

WORK SESSION – May 31, 2005

Mayor Richard F. Trump called this Work Session of the Mayor and City Council to order at 4:00 p.m., Tuesday, May 31, 2005 in the Council Chambers at the City Hall. Present was Mayor Trump, City Council Members K. B. Aleshire, K. S. Cromer, L. C. Metzner, P. M. Nigh and A. Parson-McBean, City Administrator Bruce Zimmerman, City Attorney John Urner and City Clerk D. K. Spickler.

Rules of Procedure

The Mayor and City Council had received copies of the Rules and Procedures followed by the previous administration. Mayor Trump asked Bruce Zimmerman, City Administrator, to review changes suggested by staff. He stated they would then discuss changes recommended by the Council.

The following sections were highlighted for discussion:

- 2.1 Rules of Order – “Roberts Rules of Order Newly Revised: Tenth Edition” is the current edition
- 2.2 Meetings to be Public – discusses invitations to testify at meetings
- 2.10 Cellular Telephones – is a new section added by the previous administration
- 3.1 Regular Meeting – consider changing the wording in order to allow the Mayor and Council to change the regular session meeting date, when necessary.
- 3.4 Executive Sessions – follows the City Code and the Annotated Code of Maryland
- 5.1 Order of Business – consider changing the order of the meeting to address guests and appointments prior to public hearings.
- 5.1 Order of Business – Citizen Comments – citizens have raised questions during their comments that Citizen Comments are heard after the voting segments.
- 5.1 Order of Business – Mayor and Council Comments – should address how comments will be conducted
- 6..1 Addressing the Mayor and Council – as listed, citizens are required to notify the Mayor and Council in writing they wish to address the Mayor and Council. No written request has been required to address the Mayor and Council.

6.2 Time Limit – The length of time for comments is stated as being limited to five minutes, but comments are often longer.

Councilmember Aleshire indicated the wording for cellular phone usage worked well before. He suggested allowing citizen comments at the time an item is discussed. He pointed out that section 5.2 states any citizen may remove an item from the consent agenda. It would be appropriate to let the Council be the ones to remove an item from the consent agenda. He stated the time limit on comments has not been enforced in the past. If the time limit is included in the rules and procedures it should be enforced. If the time limit is not going to be enforced, it should not be listed.

Councilmember Metzner agreed that guests and appointments should come before the public hearing in the order of the meeting. He suggested deciding on a case by case basis for hearing citizen comments prior to voting on an issue. General citizen comments should remain where they are listed. He stated the Mayor and Council need to ensure they will be able to invite citizen comments, when appropriate, before voting.

Mayor Trump asked if it would be helpful to ask for citizen comments in writing.

Councilmember Metzner suggested keeping citizen comments as they are. He stated he thinks it is appropriate to limit comments to five minutes. However, if it is obvious that a five minute time limit is not appropriate, the Mayor (as chair of the meeting) should be able to ask for a change in the limit. There are specific guidelines for addressing the Mayor and Council. He suggested having a copy of those guidelines available at the sign in sheet for comments.

Councilmember Cromer suggested, in addition to the time limit for comments, limiting the number of people who speak from the same organization. After some discussion, it was recommended that the number of spokespersons be limited to two.

Councilmember Nigh stated she has received complaints from citizens about not being able to address the Council before an issue is voted on. She would like citizens to be allowed to speak on an issue before voting occurs. General comments could stay in the same place.

Councilmember Metzner stated comments about items to be voted on should be heard at the work session.

Mayor Trump asked that the Rules and Procedures be updated from the discussion at this meeting. The Mayor and City Council will review the document prior to accepting it.

Councilmember Metzner suggested following the previously adopted Rules and Procedures until the new ones are adopted. He stated they need to decide how they want to handle citizen

comments.

Councilmember Aleshire stated he is agreeable to either guideline.

Mayor Trump requested that the rules allow all citizens to have the opportunity to speak. He stated the Council could operate in a controlled way and control the length of the comments and still have order.

Councilmember Metzner stated the Mayor and Council need the flexibility to suspend the rules, if necessary. Councilmember Aleshire stated he would agree to this, if the flexibility is in place.

Mr. Zimmerman clarified that Citizen Comments would be heard at the Regular Session, but not at Work Sessions, unless the rules are suspended.

Councilmember Cromer stated if someone submits written comments and the Council has questions, they should be able to invite that person to provide additional comments and information at a work session.

Councilmember Metzner suggested including a place on the sign in sheet for noting the topic the person wishes to discuss.

The Mayor and City Council will review the revised Rules of Procedure and schedule approval for the June 21, 2005 meeting.

Blues Fest Schedule

Karen Giffin, Public Information Manager, stated the 10th Annual Western Maryland BluesFest will be held June 3-5, 2005. It takes many people working together to put together this event, such as the BluesFest Committee, Mike Spiker (City Light Manager), Eric Deike (Public Works Manager), Jim Bender (Assistant City Engineer), the Public Information Staff and 130 volunteers.

The Mayor and Council thanked the committee for their efforts.

Carl Disque, Chairman, thanked the Mayor and Council for their support of this event. The University System of Maryland has been included in the celebration this year. The first summer concert series performance at University Plaza was a Blues celebration. He thanked Karen Giffin for her talent and dedication to this event.

Director of Administrative Services Vacancy

During the May 24, 2005 Mayor and Council meeting, Councilmember Nigh requested that

the Director of Administrative Services position vacancy be placed on the Mayor and Council's agenda. This position was authorized by Mayor and Council in October, 1996, utilizing an existing management/supervisory position in the Finance Department. John Budesky's resignation from the position was announced on February 24, 2005 and the vacancy was advertised, with a closing date of May 23, 2005. Eighty five applications (from internal and external candidates) have been received.

Bruce Zimmerman, City Administrator, stated the position has served the City and the community well for nearly nine years and he recommends that the Mayor and Council move forward with filling the position. The primary responsibilities of this position during the past three years have been the following: 1) Management of the City's Parks and Recreation Operation; 2) Negotiation of the City's four collective bargaining agreements and handling other aspects of the City's labor management program and 3) Management of the City's Purchasing and Insurance Program.

Initially, the position was conceived as providing additional staff resources in the City Administrator's Office. Over the years it has evolved and now holds very limited responsibilities in general city administration. The position now serves as the manager for parks, recreation, purchasing and insurance, and the City's lead collective bargaining negotiator. Elimination of this position will negatively impact the management of the parks and recreation and purchasing and insurance functions. There is not currently a department manager in place to oversee these operations. Likewise, the loss of this position eliminates a dedicated position to handle labor management and collective bargaining. The Departments primarily affected by the loss of this position would be Finance and Parks & Recreation, with some impact on the Human Resources Department and City Administrator's Office.

This position is in the Proposed Budget with a salary range of \$ 51,403 to \$ 74,130. In recent years, the City has eliminated several management and supervisory positions, primarily due to the weak financial condition of the General Fund and reorganization of City Departments.

Mr. Zimmerman recommended, that if Mayor and Council wish to consider further elimination of Management positions, this should be done based on a plan that considers the overall goals for services, operations, and staffing levels, along with the management structure to meet those goals. Based on the current operation levels and work demands on Department Managers, Mr. Zimmerman stated he could not recommend further reductions in manager positions.

Mr. Zimmerman indicated this position has saved the City \$150,000 by reducing the need for other positions. This responds directly to the Mayor and City Council's direction to provide increased customer service. He stated it is helpful to have a dedicated person for collective bargaining.

Mayor Trump complimented Mr. Zimmerman for his management of the position. He stated this is a discussion to answer questions and not a discussion to consider a vote on whether or not to fill the position.

Councilmember Nigh stated she doesn't think the position is needed. Caroline Twigg, Purchasing, has been performing the purchasing duties of the position. Mr. Zimmerman stated that position existed before David White retired and Ms. Twigg has had the opportunity for professional growth.

Councilmember Nigh asked if Ray Foltz, Assistant Finance Director, is the chief negotiator at this time. Mr. Zimmerman indicated that is correct, along with Mr. Zimmerman and Donna Messina. He stated the issues raised in the financial report need to be addressed and they have to be careful how much time is required for negotiations from Mr. Foltz. Councilmember Nigh stated Mr. Zimmerman was the lead negotiator when he came to the City. Mr. Zimmerman stated the position was not advertised that way, but he did serve on the negotiating team.

Councilmember Nigh asked what the salary is for the Director of Administrative Services position. The salary is in the mid \$ 60,000 range, plus benefits. She stated she finds it difficult to believe the position needs to be filled when there are employees who are performing the duties listed, and doing them very well.

Mayor Trump stated it is not the Mayor and Council's responsibility to run the day to day operations of the City. This is the responsibility of the city administrator. The position has been included in the approved budget. He stated the Mayor and Council cannot be second guessing every decision that is made. There should be agreement that we go forward as budgeted.

Councilmember Cromer stated she had some comments and questions about the position.

Mayor Trump called for order in the meeting. He requested that the people who have questions about this position talk with Staff so they fully understand the duties and responsibilities. He stated it will be discussed at the next work session. He stated the Council knew about the vacancy in February and it is not good management to question the necessity of the position at this point.

Excise Tax/Adequate Public Facilities Ordinance (APFO) Legislation

Bruce Zimmerman, City Administrator, stated House Bill 1272, the Washington County Growth Management Act of 2005, was adopted by the State Legislature during the last session. House Bill 1272, which becomes effective July 1, 2005, enables the county to revise its existing excise tax program to provide for additional revenues from development projects throughout the county to fund public capital improvement projects, including schools. As the new excise tax will replace the school and road fees currently required in the County's Adequate Public

Facilities Ordinance (APFO), the County is amending their APFO concurrently with adoption of the implementation ordinance for the new excise tax. The County intends to have both ordinances in place by July 1, 2005.

House Bill 1272 allows municipalities to retain a portion of the excise tax collected within their jurisdictions if they adopt an APFO with a school test substantially similar to or more stringent than the County's APFO school test. An APFO is a mechanism local governments may use when reviewing site plans or subdivision plats for new development which allows delays in approvals of new development projects if public infrastructure is not adequate to serve the new development project. Washington County's school adequacy test in their APFO (as proposed for amendment) requires that an elementary school be below 85% capacity and middle and high schools to be below 100% capacity as a condition of approval for new residential development projects. At present and as projected for September, 2005, all of the elementary schools in the Hagerstown Urban Growth Area are over capacity.

There are significant issues related to House Bill 1272 that the Mayor and City Council will need to consider:

1. Requirements of House Bill 1272
2. Impact of excise tax on development
3. Impact of excise tax on City revenues
4. Impact of APFO on City development activity
5. Impact of excise tax and APFO on downtown revitalization and other community revitalization projects
6. Coordination of APFO with Sewer Capacity Allocation Program
7. Coordination of excise tax with City impact fees
8. Potential for school capacity to control City development
9. Mayor and City Council's ability to plan for and direct growth in the City of Hagerstown

Depending upon the course of action regarding the APFO issue, the City could be faced with the following alternative scenarios as a result of House Bill 1272:

- 1) If we DO NOT adopt an APFO with a school test, we are prohibited from retaining a portion of the excise tax for City capital improvement projects and would be constrained in our ability to adopt a City impact fee on new development since the "double taxation" of excise tax and impact fees on new development in the City has the potential of stifling growth; or
- 2) If we DO adopt an APFO with a school test, the City may retain 28% of the base excise tax for City capital improvement projects, however the City Planning Commission will not be able to approve new residential site plans or subdivisions unless the over-

capacity schools affecting our development projects are improved by the County.

If the Mayor and City Council decide to proceed with an APFO so that excise tax funds may be retained by the City, staff believes there will be two major pieces of legislation which will need to be adopted: an ordinance allowing the City to collect and retain a portion of the excise tax; and an Adequate Public Facilities Ordinance with a school adequacy test. It would be staff's recommendation that both pieces of legislation become effective no later than mid-July.

Staff believes that the Mayor and City Council needs to be very cautious in implementing an APFO to ensure that an APFO does not either stop development within the City nor remove the Mayor and City Council's current ability to plan for and direct growth within the City. Staff believes there is merit to House Bill 1272, particularly as a means of providing additional funding from new development for school capacity expansion projects. If the City is provided a collaborative role with the Board of Education and the County Commissioners so that we may have a voice in the prioritization decisions for school capital improvement planning as it impacts City development, then staff would recommend proceeding with the plan for a City APFO with a school test.

Kathleen Maher, Planning Director, indicated there is a 2% administrative fee built in to the retained 28% of the base excise tax.

Councilmember Cromer stated it appears this is a Catch 22 situation. If the City does not adopt the ordinance, they receive no revenue. However, if they do adopt the ordinance, there will be no revenue because the schools are over capacity. Ms. Maher indicated that is correct.

Councilmember Cromer asked if the County has offered any compensation to remedy this situation. Ms. Maher stated they have not.

Mayor Trump stated meetings are being held with the County and the school board to determine where school improvement plans are and how to increase the school capacity.

Councilmember Metzner stated the information is necessary, but the Mayor and City Council have to pass this legislation prior to July 1, 2005, or revenue will be lost.

Councilmember Aleshire stated the only thing that will happen is the City will not get the 28% from the development that occurs. He stated the City has the authority to have developers pay their fair share and to help the County gets its fair share. He stated the money is earmarked for something we are already requiring the developer to do. He stated if the County feels the City is developing in a manner that is not consistent with their APFO and school test, they can change the test.

Mr. Urner stated the City's legislation has to be substantially similar to the school test.

Councilmember Metzner asked if the Mayor and City Council could adopt the APFO, then decide at a later date to not collect it. Mr. Urner indicated this was possible.

Councilmember Metzner suggested negotiating with the County in an attempt to receive a portion of the funding. He stated by adopting this APFO, the City is giving up a lot of potential rights.

Mr. Urner stated another option would be to adopt an APFO that has the same test as the County's school adequacy test. The City could include the same exemptions, waivers or mitigation rules for development within the City limits. He stated it is important to remember the only thing the City is mandated to do with the APFO is to have the same school adequacy test.

Councilmember Metzner stated there are members of the Mayor and City Council that are concerned about allowing too much development, rather than curbing development.

Councilmember Aleshire asked who determines the excise tax rate. Mr. Zimmerman stated the County determines the rate. Mr. Urner indicated the City is basically a collecting agency.

The fees will be as follows:

Non-residential Development – up to \$ 5.00 per square foot

Single-family Detached Unit - \$ 13,000 per unit, which can double for projects with 25 plus units

Multi-family Unit - \$ 15,500 per unit, which can double for projects with 25-plus units

Councilmember Aleshire stated the City needs the ability to work with building owners who are renovating their buildings. The excise tax is required when a building changes use. He believes this will have a detrimental affect on City development. He stated specific, allowable exemptions are necessary. The excise tax will apply to all construction, even if the City does not adopt the ordinances. Ms. Maher stated the tax credit would not be available to developers if the ordinance is not adopted.

Councilmember Aleshire asked who has the authority to say the rate is doubled for single-family housing. Mr. Urner stated if the project is larger than 25 units, it is automatic that the fee is doubled.

Councilmember Aleshire stated he would like to see rehabilitation projects be included. He asked if a hospital would be considered government construction under the definitions. Mr. Urner stated it would not be.

Mr. Urner indicated the Mayor and City Council can write their own ordinance, except for the

school adequacy test. He stated ordinances would be designed so that the City would be doing what they had to do to connect to the excise tax and retain their share of it.

Mr. Urner stated the sections of the proposed ordinance that are fixed are 4.3, 4.4, 4.5 and 4.6. The County cannot change those sections either. He stated there are very few schools anywhere that meet the adequacy test. He stated, as this process moves forward, he expects the County to work on some discretionary language to address this. He stated the City will be saying to the County they need the same type of language.

Councilmember Aleshire stated he finds it unacceptable to have an APFO in such a limiting capacity without some allowance for development.

Councilmember Metzner suggested implementing an APFO in order to get the money and then negotiate with the County. He stated he doesn't think the Mayor and City Council really want development to occur in areas where schools are above capacity. He stated they have spent the last six months assuring the community they didn't want development in those areas. He suggested that staff, Mr. Urner and Councilmember Aleshire meet to discuss these issues and bring the best APFO the City can have back for review.

Ms. Maher stated an APFO cannot be adopted by July 1, 2005. Councilmember Metzner stated the City should ask the County for some concession since the approval time is longer. The County may allow the City to collect on the money they would have received if everything was implemented by July 1, 2005.

Mr. Zimmerman indicated it would be helpful to have a clear implementation process. Mr. Urner stated two ordinances will be required, one to collect the Excise Tax and one to implement an APFO. Both ordinances will require introduction and then approval. They will become effective 30 days after approval. A public hearing will also be required. Mr. Urner stated the City's hearing should be held a few days after the County public hearing.

Mayor Trump asked staff to continue to review the changes noted by Councilmember Aleshire. He asked each Councilmember to obtain as much information about this issue so they have a better understanding of it.

Mr. Zimmerman stated this will be scheduled for further discussion on June 7 or June 14, 2005.

City Administrator's Comments

Bruce Zimmerman, City Administrator, reminded customers that the refuse collection schedule will be different this week because of the Memorial Day holiday. There are numerous significant issues that will come before the Mayor and City Council in the next several months.

Some of those will be the Haven Road Annexation, the Water/Sewer rate study and the Excise Tax/APFO issue.

Mayor and Council Comments

Councilmember P. M. Nigh stated she wished to continue the conversation about the Director of Administrative Services position. She stated she believes she has the right to ask questions when it involves citizens money. She stated Mr. Zimmerman controls the day to day operation of the City, but he doesn't control the money.

Councilmember K. S. Cromer stated she looks forward to working with everyone. She wants this body to be able to work together smoothly. She stated if council members have comments they want to make, they should be allowed to make them. She thought work sessions were for the Council to discuss issues. She stated she understands that if three council persons agree to discuss something, the discussion will be held. Mr. Zimmerman stated work sessions are not voting sessions but three Council members can agree to discuss an item. She thinks the Director of Administrative Services position has been covered by others during the last six months. It is her opinion that one person should not be performing all these jobs. She thinks the money should be saved. She stated she believes the City is too top heavy and they don't need more upper management people. What is needed is more employees. She asked the Council to consider eliminating this position.

Councilmember L. C. Metzner commended the new administration on their first meeting. He stated the hospital cannot be ignored. There are obviously things that need to be done prior to July 1, 2005. He stated he has talked with Mayor Trump and indicated that, in order to resolve the hospital issue, meetings need to be held with the State Delegation, the County Commissioners, hospital representatives and the Mayor and City Council. He stated he is taking the same position he took in the litigation with the County. That position is there is a time for litigation to end and to move forward. He stated it is time to move forward with the Health Care Commission. There is no reason for the hospital to not file a zoning application right now, especially since they have stated it costs \$ 14,000 per day for any delays. He stated for zoning purposes, the City will find a way to get the sewer capacity for the hospital.

Councilmember K. B. Aleshire asked if any correspondence has been sent to the Maryland Health Care Commission since they published the staff recommendation. Mr. Zimmerman stated there has not been any correspondence at the City staff level. It had been indicated to David Funk that staff did not anticipate comments from the Mayor and City Council.

Councilmember Aleshire stated a number of cases are presented to the Preservation Design District Commission after work is completed. He stated the Mayor and Council need to give staff the tools to ensure this doesn't occur. He stated there is a sunset provision in the rental registration ordinance. The Mayor and City Council should determine as a body if they want the

program to continue. He thought the swearing in ceremony was nice and he thanked everyone who helped to make it happen.

Councilmember A. Parson-McBean stated she finds the Excise Tax/APFO issue disconcerting. She agrees with Councilmember Aleshire. The discussion needs to be clearer so that anyone can understand it clearly. She stated they should not use the word may and shall to hide what is intended. She stated she appreciates her presence being so well accepted.

Mayor R. F. Trump stated it is going to be a good four years. He asked the Council to think about a having a goal setting session. He stated in running a business, a budget is set and then the president runs the company, within that budget. He stated he would like to think the Mayor and City Council sets the budget and then lets the City administration run the business of the City. He encouraged the Council to not micro-manage the operations of the City. He stated if the Mayor and City Council think a cut needs to be made, it should be a percentage cut and then let management determine where cuts would be made.

There being no further business to come before the Mayor and City Council, on a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember K. S. Cromer, the meeting was adjourned at 6:29 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: June 21, 2005