

7<sup>TH</sup> SPECIAL SESSION, WORK SESSION AND EXECUTIVE SESSION – September 8, 2009

Mayor R. E. Bruchey, II called this 7<sup>th</sup> Special Session, Work Session and Executive Session of the Mayor and City Council to order at 4:06 p.m., Tuesday, September 8, 2009, in the Council Chamber, 2<sup>nd</sup> Floor, at City Hall. Present with the Mayor were Councilmembers W. M. Breichner, M. E. Brubaker, F. Easton, A. C. Haywood and L. C. Metzner; City Administrator Bruce Zimmerman, City Attorney John Urner, City Attorney William Nairn and D. K. Spickler, City Clerk.

Hispanic Festival

Lewie Thomas, Recreation Facilities Manager, and Diana Reyes, President of the Hispanic Association of Hagerstown, stated the third annual Hispanic Festival will be held on Sunday, September 20, 2009 at Fairgrounds Park from noon to 6:00 p.m. Proceeds from the festival provide scholarships for Hispanic students at Hagerstown Community College. There will be vendors, demonstrations and informational booths at the festival.

Autumn Arts Festival

Lewie Thomas, Recreation Facilities Manager, and John Bryan, Historic Sites Facilitator, stated the Autumn Arts Festival will be held September 12 and 13, 2009 at the City Park. The festival includes craft vendors, reenactments and musical entertainment. Activities will also take place at the Mansion House, Museum of Fine Arts, Railroad Museum and the Hager House.

Street Closure Requests – South Potomac Street

Karen Giffin, Director of Community Affairs, presented requests from two agencies to close South Potomac Street. The first request is from Dale Bannon, Director of System Development for the Washington County Public School system. The street closure would be from 3:00 p.m. to 5:00 p.m. on Tuesday, October 20, 2009. The purpose for the closure would be a ribbon cutting ceremony for the Barbara Ingram School for the Arts.

The second request is from Jay Constantz, Executive Director of the Maryland Theatre. The first date requested is Friday, October 23, 2009 from 4:00 p.m. to 2:00 a.m. for a Halloween Wind Down Event for families. They are requesting a waiver from the open container law for this event. The second date requested is Saturday, October 24, 2009 from 6:00 p.m. to 2:00 a.m. On this date Comedian Ron White will give two performances. Both are sold out, which means 3,000 people will be coming to The Maryland Theatre that evening.

There will be no costs to the City since the Downtown Squad and Fire Police will be used to close the streets. No barriers will be placed in the street that would prevent emergency vehicles from using the street if a need should arise.

Mr. Bannon and Mr. Constantz were present to answer questions.

Councilmember Breichner stated he does not understand why a request would be made to close the street for a sold out show and he is concerned that handicap people will not know where to park. Mr. Constantz indicated the request was made to increase pedestrian safety.

Councilmember Metzner does not think alcohol should be served at a family Halloween event. There needs to be clear signage for handicap access. He is concerned that the Fire Police members volunteer their time during a street closure. They are on sight during the entire closure. He is supportive of the street closure but for fewer hours.

It was the general consensus to grant permission for the street closure from 3:00 to 5:00 p.m. on October 20, 2009 for the Barbara Ingram School for the Arts ribbon cutting, from 5:00 to 10:00 p.m. for the Halloween Wind Down at the Maryland Theatre, and 6:00 p.m. to midnight for the Ron White shows at the Maryland Theatre.

A Patriot Day Ceremony will be held in the Council Chamber on Friday, September 11, 2009 at 8:30 a.m.

#### Possibly Re-Naming of Cramer Alley

Rodney Tissue, City Engineer, reported Cramer Alley is being widened to a two-way street and should be completed within one week. A few months ago, Councilmember Metzner mentioned that the Council should consider changing the name of Cramer Alley from East Washington Street to the Arts & Entertainment Parking Deck. Since there are no properties addressed from this alley, it would be relatively easy to change the name to whatever the Council desires.

It was the general consensus to ask the public and students to submit suggestions for the alley. Mayor Bruchey recommended that alley not be included in the name.

A research of the name Cramer did not yield any information about the alley name.

Suggestions are due by the end of September and a name will be chosen in October.

#### Sidewalks in the "000" Block North Potomac Street

Kathleen Maher, Planning Director, and Rodney Tissue, City Engineer, indicated the City has received a grant award of up to \$ 100,000 in fiscal year 2010 from the Maryland Heritage Area Authority Financing Fund. This funding was approved as requested by the City in February, 2009, to replace the concrete sidewalks with brick in the block north of Public Square on Potomac Street. The State of Maryland is asking the Mayor and City Council to sign an agreement accepting the grant.

Ms. Maher and Mr. Tissue asked the Council if they are interested in proceeding with a project to improve the sidewalks in this block and utilize the MHA grants as well as matching funds from the City. If the Council is interested, staff will begin to develop the construction drawings to bid out the work for construction in 2010.

Staff estimates that to remove the concrete sidewalk, replace them with brick, and improve the trees and planters (as necessary) will cost approximately \$ 200,000. Staff assumes that the larger sidewalk widening project is not desired at this time. To fund the project, the \$ 100,000 grant could be utilized as could \$ 78,713 from the Maryland State Aid in Lieu of Taxes fund (which is money sent to the City for road and street related projects). In addition, the \$ 22,687 balance of the funds would come from fund balance unspent from other projects or CIP contingency.

Staff has not yet approached the property owners regarding the project, but they would meet with all of them early in the design process. Staff does not propose the widening of the sidewalk as in the first block of South Potomac Street. If widening is desired, staff could complete a preliminary design and cost estimate to determine the additional cost.

Councilmember Metzner asked if the project could be completed on a smaller scale, i.e. from Franklin Street to M & T Bank.

It is possible the grant could be used for other street improvements, sidewalks and roadways. Grant money has not been used for maintenance. If the sidewalks are widened, approximately twelve parking spaces will be eliminated.

If the project is changed, it may change the approval from the State.

It was the general consensus to not proceed with the original widening project and to develop a plan for how to best utilize the grant. Staff will explore other options, poll the businesses in this block and present the information to the Mayor and Council for further consideration in early October.

#### Proposed Commercial Zoning District Text Amendments

Kathleen Maher, Planning Director, and Stuart Bass, Comprehensive Planner, stated a public hearing was held on August 25, 2009 for proposed revisions to the zoning ordinance provisions for the C-1, C-2, C-4 and POM Zoning Districts.

Written comments received on the proposed amendments include the following:

Jason Divelbiss, Attorney, represents several property owners:

1. Add "Services for the Elderly and Persons with Disabilities" as permitted use in POM and C2.
2. Rename "Light Manufacturing" in POM to "Light Manufacturing/Flex" and add the following as permitted use: "warehouse/flex space, provided such space does not exceed more

than 50% of the total gross floor area of the building(s), except as modified by the Planning Commission.

3. Allow Planning Commission to waive the commercial limitations in the POM District which apply to (i) Fitness & Recreational Sports Centers, (ii) Retail Trade; and (iii) Beer, Wine and Liquor Stores.

These comments do not address the proposed text changes but are related to the exiting language in the Professional Office Mixed Use (POM) Zoning District. Staff would not object to items No. 1 and No. 2; however, they would object to item No. 3. The Planning Commission was also not in favor of expanding the amount of retail and service development in the POM when it was considered during their review process.

Lorraine O'Neill, owner of mixed use property on N. Cleveland Avenue

1. Allow Multi-family as permitted in C1.

Staff would support this change, since multi-family dwelling units are not uncommon in the C1 districts, as long as the dwelling units are part of a mixed use building. Single-family and two-family are already permitted in the C1 district as an accessory use to commercial uses. The Planning Commission's recommended text amendments would allow single-family and two-family dwellings as stand alone uses in the C1 district.

The Planning Commission will review these comments at their meeting on September 9, 2009.

It was the general consensus of the Mayor and Council to schedule introduction of an ordinance to amend the Zoning Ordinance on September 22, 2009, following the Planning Commission's review.

#### Draft Policy: Extension of City Utilities

Bruce Zimmerman, City Administrator, presented a draft policy for the extension of City utilities to the Mayor and Council for their consideration. The draft policy is staff's attempt to address the policy issues related to the extension of City water utilities outside of the Medium Range Growth Area (MRGA) as defined in the Comprehensive Plan and the exemption of the Hopewell Valley Area from Hagerstown's Annexation Policy. These issues often arise associated with County economic development projects and requests for City water utilities to serve these developments.

This draft was written both to support the County's economic development priorities and to protect the City's interests. Staff would suggest that the City only agree to extend utilities in return for receiving compensation that benefits Hagerstown. In the draft, staff is recommending financial compensation for extending the water service to Hopewell Valley. The utilities are a scarce and valuable resource which should be primarily utilized to the benefit of the City and its residents.

Mr. Zimmerman stated the draft policy represents staff's efforts to balance support of the County's economic goals with the City's responsibilities to Hagerstown. Staff believes the Mayor and Council's adoption of a policy along the lines of this draft will resolve an important issue for both Hagerstown and Washington County and demonstrate the City's willingness to support the County. He indicated the County Commissioners have received a copy of the draft policy.

Councilmember Brubaker stated he believes the biggest issue for City residents is double taxation. He suggested developing a plan to discuss the double taxation issue with the County Commissioners.

Councilmember Breichner indicated an agreement with the State Department of Corrections for water service also included the technology park on Downsview Pike. Michael Spiker, Director of Utilities, stated the agreement is for service to the front footage on Rensch Road.

Councilmember Breichner stated the lines were extended to the airport site with the assistance of CHIEF.

Mayor Bruchey stated this policy is an attempt to find a solution to the County's Economic Development Commission saying they can't market the Hopewell Valley because they don't know what utility service agreement will be for individual properties. This policy will address utility extension as a whole.

Councilmember Metzner stated this policy should be discussed with the County Commissioners and the County Economic Development Commission to determine their reaction to it. He is concerned that the Mayor and Council are discussing expansion of the Medium Range Growth Area (MRGA), which was established after lengthy discussions. If the MRGA is expanded in one area, another boundary will have to be diminished.

Councilmember Haywood agreed that a response should be obtained from the County Commissioners. She suggested discussing this during the strategic planning session on September 29, 2009.

Deborah Everhart, Economic Development Director, asked if there is a special taxing district at the airport. Councilmember Metzner questioned how development at the airport affects the City. Mayor Bruchey stated there is not a direct benefit but people who work there could purchase a home, clothes and groceries here. Councilmember Metzner would like to know for sure what the benefits are to city residents who work there.

Ms. Everhart indicated staff would obtain information about the number of employees within the airport district.

Councilmember Breichner stated an important issue to resolve is the fact that the County EDC claims that it is detrimental to have to tell a client they have to approach the City of Hagerstown for water and wastewater service. He agreed the policy should be discussed with the County Commissioners.

The payment for service could be paid for by the developer or the tenant. Mr. Zimmerman stated if a blanket exemption is extended, there has to be something in place to assure there is a benefit for the City to extend the service.

Ms. Everhart stated staff is attempting to be proactive and present a policy for the Mayor and Council's consideration. The annexation policy is still valid and the area will be served, if a pre-annexation agreement is signed. This policy is an additional consideration for the County.

The policy will be discussed further during the strategic planning session on September 29, 2009.

#### Amendments to City's Water and Wastewater Policy

Kathleen Maher, Planning Director, and Michael Spiker, Director of Utilities, were present to discuss proposed amendments to the City's Water and Wastewater Policy.

The proposed amendments are as follows:

1. Exception No. 1: The City's utilities staff feel that the language of Exception No. 1 in the policy should be amended to state that condemned wells or septic systems or such systems that have impending failure are an eligible exception to the policy's prohibition of service outside the Medium Range Growth Area (MRGA). Staff feels this change is appropriate, because if staff waits until a well or septic system has actually been condemned, then the property owner is without a system until the connection to public water or wastewater can be made.
2. Exception No. 3: Staff has been approached by the owner of some existing lots in Maugansville who received approval for City water and wastewater on these lots for single-family detached dwelling units. The County zoning ordinance would allow the construction of two-family dwelling units on these lots and that is now the desire of the property owner. In order to allow for such development, the Existing Lots of Record exception (No. 3) would have to be modified. Staff would support this change, since they do not foresee this type of activity occurring on a wide-scale basis, but, where it is possible, feel it would be an appropriate Smart Growth approach for exiting lots of record in the urbanized area.
3. Exception No. 3: A local engineer pointed out a deficiency in the wording of exception No. 3 for Existing Lots of Record. It

currently states that such lots would have to be from a recorded plat or valid site plan with a note on the plat or plan from the City approving water and/or wastewater service. Since both the City and the County have only had subdivision ordinances and Planning Commissions for about 30 years, the old lots of record that were created in the late 19<sup>th</sup> century and early 20<sup>th</sup> century were created through deed recordation and not by subdivision plat recordation or site plan approval. In those times, people came up with a subdivision plan for their property and simply recorded it on a deed in the Courthouse. Staff's recommendation is to delete the language related to plats and site plans.

It was the general consensus to schedule approval of the amendments for September 22, 2009.

#### CITY ADMINSTRATOR'S COMMENTS

*Bruce Zimmerman, City Administrator*, stated a presentation by the Office of Code Compliance is scheduled for September 15, 2009.

#### MAYOR AND CITY COUNCIL COMMENTS

*Councilmember M. E. Brubaker* attended a presentation by Maryland Historical Trust. He suggested questions regarding Maryland Historical Trust regulations be directed to the planning department.

*Councilmember W. M. Breichner* had no additional comments.

*Councilmember L. C. Metzner* had no additional comments.

*Councilmember A. C. Haywood* suggested that the North Potomac Street sidewalk project be reviewed by a task force.

*Councilmember F. Easton* had no additional comments.

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

#### EXECUTIVE SESSION – September 8, 2009

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 closed session to consult with counsel to obtain legal advice, #7 and to consider the acquisition of real property for a public purpose and matters directly related thereto, #3 at 5:48 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. Easton, Councilmember A. C. Haywood, Councilmember L. C. Metzner, City Administrator Bruce Zimmerman, City Attorney John Urner, City Attorney William Nairn, Deborah Everhart, Economic Development Director, Larry Bayer, Manager of Community Development, Alfred Martin, Finance Director and Donna Spickler, City Clerk. The meeting was held to discuss requests for loans through the revolving loan fund upper floors program and the commercial buildings program, and the potential acquisition of a downtown building. No formal action was taken at the meeting. On a motion duly made, seconded and passed, the meeting was adjourned at 6:57 p.m.

7<sup>TH</sup> SPECIAL SESSION – September 8, 2009

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to meet in special session at 7:10 p.m.

Public Hearing – Water and Wastewater Rates

A Public Hearing was held to discuss proposed increases in water and sewer user rates. Under the proposed increase, water service user rates will increase 5% for all Inside City customers and 6.5% for all Outside City customers. Sewer rates for users of the City of Hagerstown sewer system will increase by 5.0% for Inside City customers and 3.0% for Outside City customers, including both joint service area and full service sewer customers. Low pressure system and industrial surcharge rates are also proposed to increase by 7.0%. The proposed increases would take effect on all bills rendered after November 1, 2009.

Michael Spiker, Director of Utilities entered the following Exhibit:

Exhibit 1: Notice of Public Hearing

Alfred Martin, Finance Director, stated these rates are lower than the consultant's recommendation. One of the reasons the increases are lower is due to the deferral of some capital projects. Low interest loans will help save on debt services obligations. The proposed rates include a two tier rate system. The proposal includes an increase in fire line charges.

The following testimony was presented:

Celia McDonald, Cavetown, Maryland, asked why her bill has a flat rate of \$ 90.00, which is different from the information presented. It was discovered that Ms. McDonald is a County sewer customer, not a City customer.

The owner of 404 E. Irvin Avenue, Hagerstown, Maryland, is concerned that rates continually rise. She stated water from Moller Parkway runs into an alley behind her home and trash collects there. She is also concerned about the cost of replacing curbs



and sidewalks in her neighborhood. Councilmember Metzner pointed out the City is paying for the sidewalk replacement in that area because street trees have caused the damage. She asked who owns the curb. Mayor Bruchey stated the property owner does and is responsible for maintaining the curb.

Ruth Dooley, Chambersburg, Pennsylvania, owns property in Hagerstown and is concerned that rates are rising. She is concerned that people will not be able to afford to pay their bills.

Debbie Singleton, Hagerstown, Maryland, is against raising rates but she understands the necessity of increases.

No further testimony was presented.

The record will remain open for 10 days for written comments.

The hearing was closed at 7:40 p.m.

#### **Introduction of an Ordinance: To Increase Water Rates**

**Action:** On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance to increase the average unit cost of water rates by an average of 5% per year for in-City customers and 6.5% per year for customers outside of the City over the next five fiscal years. These rate increases are necessary to meet the revenue requirements of the Water Fund in order to keep the fund self supporting as determined by the recently completed cost of service study prepared for the City by the Municipal Financial Services Group.

The detailed individual rate changes in the volume charges and fixed charges by meter size are indicated, by fiscal year, in the body of the ordinance. The increased rates shall be effective for all bills rendered on or after November 1, 2009 for the current fiscal year (2010) and for all bills rendered on or after July 1<sup>st</sup> of each of the subsequent four fiscal years.

#### **Introduction of an Ordinance: To Increase Sewer Rates**

**Action:** On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember A. C. Haywood, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance to increase the average unit cost of sewer rates by an average of 5% per year for in-City customers and 3.0% per year for customers outside of the City over the next five fiscal years. These rate increases are necessary to meet the revenue requirements of the Wastewater Fund in order to keep the fund

self supporting as determined by the recently completed cost of service study prepared for the City by the Municipal Financial Services Group.

The detailed individual rate changes in the volume charges and fixed charges by meter size are indicated, by fiscal year, in the body of the ordinance. The increased rates shall be effective for all bills rendered on or after November 1, 2009 for the current fiscal year (2010) and for all bills rendered on or after July 1<sup>st</sup> of the subsequent four fiscal years.

The rates for the three municipalities who purchase water from the City will increase by 2% to 3% for two years and 6% for the three subsequent years.

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 7:45 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: October 27, 2009