

28TH REGULAR SESSION – September 28, 2010

Mayor R. E. Bruchey, II called this 28th Session of the Mayor and City Council to order at 7:01 p.m., Tuesday, September 28, 2010, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers W. M. Breichner, M. E. Brubaker, F. W. Easton, A. C. Haywood, L. C. Metzner; City Administrator Bruce Zimmerman, City Attorney William Nairn and D. K. Spickler, City Clerk.

The invocation was offered by Councilmember Forrest W. Easton. 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, October 5, 2010, Tuesday, October 12, 2010, Tuesday, October 19, 2010 and the Regular Session on Tuesday, October 26, 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 Brian Nordyke to the Board of Technical Appeals, with the term to expire October 1, 2015.

On a motion duly made by Councilmember W. M. Breichner and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to appoint Frank Linn to the Board of Traffic and Parking, with the term to expire October 1, 2012.

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 appoint Joyce Martin to the Bicycle Advisory Committee, with the term to expire on June 1, 2012.

CITIZEN COMMENTS

Roy Grady, 820 Marion Street, Hagerstown, Maryland, is in favor of solar energy. Solar energy could help reduce electrical costs for residents. He stated a house he owns on Marion Street was condemned. The house sat empty for a year, while he waited for the Mayor and Council to make changes to the property maintenance code regulations. He believed the changes were unanimously approved, but no detail was provided. He stated he saw a list of 23 items, but these changes have not been made. He rented the

house because he believed he was exempt due to the changes. The house was again condemned for a non-conforming ceiling height. He feels he has not been able to get answers to his questions.

Mayor Bruchey offered to visit Mr. Grady's residence and talk about the issues and his concerns. Mr. Grady agreed.

Don Day, 1846 Meridian Drive, Hagerstown, Maryland, stated he is still having a problem with Meridian Drive not being paved. He stated The Churchey Group had indicated the road would be paved during the 2010 construction period. Now they are saying it will be paved in June, 2011. He has waited patiently for five years and thinks it is time to pave the road. He asked that the Mayor and Council direct the Churchey Group II to pave the road before the end of this year.

Wes Churchey, 19803 Cool Hollow Road, Hagerstown, Maryland, stated he has discussed the paving with Rodney Tissue, City Engineer. There is still some work to be completed and an engineer has to inspect the work before paving can be done. There are 42 other homes on Meridian Drive. He doesn't think any of these residents have made a complaint about the road. He indicated plans are to pave the road in June, 2011.

Mr. Churchey then spoke about requirements for residential sprinkler systems. He asked the City to not require the sprinklers until they are mandated by the County or State.

Leonard Cooper, 10603 Marigold Drive, Hagerstown, Maryland, asked if the Mayor and Council considered his concerns about the seat belt laws. Mayor Bruchey stated Mr. Cooper should contact Delegate John Donoghue with his concerns. Mr. Cooper is also concerned about the cost of electricity from Allegheny Power. He does not agree with the rule that pedestrians have the right of way when crossing a street. He feels that some people deliberately stand in the middle of the street and carry on a conversation.

Eleanor Cooper, 17168 York Road, Hagerstown, Maryland, is also concerned about the cost of electricity. She asked if the prisoner work crews could help with snow removal for residents. Mayor Bruchey stated the agreement with the prisoner work crews is for mowing. Mr. Zimmerman stated the contract could be reviewed to determine if the crews could be used for snow removal. Councilmember Metzner suggested checking with the volunteer program for snow angels for assistance.

James Devine, P. O. Box 2217, Hagerstown, Maryland, expressed his concern that people will not be able to visit the library in one temporary location while a new building is constructed. He stated Code Enforcement regulations should not be less strict. Anything less than a strong statement for the protection of renters is not right. Mr. Levine does not think the hospital building should be torn down. He stated voter turnout is very low and this concerns him. He is also concerned about projects for Washington County and the City of Hagerstown during the next four years because of the results of the recent primary election.

PUBLIC HEARINGS

Proposed Zoning Text Amendments for Wind and Solar Energy Systems

Kathleen Maher, Planning Director, and Clayton Zug, Planning Inspector, presented amendments to the Land Management Code for wind and solar energy systems.

In January, 2009, the Planning Office began research into the wind and solar energy system industry and its regulations. Model ordinances from around the State and region were reviewed.

The proposed wind energy system amendments are modified from the City of Cumberland's ordinance, with changes including: 1) limiting free standing wind energy systems to a maximum height of 100 feet; 2) allowing building-mounted wind energy systems; and 3) not requiring Board of Zoning Appeals approval for wind energy systems.

The proposed solar energy system amendments are based on Washington County's zoning ordinance. Ground-mounted solar energy systems would be limited to commercial and industrial districts. Building-mounted solar energy systems would be permitted in all zoning districts with varied height restrictions.

The Planning Commission held a public hearing on the proposed amendments on August 25, 2010 and no public testimony was received. The Commission recommended approval of the amendments.

The following were entered into the record:

Exhibit 1 – Certificate of Advertisement

Exhibit 2 – Planning Commission Record

The following testimony was presented:

Rebecca Rush, 29 Charles Street, Hagerstown, Maryland, commended the Planning Department for moving forward with wind and solar energy amendments to the zoning ordinance. There may be grant funding available for renewable energy systems. She suggested further consideration of lattice towers on wind turbines. She suggested reviewing the height restrictions in Frederick for building mounted systems. A higher limitation would provide greater opportunities for capturing wind energy. She thinks ground mounted solar systems should be permitted in all zoning districts. She stated she has other suggestions that she will submit in writing.

James Devine, P. O. Box 2217, Hagerstown, Maryland, asked if there was any consideration given for geothermal systems. Mr. Zug indicated these systems tend to be more involved and were not considered with these amendments. Mr. Devine stated there will be a time, in 10 to 20 years, when alternative energy will be a necessity. Geothermal energy should be considered now. There should not be absolute heights on wind mills

because the extra height may be necessary. If a resident wants to install a different alternative energy system, they should be allowed to do it.

The hearing was closed at 7:57 p.m. The record will remain open for 10 days for additional comments.

FY 2010 Consolidated Annual Performance and Evaluation Report (CAPER)

Kathy Saxman, Development Funding Specialist, presented information regarding the City of Hagerstown's CAPER. Each year, the City of Hagerstown must prepare and submit to the US Department of Housing and Urban Development a report detailing how the City made use of Community Development Block Grant funds during the past fiscal year and other actions taken to benefit low and moderate income persons. The regulations require that the public be afforded an opportunity to review and comment on the report. The CAPER has been available in print and on-line since September 14, 2010.

This CAPER provides details of the operation of Hagerstown's CDBG program for the fiscal year from July 1, 2009 through June 30, 2010. The budget for the program during this period was \$ 1,993,650 which included a CDBG entitlement grant of \$ 926,101 anticipated program income of \$ 532,925 and planned carryover from the previous year of \$ 534,624. Expenditures for the period totaled \$ 1,154,286. Excluding general administration and planning, the amount expended on projects was \$ 884,194, of which \$ 860,641 or 97.34% went to activities directly benefiting low and moderate income persons. This is the second of the three year certification period, at the end of which at least 70% of the amount expended on projects must benefit low and moderate income persons. After two years, Hagerstown's low and moderate benefit percentage is 95.19%.

On July 29, 2009, the City was awarded \$ 249,458 in CDBG-R funds. These funds were allocated as follows: Community Free Clinic - \$ 30,458; Ridge Avenue Traffic Island - \$ 65,000; Handicap Accessible Curb Ramps - \$ 60,000; Street Overlay – \$ 74,000; and Administration - \$ 20,000. Work on the public facilities improvements was completed during the period and the funds to Community Free Clinic were expended.

There was no testimony presented, either in favor of or against the CAPER. Additional comments will be accepted until close of business on September 29, 2010. The hearing was closed at 8:01 p.m.

MINUTES

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 minutes, as presented, for the Mayor and Council meetings held on August 3, 2010, August 10, 2010, August 17, 2010, August 24, 2010 and August 31, 2010.

CONSENT AGENDA

On a motion duly made by Councilmember W. M. Breichner and seconded by Councilmember A. C. Haywood, the Mayor and City Council unanimously agreed by voice vote to approve the Consent Agenda as follows:

- A. Public Works: Bulk Gasoline Purchase – A. C. & T. (Hagerstown, MD)
\$ 2.3628/gal., Estimated annual cost \$ 307,164
- B. Hagerstown Police Department: Replacement of Boiler – T & P Mechanical Specialist, Inc. (Woodbine, MD) \$ 86,000.00
- C. Water Department: Inventory for Water Fund – Ferguson Waterworks (Winchester, VA) \$ 37,894.10
- D. Department of Parks and Engineering:
 - 1. Prepare Plats and Legal Descriptions for Split Parcel Annexations – Davis, Renn & Associates, Inc. (Hagerstown, MD) \$ 59,320.00
 - 2. Replacement of Curb and Sidewalks – I-Con International Contractors (Myersville, MD)
 - a) Part A: Abatement of Curb and Sidewalk Violations \$ 17,000.00
 - b) Part B: Replacement of Curb and Sidewalk Damaged by Street Trees – Not to Exceed \$ 24,000.00

UNFINISHED BUSINESS

A. Approval of an Ordinance: Amending the City Code, Section 216-10, B, Streets and Sidewalks and Section 240-32, Water Pollution Control

Action: Councilmember L. C. Metzner made a motion to approve an ordinance to amend Section 216-10, B, and Section 240-32 of the City Code. The adoption of the aforementioned amendments will align the language contained within the City Code with that currently in place as internal policies within the Department of Utilities and the Department of Public Works. Councilmember M. E. Brubaker seconded the motion.

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

B. Approval of an Ordinance: View Street Diner Local Conversion District Overlay

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 for a Local Conversion District Overlay, including the four conditions endorsed by the Planning Commission, on property located at 800 View Street.

C. Approval of an Ordinance: Amending the City Code: Chapter 64 Building Construction, Article I, Building Standards, Including Sprinkler Requirements

Action: On a motion duly made by Councilmember W. M. Breichner and seconded by Councilmember A. C. Haywood, the Mayor and City Council unanimously agreed to table the approval of this ordinance for further review.

D. Approval of an Ordinance: Amending the City Code: Chapter 64 Building Construction, Article IV, Electrical Standards

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 64, Building Construction, Article IV to provide a reference to the established fee schedule for Electrical Permits.

E. Approval of an Ordinance: Amending the City Code: Chapter 64 Building Construction, Article V to provide for updated Plumbing Standards

Action: On a motion duly made by Councilmember F. W. Easton and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to approve an ordinance to amend the Code of the City of Hagerstown Chapter 64, Building Construction, Article V to provide for updated Plumbing Standards.

F. Approval of an Ordinance: Amending the City Code: Chapter 64 Building Construction, Article VI, Mechanical Standards

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 to amend the Code of the City of Hagerstown, Chapter 64, Building Construction, Article VI to provide for updated Mechanical Standards.

NEW BUSINESS

A. Introduction of an Ordinance: Comprehensive Rezoning, Phase IV (ZM-2010-01)

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 introduce an ordinance based on the Findings of Fact, for a Rezoning Classification and Zoning Map

amendments, Case No. ZM-2010-01, to rezone those areas which are associated with Phase IV of the Comprehensive Rezoning. A series of maps are made part of this Ordinance.

B. Introduction of an Ordinance: Repeal and Re-enact Chapter 10, Part 2, Article V of the City Code – Boards, Commissions and Authorities

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 introduce an ordinance to repeal and re-enact Chapter 10, Part 2, Article V of the City Code entitled Boards, Commissions, and Authorities. The new Code language clarifies the appointment process for board members, sets terms at four years unless stated otherwise, and establishes meeting guidelines.

C. Introduction of an Ordinance: To Amend the City Code, Chapter 10, Board of Utilities

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 introduce an ordinance to delete and repeal Chapter 10, Article XI, Board of Utilities of the City Code. The Mayor and Council have determined that such Board is no longer necessary.

D. Introduction of an Ordinance: To Amend the City Code, Chapter 21, Downtown Assessment District

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 introduce an ordinance to repeal Chapter 21 of the City Code entitled Downtown Assessment District. The public need for the Downtown Assessment District has ceased and it is in the best interests of the citizenry that Chapter 21 be repealed in its entirety.

Councilmember M. E. Brubaker made a motion to amend the motion to insert “at this time” after “has ceased.” Councilmember W. M. Breichner seconded the motion.

Motion carried, 5-0 with the amendment.

E. Introduction of an Ordinance: Determining that the Former McBare’s Property at 25-29 South Potomac Street is no Longer Needed for a Public Purpose

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 introduce an ordinance indicating that the City of Hagerstown has determined that the former McBare's property located at 25-29 South Potomac is no longer needed for a public purpose. In addition, this ordinance specifies that the City of Hagerstown shall convey its beneficial interest in this property to the Maryland Theatre for the sum of \$ 261,020, which shall be allocated \$ 149,931.50 to the Hagerstown-Washington County Industrial Foundation, Inc., (CHIEF) and \$ 111,088.50 to the City of Hagerstown, with the purchase price to be paid by a purchase money promissory note from the Maryland Theatre and mortgage on the property. The Agreement of Sale and Purchase shall be executed by CHIEF (A copy is made part of this ordinance), the City of Hagerstown, and the Maryland Theatre. In approving this agreement the Maryland Theatre shall agree to use the property for the sole purpose of supporting the Maryland Theatre to and or the benefit of the citizens of Hagerstown and Washington County in keeping with the purposes of the Arts and Entertainment District of the City.

F. Approval of a Resolution: Amendments to the 2008 Comprehensive Plan – Water Resource Element

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 approve a resolution to adopt the amendments to the City of Hagerstown's 2008 Comprehensive Plan to complete the Water Resource Element requirements of H.B. 1141. With these amendments, the City of Hagerstown will be in full compliance with the requirements of H.B. 1141.

Discussion: The next time the Comprehensive Plan is revised, this amendment will be included. The Comprehensive Plan must be reviewed every six years. Councilmember Breichner stated he has felt, in some cases, this amendment was too far ahead of its time.

G. Approval of a Resolution: 2010 Small Areas Plan Amendment to the 2008 Comprehensive Plan

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 a resolution to amend the 2008 Comprehensive Plan to include the 2010 Small Areas Plan.

H. Approval of a Resolution: Fuel Cost Reimbursement Agreement with Community Rescue Service (CRS)

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 a resolution to authorize the execution and delivery of an agreement between the City of Hagerstown and the Community Rescue Service for the reimbursement of diesel fuel and gasoline obtained from the city facility located at 51 W. Memorial Boulevard.

I. Approval of a Resolution: Finance Department Check Signature Designations

Action: On a motion duly made by Councilmember F. W. Easton and seconded by Councilmember A. C. Haywood, the Mayor and City Council unanimously agreed by voice vote to approve a resolution approving the designation of the Assistant Finance Director to sign checks for certain accounts and the removal of the City Treasurer as an additional signer pursuant to Section 709 of the City Charter.

J. Approval of a Resolution: Authorizing the Execution of the Road Transfer Agreement for Broadfording Road between Salem Avenue/MD 58 and Hollyhock Road

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 of the Road Transfer Agreement between the State Highway Administration (SHA) of the Department of Transportation of Maryland and the City of Hagerstown for the 0.28 miles of Broadfording Road – from Cearfoss Pike (MD Route 58) to Hollyhock Road. The Agreement assigns maintenance responsibilities to the City of Hagerstown for this section of the roadway. The City has agreed to accept this portion as part of the City street system because the County Commissioners voted on July 28, 2009 to transfer \$ 250,000 to the City for the reconstruction of the road.

Discussion: Councilmember Brubaker asked if staff has verified that the County has included the funding in their budget. Mr. Zimmerman indicated a purchase order has been issued in the City's name and Mr. John Urner feels this provides the verification.

K. Approval of Memorandum of Understanding: Hagerstown Police Department, Washington County Emergency Services and Washington County Sheriff's Office

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 Memorandum of Understanding (MOU) between the City of Hagerstown, Washington County Division of Emergency Services and the Washington County Sheriff's Office.

This MOU provides for medical supervision of the SWAT Medics who currently work with the joint City-County Special Response Team. There is no cost to the city for this supervision.

L. Approval of Strategic Plan

Action: On a motion duly made by Councilmember A. C. Haywood and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to approve of the Strategic Plan (copy attached as part of this ordinance) outlining the Mayor and Council's Vision and Mission for Hagerstown along with the Goals and Objectives that will guide the City's current and future focus and work plan.

Discussion: Councilmember Haywood thanked staff and her fellow Mayor and Council members for working on this plan.

M. Approval of Alsatia Mummer's Parade Funding Support

Action: Councilmember L. C. Metzner made a motion to approve of a funding contribution of \$ 2,000.00 in support of the 86th Annual Alsatia Club's Mummer's Parade to be held on October 30, 2010. The source for \$ 1,000 will be from the City's Public Function's Budget, and the source for the other \$ 1,000 will be from either the Mummer's Parade Account in the Public Function Budget or from the City's Unspecified Agency Contribution Fund for Fiscal Year 2010/2011, if needed. Councilmember W. M. Breichner seconded the motion.

Discussion: Councilmember Easton stated he will be voting No, not because he is against the Mummer's Parade. If the funding is coming from the agency contribution, it should be reduced by 20%, as other groups were.

Motion carried, 4-1 with Councilmember F. W. Easton voting No.

N. Approval of Doleman Black Heritage Museum Funding for Fundraiser

Action: Councilmember L. C. Metzner made a motion to authorize a \$ 1,175 cash sponsorship for a fundraiser for the Doleman Black Heritage Museum at 7:00 p.m. on Saturday, October 16, 2010 at the Grand Venice Hotel Ballroom with the theme of "A Masquerade Ball with a Cotton Club Twist." The donation will be to the Doleman Black Heritage Museum through the City's Unspecified Agency Contribution Fund for Fiscal Year 2010/2011. Councilmember M. E. Brubaker seconded the motion.

Discussion: Councilmember Easton stated this donation is more than that made last year. The donation should be reduced by the amount of agency contributions as well.

Motion carried, 4-1 with Councilmember F. W. Easton voting No.

CITY ADMINISTRATOR'S COMMENTS

Bruce Zimmerman, City Administrator, reminded everyone that the State Highway Administration annual visit to Hagerstown will be held on September 30, 2010.

MAYOR AND COUNCIL COMMENTS

Councilmember W. M. Breichner had no additional comments.

Councilmember M. E. Brubaker had no additional comments.

Councilmember F. W. Easton had no additional comments.

Councilmember A. C. Haywood had no additional comments.

Councilmember L. C. Metzner expressed condolences to the family of Nick Giannaris, who passed away this week.

Mayor R. E. Bruchey, II also expressed sympathy to the Giannaris family. Mr. Giannaris made many contributions to the community and he will be missed.

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 8:20 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: October 26, 2010