

WORK SESSION – August 10, 2010

Mayor R. E. Bruchey, II called this Work Session of the Mayor and City Council to order at 4:06 p.m., Tuesday, August 10, 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 Attorney William Nairn and D. K. Spickler, City Clerk. City Administrator Bruce Zimmerman was not present.

Triennial Code Update Related to New Construction and Renovations

John Lestitian, Department of Community and Economic Development Director, presented proposed amendments to the City's Building Code, Mechanical Code, Plumbing Code and Electrical Code. Mike Heyser, Chief Code Official, was also present. A copy of the International Building Code is available in the City Clerk's office.

Every three years, the International Code Council publishes updated codes. The State of Maryland then reviews, amends and adopts the various codes on a State level. Counties and local jurisdictions then conduct similar processes for local adoption. Local governments are authorized to amend certain codes and prohibited from amending others.

Code Administration staff have completed a thorough review with their counterparts at Washington County and received input from the Washington County Home Builders Association, local engineers and architects, fire professionals, and local trades professionals. The result of the code updates and reviews culminate in the adoption of the updated codes with local amendments.

The updated Building Code includes the following significant changes:

1. Stair Geometry - this change is to the rise and run of newly constructed stairs.

Councilmember Haywood asked if this applies to new construction only. Mr. Heyser indicated it would be applied to replacement stairwells as well, unless the contractor utilizes the rehab code. City staff would work with contractors who have questions.

2. International Energy Conservation Code (IECC) – The IECC has been adopted as part of the State Building Performance Standards. Local jurisdictions are not permitted to amend this code.
3. Sprinklers – As written, all new residential single family homes permitted after January 1, 2011 will require sprinkler systems. This code change has resulted in significant debate and disagreement. The City is authorized by the State to amend this requirement out of the City's Building code, delay its implementation or adopt it as written.

Staff believes that strictly from a code standpoint such a requirement would provide a significant increase in building safety, a decrease in property loss and subsequently a lessening of risk to fire professionals when responding to fires in homes equipped with such systems. However, staff recognizes that this requirement adds cost to each new single family home. Additionally, staff recognizes the need for the City to be competitive in the construction of new single family homes.

Staff recommends that the sprinkler requirement remain in the code.

Acting Fire Chief Kyd Dieterich stated the basic responsibility for the fire department is to save lives, not buildings. Other jurisdictions have data to support the decrease in loss of life with a residential sprinkler system.

Councilmember Easton inquired about the cost to install a sprinkler system. The approximate cost for a new home is \$ 2,000. The County Commissioners decided not to require single family home sprinkler systems. State regulations require a sprinkler system in townhouses.

Acting Chief Dieterich stated construction is taking place on the fringe of the service area. Response time could be up to 6 minutes. A sprinkler system in the home could mean the difference between saving a life and making a rescue safely and the demise of the house.

Councilmember Breichner indicated it is important to consider how this requirement will affect the housing industry and development in the City.

Mr. Lestitian informed the Mayor and Council staff received input from the builders. He suggested considering a delayed implementation.

Councilmember Easton would be interested in knowing if homeowners' insurance cost decreased if the house has a sprinkler system. Councilmember Metzner suspects there would be a large number of homeowners who would like to have a sprinkler system.

Councilmember Haywood asked if developments already in process would be required to install sprinkler systems. She thinks a delayed implementation would make sense for these developments.

Mr. Lestitian provided a copy of a DVD to Mayor and Council members showing the difference in fires in townhouses with and without a sprinkler system.

There are no significant changes in the Mechanical Code.

There are no significant changes to the Plumbing Code except for modifying an existing local amendment. State law permits homeowners to perform limited plumbing work within their primary residence subject to local approval. Historically, the City has not authorized such work. After careful review, staff recommends that homeowners in their primary residences (limited by State Law) be authorized to obtain their own plumbing permits for work limited to the replacement of existing plumbing fixtures. This code change reduces the cost of routine projects such as the replacement of toilets and sinks by no longer requiring a licensed master plumber to perform the work.

Although there are no substantive changes to the electrical code, a housekeeping amendment is required. Fees are established in the budget process and adopted as part of the budget. Staff has discovered a conflict in the code. This amendment seeks to provide uniformity by referencing the adopted budget as opposed to delineating the fee in an individual code.

Councilmember Breichner suggested delaying approval of the amendments in order to have more information.

Mr. Lestitian asked that the Mayor and Council move forward with introduction of the ordinances and have staff provide the requested information.

Councilmember Brubaker asked if the International Code could be made available on line. Mr. Lestitian indicated copy write laws would prohibit this without a license fee.

It was the general consensus to include introduction of the amendments on the August 24, 2010 agenda.

City Code Amendments Section 216-10, B, Streets and Sidewalks and Section 240-32, Water Pollution Control

Michael Spiker, Director of Utilities, Eric Deike, Manager of Public Works, and Sherri Butler, LGIT, were present to discuss amendments to the City Code in reference to property owner responsibilities dealing with tree maintenance.

The Department of Utilities and Public Works, along with legal counsel, representatives of LGIT and Caroline Twigg, held discussions in order to develop language to amend Section 216-10 and Section 240-32 of the City Code. The proposed changes will align City Code with existing internal policies.

The added language for Section 216-10, B defines City liabilities related to the above ground portion of the tree while relieving the City of liabilities related to subterranean tree damage. Section 240-32 follows the same logic of releasing the Wastewater Division of any liabilities related to pipe or equipment which is located on customer property, i.e. property located behind the curb or property line.

Mr. Deike indicated the City has spent a significant amount of money in repairs since the December, 2004 decision was made that the City would be responsible for damage to sidewalks from street trees.

City Attorney Nairn stated it has always been the policy that repairs to anything from the curb to the house (either above or below ground) are the responsibility of the homeowner. This ordinance would clarify and make clear what the policy is. The policy is not being changed.

Councilmember Breichner doesn't think there has been confusion about the issue of damage from a tree on private property being the homeowner's responsibility. If a tree was planted by the City many years ago beyond the curb, he doesn't think damage should be the homeowner's responsibility.

Councilmember Easton expressed concern that a homeowner will be required to repair damage from a tree that they didn't want. Mr. Deike stated trees are not planted if the homeowner does not want one.

Damage to sidewalks can occur from trees if the wrong kind of tree is planted or the location was too small for the tree. Sewer damage occurs by roots getting into the line. Some of the older wastewater laterals are easily infiltrated.

Councilmember Haywood asked if a potential homeowner would have any way of knowing if there are issues with the lines prior to the purchase. Mr. Spiker stated a home inspection may reveal a potential problem. Ms. Butler stated a camera could be used in the line to locate problems.

Councilmember Metzner suggested leaving the policy as it is.

Councilmember Breichner thinks it is not logical for the City to be responsible for damage above ground but not underground. He asked if the City will pay for a Roto-Rooter call if roots are discovered.

Mr. Spiker indicated this ordinance will relieve the City of that responsibility. Ms. Butler stated the ordinance will also relieve some of the liability issues. Mr. Nairn indicated the ordinance will clarify the distinction between above ground and below ground damage.

Councilmember Brubaker is concerned about the possibility of large claims.

It was the general consensus to consider removing the tabled ordinance from the table at the August 24, 2010 meeting.

Annexation Request, Case No. A-2010-01: Aristodemos Capital Group, LLC, 19330
Leitersburg Pike

Kathleen Maher, Planning Director, reported that this annexation request has been withdrawn. It was removed from the agenda.

Zoning Map Amendment, ZM-2010-02: View Street Diner – Local Conversion Overlay
District

Stephen Bockmiller, Development Review Planner/Zoning Administrator, was present for further discussion of the request for a Local Conversion Overlay District for the View Street Diner. The reuse is for a restaurant with no outdoor seating and a retail shop. A public hearing was held by the Mayor and Council on July 27, 2010 and the record was held open for 10 days.

Staff analyzed the site for this application and proposed the following four conditions of approval which were endorsed by the Planning Commission:

1. Suitable landscaping consisting of a row of low level shrubs and/or small trees shall be planted between the sidewalk and the parking lot.
2. Existing sign posts shall be removed and replaced with a new ground-mounted or post-mounted sign. Any sign lighting shall be indirect (no neon or fluorescent tube or back lighting).
3. The parking area shall be repaired, repaved or top coated in such a way to provide a safe walking surface and professional appearance and striped for as many parking spaces as the available area allows. Planning Commission noted that strict adherence to current standards should be subordinated if doing so may allow more parking.
4. The building and site will be maintained in a professional manner. Any necessary repairs shall be completed prior to the reestablishment of the restaurant.

The applicants have no objection to the four conditions. The only additional comment received to date was a petition circulated by the owner, signed by approximately 70 persons in favor of the proposal.

Councilmember Haywood stated it is difficult to retrofit a building for a modern restaurant. She will be interested to see how this develops.

It was the general consensus to include introduction of the ordinance on the August 24, 2010 agenda.

Amendments to Partners in Economic Progress (PEP) Eligibility Criteria for Artist Live-Work Space

Kathleen Maher, Planning Director, stated when the City adopted the Partners in Economic Progress (PEP) incentive program, staff set up eligibility criteria for the creation of residential units in PEP-approved projects. The intent was to be sure that City incentives were applying to residential units that were finished to a standard that would make the units attractive to middle-income residents. As such, they require inclusion of central air, washers and dryers, dishwashers, wood cabinetry, solid surface counters, and hardwood or carpeting for flooring. Any newly created units would also need to comply with the D-MU zoning district's minimum square footage requirements for dwelling units.

Artist Live-Work Spaces are a different type of use from strictly residential uses and as such require different treatment. Typically, artist live-work spaces do not contain the same finish standards or amenities that would be expected in residential projects. The artists are looking for something more basic to keep costs down and to negate the possibility of damaging highly finished surfaces with paint, clay, adhesive, soldering, etc. In addition, at least half of the space is intended for "working" and half for "living," so the minimum square footage requirement would need to be larger for this hybrid use type.

The PEP Committee met with John Laughlin and his team and other City staff to discuss the characteristics and code issues affecting Artist Live-Work Space. In addition, staff conducted an internet search to see how other communities treat this use type. As a result of this research and discussions, the leadership team of the Department of Community and Economic Development is recommending the following criteria be added to the PEP standards for Artist Live-Work Space:

1. For a project with Artist Live-Work Space, the following minimum amenities must be included in each live-work unit:
 - a. central or split-duct HVAC
 - b. washer and dryer hook-ups and dishwasher connections
 - c. ability to vent odors to the outdoors
 - d. plumbed to allow for easy installation of slop sinks
 - e. utility capacity to meet needs of different art forms, including electric, gas, water, and wastewater
 - f. fully wired for new technologies
 - g. fully sprinklered
 - h. sound transmission rating between units of a minimum STC 60 for partition walls and ~~STC 50 for floor/ceiling assemblies~~
2. For a project with Artist Live-Work Spaces, any live-work unit created must meet the following minimum square footage requirements:
 - a. 1,000 sq. ft. for an efficiency unit
 - b. 1,300 sq. ft. for a one-bedroom unit

- c. 1,600 sq. ft. for a two-bedroom unit
- d. 2,000 sq. ft. for a three-bedroom unit

Artist Live-Work Spaces would have to meet all of the other eligible criteria with the exception of the criteria specifically dealing with residential units.

Staff is requesting approval of the proposed amendments. John Laughlin's project at the old Action Products building on N. Mulberry Street is motivating the immediate need for these amendments. These changes would also support the City's goal to attract more arts and entertainment businesses and artist housing in the City Center.

Ms. Maher stated the owner has indicated he has five or six artists from the Washington, DC area waiting to rent the apartments. If the units were not tailored for artists, the project would not be eligible for the benefits of the PEP program.

Councilmember Brubaker expressed concerned about the time that the PEP benefits may no longer be valid. The units may become empty and become a bad housing situation. Ms. Maher suggested that the leadership team of the Community and Economic Development Department (DCED) review options for this type of situation. John Lestitian, Director of DCED, pointed out these open spaces would not be eligible for subsidized housing.

Councilmember Haywood asked about the requirements for larger equipment. Ms. Maher stated the heavier equipment would most likely be located on the first floor. All renovations would have to meet code requirements.

It was the general consensus of the Mayor and Council to move forward with adopting the amendments. They will discuss how to keep the units from deteriorating at a later date.

Update From Community Coalition Meeting

Mayor Bruchey reported the coalition has created a list of issues to discuss further. Some of the issues are: Convention Center, Mt. Aetna Farm, Parking Deck for District Court and Library, Maryland Theatre, East End Project, Army Reserve Building, and Hotel/Motel Tax.

Councilmember Brubaker stated some of the City's concerns, such as restoring State funding for police and highway user revenue were placed on a watch list. The projects were assigned to different people or groups to develop a one page review of the costs and feasibility of the project.

Councilmember Haywood asked what East End Project is being considered. Mayor Bruchey stated the Chamber of Commerce paid for a study that was presented five years ago. The Chamber is the presenter because they have the information. Greater Hagerstown has indicated they don't have anything to bring to the table for the list.

Councilmember Haywood asked why there is a line for a parking deck for District Court when the Mayor and Council did not discuss it. Mayor Bruchey indicated this was a list created just for discussion purposes.

Councilmember Haywood expressed concern that there are projects/issues on the list that the Mayor and Council did not discuss. She is also concerned that by providing additional information it may be viewed as being supported by the City. Mayor Bruchey stated the City has more information than the Chamber of Commerce does about the necessity of a deck in this location. Councilmember Brubaker suggested the issue be worded as a parking study for the deck. Mayor Bruchey stated providing information does not mean the City supports a project or that it will be included on a list for the State Delegation to consider. Councilmember Haywood wants to make it clear that the City does not support a parking deck in the District Court/Library location. Mayor Bruchey stated again providing information does not indicate support. A parking study would have to be completed to determine the most feasible location for a deck. Councilmember Metzner agreed with Councilmember Haywood in that the list and providing information indicates the City supports the project. If the City provides information, it should be stressed that a parking study is needed first.

Councilmember Brubaker stated the Maryland Theatre is on the list to determine if there are specific needs for the theater.

Councilmember Easton stated it appears that this is a list created for providing more information.

The lobbyist retained by the Coalition has been asked to speak with all partners of the coalition.

Councilmember Haywood believes the City should be looking at the possibility of prohibiting subsidized/public housing in revitalization districts and arts and entertainment districts in order to preserve property values. Councilmember Metzner indicated this may be unconstitutional. Councilmember Haywood thinks the State, not the City, should prohibit this type of housing because they designate the districts.

The next meeting of the coalition will be held on August 16, 2010.

CITY ADMINISTRATOR'S COMMENTS

Donna Spickler, City Clerk, had no comments.

MAYOR AND COUNCIL COMMENTS

Councilmember M. E. Brubaker had no additional comments.

Councilmember W. M. Breichner had no additional comments.

Councilmember L. C. Metzner stated traffic control is handled well during the Wind Down Friday events.

Councilmember A. C. Haywood had no additional comments.

Councilmember F. Easton stated National Night Out was a successful event. There will be community giveaway on Saturday, August 14, 2010 at the Kmart parking lot. The event is free for anyone in the Tristate area. Bicycles will be collected on August 14, 2010 for the Bikes for the World at the Public Works building.

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

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 5:49 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: September 28, 2010