

EXECUTIVE SESSION – July 15, 2014

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 of all members present to meet in closed session to consult with counsel to obtain legal advice, #7 (Section 10-508(a)), and 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 10-508(a)) at 3:22 p.m. in Room 407, 4<sup>th</sup> Floor, City Hall, Hagerstown, Maryland. The motion also included the addition of a discussion with counsel, #7 (Section 10-508(a)) to discuss the binding arbitration petition. The following people were in attendance: Mayor D. S. Gysberts, Councilmember K. B. Aleshire (who arrived at 3:45 p.m.) Councilmember L. C. Metzner, Councilmember D. F. Munson, Councilmember P. M. Nigh, City Administrator Bruce Zimmerman, City Attorney Mark Boyer, and Donna K. Spickler, City Clerk. The meeting was held to discuss the binding arbitration petition, the MELP property, and membership of the City Ethics Commission and the Hagerstown Housing Authority. Councilmember Metzner agreed to adding the discussion of the binding arbitration petition, with the understanding that it will be fully discussed during a public Work Session. No formal action was taken at the meeting. On a motion duly made, seconded and passed, the executive session was adjourned at 3:51 p.m.

46<sup>th</sup> SPECIAL SESSION – July 15, 2014

Mayor D. S. Gysberts called this 46<sup>th</sup> Special Session, Work Session and Executive Session of the Mayor and City Council to order at 4:07 p.m., Tuesday, July 15, 2014, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers K. B. Aleshire, L. C. Metzner, D. F. Munson, and P. M. Nigh; City Administrator Bruce Zimmerman, City Attorney Mark Boyer, and City Clerk D. K. Spickler. Councilmember M. E. Brubaker was not present.

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 4:08 p.m.

**Introduction of an Ordinance: Authorizing Two Month Extension to the Cable Television Franchise Agreement with Antietam Cable Television, Inc.**

**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 of all members present to introduce an ordinance to authorize a two month extension of the Cable Television Franchise Agreement with Antietam Cable Television, Inc.

Discussion: Negotiations for a new agreement with Antietam Cable Television are nearly concluded, with a few minor details to resolve. This

extension will allow the needed time to complete the agreement for the Mayor and City Council's review.

The Special Session was closed at 4:09 p.m.

WORK SESSION – July 15, 2014

Preliminary Agenda Review

Mayor Gysberts announced he will be providing the invocation on behalf of Councilmember Aleshire at the July 22, 2014 meeting. There are no Mayor and Council meetings scheduled for July 29, 2014 and August 5, 2014.

Urban Partners will be meeting with various groups on Wednesday, July 16, 2014 and Thursday, July 17, 2014.

**Consent Agenda**

A. Department of Community and Economic Development:

1. Application Permit for Augustoberfest – Augustoberfest Charitable Foundation – Central Parking Lot and Surrounding Area – August 21, 2014 through August 24, 2014

B. Department of Parks and Engineering:

1. Marsh Run Wall Repairs – Building Systems, Inc. (Hagerstown, MD) \$99,585.00

Councilmember Aleshire stated even though he will be absent from the July 22, 2014, he supports the introduction of an ordinance to amend the rental facilities regulations.

**Approval of a Resolution: Amendment to Softball User Agreement**

Rodney Tissue, City Engineer, indicated the sole purpose of this amendment is to allow the softball group to hold two all-night softball events during a calendar year. This is required because the current User Agreement required them to be finished by 10:00 p.m. The event that was held in 2013 was successful and no complaints were received.

It was the general consensus to approve the amendment.

**Approval of a Resolution: Memorandum of Understanding for Special Deputies**

This Memorandum of Understanding (MOU) recognizes a recent change in Maryland Law pertaining to the establishment of a Special Deputy status for sworn Hagerstown Police Department (HPD) Officers.

These changes permit HPD officers, sworn as Special Deputies, to take limited law enforcement actions outside the corporate limits of the City of Hagerstown. The Special Deputy authority is outlined in the MOU and in general, is restricted to those situations which endanger human life or threaten public safety.

This completed the preliminary agenda review.

#### Ladder Truck Purchase Schedule

Chief Kyd Dieterich and Michelle Hepburn, Director of Finance, were present to discuss a ladder truck replacement schedule.

Ms. Hepburn stated during budget discussions over the winter, Chief Dieterich was tasked to review ways to stagger the purchases of aerial trucks.

Chief Dieterich stated the company that made the 1997 ladder truck has gone out of business and repairs are problematic. Chief Dieterich noted the City's Central Maintenance Garage has done a good job keeping the trucks on the road. It will take two years for a replacement truck (one year to complete the build process and another 8 to 10 months to mount equipment, install radios and properly train apparatus operators) to be ready to put in service.

In the last year, the department has had to borrow an aerial ladder from other agencies on 3 different occasions to maintain fire protection, because both of the aerials were out of service with mechanical issues. As these trucks age, this will continue to be an ever increasing problem. Staff has located a used truck in New Jersey that fits the needs of the Hagerstown Fire Department. The asking price is \$ 15,000. This truck would cover the timing for a new truck and provide a back up when a new truck is in place.

Mr. Zimmerman indicated the two aerial trucks were purchased in 1997. Because two were purchased at the same time, the reserve truck was eliminated. Staff recommends staggering the purchase of aerial trucks, with the reserve of the used truck in place.

It was the consensus to approve the purchase of the used aerial truck and to move forward with the process to purchase a new truck.

#### Theatre Seating Project Update

Jessica Green, Maryland Theatre Executive Director, and Benito Vattelana, Maryland Theatre Board President, were present to provide an update on the Theatre's seating campaign.

Four major projects have been identified to be completed by the 100<sup>th</sup> anniversary of the Theatre (June, 2015). They are:

1. Ceiling Restoration and Repair – The preliminary estimate was \$ 250,000.00. Final repairs are underway and the cost will be

- \$ 420,000.00. This work will be fully funded by a generous donation from the Hamilton Family Foundation.
2. HVAC Replacement – The boiler is 60 years old and the annual expenses to repair it and keep it running has been \$ 40,000.00 to \$ 50,000.00. An initial estimate to replace the system is \$ 511,000.00. Bids for the work are being reviewed. Funding sources to date are \$ 260,000.00 from the City of Hagerstown and \$ 300,000.00 from Washington County (with conditions). Additional funding sources are being reviewed.
  3. Floor Surface Repair and Installation of New Seating – Bids are being requested for this project. An initial estimate placed the amount at \$ 650,000.00. Possible funding sources include private donations through the Seating Campaign which is underway, the City of Hagerstown, Washington County and State funding for capital repairs.
  4. Theatrical Lighting – Initial estimates are \$ 35,000.00 to upgrade the lighting system. This project will be addressed as other projects move forward.

These projects are the last steps of the overall plan to restore the Theatre before beginning the expansion project.

The seating campaign invites supporters of the arts to become a part of the Theatre by sponsoring a seat. A recognition nameplate will be included on every sponsored seat.

Councilmember Aleshire asked what conditions the County placed on the funding. Mr. Vattelana stated the County Commissioners asked that a plan be provided for how the restoration and expansion ties in with the Urban Partners catalyst project list.

Mayor Gysberts acknowledged that the County has more revenue at their disposal than the City of Hagerstown does.

Councilmember Aleshire noted that because City taxpayers also pay County taxes, the City has actually contributed more per taxpayer than the County. He suggested offering a match from the City of \$ 100,000 for donations made toward the seating. This will ensure City taxpayer revenue is not duplicated.

Councilmember Munson thinks the matching offer is a good place to start. The Theatre is a key attraction for downtown. The leadership at the Theatre is doing a great job.

Two commercials promoting the seating campaign were shown.

#### Yard Sales a Fairgrounds Park

Rodney Tissue, City Engineer, and Junior Mason, Parks Superintendent, were present to provide information about yard sales at Fairgrounds Park.

In the late 1990's, the City renovated the stables along the western perimeter of Fairgrounds Park. This included repainting the stables, adding electricity, and adding a walking path. When the community yard sales were first started in the stables around 2004, the fee was \$ 15 and the City provided tables. Today, the fee is \$ 20 per stall and the users supply their own tables. In 2012 and 2013, the number of annual yard sales decreased from four to two, with the reason being that fewer stalls were filled during the summer months, due to either heat or vacations, and the number of "shoppers" also dropped. This year, it was changed back to four dates, the second Saturday in April, June, August, and October. In April all the stalls were rented. In June, all stalls were rented except three, but the crowd was definitely lower than in April.

For each yard sale event, staff accepts applications for each stall and issues permission for up to 72 vendors. This takes staff approximately one full working day for every event. Staff is working on the purchase of an on-line application system for all the recreation and rental uses and this would allow online registration by renters and staff would spend less time for paperwork for the events. No full-time staff is assigned to the yard sales but the park attendant monitors the sales and addresses issues that arise. However, this takes them away from other duties and parks.

It is reasonable that the City could have one of these events every month during the months of April through October for 6 yard sales over the course of the summer. When an event occurs and the stalls are completely sold out, the City revenue is \$ 1,440 per event, less any staff costs. Having sales more frequently than once per month will require the city to hire additional park attendant staff to ensure all the required work in all the parks is completed.

Councilmember Munson thinks 6 yard sales per year is a good number. The events should be self supporting, without costing the City anything.

Councilmember Nigh clarified any changes would be made for the next season.

Mayor Gysberts stated one person suggested to him that participants be allowed to pre-purchase space for all six yard sales. The City would have the revenue, whether or not vendor shows up.

Councilmember Nigh suggested that members of Neighborhoods 1<sup>st</sup> could provide coverage for the sales.

Mr. Mason stated office staff take the money and make sure people are in their assigned locations. Park attendants open the gates and make sure everyone gets in place, make restroom checks and cleans up and secures the park at the end of the day.

A total of 6 yard sales will be held in 2015.

Mr. Zimmerman thanked Junior Mason for all he does for the parks and the City.

Fireworks at Fairgrounds Park – 2015, 2016 and 2017

Karen Giffin, Community Affairs Manager, and Ted Bodnar were present to discuss the fireworks contract for the Fairgrounds Park Event. In February 2012, the Mayor and City Council approved a three-year fireworks contract with Fireworks Extravaganza for the annual event. The fireworks display had been competitively bid, and two companies had put in a bid for the display. Fireworks Extravaganza was the low bid by a significant amount. The contract was for July 4, 2012, 2013 and 2014.

On June 24, 2014, Councilmember Metzner requested that staff work with Chair Ted Bodnar to negotiate with Fireworks Extravaganza for the 2015 fireworks display so that the City of Hagerstown did not lose the July 4<sup>th</sup> date. Mr. Bodnar has discussed this with Fireworks Extravaganza and has indicated to staff that the July 4, 2015 date is not in danger of being lost.

Councilmember Metzner thanked Ted and Vicky Bodnar for starting the fireworks event. The Hagerstown show is the best around. He suspects fireworks shows are difficult to competitively bid and the pricing of the last three years is reasonable. He suggested not bidding the contract and working with the current vendor on pricing for the next three years.

Mayor Gysberts stated the Fireworks at Fairgrounds Park is one of the best events in the area. In addition to fireworks, there is a music program. Councilmember Munson agreed.

It was the general consensus to negotiate a contract with the current vendor for Mayor and Council approval.

Petition to Amend the City Charter – Collective Bargaining and Binding Arbitration

The Mayor and City Council discussed the petition to amend the City Charter for Collective Bargaining and Binding Arbitration that was submitted on May 27, 2014 to the City Clerk's office.

Donna Spickler, City Clerk, described the process used to verify the signatures on the petition. The first step in the process was staff entering information from the petition sheets into a spreadsheet. The City's Information Technology Department completed a match on three criteria for each entry to develop a list of definite matches. This yielded a match on 3,777 entries. The remaining 6,000 entries were manually compared to the Voter List provided by the Washington County Board of Elections to determine if they were registered voters for the City of Hagerstown. The manual review revealed that an additional 1,063 signatures were verified. The total number of verified signatures is 4,840. There are approximately 500 signatures to review in greater detail.

Mayor Gysberts asked Ms. Spickler if the required 20% of verified signatures on a petition was met. Ms. Spickler stated that 4,819 signatures are needed for the petition to

be valid and the threshold was met. Mayor Gysberts reported that the union's attorney submitted a request to withdraw the petition that was presented on May 27, 2014. This was not an option the Mayor and Council were willing to consider because, per the City Attorney, they have an obligation to the registered voters to verify the signatures on the petition. A decision for further action has to be made by the Mayor and Council by July 26, 2014, which is within the 60 day time frame established by State law.

Mayor Gysberts stated the options for action are:

1. Amend the City Charter as requested in the petition immediately.
2. Pass a resolution to include a referendum question to the voters concerning binding arbitration during the next election.
3. Reject because the amendment is not appropriate for the City Charter on the basis that it interferes with the function of the Council and violates the legislative prerogative of the City Council.

Mayor Gysberts stated binding arbitration establishes an action. If an arbitrator determines public safety employees deserve a 25% pay increase, the City would have to provide the increase. His preference is that the Council reject the petition.

Councilmember Munson agrees with the Mayor's suggestion. He mentioned a local community in Pennsylvania had a similar situation which caused the town to raise their property tax rate to cover the arbitrator's ruling. This would not be fair to City taxpayers.

Mayor Gysberts indicated the tax was raised by 13% and it was named after the arbitrator. He thinks the petition is completely unnecessary because the labor contract was approved. He finds it disingenuous because signers were told the City was taking benefits away from the firefighters and that the City was not acting in good faith. After the union's attorney asked to withdraw the petition, another 2,000 signatures were presented on July 14, 2014.

Councilmember Aleshire pointed out the verification count at this point is slightly more than the amount that is required. In the time since the petition was submitted, Council members have repeatedly heard from people who signed the petition that they felt misled when they signed it. He listed reasons he would agree to not entertain the petition:

1. Citizens were lied to. When a contract is made with a third party to convey a message that impacts them directly and financially, and the message is not accurate, it erodes the public trust. Then when the group goes to these same citizens in the future for help, there is no one to blame but themselves when citizens are more cautious.

Mayor Gysberts stated it is important for people to read what they are signing in detail. Councilmember Aleshire stated it is clearly the Mayor and Council's responsibility to read the petition and understand what the petition is asking for. They decided early on that it was a bad petition, it was not clear and sold as something other than what it is.

2. He suspects the petitioners themselves probably recognized, at least in some part, the problems with the language, otherwise there would not have been a voluntary request to withdraw. Unfortunately, the City Council can't do that.
3. As the City Attorney has pointed out, there are a number of legal questions and it is clearly one of the cases in State process that is not clear.

Mayor Gysberts stated it is the sole prerogative of the Council to act on legislation and it should not be transferred to a third party.

Councilmember Aleshire stated anyone who thinks the elected body hasn't taken the appropriate steps over time to improve fire service is completely delusional. For example, there were less people and less street miles in the City of Hagerstown in 1950. He is sure the proportion of staff was much higher at that time than it is now.

Councilmember Metzner would vote to have the question on the ballot in the next scheduled election. He has faith in the citizens. If this case goes to litigation, he has no intention of the other side being able to quote him for why he would vote for this. He has spoken in the past about the methods used and what the petition says. He has never had a problem in recognizing the collective bargaining units in the City Charter.

Councilmember Nigh stated she has been clear that it should go to referendum.

Mayor Gysberts stated he thinks Councilmember Brubaker supports rejecting the petition. He believes a majority of this body will vote to reject the petition. He feels sure the Council's inaction will invite litigation. He thinks other communities will face this situation as well. He doesn't think anyone on this Council is anti-union. He also thinks the groups continue to be supported by every member of the Council. He thinks the City staff negotiates in good faith with all the bargaining units. However, this is an interference of the legislative function of the Council.

Mark Boyer, City Attorney, stated the Mayor characterized the options available correctly. He believes he understands the direction from the majority of the body as rejecting the petition. He indicated this could be formalized with a resolution at the Regular Session on July 22, 2014 or simply take no action on the Charter amendment.

Councilmember Metzner is concerned by doing nothing the Council has not affirmatively stated why they are taking no action and would not be following the law.

Mr. Boyer stated a letter could be submitted to the union's attorney notifying them that no action will be taken.

Mr. Zimmerman asked if the direction is to have the City Attorney draft a letter to the union attorney notifying them of the decision. Councilmember Metzner asked that it be noted that the decision was not unanimous.

**CITY ADMINISTRATOR'S COMMENTS**

*Bruce Zimmerman, City Administrator*, had no additional comments.

**MAYOR AND COUNCIL COMMENTS**

*Councilmember L. C. Metzner* is pleased with the direction provided for the fireworks contract. The Municipal Band concert on July 13, 2014 was a great celebration of their 100<sup>th</sup> anniversary. Bike Night will be held on July 18, 2014 in downtown Hagerstown. He commended the City's Light Department employees for their efforts to restore service to customers quickly.

*Councilmember P. M. Nigh* suggested closing a portion of Cleveland Avenue for the fireworks event. This will help with pedestrian safety. She asked how many cameras are operational. She reiterated she feels a ballot question for binding arbitration is the best option.

*Councilmember D. F. Munson* agreed that the fireworks event and 100<sup>th</sup> anniversary concert were great events. He noted during a discussion at last week's Work Session he stated properties on Baltimore Street were trash. He was referring specifically to the Massey building and two adjoining buildings. He apologized that his comment was not more specific.

*Councilmember K. B. Aleshire* asked that staff advise the Council when the concrete crushing operation at Schuster Concrete is challengeable to the Board of Zoning Appeals. Mr. Boyer will research this.

Councilmember Nigh stated many residents near the concrete plant were not aware of the meeting scheduled with the Maryland Department of the Environment. She hopes another hearing will be held.

Councilmember Aleshire stated it is difficult to progress as a single unit when the individuals are fighting among themselves (this is in reference to the Charter amendment petition). The stadium was a big issue when he was elected in 2012. He believes the key for revitalization of downtown is education. The Wind Down events at the Maryland Theatre clearly are moving toward a family environment. These types of events bring families to downtown, as will increased educational activities.

*Mayor D. S. Gysberts* congratulated the Municipal Band for a great performance. He hopes to have copies of the recorded concert to take along on his pending trip to Wesel, Germany. When he visits other areas, he is reminded of the great things happening to enjoy in Hagerstown, from the basics to different cultural events. He wants to keep moving forward and adding new events and activities.

Mr. Zimmerman stated during wide spread power outages, Light Department employees restore service to City customers and then assist other utilities. He noted

Nathan Fridinger, Electric Operations Manager, did a great job handling the outages during recent storms.

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 5:34 p.m.

Respectfully submitted,

Donna K. Spickler  
City Clerk

Approved: August 26, 2014