

101ST SPECIAL SESSION AND WORK SESSION – May 29, 2020

In response to the Mayor's declaration of a Civil Emergency, this Mayor and City Council meeting was held virtually.

Mayor and City Council members and meeting participants were provided with a specific meeting ID prior to the meeting. This meeting ID is required in order to join the meeting as a participant.

The meeting was streamed live through the City of Hagerstown's Cable Channel 25, Facebook, and YouTube accounts. All members of the public were welcome to view meetings through these platforms, but only able to participate in public meetings virtually.

101ST SPECIAL SESSION AND WORK SESSION – May 29, 2020

Mayor R. E. Bruchey, II called this 101st Special Session and Work Session of the Mayor and City Council to order at 2:00 p.m., Friday, May 29, 2020 in the Council Chamber at City Hall. Participating with the Mayor were Councilmembers K. B. Aleshire (remotely), A. Heffernan (remotely), E. Keller (remotely), L. C. Metzner (remotely), and S. McIntire, (remotely), City Administrator Scott A. Nicewarner, and City Attorney Jennifer Keefer (remotely). City Clerk D. K. Spickler was not present.

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember A. Heffernan, the Mayor and City Council unanimously agreed by all members to suspend the Rules of Procedure as to subsections 6.1, 6.2, and 6.4.

WORK SESSION – May 29, 2020

Temporary Outdoor Seating Areas for Restaurants on Private Property

Kathleen Maher, Director of Planning and Code Administration, was present to discuss temporary outdoor seating areas for restaurants on private property.

On May 27 2020, Governor Larry Hogan issued Executive Order Number 20-05-27-01. In particular, this Order allows restaurants, bars, and social clubs that serve food and beverages to serve customers in outdoor areas as of 5:00 p.m. on Friday, May 29, 2020.

City Staff met on May 28, 2020 to review the Executive Order and to discuss local regulations that would potentially affect outdoor dining under the Order. The City of Hagerstown's Land Management Code includes a provision for Temporary Uses. The criteria included for Temporary Uses does not accommodate a quick turnaround nor allow an extended use.

To allow outdoor dining to begin quickly, staff drafted an Emergency Ordinance which would permit the Zoning Administrator to issue a Temporary Use Permit of the duration of the Governor's Executive Order to businesses that meet the regulations.

Ms. Maher stated there has been a Sidewalk Café License process in place for many years for outdoor dining on public property, for example tables on the sidewalks, that many restaurants are utilizing.

Councilmember Heffernan asked if the Sidewalk Café License would be required if the street is closed. Ms. Maher indicated it would be.

Councilmember Keller stated she supports whatever is necessary to allow restaurants to utilize outdoor dining space as quickly as possible.

Councilmember Heffernan asked about requirements for a tent. Ms. Maher stated a permit is required for erection of a tent. There are safety issues that need to be considered with a tent, such as the canvas material must be fire safe and anchoring must be secure. As soon as someone applies for a tent permit and provides the necessary information, staff will act as quickly as possible to issue the permit.

Councilmember McIntire asked if outdoor dining will be allowed at the City Farmers' Market this weekend. Ms. Maher stated this was not included in the staff discussion yesterday. Councilmember McIntire asked that this be considered for the coming weeks.

Councilmember Heffernan asked if restaurants are having issues with obtaining thermometers to check temperatures of their wait staff. He wondered if the EOC could assist. Jill Thompson, Director of Community and Economic Development, indicated the business group is working on creating a web seminar to provide additional information and resources specifically for restaurant owners. A similar web seminar is being planned for youth camps and pool operators.

Mayor Bruchey asked if a portion of the CDBG CARES grant could be used to purchase PPE and thermometers for business owners.

Ms. Thompson reminded everyone that the application process for the business relief grants opens on Monday, June 1, 2020. This funding can be used for the purchase of PPE and other equipment necessary to reopen.

Councilmember Aleshire asked if there is any potential liability to the City for saying yes to move forward with the outdoor dining. He has reviewed the Governor's Executive Orders that includes approximately two pages of steps a restaurant needs to work through in order to provide outdoor seating. In addition, there is a "best practices" for bars and restaurants. This document also requires restaurants to confirm these practices are in place in order to reopen. In Frederick County, they are considering a permitting process similar to the City's Sidewalk Café License. He wonders what role the City has in ensuring the State's regulations are followed.

Ms. Maher stated the Health Department could be included in the permit review process.

Councilmember Aleshire asked who enforces the directives. Councilmember Metzner stated he understands enforcement is up to the Health Officer. It would not be the Hagerstown Police Department.

Jennifer Keefer, City Attorney, stated these issues are beyond the scope of this legislation, which is geared toward restaurants who do not have space for outdoor dining or want to expand their existing outdoor dining. She does not view this legislation creating liability for the City the way it is written.

Councilmember Aleshire stated he is concerned about the requirement of establishments posting communications about social distancing, etc. He is also concerned about setting up tables in a manner that restricts access to the building.

Ms. Maher indicated part of the permit process is review of a site plan, which would show the location of tables. The City staff review has never included health department issues. She stated staff could have the applicant acknowledge the health department requirements as part of the permit process.

Councilmember Keller stated the City could require the establishment to include the City of Hagerstown as an additional insured on their insurance policy. Ms. Maher indicated proof of insurance is required for a Sidewalk Café License.

Councilmember Metzner stated anyone using public property must have insurance.

Mayor Bruchey asked what insurance coverage is required for events such as the Wind Down series. The applicant for use of the property is required to have insurance for events.

Councilmember McIntire asked if any considerations were given to restaurants that may not want to utilize outdoor dining. She is concerned parking will be challenging for people with the addition of outdoor dining.

Jill Thompson, Director of Community and Economic Development, reported a draft plan for closing portions of Potomac Street has been shared with downtown restaurants and feedback is being collected. A summary of the feedback will be provided to the Mayor and City Council soon.

Mr. Nicewarner talked with many restaurant owners today. For those that are not located on Potomac Street, accommodations could be made for utilizing space created by a street closure. Ms. Maher will be doing a special Council Wraps segment following this meeting to relay information about outdoor dining.

Councilmember Aleshire clarified this legislation will cover the entire City and the rules will apply for all areas. That is correct.

Mr. Nicewarner stated this legislation can be utilized by every business in the City. He noted Doug DeHaven, Fire Marshall, sent an email indicating the Fire Marshall is required to enforce life and safety code regulations. Social distancing is not a code issue. Maintenance of required egress and ingress will be enforced by the Fire Marshall.

Ms. Maher pointed out again that this ordinance applies to the use of private property. There is an existing licensing process for those wishing to use public property, such as the sidewalk.

Mayor Bruchey stated he hopes this discussion has answered questions and concerns of Councilmembers. He hopes this legislation moves forward as expediently as possible.

101ST SPECIAL SESSION – May 29, 2020

On a motion duly made by Councilmember S. McIntire and seconded by Councilmember E. Keller, the Mayor and City Council unanimously agreed by voice vote to meet in Special Session at 2:30 p.m.

Approval of an Emergency Ordinance: Temporary Outdoor Seating Areas for Restaurants and Pubs on Private Property

Action: On a motion duly made by Councilmember S. McIntire and seconded by Councilmember E. Keller, the Mayor and City Council unanimously agreed by voice vote to approve an Emergency Ordinance that shall establish criteria related to temporary use of land for outdoor dining for restaurants and pubs which have previously received zoning approval for their business location. This emergency ordinance shall be in effect for the duration of the Governor's Executive Order 20-05-27-01.

The Special Session was then closed.

CITY ADMINISTRATOR'S COMMENTS

Scott A. Nicewarner, City Administrator, stated there are no set plans yet for a street closure on North and/or South Potomac Street. Staff will be meeting Monday to review feedback from businesses. If there is support to close the street, he asked if the Mayor and City Council want to meet next week to vote on it or to allow staff to make the decision.

It was the general consensus to allow staff to make the decision on whether or not and when to close portions of the street to accommodate outdoor dining.

Mr. Nicewarner does not want the closure to be viewed as a party atmosphere. The closure would be for expansion of outdoor dining under Governor Hogan's Executive Order.

Mr. Nicewarner noted Rodney Tissue, City Engineer, sent emails to groups who have user agreements for use of the City's parks reminding them of the requirements for outdoor activities under the Governor's orders.

Mr. Nicewarner reported the contracted pool operating company, American Pools, has indicated they are not prepared to open Potterfield Pool until June 29, 2020, at the earliest. Staff will discuss ways to expedite the opening with American Pools.

Free parking at all metered spaces and in parking decks will continue until August 3, 2020. At that time, paid parking will resume. Pay by Phone parking will also be available at that time.

MAYOR AND COUNCIL COMMENTS

Councilmember S. McIntire had no additional comments.

Councilmember E. Keller had no additional comments.

Councilmember K. B. Aleshire listened to the Greater Hagerstown Committee meeting today. The more everyone focuses on working through issues in a cooperative and positive way, rather than in a political way, the better off everyone will be.

Councilmember L. C. Metzner reminded everyone to send in their Primary Election ballot.

Mayor R. E. Bruchey, II had no additional comments.

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 2:40 p.m.

Respectfully submitted,

Original signed by D. K. Spickler

Donna K. Spickler
City Clerk
(from video)

Approved: June 23, 2020