

WORK SESSION – July 11, 2017

Mayor R. E. Bruchey, II called this 19th Special Session and Work Session of the Mayor and City Council to order at 4:00 p.m., Tuesday, July 11, 2017 in the Council Chamber at City Hall. Present with the Mayor were Councilmembers K. B. Aleshire, P. D. Corderman, E. Keller, L. C. Metzner, and D. F. Munson, City Administrator Valerie Means, City Attorney Jennifer Keefer, City Attorney Jason Morton, and City Clerk D. K. Spickler.

Stormwater Fee/Stormwater Utility Information

Rodney Tissue, City Engineer, and Jim Bender, Assistant City Engineer, were present to provide additional information about Stormwater Utilities. In the City's approved budget for FY 18, \$ 200,000 in revenue was expected from the implementation of a fee. However, it is unlikely that the necessary studies and legislation will be in place to begin collecting the fee in FY 18. Staff requests direction on whether or not to proceed with the selection of a consultant to conduct a Rate Study.

Over the past six years, staff has made several presentations to the Council regarding the Watershed Implementation Plan (WIP) process for reducing stormwater pollution. Using cost estimating tools provided by the Maryland Department of the Environment (MDE), staff has estimated that the cost to the City to fully comply with the pollutant reduction requirement could be as high as \$ 120 million between 2013 and 2025. The City's Capital Improvement Program budget currently allocates only a fraction of this amount of money to stormwater projects, and it will be difficult to find additional revenue from the General Fund. Many other communities are facing the same challenge; one attempted solution has been the implementation of a stormwater fee/stormwater utility to raise revenue to help cover these costs.

Under the National Pollutant Discharge Elimination System (NPDES) regulations, municipalities are separated into two categories: Phase I and Phase II communities. In general, Phase I communities consist of larger cities and urbanized areas. The City of Hagerstown and Washington County are classified as Phase II communities. The NPDES stormwater permits (and their requirements) for Phase I communities are much more stringent than the permits for Phase II communities.

In 2012, the General Assembly approved House Bill 987; this bill required Phase I communities to begin collecting a "stormwater remediation fee" and establish a "local watershed protection and restoration fund". Subsequent legislation in 2015 removed the requirement for charging this fee if the community could show a financial plan guaranteeing that an equivalent amount of money from other sources would be dedicated to their stormwater program. To date, no legislation has yet been introduced to extend these requirements to Phase II communities.

MDE has notified all Phase II communities that it hopes to issue a new NPDES Phase II permit by the end of the 2017 calendar year. Based upon staff's review of the draft permit, the City will be required to treat the runoff from 20 percent of the existing impervious surfaces that do not currently have any type of treatment within the five-year term of the permit. Staff's preliminary analysis indicates that this may mean providing treatment for as much as 400 acres of impervious surfaces; the cost associated with that effort will likely exceed \$ 20 million.

A "Stormwater Utility" is basically an enterprise fund responsible for addressing stormwater management issues in a community. The Utility is funded through the collection of a fee charged to property owners in the municipality. The fee is collected from all properties that have impervious surfaces. It doesn't matter if the property is commercial, residential, or tax exempt. As of 2016, there were more than 1,600 municipalities across the United States and Canada that operated a Stormwater Utility, and the number is growing rapidly as Federal and State regulations become more stringent. In Maryland, examples of municipalities that are charging a stormwater fee or operating a Utility include Montgomery County, and the Cities of Frederick, Gaithersburg, and Rockville.

The process to develop a Utility typically begins with a Rate Study to determine how much money needs to be collected to fund a municipality's stormwater pollutant reduction efforts. Consultants quantify the cost to operate/maintain the Utility. This overall cost is then used as the basis for setting the amount of the fee schedule. A Rate Study for a stormwater fee would require the same rigor, and will likely receive as much or more scrutiny, as a similar study for water, wastewater, or electric rates. Add to this the public's low level of awareness of the costs to build and maintain a stormwater program, and the characterization of this approach as a "rain tax", and the need for public stakeholder education and participation becomes apparent. Without a Rate Study or "business plan" as justification, stormwater fees are open to disputes and legal challenges. Successful Rate Studies, and the subsequent legislative process to enact a fee, typically require 12-18 months to complete.

Stormwater fees are not a tax; they are typically a charge that is based upon the amount of impervious surface on a parcel of land. Because most developed properties contain impervious surfaces in the form of roofs, patios, or pavement, the fee applies both to taxable properties and to properties that are normally tax-exempt (e.g. churches, non-profit organizations, etc.). It is important to note that the collected fees must be devoted to operation/maintenance of the stormwater system; the fees cannot be lumped in with other General Fund revenue.

The most common method used for establishing the amount of stormwater fee is the Equivalent Residential Unit (ERU) method. Based upon survey/GIS analysis, the "average" amount of impervious area on a typical residential lot is determined; all similar residential lots are then assumed to have this amount of impervious area without any actual measurement on each lot. For non-residential, commercial, and industrial properties, the amount of impervious area on the lot is measured. That measurement is then divided by the average amount assumed for a residential lot to get an ERU value.

The stormwater fee charged by a Utility will vary from municipality to municipality, depending upon the results of the Rate Study. Nationwide, average fees range from \$3 to \$5 per month per ERU.

According to the 2016 Stormwater Utility Survey prepared by Western Kentucky University, out of 739 cities with stormwater utility that were studied, the median size of an ERU was 2,900 square feet.

Some municipalities, such as Montgomery County, MD, have different levels or “tiers” for their fees; the more impervious area that actually exists on a lot, the higher the fee. This tiered structure, while more equitable to individual property owners, requires more work from the municipality to actually measure impervious surfaces on individual lots.

The question has been raised as to whether a fee could be levied on only commercial/non-residential properties. Staff, through its research, was unable to find an example of a “commercial only” stormwater fee. Although this has not been confirmed by legal research, staff feels that a “commercial only” fee would be difficult to implement because (a) without being able to spread the overall stormwater program costs over all properties, the fee charged to the commercial properties would have to be disproportionately high, and (2) it would be difficult to establish the fairness of such a system when residential properties were also discharging storm runoff and pollutants into the City’s system without having to pay the fee.

Councilmember Metzner stated if the Mayor and City Council do not move forward with the rate study, they need to discuss how they will replace the \$ 200,000 revenue in the budget.

It was the general consensus to move forward with a request for proposal for a Rate Study. The cost of the study can be paid for from the stormwater fees. Staff will issue an RFP and bring back recommendations for a consultant.

Councilmember Munson clarified that if the stormwater plan is not implemented the City could be fined. He stated the City’s relationship with Washington County has to be discussed. Mr. Tissue stated the County is facing the same issues as Hagerstown is and it would be good for each jurisdiction to know what the other is dealing with.

Councilmember Aleshire pointed out the City and County systems are not isolated in that they share collection lines. If a Stormwater Utility is created, he anticipates the State will realize the City could not accept stormwater from other systems.

The NPDES is a federal mandate from the Environmental Protection Agency that is distributed to individual States. Councilmember Metzner wondered if the State of Maryland would cancel the requirements if the Federal government cancels the mandate.

Councilmember Aleshire stated this was not implemented through a federal legislative action.

Mayor Bruchey stated all the jurisdictions with an effect on the Chesapeake Bay will have to comply with the NPDES mandate.

Mr. Tissue will reach out to the County Department of Water Quality to discuss their intent with the mandate.

Quit Claim – Parcel between #115 and #125 North Prospect Street

Jim Bender, Assistant City Engineer, was present to discuss a request from the Hope Center at the Hagerstown Rescue Mission (the “Mission”) for the City to quit claim an alleyway between properties that they own on North Prospect Street. The Mission would like to obtain ownership of this alleyway to improve operations of their facility.

The alleyway in question aligns with Weller’s Alley to the east of N. Prospect Street, and would logically appear to be an extension of that alley. However, research by City staff was unable to find any evidence this alleyway was ever a public right-of-way, and no evidence that it was ever accepted by the City. So, while it is unclear that the City has any interest in this right-of-way, the requested quit claim would relinquish any rights to it that the City may have. The alleyway has been blocked by a fence along the N. Prospect Street sidewalk for some time.

Staff contacted other City departments and agencies to determine whether or not there were any concerns or objections to the proposed quit claim. The Hagerstown Police Department, Fire Department, Public Works Department, Water Division, and Wastewater Division had no objection to the request.

The Hagerstown Light Department has an existing guy wire and anchor adjacent to the alleyway. While they do not object to the quit claim, they will require the establishment of an easement in this area that would allow them to relocate the guy wire and anchor in the future if necessary.

The Department of Planning and Code Administration expressed concerns about quit claiming this alleyway. Their concern centers on the fact that the building on #115 N. Prospect Street is on a separate parcel from the other parcels owned by the Mission. If the quit claim was approved and the Mission then sold the parcel at #115 to another entity, there would be no street access to the rear of the parcel.

While vehicular access to the rear of #115 is a valid and important consideration, the layout of the existing alleyway (if it were to remain) and the parcel boundaries would still require a future owner to drive across Mission property to reach the rear of the building with a vehicle. One possible solution to this problem is to require the Mission, as part of the quit claim process, to establish an access easement to the rear of #115 from Church Street, crossing their other parcels. Another solution would be to require the Mission to combine all of their parcels in this area into one single parcel; then, if the Mission wanted

to subdivide off #115 in the future, the establishment of an access easement could be a condition of approval of that subdivision.

The Hagerstown Planning Commission will consider this request at their Work Session meeting on July 12, 2017, and is expected to take formal action on the quit claim at their Regular Session meeting on July 26, 2017. Therefore, if the Council is inclined to approve the quit claim, that approval should be contingent upon the Planning Commission's approval.

It was the general consensus of the Mayor and City Council to move forward with approval of the Quit Claim.

Speed Monitoring System Contract with Brekford Corp – Proposed New Contract and Proposed New Collections Contract

Chief Brito and Jason Morton, City Attorney, informed the Mayor and City Council that Brekford Corp. has approached the City with a proposal for a new speed monitoring system contract, as well as a new collections contract. Both new contracts have been reviewed and revised by the City Attorney for legal sufficiency, by HPD as to technical requirements; by Finance as to payment details; and by Kevin DeHaven as to insurance requirements for Brekford.

The current speed monitoring system contract was executed on December 17, 2014 and was for a term of two years. It was automatically extended for an additional one year term, which expires on December 17, 2017. The current collections contract was executed on October 6, 2015 and the original term ended December 16, 2016. It was automatically extended for an additional year, which expires on December 16, 2017.

The proposed speed monitoring system contract piggybacks off of Calvert County's contract with Brekford, which was executed on April 1, 2016. It offers the following advantages over the City's current contract:

1. The cost to the City is \$ 3,100.00 per month per system. Right now, the City pays \$ 3,500.00 per month plus an additional fee if the City exceeds 75 events per day. The City has twelve (12) systems in place. The new contact represents a savings of at least \$ 4,800.00 per month.
2. Brekford is obligated to maintain insurance (general liability, auto, umbrella and errors and omissions) and to name the City as an additional insured
3. The City has the right to reduce the scope of services in the event of budgetary restraints.

The new speed monitoring system contract is for a term of three yeas, beginning when it is executed by both parties. At the end of the three year term, the contract can be extended for an additional one year term, at the option of the City.

The new collections contract is revised to reflect that the City is operating under a new speed monitoring system contract, otherwise, the financial terms are the same.

Approval of the contract is included on the Special Meeting agenda that follows this Work Session.

Red Light Camera Update

Chief Brito reported that a red light program in Hagerstown would provide additional safety for residents and visitors. The following five camera locations have been approved by the State of Maryland within Hagerstown's City limits:

1. Eastern Boulevard/Dual Highway
2. N. Edgewood Drive/Dual Highway
3. W. Franklin Street/N. Potomac Street
4. Virginia Avenue/Burhans Boulevard/Wilson Boulevard
5. S. Potomac Street/W. Wilson Boulevard

Chief Brito stated Automated Enforcement Systems (AES) is the best management company for a red light camera program in the State of Maryland. An automated red light ticket is \$ 75.00. As HPD looks at traffic enforcement, red light cameras will provide the opportunity for officers to respond to other calls. Traffic enforcement will continue, even with the red light cameras being in place. The purpose for red light cameras is to change behavior and slow drivers down. There will be 24/7 monitoring with the cameras. With the cameras being operational at all hours, it will provide additional tools for crime fighting efforts.

If approved by the Mayor and City Council, cameras could be in place within 90 days. There would be a 30 day warning period at all locations.

Councilmember Munson clarified that violations would not be issued to motorists if the vehicle is in the intersection when the light changes to red. Chief Brito stated that is correct.

Mayor Bruchey stated he was Mayor when a previous administration approved the speed enforcement cameras. At that time, he questioned the hours of operation, which are outside regular school hours. He stated he feels if the goal is to protect students walking to school, the cameras should not be operational when school is not in session.

Chief Brito noted the City is allowed to operate the camera system from 6:00 a.m. to 8:00 p.m. Students still use the schools after hours and on holidays.

Councilmember Aleshire asked if a review of traffic patterns had been conducted to after one year in service to determine if drivers have slowed down. Chief Brito stated a comparison could be completed. Councilmember Aleshire stated if there are the same number of violations issued, he doesn't think the intent of the program is working.

Councilmember Aleshire stated the Town of Myersville conducted a traffic count to determine if a speed camera system or a flashing radar light would be more effective in reducing speed. A flashing light system was installed and speeding drivers reduced significantly. It has completely changed driving habits for a significant number of drivers. He wants to be sure any camera system installed is effective for changing people's driving habits. He wondered if an empty speed camera box is effective at causing drivers to slow down.

Mayor Bruchey stated the camera system on Northern Avenue did reduce the number of drivers speeding by the schools. The drop in revenue from violations is evidence of this.

Chief Brito stated the overall goal for the camera systems is to change behavior. In his experience, red light cameras reduce serious injury and fatal accidents.

Ms. Hepburn stated Brekford sends a large amount of statistical data monthly. Officer Tim Culp and others monitor this information, as well as each camera image. The actual number of violations issued is monitored for each location. If statistics indicate a significant reduction in violations, a camera may be moved to a different location. There is not a camera in every box.

Ms. Hepburn indicated violations have decreased overall.

Mayor Bruchey would like to revisit the hours of operation for the speed cameras.

Councilmember Corderman Paul stated he knows there are many instances of malfunctions with red light cameras. He wondered about the process for disputing a citation with Brekford.

Chief Brito stated there are very few malfunctions. Every violation is reviewed by a dedicated officer who determines if the citation is sent. The review includes a photographic image, which the officer reviews to determine if the light was red when the vehicle was in the intersection.

Councilmember Corderman stated Brekford has experienced malfunctions in Baltimore City. There have been instances of parked vehicles targeted for moving violations. He disagrees that the red light program is about safety. He believes it is about creating additional revenue. He read an article about red light cameras in Washington, DC and accidents increased. Chief Ramsey was quoted as saying he would like to have a red light camera at every intersection.

Ms. Hepburn noted Brekford does have a contract with Baltimore City. The extent that the local municipality staff performs duties is very different than the Baltimore City contract.

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 meet in Special Session at 4:53 p.m.

Approval of an Ordinance: Land Management Code Amendments – Floodplain Ordinance Update

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 an ordinance to amend Chapter 140 (Land Management Code) of the City Code. These amendments repeal Articles 3 and 6 of the existing Chapter 140, and replace them in total with new Articles 3 and 6 which are appended to the ordinance. The newly updated Land Management Code that includes these new Articles 3 and 6 shall be identified as the Land Management Code, Version 3.1.

Discussion: Councilmember Aleshire stated he is struggling with the definition of how a townhouse is defined. If the residences are not individually for sale, he feels they are apartments. He wondered if the definition makes apartments permissible in the R-MOD zoning district.

Kathleen Maher, Director of Planning and Code Administration, stated review of the definition of a townhouse can be included in the annual miscellaneous amendments to the Zoning Ordinance for the Planning Commission and Mayor and Council's consideration.

Introduction of an Ordinance: To Amend the City Code by Adding Chapter 37: Police and Fire Department Binding Interest Arbitration

Action: 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 introduce an ordinance to amend the City Code pursuant to the Charter Amendment passed by voters at the General Election on November 8, 2016 to add Chapter 37, Police and Fire Department Binding Interest Arbitration to set forth the procedures for implementing binding interest arbitration when the City and a defined negotiating union have reached an impasse during contract negotiations.

Discussion: Councilmember Metzner's suggested amendments are now included in the ordinance.

Approval of a Resolution: Hagerstown Police Department Secondary User Agreement with Washington County Sheriff's Department

Action: On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember D. F. Munson, the Mayor and City Council

unanimously agreed by voice vote to approve a resolution approving a Secondary User Agreement with the Washington County Sheriff's Office. The agreement will allow the Hagerstown Police Department to enter data into the Maryland Criminal Justice Information System through the Washington County Sheriff's Office.

Approval of Brekford Automated Speed Enforcement Contract

Action: Councilmember K. B. Aleshire made a motion to approve the renewal of the Automated Speed Enforcement contract with Brekford Corporation. The new contract is based on the Calvert County, Maryland contract number 2016-15, awarded to Brekford in April, 2016, and to approve a new collections contract with Brekford Corporation. Councilmember L. C. Metzner seconded the motion.

Discussion: Councilmember Corderman would like to review the statistics before the contract is awarded.

Motion carried 4-1, with Councilmember P. D. Corderman voting No.

Approval of City Grant Application to Maryland Department of Housing and Community Development: Operating Assistance Grant

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 of a maximum of \$ 25,000 in grant funding from the Maryland Department of Housing and Community Development as requested in the presentation to the Mayor and Council on June 20, 2017. There is no City match requirement for this grant. Mayor and Council direct staff to complete the following:

1. Accept the scope of service as written by the State and the vendor once completed
2. Submit the grant application with the finalized scope of work as completed by the State and the vendor to Maryland Department of Housing and Community Development
3. Award the consultant services to a vendor as selected by the State without a formal RFP process by the City of Hagerstown
4. Act as pass-thru agency for the grant as requested
5. Assist in preparing a sub-recipient agreement for all parties (State of Maryland, City of Hagerstown, and consultant) which reflects the responsibilities and duties of each party in the grant before any funds are exchanged

CITY ADMINISTRATOR'S COMMENTS

Valerie Means, City Administrator, had no additional comments.

MAYOR AND COUNCIL COMMENTS

Councilmember E. Keller noted the Hagerstown Pride Festival will be held on July 15, 2017 downtown.

Councilmember K. B. Aleshire had no additional comments.

Councilmember P. D. Corderman noted Jess and James' recently moved from downtown. He thanked them for their time in Hagerstown.

Councilmember L. C. Metzner offered condolences to the family of Ted Bodnar who passed away on July 7, 2017. Mr. Bodnar was a visionary and he did everything he could to make Hagerstown a place for upper class folks to live. The Fireworks at Fairgrounds Park was started because of his vision.

Councilmember D. F. Munson stated Mr. Bodnar and his wife, Vicki, did a lot for the people in Hagerstown. He was a good man and will be missed.

Mayor R. E. Bruchey, II stated Mr. Bodnar was a good friend. His commitment to Augustoberfest and other events was substantial. A Goal Setting Retreat will be held on July 25, 2017 to discuss the Mayor and City Council's goals and priorities. Other retreats will be scheduled as well.

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 5:14 p.m.

Respectfully submitted,

Original signed by D. K. Spickler

Donna K. Spickler
City Clerk

Approved: August 29, 2017