

REGULAR SESSION (77TH VOTING SESSION) – September 26, 2023

Mayor T. Martinez called this Regular Session (77th voting session) of the Mayor and City Council to order at 7:01 p.m., Tuesday, September 26, 2023, in the Council Chamber at City Hall. Participating with the Mayor were Councilmembers K. B. Aleshire, R. E. Bruchey, II, T. Burnett, S. McIntire, and M. J. Schindler, City Administrator Scott A. Nicewarner, City Attorney Jason Morton, and City Clerk D. K. Spickler.

The invocation was offered by Councilmember T. Burnett. The Pledge of Allegiance was recited and led by Mayor Tekesha Martinez.

Mayor Martinez announced the Rules of Procedure for this meeting will be followed as adopted December 15, 2020. 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 beginning at 4:00 p.m. on Tuesday, October 3, 2023, Tuesday, October 10, 2023, Tuesday, October 17, 2023, and Regular Session on Tuesday, October 24, 2023. No meeting is scheduled for Tuesday, October 31, 2023.

APPOINTMENTS

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 to make the following appointments:

Hagerstown Youth Council Members (Terms to Expire September 26, 2025)

Shradha Bista
Zander Hine
Louis Maciulla
Alle Orndorff
Jessica Ramos
Aniya Russell

Mayor Martinez provided the Oath of Office to all these Youth Council members.

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 to make the following appointments:

Board of Traffic and Parking (Terms to Expire September 27, 2027)

Kathleen O’Connell
David Haller

Mayor Martinez then provided the Oath of Office to Ms. O’Connell.

The Oath will be provided to appointees who were unable to attend this meeting at a later time.

PUBLIC HEARINGS

ZT-2023-02 Land Management Code Text Amendments

A Public Hearing was held to receive testimony regarding the 2023 Land Management Code Text Amendments. The Planning Commission moved to forward the amendments to the Mayor and City Council during their meeting on August 9, 2023.

City Clerk Donna K. Spickler provided the Oath to Kathleen Maher, Director of Planning and Code Administration, and Stephen Bockmiller, Development Review Planner/Zoning Administrator.

Mr. Bockmiller stated this package of amendments contains 11 proposals to address issues or deficiencies in the Land Management Code (LMC). Staff received input from the public, and the potential developer of a property requesting an amendment to specific text in the Code to make the regulations regarding mixed use development more consistent with those found in other jurisdictions.

The Planning Commission held the required public review meeting on July 26, 2023. One person provide testimony with concerns about one item. The Commission decided to move forward with the package as originally developed and include that request in the next group so they didn’t have to start over. The proposals are as follows:

1. 2023-05 – Open space requirements and N-MU Housing Mix Percentages
A developer is exploring the creation of a mixed-use development on a large, N-MU (Neighborhood Mixed-Use) zoned “greenfield tract”. In doing their site assessment, they concluded that the recently adopted housing type mix requirements are inconsistent with most other jurisdictions. Also, in reviewing this issue, staff determined that the open space requirements are below reasonable expectation, and although the City encourages mixed-use new development, the existing standards (as far as they relate to the development and use of open space) are perhaps somewhat too accommodating. This amendment would require tracts of 5-49 acres to have at least 2 dwelling types. Over 50 acres, must have at least 3 dwelling types.
2. 2023-06 – Clarification of Exemption to Nonconformity for Certain Dwellings
Earlier this year, an appellant attempted to use a provision regarding exemption to nonconforming use expiration for dwellings built as duplexes or townhouses made nonconforming by lot area and width requirements to void a determination that a house with a later-retrofitted second unit is an expired nonconformity and cannot be re-established. Had this been successful, it would have opened a large hole in the regulation of nonconforming multiple dwelling units on undersized lots. This

amendment clarifies that the buildings must have been originally constructed as duplexes or townhouses and does not apply to later conversions that added units to existing buildings. The City Attorney and staff both felt that the language should be tightened so that this provision cannot be misinterpreted in the future.

3. 2023-07 – Minor Adjustments to the Motor Vehicle Sales Facility Design Standards

The proposed amendment clarifies when this standard applies, including when additional uses are added to a site that has an existing vehicle sales facility.

4. 2023-08 – Minor Adjustments to the Use of Vending machines and ATMs as a Principal Permitted Use

This proposal closes a loophole in the Ordinance that currently does not prohibit the installation of vending and ATM machines in front of dwellings and institutional uses in the mixed-use zoning districts. Currently, vending machines as a principal use are permitted only in commercial and mixed-use districts. They are not permitted in the residential districts. But there is nothing that prohibits them in the mixed-use districts on a property used for dwelling or institutional purposes which are not generally commercial in nature.

5. 2023-09 – Parking Requirements for New Assembly Uses in Existing Buildings

When there is no approved site plan on record, and a property is proposed to change from one use permitted by right to another, the Planning Office has a long history of not evaluating the proposed permitted use for compliance with current parking requirements. This proposal adds requirements that when six certain assembly-type uses are proposed in certain districts, they must comply with ordinance requirements. This language is built into the description of the use, meaning that variance relief will not be available in these cases. It does not apply to the CC-MU district.

6. 2023-10 – Revisions to Article 4, Section M (nonconforming Uses) and section U (Board of Zoning Appeals) Including Procedures and Review Standards

Historically, the zoning ordinance has always had wording that blurs the difference between a special exception and a change of a nonconforming use. This change removes that confusion and clearly addresses these actions separately. Also, this change consolidates redundant language and removes wording regarding notice that exceeds State law requirements. With these changes, special exceptions, changes of nonconforming uses, and enlargement of nonconforming uses each have their own separate criteria that tracks the way they have been addressed.

7. 2023-11 – Codify Parking Requirements for Child Day Care Centers

Child day care centers are occasionally new-construction, subject to site plans. The ordinance does not currently enumerate parking requirements for this use, requiring staff to make a determination based on guidance from the ITE Parking Manual. This proposal codifies a uniform requirement for a standard use, eliminating use of the back-up source.

8. 2023-12 – Create Ability to maintain a Pre-Approved Inventory of Street Names

This proposal creates the authorization for staff to explore the creation of pre-approved street names, which removes a complexity from the subdivision plan review process.

9. 2023-13 – Exempt Mostly Decorative Banners from Sign Regulations

Some locations, mostly institutional uses on larger tracts, utilize decorative banners for beautification. This proposal removes these from sign requirements provided they are not used for obvious signage.

10. 2023-14 – Permit CL District Uses in Commercial Spaces in Existing Mixed-Use Buildings in the RO District by Special Exception

This proposal would permit CL district commercial use in existing buildings that are built as mixed-use buildings in the RO District. This allows for a wider array of potential commercial uses that could potentially occupy storefronts in mixed-use buildings that are difficult to attract only those commercial uses permitted in the RO District by right.

11. 2023-15 – Correction of an Overlooked Remnant of Past Amendments

The term “preliminary plan” is no longer used in the LMC, having been replaced with “development plan.” This proposal removes one last reference found in the text.

Mr. Bockmiller entered the following as Exhibits:

Exhibit A: Planning Commission file by reference

Exhibit B: Certificate of publication of the hearing notice

There was no testimony presented, either in favor of or against the proposed amendments.

The Mayor and City Council will discuss the testimony taken and any other communications received at a work session in October.

The record will remain open for 10 days for additional public comment.

The hearing was closed at 7:39 p.m.

ZM-2021-01 Local Conversion District Overlay Amendment

A Public Hearing was held to receive testimony regarding an amendment to the Local Conversion District Overlay at 4 Cypress Street.

City Clerk Donna K. Spickler provided the Oath to Joanna Wu, Planner.

Ms. Wu stated the Planning Commission recommends approval of this amendment to ZM-2021-01.

The property at 4 Cypress Street was approved as a Local Conversion District Overlay on May 24, 2022. The property was an existing mixed-use building on the corner of Cypress Street and Potomac Avenue, with office space and one dwelling unit. The prior application allowed the applicant to add a parking lot, retain one dwelling unit, and expand the permitted commercial uses for the office space.

The applicant is seeking to amend the application by constructing a 304 square foot addition to the front of the building. The addition would enclose the exiting staircase, add hallway space, and a patient restroom. They would also amend the overlay by altering the use of the second floor to be used for administrative purposes and storage, rather than an apartment. All the requirements for a Local Conversion District would still be met with the proposed change.

The Land Management Code v3.10 was approved on May 23, 2023, and became effective June 22, 2023. The text amendment lessened the restrictions on building additions in the Local Conversion District. It also addressed that if the zoning overlay is approved by the Mayor and City Council, BZA approval of a setback variance is not required.

Edward Little and Brenda Little, 8 Cypress Street indicated they were not opposed to the overlay amendment, but they expressed concerns about the current parking issue in the neighboring alleyway behind 6 Cypress Street. They also want to see landscaping maintenance performed regularly at 6 Cypress Street.

Ms. Wu entered the following as Exhibits:

- Exhibit A: Certificate of publication of the hearing notice
- Exhibit B: Planning Commission file by reference

The following testimony was presented.

City Clerk Donna K. Spickler provided the Oath to Dr. Everett Eklund.

Dr. Everett Eklund, 21508 Mt. Aetna Road, Hagerstown, Maryland, owns Potomac Dental Center. He used to reside on Cypress Street. He plans to create surgical units at the Cypress Street location. The present exterior design does not meet their aesthetic design and goals. The exterior staircase doesn't provide the look they want for the Center. He feels the requested changes would be an improvement for the neighborhood.

There was no further testimony presented, either in favor of or against the proposed amendments.

The Mayor and City Council will discuss the testimony taken and any other communications received at a work session in October.

The record will remain open for 10 days for additional public comment.

The hearing was closed at 7:44 p.m.

Annexation of 13-17 Western Maryland Parkway

A Public Hearing was held to receive testimony regarding annexation of 13-17 Western Maryland Parkway.

City Clerk Donna K. Spickler provided the Oath to Joanna Wu, Planner.

Ms. Wu stated it is a goal of the Mayor and City Council to ensure that the City of Hagerstown has a diverse, business-friendly economy that supports the community's needs. In order to implement that goal, the Mayor and City Council have prioritized the review of pre-annexation agreements and the exploration of new possibilities for annexation opportunities. Annexation, particularly of properties utilizing City services, is a fiscally responsible way to grow the assessable base and ensure that the customers and citizens continue to benefit from high-level municipal services and outstanding quality of life.

As a result of this initiative, the two office buildings at 13 and 17 Western Maryland parkway are recommended to be annexed into the City. This property is contiguous to the City via annexation of 2 Western Maryland Parkway, which became effective July 1, 2023. These properties are subject to annexation under the terms and conditions of the 2005 pre-annexation agreement (WS-2005-01). A letter was sent to the property owners on July 1, 2023 informing them of this annexation.

The area of the property is approximately 10.59 acres. The proposed City zoning is I-MU. The current County zoning is ORT. It is within the City's Medium Range Growth Area (MRGA), County's Urban Growth Area (UGA), and State's Priority Funding Area (PFA). Water and Wastewater service is provided by the City. Electric service is provided by Potomac Edison. No significant impact is expected for emergency medical service delivery. Maintenance of the rights-of-way will be performed by State Highway on Western Maryland Parkway and the County on West Washington Street. The assessed value of the two properties is \$ 26.35 million (as of July 1, 2023).

The Planning Commission reviewed the annexation plan and reviewed the proposed zoning on July 12, 2023 and recommends the proposed zoning of I-MU.

The Maryland Department of Planning has determined that the requested zoning for the annexation is not substantially different from the existing county zoning. Express approval by the County Commissioners is not required. The letter from the MDP is included in the meeting material.

Ms. Wu entered the following as Exhibits:

- Exhibit A: Certificate of publication of the hearing notice
- Exhibit B: Planning Commission file by reference

There was no testimony presented, either in favor of or against the proposed amendments.

The Mayor and City Council will discuss the testimony taken and any other communications received at the October 10, 2023 Work Session.

The record will remain open for 10 days for additional public comment.

The hearing was closed at 7:47 p.m.

CITIZEN COMMENTS

Citizen Comments were accepted by email at councilcomments@hagerstownmd.org prior to 5:00 p.m. on Tuesday, September 26, 2023. Citizen Comments were also accepted during the meeting.

Gail Spiro is currently homeless. She formerly resided at 149 Orchard Lane in Dunnegan, California. She is staying in Hagerstown while traveling to the east coast to relocate. She stayed at the Hotel 6 and while she was sleeping, her wallet was stolen. For the last three months she has been trying to get her photo ID replaced, without success. She was able to continue staying at the hotel until her checks were used up. She has never been homeless, and she now has to sleep on the sidewalk because she can't get access to her money without a photo ID. There are many homeless people in this community, and they need a place to be safe. There are not adequate accommodations in Hagerstown for the homeless. She suggested constructing a shelter with a concrete floor and a roof with benches so people can safely sleep outside. Bathroom facilities for homeless people should be open from midnight to 6:00 a.m.

MINUTES

On a motion duly made by Councilmember R. E. Bruchey, II and seconded by Councilmember M. J. Schindler, the Mayor and City Council unanimously agreed by voice vote to approve the minutes as presented for August 1, 2023, August 8, 2023, August 15, 2023, and August 22, 2023.

CONSENT AGENDA

Councilmember K. B. Aleshire made a motion to approve the Consent Agenda as presented. Councilmember S. McIntire seconded the motion.

A. Community Engagement:

1. Open Container Exemption and Street Closure – Downtown Fall Folk Festival – October 14, 2023
2. Barbara Ingram School for the Arts (BISFA) Lamp Post Sponsorship Program

B. Police Department:

1. 2023 Ford Explorer – Keystone Ford (Chambersburg, PA) \$ 43,200.00
2. 2022 Ford F-150 Police Responder – Hagerstown Ford (Hagerstown, MD) \$ 45,319.00
3. Various Uniform Shirts – Howard Uniform Company (Baltimore, MD) \$ 16,554.86

C. Public Works:

1. HVAC Replacement for Police Athletic League Tenant Space – M. S. Johnston (Hagerstown, MD) \$ 11,350.00
2. 2024 Ford F550 Dump Truck with Salt Spreader and Plow for Parks – Keystone Ford (Chambersburg, PA) \$ 123,529.00
3. Hagerstown Ice Amateur Athletic Association (HIAAA) Ice Making Equipment Repair Reimbursement - HIAAA (Hagerstown, MD) \$ 11,925.00
4. 2024 Ford F550 Dump Truck with Salt Spreader and Plow for Public Works – Keystone Ford (Chambersburg, PA) \$ 123,529.00
5. 2024 Ford F750 Dump Truck with Salt Spreader and Plow for Public Works – Keystone Ford (Chambersburg, PA) \$ 191,756.00

D. Utilities:

1. Light – FY23 Consulting Services – Blanket Contract – GDS Associates, Inc. (Marietta, GA) \$ 10,253.75

Motion carried 4-1 with Councilmember Bruchey abstaining.

UNFINISHED BUSINESS

A. Approval of an Ordinance: Amending the City Code by Increasing the Number of Members of the Hagerstown Youth Council and Establishing a Partner Group

Action: On a motion duly made by Councilmember S. McIntire and seconded by Councilmember R. E. Bruchey, II, the Mayor and City Council unanimously agreed by voice vote to approve an ordinance expanding the maximum number of youth participants for the Hagerstown Youth Council. The council has received increased interest and current limits restrict the involvement of passionate youth in the City. Expanding the limit would allow for increased interest and devotion to the City by youth. Securing continuation of the Partner Group allows for increased support from community members for the Hagerstown Youth Council.

Discussion: Councilmember McIntire is excited about this amendment. It is exciting to see how the interest in the Youth Council has increased.

Mayor Martinez agreed it is exciting to see how interested the students are in the community.

B. Approval of an Ordinance: Conveyance of City Property and Granting a Temporary Construction Easement to the Board of County Commissioners – Crystal Falls Drive

Action: On a motion duly made by Councilmember M. J. Schindler and seconded by Councilmember T. Burnett, the Mayor and City Council unanimously agreed by voice vote to approve an ordinance approving the conveyance of a portion of City Property on Crystal Falls Drive, consisting of 785+/- square feet, to the Board of County Commissioners in accordance with the Property Acquisition Agreement. The Agreement also includes granting a temporary construction easement.

The conveyance of this property is part of Washington County's bridge replacement project on Crystal Falls Drive over Beaver Creek.

NEW BUSINESS

A. Introduction of Ordinance: Quit Claim – Alley #2-82A

Action: 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 to introduce ordinances to quit claim unimproved Alley #2-82A to Tarynn M. Cave and George B. Moss and authorize the Mayor to execute the quit claim deed. Staff have determined that this alley serves no public purpose.

B. Approval of a Resolution: Outgoing Loan Agreement with Washington County Historical Society

Action: On a motion duly made by Councilmember T. Burnett and seconded by Councilmember M. J. Schindler, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to enter an agreement for an outgoing loan from the Washington County Historical Society between the City of Hagerstown and the Washington County Historical Society, Inc. The loan agreement is for a period of 10 years commencing on October 16, 2023.

C. Approval of a Memorandum of Understanding (MOU): First Amendment to Agreement with Board of Education of Washington County for School Resource Officers

Action: On a motion duly made by Councilmember S. McIntire and seconded by Councilmember M. J. Schindler, the Mayor and City Council unanimously agreed by voice vote to approve a First Amendment to the Memorandum of Understanding with the Board of Education of Washington County for School Resource Officers.

This amendment increases the number of School Resource Officers to one Sergeant and is updated to reflect current costs associated with the position.

The additional SRO will be fully funded by the Washington County Board of Education.

D. Approval of a Memorandum of Understanding (MOU): For Access to Regional Automated Property Identification Database (RAPIDS)

Action: On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember R. E. Bruchey, II, the Mayor and City Council unanimously agreed by voice vote to enter into a Memorandum of Understanding with the Metropolitan Washington Council of Government, National Capital Region Law Enforcement Exchange Program Management Office, and Maryland Department of State Police. This MOU will allow the Hagerstown Police Department to have continued access to a database which is used to electronically collect, and search statutorily required pawn and secondhand property.

E. Approval of an Extension of the Invest Hagerstown – City Center Redevelopment Grant for 49 and 37 Jonathan Street – City Sprouts, LLC

Action: On a motion duly made by Councilmember S. McIntire and seconded by Councilmember R. E. Bruchey, II, the Mayor and City Council unanimously agreed by voice vote to approve an extension of the Invest Hagerstown City Center Redevelopment Grant for renovation project at 49 and 37 Jonathan Street to November 30, 2023. The City’s original approval was on May 25, 2021, and this is the third extension to the date requested by the developer. Failure to meet this deadline will result in termination of an attached approval letter and forfeiture of the grant.

CITY ADMINISTRATOR COMMENTS

Scott Nicewarner, City Administrator, stated this will be a busy weekend with Thunder in the Square Classic Car Show, Scavenger Hunt and Pub Tour, and Voltage Wrestling.

MAYOR AND CITY COUNCIL COMMENTS

Councilmember K. B. Aleshire apologized for not being able to be at the meeting last week.

Councilmember R. E. Bruchey, II noted the School Resource Officers (SRO) put up with a lot in the schools. These issues also flow out into the community. He hopes the SRO’s will be able to keep a closer watch on Marshall Street.

Councilmember T. Burnett thanked Chris Siemerling, Economic Development Specialist, for being so responsive to the people she sent to him for information. She thanked staff for their flexibility with all the inquiries.

Councilmember S. McIntire congratulated Addie Nardi, Executive Director, and everyone at the Boys and Girls Club on the groundbreaking for the new club. It is bittersweet that the old building was demolished today. However, it is a great step forward for the kids in the community.

Councilmember M. J. Schindler thanked the Bester Community of Hope for the placement of new exercise equipment on the Cultural Trail.

Mayor T. Martinez thanked everyone who participated in the United Way Day of Caring. Both Councilmember McIntire and Councilmember Schindler participated. Citibank refreshed the planters downtown earlier today.

She stated it was amazing to be part of the Boys and Girls Club groundbreaking. Sanmar had a vision for exercise equipment on the Cultural Trail and made it happen.

There is a lot of construction around Hagerstown and many new things are coming. It will take some extra time to travel to places around the City. She urged people to be kind to each other during the delays and detours.

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 8:09 p.m.

Respectfully submitted,

Original signed by D. K. Spickler

Donna K. Spickler
City Clerk

Approved: October 24, 2023