

EXECUTIVE SESSION, SPECIAL SESSION (35<sup>TH</sup> VOTING SESSION), AND WORK SESSION – March 8, 2022

EXECUTIVE SESSION – March 8, 2022

Mayor Keller called the Executive Session to order at 3:02 p.m.

On a motion duly made by Councilmember T. Martinez and seconded by Councilmember T. Burnett, the Mayor and City Council unanimously agreed by voice vote of all members present to meet in closed session to consider the acquisition of real property for a public purpose and matters directly related thereto; (#3) (Section 3-305(b)), and 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)), on Tuesday, March 8, 2022 at 3:02 p.m. in the Council Chamber, 2<sup>nd</sup> floor, City Hall, Hagerstown, Maryland.

The following people were in attendance: Mayor E. Keller, Councilmember K. B. Aleshire, Councilmember R. E. Bruchey, II, Councilmember T. Burnett, Councilmember T. Martinez, City Administrator Scott Nicewarner, Michelle Hepburn, Chief Financial Officer, Kathleen Maher, Director of Planning and Code Administration, Jill Thompson, Director of Community and Economic Development, Eric Deike, Director of Public Works, Rodney Tissue, City Engineer, Doug Reaser, Business Development Specialist, Chris Siemerling, Economic Development Specialist, Stephen Bockmiller, Zoning Administrator/Planner, Wes Decker, Communications Manager, and Donna K. Spickler, City Clerk. Councilmember S. McIntire was not present.

The meeting was held to discuss property acquisition and one business proposal. The first topic required additional time for discussion; therefore, the business proposal discussion was moved to another date. 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.

SPECIAL SESSION (35<sup>TH</sup> VOTING SESSION) AND WORK SESSION – March 8, 2022

Mayor E. Keller called this Special Session (35<sup>th</sup> voting session), and Work Session of the Mayor and City Council to order at 4:08 p.m., Tuesday, March 8, 2022 in the Council Chamber at City Hall. Participating with the Mayor were Councilmembers K. B. Aleshire, R. E. Bruchey, II, T. Burnett, and T. Martinez, City Administrator Scott A. Nicewarner, and City Clerk D. K. Spickler. Councilmember S. McIntire was not present.

SPECIAL SESSION (35<sup>TH</sup> VOTING SESSION) – March 8, 2022

On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember T. Burnett, the Mayor and City Council unanimously agreed by voice vote of all members present to meet in Special Session at 4:08 p.m.

**Approval of a Resolution: Annexation Agreement for 14 Western Maryland Parkway**

**Action:** On a motion duly made by Councilmember R. E. Bruchey, II and seconded by Councilmember T. Burnett, the Mayor and City Council unanimously agreed by voice vote of all members present to approve a resolution approving an annexation agreement between the City of Hagerstown and GVP Hagerstown Owner, LLC, owner of 14 Western Maryland Parkway, which outlines the process and conditions of annexation of the property in exchange for receipt of City water and wastewater service. Per the annexation agreement, the annexation process will be initiated following the property owner's receipt of a building permit from Washington County for construction of the proposed warehouse building. The property will be zoned I-MU (Industrial Mixed-use) when the annexation is effective.

**Approval of TC Mid Atlantic Development V, LLC Request for Water and Wastewater Under the City's Water & Wastewater Policy**

**Action:** On a motion duly made by Councilmember T. Martinez and seconded by Councilmember R. E. Bruchey, II, the Mayor and City Council unanimously agreed by voice vote of all members present to approve the request from the Washington County Board of Commissioners for TC Mid Atlantic Development V, LLC for water service to Parcel 496 on Tax Map 36 located on Maryland Route 63 just north of the intersection with Maryland Route 40 for a proposed industrial warehouse. Approved water service is for 2,400 GPD (12 EDUs) of anticipated usage and is in accordance with all applicable Utilities Department Policies and City Code as may be amended from time to time. The property is approximately 99 acres and is identified on an included map. Submittal of a pre-annexation agreement to the City of Hagerstown is required prior to approval by the Utilities Department of the request for water service on the site plan, per the requirement of the City's Annexation Policy and Water and Wastewater Policy. An exception granted pursuant to the City's Water and Wastewater Policy is void if the following has not occurred within 18 months of the approval by the Mayor and City Council; 1) site plan approval by Washington County; 2) building permit filed with Washington County; and 3) all City water fees paid. Any request for a variance or extension of the 18 month time limit must be submitted for consideration to the Mayor and City Council at least 60 days prior to the expiration date and must be approved by the Mayor and City Council.

**Action:** On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember T. Burnett, the Mayor and City Council unanimously agreed by voice vote of all members present to approve Amendment #1 to the Consultant Services Agreement with Eastern Sports Management, LLC for the next phase of the development of an indoor recreation facility at the Municipal Stadium property. Deliverables of this phase will include: complete site plans, 35% complete building plans and development of legal agreements for the construction and operation of the facility. Funding of the \$ 500,000 contract will be from FY21 GF surplus.

**Approval of Additional Funding for Up-Fitting of Hagerstown Police Department 2021 Dodge Chargers**

**Action:** On a motion duly made by Councilmember T. Burnett and seconded by Councilmember R. E. Bruchey, II, the Mayor and City Council unanimously agreed by voice vote of all members present to approve of \$ 42,474.84 in additional funding for up-fitting the recently purchased 2021 Dodge Chargers for the Hagerstown Police Department. The vendor's quote was for one vehicle only. The original amount of \$ 23,079.88, approved by the Mayor and City Council on February 22, 2022, did not cover the full amount required for the work for all the vehicles. The corrected Consent Form is attached with the motion.

The Special Session was closed at 4:13 p.m.

WORK SESSION – March 8, 2022

Proclamation: Women's History Month

Mayor Keller read a proclamation naming March, 2022 as Women's History Month in Hagerstown, Maryland. Mayor Keller presented the proclamation to Councilmember Burnett, Councilmember Martinez, Councilmember McIntire and all women staff Members.

Request to Fly a Drone in City Park

Eric Deike, Director of Public Works, was present to discuss the current park rules.

Current Park Rules state that "operation of hot air balloons, model aircraft, rockets and drones, remote controlled vehicles and all watercraft, etc., are prohibited unless approved

by Mayor and Council.” These rules are in place to provide a safe place for everyone to enjoy without fear of being injured or harassed by the actions others.

The rule was written with the approval language to allow staff to request exceptions for special events such as July 4<sup>th</sup> fireworks or for organized groups such as the yacht club (motorized model boats).

Brian Garrett was recently in City Park flying a drone when he was informed that drones are not allowed. A review of the Park Rules provided an opportunity for Mr. Garrett to make his request.

Besides the safety of the park visitors, drones are regulated by the FAA (Federal Aviation Association). Most of City Park falls under what is known as Class G airspace. Class G airspace is the portion of the airspace that has not been designated as Class A, B, C, D or E, which is more restrictive. It is therefore designated as uncontrolled airspace. Class G airspace extends from the surface to either 700 or 1,200 feet above ground level.

All other city parks fall under the Class D airspace which is controlled airspace extending to 2,500 feet above ground level. Drones over 0.55 lbs. must have FAA authorization to fly. The height to which a drone can be flown becomes increasingly less the closer one gets to an airport.

Washington County Department of Parks & Facilities also have a list of rules and regulations. They, too, state “NO power operated model airplanes, helicopters, rockets or drones on park property.”

Staff’s recommendation is to deny this request to fly a drone in City Park or any other City Park or facility. Staff also recommends simplifying the language of park rule No. 15 to say “Operation of hot air balloons, model aircraft, rockets and drones, remote controlled vehicles and all watercraft, etc. are prohibited.” Any reference to Mayor and Council approval would be dropped.

The Mayor and City Council agreed with Staff’s recommendation regarding drones in any City park facility. The Park Rules will be amended as recommended.

#### InvoiceCloud Payment Portal

Beth Everhart, Support Services Manager, and Ryan Grove, Support Services Supervisor, were present to provide an overview of the new online payment portal, InvoiceCloud. InvoiceCloud is a new robust online payment portal that offers the City of Hagerstown’s customers many options to pay, receive notifications, and manage their accounts. The new system has been well received by the majority of customers.

The success of this implementation would not have been possible without the collective efforts of the implementation team – Nathan Fridinger, Ryan Grove, Dave Gordon, and Jim Snyder.

Customers have many options to pay their bills online, including standard credit cards, Pay by Text, Apple Pay, Google Pay, PayPal, and Venmo. Customers can now also make payments by phone and/or check their account balance 24/7 with the automated phone service.

Ms. Everhart reported revenue has increased by \$ 1 million since the implementation of the new service. More than 10,0000 customers have visited the site in the last 30 days.

Mr. Grove appreciates the opportunity to serve customers better.

Customers are able to pre-schedule payments if that works best for them. Additional features include a QR code and promotions that will only be offered to registered users.

Mr. Grove reminded customers the termination moratorium on electric bills will be lifted on April 1, 2022.

Code Amendments – Sections 238 and 240

Nancy Hausrath, Director of Utilities, was present to discuss proposed amendments to the City Code, Sections 238 and 240.

Over the past 6 to 12 months, staff have been evaluating the existing capacity at the Hagerstown Wastewater Treatment plant and the RC Willson and Breichner Water Production Plants. Staff have also reviewed customer usage inside and outside municipal limits.

There have been numerous requests for service in the Medium Range Growth Area (MRGA) and a couple requests in the County Urban Growth Area (UGA). Staff, along with legal counsel, has completed and adopted the new Joint Sewer Service Area Agreement to replace the consolidated General Service Agreement and the Flow Transfer Agreement. These agreements will transfer county flow in the Maugansville area back to the County and flow from the Hager’s Crossing/Western Maryland Parkway area back to the City.

Both the Water and Wastewater Plants are at or exceed 85% capacity and as such, staff is working on amendments to Sections 238 and 240 to restrict allocation, to reduce assigned allocation, and to establish a process and fees to manage system capacity. Staff has initiated a dialog with NewGen to review the City’s rate structure to include usage, fixed fee, benefit fee, fire-line, etc. to determine the best way to address future funding needs.

Ms. Hausrath stated the City is required to evaluate the inflow on a regular basis. Black and Veatch (engineers) will prepare a proposal that will review the headworks loading. Following the evaluation, the rates, which have not been changed for more than

The proposed Code amendments will address how allocation is established and billed. Users will be required to request additional allocation if needed. The amendments will connect allocation to the Water and Wastewater Policy. Language will be included to allow for termination of service if a non-residential customer does not work with the City in advance for increased usage. The City will also reserve the right to move a customer out of the declining tier rate structure and into an inclining tier structure.

Councilmember Bruchey stated some people will say this is a drastic amendment. But, as Councilmember Aleshire says repeatedly, the water resource is finite. The City is looking to the future and determining the needs of all customers to accurately establish allocation and reserve parameters.

Mayor Keller stated the City needs to control the resources.

Ms. Hausrath stated the benefit fee was established in the late 1990's. The Code prohibits transfer of allocation to another property. The City needs to determine if transfer of allocation will be permitted and if it can be transferred from a within City limits property to a non-City limits property if the owner of both properties is the same. If the allocation can be transferred, could the current holder sell or transfer their allocation to a different owner. Ms. Hausrath stated she would prefer the allocation stays with the owner, although this would limit allocation for future projects.

Councilmember Bruchey recommends limiting the transfer of allocation to properties owned by the same person/organization.

Mayor Keller would prefer the amendments not be too lenient.

Ms. Hausrath asked if the Council would prefer to limit allocation transfer to within the City limits. Councilmember Bruchey indicated this would alleviate some of the requests for allocation outside the City limits from people outside the MRGA. He believes this would be a benefit for the City for companies that own multiple properties.

Ms. Hausrath indicated part of the benefit fee policy would reserve a certain allocation within the City limits.

Councilmember Aleshire asked what amendments will be made first. Ms. Hausrath stated a schedule has not been established but she would recommend starting with adding water benefit charges for outside customers.

Councilmember Aleshire noted capacity and availability and capital projects are discussed often. He asked if the proposed amendments are based on a completed evaluation of the long range capital project demands. Ms. Hausrath stated the capital

The rate study will review the benefit fees for new customers and new allocations.

Councilmember Aleshire stated his objective is to know the actual capacity capability for both the water and wastewater systems. Ms. Hausrath stated staff has good records of the actual and anticipated amounts. It has been difficult to determine what the City has sold in the way of allocation.

Councilmember Aleshire stated he would need a finite number of the amount allocated so he knows what amount is left. He could then review the capital program and determine what improvements are needed at both plants over the next 20 years to reach that capacity.

Ms. Hausrath noted plant improvements are needed to consistently push out the volume needed. Water mains will have to be replaced and the hydraulic capacity at the treatment plant needs to be adjusted. Staff has worked with the engineers to include these improvements into the capital improvement program. She pointed out that outside customers pay a much higher capacity fee and there is no incentive on the water side to be an inside customer.

Councilmember Aleshire stated these things are important; however he feels discussing the allocation is further into the evaluation process. He does not have enough information to make any kind of decision regarding allocation. He does not know what the remaining allocation is on a daily basis. He feels that each evaluation should be discussed individually and determine from there what is needed for each component. From there, the Mayor and City Council could determine what the capacity is and what allocation is left.

Councilmember Bruchey stated he believes those numbers are available. The difficult piece is knowing what allocation has been approved that is not being used.

Councilmember Aleshire believes the City has reached a level where the system is not prepared for the use of all the allocation approved.

Ms. Hausrath stated some of the proposed amendments are intended to address allocation and whether or not it can be taken back or transferred to another property. Washington County is struggling with how to buy back allocation.

Councilmember Aleshire clarified that the customer base is currently using more than the allocation. Ms. Hausrath stated that is correct.

Councilmember Aleshire asked if the City will have to buy back some of the allocation that has been sold. Ms. Hausrath indicated there is no mechanism in place to

buy back allocation. The proposed amendments are an attempt to include a mechanism in the City Code that forces non-residential customers to come back to the City for additional allocation. Ms. Hausrath anticipates owners approaching the City for permission to transfer allocation between properties. Councilmember Aleshire stated the needs of the water zone also have to be considered.

Ms. Hausrath stated the owner of the property would be responsible for upgrades to the system necessary for any transfer of allocation. A cap on allocation will also be necessary at some point. She mentioned that a differential for the transfer of allocation from an inside City limit property to an outside City limit property could be included as well.

Councilmember Aleshire thinks, legislatively, the City needs to be very cognizant of how the language is written.

Ms. Hausrath asked if the Mayor and City Council wish to incorporate a mechanism that allows staff to bill wastewater differently for certain businesses. She used an example of a brewery business, where the water goes into the product and not the wastewater system. Use of a flow meter to measure the wastewater collection would be used to determine usage.

Councilmember Bruchey wondered if a cap of a 50% reduction would be appropriate.

Mayor Keller asked how other jurisdictions handle wastewater usage reductions.

Ms. Hausrath indicated this type of reduction could be good for some economic development projects.

Proposed amendments will be drafted based on this discussion. Staff will review the amendments with the Mayor and City Council at a future Work Session.

Planning Commission Recommendation to Mayor and City Council: Eklund Family LLC Local Conversion District Overlay at 4 Cypress Street

Megan Flick, Planner, was present to discuss rezoning Case WS-2021-01 for a Local Conversion District Overlay at 4 Cypress Street. The Local Conversion District is a type of rezoning overlay that allows use of nonconforming small properties for a variety of commercial or mixed-use activities.

The property is an existing mixed-use building located on the corner of Cypress Street and Potomac Avenue. It is currently occupied by one dwelling unit and one office space. The applicant wishes to expand the permitted commercial uses for that office space to include the following uses: Professional offices; administrative support offices; business and professional offices; ambulatory health care services; scientific and technical

The Planning Commission has received background information on this case in a consultation and additional work session, during which members expressed no concern over the applicant's proposal to install additional parking. There are no other specific requests or recommendations from the Commission aside from requiring a site plan for the parking proposal.

The Planning Commission Public Review Meeting yielded the following public input:

1. Edward Little, 8 Cypress Street – Not opposed to the proposed overlay, but has concerns about the traffic impacts from when it was previously a dental office and the littering by clients as they waited to enter the building during COVID. The Street parking by the dental clients created conflicts for the neighborhood. If they do not build the proposed parking lot, it will be a problem.
2. Brenda Little, 8 Cypress Street – repeated concerns about parking and littering.

The Planning Commission recommends that the Mayor and City Council approve ZM-2021-01 Local Conversion District Overlay at 4 Cypress Street.

A Public Hearing before the Mayor and City Council is scheduled for March 22, 2022.

#### Review of Feedback from Public Hearing for Redesignation of the Arts & Entertainment District

Jill Thompson, Director of Community and Economic Development, and Kathleen Maher, Director of Planning and Code Administration, were present to review feedback from the public hearing for the redesignation of the Arts & Entertainment District.

The Public Hearing was held on February 22, 2022 and the record was held open for 10 days for additional comments. Letters of support from Discovery Station, Dr. James Klauber (Hagerstown Community College), Schmankerl Stube, and Washington County Arts Council were submitted during the 10 day period. The Department of Planning and Code Administration received a sign-up on another platform but did not hear back from the person.

Ms. Thompson indicated the map was modified slightly from the version provided during the Public Hearing. Changes include:

1. Slight changes and clean up around Park Circle and Trail
2. Move boundary to alley across Church Street from Market House
3. Estimated Net Acres 161 (Total 226 acres – 65 acres of Green Space in City Park/Wheaton Park - Net 161 acres)

Mayor Keller stated artists have asked to be included in the boundary but it has been confirmed there is not a benefit for residential properties. Ms. Thompson clarified that State regulations excludes residential properties from designation. If a mixed-use property includes housing, staff will encourage that development. The State clarified with the Maryland State Arts Council the eligibility of the Tax Credit for properties renovated for Artist Housing per the State Property Tax Article 9-240. Eligibility is limited to commercial, industrial, or manufacturing properties. Residential properties and properties in residential zoning are ineligible.

Additionally, the Mayor and City Council discussed in November 2021 a proposed change to the Real Estate Tax Credit for the City of Hagerstown to provide a declining scale of tax credits over a ten year period. The current tax credit is 50% of the tax each year of the 10 year period. Washington County is reportedly discussing a credit of 50% for each year of the 10 year period.

Councilmember Aleshire clarified that properties are not automatically eligible for the tax credit. Mr. Nicewarner and Ms. Thompson stated they could be eligible by development within the criteria of the A&E District credits.

Ms. Maher noted if the state assessor determines an increase in the assessment due to eligible development, the owner could apply for a credit for the increase in the assessment due to the new improvement.

Ms. Hepburn stated she asked that the tax credit be discussed specifically during this review. Increasing the area and making a change in the tax credit may be too many changes at the same time. It may be better to wait until the next redesignation to consider a declining tax credit.

Mr. Nicewarner noted a lot of the expansion is to get to other areas and it encompasses a number of residential properties that are not eligible.

It was the consensus to include approval of a resolution for the A&E District Redesignation confirming the final boundaries and keeps the tax credit the same on the March 22, 2022 Regular Session agenda.

#### Invest Hagerstown Program Update

Chris Siemerling, Economic Development Specialist, was present to provide an update on the Invest Hagerstown Program, and to request guidance for managing the balance of funding through the remainder of FY22.

To date, \$ 775,415 in grant funding has either been disbursed or committed for redevelopment, resulting in roughly \$ 10.4 million worth of investment with the help of Invest Hagerstown grant funding. Staff anticipate up to 87 jobs are expected to be

created within the next 2 years. These numbers include 1/3 of the estimated economic impact as a result of the Holly Building's customized incentive plan over a three-year period

Applications currently being reviewed include 3 homeownership grants and 1 redevelopment grant.

Mr. Siemerling provided an updated chart of the projects that are from 2022. The summary shows a balance of \$ 93,585.40. He asked for direction on the ability to reallocate funding and/or use the current total remaining balance of funding across any of the program components on a first come, first served basis for the remainder of FY22.

Mayor Keller recommends using all the funding from across the categories to cover approved grant requests.

Councilmember Aleshire stated he supports using all the funding but the timing of updating the criteria and then the funding source seems odd.

It was the general consensus to use the remaining funding in all categories for any approved application, regardless of the stated category. When the funding is exhausted, no applications will be accepted until after July 1, 2022.

### **CITY ADMINISTRATOR'S COMMENTS**

*Scott A. Nicewarner, City Administrator*, had no additional comments.

### **MAYOR AND COUNCIL COMMENTS**

*Councilmember R. E. Bruchey, II* stated the water allocation discussion is important because of the number of requests for service the City receives. He believes a solution will be reached.

*Councilmember T. Burnett* had no additional comments.

*Councilmember K. B. Aleshire* offered condolences to the family of a fellow co-worker of his – Deputy Colander who was laid to rest today. Deputy Colander will be missed by the Frederick Community.

*Councilmember T. Martinez* met with Mike Keefer about Hagerstown, Indiana. He suggested starting a pen pal program with Jonathan Hager Elementary School students. She will be meeting with Mr. Keefer every Tuesday. She thanked Socialite Studios for hosting her family and their friends for a recent birthday party.

*Mayor E. Keller* met with 4<sup>th</sup> grade students at Salem Avenue Elementary School and Jonathan Hager Elementary (by ZOOM) for the If I Were Mayor Contest. She will be

EXECUTIVE SESSION, SPECIAL SESSION (35<sup>TH</sup> VOTING SESSION), AND WORK SESSION  
MARCH 8, 2022  
MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND  
meeting with students at Eastern Elementary School tomorrow. She was asked for her  
opinion about dinosaurs being destroyed by a meteor.

She thanked everyone who attended the Day in Annapolis last week. Good things are  
coming to Hagerstown.

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 5:55 p.m.

Respectfully submitted,

*Original signed by D. K. Spickler*

Donna K. Spickler  
City Clerk

Approved: April 26, 2022