

32<sup>ND</sup> REGULAR SESSION, WORK SESSION AND EXECUTIVE SESSION –  
NOVEMBER 23, 2010

WORK SESSION – November 23, 2010

Mayor R. E. Bruchey, II called this Work Session of the Mayor and City Council to order at 5:36 p.m., Tuesday, November 23, 2010, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers W. M. Breichner, M. E. Brubaker, F. W. Easton, A. C. Haywood, L. C. Metzner, City Administrator Bruce Zimmerman, City Attorney Mark Boyer, and D. K. Spickler, City Clerk.

Building Code

John Lestitian, Department of Community and Economic Development Director, reported staff has reviewed the state building code and determined that the application of these standards in Hagerstown is workable. The single staff concern is enforcement capabilities in the event of non-compliance.

There are two options to address this concern. The first is to adopt a building code which includes the establishment of violations as municipal infractions. The second is to adopt a stand alone ordinance which established violations as municipal infractions.

Mr. Lestitian stated the Maryland Building Performance Standards COMAR 05.02.07 and the vetoed Chapter 64 Building Construction, Article I ordinance primarily reference the 2009 International Building and International Codes, which requires sprinkler systems in all new residential buildings. The proposed ordinance includes an exception to not require sprinkler systems. He stated if the City does not adopt a building code, the State Code would be implemented. Money for fines paid would go to the State and not the City of Hagerstown. The Mayor and Council had discussed options about the sprinkler systems. Another option could be to make an exception excluding single family, detached dwellings.

Bruce Zimmerman, City Administrator, stated Staff could deal with the State Code, except for the type of violations. It would be helpful for direction from the Mayor and Council about any revisions with the sprinkler system requirement.

Councilmember Metzner stated he would support an exception excluding single family, detached dwellings from the sprinkler requirement. He doesn't believe government should tell people what they can do with their property, except for basic needs.

Councilmember Brubaker pointed out this extends protection to duplexes. He believes all newly constructed homes will be required to have sprinkler systems eventually. This option does not require sprinkler systems for additions or alterations.

Councilmember Haywood asked at what point renovations become a new home. Mr. Lestitian indicated renovations would not be considered building a new home. Councilmember Metzner stated he does not intend for anyone to change existing structures with the exemption.

Councilmember Haywood clarified that an addition exceeding 50% of the original footprint would require a sprinkler system. She asked what happens if the Code office cannot assess the fine. Mr. Lestitian indicated that revenue of \$ 8,000.00 to \$ 13,000.00 would not be coming to the City.

The State Code becomes effective for all permits applied for after February 1, 2010.

Mark Boyer, City Attorney, stated once a Code Compliance Officer issues a citation, it is submitted to the State's Attorney's office for prosecution. Councilmember Haywood asked if this process would reduce staff time involved. Mr. Lestitian pointed out this would be a lost revenue stream for the City if all the money is sent to the State. The City would also lose control of the building standards ordinance.

Mayor Bruchey does not think the City should tell someone they have to install a sprinkler system in their new home. He used an example of building a duplex and living in one side while renting out the other, which would require a sprinkler system. He asked if the City should tell the builder they had to install a sprinkler.

Amendments can be made to the State code. Councilmember Metzner stated the Mayor and Council need to look at the entire code if the issue is to make a home less expensive for someone to build. Councilmember Haywood indicated her objections are not based on economics alone. Councilmember Easton stated it is interesting that a previous discussion centered on safety for firefighters and eye beam construction has not been discussed.

Councilmember Metzner stated the code is being reviewed in order to provide safety for residents.

Councilmember Haywood stated if the issue is safety, quality of construction should be dealt with. She would rather see renovations of older homes.

Mayor Bruchey stated, aside from cost, he vetoed the ordinance based on the government's role. The County did not adopt building standards with sprinkler requirements. Hagerstown is the only municipality in Washington County to consider this requirement. It would be subjective to say the sprinkler systems work every time.

Councilmember Brubaker stated he believes the County did not include sprinkler systems because many County residents use well and septic systems.

It was the general consensus to amend the agenda for the Regular Session to include introduction of an ordinance adopting building standards, with a sprinkler requirement, for the City of Hagerstown.

The Work Session ended at 5:50 p.m.

EXECUTIVE SESSION – November 23, 2010

On a motion duly made by Councilmember F. W. Easton and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to meet in closed session to consider the acquisition of real property for a public purpose and matters directly related thereto, #3 at 6:17 p.m. in the Mayor's Office, 2<sup>nd</sup> Floor, City Hall, Hagerstown, Maryland. The following people were in attendance: Mayor R. E. Bruchey, II, Councilmember W. M. Breichner, Councilmember M. E. Brubaker, Councilmember F. W. Easton, Councilmember A. C. Haywood, Councilmember L. C. Metzner, City Administrator Bruce Zimmerman, Deborah Everhart, Economic Development Director, John Lestitian, Department of Community and Economic Development Director, Michelle Burkner, Acting Finance Director, Alfred Martin, Budget Officer and City Clerk D. K. Spickler. The meeting was held to discuss a contract of sale for a City Center property. No formal action was taken at the meeting. On a motion duly made, seconded and passed, the meeting was adjourned at 6:32 p.m.

32<sup>ND</sup> REGULAR SESSION – November 23, 2010

**Mayor R. E. Bruchey, II called this 32<sup>nd</sup> Session of the Mayor and City Council to order at 7:02 p.m., Tuesday, November 23, 2010, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers W. M. Breichner, M. E. Brubaker, F. W. Easton, A. C. Haywood, L. C. Metzner; City Administrator Bruce Zimmerman, City Attorney Mark Boyer and D. K. Spickler, City Clerk.**

The invocation was offered by Councilmember Lewis C. Metzner. 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, December 7, 2010, Tuesday, December 14, 2010 and the Regular Session on Tuesday, December 21, 2010 at 7:00 p.m.

The MVP awards were presented at this time.

## **GUESTS**

The Hagerstown Gridiron Challenge MVP Presentation was made. North Hagerstown High School MVP A. J. Staley was presented a scholarship check from Conservit, Inc. by Jack Metzner. South Hagerstown High School MVP Hunter Phillips was presented a scholarship check from the Hagerstown Kiwanis by John Roney.

## **CITIZEN COMMENTS**

There were no citizen comments.

## **PUBLIC HEARINGS**

### **Community Development Block Grant FY 2011/2012 Community Needs**

Larry Bayer, Director of Community Development, stated the purpose of this public hearing is to obtain the views and comments of individuals and organizations concerning the City's housing and community development needs, including project recommendations for FY 2011/2012 CDBG funds.

The following testimony was presented:

Kathy Powderly, Habitat for Humanity, 100 Charles Street, Hagerstown, Maryland, stated Habitat built 33 homes in Washington County since 1994. Twenty eight of these have been in the City, with four being built on property donated by the City. They will be starting a rehab program in 2011 which will be important to revitalization for the City. This program will help increase and broaden home ownership. They would like the first project to be in the City and they are seeking support from the City in acquiring a home to revitalize. Habitat is a good investment for the City, especially since they focus on low income families and dollars are spread much further because of the volunteers who help.

Fanny Crawford, Apples for Children, 6 W. Washington Street, Hagerstown, Maryland, stated Apples for Children creates an alliance for parent providers and local employer solutions for children. They are concerned about child care access within the City limits. They need help for the Child Care Center to begin and stay established. They would like to target their efforts to City applicants.

Sharon Disque, Home Store, 21 E. Franklin Street, Hagerstown, Maryland, stated they will submit applications to the City, as in the past, for CDBG funding. HUD specifies the minimum criteria that the City users when reviewing applications. The Home Store meets and exceeds all of the criteria. They also generate significant matching funds, multiplying the impact of any CDBG dollars received. They provide services which are in particularly high demand in today's volatile housing market, and a high priority in the City's Consolidated Plan. They conduct home buying, foreclosure, fair housing and credit counseling services in compliance with HUD regulations. They are the only housing counseling agency in Washington County to have adopted the national Industry

Standards for Homeownership Education and Counseling. In the City's Consolidated Annual Performance and Evaluation Report, this program is cited as serving the largest number of clients among all the housing activities named. Despite current economic conditions, 19 of their clients have purchased homes within the city since July. By funding the Home Store in the upcoming CDBG budget, the City can be confident that its goals will be achieved, while complying with HUD regulations, including service to low and moderate income households and minorities.

Doug Wright, Holly Place, 268 S. Potomac Street, Hagerstown Maryland, stated Holly Place cares for 15 senior citizens who need assisted living and can't afford it or get support from their families. The cost of care is \$ 2,600.00 per month. This is a critical service for these residents. He stated the CDBG program and the City have been a significant part of the support for Holly Place.

Ron Lytle, Contemporary School of Arts, 4 W. Franklin Street, Hagerstown, Maryland, stated they are seeking assistance to continue to serve the community through the After School Arts Program. They served over 500 children and family members last year. They provide other programs, in addition to the art school.

James Ramsburg, Contemporary School of Arts, is the After School Coordinator for the school. He stated art education helps improve the quality of life for students. The program brings families to the downtown area. Funding is necessary to continue this important program.

Mr. Bayer stated written comments will be accepted through December 17, 2010. Applications for funding are due at the same time and are available on the City's website or in person.

The hearing was then closed.

## **MINUTES**

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 approve the minutes, as presented, for the Mayor and Council meetings held on October 5, 2010, October 12, 2010, October 19, 2010 and October 26, 2010.

## **CONSENT AGENDA**

On a motion duly made by Councilmember F. W. Easton and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve the Consent Agenda as follows:

### **A. Water Department:**

1. Water Fund Pipe Inventory – Atlantic States (Phillipsburg, NJ)  
\$ 27,176.01

2. Water Fund Inventory – HD Supply Waterworks, LTD (Martinsburg, WV)  
\$ 19,965.36
  3. Copper Tubing – HD Supply Waterworks, LTD (Martinsburg, WV)  
\$ 33,648.00
  4. Dual Port Meter Transceiver Units – L/B Water Service, Inc. (Chambersburg, PA) \$ 33,048.00
- B. Information Technology/Engineering: GIS Geodatabase Design –  
Geographic Technologies Group, Inc. (Goldsboro, NC) \$ 30,000.00
- C. Parks and Engineering: Street Tree Planting – Botanica Enterprises, Inc.  
(Hagerstown, MD) Not to exceed \$ 50,000.00
- D. Department of Community and Economic Development – Public Relations and  
Marketing: 2011 Western Maryland BluesFest Budget

### **UNFINISHED BUSINESS**

#### **A. Approval of an Ordinance: To Amend the City Code, Chapter 33, Code of Ethics**

**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 an ordinance to repeal Chapter 33 of the City Code entitled Code of Ethics. This Chapter provides for a Code of Ethics for the City, by adopting standards of conduct and establishing violations and penalties for violations thereof.

#### **B. Approval of an Ordinance: To Amend the City Code, Chapter 35, Ethics Commission**

**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 an ordinance to repeal Chapter 35 of the City Code entitled Ethics Commission and replace it with a new Chapter 35 to be entitled Ethics Commission. This Chapter provides for the establishment of an Ethics Commission for the City, the qualifications and terms of the members and the responsibilities of the commission members.

**NEW BUSINESS**

**A. Introduction of an Ordinance: Former Corsi's Local Conversion District Overlay (ZM-2010-03)**

**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 for a Local Conversion District Overlay, including the seven conditions endorsed by the Planning Commission, with the modification of Condition #5 that the driveway apron will be realigned during the next regularly scheduled maintenance on the curb and sidewalk, on property located at 991 Maryland Avenue.

**B. Introduction of an Ordinance: To Convey a Portion of Stratford Avenue**

**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 determining that a certain portion of Stratford Avenue is no longer needed for a public purpose and authorizing the conveyance of said property. The Mayor and City Council further authorize the execution of legal documents to convey the one block section of Stratford Avenue from Florida Avenue to the Norfolk Southern Railroad. The ARC of Washington County, Inc. is requesting that the City release any interest in the property since they own all adjoining properties and the road no longer serves a public purpose.

**C. Introduction of an Ordinance: To Repeal and Re-enact Article XII, the Board of Traffic and Parking, and Article XIV, Board of Technical Appeals**

**Action:** Councilmember A. C. Haywood made a motion to introduce an ordinance to repeal and re-enact Chapter 10 Part 2 Article XII, Board of Traffic and Parking and Article XIV Board of Technical Appeals to update and make the provisions uniform with others in Chapter 10. The Code is amended by adding new Article XII and Article XIV to the Code. Councilmember F. W. Easton seconded the motion.

Discussion: Councilmember Brubaker will vote against limiting the chairman to terms of two years.

Motion carried, 3-2 with Councilmember W. M. Breichner and Councilmember M. E. Brubaker voting No.

**D. Introduction of an Ordinance: To Repeal Article IX, Board of Parks and Recreation**

**Action:** Councilmember F. W. Easton made a motion to introduce an ordinance to repeal Chapter 10 Article IX, Section 10-41 to Section 10-45 of the Hagerstown City Code Board of Parks and Recreation. The public need for such Board has ceased and it is in the best interest of the City of Hagerstown that the Section be repealed. Councilmember L. C. Metzner seconded the motion.

Discussion: Councilmember Haywood stated she would vote against this ordinance. Even though she recognizes the Board, in its current format is not functioning, parks are public and require public input. She would want the Board to be reinstated at some point.

On a motion duly made by Councilmember W. M. Breichner and seconded by Councilmember L. C. Metzner, the motion was tabled.

**E. Approval of a Resolution: Modifications to the Hagerstown Revolving Loan Fund Guidelines**

**Action:** On a motion duly made by Councilmember W. M. Breichner and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve a resolution repealing the existing guidelines for the Hagerstown Revolving Loan Fund and to adopt, by resolution, revised guidelines dated November 23, 2010.

**F. Approval of Utilities Department Bulk Chemical Purchases: Wastewater Division \$ 347,078.00 and Water Division \$ 552,838.05**

**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 the expenditure of \$ 347,078.00 of budgeted Wastewater Division funds and the expenditure of \$ 552,838.05 of budgeted Water Division funds for the purchase of bulk chemicals. The purchases will occur in the second half of Fiscal Year 11 and the first half of Fiscal Year 12. The chemicals, which are used in the treatment processes employed by the Divisions, were low bid submissions obtained through the City/County joint bidding process.

**G. Approval of Benefit Consulting Services Contract**

**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 approve renewal of a four year contract for benefit consulting services with CBIZ with a rate guarantee for the next four years as follows:

- Current Annual Fee                      \$ 50,200
- Effective July 1, 2011                      \$ 51,000



- Effective July 1, 2012    \$ 51,960
- Effective July 1, 2013    \$ 53,400
- Effective July 1, 2014    \$ 55,000

**H. Approval of Bulk Diesel Fuel Bid – Mansfield Oil Company (Gainesville, GA)  
\$ 2.2275/gal as of 09/23/10, Estimated Annual Total \$ 148,129.00**

**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 the bulk diesel fuel purchase for City operations from Mansfield Oil Company. The price is per the Oil Price Information Service (OPIS) average on 09/23/10 of \$ 2.1996 plus the bidder's plus factor of \$0.0279/gallon. The estimated annual cost of the diesel fuel is \$ 148,129.00. This purchase was competitively bid by Washington County Purchasing to obtain a better bulk rate for the County, Board of Education and the City of Hagerstown.

**I. Approval of Contract Extension for City Legal Services**

**Action:** On a motion duly made by Councilmember W. M. Breichner and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve an agreement with the law firms of Nairn & Boyer and John H. Urner to serve as general counsel for the City of Hagerstown for a contract term commencing on January 1, 2011 and running through December 31, 2013, as outlined in the agreement (which is a part of this resolution).

**J. Introduction of an Ordinance: Amending the City Code: Chapter 64  
Building Construction, Article I, Building Standards, Including Sprinkler  
Requirement Exemptions**

**Action:** Councilmember L. C. Metzner made a motion to introduce an ordinance to amend the Code of the City of Hagerstown, Chapter 64, Building Construction, Article I, to provide for updated Building Standards which includes a requirement for the installation of a residential sprinkler system in newly constructed one and two family dwellings. One-family detached dwellings are exempt from this requirement. This requirement will become effective for building permit applications received after February 1, 2011. Councilmember W. M. Breichner seconded the motion.

Discussion: Councilmember Brubaker will vote for this ordinance, but he thinks it would be advisable for it to apply to all new residential construction.

Motion carried, 3-2 with Councilmember A. C. Haywood and Councilmember F. W. Easton voting No.

**CITY ADMINISTRATOR'S COMMENTS**

*Bruce Zimmerman, City Administrator*, reminded everyone that City Hall and other City offices will be closed on Thursday, November 25, 2010 and Friday, November 26, 2010 for the Thanksgiving holiday. Refuse collection will be delayed by one day due to the holiday.

**MAYOR AND COUNCIL COMMENTS**

*Councilmember L. C. Metzner* wished everyone a Happy Thanksgiving. He signed the letter requesting the Attorney General to investigate the robocall made against County Commissioner Kristen Aleshire. He stated partisan politics should not exist in City government.

*Councilmember A. C. Haywood* reminded everyone that a Christmas fair will be held in the square on Friday, November 26, 2010. A variety of vendors will be in attendance offering unique gift purchases.

*Councilmember F. W. Easton* wished everyone a Happy Thanksgiving.

*Councilmember M. E. Brubaker* was unable to attend the tree lighting in the square because of the Washington County Municipal League meeting. Briefings of the state budget were provided at the meeting by the leadership of MML. There was some hope that Highway User Funds may be restored in the future.

*Councilmember W. M. Breichner* wished everyone a safe and Happy Thanksgiving. The MML chapter meeting was well attended and good information was provided.

*Mayor R. E. Bruchey, II* also wished everyone a safe and Happy Thanksgiving.

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 7:41 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: December 21, 2010