

23RD SPECIAL SESSION, WORK SESSION AND EXECUTIVE SESSION –
September 3, 2013

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Mayor D. S. Gysberts called this 23rd Special Session and Work Session of the Mayor and City Council to order at 4:04 p.m., Tuesday, September 3, 2013, 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 Bruce Zimmerman, City Attorney William Nairn, and City Clerk D. K. Spickler.

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 to meet in Special Session at 4:05 p.m.

Approval of Application Permit: University Plaza – United Way of Washington County Kickoff – September 18, 2013 – 5:30 p.m. to 7:00 p.m.

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to authorize an application/permit with the United Way of Washington County. Also, according to the City of Hagerstown's Open Containers Law, the Mayor and City Council may permit the possession of alcoholic beverages in open containers on the streets, lanes, alleys, sidewalks, parking lots or public ways of the City during special events upon application or upon its own initiative. Therefore, Mayor and City Council formally approve the possession of alcoholic beverages (beer and wine) in the University Plaza for September 18, 2013 for the United Way of Washington County Kickoff. Hours of the event are to be 5:30 p.m. to 7:00 p.m.

Lorraine Clements, United Way Director of Resource Development, was also present.

The Special Session was closed at 4:08 p.m.

WORK SESSION – September 3, 2013

One Maryland Broadband Impact Study

Scott Nicewarner, Director of Information Technology and Support Services, and Andrew Cohill, President of Design Nine, Inc., were present to discuss the findings of the Washington County Broadband Impact Study commissioned by the County in February, 2013.

Design Nine met with the Broadband Impact Study Coordinating Committee in developing this study, with the intention of determining the impact of the One Maryland

Broadband Network (OMBN) project on Washington County and how the County and City could leverage these and other local assets to increase broadband availability to under-served (defined as average of delivered service no less than 4Mbps downtown and 1 Mbps upload speeds) and un-served areas of the County/City.

While most city and county residents and businesses have access to copper-based “little broadband” services with bandwidth in the range of 1-20 megabits/second, many other cities and towns in the country have already made the leap to fiber-based “big broadband” with a minimum bandwidth of 100 megabits/second and many of those communities are now “Gigabit Cities” with a standard residential and business connection of 1,000 megabits (one Gigabit).

Local leaders might reasonably ask, “why does anyone need a Gig of bandwidth?: The value of a Gig fiber connection is about the future, not the present. It is about preparing citizens, businesses, and the community to be able to compete for jobs and businesses over the next five to thirty years, with future-proof infrastructure that will support future needs.

If the region wants to stand still economically, then it can stay with its current copper-based telecom infrastructure, effectively freezing economic development where it is today. But if the community wants to grow economically, retain businesses, create jobs, attract entrepreneurs, and bring new businesses, the Gigabit connection becomes a critical part of a forward-thinking economic development strategy.

There is a growing trend of more people working from home, in two distinct groups. Throughout the United States, there are established business professionals who want to run a business from their home, but they require business class broadband services in residential neighborhoods. There are also growing opportunities for residents to work full-time from home, and to qualify for these jobs, reliable and affordable broadband must be available.

The trend of increasing energy costs is already making long commutes to work more expensive for Washington County residents. Work from home options have the potential to substantially reduce or eliminate commuting costs, and can reduce the number of residents who have to travel to jobs located outside the county.

The report provides a series of strategies and activities to help get more and better broadband in the region. Increased affordability and availability of broadband delivered services has the potential to increase job creation in the county and the city, help retain existing businesses, and improve the region’s ability to attract new businesses and entrepreneurs.

The fundamental challenge for the County is to ensure that businesses, government, and residents have a modern, twenty-first century digital transport system. The Internet has rapidly changed the fundamental nature of many kinds of products and services—whole industry segments no longer need the same kind of transportation systems.

The Internet is a transport system that is making many other information transport systems obsolete. And that's why every home and every business needs a high performance broadband connection; without it, residents and businesses of Washington County might as well be living in 1400—before books, before newspapers, before any information distribution systems existed.

A shared digital transportation system will not do away with private sector providers—these firms are vitally needed to continue providing the services they already offer—telephone, video, news, Internet access, business class services, and other residential and business services. The focus of this study has been to analyze the potential for the region to collaborate on the development and deployment of a modern, world class digital transport system that will meet the needs of the region's world class businesses for the next twenty to thirty years.

Demographic changes must be considered; if the City and the County want to attract and retain young people. World class broadband infrastructure will be necessary to maintain the County's attractiveness as a great place to live.

Next steps include reviewing the report, identifying key ideas and concepts that may be important to future economic development initiatives, meet with elected and community leaders to discuss these key ideas and concepts in more detail, and consider developing an RFI to solicit private sector partners for a public/private partnership.

If leaders and stakeholders believe that telecom and broadband investments are needed to support the long term goals of the County, the current broadband task force should be directed to move the effort forward. Key recommendations include:

1. The two local governments must play a key leadership role to bring Gigabit fiber services to the area.
2. The City and the County should not compete with the private sector. All broadband services should be sold directly to customers by existing and new private sector service providers.
3. It is essential to bring "anchor tenants" into the planning work to help aggregate demand, including health care providers, K12 schools, higher education, and major employers.
4. Development of a modest collocation facility in Hagerstown to provide a common, affordable meet point for all public and private fiber, including the OneMaryland backbone. This is a critical starting point for the effort.
5. A regional broadband authority or a public/private partnership can be used to create the permanent oversight and leadership needed for the effort. Most jobs associated with the effort can remain in the private sector.
6. Modest pilot projects like fiber downtown Hagerstown and key economic development zones represent a low risk first step to enable improved economic development opportunities.
7. Work with existing services providers. It is likely many businesses would see their Internet and/or telephone costs decline by getting a fiber

- connection to a service provider using shared community broadband infrastructure.
8. Make modest investments in basic telecom infrastructure – The City could accelerate economic development, especially in downtown Hagerstown, by modest investments in duct and fiber.
 9. When water, sewer, and road improvement projects are undertaken by the City and the County, telecom duct and/or fiber cable should be considered as part of the project.
 10. Include public safety, rescue, and first responder communications needs in the planning effort.
 11. When water, sewer, and road improvement projects are undertaken by the City and the County, telecom duct and/or fiber cable should be considered as part of the project.

There are several different ownership and governance options available, and there are three (Municipal Department, Public/Private Partnership, and regional Authority) that Design Nine recommends for consideration. These options are not necessarily mutually exclusive, and the strategy chosen by the County, the City, the County K12 schools, and the County library system could include elements of all three options.

Councilmember Munson asked if more gigs would be better. Mr. Cohill stated there would be significant costs for the equipment for 10 gig service.

Councilmember Brubaker asked why the government, rather than the private sector, should be doing this. Mr. Cohill indicated it is more efficient to have a single, shared network rather than two or three private networks. It would be prudent management of the public right of way.

The next step would be a detailed study of a specific pilot project in downtown.

Councilmember Aleshire stated this endeavor should be set up as an enterprise fund. Mr. Cohill agreed. The fees should cover the costs of the operational debt. It would be appropriate to make a transfer to the general fund, as many communities do.

Councilmember Aleshire asked if OneMaryland would have the authority to set the rates that could be charged for the service. Mr. Cohill stated service providers would become customers of the service.

Mr. Nicewarner stated the study has shown what opportunities are available. He will provide a coherent plan to the Mayor and Council at a future date.

Mayor Gysberts stated broadband service is crucial to economic development in Hagerstown. Broadband service may draw businesses to Hagerstown.

The single largest cost for broadband is the conduit on electric poles. The City has the advantage owning the poles.

Councilmember Brubaker asked how other cities fund broadband service. Mr. Cohill indicated revenue bonding is viable. It is difficult to start with revenue bonds because there hasn't been a history created in building and running networks. Enterprise funds have been created for some projects. The City has the capability of starting a system within 4 months, in comparison to up to 18 months for a broadband company. He cautions communities to not rely too heavily on grant funding. Other avenues of support are needed.

Councilmember Munson stated this project is a good example of the City and County working together. It is a good opportunity. He mentioned there is one business that pays \$ 500,000 for fiber in the Fios network. The estimated price in Hagerstown is \$ 60,000. If they can't get service on the Fios network, they will be moving.

Mr. Cohill stated there are four or five long haul fiber routes passing through Hagerstown. It will have to be determined how this fiber is connected to other fiber.

Councilmember Brubaker agreed that a way should be found to connect to the nearby lines. He has questions about the authority structure. Mr. Nicewarner stated the task force discussed this and will discuss it again. He wants to make sure the City has a representative with the authority. Mr. Cohill stated the City would not join the authority until the agreement meets their requirements.

Councilmember Munson stated Antietam Cable Television could manage the broadband service, if they chose to. Mr. Cohill stated Antietam Cable has said there are customers they can't afford to provide fiber to. The City does not have to wait for an authority to be created to participate.

It was the general consensus of the Mayor and Council to move forward with a broad band project.

Synagro Contract Discussion

Michael Spiker, Director of Utilities, and Joseph Moss, Wastewater Operations Manager, were present to provide information about the contract with Synagro, operator of the City's Wastewater Pelletizing Operations. Tom Maestri and Rick Shuman, Synagro, were also present.

The City of Hagerstown Department of Utilities Wastewater Division has been discussing contract options related to the Wastewater Pelletizing Operations currently operated by Synagro. Both entities have enjoyed a relationship in excess of twenty years whereas Synagro converts the solid waste component of the process into pellets which are then land applied as a soil amendment or disposed of by other means, depending upon market conditions. The Wastewater Division owns the building, equipment and the associated hardware with Synagro supplying the technology, labor, and disposal services. The Division currently pays a monthly average operation fee of \$ 93,423.40. Any equipment upgrades required to maintain facility operational compliance are billed to the

Division at a rate of 15% above actual cost. Currently, the operation produces approximately 15 dry tons per day during a 4.5 day week.

In November of 1988, the City of Hagerstown entered into an agreement with Envir-Gro Technologies (currently Synagro) to build a pelletizing facility designed to process and dispose of the sludge that is produced at the WWTP. The initial term of the contract was ten years, with an option to allow Synagro to extend the operating term for an additional five years, which was executed during April of 2001. In August, 2006, the contract was extended another 5 years with a provision containing one year renewals unless either party decided to end the relationship. Additional contract language changes were incorporated into the extension, including a fixed fee structure and the procurement and purchase of polymer. This arrangement has worked well for both parties.

City Staff and Synagro presented a joint draft proposal to the Mayor and Council in July 2012 whereas a Design Build Owner Operated (DBOO) facility agreement would allow for a rebuild of the facility in place utilizing a new Drum Dryer with de-watering supplied by either a Belt Filter Press (BFP) or Centrifuge equipment. The BFP or Centrifuge equipment each contained a different set of operational conditions related to odor control, reduced fuel consumption, differing operation and maintenance costs, etc., that was studied and reviewed before any final contract was to be submitted for approval. The DBOO option would have possessed a twenty year contract term.

Further internal discussions and meetings with Synagro led to a determination that the existing conservative approach utilizing a fixed fee payment with a 15% overhead rate for construction upgrades was cost effective. Therefore, City Staff requests approval of a 10 year contract extension for operations, maintenance services, and capital improvements to the facility. A "Third Extension Agreement" was presented for the Mayor and City Council's consideration. The agreement details the jointly developed master plan for the Dryer Facility Upgrades which will be constructed over the ten year contractual period.

Legal counsel has reviewed and approved the language contained within the agreement.

Prior to the contract with Synagro, the sludge was land applied. MDE regulations have changes drastically since that time.

Most of the pellets are sold in Union Bridge for energy. Some is sold in Western Maryland.

Mayor Gysberts asked if there is potential for the pellets to be used to provide energy within the City's own utility. Mr. Spiker stated 15% of the total is allowed to be used, which has occurred.

Mr. Zimmerman asked if bidding the contract is an option, rather than extending the contract for an additional 10 years. Mr. Spiker stated Synagro is the industry leader in pelletizing. The City utilizes their services, based on a bid, for cleaning the lagoons.

It was the general consensus to extend the current contract with Synagro.

Update of City Noise Ordinance (Chapter 155)

Kathleen Maher, Planning Director, stated a team of City staff (Planning, Code Administration, and Police) have reviewed the existing City Noise Ordinance and determined that improvements could be made to make this a better tool for promoting the public health, safety and welfare of the citizens of Hagerstown. The City Attorney conferred with staff and has determined that the draft update of the ordinance is reasonable and legally acceptable. Police Chief Mark Holtzman was also present.

Staff reviewed the noise ordinance to determine its effectiveness as a tool to protect public health, safety, and welfare. The existing Noise Ordinance was adopted in 1996 as a repeal of the 1967 code. Staff found a number of deficiencies and areas that could use improvement. The following are examples of issues to be addressed:

1. There is no Statement of Intent in the ordinance that informs the public and the courts what the regulations are intended to accomplish.
2. There are no definitions of terms which could have debatable definitions (e.g., normal daytime usage, etc.)
3. While the examples of prohibited noises are not intended to be exclusive, the nature of the list suggests that a focus on informal noises by individuals rather than a more inclusive focus that includes business-related noises.
4. The list of exemptions appear to create unintended consequences, i. e. construction noises may occur 24 hours per day, County and State government operations are not exempt, amplified sounds at stadiums need special permission, etc.
5. The only provision for a variance from the provisions is by the Maryland Department of Health and Mental Hygiene.
6. It does not identify an enforcement entity.
7. Violations are a misdemeanor and therefore a criminal offense.
8. Some Court cases involving local noise ordinances have determined that testing at 50 feet is too short a distance.

The proposed new Chapter 155 provides the following new provisions to the existing ordinance:

1. Statement of Intent
2. Definitions of terms, including “excessive noise, plainly audible and day time”
3. Simplification of the Specific Prohibitions section.
4. More detailed list of Exemptions, including acceptable household, government entity, public facility, and emergency noises.

5. Special Permits provision that allows the City Clerk to provide relief on a case by case basis to allow certain noise generating activities otherwise prohibited by the ordinance.
6. Clearly stated Determination of Violation, including responsible party enforcement and method to assess noise.
7. As in existing ordinance and a number of other noise ordinances, noise violation is excessive noise that is plainly audible at a certain distance (in the proposed text, it would be 100 feet); staff also added plainly audible through common partition walls in attached dwellings or multi-family dwellings.
8. Violations are a municipal infraction and therefore a civil offense. Fines are commensurate with other civil penalties in the City Code.

Mayor Gysberts asked if fireworks shows would be approved by the City Clerk or by the Mayor and City Council, as is done at this time.

Mr. Zimmerman asked what process would be followed for a noise complaint and used an example of a live band at a back yard party. Ms. Maher stated the 100' prohibition would be tested. If there is a violation, the activity would be shut down. The organizers could have secured a permit prior to the event from the City Clerk.

Mr. Zimmerman asked about freedom of speech issues. Chief Holtzman stated if a permit is provided by the City Clerk for an event at City Park, HPD would work with the holder to define the area for the event.

Councilmember Aleshire asked who determines the parameters of permitted construction activities during extreme heat situations. He suggested specifying a temperature. He wondered specifically about utility noise. Ms. Maher stated a timeframe is not designated for the day for heat. Chief Holtzman stated the summer calendar could be used.

Councilmember Metzner suggested making an exemption for the summer months, not a designation for extreme heat.

Councilmember Munson has received complaints about the noise from the trash haulers. He asked if the intent of these amendments is to make manufacturing noise easier to deal with because of complaints from one person.

Ms. Maher indicated the complaints logged about noise prompted staff to review the noise ordinance. Definitions in the ordinance were revised to convey the City's intent.

Councilmember Munson asked what can be done about a loud radio in a vehicle. Chief Holtzman stated civil violations address noise from vehicles and indoor noise of commonly joined walls in buildings.

Councilmember Munson suggested making the sound distance limitation 100 feet.

He also mentioned foul language is a problem.

Mayor Gysberts agreed that being around people using foul language is not a pleasant experience, whether it be in a park or on the sidewalk. Chief Holtzman had informed him it is a violation to use this type of language in public.

Councilmember Brubaker has noticed an increase in the number people yelling and shouting. Chief Holtzman indicated staff is reviewing Chapter 173 of the City Code, with the intent to strengthen the citizenship type of behavior.

Mr. Nairn stated if someone is violating the law, an officer could issue a citation.

Councilmember Brubaker mentioned some vehicles have extremely loud exhaust systems.

Councilmember Nigh mentioned that loud music from vehicles, loud motorcycles and foul language are all problems. More than one person, including herself, complained about the noise from the Hub Scrap yard on Prospect Street.

Chief Holtzman stated these quality of life issues are discussed at the neighborhood level with residents. There is an effective juvenile justice department in Hagerstown. They work with juveniles to guide them to be good citizens.

It was the general consensus of the Mayor and City Council to forward with revisions to the noise ordinance. The reference to extreme heat conditions will be designated as summer months.

Sister City Proposal with Hagerstown, Indiana from Mike Keifer

Karen Giffin, Community Affairs Manager, stated resident Mike Keifer would like to create a sister city relationship with the town of Hagerstown, Indiana. Mr. Keifer has researched information on Hagerstown, Indiana, and has put together a local community group that would be a start of a sister city affiliation group with Hagerstown, Indiana. He has also reached out to the leaders of Hagerstown, Indiana who are interested in this endeavor. Letters showcasing support from the Councilmembers, Town Council President and Town Manager of Hagerstown, Indiana were presented.

Linda Irvin-Craig, Director of Washington County Historical Society, Pat Wishard, Washington County Free Library, and Tom Riford, Executive Director of the Convention and Visitors Bureau, were also present.

Mr. Keifer stated there are only two Hagerstowns in the United States. The founders of Hagerstown, Indiana were originally from Hagerstown, Maryland. Hagerstown, Indiana has a population of 1,700. He is excited about the possibility of this sister city relationship. One idea to highlight the Sister City relationship is to have a display at the

library. Councilmember Brubaker stated Wesel, Germany should be included in any Sister City display.

Brian Longbons, Council Member, and Robert Warner, Town Manager, will be visiting this area at the end of September. Mr. Keifer is planning to take them on a tour of the area. He hopes to have them attend the October 1, 2013 Mayor and Council meeting. Hagerstown, Indiana holds a festival each August and he hopes some people will from Maryland will attend.

Mayor Gysberts thanked Mr. Keifer for his enthusiasm and efforts. Councilmember Munson agreed.

It was the general consensus to move forward with the Hagerstown, Indiana Sister City designation. A proclamation will be read and presented to the Council Member and Town Manager of Hagerstown, Indiana at the October 1, 2013 Mayor and Council meeting.

Washington County Free Library Street Closure Request for Ribbon Cutting and Grand Opening

Karen Giffin, Community Affairs Manager, stated the City of Hagerstown received a request for the closure of portions of the first two blocks of South Potomac Street and Antietam Street on Saturday, October 5, 2013 from 10:00 a.m. to 4:00 p.m. as part of the Grand Opening and Ribbon Cutting for the new library.

The event would utilize City of Hagerstown services for the street closure and for the placement and tear down of approximately 500 chairs for the event. The funds for the services would come from the current Fiscal Year Public Functions budget. The City of Hagerstown would require an insurance certificate from the Washington County Free Library for this event. Auxiliary Police would notify the residents and businesses surrounding the street closure.

It was the general consensus to grant permission for the street closure on October 5, 2013.

Advisory – Neighborhood 1st Special Event on September 14, 2013 – Porchfest

Karen Giffin, Community Affairs Manager, reported the Historic Heights Neighborhoods 1st Group is planning a Porchfest for Saturday, September 14, 2013 from 2:00 p.m. to 6:00 p.m. The event brings together neighborhood organizations and residents and simultaneously showcases the recently completed streetscape project and the historic architecture. Sarah Nelson, Planning/Outreach Coordinator and Jennifer Fettig, Neighborhoods 1st, were also present.

The event has been approved by the Neighborhoods 1st Event Approval Process and reviewed logistically by representatives of various City departments for safety and traffic issues.

Ms. Fettig stated there will be musicians on porches and the architecture will be featured. Georgia Boy Café is the caterer for the event.

CITY ADMINISTRATOR'S COMMENTS

Bruce Zimmerman, City Administrator, reminded everyone recycling and trash pick up is moved back one day because of the Labor Day holiday.

MAYOR AND COUNCIL COMMENTS

Councilmember L. C. Metzner had no additional comments.

Councilmember P. M. Nigh had no additional comments.

Councilmember D. F. Munson pointed out the improvements at the Maryland Theatre are very nice.

Councilmember K. B. Aleshire had no additional comments.

Councilmember M. E. Brubaker had no additional comments.

Mayor D. S. Gysberts reminded the Council an executive session is being held on September 6, 2013 at 4:00 p.m. with Bruce Quinn and other representatives from the Hagerstown Suns. He met with Donna Brightman, Washington County Board of Education, who issued an invitation to the Mayor and City Council to share in the visioning process for Washington County.

EXECUTIVE SESSION – September 3, 2013

On a motion duly made by Councilmember D. F. Munson and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to meet in closed session to conduct collective bargaining negotiations or consider matters that relate to the negotiations, #9 (Section 10-508(a)), before a contract is awarded or bids are opened, discuss a matter directly related to a negotiation strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process, # 14 (Section 10-508(a)), and to discuss the employment, assignment, promotion, discipline, demotion, compensation, removal, resignation or performance evaluation of appointees, employees, or officials over whom it has jurisdiction, #1 (Section 10-508(a)), at 6:13 p.m. in Room 407, 4th Floor, City Hall, Hagerstown, Maryland. The following people were in attendance: Mayor D. S. Gysberts, Councilmember K. B. Aleshire, Councilmember M. E. Brubaker, Councilmember L. C.

Metzner, Councilmember D. F. Munson, Councilmember P. M. Nigh, City Administrator Bruce Zimmerman, Karen Paulson, Director of Human Resources, Scott Nicewarner, Director of Technology and Support Services, Michelle Hepburn, Acting Finance Director, William Nairn, City Attorney, Karen Giffin, Community Affairs Manager, John Lestitian, Director of Community and Economic Development, Tom Robinson, President of CBG Communications, Inc., Bob Duchon, Vice President – River Oaks Communications Corporation (by telephone), Dick Nielsen, Senior Engineer CBG Communications, Inc. (by telephone) and Donna K. Spickler, City Clerk. The meeting was held to discuss union negotiations, a contract for the City Attorney and franchise agreement negotiations and strategies. No formal action was taken at the meeting. On a motion duly made, seconded and passed, the meeting was adjourned at 7:56 p.m.

Respectfully submitted,

Original signed by D. K. Spickler

Donna K. Spickler
City Clerk

Approved: October 22, 2013