

**22<sup>ND</sup> REGULAR SESSION – May 25, 2010**

**Mayor R. E. Bruchey, II called this 22<sup>nd</sup> Session of the Mayor and City Council to order at 7:06 p.m., Tuesday, May 25, 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 Mark Boyer and D. K. Spickler, City Clerk.**

The invocation was offered by Councilmember A. C. Haywood. The Pledge of Allegiance was then recited.

Mayor Bruchey announced the Rules of Procedure for this meeting will be followed as adopted June 23, 2009. It was announced that the use of cell phones and electronic devices during meetings is restricted and that all correspondence for distribution to elected officials should be provided to the City Clerk and should include a copy for the City Clerk for inclusion in the official record.

The next scheduled meetings are: Work Sessions beginning at 4:00 p.m. on Tuesday, June 1, 2010, Tuesday, June 8, 2010, Tuesday, June 15, 2010 and the Regular Session on Tuesday, June 22, 2010 at 7:00 p.m.

**APPOINTMENTS**

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember W. M. Breichner, the Mayor and City Council unanimously agreed by voice vote to appoint Gregory Hannigan and Aaron House to the Board of Technical Appeals. The term for both members will expire June 1, 2014.

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember W. M. Breichner, the Mayor and City Council unanimously agreed by voice vote to appoint Richard Cushwa, Maury Domskey, Richard Ebersole, Mike Mittel, Mark Neubauer and Winslow Wheeler to the Bicycle Task Force. The term for all members of this newly created task force will expire on June 1, 2012.

**GUESTS**

Wayne Winebrenner and Peter Callas, Korean War Veterans Association, informed the group that there will be a tribute to Korean War veterans on June 26, 2010 at the Kepler Auditorium at Hagerstown Community College. The event will honor all veterans and observe the 60<sup>th</sup> anniversary of the beginning of the Korean War. A special tribute will be given to the 31 Washington County residents who died during the war. The Mayor and Council are invited to attend this event. Mr. Winebrenner and Mr. Callas requested a proclamation from the City in recognition of the anniversary.

**CITIZEN COMMENTS**

Alan Johnson, President of the Landlord Association, spoke in favor of the amendments to the rental facilities ordinance. He thanked the Mayor and Council for addressing the concerns of the Landlord Association and Penmar Association of Realtors. The proposed changes do not weaken the authority of the code inspectors. By accepting the housing authority's inspections, there will be 800 fewer properties the City has to inspect. Both groups (realtors and landlords) want an attractive place to live in. He urged the Mayor and Council and these groups to continue to work together.

Roger Fairborn, Edgewood Hills, Hagerstown, Maryland, is a broker, resident and property owner in Hagerstown. He stated he did not oppose a rental facilities program to improve health and safety and to deal with slum lords. He did oppose the progression of the program as it became more restrictive. The amendments being considered will encourage ownership of rental properties. The change will benefit investors, tenants and neighboring property owners. This effort on the part of the Mayor and Council is a positive step.

Christopher Kline, 317 S. Mulberry Street, Hagerstown, is against the amendments being considered to the rental facilities ordinance. The rental facilities program improves the overall quality of life. He is concerned that the amendments will decrease the value and quality of his home.

Julie Wright, 403 Brown Avenue, Hagerstown, Maryland, supports the proposed amendments.

Darryl Sword, 152 S. Mulberry Street, Hagerstown, Maryland, supports the proposed amendments.

Wendy Wilmowski, Germantown, Maryland, is a real estate agent from Montgomery County. She represents investors from that area. The amendments being considered will improve interest in Hagerstown from investors.

Judy Wheeler, 213 S. Prospect Street, Hagerstown, Maryland, spoke against the rental facilities changes being considered on behalf of the Historic Heights Neighborhoods 1<sup>st</sup> Group. They realize landlords face challenges, as all home owners do. The past ordinance took into account the challenges. The group is concerned these amendments are moving toward less stringent requirements. It is troubling, for one thing, because it sends the message that neighborhoods don't come first. She urged the Mayor and Council to reconsider making the changes to the rental facilities ordinance.

Jim Stone, 1172 The Terrace, Hagerstown, Maryland, supports the amendments to the rental facilities ordinance. He believes this is a necessary step to balance the regulatory nature of the program. This will benefit the entire community.

Gordon Bartels, 139 S. Mulberry Street, Hagerstown, Maryland, supported the comments presented by Judy Wheeler. He expressed his concern that the landlords and the Mayor and Council discussed these amendments but Neighborhoods 1<sup>st</sup> groups were not included. He urged the Mayor and Council to table action on the proposed amendments and provide an opportunity for the Neighborhoods 1<sup>st</sup> groups to discuss their concerns.

Michael Stanford, 12709 Bradbury Avenue, Smithsburg, Maryland, is a liaison between Penmar Realtors and the Landlord Association. He thanked the Mayor and Council for the steps they are considering with the rental facility ordinance. He asked for a show of hands in support of the amendments. (Many people in the audience raised their hand.)

John Liebl, 18727 Rolling Road, Hagerstown, Maryland, stated he enjoys the events that are held in Washington County. He and his granddaughter enjoyed the recent wagon train event. He stated his family has frequently purchased donuts from Krumpe's Donuts. He suggested naming the alley Krumpe Way, in honor of the family.

Virginia MacGruder, no address given, was a Hagerstown property owner until last November. Her property was flanked by rental properties. She stated it is true that tenants affect the quality of lives around them. She does not think accepting federal inspections for properties is good. She stated the community knows what the needs are and should establish its own regulations. She stated she realizes some people are unwilling to report conditions out of fear of being evicted from their homes.

Winslow Wheeler, 213 S. Prospect Street, Hagerstown, Maryland supports the renaming of the alley at Krumpe's Donuts. He is against the adoption of amended standards for rental facilities. He stated the process to get to this point has been opaque. Meetings between the Mayor and Council and the landlord association were apparently held and constituents were not included. The proposed changes do not reflect what was in the original memorandums. These amendments will allow the substandard properties to sink even lower.

Penny M. Nigh, 534 N. Mulberry Street, Hagerstown, Maryland stated that during her time as a Councilmember, they (Mayor and Council) knew they had to take a stand and do something to stop the deterioration of rental property in Hagerstown. She asked the Mayor and Council to not pass any more amendments which diminish property standards.

Mayor Bruchey stated he has listened to concerns from the landlords and the tenants. There have been discussions of this topic in more than ten open meeting sessions. The meetings were not held "behind closed doors" as was implied during some citizen comments. The changes being considered are positive. Quality rental stock will still be provided for tenants.

## **MINUTES**

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember W. M. Breichner, the Mayor and City Council unanimously agreed by voice vote to approve the minutes, as presented, for the Mayor and Council meetings held on April 6, 2010, April 13, 2010, April 20, 2010 and April 27, 2010.

## **CONSENT AGENDA**

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 approve the Consent Agenda as follows:

- A. Fire Department:
  - 1. Acceptance of \$ 16,000.00 Department of Homeland Security Fire Prevention and Safety Grant with a City match of \$ 1,600.00
  - 2. Acceptance of \$ 51,305.00 Department of Homeland Security Assistance to Firefighter Grant with a City match of \$ 5,130.00
- B. Public Works: Emergency Purchase: Traffic Signal Control Cabinet – Econolite Control Products, Inc. (Hanover, MD) \$ 10,900.00
- C. Light Department: Transformers – WESCO Distribution (Richmond, VA) \$ 72,864.00
- D. Water Department: Miscellaneous Inventory – HD Supply Waterworks, LTD (Martinsburg, WV) \$ 42,275.37
- E. Wastewater Department:
  - 1. Annual Maintenance of Compressors – Atlas Copco Edmac Customer Center (Thorofare, NJ) \$ 31,170.00
  - 2. Emergency Purchase: Muffin Monster Repair – JWC Environmental (Buford, GA) \$ 16,011.07
- F. Community Development: Rehabilitation of House at 25 E. Lee Street – Alfred Hobbs (Hagerstown, MD) \$ 52,696.00

## **UNFINISHED BUSINESS**

### **A. Approval of an Ordinance: Chapter 197, Amended Licensing and Inspection Program for Residential Rental Facilities**

**Action:** On a motion duly made by Councilmember A. C. Haywood and seconded by Councilmember F. W. Easton, the Mayor and City Council unanimously agreed by voice vote to approve an ordinance to amend the Code of the City of Hagerstown, Chapter 197 thereof, entitled Rental Facilities to:

1. Decrease the frequency of exterior and interior inspections by lengthening the time period between required inspections, and to
2. Lengthen the exemption period of newly constructed rental facilities, and to
3. Allow for acceptance of Hagerstown Housing Authority's interior inspections, and to
4. Require a notice to occupants of a rooming unit prior to an interior inspections, and to
5. Modify the "Issuance of the License" to require issuance upon registration and full payment, and to
6. Modify the application procedure to comply with a recent Court of Appeals decision

Discussion: Councilmember Brubaker stated it has always been the objective of the Mayor and Council to improve properties. He is glad to hear the landlord association feels the amendments are a positive step in reaching a middle ground. He challenged them to pressure their non-conforming peers to take care of their properties. He feels these amendments are too much, but he will support the ordinance. He stated he did not make any promises during the campaign.

Councilmember Metzner stated this Council is transparent. There were two issues during the campaign – the behavior of elected offices and code enforcement. The message from voters was loud and clear. He stated one of the first goals of this Mayor and Council was to review the Ethics Code. An Ethics Review Board is in the process of reviewing the code. He stated this body never met with the landlord association. There were individual meetings but not one with the full Mayor and Council. He does not think there would be a unanimous vote on amendments that would further delineate the ordinance. He stated the content of inspections is not changing, the frequency is. He assured the citizens who spoke at this meeting that this body will listen to their input.

Councilmember Easton stated Code Enforcement has been an issue and confrontational for more than eight years. He takes exception with the comments about promises being made. He did not make promises to anyone. He stated there were no secret meetings of the group. He did meet individually with some people.

#### **B. Approval of an Ordinance: Quit Claim a Portion of 800 West Irvin Avenue Right-of-Way**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve an ordinance to authorize the execution of a quit claim deed for a portion of the City's right-of-way abutting 800 West Irvin Avenue. The property owner is requesting that

the City release any interest in the property since their carport falls within the area.

**C. Approval of an Ordinance: Tax Rate for July 1, 2010 to June 30, 2011**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember W. M. Breichner, the Mayor and City Council unanimously agreed by voice vote to approve an ordinance as introduced on May 11, 2010 to establish the City's tax rates for the levy year July 1, 2010 through June 30, 2011 on the basis of \$0.788 per \$100 of assessed value of all real property and \$ 1.97 per \$ 100 of assessed value of all business personal property within the City of Hagerstown. These rates are the same as the current year.

The County is proposing a tax rate differential of \$0.125 per \$100 of assessed value for County real estate taxes within the City in lieu of a payment in lieu of services to the City. The City is electing not to increase the City tax rate to make up for this lost revenue.

As a result, City taxpayers will see their overall real estate tax rates for City, County, and State taxes reduced by 6.8% for the next fiscal year.

**D. Approval of an Ordinance: Budget For July 1, 2010 to June 30, 2011**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember W. M. Breichner, the Mayor and City Council unanimously agreed by voice vote to approve an ordinance as introduced on May 11, 2010 to adopt the budget for fiscal year July 1, 2010 through June 30, 2011 in the total amount of \$ 134,800,360.

**NEW BUSINESS**

**A.. Introduction of an Ordinance: Land Use Management Code Text Amendment – ZT-2009-04 To Add Additional Definitions for Residential Care Facilities and to Accordingly Modify the Land Use Chart**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember F. W. Easton, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance for a text amendment to the City Code, Chapter 140, Land Management Code, Article 4., Land Use Charts in Sections B, D, E, F, and H, and Section C, Definitions.

**B. Introduction of an Ordinance: Repealing and Replacing Chapter 213 of the City Code “Stormwater Management”**

**Action:** Councilmember L. C. Metzner made a motion to introduce an ordinance to amend the Code of the City of Hagerstown by deleting and repealing Chapter 213 thereof, entitled Stormwater Management, and replacing it with a new Chapter 213, to be entitled Stormwater Management. Councilmember F. W. Easton seconded the motion.

Discussion: Councilmember Breichner expressed his concern that this has been mandated by the State but no funding assistance is being offered. He would support the ordinance if the State would provide some financial assistance.

Motion carried, 4-1 with Councilmember W. M. Breichner voting No.

**C. Introduction of an Ordinance: Amendments to Chapter 60, Vehicles and Traffic**

**Action:** On a motion duly made by Councilmember F. W. Easton and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance to amend Chapter 60 of the City Code entitled, Vehicles and Traffic, to revise regulations pertaining to vehicle towing and parking enforcement

**D. Introduction of a Resolution: Aristodemos Capital Group, LLC, 19330 Leitersburg Pike, Case No. A-2010-01**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to introduce an annexation resolution for property located at 19330 Leitersburg Pike. The property to be annexed is approximately 2.07 acres in size and is intended to be added to and made part of the adjacent municipal lands.

Discussion: Councilmember Breichner indicated he was told the reason this annexation request was submitted is because the owner of the property cannot gain approval from the County for what they propose to do.

Councilmember Metzner pointed out this motion begins the process of responding to the request. It does not mean the Mayor and Council approved the annexation.

**E. Approval of Annexation Plan: Aristodemos Capital Group, LLC, 19330 Leitersburg Pike, Case No. A-2010-01**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember F. W. Easton, the Mayor and City Council unanimously agreed by voice vote to adopt an annexation plan for the Aristodemos Capital Group, LLC (A-2010-10) Annexation.

**F. Approval of a Resolution: Revising Parking System Rates and Fees**

**Action:** 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 approve a resolution approving the revised schedule of parking system rates and fees, effective July 1, 2010.

**G. Approval of a Resolution: Approval of the FY 2010/2011 Annual Action Plan for the Community Development Block Grant**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember W. M. Breichner, the Mayor and City Council unanimously agreed by voice vote to approve a resolution approving the FY 201/2011 Annual Action Plan for the Community Development Block Grant Program, and authorizing the Mayor to file an application for financial assistance with the US Department of Housing & Urban Development in the amount of \$ 1,004,949 for the CDBG programs, and further authorizing the Mayor to execute all other documents relating to the City's CDBG program for FY 2010/2011.

**H. Approval of a Resolution: Approval of the FY 2010/2014 Consolidated Plan for the Community Development Block Grant**

**Action:** On a motion duly made by Councilmember F. W. Easton and seconded by Councilmember W. M. Breichner, the Mayor and City Council unanimously agreed to approve a resolution approving the FY 2010/2014 Consolidated Plan for the Community Development Block Grant Program.

**I. Approval of a Resolution: Naming Alley 2-128 as "DoNut Alley"**

**Action:** On a motion duly made by Councilmember W. M. Breichner and seconded by Councilmember F. W. Easton, the Mayor and City Council unanimously agreed by voice vote to approve a resolution authorizing the designation of Alley #2-128 as "DoNut Alley." This alley runs north and south, parallel with the 900 block of Maryland Avenue and Spruce Street. The alley is so named in honor of 60 years of Krumpe's Donuts, located adjacent this alley and in response to a citizen's petition.



Discussion: Councilmember Breichner stated the petition submitted asked for the name DoNut Alley. The sentiment to name the alley in honor of Krumpe's is good, but the Krumpe family asked for the name to be DoNut Alley.

**J. Approval of Waiver of the Adequate Public Facilities Ordinance for Hamilton Hotel Project**

**Action:** On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember M. E. Brubaker, this item was removed from the table.

Councilmember M. E. Brubaker made a motion to approve a waiver of the Adequate Public Facilities Ordinance school test requirements for Ares Investment Group, LLC's plan to adapt the old Hamilton Hotel at 90-96 West Washington Street into 24 residential condominium units for intended sale to young professionals. A waiver under the Revitalization Clause of the APFO is justified given the proposed redevelopment plan and the fact that the project is located in the Downtown "revitalization area," the upper floors of the building have been vacant for decades, and the impact on the school system from this project would be negligible. The County Commissioners approved this APFO waiver request on March 30, 2010. Councilmember F. W. Easton seconded the motion.

Motion carried, 3-2 with Councilmember W. M. Breichner and Councilmember L. C. Metzner voting No.

**K. Acceptance of the Utilities Department Street Patching Contract for Fiscal Year 11 with Arthur Construction, Inc.**

**Action:** On a motion duly made by Councilmember A. C. Haywood and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve the Fiscal Year 11 Street Patching Contract in the amount of \$ 269,775.00 (two hundred sixty nine thousand seven hundred seventy five dollars) with Arthur Construction, Inc. This contract is an estimate, with the actual cost based upon the actual work performed for street patching and repairs associated with the operations of the Water Distribution Division and Wastewater Collections Division. Adequate budgetary funds are in place in the three accounts, as on the New Business Approval Form.

**L. Approval of Memorandum of Understanding – Department of Corrections Maryland Correctional Training Center for Use of Inmate Labor Crews**

**Action:** On a motion duly made by Councilmember W. M. Breichner and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve a Memorandum of

Understanding with the Maryland Department of Corrections for the use of inmate labor to supplement the City of Hagerstown's labor pool.

**M. Adoption of Amendment to Design Review Guidelines**

**Action:** On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember W. M. Breichner, the Mayor and City Council unanimously agreed by voice vote to adopt an amendment to the Architectural Design Guidelines for the Residential Historic Districts and the Downtown Historic District that modifies the standard for replacement windows. The new language is as follows:

“While it is preferred to retain or replace-in-kind historic windows on front and other facades visible from a public way, non-wood replacement products shall be allowed if the new window replicates the appearance of the original window in design and in the width and depth of individual window elements. For facades not visible from a public way, replacement windows would not be required to replicate the appearance of original windows.”

**N. Approval of a Contract for the Construction of Streetscape Improvements to the “000” Block of North Potomac Street**

**Action:** On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember F. W. Easton, the Mayor and City Council unanimously agreed by voice vote to award the contract to Concrete Central, LLC in the amount of \$ 133,720.00 for improvements to the “000” Block of North Potomac Street. These improvements are consistent with the 1996 Downtown Enhancement Plan prepared by LDR and the scope of work and funding plan are included in the May 18, 2010 memo to the Mayor and City Council.

**CITY ADMINISTRATOR’S COMMENTS**

*Bruce Zimmerman, City Administrator*, thanked the Mayor and Council for their work on the budget this year. A balanced budget was approved with significant expenditure reductions and no tax increase.

**MAYOR AND COUNCIL COMMENTS**

*Councilmember W. M. Breichner* stated the Council of Governments met last week. The main topic was the tax differential. They will be developing bylaws for the group.

*Councilmember M. E. Brubaker* had no additional comments.

*Councilmember F. W. Easton* thanked his fellow Mayor and Council members and City staff for their work on the budget and for their support throughout their first year in office.

*Councilmember A. C. Haywood* thanked Councilmember Breichner for participating in the Council of Governments. She thanked everyone who spoke during citizen comments. She pointed out topics are usually discussed by the Mayor and Council at several meetings, prior to any formal action.

*Councilmember L. C. Metzner* thanked his fellow Mayor and Council members for their work during the first year in office. He urged everyone to remember all veterans, especially on Memorial Day.

*Mayor R. E. Bruchey, II* stated there will be three wreaths placed on Memorial Day – one in the square, one at the monument on Memorial Boulevard and one at the Medal of Honor Triangle. He attended the National Junior Honor Society sixth grade induction at Western Heights Middle School. These students have made great achievements in service and character. Character is what happens when no one is watching.

There being no further business to come before the Mayor and City Council, on a motion duly made, seconded and passed, the meeting was adjourned at 8:16 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: June 22, 2010