

**97<sup>th</sup> REGULAR SESSION – July 26, 2016**

**Mayor D. S. Gysberts called this 97<sup>th</sup> Session of the Mayor and City Council to order at 7:01 p.m., Tuesday, July 26, 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 Donna K. Spickler, City Clerk.**

The invocation was offered by Councilmember K. B. Aleshire. The Pledge of Allegiance was then recited.

Mayor Gysberts announced the Rules of Procedure for this meeting will be followed as adopted September 24, 2013. It was announced that the use of cell phones 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 Session at 4:00 p.m. on Tuesday, August 2, 2016, Tuesday, August 16, 2016, and Tuesday, August 23, 2016, and the Regular Session at 7:00 p.m. on Tuesday, August 30, 2016. No meeting is scheduled for Tuesday, August 9, 2016.

**APPOINTMENTS**

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember D. F. Munson, the Mayor and City Council unanimously agreed by voice vote to appoint the following people to the Hagerstown Loan Review Authority:

- Leroy Burtner, Term to Expire August 1, 2019
- Randy Catlett, Term to Expire August 1, 2019
- Brian Selders, Term to Expire August 1, 2019

**CITIZEN COMMENTS**

There were no Citizen Comments.

**PUBLIC HEARINGS**

Land Management Code Updates

Stephen Bockmiller, Development Review Planner/Zoning Administrator, stated this Public Hearing is being held to review the package of 32 proposed amendments to the Land Management Code forwarded by the Planning Commission to the Mayor and City Council.

The Land Management Code was established and refined between 2008 and 2013 consolidating four separate land use and development ordinances. The Planning and

Code Administration Department perpetually looks for ways to update the ordinance and correct errors when they are discovered. In 2014, staff established a process where all suggestions for amending the Code are considered together at one time on an annual basis. This package is the second annual update proposal; the first being in 2014-2015.

Staff began reviewing proposals with the Planning Commission in November, 2015. Discussions were held on various provisions over several months.

Once a package of materials was settled on, the Planning Commission held a public hearing on the proposed changes on May 25, 2016, and voted to forward this package to the Mayor and Council for its consideration on June 8, 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.

Mr. Bockmiller entered the following Exhibit into the record:

1. Exhibit 1 – Certificate of Publication for the Public Hearing

No testimony, either in favor of or against any of the proposed amendments was presented.

The record will remain open for 10 days for additional comments. The hearing was then closed.

It is anticipated an ordinance to introduce the proposed amendments will be scheduled for the September, 2016 Regular Session.

### **CITY ADMINISTRATOR COMMENTS**

*Valerie Means, City Administrator*, had no additional comments.

### **MAYOR AND COUNCIL COMMENTS**

*Councilmember P. M. Nigh* asked what can be done about the loitering and trash accumulation in the Central Parking Lot. City Attorney Mark Boyer will review this issue. Ms. Means will also discuss the situation with Police Chief Brito and Eric Deike, Director of Public Works.

*Councilmember D. F. Munson* has also received complaints from citizens about loitering, especially at businesses on W. Franklin Street. There is a significant amount of trash left by these groups of people.

*Councilmember L. C. Metzner* agreed that the trash and loitering needs to be addressed.

*Councilmember M. E. Brubaker* had no additional comments.

*Councilmember K. B. Aleshire* has observed groups of people loitering and throwing trash on the sidewalks.

*Mayor D. S. Gysberts* will be a VIP server at the Children's Village Breakfast on September 7, 2016. The event is being held at the Elks Lodge on Robinwood Drive. There have been productive follow-up discussions from the Housing Summit. The raw data collected at the Summit is being collated and conversations will continue.

### **MINUTES**

On a motion duly made by Councilmember D. F. Munson and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve the minutes, as presented, for the Mayor and Council meetings held on June 7, 2016, June 14, 2016, and June 21, 2016.

### **CONSENT AGENDA**

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember K. B. Aleshire, the Consent Agenda was approved as follows:

A. Fire Department:

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

**UNFINISHED BUSINESS**

**A. Approval of an Ordinance: Local Conversion District Overlay – 400 Jonathan Street**

**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 to approve an ordinance for a Local Conversion District Overlay, including the three conditions endorsed by the Planning Commission, on property located at 400 Jonathan Street.

**B. Approval 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 L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to adopt an ordinance as introduced on July 19, 2016 authorizing the City of Hagerstown to issue and sell upon its full faith and credit, general obligation 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 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.

**NEW BUSINESS**

**A. Introduction of an Ordinance: Deed and Easement Agreement with Ellsworth Properties, LLC for Mural of Unusual Size – Hagerstown Cultural Trail**

**Action:** Councilmember D. F. Munson made a motion to introduce an ordinance authorizing the execution of a deed and easement agreement to permit the

City of Hagerstown to create and maintain a mural in connection with the Hagerstown Cultural Trail at 67 West Baltimore Street. Councilmember M. E. Brubaker seconded the motion.

Discussion: Councilmember Nigh hopes this mural will be better maintained than other murals have been.

Motion carried 4-1 with Councilmember P. M. Nigh voting No.

**B. Approval of a Resolution: Amending the City Charter: Article VIII, Personnel**

**Action:** Councilmember L. C. Metzner made a motion to approve a resolution amending the Charter of the City of Hagerstown, Article VIII, by adding Section 808, Collective Bargaining for Non-Management Employees. Section 808 will permit non-management employee groups of the city to designate a union to act as their exclusive representative and to engage in collective bargaining with the City regarding wages, benefits, and working conditions. Councilmember P. M. Nigh seconded the motion.

Councilmember Aleshire does not disagree with considering this proposal. However, he disagrees with the context of how it being considered. When this administration took office in 2012, all members saw the need to reverse the furloughs and improve other employee related benefits as the economy stabilized. Taxes and fees were increased. Negotiation teams discussed the total amount available for employee benefits with the various employee groups. He feels that members of the Mayor and City Council were led to believe that all union contracts would be the same, even with the “me-too” clause that is included in one contract. A grievance was filed and the City of Hagerstown lost. At great expense the grievance was satisfied. As contracts were signed, another grievance was filed based on interpretation of language in the contract. Again, the City lost and had to address it. When the contracts came due, there was another list of items to address. A decision was made to rollover the contracts for one year, rather than let them expire and start over and develop new contracts. Another grievance was filed citing one group received better benefits than another. The cost to have the same wages would be significant. The proposed resolution is not an olive branch. The entire situation has been a challenge. He does not feel there has been sufficient time for discussion of the resolution. He believes this resolution will be challenged soon after it is approved. He doesn’t understand why the Charter Amendment is being considered, especially without a statement to the union groups that members may want to reconsider filing grievances.

Mayor Gysberts stated it is the right thing to do. Approving this Charter Amendment will remove one of the issues from the ballot question

because it has already been addressed. The focus will then be on binding arbitration. Members of IAFF understand the third party used to gather signatures for the petition made some false statement during the process. He supports unions and will abide by the vote of the citizens in November. He mentioned Councilmember Aleshire's comments point to a broken process. The four unions have different contracts, even though all members are City employees. He thinks there is distrust between the bargaining units. He suggested talks continue, but as a collective group. He thinks a process should be developed to work through an impasse and not have to resort to binding arbitration. Mediation may be a part of the process and would be preferable to a third party arbitrator who would not have to consider budget constraints. A "me too" clause is a provision that should not be included in any union contract.

Motion carried 4-1 with Councilmember K. B. Aleshire voting No.

**C. Approval of a Resolution: Specifying the Day and Hours for the Referendum of a Proposed Charter Amendment Submitted to this Legislative Body by Petition of Qualified Voters and Specifying the Text of the Ballot Question**

**Action:** On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember P. M. Nigh, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to direct that a question shall appear on the ballot for the General Election for the City of Hagerstown on November 8, 2016 asking voters whether the Charter of the City of Hagerstown should be amended to include collective bargaining and binding arbitration for non-management employees of the police and fire departments.

Mayor Gysberts then read the question that will appear on the ballot on November 8, 2016:

“Question A – Municipal Referendum Petition, Proposed Amendment to Hagerstown City Charter

Establishes a new Section 802A of Article VIII of the Charter of the City of Hagerstown which provides that the non-management employees of the police and fire departments shall be entitled to designate a union to act as their exclusive representative to engage in collective bargaining with the city, and which further requires the City Council to pass an ordinance which provides for binding arbitration with a neutral arbitrator in order to resolve labor disputes between the City and the exclusive representative.” Voters will vote for the referred law or against the referred law.

**D. Approval of a Resolution: Parking Lease for the Central Parking Lot with the State of Maryland (SDAT)**

**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 to approve a resolution to approve a parking lease agreement between the City of Hagerstown and the State of Maryland Department of Assessments and Taxation for the rental of ten parking spaces in the Central Parking Lot.

The term of the lease is two years and commences on July 26, 2016. The annual rent to be paid to the City is \$ 5,760.00

**E. Approval of a Resolution: Parking Lease for the University District Parking Deck with the State of Maryland (JUDC)**

**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 to approve a resolution to approve a parking lease agreement between the City of Hagerstown and the State of Maryland Department of the Judiciary for the rental of five parking spaces in the University District Parking Deck.

The term of the lease is two years and commences on July 26, 2016. The annual rent to be paid to the City is \$ 3,720.00

**F. Approval of a Resolution: Parking Lease for the University District Parking Deck with the State of Maryland (DORS and DJS)**

**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 to approve a resolution to approve a parking lease agreement between the City of Hagerstown and the State of Maryland Department of Education, Division of Rehabilitation Services and the Department of Juvenile Services for the rental of nine parking spaces in the University District Parking Deck.

The term of the lease is two years and commences on July 26, 2016. The annual rent to be paid to the City is \$ 6,696.00.

**G. Approval of a Resolution: Memorandum of Understanding with University System of Maryland at Hagerstown for Operations of University Plaza**

**Action:** On a motion duly made by Councilmember D. F. Munson and seconded by Councilmember P. M. Nigh, the Mayor and City Council unanimously agreed by voice vote to approve a resolution for the execution and delivery

of an amendment to the Memorandum of Understanding (MOU) between the City of Hagerstown and the University System of Maryland at Hagerstown for Operations of University Plaza. This MOU sets forth the responsibilities of both parties regarding the operation and use of the Plaza from June 30, 2016 through June 30, 2019.

**H. Approval of a Resolution: Memorandum of Understanding with University System of Maryland at Hagerstown for Police Services at University Plaza**

**Action:** On a motion duly made by Councilmember P. M. Nigh and seconded by Councilmember D. F. Munson, the Mayor and City Council unanimously agreed by voice vote to approve a resolution for the execution and delivery of an amendment to the Memorandum of Understanding (MOU) between the City of Hagerstown and the University System of Maryland at Hagerstown for Police Services of University Plaza from July 1, 2106 through June 30, 2019.

**I. Approval of a Resolution: Memorandum of Understanding with University System of Maryland at Hagerstown for Groundskeeping Services at University Plaza**

**Action:** On a motion duly made by Councilmember P. M. Nigh and seconded by Councilmember D. F. Munson, the Mayor and City Council unanimously agreed by voice vote to approve a resolution authorizing the execution and delivery of a Memorandum of Understanding (MOU) between the City of Hagerstown and the University System of Maryland at Hagerstown for Groundskeeping Services for University Plaza from July 1, 2016 through June 30, 2019. The MOU sets forth the responsibilities of both parties to maintain the Plaza.

**J. Approval of a Resolution: Agreement with Joint Veteran’s Council of Washington County for Vietnam War Veterans Monument**

**Action:** On a motion duly made by Councilmember P. M. Nigh and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve a resolution authorizing an agreement with the Joint Veteran’s Council of Washington County to support the creation of the Vietnam War Veterans Monument. The Monument will be located west of South Walnut Street in City Park. The City is donating the land but has no financial obligation toward the monument.

**K. Approval of a License Agreement with Brookgreen Gardens, Inc. for Use of “Diana of the Chase” Image – Hagerstown Cultural Trail**

**Action:** On a motion duly made by Councilmember D. F. Munson and seconded by Councilmember L. C. Metzner, the Mayor and City Council

unanimously agreed by voice vote to authorize the City to enter into a License Agreement with Brookgreen Gardens, Inc. in Murrills Inlet, SC that allows the City of Hagerstown to use the image of “Diana of the Chase” which was originally created by Anna Hyatt Huntington in 1922, as the logo for the new Cultural Trail.

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

**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 to approve a contract with Milton Stamper Builders of Hagerstown, MD in the amount of \$ 255,425.00 for the replacement of the 140 feet of masonry retaining wall on the northeast side of the dry bridge on South Prospect Street. In 2015 an automobile accident destroyed a portion the wall and the 150+ year old wall is generally deteriorated to a point of needed reconstruction.

Discussion: Councilmember Brubaker mentioned the appearance of the stone wall will be retained. He stated this is another example of the City of Hagerstown funding significant street related repairs with no financial assistance from the State of Maryland. This is why the Highway User Revenue is crucial for local governments.

**M. Approval of Permission to Finalize MDE Grant for Energy Water Infrastructure Programs at the R. C. Willson Water Plant and Pump Station 4**

**Action:** On a motion duly made by Councilmember D. F. Munson and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to grant permission for City staff to finalize the Grant Policy Process to receive an MDE Grant for Energy Water Infrastructure Programs at the R. C. Willson Water Plant and Pump Station 4 in the amount of \$ 842,940.00.

**N. Approval of Permission to Finalize MDE Grant for Improvements at the R. C. Willson Water Plant and System Water Tanks**

**Action:** On a motion duly made by Councilmember P. M. Nigh and seconded by Councilmember D. F. Munson, the Mayor and City Council unanimously agreed by voice vote to grant permission for City staff to finalize the Grant Policy Process to receive an MDE grant for improvements at the R. C. Willson Water Plant and System Water Tanks in the amount of \$ 691,250.00.

Discussion: Councilmember Munson congratulated staff for their work to secure these grants.

**O. Approval of Liability/Property Insurance for FY 2017 – Local Government Insurance Trust (LGIT) (Hanover, MD) \$ 409,769.00**

**Action:** On a motion duly made by Councilmember D. F. Munson and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve the Fiscal 2017 renewal of coverage with the Local Government Insurance Trust (LGIT) for liability and property insurance in the amount of \$ 409,769.00.

**P. Approval of an Agreement: Cooperative State and Local Agreement with U. S. Drug Enforcement Administration (DEA)**

**Action:** On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember P. M. Nigh, the Mayor and City Council unanimously agreed by voice vote to authorize the renewal of a Cooperative State and Local Agreement with the U. S. Drug Enforcement Agency. This agreement states that the City of Hagerstown will detail three experienced officers to the Hagerstown Resident Office for a period of not less than two years. It also states that the City of Hagerstown will be responsible for the salary, overtime, and benefits of the three HPD officers.

The period of this agreement is October 1, 2016 through September 30, 2017.

**Q. Approval of After School Program at Parkside Community Center**

**Action:** On a motion duly made by Councilmember P. M. Nigh and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve funding of the after school program at Parkside Community Center.

The Hagerstown Housing Authority provides a variety of constructive after school programs to area youth. This program runs for the 2016 – 2017 school year at a cost of \$ 18,881.00.

**R. Approval of After School Program – BTJ Dance Group**

**Action:** On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve funding of the BTJ Dance Group after school program that is held at the Suman Avenue Community Building.

The Hagerstown Housing Authority provides a variety of constructive after school programs to area youth. This program runs for the 2016 - 2017 school year at a cost of \$ 3,500.00.

**S. Approval of Purchase – Public Works –Dump Truck with Snow Plow – Replacement of Unit 20 – McCafferty Ford (Mechanicsburg, PA) \$ 142,438.00**

**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 the purchase of a Public Works Vehicle to replace Unit 20 in the amount of \$ 142,438.00 for Fiscal Year 17 from McCafferty Ford. Pricing is provided through the State of Pennsylvania COSTARS program.

Discussion: Councilmember Brubaker pointed out here is another example of expenses incurred by municipalities to maintain State roads located within corporate boundaries, with limited financial assistance from the State Highway Administration.

Councilmember Munson assured the public the price for this truck and related equipment was competitively bid, as other City vehicles are, and is the lowest price available.

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 8:02 p.m.

Respectfully submitted,

*Original signed by D. K. Spickler*

Donna K. Spickler  
City Clerk

Approved: August 30, 2016