

50th SPECIAL SESSION AND WORK SESSION – September 16, 2014

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Mayor D. S. Gysberts called this 50th Special Session and Work Session to order at 4:10 p.m., Tuesday, September 16, 2014, 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 M. E. Brubaker and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to meet in Special Session at 4:11 p.m.

Public Hearing: FY 2014 Consolidated Annual Performance and Evaluation Report (CAPER)

Jonathan Kerns, Community Development Manager, stated the purpose of this public hearing is to provide an opportunity for interested citizens to comment on the City of Hagerstown's Consolidated Annual Performance and Evaluation Report (CAPER).

After the close of each Community Development Block Grant program year, the City of Hagerstown must prepare the CAPER. This CAPER provides details on Hagerstown's CDBG program for the fiscal year from July 1, 2013 through June 30, 2014. CDBG expenditures for the period totaled \$ 757,076.01. Excluding general administration and planning costs, the amount expended on projects totaled \$ 590,201.27. Of the total project expenditures, \$ 449,629.27 or 76% went to activities directly benefitting low and moderate income persons.

A copy of the draft CAPER has been available for review at the Department of Community and Economic Development Office, Washington County Library in Downtown Hagerstown and on the City's website at www.hagerstownmd.org since September 2, 2014.

There was no testimony presented.

The record will remain open until September 19, 2014.

The public hearing was closed at 4:15 p.m.

WORK SESSION – September 16, 2014

Check Presentation for Public Art Sculpture – The Fishing Lesson – From the Valley Art Association

Janie Moltrup, Sue Parker, and Nancy Arsenovic, of the Valley Art Association, presented a check to the City of Hagerstown for \$ 750.00 toward the cost of the Fishing Lesson sculpture in City Park.

The sculpture will be unveiled on September 20, 2014 during the City Park Fall Fest. Other activities include the 275th anniversary commemoration of the Jonathan Hager House and the 75th anniversary of the Valley Art Association.

Introduction of Kathleen “Kassie” Lewis, Director of the Washington County Department of Business Development

Kathleen “Kassie” Lewis, Director of the Washington County Department of Business Development, was present at the meeting. Ms. Lewis most recently worked at the Maryland Department of Business and Economic Development (DBED) and has experience with county levels of economic development.

Councilmember Munson welcomed Ms. Lewis to Washington County. He had some limited interactions with Ms. Lewis at the State level. He urged her to remember Hagerstown when she is looking at important places in Washington County.

Mayor Gysberts pointed out that what is good for the City is good for the County.

Councilmember Brubaker reiterated that the residents of Hagerstown support the County as much as all the other County residents do. The City needs the support from the Department of Business Development.

Ms. Lewis stated she is impressed with the level of commitment in the community.

Maryland Theatre Seating Project Update

Jessica Green, Executive Director, and Benito Vattelana, Board of Directors President, of the Maryland Theatre, provided an update on the seating project and other initiatives at the Maryland Theatre. In 2011, the Maryland Theatre Board of Directors embarked on a comprehensive plan to improve the Maryland Theatre Business Operations. In doing so, the Board of Directors also recognized the urgent need to restore the Maryland Theatre and ensure its future preservation as the Jewel of the Downtown. As part of this endeavor the Maryland Theatre Board of Directors envisioned a facility expansion that addresses the needs of both the Maryland Theatre business operations and the needs of the artistic and educational needs of the community. Over the past four years this internal initiative was led by the Maryland Theatre’s Building Committee. Additional information about the capital improvement plan will be provided at a future work session.

The seating campaign began in July, 2014 and will end on Monday, September 22, 2014. The preliminary estimate to replace the seats was \$ 650,000. Lead testing results were negative, reducing the preparation work required in the balcony and the balcony condition is better than anticipated. Several options on the seating that were deemed not

historically correct upgrades were removed. Both these actions resulted in reducing the estimated cost to \$ 500,000. The City of Hagerstown and the Washington County Commissioners have agreed to provide preliminary funding of up to \$ 300,000. The amount needed to cover the gap is \$ 200,000. To date, \$ 71,050 has been committed through seat sponsorships. Three seating grants have been applied for, with notification anticipated by the end of 2014.

The seats must be ordered by October 1, 2014 in order to move forward with the January completion date.

Ms. Green stated the Theatre is making a final request to the City for an additional \$ 50,000 to cover the costs. This is a strong project for the Community's City Center plan. The seat replacement is about accessibility, as well as aesthetics. The additional funding may not be needed, depending on the outcome of the grant requests.

Councilmember Brubaker stated the Maryland Theatre should submit a bond bill again this session.

Mayor Gysberts mentioned there was a story in The New Yorker magazine about Bill Cosby and the Maryland Theatre was mentioned.

Councilmember Metzner stated he is ok with the \$ 100,000 commitment from the City but would prefer to wait until the grant requests are reviewed before committing to the additional \$ 50,000.

Councilmember Munson mentioned the deteriorated building to the rear of the Maryland Theatre is being demolished because of the City's efforts to improve the downtown.

Councilmember Brubaker encouraged citizens to consider sponsoring a seat. This is a fun opportunity to have your contribution recognized for many years. The Maryland Theatre serves the entire community.

Mayor Gysberts clarified that a majority of the Council supports the commitment made to match up to \$ 100,000 for the project.

Workers' Compensation Program

Karen Paulson, Director of Human Resources, and Ed Seward, CBIZ Insurance Services, Inc., were present to continue the discussion of the feasibility to move to a self-funded workers' compensation program from the current guaranteed cost model. Kevin DeHaven, Safety and Loss Control Coordinator, was also present.

CBIZ projects a self-insured program will have a one year savings of \$ 288,645 and a five year savings of \$ 1,972,115. The cost of the City's workers' compensation program, which combines premium and broker expenses, rose from \$ 990,620 in FY 14 to a

projected \$ 1,350,000 for FY 15. The costs are expected to continue to increase. During the August 12, 2014 Work Session discussion, several members of the Council requested additional data added to the attachments and they have been completed. The memo attachments have been revised as follows:

1. Attachment A Revision – page 1 – Revision reflects the break out detail for all 5 years that are referenced in the “5 year comparison” at the bottom of the page.
2. Attachment A – Revision – page 2 – Claims estimates have been moved to a new separate page to allow a full 10 years of projected payments to be shown. This illustrates how the cash flow savings are ongoing through the life of the program.
3. Attachment C – New – The City’s current experience modification is 1.04. This number is a significant factor in the calculation of premiums under a guaranteed cost program. Both pages of this attachment show the effect of a moderate increase from 1.04 to the estimated projection of 1.49.

The key to a successful self-insurance program is aggressive safety and loss control efforts.

Mr. Seward recommends the City fund the estimated losses amount in the budget for at least the first several years.

Councilmember Aleshire inquired what happens with long term ratings if the City uses a new company for Workers’ Compensation Insurance. Mr. Seward indicated the loss claims record for the City has not been good.

Mayor Gysberts pointed out savings in Workers’ Compensation creates an opportunity to fund other programs and initiatives.

Councilmember Metzner asked if the costs for insurance are actually increasing because of presumptive claims legislation or because of the claim/accident ratio. He believes claims will decrease in future years.

Councilmember Brubaker stated the presumptive claims legislation is another unfunded State mandate.

Mr. Seward stated that Cumberland has had success with a self-insurance Workers’ Compensation program. Losses have been reduced.

Mayor Gysberts stated safety and health programs are beneficial for employees. Councilmember Aleshire does not think the level of savings will be as high as indicated.

Councilmember Nigh asked if mandatory physicals would be acceptable to employees. Mr. Seward stated union contracts would address mandatory physicals. Currently, physicals are required for new hires.

Mr. Zimmerman pointed out the claims projections are for five years. Actual claims will fluctuate from the projections.

Staff will return in October for additional follow up work session discussions on the recommended program change and the opportunity for an additional staff person in Human Resources to help drive critical organizational initiatives that extend beyond workers' compensation and safety. Staff anticipates a formal decision from Mayor and Council in either October or November, 2014 to secure direction before FY 16 budget preparations begin.

S & P Ratings Upgrade

Michelle Hepburn, Director of Finance, was present to discuss the recent S & P Ratings upgrade. The City was upgraded from "AA-" status to "AA" status.

Standard & Poor's Ratings Services raised its rating on Hagerstown, Maryland's general obligation (GO) debt one notch to "AA" from "AA-" based on Standard & Poor's local GO criteria. The outlook is stable.

The City's full-faith-and-credit-and-resources pledge and an agreement to levy ad valorem property taxes without limitation as to rate or amount secure the bonds.

The rating reflects S & P's opinion of the following factors for the City:

1. Hagerstown, despite its semirural location in a largely agricultural area, is a low-cost alternative for businesses. Residents benefit from significant economic and employment opportunities due to access via interstates 81 and 70. In their opinion, the City's local economy is adequate with market value of roughly \$ 69,700 per capita and projected per capita effective buying income of 80% of the national average.
2. In their view, Hagerstown's management conditions are very strong with "strong" financial management practices under the Financial Management Assessment methodology, indicating practices are strong, well embedded, and likely sustainable. Assessment strengths include management's formulation of budgetary assumptions based on a historical analysis of past revenue and expenditure performance, broken down by department and expenditure type to encourage streamlining operations; frequent monitoring and reporting of budget-to-actual performance to the governing council; detailed five-year financial forecasting and capital planning processes; formally adopted general fund reserve policy that requires an unreserved fund balance in excess of 10% of budget; and formal debt management policy that restricts direct debt to less than 10%

of assessed value, or \$ 1,000 per capita.

3. In their opinion, budgetary flexibility is very strong with available reserves of \$ 9.5 million, or 26.4% of operating expenditures, in fiscal 2013. For fiscal 2015, officials plan to draw down approximately \$ 800,000 from available reserves. This could bring down available fund balance to, what S & P considers, a very strong 21.8% of expenditures. Management plans to use these funds for capital expenditure purposes.
4. In S & P's view, overall budgetary performance is adequate with surpluses of 3.3% for the general fund and 2.8% for total governmental funds in fiscal 2013. Hagerstown estimates balanced operations for fiscal 2014. For fiscal 2015, management has budgeted for an operating deficit of \$ 824,000, or 2.1% of the budget.
5. Very strong liquidity supports Hagerstown's finances with available cash of 61% of governmental funds expenditures and debt service of 12x. Based on past debt issuance, S & P believes Hagerstown has strong access to capital markets to provide liquidity, if necessary.
6. In S & P's view, Hagerstown's debt and contingent liabilities profile is strong. Debt service is 5% of total governmental fund expenditures, and net direct debt is 60.9% of total governmental funds revenue. Officials plan to retire approximately 66% of debt over 10 years, which they consider a positive credit factor. They view the net-debt-to-market-value ratio as a low 1.8%, which they consider a positive credit factor. They believe Hagerstown is facing large pension and other postemployment benefits (OPEB) obligations, which they view as a negative credit factor. Last year, Hagerstown contributed 100% of the annual required pension contribution. The combined annual pension and OPEB cost accounted for 12% of total government expenditures in fiscal 2013.
7. They consider the Institutional Framework score for Maryland municipalities very strong.

The stable outlook reflects Standard & Poor's opinion of Hagerstown's strong management practices of sustaining its very strong budgetary flexibility. They believe Hagerstown's very strong liquidity and favorable debt profile provide further rating stability. They do not expect to change the rating during the outlook's two-year period. They believe Hagerstown's adequate local economy constrains upward rating movement.

Ms. Hepburn pointed out that the City of Hagerstown has not reduced funding for Other Post Employment Benefits (OPEB) and pension costs, as other entities have been required to do to meet their budgets.

Councilmember Munson stated rating increases are not easy to achieve and this is a significant accomplishment.

Councilmember Brubaker believes the bond rating companies recognize the City has a plan for meeting their obligations.

Resident 311 Program Update

Erin Wolfe, Communications Manager, was present to introduce a new feature to the Mayor and Council that has been implemented to enhance transparency and engagement with the community. Staff has developed and implemented a Resident x311 phone tree and webpage in an effort to more effectively provide information about programs, services and amenities provided by the City of Hagerstown. In communities across the country, 311 is the universal phone number to reach such information; staff has adapted this service to the current telephone system and within the organization of the City website.

The navigations of Hagerstown's Resident x311 were developed based on a year's worth of website analytics data, which tracks search queries on the City website. In addition, department managers and staff who handle inquiries from community members provided input for the organization of the website and phone tree.

The Resident x311 logo, including the phone number and website URL, will be displayed on the reverse of new orders of City business cards along with a QR code that can be scanned with a Smartphone to direct users to the webpage.

It was suggested to include this information in utility customer bills as well.

IAFF Local 1605 and AFSCME Local 3373 Lawsuit Discussion

Mayor Gysberts stated the IAFF Local 1605, the AFSCME Local 3373, and a city resident have filed a lawsuit against the City of Hagerstown regarding a proposed charter amendment to include binding arbitration language in the City Charter. After a petition was submitted to amend the Charter, the Mayor and City Council determined that binding arbitration language in the City Charter is an unlawful delegation of their legislative power. In response to the determination, the lawsuit was filed on August 4, 2014 and served on August 19, 2014. The City must file a response to the lawsuit by September 18, 2014. Mayor Gysberts indicated a response will be filed by the deadline.

Mayor Gysberts thinks the petition drive to collect signatures was flawed. This is a legal argument that will be heard through the court system. This issue will also be heard in the court of public opinion. The fire union endorsed five candidates in the 2012 election who were ultimately elected. Shortly after the election, union negotiations began. The City is experiencing the effects of the recession and is working through this. The Mayor and City Council wanted to offer wage and benefit increases but were limited by the budget. However, union contracts have been successfully resolved, enhancing

wages for all employees. Pages of questions were submitted by members of the fire union about where the City's revenue is spent. These questions were answered. There was never a question of whether employees would receive raises. The fire union wanted four delayed pay steps to be made up within one year. This request was not possible with existing revenue.

Mayor Gysberts stated a majority of the Mayor and City Council believe binding arbitration would be detrimental to the City and its operations. The majority also believes that binding arbitration in the City Charter is not appropriate because it would take away the rights of elected officials.

Mayor Gysberts pointed out that one-third of the City's employees are suing the City. In collecting signatures, the public was lied to. There were disingenuous offers to withdraw the petition. Additional signatures were being collected even as the offer to withdraw the petition was being made. The actions call into question the integrity of some of these people. He questions if union members voted to file the lawsuit. He received a public information request for expense information for his recent trip to Europe. He pointed out significant staff time has been spent throughout the petition process, with validation of the signatures, and his responses to requests. He believes the union members are trying to amend the Charter to benefit them personally. He strongly feels that the issue of ethics should be discussed around this table and in the public. No one doubts the necessity of police and fire services. This situation appears to be one of blatant self-interest. This Council is probably the most union friendly ever.

Councilmember Metzner stated the Council wanted to have a public discussion of the petition and lawsuit but were not able to until now. He met with the fire leadership several months ago and doesn't need to discuss it any further. Petitions and politics are similar. People say a lot of things that aren't true. The fact is that a substantial number of voters in Hagerstown petitioned this referendum. He is not going to question the gathering of the signatures anymore. Voters have said they want the question on the ballot. He would support voting for a resolution to put the question on the ballot. Binding arbitration is negotiated. This would be a referendum asking if voters want binding arbitration. If the referendum passes, it would be up to the body elected at that time to decide if they were going to litigate it or not. The courts will determine if the resolution would be legally binding. He believes the question should be on the ballot. His comments do not indicate legal counsel is wrong or that these actions lead to litigation. He doesn't understand how there can be a binding referendum that directs the City to prepare an ordinance determining what the binding legislator can do.

Councilmember Brubaker stated the Council received legal advice that this type of language does not belong in the City's Charter. It is the Council's fiduciary duty to follow that advice. First, the Council could have been much nastier in this fight than they were. A contract was not imposed on the unions. The contracts were negotiated in good faith. He has seen that arbitrators do what the unions want and assume the City has money. They don't find out there is not revenue to cover the requests. Hagerstown has been able to do more than other municipalities have been able to do. He did not ask for

the fire union's endorsement. When they endorsed him, he said he would try to do what is fair to employees to the best of his ability. He did not make specific promises. Indications otherwise are ludicrous. He believes the Council has the legal obligation to pursue this issue any way they can.

Mayor Gysberts asked what incentive there is for a union to negotiate with the City if binding arbitration is in the Charter. Operations within both the police and fire departments have been challenging for the two chiefs, with the idea that the unions are going to run the departments. There needs to be respect for the chain of command in both departments.

Councilmember Aleshire has been elected to office at the hands of the voters, never to an individual or group. During deliberations, he feels as though the groups fail to take into account who they are affecting – that being the voters. He is as plain and honest as he can be as an elected official and as a municipal employee. He would not consider approaching citizens and providing them with wrong information. He has not seen the validity of the signatures collected. There could be an argument of the merit of the petition, if the signers were aware of question. There is no validity when signers were purposely misled. When they approached citizens, they should have provided plain and simple information. The Declaratory judgment indicates judgment from the court will terminate this controversy. He finds it interesting that court is being asked to make a decision on the same thing they are asking voters to act on. The lawsuit indicates there was a breach of duty and disregard of the duty of the elected body to uphold the constitution. He stated there have been no instances in which he has not upheld the constitution. Binding arbitration moves the decision for fiscal responsibility from the elected body to the arbitrator. This process totally excludes the citizens.

Councilmember Munson stated the fire union endorsed him and he appreciates that. He strongly believes that binding arbitration is not appropriate material for the City Charter. As an elected Councilmember, the only power he has is budgetary. If that is taken from the Council, it diminishes the whole system.

Councilmember Nigh conveyed her thoughts from the beginning, which is to take the question to referendum.

Mayor Gysberts clarified that two of the five Councilmembers want to take the issue to referendum. The other three do not. He noted that Councilmember Metzner is not opposed to binding arbitration.

Mr. Zimmerman stated he appreciates the Council approaching this issue on a number of levels. One is the legal issue and the other is the question of an initiative by employees that could possibly have deceived the public. That is a significant organizational issue and he appreciates the Mayor and Council's recognition of that.

CITY ADMINISTRATOR'S COMMENTS

Bruce Zimmerman, City Administrator, stated the annual Chamber of Commerce dinner will held on September 23, 2014.

MAYOR AND COUNCIL COMMENTS

Councilmember M. E. Brubaker attended the MML Fall Conference. The legislative committee debated a number of significant issues including Highway User Revenue, a new development in the Planning statutes of Maryland, and a request to reduce the reporting standards in the Maryland Ethics Commission requirements. Governor O'Malley addressed the conference attendees.

Councilmember L. C. Metzner stated the Porch Fest event was a great success. This is another example of what can happen when citizens decide they are going to make the community a lot better. The Hispanic festival was a great event as well.

He discussed the State Ethics Commission requirements for members of boards to submit an annual financial disclosure statement. These are volunteer board members and he is concerned this will deter citizens from volunteering for membership.

Councilmember P. M. Nigh agreed the disclosure requirements are more extensive than in previous years. Councilmember Brubaker reported MML is working on this issue.

Councilmember D. F. Munson had no additional comments.

Councilmember K. B. Aleshire stated the only way to make individuals who are causing problems realize this isn't acceptable in the community is to keep reporting suspicious activity to the police. He has recently reported two incidents and the police responded very quickly. He also attended the Porch Fest event.

Mayor D. S. Gysberts stated there is no question that City employees work hard every day. He still questions whether or not the union members voted to sue their employer. He believes there is a disconnect between union management and union employees. He thanked everyone involved with planning the Remembrance in the Park activities.

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 6:25 p.m.

Respectfully submitted,

Donna K. Spickler
City Clerk

Approved: October 28, 2014