

96TH SPECIAL SESSION, WORK SESSION, AND EXECUTIVE SESSION – July 19, 2016

EXECUTIVE SESSION – July 19, 2016

On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember D. F. Munson, the Mayor and City Council unanimously agreed by voice vote of all members present to discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation or performance evaluation of appointees, employees, or officials over whom it has jurisdiction, #1, (Section 3-305(b)), to consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State, #4, (Section 3-305(b)), and to conduct collective bargaining negotiations or consider matters that relate to the negotiations, #9, (Section 3-305(b)), on Tuesday, July 19, 2016 at 5:00 p.m. in Room 407, 4th floor, City Hall, Hagerstown, Maryland.

The following people were in attendance: Mayor D. S. Gysberts, Councilmember M. E. Brubaker, Councilmember L. C. Metzner, Councilmember D. F. Munson, Councilmember P. M. Nigh, City Administrator Valerie Means, Jill Frick, Director of Community and Economic Development, Kathleen Maher, Planning Director, Michelle Hepburn, Director of Finance, Eric Deike, Director of Public Works, Jonathan Kerns, Community Development Manager, Paul Fulk, CC Inspector Technology Specialist, Karen Paulson, Director of Human Resources, and D. K. Spickler, City Clerk. Councilmember K. B. Aleshire was not present.

The meeting was held to discuss membership of the Hagerstown Loan Review Authority, details of a business proposal, and collective bargaining negotiations. No formal action was taken at the meeting. On a motion duly made, seconded, and passed, the Executive Session was adjourned at 5:57 p.m.

96TH SPECIAL SESSION AND WORK SESSION – July 19, 2016

Mayor D. S. Gysberts called this 96th Special Session, Work Session and Executive Session of the Mayor and City Council to order at 6:05 p.m., Tuesday, July 19, 2016, 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, City Attorney Mark Boyer, and City Clerk D. K. Spickler.

WORK SESSION – July 19, 2016

Preliminary Agenda Review

Consent Agenda

A. Fire Department:

1. Purchase of Replacement Deputy Fire Marshal Vehicle – McCafferty Ford (Mechanicsburg, PA) \$ 61,606.83

Councilmember Brubaker asked about the bidding process for vehicles that include added equipment. The bids for the Fire Marshal vehicle and the dump truck with snow plow were part of the Costars bidding group for municipal vehicles. All vehicle bids include the added equipment. Costars uses a base for the vehicle, with a set amount for overhead.

Approval of a Resolution: Charter Amendment: Permitting Non-management Employee Groups to Designate a Union to Act on Their Behalf

Approval of a Resolution: Specifying the Day and Hours for the Referendum of a Proposed Charter Amendment

Mayor Gysberts stated this Mayor and City Council supports the collective bargaining rights of non-management employees. The Council is considering taking the action to include recognition of the unions in the City Charter. The Council is also taking action to set the day and hours of the referendum question. The question that will appear on the ballot includes two questions – 1) should the City of Hagerstown Charter include recognition of unions, and 2) whether or not the City of Hagerstown Charter should include binding arbitration. Mayor Gysberts stated he believes binding arbitration would be detrimental to the City government. It adds a fourth element to City government by allowing a third party arbitrator to make decisions for the taxpayers of Hagerstown. This third party arbitrator may or may not have an interest in the City. The question will appear on the ballot as it appeared on the petition when signatures were collected in 2014. He indicated by approving a resolution to amend the Charter to include recognition of unions, it makes the two part question essentially have one part. The remaining question is about binding arbitration. The City of Hagerstown has been ordered by the Court to place the question on the ballot in November, 2016.

Mark Boyer, City Attorney, stated if the resolution to amend the City Charter is approved on July 26, 2016, per State of Maryland law, it will become effective 50 days after it is passed. If the resolution to set the day and hours for the referendum of a proposed Charter amendment is approved on July 26, 2016, Mr. Boyer's office will notify the Circuit Court that the City of Hagerstown has complied with the court order. They will also notify the Board of Election Supervisors that the resolution has been approved.

Councilmember Aleshire pointed out the last public discussion was regarding the court's decision of the appeal filed by the City of Hagerstown. The Mayor and Council briefly discussed what amount of resources would be considered to oppose the referendum question as it has been put forth. He stated he will not participate in further closed session discussions because citizens have not had the advantage to hear the discussions. He is concerned that members of the Council are ready to vote on a resolution to change the charter to include recognition of the unions. This is the first time the citizens have had the opportunity to view the documents for the Charter amendments. He is concerned that a charter amendment may be passed in July, and then just a few months later a question about recognition and binding arbitration will be posed to voters. He asked how the charter amendment (recognizing union representation) would be affected if the question is denied. Mr. Boyer indicated the charter amendment would remain in place.

Mayor Gysberts stated the next administration could amend the charter to remove the recognition if they wished to.

Councilmember Metzner pointed out the charter amendments were not discussed during the Executive Session held earlier today. He agrees that discussions should be held in open sessions. This would help ensure that citizens know what is on the ballot. He has never heard a Mayor and City Council member say the answer to dealing with unions is to stop recognizing them. He understands union members have been concerned for some time that the unions were not recognized in the City Charter. He is disappointed the petition question could not be listed on the ballot in two separate parts. He noted during the Charter Review in 2007, he suggested recognizing unions in the City Charter. He believes it is appropriate to include the right of collective bargaining for employees. With the two part ballot question, he wonders what message the voters are sending to the elected body, no matter if they vote yes or no for the question. He stated there has not been discussion in closed session about the level of involvement the City will have in the referendum. That discussion should not be held in closed session.

Mayor Gysberts stated he does not believe there is a majority of the Council in favor of having open negotiations with the unions. That discussion in closed session is different than discussing the actions for the referendum.

Councilmember Aleshire expressed his concern that discussions have been held in closed session with the City Attorney for legal deliberations for the referendum, including the expenses for how to move forward. Now, in less than two months, it appears the Council is moving in a different direction from what was discussed and this is the first time it is being discussed in public.

Mayor Gysberts stated he thinks there will be confusion on Election Day because of the wording of the question. He anticipates the proposed Charter Amendment to include recognition of collective bargaining units in the City Charter with help resolve some of the confusion.

Councilmember Metzner pointed out if the referendum is defeated and he was re-elected, he would promote recognition of the collective bargaining units in the City Charter.

Mayor Gysberts stated it is important to make it clear to voters this question is about binding arbitration and nothing else. The citizens were lied to about the Mayor and City Council not supporting public safety during the signature collection process for the petition.

Councilmember Brubaker is very disappointed with how the whole signature collection process was handled. The Mayor and City Council are making a concession on half of the proposal to recognize the unions. Binding arbitration will likely have a negative effect financially for the City of Hagerstown and other municipalities.

Councilmember Aleshire stated he supports a genuine discussion about this action but doesn't feel the way it was been handled is genuine.

Councilmember Brubaker fear smear tactics will be used even though the Council is doing the right thing.

Councilmember Aleshire doesn't see any reason to not let the entire question and resulting actions go to the voters for the decision.

Councilmember Metzner is optimistic that the City will not be facing the same thing as it did with the petition. He is hopeful there will be a different approach with the November ballot.

Councilmember Munson does not support binding arbitration. He thinks the process that is being considered is appropriate. He regrets the Courts have put the Mayor and City Council in this position.

Councilmember Aleshire inquired if there is an ordinance requirement for the proposed Charter Amendment recognizing collective bargaining units. Mr. Boyer indicated n ordinance is not required for implementation.

Mayor Gysberts clarified that a majority vote is all that is required to approve a resolution to amend the City Charter. No further action is required to implement the recognition of unions in the City Charter.

Approval of Amended Agreement: Brookgreen Gardens, Inc. for Use of "Diana of the Chase" Image – Hagerstown Cultural Trail

Rodney Tissue, City Engineer, stated earlier this year, the Mayor and City Council approved an agreement between the City and Brookgreen Gardens in Murrills Inlet in South Carolina. The purpose of this agreement is to allow the City to use the image of

“Diana of the Chase” which was originally created by Anna Hyatt Huntington in 1922. Brookgreen Gardens has the copyright protection responsibilities and this agreement would allow the City to use the image as the logo for the new Cultural Trail.

Brookgreen’s attorney made additional changes to the agreement and staff feel it is best for the Mayor and City Council to re-approve the agreement. This agreement was prepared by the City Attorney.

It was the general consensus to include approval of the new agreement on the July 26, 2016 agenda.

Approval of a Contract: South Prospect Street Wall Replacement – Milton Stamper Builders (Hagerstown, MD) \$ 255,425.00

Mr. Tissue reported that in November, 2015, an automobile accident destroyed a portion of the wall that fronts 30/40/50 South Prospect Street. The City filed an insurance claim and was reimbursed \$ 25,000.00. However, the entire 150+ year old wall is in poor condition and needs to be replaced.

The project includes rebuilding the entire wall and using the existing stone for the façade.

It was the general consensus to include approval of the wall replacement on the Regular Session agenda.

There were no additional comments or questions regarding the items of the Preliminary Agenda. All items are scheduled for approval on July 26, 2016, unless otherwise noted.

Mark Boyer, City Attorney, then left the meeting.

Local Conversion Overlay – 400 Jonathan Street

Alex Rohrbaugh, Planner, was present to follow up on the June 21, 2016 Public Hearing for the proposed Local Conversion District Overlay zoning for 400 Jonathan Street.

The property at 400 Jonathan Street (corner of Jonathan Street and W. North Avenue) currently contains a vacant commercial building. The property owners, Khadene Wilson and Dexton Brunson, have filed for rezoning for a Local Conversion District Overlay for a restaurant use. At its May 11, 2016 meeting, the Planning Commission recommended to the Mayor and City Council approval of the zoning proposal, subject to three conditions:

1. The old metal sign pole along Jonathan Street shall be removed
2. Parking spaces shall be striped in the parking area

3. The dumpster and enclosure shall be placed adjacent to the proposed handicap accessible entrance

Other than the applicant (Ms. Wilson) no one from the public provided comment on the proposal at the June 21, 2016 Public Hearing. Staff has received no additional public input during the comment period following the hearing.

Approval of the requested overlay will be scheduled for July 26, 2016.

Land Management 2016 Updates – Package of Proposals Submitted for the Mayor and Council’s Consideration

Stephen Bockmiller, Development Review Planner/Zoning Administrator, was present to present a package of 32 proposed amendments to the Land Management Code from the Planning Commission to the Mayor and City Council for their consideration. The Commission conducted a public hearing on these proposals in accordance with the City Code and the Code of Maryland on May 25, 2016.

The Mayor and Council asked staff and the Planning Commission to review the issue of the ordinance not permitting privacy fences on residential properties on side and rear property lines that abut roadways that are of a higher functional classification than the front street. This was raised when the owners of a house that fronts Moller Parkway wanted to put a privacy fence in their rear yard adjacent to Eastern Boulevard were required to obtain a variance from the Board of Zoning Appeals. The Commission recommends that the existing text remain intact.

After much discussion and several fruitless attempts to craft language to address this uncommon situation, the Commission determined that the few properties that this requirement impacts typically have unique characteristics that could not be addressed through creating standardized language in the Ordinance. The Commission believes these situations are fairly rare and best addressed through the variance process. This allows for consideration of these unique conditions, allows for review for potential impacts to surrounding properties and the public interest, and allows for the Board to impose conditions where necessary to address those impacts.

There are 33 proposed amendments to the Land Management Code. The first 18 involve policy/content changes. The remaining 15 are administrative, structural, or other non-substantive changes or corrections.

The first 18 are listed below:

1. Remove the reference to the Adequate Public Facilities Ordinance, which has been repealed.
2. Codify that the forest conversation approval is based on area and the fee will be based on the rate that is in effect at the time it is collected.

3. Article 4, Section M.1 speaks of a property owner being able to file a certification of nonconforming use with the Zoning Administrator. This basically puts approval of such in the hands of the applicant. There is no wording regarding how the review authority would or would not approve it. The proposed amendment clarifies the authority process.
4. Staff receives inquiries about beekeeping in residential areas. This is not advisable. Staff proposes adding beekeeping to the definition of livestock. Keeping of livestock is prohibited in all zoning districts except the AT (Agricultural Transition) Zoning District.
5. To ensure the creation of homeowners associations with subdivisions, a signature block for HOA covenants' location in the land records will be included on the plat.
6. The ordinance is silent on outdoor flea markets. A definition (specifically outdoors) and permit process will be added.
7. Remove the 240 square foot provision from Detached Garages and Accessory Buildings.
8. Include satellite simulcast betting facilities as a permitted use in the CC-MU District as a potential support for the A & E District, and in the CG District, and define the use in Article 3.
9. To prevent front yards of single family homes and duplexes from becoming parking lots, Article 4 will be amended to prohibit vehicular parking in front yards
10. New uses of merchandise, inventory and supply display and storage will not be permitted right up to rights of way and property lines.
11. Increase side setback and require apartment developments that have any property line which has the rear or long axis of an apartment building facing it shall be treated as a rear setback for the building will be amended to prohibit
12. Codify that if zoning approval for a building permit or zoning certificate was done in error and the work is underway or completed, the Zoning Administrator is prohibited from revoking the permit and enforcing the violated provision.
13. Historically, the City has not held retaining walls to setback requirements, but there is a need to not allow the toe of a wall to be right up to the property line in order to allow for maintenance of the wall from the lower side.
14. Mayor and Council have asked staff and the Planning Commission to consider the issue of privacy fencing on side and rear property lines.
15. The City's regulations are more restrictive than the State's regarding home day care. Amendments will be made to comply with State regulations.
16. State law requires gas price signs of a minimum square footage and exempts it from local sign laws. Amendments will be made to comply with the State requirements.
17. Amend use chart to permit motor vehicle sales in the CL District, provided all inventory and vehicles to be serviced are stored within a building.
18. Prevent multiple units within an apartment building from being used for residential facilities with in-house professional care, creating an institutional

environment through the use of individual residences on a property that permits multiple residential units.

Mayor Gysberts suggested reconsidering prohibiting beekeeping.

Councilmember Aleshire asked what defines a driveway. Councilmember Metzner asked if there are regulations for cars parked in front yards. To address this situation, a definition for a driveway will be included.

Councilmember Aleshire asked if a building permit is required for retaining walls of a certain size.

Mayor Gysberts asked if the Planning Commission has reviewed accessory dwelling units, which are popular in other areas. Mr. Bockmiller stated this has not been discussed recently.

Councilmember Aleshire thinks the Zoning Administrator's rejection of the request should be considered in any appeal hearing. The proposed language removes that consideration. Staff has recommended this language because it is more property owner friendly. Councilmember Aleshire likes that the appointed boards can defer to staff for clarification of issues as needed.

Councilmember Metzner then left the meeting.

A Public Hearing for the proposed amendments is scheduled for July

Tank Mixing and Travelling Screen Project

Nancy Hausrath, Water Operations Manager, was present to discuss two grants recently awarded to the City of Hagerstown. Both grants are from the Maryland Department of the Environment.

In accordance with the approved FY16 and FY17 Capital Improvement Budget, staff requested consideration for funding to the Maryland Department of the Environment (MDE). In the funding application, a request was made for loan and grant funding. Staff was notified on May 18, 2016 of approval of \$ 691,250.00 in grant funding and an additional \$ 691,250.00 in loan funding.

The project will include the replacement of the existing traveling screens at the R.C. Willson Water Treatment Plant and the installation of tank mixing systems in four finished water tanks throughout the water distribution system. The existing traveling screens at the Willson plant were installed and placed into service in 1976 – emergency repairs have been and continue to be made to keep the screens operable until they can be replaced. This project will allow for better solids removal from the raw water supply and minimize and/or eliminate disinfectant by-product formation and nitrification in the

distribution system. To continue to achieve compliance with the Stage 2 DBPR2 – this project builds on the existing work that has been completed in the Phase IV-A and Phase IV-B improvements at the R.C. Willson Plant. This project will also address future concerns regarding nitrification in the water distribution system with the conversion to chloramines in August 2015 as a secondary disinfectant.

MDE contacted City staff on April 4, 2016 to notify staff of a new grant funding opportunity available through the Energy-Water Infrastructure Program (E-WIP). Staff reviewed the funding application and requested consideration for funding to MDE. In the funding application, a request was made for grant funding in the amount of \$ 842,940.00. Staff was notified on June 17, 2016 of approval of the total grant funding request.

This project consists of the replacement of the low service pumps at the RC Willson Water Treatment Plant and finished water system pumps at Pump Station 4 located on Park Avenue. There are four low service pumps at the RC Willson Plant which were installed in 1970. One 75HP pump and one 150HP pump run 24 hours per day year round. Occasionally, a second 75HP pump will need to be turned on based on customer demand. There are 20HP pumps at Pump Station 4 that were installed in 1963. At least one of these pumps run 24 hours per day, and sometimes a second will turn on in a lead-lag setup when customer demand increases. Based on current energy usage at the Water plant, the estimated efficiency for these pumps has been reduced to approximately 60%.

Utility Department staff is recommending Mayor and Council approval of the MDE grant in the amount of \$ 842,940.00 for the replacement of the four low service pumps at the R.C. Willson Plant and the three pumps at Pump Station 4. Collectively, these improvements will reduce long term energy costs and improve system reliance.

Councilmember Munson asked if there is any cause for concern of lead in Hagerstown's water supply. Ms. Hausrath stated there is not, and the City of Hagerstown Water Department has been in compliance with lead levels for many years. Tests are performed on a regular basis.

It was the general consensus to include acceptance of both MDE grants on the July 26, 2016 agenda.

96TH SPECIAL SESSION – July 19, 2016

On a motion duly made by Councilmember D. F. Munson and seconded by Councilmember K. B. Aleshire, the Mayor and City Council unanimously agreed by voice vote of all members present to meet in Special Session at 7:40 p.m.

**Approval of an Application/Permit for the Doleman Black Heritage Museum
Summer Concert Series – July 23, 2016, August 13, 2016, and September 17, 2016**

Action: On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember D. F. Munson, the Mayor and City Council unanimously agreed by voice vote of all members present to approve an Applicant/Permit for The Doleman Black Heritage Museum in University Plaza on Saturday, July 23, 2016, August 13, 2016, and September 17, 2016 from 6:00 p.m. to 9:30 p.m.

Approval of a Street Closure: T.E.A.M. Community Day

Action: On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember D. F. Munson, the Mayor and City Council unanimously agreed by voice vote of all members present to approve of a street closure for the T.E.A.M. Community Day event from 12:00 p.m. to 1:00 p.m. on July 23, 2016. The event site includes Locust Street between E. Franklin Street and North Avenue and North Avenue between Locust Street and North Prospect Street.

**Approval of Purchase of Five Ford Police Vehicles – Keystone Ford
(Chambersburg, PA) \$ 94,726.75**

Action: On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember P. M. Nigh, the Mayor and City Council unanimously agreed by voice vote of all members present to approve the purchase of two 2014 Ford Fusions, two 2013 Ford Edges, and one 2014 Ford Taurus for Hagerstown Police Department use. These vehicles will be purchased from Keystone Ford in Chambersburg, Pennsylvania for a total of \$ 84,726.75. Funding will be from HPD's vehicle CIP account.

**Introduction of an Ordinance: City of Hagerstown Drinking Water Bond, Series
2016 for R.C. Willson Traveling Screen Replacements and Pump Station
Improvements**

Action: On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember D. F. Munson, the Mayor and City Council unanimously agreed by voice vote of all members present to introduce an ordinance authorizing the City of Hagerstown to issue and sell upon its full faith and credit, general obligations bonds to the Maryland Water Quality Financing Administration in one or more series in an aggregate principal amount not to exceed \$ 1,000,000. Proceeds from the sale of the bonds will be used for the public purpose of financing the R.C. Willson Water Plant Traveling Screen Replacement and Pump Station

Improvements as more fully described in the ordinance together with related expenses and costs of issuance.

Staff is hereby directed to proceed in working with the City's Bond Counsel to develop the necessary detailed resolutions and other documents required to prepare for the sale of the bonds as directed by this ordinance. As specified in the ordinance, details and authorizations regarding the amount, timing, method of sale or sales, and other sale details will be outlined in a detailed resolution to be presented to this body for approval at a future date prior to the issuance of the bonds.

Approval of a Resolution: Declaration of Official Intent to Use Future Bond Financing for R.C. Willson Traveling Screen Replacement and Pump Station Improvements

Action: On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember D. F. Munson, the Mayor and City Council unanimously agreed by voice vote of all members present to approve a resolution to evidence the city's reasonable expectation to use future bond financing to reimburse project costs paid for the R.C. Willson Traveling Screen Replacement and Pump Station Improvement projects prior to issuance of such bond financing.

The Special Session was closed at 7:45 p.m.

CITY ADMINISTRATOR'S COMMENTS

Valerie Means, City Administrator had no additional comments.

MAYOR AND COUNCIL COMMENTS

Councilmember P. M. Nigh wondered if any of the Mayor and City Councilmembers were aware that the Secretary of Commerce recently held a meeting in Hagerstown. Councilmember Brubaker stated he intends to call the Secretary about the meeting.

Councilmember D. F. Munson thanked City staff who have spent considerable time mowing weeds from the lot across from North Hagerstown High School. Ms. Means indicated staff is close to determining a responsible party for this lot.

Councilmember K. B. Aleshire attended the Housing Summit that was held earlier today. In summary, those that attended agreed that all parties have to work together to address the housing needs in the community. He and other Mayor and City Councilmembers received a letter from citizens requesting that a park be created on a portion of the property behind the library (the Massey property).

Councilmember M. E. Brubaker thanked Mayor Gysberts, City staff, and others for planning the housing summit. He was impressed with the determination of the participants. He thanked Habitat for Humanity for another successful project.

Mayor D. S. Gysberts thanked Jonathan Kerns, Community Development Manager, and Sarah Nelson, Planning/Outreach Coordinator, for their assistance with the planning and organizing of the housing summit. He thanked others for their assistance as well. His vision was to hold an event where diverse stakeholders meet and break out of their silos and share what they provide in the community. The event was successful in meeting his vision. Housing is an important part of the community and touches every life. The tendency is to think that the owner/renter ratio in Hagerstown is negative. That may not be the case, since rental units have to be quality housing and adhere to code regulations. He hopes the conversation will continue for the housing needs in Hagerstown and Washington County. He stated he called for a summit because it implies leadership. Housing has been identified as a catalyst project and it touches every part of the community.

Councilmember Aleshire hopes the information from the summit will be distributed soon. Councilmember Munson stated Mayor Gysberts had a good idea to hold the summit and should be congratulated for following through with it. Dealing with blighted properties is an important part of creating quality housing.

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 8:00 p.m.

Respectfully submitted,

Original signed by D. K. Spickler

Donna K. Spickler
City Clerk

Approved: August 30, 2016