

75TH SPECIAL SESSION AND WORK SESSION – August 4, 2015

Mayor D. S. Gysberts called this 75th Special Session and Work Session of the Mayor and City Council to order at 3:00 p.m., Tuesday, August 4, 2015, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers K. B. Aleshire, M. E. Brubaker, L. C. Metzner, D. F. Munson, and P. M. Nigh; City Administrator Valerie Means, and City Attorney Mark Boyer.

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 meet in Special Session at 3:00 p.m.

Approval of AFSCME 1540 Cost of Living Increases Due to Arbitration Award

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 of two cost of living adjustments to the AFSCME Local 1540 salary scale as ordered by Arbitrator William A. Nowlin in FMCS case number 15-511-52-1. The Arbitrator's Opinion and Award orders an additional 1.00% cost of living adjustment to the AFSCME Local 1540 salary scale effective retroactively to July 1, 2014. Further, the City is ordered to provide AFSCME 1540 with another additional 1.00% cost of living adjustment effective retroactively to July 1, 2015. The total estimated gross impact of this Opinion and Award for Fiscal Years 15 and 16 is \$ 215,131. This impact will be absorbed operationally in FY15 and funded by departmental reductions in expenses in FY16.

Discussion: Councilmember Brubaker stated the motion he made states the award will be funded in FY16 through departmental reductions and it does not limit the reductions to operations.

Mayor Gysberts invited Michelle Hepburn, Director of Finance, and Karen Paulson, Director of Human Resources, to the table. He asked what other options the City has to pay for the award if it is not from operational funds. Ms. Hepburn stated other options include from wages, from deferring purchases and from capital expenditures.

Mayor Gysberts noted layoffs would be an option as well and that the Mayor and Council have chosen not to order layoffs. He stated this is an example of why binding arbitration is a terrible idea. The unions are not recognized in the City Charter because they are not part of the form and

function of government. This is an example of a third party dictating the spending of taxpayer dollars. The amount that has the City has been ordered to pay to employees is approximately equal to a 1¢ on the tax rate. He then provided the audience with Mr. Nowlin's telephone number.

Councilmember Aleshire agreed with the motion language so that it does not limit where funding can be taken from and it is not limited to specific departments within the general fund. He believes binding arbitration will be an issue put forth by union membership representation in the next City election. All citizens should be familiar with what binding arbitration means and how an independent arbitrator can make a decision, without considering the organization's budget and financial status. There are four unions in the City. Each union negotiates independently with parameters of what is available and certain items that are requested, with different outcomes for each union. In this case, a group negotiated a contract one way and now comes back and asks for the same amenities as another union. As long as there are separate negotiations and contracts, the only groups that loses in this process are the taxpayers and citizens. It may be increased taxes or decreased services.

Mayor Gysberts stated when it comes down to the economic matters, there should not be separate contracts for the four unions. He thinks a "me too" clause within a contract is ridiculous.

Councilmember Brubaker understands that the arbitrator did not have to issue the order that he did. Ms. Paulson indicated AFSCME 1540 was offered the same benefit as other employees which was the 2% COLA, which they declined for an enriched step benefit. The arbitrator issued the COLA award as well.

Councilmember Brubaker stated fair negotiations were held. The fire union membership settled their contract after the petition was filed, and they said they were treated unfairly. There were untruths stated during the discussions. This Mayor and City Council are sympathetic to unions. Inevitably, arbitration favors the bargaining groups. He doesn't see how the City can fund the order without reducing personnel expenses and similar expenses.

Councilmember Metzner noted that 1540 was the first union to approve a contract. Clearly two of the other three unions have created challenges. He doesn't want to criticize the union that worked with the City. For him, the "me too" clause is less relevant than attacking the union that worked with the City and signed quickly. The City could have approached 1540

and said these are the issues and discussed it with them. He doesn't think 1540 should be criticized because they worked with the City very early.

This is arbitration interpreting an agreement. Binding arbitration would be making the agreement.

Councilmember Munson pointed out the funding is unbudgeted and it will have to be found. An easy way to obtain the funding would be to lay people off. This Mayor and Council are trying to do the right thing with the employees. This is an example of the serious challenges that binding arbitration could create. The elected body would lose their ability to make the financial decisions to keep the City of Hagerstown fiscally sound. He also believes binding arbitration will be on the ballot in the next City election. If it is approved by the voters, there could be significant tax increases. The City's property tax is already high and higher rates would be detrimental. The arbitrator made the decision without any regard to the citizens of Hagerstown and provided benefits that were not requested. The only option the Mayor and City Council has is to appeal the decision through the courts, which would be expensive.

The Special Session was adjourned at 3:23 p.m.

Work Session – August 4, 2015

Certificate of Recognition: City of Hagerstown Finance Department

Mayor Gysberts recognized the City of Hagerstown Finance Department employees for their hard work and dedication and for being awarded the Certificate of Achievement and Excellence in Financial Reporting from the Governmental Finance Officers Association.

Michelle Hepburn, Director of Finance, and Rana Rose, Accounting Manager, were present for the recognition.

Proclamation: 80th Anniversary of the Signing of the Social Security Act

Mayor Gysberts read a proclamation recognizing the 80th Anniversary of the Signing of the Social Security Act. Mary Castle, Hagerstown branch of the Social Security Administration, Julianna Albowicz, representing Senator Barbara Mikulski, Sonny Holding, representing Congressman John Delaney, and Robin Summerfield, representing Senator Ben Cardin, were present for the recognition.

Mr. Summerfield presented a citation from Senator Cardin to the City of Hagerstown thanking the Mayor and City Council for recognizing this anniversary.

Land Management Code Amendments – Continuation of Discussion

Kathleen Maher, Planning Director, and Alex Rohrbaugh, Planner, were present to review new material from staff to address concerns about a Storefront Protection Zone (SPZ) and window graphics.

Concerns expressed regarding the proposed Storefront Protection Zone is that it could create unintended consequences that would not be beneficial to the downtown. An example is the exclusion of offices from storefronts, which some members felt create good foot traffic and should not be excluded (e.g., law offices). The area of the Storefront Protection Zone might be too large.

An alternative that was suggested was to create a more limited list of uses that are not wanted in storefronts rather than a longer list of those that are wanted. Staff's response is that it is difficult to single out certain types of offices as not desirable in a zoning code, as was evidenced with the attempted moratorium on ambulatory healthcare facilities. Federal law prohibits land use regulations which single out religious uses for special treatment which is not shared by other places of assembly. For these reasons, staff recommend that the SPZ treat like land uses (e.g., offices – law, accountant, medical, bail bond; places of assembly – theaters, churches, etc.) similarly with the storefront restrictions and upper floor preferences.

As recommended to the Planning Commission during their review, staff suggest a compromise of reducing the area of the Storefront Protection Zone and removing spaces without direct sidewalk access from the definition of storefront.

A reduced area was proposed and a map was provided of the alternative area. There are 102 storefronts in this reduced area – on July 28, 2015, 48% were occupied with the preferred storefront uses, 22% occupied with the preferred upper floor uses, and 30% vacant. This area also includes 15 commercial spaces without display windows, 7 single-user institutional/auditorium spaces, 4 residential buildings, and 11 lobby spaces. The area to be removed contains 87 storefronts, 16 commercial spaces without display windows, 8 single-user institutional/auditorium spaces, and 28 residential buildings.

Councilmember Aleshire clarified that 50% of the uses would fit within the amendment. He is concerned that approximately every 1 in 5 use would not be permissible after the amendments are approved. He is concerned about the possible difficulty of filling vacant storefronts if current tenants and owners move.

Mayor Gysberts wondered if there are too many non-retail uses in storefronts to change the ratio.

Councilmember Brubaker argued for this in the Planning Commission and supported bringing this to the Mayor and City Council for further discussion. He is very concerned

with the unintended consequences. He is not convinced this is the appropriate time to implement these regulations and that there are not enough allowed uses to make it advantageous. He is concerned about the declining tax base. He pointed out staff is working hard to provide solutions for downtown.

Councilmember Nigh stated retail ventures would not want to locate in an area where there is a large amount social service providers.

Councilmember Munson thanked the Planning staff for their efforts. The problem of social services downtown can't continue to be ignored.

Ms. Maher suggested maintaining the language in the amendments that prohibits removal of existing storefronts.

Concerns expressed for window graphics were that even with the 50% coverage revision; too many businesses would become in violation of the Land Management Code and would create new work for enforcement staff. Staff undertook an analysis of three areas of the city to determine what the violation situation would be for "more than 50% coverage" of commercial windows by graphics (signs). Staff found that nearly 80% of the businesses on two commercial corridors would have been compliant and 98% of the commercial spaces in a portion of the downtown are compliant. On the Dual Highway between Cannon and Eastern Boulevard, 78% of the businesses would have been compliant with this provision. On Wesel Boulevard, 79% would have been complaint. In the proposed reduced SPZ area, 98% are complaint as of July 28, 2015.

Staff recommends the following revisions to the package under review:

1. SPZ Area – reduce SPZ areas described above
2. Storefront Definition – modify definition so that spaces without direct access to the sidewalk are exempt.
3. Projection of Storefront Space – modify storefront protection provision to include the following: "window glazing openings on existing storefronts shall not be reduced in area, but may be expanded in size with approval of the HDC where required."
4. List of Preferred Storefront Uses – modify "Visitor Welcome Centers" to read "Visitor and Business Welcome Centers" in the list of uses permitted in storefronts in the SPZ and in the land use chart of LMC.
5. Window Graphics: remove window graphics from the maximum square footage requirement and instead add a provision that allows them in a manner that matches the HDC recommendation:
 - a. Exempt – window graphics, provided they cover no more than 50% of the surface of an individual window or contiguous block of windows
 - b. Prohibited – window graphics applied to the surface of the glass that create a solid background which prevents views into occupied storefront space.

- c. Definition – add the following to the definition of window graphics – Decorative window scrims or films on vacant spaces that are not commercial advertisements of a business, products or services are not considered graphics.
- d. Freestanding Signs in Multi-jurisdiction Commercial Area – modify provision for Freestanding Signs to allow 150 square foot signs in commercially zoned sections of the Dual Highway, Wesel Boulevard, and Potomac Avenue to match County maximum.

Councilmember Metzner stated the businesses that would be affected by these regulations should have been contacted for input. He thinks enforcing the proposed amendments would create an overwhelming amount of additional work for the existing staff. There is difficulty with enforcing the existing regulations.

Councilmember Aleshire is concerned that businesses that do not generate complaints will be made to comply with stricter regulations. He feels that the regulations are addressing store fronts that are glaringly viewable from the road, not the storefronts in shopping centers.

Mayor Gysberts wondered if signs in windows would be considered an expression of free speech. He wondered what the health, safety and welfare component of zoning regulations these amendments would address.

Councilmember Brubaker does not want to send a message to existing businesses that the Mayor and City Council don't want them in the City. These regulations may be viewed as perceived obstacles.

It was the general consensus to not move forward with Storefront Protection Zones and Window Graphics as proposed.

It was the general consensus to retain the language prohibiting removal of storefronts, allowing graphics on glass doors, and modifying freestanding sign provisions.

Introduction of the ordinances will be scheduled on the August 25, 2015 Regular Session.

Land Management Code Amendment: Indoor Plant Cultivation & Processing Facilities

Kathleen Maher, Planning Director, and Jill Frick, Economic Development Manager, were present to discuss a new text amendment to accommodate Indoor Plant Cultivation and Processing Facilities.

Mayor Gysberts noted this text amendment would also allow growing of medical marijuana.

Staff see a benefit to modifying the City's zoning regulations to allow an enterprise to conduct an indoor growing operation in certain districts of the City that are not traditionally viewed as likely locations for nursery/greenhouse operations. Examples include hydroponic growing and emerging industries such as geaponics, indoor vertical farming, and urban agriculture.

Additionally, the ability to accommodate a combined growing and limited manufacturing operation is at times discussed as something that would be economically beneficial. Examples include growing, processing, and packaging herbs, teas, potpourri, etc. for sale. Currently, the City's Land Management Code does not allow for the combination of growing of plants and processing/refining of plant materials in one enterprise.

If the Mayor and City Council are in agreement that there is economic benefit to accommodate indoor growing operations in additional zoning districts and that it would be appropriate to allow the combination of growing and limited plant processing in certain districts, staff have prepared the following potential amendments for consideration:

1. Indoor Plant Cultivation and Processing Facility – Indoor cultivation of plants for wholesale distribution of plant and/or fruit, seeds, or flowers of the plant. This use may include refinement of plant materials into end products for human consumption or personal use, including canned, preserved or frozen fruits and vegetables, dried culinary and medicinal herbs, other medicinal products, essential and infused oils, spices, teas, dried flowers, potpourri, sauces and salsas, etc. This use shall not include refinement of plant materials with other manufactured components into lotions, creams, gels, or other cosmetic products. This use shall not include refinement of plant materials into industrial products, such as paper, textiles, rubber, etc. Permitted in Zoning Districts – 25,000 sf or less: CC-MU, I-MU, IR, and IG; Special Exception in POM, over 25,000 sf: IR and IG; Special Exception in CC-MU, POM, and I-MU
2. Brewery – A place where beer is manufactured for commercial wholesale. This use shall not include enterprises that make beer for on-site consumption, such as brewpubs. Permitted in the IG Zoning District.
3. Distillery – A place where liquor is manufactured for commercial wholesale. Permitted in the IG Zoning District.

Councilmember Munson clarified these amendments will permit medical marijuana facilities. The general proposal is a good idea; however he would request that any facility be specifically approved by formal vote of the Mayor and City Council.

Ms. Maher stated it may be possible to add another chapter requiring the support of the Mayor and City Council. She noted a State permit is required for any medical marijuana facility.

Councilmember Brubaker noted the amendments are for broad industrial uses as well.

Mayor Gysberts stated Hagerstown's electric rates are attractive for potential growers. There are potential growers interested in the community and it would be beneficial for the City to be prepared to make it possible.

Councilmember Metzner stated growing is moving toward indoor farming for many crops, not just marijuana.

Councilmember Munson stated marijuana is a threshold drug and is concerned people will be able to obtain it illegally. He wants to make sure illegal activity is kept to a minimum.

It was the general consensus to move forward with the process and recommend that the Planning Commission review the amendments. The City Attorney recommends that this amendment go forward separately from the current package of amendments and follow the normal public review process for text amendments. The next step would be review by the Planning Commission and advertisement of a public review meeting by that body.

Mr. Boyer then left the meeting.

MML Legislative Priorities

Councilmember Brubaker has been reappointed to the Legislative Committee for MML. The Legislative Committee will be meeting on September 2, 2015 to begin the process of developing a list of legislative priorities for the General Session.

During the last session, legislation was passed allowing elected officials to have the last word on Comprehensive Plans.

Staff noticed several of subdivisions will go past the Stormwater Management Regulations deadline before they are fully built-out and would be exposed to complete modification of their stormwater plans. There is some language that may be problematic that should be addressed during the General Session.

Councilmember Brubaker would like to discuss any issues Councilmembers would like to have addressed during the Work Session on August 18, 2015. Legislative issues for the MML must be state wide concerns, not specific to Hagerstown.

CITY ADMINISTRATOR'S COMMENTS

Valerie Means, City Administrator thanked staff for their presentations during the meeting. There will be no Mayor and Council meeting on August 11, 2015. National Night Out will be held on August 4, 2015 at 5:30 p.m. There will be a community meeting held at the Farmer's Market for public input for the future of the market on August 8, 2015.

MAYOR AND COUNCIL COMMENTS

Councilmember M. E. Brubaker had no additional comments.

Councilmember K. B. Aleshire made comments last week about the A & E Trail and was discouraged that the article in the newspaper was not an accurate description of the process for land needed for the trail from the Herald Mail. The City has been in communication with that property owner as early as January. He mentioned that the Herald Mail Company and Antietam Cable Television are owned by the same company. He is concerned that the City's potential broadband service will become an issue in discussions about the land. The trail will be a \$ 2 million improvement to the neighborhood.

Councilmember D. F. Munson thanked Councilmember Brubaker for his work with MML. He attended the Municipal Band concert on Sunday. He estimated an audience of 1,000 in attendance.

Councilmember L. C. Metzner also thanked Councilmember Brubaker.

Councilmember P. M. Nigh thanked Public Works for attempting to remove the weeds. She wondered if violation letters have been issued by Code Compliance. She is concerned the letters have a strong tone. She is concerned about codes that are not being enforced. She is tired of seeing residents with out of state tags on their cars. There are many vehicles parking illegally at the Alms House. She thanked Karen Giffin, Community Affairs Manager, for her 23 years of service. Ms. Giffin is leaving City employment. Ms. Giffin has held many different positions and coordinated 55 events in the City. The City's TV channel started in Ms. Giffin's office. She has organized many fund raising endeavors. She wished her well in her next endeavor.

Mayor D. S. Gysberts wished Ms. Giffin well. He also thanked Councilmember Brubaker for his work with MML. The market has a lot of potential and he encouraged people to attend the public input meeting on Saturday.

Councilmember Munson also thanked Ms. Giffin for her service and dedication. There is a chain across the road at the old YMCA and he wondered if that is permitted.

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 4:38 p.m.

Respectfully submitted,

Original signed by D. K. Spickler

Donna K. Spickler, City Clerk
From the video

Approved: September 29, 2015