

27th SPECIAL SESSION AND WORK SESSION – September 14, 2010

Mayor R. E. Bruchey, II called this 27th Special Session and Work Session of the Mayor and City Council to order at 4:05 p.m., Tuesday, September 14, 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 John Urner, City Attorney Mark Boyer and City Clerk D. K. Spickler.

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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 meet in Special Session at 4:07 p.m.

Approval of a Resolution: City Support of Doleman Black Heritage Museum, Inc. Application for Community Investment Tax Credits

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 approve a resolution for the Doleman Black Heritage Museum Application for Community Investment Tax Credits through the Maryland Department of Housing and Community Development for Neighborhood Revitalization.

Discussion: Councilmember Brubaker noted this resolution is supporting the Doleman Black Heritage Museum's application for a tax credit program.

The Special Session was then adjourned.

WORK SESSION – September 14, 2010

Ethics Review Board Recommendation

Jeanne Singer, Pastor Stephen Robison and Doug Wright, Members of the Ethics Review Board, presented their recommendations for amendments to the City's Ethics Code.

The most significant amendment is the recommendation that the City establish its own Ethics Commission. The Board strongly believes that for the citizens to maintain the highest trust in their public officials and government employees, a culture of personal honor and integrity needs to be fostered among all those entrusted by the citizens with the governing of life together as a community. They believe that the establishment and maintaining of its own Commission will enable more opportunities for education, and create a higher level of communication regarding the appropriateness of certain actions

thereby fostering the desired culture and environment. The current system, utilizing the County's Ethics Commission, dilutes the accountability to such an extent that it becomes a reactionary tool at most and does little to instill confidence in the citizens of Hagerstown in their City government.

The remaining changes serve mainly to clarify the intention of the provisions and to reinforce the importance of avoiding an appearance of impropriety.

They realize there is some concern about the elected officials imposing a punishment upon a colleague for a violation of the Ethics Code. Unfortunately, state law does not allow for the delegation of this. They did specify that the Commission could recommend appropriate sanctions.

The Board did not revise the Financial Disclosure form, believing that to be the duty of the new Ethics Commission. They do recommend that the form follow the adopted changes and consider the disclosure requirements currently imposed upon the sponsors of City events. While the sponsorship disclosures are key to enhancing the ethical culture of the City, the sponsors should not be held to a different standard than City employees and officials. In addition, they recommend that the Finance Department/Purchasing Specialist consider revisions to its RFP process to require an affirmation of compliance with the Ethics Code and its disclosure requirements.

The Board also reviewed underlying policies, such as the whistleblower policy, to determine if changes or additions were necessary. They have no recommended changes to those policies.

Ms. Singer reported the most significant recommended change is the appointment of a City Ethics Commission. The Board recommends a commission of five City residents who would serve five year terms, other than the initial members. Two members would be nominated by the Mayor, two members would be nominated by the Council and one member would be nominated by the City Administrator. Candidates would be chosen from a group of nominees that would be twice the number of currently vacant positions. To allow for staggered terms, of the initial members nominated, one's initial term would be five years, one's term would be four years, one's term would be three years, one's term would be two years and one's term would be one year. The Review Board recommends that the Ethics Commission meet regularly.

Mr. Wright indicated the opening statement in the proposed amendments reflect the Ethics Code is in effect because it is the right thing to do, not because it is a requirement. He pointed out that the City's Ethics Commission could determine if an issue, such as receipt of tickets, would comply with the Ethics Code.

If these amendments are approved, the annual financial disclosure form will have to be revised to reflect the changes. Mr. Wright indicated the types and value of gifts received has to be consistent with the ordinance.

The following list includes highlights of the recommended amendments:

1. 33-1 Specify why the Code is being implemented
2. 33-2 Change the wording to reflect the Code applies to everyone, employees and elected officials
3. 33-3 Broadened the definition of family
4. 33-3 b & c Address conflicts of interest issues for those doing business with the City, limits are raised, transaction totals span the calendar and fiscal years to avoid timing issues, adding language about disclosure; The Board attempted to address the limited number of vendors for services/products by adding the disclosure language.
5. 33-4 No change in the filing amount for value of gifts, removed the dollar amount of family gifts, adding department heads to the list of financial disclosure filers
6. 33-5 and 33-6 No changes
7. 33-7 Added language to have the Commission make recommendations to the appropriate City authority

Mr. Wright stated it will be important to educate the public and City employees about the requirements of the Ethics Code. This will be a “living” document. He has been Planning Commission chairperson for 25 years and has not seen the existing Ethics Code.

Pastor Robison stated the amendments recommended will help the Mayor and Council avoid negative perception.

Mayor Bruchey suggested that Mayor and Council members review the amendments and schedule further discussion in October.

City Attorney Boyer left the meeting.

North Hagerstown High Homecoming Parade Request

Lindsay Reynolds and Jody Columbo were present to request permission to hold a homecoming parade. North Hagerstown High School would like to host a Homecoming Parade on Saturday, September 25, 2010 from 10:00 a.m. to 11:00 a.m. The parade would consist of the football team, cheerleaders, the band and Homecoming Court. Approximately 100 to 150 people will be in the parade. The football game will be held at 1:00 p.m. on Saturday, September 25, 2010.

The requested route utilizes Oak Hill Avenue, Park Lane and Saint Clair Street, ending at the school. If the Mayor and City Council approve the parade, the school would have to furnish the City of Hagerstown a certificate of insurance with the City as an added insured, notify the neighborhoods in which the parade will occur, fill out a parade permit and set out cones at intersections specified by the City’s Parks and Engineering Department.

The City would have one officer assist with the parade for two hours, which would cost \$ 80.00. This would be taken out of the Community Affairs Budget.

Councilmember Metzner suggested having HPD or the Fire Police be responsible for closing the major intersections.

It was the general consensus to approve the parade request.

Strategic Plan Focus Area #3

The Mayor and Council discussed Focus Area 3 – A Safe and Healthy Community of the Strategic Plan.

Scott Nicewarner, Director of Technology and Support Services, stated Focus Area #3 is a safe and healthy community. The goal statement is to create and maintain a community that is safe, inviting, and environmentally healthy, with an emphasis on resource conservation.

Objectives include:

- A. Implement recommendations from the Green Task Force by January, 2011
- B. Completion of the West End Water Tank by December, 2010
- C. Completion of Wastewater Treatment Plan ENR upgrade by December, 2010
- D. Implement recommendations of the Trash and Recycling Task Force by December, 2011
- E. Complete the engineering and bidding requirements for the R. C. Wilson Transmission Water Main Replacement, Year 2013
- F. Continue to maintain and create new governmental and community partnerships to improve safety services and reduce costs
- G. Explore expansion of “trails” system for biking and walking throughout the City

Councilmember Breichner asked if the recommendations from the Green Task force include energy savings. Mr. Tissue indicated the Task Force did not include a specific recommendation for wind energy. Councilmember Metzner suggested reviewing the recommendations and determining which recommendations to pursue. Mr. Zimmerman stated the Mayor and Council reviewed the recommendations previously but had not approved them.

It was the general consensus to change the wording for Item D to “approve the recommendations of the trash and recycling task force.”

Councilmember Breichner asked if Item E is complete. Mike Spiker, Director of Utilities, stated the documents have been received but haven’t been completed. The initial estimate for the project is \$ 24 million. Councilmember Brubaker asked if grants are available for the project. Mr. Spiker stated since the project is growth related it will be difficult to secure any grants. Councilmember Metzner stated the project has to be

done because the infrastructure has to be updated. Valves need to be replaced and repaired so that one main line can be used if the other is down. Mr. Spiker stated the project is on the federal funding list. The scope of the project was changed so that the starting point is located within a priority funding area for State funding. Nancy Hausrath, Superintendent of Water Operations Manager, stated staff continues to work with funding agencies and MDE and the EPA. Staff continually monitors changes in growth for funding through the City's budget.

Councilmember Metzner asked how the drought has affected the water supply. Mr. Spiker indicated water usage has decreased, probably because customers have stopped outside watering. As water levels decrease, algae growth is increasing. Organics in the water is an issue for the City in the fall.

Item F should not be exclusive to safety services. Other partnerships can be formed. Councilmember Haywood indicated that are some very specific partnerships that can be formed. Councilmember Metzner suggested removing the word "safety" from the statement so partnerships are not limited to safety issues. The City should continue to explore other governmental partnerships. Councilmember Brubaker stated this should also be included in Focus Area #4. Mr. Zimmerman suggested moving partnerships for safety services to Focus Area #4. This could then include projects like additional cameras. Staff will work on the wording for this item to indicate collaborative efforts of all departments and groups.

Councilmember Metzner would like to review recreational facilities. He would also like to look at taking advantage of water way systems. Councilmember Haywood stated a new objective should be the importance of waterways as a comprehensive system throughout Washington County. There should be revitalization of recreational use of the waterways. Councilmember Metzner stated the goal should be to make waterways clean, safe and useable for recreation.

The Mayor and Council will review these changes and discuss Focus Area #4 at next week's work session.

Councilmember Easton would like the recommendations of the Ethics Review Board included in one of the Focus Areas.

Water Resources Element Amendments to Comprehensive Plan

Kathleen Maher, Planning Director, was present to discuss the proposed amendments to the Comprehensive Plan that provide full compliance with the requirements of H.B. 1141 for a Water Resources Element.

The City has prepared amendments to the 2008 Comprehensive Plan to comply with State law (H.B. 1141) that requires all municipalities to adopt a Growth Element in their Comprehensive Plan and requires all jurisdictions to adopt a Water Resources Element in their Comprehensive Plan. The intent of these elements is to determine the impact of

growth on public services and environmental resources and to develop policies to control that growth so that it occurs in an orderly manner and does not overwhelm the services and resources needed to accommodate that growth. One requirement for municipalities is to adopt a growth boundary that can be served by available public services and absorbed by environmental resources and have that line be the municipality's limit of annexation activity for the life of the plan. In previous actions by the Mayor and City Council, the plan was amended to fully comply with the Growth Element requirements and to partially comply with the Water Resources Element requirements. The pending amendments provide the required text associated with stormwater management and some additional technical data associated with the City's wastewater system, which will provide the final items needed to fully comply with H.B. 1141. By State law, these amendments must be adopted by October 1, 2010 or the City forfeits its zoning powers.

The current and previous amendments address H.B. 1141's requirements to ensure that City water and wastewater resources will be adequate to serve the projected growth of a City identified growth area, the Medium Range Growth Area. Adoption of the amendments by October 1 is crucial to protect the City's zoning authority. The proposed amendments will not preclude future discussions between the City and County on mutually beneficial mechanisms to serve areas outside the City's previously adopted MRGA.

The Planning Commission held a public hearing on the currently proposed Comprehensive Plan amendments on June 30, 2010 and no one attended the meeting to testify. Following the Planning Commission's public hearing, staff received comments from the Maryland Department of Planning and the draft text was modified where appropriate to address those comments. So far, comments have not been received from the Maryland Department of the Environment or the Maryland Department of Natural Resources.

The Mayor and Council's public hearing was held on August 24, 2010 and no one attended the meeting to testify. Written comments were received from Washington County and have been incorporated into the record.

Ms. Maher reported no additional comments were received following the public hearing.

Councilmember Haywood asked that a discussion be scheduled regarding nutrient trading for the hospital requirements. Ms. Maher stated the Comprehensive Plan includes the possibility of nutrient trading with other municipalities. Mr. Zimmerman stated the language mentions exploring the possibility of nutrient trading. These amendments do not remove that language so the opportunity for exploring trading will remain in place.

Formal action by the Mayor and Council on the Water Resources Element is scheduled for September 28, 2010, allowing compliance with the State of Maryland's deadline of October 1, 2010.

Triennial Code Update – Sprinkler Requirement

John Lestitian, Department of Community and Economic Development Director, was present to discuss the sprinkler requirement in the triennial code update. Acting Fire Chief Kyd Dieterich was also present.

At the Mayor and Council work session on August 10, 2010, staff was directed to investigate three items in reference to the pending requirement for sprinkler systems in new one and two family dwelling units. The three items are the insurance savings, cost of installation and the perspective of local builders.

Insurance Savings: Staff contacted both government agencies which oversee the insurance industry and insurance companies who offer home owner insurance plans in Hagerstown. In general, insurance companies offer 5 – 10% savings on annual premiums if a home is equipped with a residential sprinkler system.

Cost of Installation: Staff contacted other jurisdictions who currently require sprinklers as well as companies who install sprinkler systems. Depending on the need for pumps, holding tanks and the size of the structure, a residential sprinkler system in a new construction single family home is generally between \$ 2,200.00 and \$ 5,500.00.

Local Builders: It is important to note that the majority of national and regional builders are not impacted as greatly due to the volume their developments and experience working in jurisdictions that already require sprinkler systems.

Staff met with several local builders as well as the Director of the Washington County Home Builders Association. In each meeting, all parties agreed that in time sprinkler systems will be required throughout Maryland. The major concern expressed was the timing of the requirement and state of the economy. One builder offered a compromise position in an effort to mitigate safety concerns as an exemption to the sprinkler requirement. Staff finds this compromise position intriguing but strictly from a code standpoint believes it falls short.

Staff recommends the adoption of the code with the sprinkler requirement. This will require the installation of a residential sprinkler system in newly constructed one and two family homes.

Mr. Lestitian stated Frederick County requires sprinkler systems in new single and two family homes. Washington County has exempted the requirement at this time.

Councilmember Brubaker understands it is significantly more expensive to provide a sprinkler system from a well water source than a public water system. He indicated he supports requiring sprinkler systems because of the added safety factor.

Councilmember Breichner asked if staff has heard that builders will go outside the City's jurisdiction if the requirement is approved. Mr. Lestitian indicated it would add costs for building in the City.

Councilmember Brubaker stated he does not think the requirement would be a catalyst for building outside the City. This is more than economics. This requirement deals with people's safety and well being.

Mayor Bruchey stated approving the requirement would make it mandatory to have a sprinkler system installed and he is concerned this will affect the building of new homes in the City. He is concerned builders will decide to build homes in the County instead of in the City.

Councilmember Easton does not support approving the requirement. He believes the City can wait for three to five years, when the State will require new homes to have sprinkler systems. He stated it is not the Mayor and Council's job to mandate sprinkler systems. He believes less government involvement is better.

Councilmember Haywood stated if the requirement is to be accelerated as staff is proposing, there should be exemptions for developments already in process. She believes a bigger issue is mass production of homes using substandard materials.

Councilmember Metzner supports the requirement. There are a number of homes for sale without sprinkler systems. This requirement would protect firefighters as well as citizens.

Councilmember Easton would support the requirement if the City would pay for a sprinkler system.

Mayor Bruchey asked what alternative has been proposed. Mr. Lestitian stated properties could be exempted from the requirement if the home was smaller than the national average, the floor system was not lightweight construction, the underside of all floor systems had a dry wall covering and draft stops are included. The exemption would expire in three years. This compromise provides some additional safety for first responders.

There was no discussion about the quality of insulator materials for the compromise.

Councilmember Haywood could support the compromise but her primary concern is promoting quality building.

Councilmember Brubaker pointed out materials used aren't substandard. Sprinkler systems are a way to suppress a fire long enough to allow people to get out of the building.

Councilmember Haywood asked how many times a sprinkler has caused more damage to a home. Chief Dieterich indicated none that he is aware of. He knows of two cases in which the sprinkler system was activated and a fire was put out completely. A sprinkler system also saved a building, in which 9 or 10 families would have been displaced.

It was the general consensus to include introduction of the ordinance, with the sprinkler requirement, on the agenda for September 28, 2010.

CITY ADMINISTRATOR'S COMMENTS

Bruce Zimmerman, City Administrator, stated many events are taking place this weekend, including the dedication of the historical sign at Oswald Park, the Autumn Arts Festival at City Park and the Hispanic Festival at Fairgrounds Park.

MAYOR AND COUNCIL COMMENTS

Councilmember M. E. Brubaker will be out of town and unable to attend the 9/11 observances or the anniversary celebration for the Maryland Theatre. He is pleased to see the future plans for the 100th anniversary of the Maryland Theatre.

Councilmember W. M. Breichner reported the Lobbying Coalition meeting held this week was uneventful. The development of a high tech park is the only thing the City has left on the table, and that is on a watch list. The gas tax and highway user revenue are still on the watch list. The Maryland Theatre board will be asked for a list of projects, in priority order.

Councilmember L. C. Metzner stated Mayor Bruchey spoke at the opening ceremony for the Emergency Operations Center. He urged everyone to get out and vote.

Councilmember A. C. Haywood reminded everyone the Rubbish Round Up will be held on September 18, 2010, beginning at 8:30 a.m. at the Funkstown Legion. She urged people to help with the clean up.

Councilmember F. W. Easton attended the September 11 remembrance ceremony. He would like to see this expanded, with more participation from the community. He attended the Gettysburg Wine Festival. He thinks this type of event would be a good one for the City.

Mayor R. E. Bruchey, II stated the City needs to move forward with paving the Digby parking lot at City Park. The September 11 ceremony was a good event. The Maryland Theatre 95th Anniversary celebration was well attended and was an enjoyable event. He

mentioned that the McBare's building will be given to the Maryland Theatre for their future use.

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 5:48 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: October 26, 2010