

EXECUTIVE SESSION – August 17, 2021

On a motion duly made by Councilmember R. E. Bruchey, II and seconded by Councilmember S. McIntire, the Mayor and City Council unanimously agreed by voice vote of all members present at the time of the 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 3-305(b)), and to consult with counsel to obtain legal advice (#7) (Section 3-305(b)), on Tuesday, August 10, 2021 at 3:03 p.m. in Room 407, 4th floor, City Hall, Hagerstown, Maryland. Councilmember K. B. Aleshire was not present for the vote.

The following people were in attendance: Mayor E. Keller, Councilmember K. B. Aleshire, Councilmember R. E. Bruchey, II, Councilmember T. Burnett, Councilmember T. Martinez, Councilmember S. McIntire, City Administrator Scott Nicewarner, City Attorney Jason Morton, Michelle Hepburn, Chief Financial Officer, Jill Thompson, Director of Community and Economic Development, Eric Deike, Director of Public Works, Chris Siemerling, Economic Development Specialist, Doug Reaser, Business Development Specialist, Paul Fulk, Neighborhood Services Manager, Jonathan Kerns, Community Development Manager, Wes Decker, Communications Manager, and Donna K. Spickler, City Clerk.

The meeting was held to discuss a business proposal and to obtain legal advice. No formal action was taken at the meeting. On a motion duly made, seconded, and passed, the meeting was adjourned at 3:58 p.m.

WORK SESSION – August 17, 2021

Mayor E. Keller called this Work Session of the Mayor and City Council to order at 4:06 p.m., Tuesday, August 17, 2021 in the Council Chamber at City Hall. Participating with the Mayor were Councilmembers K. B. Aleshire, R. E. Bruchey, II, T. Burnett, T. Martinez, S. McIntire, City Administrator Scott A. Nicewarner, and City Clerk D. K. Spickler.

A moment of silence was observed in memory of Paul David Hose, Jr., long time Mayor of Clear Spring, Maryland, who passed away on August 8, 2021. Mayor Hose was recognized by the Maryland Municipal League for being the longest serving Mayor in Washington County.

Preliminary Agenda Review

Mayor Keller announced that Citizen Comments for the August 24, 2021 Regular Session will be welcome either in person or by submitting comments by email to councilcomments@hagerstownmd.org. If by email, the submitters name, address, and a summary of the comments will be announced during the Citizen Comments portion of the

meeting. The email will not be read in its entirety but it will be included in the public record for the meeting and may be viewed by the public at any time.

Consent Agenda

A. Community and Economic Development:

1. Street Closure – Explore BISFA Event

B. Information Technology:

1. Tyler PACE-15 Training Package Renewal – Tyler Technologies (Dallas, TX) \$ 12,363.75
2. ESRI-GIS Renewal – ESRI (Redlands, CA) \$ 38,500.00

C. Parks:

1. Renovation of Public Restrooms Adjacent FIT Room and BMX Track – PBI Commercial (Hunt Valley, PA) \$ 154,599.00

D. Planning and Code Administration:

1. Court Ordered Repair – Wall to Open Alley No. 4-2 (Cramer’s Alley) – Gruber-Latimer Restoration (Sharpsburg, MD) \$ 18,662.00

E. Police:

1. Annual Software Maintenance Agreement – Keystone Public Safety, Inc. (Maple Shade, NJ) \$ 104,430.00
2. 2021 Ford Explorer – Sheehy Ford (Richmond, VA) \$ 35,908.40
3. 2021 Ford F-250 – Keystone Ford (Chambersburg, PA) \$ 33,830.00

F. Utilities:

1. Wastewater – Grinder Pump Retrofit – Fluid Solutions, Inc. (Westminster, MD) \$ 56,485.00
2. Wastewater – Air Lift Pumps - Parkson (Ft. Lauderdale, FL) \$ 62,662.00
3. Wastewater – Prep and Spray Lining of Sanitary Sewer Manholes Advanced Rehabilitation Technology (Bryan, OH) \$ 33,810.00

Mayor Keller stated there will be an additional New Business item added to the agenda to accept an additional grant for the police department.

This completed the Preliminary Agenda Review. There were no questions about any items. All items, unless noted, are scheduled for approval on August 24, 2021.

Firefighter Up-Staffing Request

Fire Chief Steve Lohr offered condolences to the family of Joshua Laird, Frederick County Fire Department, who lost his life in the line of duty on August 11, 2021.

Chief Lohr was present to request permission to immediately fill two firefighter positions in the Hagerstown Fire Department (HFD). One would be due to the retirement

of FAO Greg Yeargan, and one in anticipation of additional retirements and trickle down vacancies in early CY23. He anticipates filling these vacancies during the first pay period in October, 2021.

A vacancy has recently been created as a result of a medically influenced duty status (MIDS) retirement of Fire Apparatus Operator Gregory Yeargan, resulting in the need to hire one additional person to bring the department up to the existing approved funding level.

After evaluating the current staffing matrix, there are six personnel, including the Fire Chief, who could potentially retire in the near term. It is believed that there will be at least one additional vacancy, possibly more created within the current fiscal year.

After consulting with both the Finance and Human Resources Director, staff believe that the best course of action is to temporarily up-staff the HFD by one firefighter position in an effort to save training costs and eliminate a transition period when the next person retires. This practice of hiring one additional person has been granted in the past, and proved to be a successful venture for both the City and the HFD.

Trained, practiced, and certified staffing is the most critical resource within the HFD. To ensure the staffing is adequately prepared to meet minimum training certifications and standards, all recruits undergo at least eight weeks of academy-style training while assigned to a day work schedule to ensure their performance level fulfills the knowledge, skills, and abilities to be rostered as required minimum staffing.

At the end of the training academy, recruits are nationally certified as Fire Fighter Level 2, Emergency Medical Technician, Confined Space and Vehicle/Machinery Rescue Technicians, Hazardous Materials Operations technician, and Fire Inspector-Level 1. In addition, hundreds of hours of additional skills training are required to be a full performance probationary fire fighter. These efforts are not free, and due to instructional safety standards, cost the same amount for instructors and other resources whether they train one new recruit, or ten new recruits.

Therefore, staff requests that the department overfill the current roster by one position in an effort to best balance current budget limitations against near term future staffing requirements. It was the general consensus to include approval of this request to the August 24, 2021 Regular Session agenda.

American Rescue Plan (ARP) Update

Scott Nicewarner, City Administrator, and Michelle Hepburn, Chief Financial Officer, were present to provide an update on staff's work towards providing a list of recommendations for use of the proceeds received from the Federal Government through the American Rescue Plan (ARP).

Staff have met regularly since May to brainstorm and produce a draft list of projects based upon (1) the results of the Community Survey commissioned by the Mayor and

City Council earlier this year; (2) the discussions held during the Mayor and Council's strategic planning workshop held last Spring; and (3) input from staff on key initiatives that were postponed or cancelled due to the COVID-19 pandemic. Staff have held preliminary discussions with several organizations, including the Washington County Health Department, Homeless Coalition representatives, and Hagerstown Community College, to ask for information from them on several of the draft project items and to provide additional information that may be incorporated into the presentation to the City Council in September for their consideration. Staff are also seeking suggestions from the Mayor and City Council to add to the list and will research the items further.

The entire list, including those priorities staff are recommending for consideration to utilize both the 2021 portion and the 2022 portion of this funding, will be presented during the September Work Session. A number of projects have been removed from the original list due to the restrictions. Staff may work with Congressman Trone's office for other funding for those projects.

As a reminder, the restrictions on the use of this money placed by the Federal Government are:

1. 50% of the funding received in May of 2021, 50% of 2020 funding is anticipated to be received in May of 2022
2. Deadline to have all funds spent is December 31, 2024
3. Allowable use of funds include:
 - a) Respond to or mitigate COVID health emergency or its negative economic impacts, including assistance to households, small businesses, nonprofits, and aid for tourism, travel, and hospitality
 - b) Provide essential workers with premium pay
 - c) Cover revenue losses incurred as a result of COVID
 - d) Make necessary investments in water, sewer or broadband infrastructure

At this time, the City has utilized \$ 2.153 million toward Council approved fulltime staff stipends. There are commitments from Council to hire a grants coordinator during this ARP period, which has now been posted and applications are being received. Lastly, staff will not have 100% confidence on qualifications of projects for ARP funding until the final release of the guidance is provided in the near future.

Mr. Nicewarner is hoping to discuss partnering with the County on projects that will provide a needed public service.

The temporary Grant Position has been advertised and the pool of candidates that have responded is encouraging.

Ms. Hepburn stated an initial report has to be filed with the Federal government by August 31, 2021. The next compliance report is due in October. That report will be more in-depth.

Mr. Nicewarner stated people are appreciative that the City is looking to the community interests and taking the community survey into consideration and addressing the main concerns from the survey. There is another infrastructure bill being considered so staff is limiting infrastructure projects on the list in anticipation of this other funding.

Ms. Hepburn stated Stormwater Fund projects are eligible for ARP funding.

Mr. Nicewarner will provide the list to the Mayor and City Council and anticipates a lengthy Work Session to work through the details of the projects. This will allow the Mayor and City Council to have complete information before making any decisions about potential projects. Staff definitely want to hear the ideas from the Mayor and City Council as well.

Councilmember McIntire confirmed that staff used the survey results and goal setting session topics to create the list.

Ms. Hepburn informed the group that existing programs, such as Invest Hagerstown, cannot be enhanced with the ARP funding. However, new programs can be funded through ARP.

Review of Letter of Intent and Proposed Lease Terms – 6 North Potomac Street

Doug Reaser, Business Development Specialist, and Jen Graybash, Managing Member of The Foundry LLC, were present to review a proposed letter of intent based on draft lease terms with The Foundry for retail space in the Elizabeth Hager Center.

The retail space is located at 6 North Potomac Street and is currently vacant. The most recent use was the Welcome Center for the Convention and Visitor's Bureau.

The Foundry is a retail incubator that offers a place for small businesses or artisans to test the market by using floor space in their retail location. The Foundry provides professionally designed retail space in a premium location, full staffing and management, website with online shopping, analytics and feedback to their retail partners. This would be the Foundry's second retail location, with the other being located in Staunton, Virginia, that opened in May of this year.

The lease would be effective November 1, 2021 through October 31, 2022, with tiered annual rent for the 2,000 usable square feet of office space beginning at \$ 30,000.00 in Year 1. Alteration costs total an estimated \$ 28,200.00 for the space. Water/Sewer will be included in rent. The lease includes an expansion clause to allow the business to terminate the lease with 90 days' notice if a bona fide need of at least 2,500 square feet is needed and the business remains within the City after the initial lease term.

The tenant may require assistance up to \$ 9,700.00 for fit out/rental operations of the tenant space that will be determined at a later date. A right of first refusal for a period of 45 days will be included in the letter of intent as the business looks to secure additional grant funding.

Ms. Graybash stated The Foundry is a retail incubator with pop-up shops for new businesses to try their ideas. They opened the first location in downtown Stanton, Virginia and currently have 25 businesses participating. The Foundry grew quickly and they found an opportunity for a second location in Hagerstown.

It was the general consensus to include approval of the requested Letter of Intent during the August 24, 2021 Regular Session.

Hamilton Building Incentive

Jill Thompson, Director of Community and Economic Development, was present to review a Financial Incentive Agreement (FIA) for an incentive to Ash Azadi of Ares Investment Group, LLC for the stabilization of the Hamilton Building at 86-98 W. Washington Street.

A motion was passed by the Mayor and City Council at the July 27, 2021 Regular Session to provide a grant of \$ 358,053 and a loan-to-grant of \$ 358,053 (which will be forgiven if Ares fulfills all of its obligation under the FIA in a timely manner, for total funding of \$ 716,106. The funding will come from an FY21 transfer from the General Fund to the Economic Redevelopment Fund. The motion stated that the full terms and conditions of the funding would be outlined in a FIA to be separately approved by the Mayor and City Council.

The monetary incentive in the amount of \$ 716,106 shall be applied to outstanding invoices for work already performed to date and/or work to be performed by contractors to repair damages caused by the building collapse. The invoices will be paid on or before September 17, 2021.

The monetary incentive replaces the following City of Hagerstown programs: (1) Invest Hagerstown City Center Redevelopment Grant Program; (2) Partners in Economic Progress (PEP) Program; (3) Life Safety Infrastructure Grant Program; (4) Façade Grant Program; and (5) any future upper floor housing grant program or residential/mixed-use development grant program administered by the City. Eligibility for the Invest Hagerstown City-Wide Redevelopment Grant Program for commercial tenant fit-out will be evaluated on a case-by-case basis.

The agreement outlines the history of agreements with Ares to date. It defines renovation of the upper floors and common areas and the redevelopment of 7 commercial spaces. It defines specific uses of the \$ 716,106 for the vendors listed in Exhibit 1. This financial incentive cannot be layered with other City of Hagerstown incentive programs.

The new FIA establishes a completion date for the project, including certification for full occupancy, on or before February 1, 2023. A claw back clause is included in the event the project is not completed by the deadline. Ares is required to remain in good standing throughout the term of the agreement. The agreement also requires a personal guarantee of the individuals associated with the Ares Investment group.

Councilmember Aleshire asked staff what they estimate the total investment to be for the Hamilton Building. Ms. Thompson stated the original estimate was \$ 2 to \$ 3 million. The owners believe the partial collapse adds another \$ 2 million to the project.

Councilmember Aleshire often receives feedback stating people can't believe the government is letting this building decline and not assisting the owners. Not all buildings can be saved. There was no other choice for this building. It is a nice, historic downtown building. He estimates every taxpayer is providing \$ 36 for this project. In this case, there are not a lot of other options. The owners are providing 6 to 7 times the funding the City is. He hopes people keep these numbers in mind when conversations turn to what buildings are salvageable and whether or not the government is expected to be the sole investment party.

Councilmember Bruchey has been championing this building project for the last 6 years. He understands what this building adds to the core of Hagerstown. It is one of the first buildings you see when entering downtown. It is worth saving and bringing back the retail use it once had. It is historically significant. The tax assessment will increase when the project is finished. He considers this incentive as an investment in the future of Hagerstown.

Councilmember Aleshire pointed out this is a risk that the Mayor and City Council can't take on every building.

Councilmember Bruchey also pointed out Jonathan Street could not remain closed indefinitely.

Ms. Thompson stated this incentive supports upper floor redevelopment and fits within the City's economic benefit policies. It is very positive for 24 hour happenings downtown.

It was the general consensus to move forward with approval of the FIA as presented.

FY21 Year-End Adjustments Request

Michelle Hepburn, Chief Financial Officer, reported as of FY21 year-end processing begins, there are some adjustments that staff recommends for consideration. The recommendations are as follows:

1. Professional Court Extension (C0685) - Project will receive two separate Appalachian Regional Commission (ARC) grants that total \$ 1.25 million. The final paperwork has not yet been received but it is confirmed. As part of the ARC application, there must be a 20% local City match in funding which is \$ 250,000. Due to the timing of notification of the federal grant monies to be received and based on year-end performance, staff recommends making an additional FY21 General Fund transfer into this capital project.

2. Health Insurance Fund allocation reversal for additional contribution to Other Post-Employment Benefit (OPEB) trust fund. As approved in the FY21 budget, there was a total of \$ 484,000 transferred from the Health Insurance Fund to the General Fund, Electric Fund, Water Fund, and Wastewater Funds that represented a prior year surplus within Health Insurance. Due to current economic conditions and low interest rate market, it is more important to fund additional dollars into the City's OPEB plan for retirees. This funding was only transferred originally to help balance the General Fund budget but other savings throughout FY21 makes this unnecessary.
3. The City portion of the MELP (C0839) project is complete with a surplus of \$67,000. Staff recommends treating the unrestricted surplus from this project in the same manner as all other projects in the CIP and move it to CIP fund balance to help with future project needs and overages.

Councilmember Bruchey asked what the unfunded portion of OPEB is. Ms. Hepburn indicated the report will be available soon.

It was the general consensus to include approval of the transfers on the agenda for August 24, 2021.

Mack Water Storage Tank Replacement

Nancy Hausrath, Director of Utilities, and William Luhn, Water Operations Manager, were present to provide an update on the Mack Water Storage Tank Replacement.

On April 28, 2021 staff became aware of a leak at the Mack Water Tank and began work to isolate, drain, and work with Hazen and Sawyer to determine the extent of the leak and the best path forward. Staff requested emergency authorization for the evaluation and repair of the tank. Mayor and Council approved the emergency repair total of \$74,830 in July 2021. The repair includes a welded repair of 50% of the tank diameter.

The tank was built in the late 1960's and has been in continuous service since that time and has been maintained (routine painting, grouting, etc.). In 2019 a small leak was observed along the ring-wall and tank floor interface. Emergency repairs were made and the tank was placed back in service. This repair cost was approximately \$1,400.

The decision was made to complete the current repair and place the tank back in service because this tank is needed to provide system pressure and fire protection in Zone 3. The most recent tank failure caused a portion of the sand base under the tank to wash away causing additional stress along the ring-wall floor interface. While the tank is structurally sound with this repair, the tank has exceeded its useful life and needs to be replaced because of concerns regarding reliability and safety. Staff estimates the time to complete this work to be 18-months to 2-years at a cost of \$ 1.5 to \$ 2.0 million. At this time they anticipate using Water Fund cash to fund this project; however, staff will

submit a funding application to MDE in January 2022 for the demolition of the existing tank and construction of the new tank and associated water system improvements.

Staff is currently working with Hazen and Sawyer on an engineering proposal to complete the design, bidding and construction phase services for the construction of a new tank and the demolition of the existing tank. Staff will request Mayor and Council approval to amend the recent current contract with Hazen and Sawyer to include the Mack Tank replacement. Staff plans to have the proposal ready next month for Mayor and Council consideration.

Mr. Nicewarner asked what the status of the leak is at this point. Mr. Luhn indicated it was a significant leak and the sand had to be replaced. The repair should be completed within 45 days.

Councilmember Bruchey asked if the repair costs qualify for ARP funding. Mr. Nicewarner indicated they do and it is on the list of projects for consideration.

Decks in Hagerstown's Townhome Communities

Paul Fulk, Neighborhood Services Manager, was present to provide an update on staff's review of decks in Hagerstown's Townhome Communities.

The Planning and Code Administration Department (PCAD) responded to a deck failure in the community on the evening of July 4, 2021. This deck failure resulted in two injuries. A review of the file discovered there were no permit approvals for this deck. A discussion with the current property owner revealed that the original deck was constructed by a previous owner; PCAD had no permits for this work. The current owner indicated they performed structural modifications to the deck, without permits. This summer, three other decks collapsed in Maryland resulting in injuries to 18 people. Last year, 6 people were in a deck collapse in Ellicott City. The department was concerned about other townhome decks in Hagerstown being constructed without the proper permits. Staff performed a review of the townhome community with the deck collapse and discovered 28 decks without approvals. This was 38% of the decks in this community. Staff were concerned about the other townhome communities having a similar percentage of unpermitted work for decks. PCAD performed a review of the City's townhome communities. The reviews included site visits and a file review to determine which properties had decks.

PCAD completed the deck review during the first week of August. They found that 111, or 19% of the decks had missing or no approvals.

After this review, the department determined an education effort was needed for townhome communities. They were not going to go directly to enforcement for failure to obtain permits because a majority of these owners were most likely not the property owners at the time of deck construction. They identified the following two paths for education efforts:

1. The one for property owners that obtained all approvals would receive a flyer identifying proper deck maintenance.
2. The other would be a letter explaining to the current property owner their deck had no approval and is to be evaluated to ensure their safety. The evaluation is to be performed by a Maryland licensed home inspector certified to perform deck evaluations or a Maryland licensed structural engineer.

This evaluation is needed because wood decks are designed to support applied loads and to transfer those loads to the ground. These loads include live loads (people), dead loads (the deck, objects, and snow) and lateral loads (wind and settlement). The permit application, plan review, and inspection process examines all of these loads along with the construction method. When PCAD is unable to evaluate the construction from the beginning, they must have a licensed professional sign-off on the completed work performed to ensure safety.

The department is concerned about the number of decks that have been constructed without permits and, with one recent failure, it is imperative to get ahead of the issue before any other decks fail. For any unpermitted decks, staff will follow up with the property owner in 30 days if they have not received a completed deck evaluation checklist. Safety is the paramount concern.

Decks at townhomes are typically elevated 8-10 feet above the ground level. Many townhome owners add decks after the initial home construction to create an outdoor amenity to their home. Proper approvals are required to meet building code, zoning, and fire code requirements. Maintenance of decks can help prevent deterioration and failure.

PCAD staff did a social media post on May 18, 2021 about deck safety. After the collapse on July 4, 2021, they sent out more posts on July 6, 2021 encouraging people to have their decks checked. Mr. Fulk thanked the inspections staff for their help with this information.

Councilmember McIntire asked is a licensed inspector would be responsible if a deck failed after the inspection.

Councilmember Aleshire confirmed if residents who have permitted decks will receive a flyer encouraging them to maintain their decks and others will receive a flyer saying they should have someone inspect their decks. Mr. Fulk stated that is correct. People should really have decks inspected that are not permitted. The goal is safety for residents. PCAD will not be fining people for having non-permitted decks.

Councilmember Aleshire clarified that staff will highly encourage those without permitted decks to have them inspected for safety reasons and will not be issuing fines. Mr. Fulk indicated that is correct.

Councilmember Aleshire noted staff is looking to ensure the deck will not collapse, rather than inspecting for loose rails, etc.

Mr. Nicewarner stated there are more decks in Hagerstown than those on this list. Mr. Fulk indicated PCAD only reviewed decks in townhome communities. Mr. Nicewarner stated the deck maintenance and inspection information can be included with water bills so all residents have the information.

Councilmember Burnett provided this information the unofficial Homeowners Association for Hager's Crossing. They have posted it on their social media page.

Councilmember Bruchey thanked PCAD staff for being proactive with this issue rather than reactive.

CITY ADMINISTRATOR'S COMMENTS

Scott A. Nicewarner, City Administrator encouraged people to attend the International Film Festival this weekend and the Downtown Festival hosted by the Augustoberfest Foundation on Saturday, August 21, 2021.

MAYOR AND COUNCIL COMMENTS

Councilmember S. McIntire had no additional comments.

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

Councilmember T. Burnett had no additional comments.

Councilmember K. B. Aleshire recalled that Mayor Hose was always welcoming when he visited Clear Spring while he served as County Commissioner.

Councilmember T. Martinez had no additional comments.

Mayor E. Keller thanked the Medal of Honor Neighborhoods 1st group for holding their annual Day of Hope recently.

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 5:05 p.m.

Respectfully submitted,

Original signed by D. K. Spickler

Donna K. Spickler
City Clerk

Approved: September 28, 2021