

79<sup>TH</sup> REGULAR SESSION AND EXECUTIVE SESSION – September 29, 2015

EXECUTIVE SESSION – September 29, 2015

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 consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State, #4 (Section 10-508(a)), on Tuesday, September 29, 2015 at 6:04 p.m. in Room 407, 4<sup>th</sup> floor, City Hall, Hagerstown, Maryland. The following people were in attendance: Mayor D. S. Gysberts, Councilmember K. B. Aleshire, Councilmember L. C. Metzner, Councilmember D. F. Munson, Councilmember P. M. Nigh, City Administrator Valerie Means, Michelle Hepburn, Director of Finance, Scott Nicewarner, Interim Director of the Department of Community and Economic Development, Jill Frick, Economic Development Manager, Andrew Sargent, Downtown Manager, and D. K. Spickler, City Clerk. The meeting was held to discuss a business proposal. No formal action was taken at the meeting. On a motion duly made, seconded, and passed, the Executive Session was adjourned at 6:53 p.m.

79<sup>TH</sup> REGULAR SESSION – September 29, 2015

**Mayor D. S. Gysberts called this 79<sup>th</sup> Session of the Mayor and City Council to order at 7:06 p.m., Tuesday, September 29, 2015, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers K. B. Aleshire, M. E. Brubaker, L. C. Metzner, D. F. Munson, and P. M. Nigh; City Administrator Valerie Means, City Attorney Mark Boyer, and Donna K. Spickler, City Clerk.**

The invocation was offered by Councilmember Lewis C. Metzner. The Pledge of Allegiance was then recited.

Mayor Gysberts announced the Rules of Procedure for this meeting will be followed as adopted September 24, 2013. It was announced that the use of cell phones during meetings is restricted and that all correspondence for distribution to elected officials should be provided to the City Clerk and should include a copy for the City Clerk for inclusion in the official record.

The next scheduled meetings are: Work Sessions at 4:00 p.m. on Tuesday, October 6, 2015, Tuesday, October 13, 2015, and Tuesday, October 20, 2015, and the Regular Session at 7:00 p.m. on Tuesday, October 27, 2015.

**APPOINTMENTS**

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember D. F. Munson, the Mayor and City Council unanimously agreed by voice vote to reappoint Percy Wright and Myra Constable to the Board of Traffic and Parking. Both terms will expire September 27, 2019.

## **GUESTS**

### **Proclamation: National Diaper Need Awareness Week**

Mayor Gysberts presented a proclamation naming September 28 – October 4, 2015 as National Diaper Need Awareness Week to Rebecca Griffin and Karen Mercodel.

### **Proclamation: Economic Development Week**

Mayor Gysberts read a proclamation naming September 28 – October 2, 2015 as Economic Development Week. Jill Frick, Economic Development Manager, Andrew Sargent, Downtown Manager, and Michael Reyka, PhD, Executive Director of Ambulatory Services at Meritus Medical Center, accepted the proclamation.

## **CITIZEN COMMENTS**

Patrick Prudomme, 136 N. Mulberry Street, Hagerstown, Maryland, reported more than 400 violations were issued for property maintenance violations and about half were addressed. It took four employees four days to complete the violations. The City of Hagerstown could increase revenue by \$ 40,000.00 if the remaining 200 violators were fined \$ 200.00 each.

## **MAYOR AND COUNCIL COMMENTS**

*Councilmember P. M. Nigh* asked that Code Inspections staff check the property at 238 N. Locust Street.

*Councilmember D. F. Munson* had no additional comments.

*Councilmember L. C. Metzner* had no additional comments.

*Councilmember M. E. Brubaker* reported all three of the City's legislative priorities are included in the MML's Legislative Priorities list. A state-wide issue is maintenance of foreclosure properties. A task force is reviewing this issue. Double Taxation will remain a priority of the Municipal League. The League will be reviewing guidelines for body worn cameras. The organization supports moving forward with body worn cameras but is concerned State mandated guidelines may be difficult to implement or be impractical. He attended Thunder in the Square and the first Country Fest. Both events were enjoyable. He will be attending the Washington County Coalition meeting on September 30, 2015.

*Councilmember K. B. Aleshire* reminded everyone that the Snow Angel program is beginning again. He attended the Wind Down (Thunder in the Square) last week also. He thinks the Mayor and Council should discuss the educational hub project with the Board of Education soon. A private entity looked at Winter Street School recently and he believes reuse would be better than demolition of the building.

*Mayor D. S. Gysberts* stated a meeting is being planned with the Board of Education. A group of citizens from Xinjin, China visited Hagerstown on September 23, 2015. Their day was full with tours and site visits. Mayor Gysberts believes they were impressed and this visit may lead to the opportunity for cultural exchanges with Xinjin. He congratulated the United Way of Washington County with the kick off of this year's campaign. He judged the cars that were participating in the Thunder in the Square Wind Down. He thanked the people who organized and participated in the Out of the Darkness walk to raise awareness of suicide. He congratulated members of the Police Athletic League (PAL) for a successful first time event – the Country Fest. Events being held on October 2 and 3, 2015 include a Blues and Books event at the Washington County Free Library, grand opening of Kiwanis Park, and the 200<sup>th</sup> Anniversary of the First Hose Fire Company parade. He thanked Chief Steve Lohr for distributing fire safety information to neighbors following a fire in a neighborhood. October is fire prevention month.

Councilmember Brubaker mentioned the Maryland Sustainable Growth Commission visited Hagerstown on September 28, 2015. He thanked staff for organizing and presenting an excellent walking tour.

Councilmember Munson thanked Michael Spiker, Director of Utilities, Nancy Hausrath, Water Operations Manager, and all Water staff for their efforts to protect Hagerstown water customers from the effects of the latex spill near Luke, Maryland.

### **CITY ADMINISTRATOR COMMENTS**

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

### **MINUTES**

On a motion duly made by Councilmember D. F. Munson and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve the minutes, as presented, for the Mayor and Council meetings held on July 21, 2015, July 28, 2015, August 4, 2015, August 18, 2015, and August 25, 2015.

### **CONSENT AGENDA**

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember M. E. Brubaker, the Consent Agenda was approved as follows:

- A. Department of Community and Economic Development
  - 1. Barbara Ingram School for the Arts (BISFA) Lamp Post Project
  
- B. Department of Parks and Engineering:
  - 1. Curb and Sidewalk Replacement Program – Odd Jobs Contractors (Keedysville, MD) \$ 43,917.50
    - a. Part A: Abatement of Curb and Sidewalk Violations - \$ 18,917.50
    - b. Part B: Replacement of curb and/or sidewalk damaged by street trees –

Not to Exceed \$ 25,000.00

2. Demolition of 40 & 50 East Baltimore Street (Massey Property) Allegheny Wrecking & Salvage (Hagerstown, MD) \$ 39,400.00

C. Police Department:

1. Laser Scanner – DiCarlo Precision Instrument, Inc. (Salisbury, MD) \$ 98,734.00
2. Crash Software – FARO Technologies (Kamloops, BC) \$ 11,000.00

D. Department of Utilities:

1. Water – Vertical Pump Assembly – Geiger Pump and Equipment (Baltimore, MD) \$ 29,120.00

**UNFINISHED BUSINESS**

**A. Approval of an Ordinance: Land Management Code Amendments**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve an amended ordinance to amend Chapter 140, Land Management Code, of the City Code. This ordinance itemizes a package of amendments covering a wide range of revisions which began review by the Planning Commission in 2014. The complete details are outlined in the ordinance.

Since the introduction of the Enacting Ordinance, the proposed provision that shifted responsibility for writing Board of Zoning Appeals decisions from Board members to City staff and/or the City Attorney has been removed at the direction of the Mayor and City Council.

Discussion: Councilmember Brubaker noted the removed item mentioned in the motion will be reviewed again.

**B. Approval of an Ordinance: Land Management Code Amendments for Brewery, Distillery and Indoor Plant Cultivation and Processing Facility**

**Action:** Councilmember M. E. Brubaker made a motion to approve an ordinance to amend Chapter 140, Land Management Code, of the City Code. These amendments add “brewery, distillery, and indoor plant cultivation and processing facility” to the definitions and to the list of permissible uses in the zoning ordinance. The complete details are outlined in the ordinance. Councilmember L. C. Metzner seconded the motion.

Discussion: Councilmember Nigh read an article that was in the Washington Post that discussed the effects of legalized marijuana in

Colorado. She is concerned there will be problems in this area since land is less expensive than it is in Colorado.

Councilmember Aleshire pointed out the Federal statute states there is no medicinal value to marijuana. He is concerned that an ordinance is being considered to allow indoor planting and cultivation of medicinal herbs. If passed, the ordinance does not require additional review by the Mayor and City Council. An applicant for this use would only have to complete the regular zoning process for a permitted use. If a State enacts legislation that circumvents a Federal Statute, the Federal government can sue the State. He wonders if the Federal government would ignore such an occurrence. He feels a favorable vote is directly in conflict with the Oath of Office. He is concerned the Council is considering approving the indoor growing of medical marijuana in one agenda item and considering approving enforcement of the abuse of the same illegal narcotic in another.

Councilmember Metzner stated calling marijuana a narcotic does not make it one. The ordinance being considered for approval is not a debate on the legality of the use of marijuana. The ordinance would approve zoning regulations that include allowing growing specific crops in specific areas. Currently, it is not illegal to use marijuana for medicinal purposes in Maryland. He visited friends and family in Colorado last year and did not notice any problems.

Councilmember Aleshire offered an amendment to the motion to include that it would be consistent with State and Federal law.

Councilmember Brubaker pointed out these amendments will not legalize the use of marijuana. The City is governed by State law. Facilities will be located in Maryland and currently they are not permitted uses in the City's zoning ordinance. This amendment will allow these facilities in the City limits and may bring jobs to Hagerstown.

Mayor Gysberts stated it is a personal consideration of whether or not Councilmembers feel voting in favor of the ordinance is a violation of their oath. There is evidence that medical marijuana has purpose. He agrees with Councilmember Brubaker this is an opportunity to bring jobs to Hagerstown.

Councilmember Nigh pointed out there is no guarantee residents will be hired. She noted prescription drug abuse is increasing.

Mayor Gysberts noted this is not a debate about legalization of drugs. The truth is that drugs are going to be here whether this ordinance is approved or not. Drug abuse has been criminalized and it should be dealt with medically.

Councilmember Munson stated this is a difficult issue. The fact remains medical marijuana will be grown somewhere in Washington County. If the amendments are not approved, Hagerstown will have lost any benefits that could come to the City with this new business. This is a zoning issue.

Councilmember Aleshire stated if growing marijuana was legal he would not have received a letter from Peak ReLeaf's attorney. He is not hiding behind the Oath of Office. He would sign a petition support legalizing marijuana for medicinal or recreational use.

Motion carried, 3-2 with Councilmember P. M. Nigh and Councilmember K. B. Aleshire voting No.

### **NEW BUSINESS**

#### **A. Approval of a Resolution: Transfer of Assignment of the Miss Maryland Pageant Agreement**

**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 approve a resolution approving the request to transfer assignment of the agreement for the Miss Maryland Pageant between the City, the Maryland Theatre, Washington County, and the Miss Maryland Scholarship Organization to allow the legal entity of the Miss Maryland Scholarship Organization to now be the Community Foundation of Carroll County. This agreement is valid through the 2016 event.

#### **B. Approval of a Resolution: License Agreement with Pinnacle Foods Group, LLC**

**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 approve a resolution that authorizes the execution of a License Agreement between the City of Hagerstown and Pinnacle Foods Group, LLC for fencing and gates across the right-of-way of Kenly Avenue.

#### **C. Approval of Revisions to the Historic District Commissions Downtown Design Guidelines**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve the Historic District Commission's proposed revisions to their Downtown Design Guidelines related to demolition and window graphics. These revisions are consistent

with Land Management Code amendments that are being considered. The complete details of the guidelines revisions are part of this action.

**D. Approval of Request to Forgive a Business Revolving Loan for the Maryland Theatre**

**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 approve the request to forgive a Business Revolving Loan for the Maryland Theatre. The original amount of the loan was \$ 22,370.00, with a remaining balance (through September 30, 2015) of \$ 14,913.55. This amount would be forgiven as of September 29, 2015.

**E. Approval of Pen-Mar Regional Association of Realtors Request for Water under the City's Water and Wastewater Policy**

**Action:** On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember P. M. Nigh, the Mayor and City Council unanimously agreed by voice vote to approve the Pen-Mar Regional Association of Realtors request for water for Lot 4, Breezehill Drive, for their proposed new office building. Approval is granted for this property outside the City's Medium Range Growth Area under Exception #6 of the City's Water and Wastewater policy. The findings of fact and statements of reasons for this decision are outlined in the written Decision.

**F. Approval of West End Tank Painting Contract**

**Action:** On a motion duly made by Councilmember D. F. Munson and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve the bid from Corrosion Control Corporation to provide a new interior and exterior coating on the West End Tank in accordance with the official bid specification at a cost not to exceed \$ 187,624.00 of Water Division operating funds. This cost includes the enhanced coating and replacement of the tank logo. This work will begin in the spring of 2016.

**G. Approval of Right-of-Way Clearing and Tree Trimming Contract – All Reliable Services, Inc. (St. Augustine, FL) \$ 133,591.50**

**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 approve the Fiscal Year 2016 Tree Trimming Contract with All Reliable Services, Inc. The final cost of the initial Contract will be based on actual work performed and is expected to be approximately \$ 175,000. This contract has a one (1) year renewal

option under mutually agreeable terms. Approval of this contact authorizes staff to exercise the renewal options. Adequate budgetary funds are in place for the work identified under this contract.

**H. Approval of One Year Extension of Contract with MHA Audio –Sound and Staging Services for 2016 Western Maryland Blues Fest**

**Action:** On a motion duly made by Councilmember P. M. Nigh and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve the request to extend the existing contract with MHA Audio for one year to supply sound and staging services for the 2016 Western Maryland Blues Fest.

**I. Approval of Speed Camera Collection Contract**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to authorize and approve a new contract to establish a collections program for unpaid speed camera citations. This contract with Brekford Corporation will allow for additional collection efforts to take place in an effort to recover outstanding fines. The contract also permits the practice of reporting to credit bureaus in the event collection efforts are unsuccessful.

Discussion: Councilmember Munson hopes approving this contract will permit the City to hire more police officers.

Councilmember Brubaker pointed out this will allow the City to seek payment from the out of state violators.

Mayor Gysberts noted the funds have to be used for public safety.

Councilmember Nigh suggests using the revenue to offset the future costs associated with the recently awarded \$ 500,000 grant.

**J. Approval of a Memorandum of Understanding with the Drug Enforcement Administration**

**Action:** On a motion duly made by Councilmember P. M. Nigh and seconded by Councilmember D. F. Munson, the Mayor and City Council unanimously agreed by voice vote to approve a Memorandum of Understanding with the U. S. Drug Enforcement Agency (DEA). This agreement is for the purpose of deputizing the remaining two HPD officers assigned to the Washington County Narcotics Task Force. Deputizing the remaining agents will improve the efficiency of the Washington County Narcotics

Task Force office and satisfy the security requirements of the DEA. There are no costs to the City.

There being no further business to come before the Mayor and City Council, on a motion duly made, seconded and passed, the meeting was adjourned at 8:10 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: October 20, 2015