayor R. E. Bruchey, II called this Work Session and Executive Session of the Mayor and City Council to order at 4:09 p.m., Tuesday, April 13, 2010, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers W. M. Breichner, M. E. Brubaker, F. W. Easton, A. C. Haywood, L. C. Metzner; City Administrator Bruce Zimmerman, City Attorney William Nairn and D. K. Spickler, City Clerk.

Mary King, Miss Washington County 2010

Mary King, Miss Washington County 2010, was present to discuss the Active Kids Achieve initiative. She developed this initiative to help kids achieve all they can through being active in the community and in their schools. The Barbara Ingram School for the Arts is a future builder for our community and is turning out amazing kids. She urged everyone to keep investing time with kids, because they are our future. The Miss Maryland pageant will be held in Hagerstown in June.

Rental Licensing Program – Proposed Amendments

Rodney Tissue, City Engineer, and John Lestitian, Director of Code Administration, were present to discuss amendments to the rental licensing program. As directed by the Mayor and Council, staff conducted an analysis of the Rental Licensing Program. The success of the program allows staff to refocus the program to better address the changing needs of the community. The analysis takes into account the impact of foreclosures and the current real estate market.

Bruce Zimmerman, City Administrator, stated these proposed changes were developed with the intent to address the concerns expressed by the Mayor and Council, landlords, and homeowners. He stated there are three constituent areas to consider when developing amendments. They are owners of properties, the tenants and the quality of living conditions.

Mr. Lestitian stated the rental licensing program was first implemented in the fall of 2002. Since then, it has been amended several times, as needs change. This proposal is the latest attempt to address changing needs and changing perceptions, with the intent to find a balance within the three groups of constituent areas.

The proposed changes include:

1. Exterior Inspections – to be biennial, except that if an exterior inspection reveals no violations the subsequent exterior inspection shall be quadrennial (every 4 years). This is consistent with the goal of promoting and recognizing responsible ownership.
2. Interior Inspections – to be at tenant turnover and never more frequently than every 48 months.

3. Tenant Based Section 8 Inspections – Interior inspections conducted by the Hagerstown Housing Authority for their Tenant-based Section 8 Inspection Program to be accepted in lieu of a City interior inspection. Units must be registered and the exterior of the rental facilities remain subject to the City's inspection. (not Walnut or Potomac Towers)
4. New Construction – Newly constructed rental facilities shall be exempt from the Rental Licensing Program for a period of 2 years from the issuance of the use and occupancy permit.
5. Board of Technical Appeals – Maintain existing rules and structure but add two (2) positions to this Board (both positions to be filled by city residents; one investment owner and one owner-occupant or tenant) for cases arising from rental inspections.
6. Minimum Ceiling Height – Administrative Order – until such time that the following is adopted into the Property Maintenance Code an administrative order shall be issued directing that: Minimum Ceiling Height in existing, originally constructed residential units shall be at least 7', except that minimum ceiling height of 6'8" is acceptable throughout the dwelling unit provided that the following fire safety requirements are met:
  - a. hardwired/battery backup interconnected smoke alarms both near and in the affected sleeping area and on every level within the dwelling unit
  - b. emergency escape from affected sleeping area meets the 5.7 square feet requirementSloped ceiling exception for sleeping/study areas shall be extended to all areas of a dwelling unit except for the directional path of egress; this exemption permits ceilings to slope to a minimum of 5'
7. Code Violations v. Condition Advisory – Classify minor technical violations in all correspondence as "Condition Advisory". These technical violations will state the code requirement but will only seek voluntary compliance. Enforcement action will not be taken on "Condition Advisory" items. Examples of "Condition Advisory" items may be a small missing piece of trim work or the lack of sink stopper in a kitchen sink designed for such a stopper. More substantive deficiencies would be classified as code violations. Minor technical violations of the code have never resulted in enforcement action or prohibition of occupancy.

It was noted that staff is in the middle of the regular triennial Code review. Additional modifications to the Property Maintenance Code are being considered along with the adoption of the new Building, Residential, Electrical, Plumbing and Mechanical Codes. Staff will seek to present the Code adoption information to the Mayor and Council in July.

Councilmember Haywood asked why newly constructed units would be entered into the program after two years, rather than four (which follows the inspection schedule). Mr. Lestitian pointed out that a surprising number of complaints are received by the Code office about problems in units during the first year. Councilmember Haywood stated she would think the use and occupancy permit inspection would pinpoint deficiencies in construction. She suggested requiring newly constructed units to be entered into the program after four years, then inspected every four years (if there are no violations).

Councilmember Haywood likes the proposal to add two members to the Board of Technical Appeals. She asked what happens if the Board determines there is a weakness within the Code. Mr. Tissue stated they could recommend a change to the Mayor and Council. The Mayor and Council could decide if they wanted to proceed with making the change or not. Councilmember Haywood stated she thinks it would be good if the Board would be able to amend the code that they review. It was pointed out that the Mayor and Council would be the body to make any changes within the code.

Mr. Tissue stated staff has suggested making some amendments to the code as the Boards and Commissions language has been reviewed.

Councilmember Haywood stated she feels the language regarding ceiling height is confusing. She is concerned about the Condition Advisory addition. She asked why staff time and resources would be wasted on dealing with something if it does not interfere with the health and safety of the tenant.

Mr. Lestitian stated health and safety is the primary focus for the Code office, but other considerations are the future of Hagerstown and the quality of life, quality of maintenance and neighborhood vitality for all residents.

There was considerable discussion about how and whether or not, a missing piece of trim, holes in the walls or a missing sink stopper would reduce the quality of life for a tenant or pose a safety risk.

Mr. Lestitian stated the Condition Advisory is meant to be a means to advise a landlord of a potential issue. The inspector would have discretion as to whether or not to issue the advisory. Councilmember Haywood asked for a list of Condition Advisory items. Mr. Lestitian indicated a list is not available because they are at the discretion of the inspector. Councilmember Easton stated it is a problem if there is no list for landlords to follow.

Mayor Bruchey, as one example, asked if a baseboard conduit that had been painted over would be a condition advisory. Mr. Lestitian stated conduit on a baseboard would be a hazard and would not pass an electrical inspection. He stated occupancy is not prohibited if there is a condition. Occupancy is prohibited if there is a hazard, i.e. no smoke alarms. Mayor Bruchey used several other examples. He stated he believes the Mayor and Council need to focus on looking at every opportunity they can to make sure

they are focusing on the health and safety of the citizens they represent and to make sure they have access to quality rental housing stock.

Councilmember Brubaker clarified that interior inspections would occur at a tenant turnover, but not more frequently than every four years. Mr. Zimmerman pointed out this schedule would permit a tenant to live with a condition such as a loose bathtub from the wall for four years, if they did not file a complaint during that time.

Councilmember Breichner is concerned about the condition advisory. The City should concentrate on issues that are safety issues, rather than things, like trim and sink stoppers. He asked why this is included if there is no fine involved. Mr. Zimmerman pointed out the condition advisory is not a violation. It is intended to be an informational correspondence for the owner of the property.

Councilmember Haywood wondered if the owners of the property would appreciate being notified of issues that were not health and safety concerns. She is concerned about the subjectivity of the condition advisory. Mr. Tissue pointed out the condition advisory could be deleted from the proposed changes. Councilmember Metzner suggested providing the information as comments to the owner, rather than as an advisory. Councilmember Haywood indicated she believes that would be outside the scope of what Code Enforcement is to be doing.

Councilmember Metzner stated the City has a code in place, The International Property Maintenance Code (IPMC), with local amendments. The code can be amended by the Mayor and Council. The reason some of these issues have come up is because they are listed in the IPMC. He asked if the Mayor and Council want to go through the Code, line by line and determine which items they don't want included. An alternative would be to allow the permit office some discretion to not issue notices for the items they realize the Mayor and Council are extremely concerned about.

Councilmember Breichner would suggest someone go through the code and determine which items to remove. Councilmember Haywood suggested that the Board of Technical Appeals do this.

Mr. Lestitian noted that changing an item in one section of the code could affect language in another section. He pointed out that Staff has met with County staff, members of the landlord association and homeowner groups to review the code periodically.

Councilmember Metzner stated he thinks it would be more appropriate to have a specifically appointed group review the code and provide recommendations to the Mayor and Council. The changes presented at this meeting should be implemented as soon as possible.

Councilmember Brubaker stated the Mayor and Council have a responsibility to landlords and tenants. He would like to see the code be more user friendly and

consistent. He is concerned that one inspector would take an issue to court while another would not. He thinks someone reviewing the code technically would be good.

Mr. Tissue stated the City attorney has indicated the City must substantially comply with the State adopted International Property Maintenance Code. The local amendments, those unique to Hagerstown, are typically less strict than the international code.

Councilmember Easton stated he would like to see less government involvement in business, at all levels. He asked if the Code office is self sufficient. Mr. Lestitian stated it is not, but the average contribution from the General Fund has been \$ 10,000.00 for each of the last eight years. The primary focus of the Code office, that of health and safety, has not changed.

Councilmember Easton suggested educating tenants that they can call the Code office to report issues. This would shift some of the responsibility back to the tenant. Mr. Lestitian stated that the majority of tenants in housing where issues are noted are much less likely to report the condition because they are afraid of being evicted.

Mr. Zimmerman stated Staff could begin implementing the proposed changes, in anticipation of the Mayor and Council formally approving the amendments. Councilmember Haywood questioned how this would be acceptable and legal. Councilmember Breichner does not support changes to the Board of Technical Appeals or adding a Condition Advisory. Councilmember Metzner stated this would not change the situation that exists right now. The code enforcement would still be subjective.

Councilmember Haywood stated Staff is supposed to enforce the code and not things that aren't in the code.

Mr. Zimmerman stated the proposed changes address items on the list from the landlord and homeowner's groups. The issues are addressed in a positive manner. He again suggested moving forward with everything except the changes to the Board of Technical Appeals and the condition advisory, and with changing the inspection for newly constructed units to after four years.

It was the general consensus to move forward with the proposed changes, except as noted. Councilmember Haywood wants to see the ordinance language that will be introduced prior to voting on it. The language will be available for the preliminary agenda review. Mr. Zimmerman stated the changes will not be implemented administratively, prior to the Mayor and Council's approval. Introduction of the ordinance will be added to the agenda for April 27, 2010.

A recess was taken at 5:52 p.m.

Budget Work Session

The Mayor and Council reviewed the following areas of the 2010/11 proposed budget regarding expenditure reductions:

**The level of General Fund capital outlay and transfer to the CIP Fund for “pay as you go” funding of capital projects. (Section 1, Page 5, No. 17)**

An overview of General Fund capital funding by fiscal year is shown in Section 1, Page 10. It shows a 15 year history and a projection of what is included in the financial projections for the next 5 years. Additional details on what is included in the \$ 78,285 General Fund capital outlay (smaller capital expenditures) is found in Section 3, pages 85-87. The General Fund funding for the CIP of \$ 522,000 is shown in Section 4, with other sources of funding for the FY 2010/2011 CIP total of \$ 15,075,029. An overview of the non-utility projects by department showing the overall expenditure and sources of funds can be found in Section 4.

Councilmember Metzner asked why there is \$ 120,000 (from Excise Tax) included in the budget for the Professional Court Extension. He stated this is a county project that is not supported by the County. Rodney Tissue, City Engineer, stated the City authorized a traffic study to determine what improvements are going to be needed if the road is punched through. If the road is not extended, this money will not be expended. The project is not included in the County’s budget. Councilmember Metzner stated this should not be included in the City’s budget if it is not in the County’s budget. Councilmember Metzner also suggested removing the Northwest Connector project from the list, unless there is serious thought this will be completed in the near future.

Councilmember Brubaker pointed out that Excise Tax funding can only be used for road improvements within the City. Mr. Tissue stated Staff is trying to get ahead of the curve and line up properties in anticipation of these projects.

Councilmember Metzner asked where the project called Memorial Park is located. Mr. Zimmerman stated it is the City owned property at the corner of Potomac Street and Memorial Boulevard. It is on the list for discussion and one idea was to set aside part of that property as a memorial. Councilmember Metzner stated the \$ 55,000.00 allocated for the park could be used elsewhere. Mr. Zimmerman noted that this is Community Development Block Grant funding.

Phase I of Mills Park is included in the CIP list. This project will not proceed until grant funding is secured.

Mayor Bruchey asked if there is other funding that could be used for the stormwater management planning and improvements. Mr. Tissue stated staff is trying to determine what effect the recently passed laws will have on the City for implementing the State mandated Stormwater Management regulations. This will be discussed again after the State completes their review.

Councilmember Brubaker stated this budget year will be a “just get by” year, with no new bond issues and no vehicle replacements.

**The reduction in General Fund funded Contributions to Other Agencies.  
(Section 1, Page 5, No. 21)**

Detail of the individual agency contributions is shown in Section 3, Page 84. This represents the General Fund funded contributions. Some additional agency support is provided through the CDBG Fund as Public Service expenditures. There is a cap on these expenditures not exceeding 15% of the current year federal entitlement grant from HUD and the prior year’s program income.

Mr. Martin stated funding to the Community Free Clinic will be reduced in the General Fund budget by \$ 20,000.00. The City’s commitment to the Mike Callas Stadium has been completed and that funding will be redirected. He recommended keeping something in the budget for the Barbara Ingram School for the Arts.

The City has contributed \$ 50,000.00 to \$ 75,000.00 to CRS in recent years. A large percentage of calls for CRS are for city residents who are not able to pay for the service. The City’s contribution helps to offset some of the costs for these calls. He pointed out that the County is not giving any credit to the municipalities for funding provided to fire or emergency medical service providers in the tax differential calculation. Councilmember Metzner would be more supportive of reducing the City’s funding for the Narcotics Task Force than for CRS. Councilmember Haywood stated this year it is critical to maintain funding for CRS. They are now providing 24 hour emergency service to the West end of Hagerstown. She indicated the funding from the City is used to provide this service.

Councilmember Brubaker would like more information about CRS. Councilmember Metzner suggested funding the basic things.

Councilmember Easton asked how the list of agencies is determined. Mr. Martin stated the City has contractual obligations with some of the groups. Others provide key operations. Some have been included for many years. Councilmember Easton would like to hear a reason for funding the non-profits included in the budget.

Councilmember Metzner thinks the Hagerstown Municipal Band should be fully funded. Councilmember Breichner agreed.

Councilmember Easton asked what will be done with the \$ 35,000.00 allocated for the library if they aren’t downtown for two years. Mr. Martin stated the City’s internet service is through the library and there is no charge. The funding would remain in place.

Councilmember Haywood suggested establishing a policy for funding organizations from year to year.

It was the general consensus to fund the Hagerstown Municipal Band at the level of last year.

Mr. Zimmerman stated there is Community Development funding included in the proposed budget for agency contributions. The Mayor and Council have received feedback from groups about some of this funding.

Larry Bayer, Community Development Director, stated the CDBG funds offset some of the general fund contributions, i.e. Neighborhoods 1<sup>st</sup>. Other programs include: Children in Need and Holly Place.

CDBG funding has been provided for The Home Store and HNBP for the past several years. During the FY 09/10 budget, it was no longer possible to provide the same level of funding. The amount for each program was reduced to \$ 50,000.00. Beginning with the FY 10/11 Budget year, the level of funding the City receives from the CDBG program does not permit continued funding of either program. Mr. Bayer stated each request was reviewed using the criteria of providing necessary and vital services to individuals. The review included a determination of whether or not funding reductions would be destructive to an operation.

Councilmember Breichner wondered if funding for public facilities might be available. Mr. Bayer indicated staff could review the funding list and possibly make some adjustments to help with the other agency contributions.

Mr. Martin stated that funding for various CSafe programs is included, in the amount of \$ 318,000.00. The funding does not include \$ 62,000.00 from the General Fund to help fund the City's share of the after school program grant, as it has in the past. Councilmember Metzner stated he understood the after school program would be fully funded after the grant was depleted. Mr. Zimmerman indicated the program is funded for 10 months of the year.

Councilmember Easton asked if the Mayor and Council can dictate to the State that any funding cuts to the CSafe program can't be from the after school program. Mr. Martin stated it would most likely depend on how the grant was written.

Councilmember Haywood wants to hear from these agencies and how they will deal with the cuts. She believes the CSafe after school program should remain in tact. She believes this type of program will help alleviate juvenile delinquent issues.

Councilmember Easton would like additional information from the agencies. He stated the City can no longer afford to provide funding for all these agencies. He suggested looking at other ways the City can support them. For example, are there in-kind services the City could provide? Councilmember Metzner suggested this information would be in the organization's budget. He stated these organizations should not be funding things that are not essential. Mr. Martin pointed out the agencies are required to submit a budget with their funding request.



**Clarification of eliminating City plan provided prescription drug coverage for Medicare eligible retirees and dependents. (Section 1, Page 4, No. 13)**

The proposed budget includes \$ 315,000 in cost savings from the elimination of the prescription component of the City's Medicare supplement insurance. This coverage is received primarily by retirees age 65 or older and is often referred to as Medcomp. As Department Heads worked on the budget, they saw the opportunity for savings and at the same time provide more flexibility for the retirees to choose an Rx Plan that best meets their needs. Under the proposal, the City will continue to provide the health insurance component of the City's Medcomp Plan.

Retirees currently pay \$ 83.00 per month as their share of the premium cost for receiving this supplement. Elimination of the prescription portion of Medcomp as proposed in the budget reduces the retirees' premium cost to zero, saving the retiree \$ 996.00 on an annual basis. In addition to providing this premium cost savings to retirees, staff believes this proposal will offer more flexibility and provide them funds to select one of the 45 prescription plans offered through Medicare Part D.

The City also offers a Health Reimbursement Account (HRA) of \$ 400 per month for each participant to purchase a supplemental medical and prescription plan. Those funds roll over annually and can be used for premiums and out of pocket medical costs.

This new approach accomplishes two goals: Cost savings for the City and participants and provides flexibility to retirees, by making 45 plan options available to them.

Donna Frazier, Director of Human Resources, and Susan Delauter, Human Resources Administrator, were present to provide further information. There is a point between two coverage levels in which prescription benefits are paid for by the participant under Medicare D. This is commonly called the "donut hole." Federal and state subsidies are available to cover this gap, if the participant is eligible. Ms. Frazier stated the participants in the City's current plan are not eligible for these subsidies. Many of the available plans provide coverage for generic drugs through the gap. Ms. Frazier pointed out that not all of the current participants will benefit from this change. The Commission on Aging staff can assist someone to determine which plan is best for them, based on their individual needs. Ms. Delauter pointed out that participants who have prescriptions costs greater than \$ 5,000.00 could realize a significant savings.

Mayor Bruchey stated these retirees were guaranteed that they would have a prescription plan and they would be covered for their prescription costs. He estimates this change will be a benefit for less than 80% of the current participants.

Councilmember Haywood stated that, under the new national health care plan, the donut hole will be eliminated by 2020. In 2011, there will be a rebate system for those in the donut hole.

Councilmember Metzner pointed out that when these employees retired, the City coverage was the most beneficial option. Now, there are other options to choose from that may help even more with health care costs.

Mr. Zimmerman stated staff cannot say this change is ultimately going to benefit every single individual, but there may be other options that could be beneficial. The City is clearly encouraging participants to discuss their individual needs with the Commission on Aging.

Mayor Bruchey asked if the participants could choose to opt out of the prescription plan. Ms. Frazier stated, in order to be eligible for the subsidies, the plan would have to be eliminated in total. Mayor Bruchey suggested offering workshops to educate retirees on their options.

Councilmember Easton wondered if other options could be offered as an alternative. Ms. Frazier indicated the suggested amounts could be changed, if the Mayor and Council decide to do so.

#### **Whether to continue funding for the federal lobbyist, the Ferguson Group**

City wide cost of the contract is \$ 9,000 per month with the General Fund paying 50% and the Water and Wastewater Fund each paying 25%. The General Fund share of \$ 54,000 is included in Section 3 as part of the Legal Services budget.

The priority list for the Federal agenda is working its way through the process. Funding approvals typically are announced in the fall.

Councilmember Metzner stated, for him, if the Eastern Boulevard project is not funded through the federal process, the project should be removed from the City's budget. He is concerned that the number one priority identified by the City is a county project, which the Commissioners don't seem to support. Mr. Zimmerman indicated the County did send a letter of support for the project.

Councilmember Breichner stated he is opposed to continuing the contract with The Ferguson Group. The City needs operating funds to balance the budget and ending the contract will provide additional funds.

Councilmember Easton stated he does not support continuing the contract.

Councilmember Brubaker stated the City's budget situation has changed since the Mayor and Council agreed to renew the contract. He is reluctant to continue the contract as well.

Councilmember Metzner indicated he believes The Ferguson Group delivered what they said they would. He believes entering into a contract with them was correct and it

has paid off. There is a significant change in the City's fiscal situation that prompted this action. The City learned a lot from The Ferguson Group and about the lobbying process.

Councilmember Haywood stated if the contract is terminated, the Mayor and Council will have to take more responsibility in lobbying legislators for funding needs. She stated it is vital to stay in touch with federal and state legislators.

Councilmember Easton would like to hear from any agency that would be interested in partnering with the City for the federal lobbyist contract.

It was the general consensus to terminate the contract with The Ferguson Group, effective immediately. It was noted by all that the contract is being ended due to budget constraints and does not reflect any dissatisfaction with the performance of The Ferguson Group or their staff.

### **CITY ADMINISTRATOR'S COMMENTS**

*Bruce Zimmerman, City Administrator*, had no additional comments.

### **MAYOR AND COUNCIL COMMENTS**

*Councilmember M. E. Brubaker* stated the State legislative session has now ended. Minimal projects were funded during the session.

*Councilmember L. C. Metzner* reported the Barbara Ingram School for the Arts (BISFA) production, "Thoroughly Modern Millie" was excellent.

*Councilmember W. M. Breichner* agreed that the events at the BISFA were excellent.

*Councilmember A. C. Haywood* agreed with Councilmember Metzner and Councilmember Breichner.

*Councilmember F. W. Easton* had no additional comments.

*Mayor R. E. Bruchey, II* had no additional comments.

### **EXECUTIVE SESSION – April 13, 2010**

On a motion duly made by Councilmember F. W. Easton and seconded by Councilmember W. M. Breichner, the Mayor and City Council unanimously agreed by voice vote to meet in closed session to consult with counsel to obtain legal advice, #7; to consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State, #4 and to consider the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation or performance evaluation of appointees, employees, or officials over whom it has jurisdiction, #1 at 8:45 p.m. in the Council Chamber, 2<sup>nd</sup> Floor, City Hall, Hagerstown,

Maryland. The following people were in attendance: Mayor R. E. Bruchey, II, Councilmember W. M. Breichner, Councilmember M. E. Brubaker, Councilmember F. Easton, Councilmember A. C. Haywood, Councilmember L. C. Metzner, City Administrator Bruce Zimmerman, City Attorney William Nairn, Rodney Tissue, City Engineer, Deborah Everhart, Director of Economic Development, and Donna Spickler, City Clerk. The meeting was held to discuss potential litigation, a waiver from the Partners in Economic Progress requirements and to discuss an employment contract. No formal action was taken at the meeting. On a motion duly made, seconded and passed, the meeting was adjourned at 8:58 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: May 25, 2010