

**City Of Martinsburg
Special Council Meeting
Monday, March 27, 2017
The J. Oakley Seibert Council Chambers**

With a quorum present, the special session of the Martinsburg City Council was called to order by Mayor Karos at 5 p.m. The following Council Members were present: Gregg Wachtel, Harriet Johnson, Dennis Etherington, Kevin Knowles, Ken Collinson, Mark Baker and Jason W. Baker. Also present were: Mark Baldwin, City Manager; Kin Sayre, Legal Counsel; Gena Long, City Recorder, Police Chief Maury Richards; Utilities Director Steve Knipe; City Engineer/Planning Director Michael Covell; Community Development Administrator Nancy Strine and Finance Director Mark Spickler.

3. Presentations

a. Judge Stephen R. Kershner Proposing Ordinance Change to City Code Section 171.02 concerning the Appointment and Qualifications for Police Court Judge

Judge Kershner stated to Council that he has been the police court judge for a long time and is moving to Shepherdstown. He would like to continue to serve as judge, however, the City Code Section 171.02 states that the Police Court judge must live in Berkeley County. He requested that Council request a change to the ordinance that would allow the judge to reside in, or hold a principal law office, in Berkeley County. He could not think of a viable reason for the ordinance to require Berkeley County residency, as some areas of Berkeley County are a further distance than area of Jefferson County from City Hall, therefore the residency requirement would not ensure there is not a timeliness issues. He also pointed out that the City collects B&O tax from his business, no matter where his residence is. Judge Kershner added that the City could still give hiring preference to City residence, should the office become vacated, but removing the residency restriction would give the City a wider range of candidates.

Mayor Karos moved Item 11 V up on the agenda.

11 v. Approve/deny Judge Kershner's proposal to amend City Code Section 171.02 concerning the appointment and qualifications for the Police Court Judge, authorize City Attorney to draft ordinance

Motion made by Councilman Wachtel to approve the proposal. Motion died for lack of a second.

Councilman Knowles asked if this ordinance would allow the judge to live anywhere, such as Morgan or Hampshire County. Mr. Sayre confirmed that the judge could reside anywhere in the world, but would still pay taxes to the City as long as he has a principal business office in the City.

Councilman J. Baker added that he believes the ordinance should be more restrictive, requiring City residency, not just Berkeley County residency, and he would vote in favor of making the ordinance more restrictive.

Councilwoman Johnson stated that she feels Council should be cautious about changing the ordinance to suit one particular situation, as it could set a precedent.

Councilman Wachtel felt that the Judge likely pays more to the City in B&O taxes than many residents do in Real Estate tax, and that it is in the best interest of the City to maintain quality. He stated that he is not generally in favor ordinance changes in response to a particular situation, but in this case, he is.

Motion made by Councilman J. Baker, seconded by Councilwoman Johnson, to deny the request to change the ordinance. Motion carried 6-1, Councilman Wachtel voting no.

Mayor Karos added that changing the ordinance could open a Pandora's Box in terms of employment and appointments.

Judge Kershner stated that he understands and that he will continue to serve the remainder of his appointed term, which ends June 30, 2017.

4. Petitions from Citizens

Mr. Trey Knepper, Jaybird Lane, ROCS Classic Norwalk Soap Box Derby, stated that he was appreciative of Council working with the organization to come up with a solution to keep the Soap Box Derby in Martinsburg. Mayor Karos thanked Mr. Knepper for taking the initiative to approach Main Street Martinsburg to sponsor the Derby, which would allow Council to waive fees for City services, if they wish.

Mr. Eric Westergard, 100 Exchange Place, stated that he is in favor of the City cleaning up the underpass area, the entrance to downtown. He stated that he has two lots that the utility pipes will cross, and asked that he be fairly compensated for the diminished value of his property created by the installation of a utility right of way.

Barbara Bratina, N. Tennessee Avenue, spoke against changing the ordinance regarding residency requirements for the Police Court Judge, though the action had already been taken on the matter. She stated that, while the Judge is honorable and a good judge for the City, Council must consider the full implications of the ordinance and it's bad policy to amend the ordinance for one person.

5. Receive and File Reports—Minutes—Correspondence of the Following:

a. Hagerstown/Eastern Panhandle Metropolitan Planning Organization (HEPMPO) Interstate Council January 18, 2017 Meeting Minutes and Berkeley County Projects Update

Motion made by Councilman Etherington, seconded by Councilman J. Baker to receive and file item 5A. . Motion carried unanimously.

City Manager Mark Baldwin reminded Council to review the Projects Update, as it provides information and updates on current and future transportation projects in Berkeley County.

6. Reports of Chairpersons of Council Standing Committees

a. Council as a Whole March 20, 2017 Meeting Minutes

Motion made by Councilman Etherington, seconded by Councilman M. Baker, to approve the Committee Minutes. Motion carried unanimously.

Council as a Whole Committee Minutes Monday, March 20, 2017

Present: Mayor George Karos, Councilmembers Kevin Knowles, Jason Baker, Mark C. Baker, Dennis Etherington, Harriet Johnson and Ken Collinson.

Others in Attendance: Mark Baldwin, City Manager; Mark B. Spickler, Finance Director; Nancy Strine, CDBG Administrator; Steve Knipe, Utilities Director, members of the media and public

Unable to Attend: Councilman G. Wachtel

Mayor Karos opened the meeting and the following items were discussed:

1. Discuss FY 2017-2018 Recommended Budgets

The City Manager provided an overview of the process in preparing the budgets for Council consideration.

The following budgets were presented for overview by Finance Director Mark B. Spickler:

a. 1. General Fund Budget Overview--\$16.7M

The following items were discussed: property tax revenues, B&O tax revenue projection; police fines; and \$1.8M of sales tax revenue is being utilized to balance the General Fund. It was also stated General Fund expenditures now include an Economic Development Department and Stormwater Department.

Consensus of the Committee was to recommend to City Council the General Fund Budget for approval.

a. 2. FY 2017-2018 Animal Control Agreement

City Manager Mark S. Baldwin stated that the current budget for Animal Control is \$117,500, which is in the 2017-2018 budget until an agreement is received from Berkeley County.

a. 3. FY 2017-2018 Berkeley County Day Report Center Funding Request

After discussion, consensus of the Committee and Mayor was to defer any action on this request until the end of the current fiscal year and an evaluation of the General Fund unencumbered balance.

**** since this item was deferred, it was not made a part of the GF budget at this time.**

b. Coal Severance Tax Budget--\$70,000

c. Police Levy Fund Budget--\$1, 275,000

Finance Director informed the Committee the Police Levy Election should be scheduled for May/June 2018

d. Fire/EMS Budget--\$825,000

e. Sales Tax Budget--\$4,025,000

Finance Director stated that \$1.8M of the sales tax revenue is being used to balance the General Fund.

City Manager emphasized to the Committee the sales tax revenue and budget is being utilized as was presented in the City's Home Rule application to the public and to the Home Rule Board. He further stated that it was important for Council to remember the Sales Tax Fund Budget is being utilized for GF operating revenue, Economic and Community Development Department funding, City retirement funds (police, fire and OPEB), City projects and reserve fund.

f. Water and Sewer Fund Budget--\$8,600,000

g. Sanitation Fund Budget--\$1,800,000

h. Parking Fund Budget--\$175,000

***See Attached Memo to Mayor and Council from Mark S. Baldwin, City Manager, and Mark B. Spickler, Finance Director, in reference to above mentioned budgets.**

2. FY 2017-2018 Employee pay increases

Consensus of the Committee was to recommend to City Council employee pay increases for FY 2017-2018 utilizing the merit pay scale effective July 1, 2017.

3. CDBG/HOME Budgets

CDBG Administrator, Nancy Strine, and Mark S. Baldwin, City Manager, provided an overview of the application submitted and recommendations for the CDBG and HOME programs.

Consensus of the Committee was to recommend to City Council approval of the CDBG and HOME programs for FY 2017-2018.

4. Update on Big Springs Water Plant Upgrade

City Manager provided an update stating the Air National Guard/Air Force has put a "pause" on all agreements being negotiated by ANG and entities. City Manager further stated it is anticipated agreements and funding may be active late spring/early summer.

City Manager and Steve Knipe, Utilities Director, recommended the City move forward with completing the upgrade to the Big Springs Water Plant in the amount of approximately \$3.5M. Committee was informed the water/sewer fund would have to fund the improvements until such time as the agreement is in place and the City is reimbursed. Committee was also informed if the Agreement is not finalized, no reimbursement would take place. Mark Spickler stated approximately \$6M is available in the fund to go toward this project.

Steve Knipe, Utilities Director, stressed the importance of moving forward in order to be proactive in order to have an adequate water supply in case of a drought, and emergency with Kilmer Springs plant, or other issues that may arise.

Consensus of the Committee was to recommend to City Council to continue to move forward with the plant upgrades utilizing City funds in anticipation of an agreement with ANG for reimbursement.

5. Discuss close-out of project financing for Wastewater Treatment Plant Project

Finance Director Mark Spickler requested the WWTP project be closed out with WVDEP in order for the bond payment to be restructured. He indicated the \$297,000 being withheld for payment would then be paid out of water/sewer funds.

Consensus of the Committee was to recommend to City Council the project be closed out with WVDEP and W/S funds be utilized for final project payment.

6. Mayor closed the meeting and reminded Councilmembers the next Special City Council meeting to approve budget(s) is scheduled for Monday, March 27, 2017 at 5 PM in the J. Oakley Seibert City Council Chambers.

Meeting adjourned.

7. Report of Mayor

a. Schedule Special Council Meeting for Tuesday, April 18, 2017 at 5 PM for the purposes of setting the levy and other business as needed.

8. Report of City Attorney

9. Report of City Manager

10. Unfinished Business

a. Third and Final Reading of Ordinance 2017-02 Amend And Re-Enact Part Fifteen – Fire Prevention Code, Article 1501 Section 1501.01 Of The Codified Ordinances Of The City Of Martinsburg, And Repealing Ordinance Number 2014-15 Of The City Of Martinsburg, West Virginia.

Motion made by Councilman J. Baker, seconded by Councilman Etherington, to read Ordinance 2017-02 through the third and final reading, by title only and adopt. Motion carried unanimously.

b. Third and Final Reading of Ordinance 2017-03 Providing that the 200 Block of South High Street in the City of Martinsburg shall have One-Way Vehicular Traffic Running in a Southerly Direction beginning at the Intersection of East King Street and Continuing along the Remaining Length of South High and thence One Way Running in an Easterly Direction on McSherry Street to the Intersection with Seibert Street

Motion made by Councilman J. Baker, seconded by Councilman M. Baker, to read Ordinance 2017-03 through the third and final reading, by title only, and adopt. Motion carried unanimously.

Councilman M. Baker asked when the ordinance will be effective. The City Recorder replied that the ordinance reads that it will be effective upon passage or when appropriate signage is installed, whichever comes later.

c. Third and Final Reading of Ordinance 2017-04 to Amend the Codified Ordinance of the City of Martinsburg, Section 5: General Offenses Code, at Section 533.06: Tampering with and Theft of Utilities; CATV by adding Subsection 533.06 (d): Interference with Meter; Penalty

Motion made by Councilman Collinson, seconded by Councilman Etherington, to read Ordinance 2017-04 through the third and final reading, by title only. Motion carried 5-2, Councilman M. Baker and Councilman J. Baker voting no.

11. New Business

a. Adopt Resolution 2017-06 to approve General Fund Budget Revision #3 for FY 2016-2017

Motion made by Councilman Knowles, seconded by Councilman Etherington, to approve Resolution 2017-06. Motion carried unanimously.

b. Adopt Resolution 2017-07 to approve Coal Severance Tax Fund Budget Revision #3 for FY 2016-2017

Motion made by Councilman Knowles, seconded by Councilman Etherington, to approve Resolution 2017-07. Motion carried unanimously.

c. Approve/deny Police Levy Fund Budget Revision #1 for FY 2016-2017

Motion made by Councilman J. Baker, seconded by Councilman Wachtel, to approve Police Levy Fund Budget Revision #1. Motion carried unanimously.

d. Approve/deny Fire/EMS Budget Revision #1 for FY 2016-2017

Motion made by Councilman Etherington, seconded by Councilman J. Baker, to approve Fire/EMS Budget Revision #1. Motion carried unanimously.

e. Approve/deny Sales Tax Budget Revision #1 for FY 2016-2017

Motion made by Councilman Etherington, seconded by Councilman J. Baker, to approve Sales Tax Budget Revision #1. Motion carried unanimously.

f. Approve/deny Water and Sewer Fund Budget Revision #1 for FY 2016-2017

Motion made by Councilman Etherington, seconded by Councilman J. Baker, to approve Water/Sewer Fund Budget Revision #1. Motion carried unanimously.

g. Approve/deny Sanitation Fund Budget Revision #1 for FY 2016-2017

Motion made by Councilman Collinson, seconded by Councilman Etherington, to approve Sanitation Fund Budget Revision #1. Motion carried unanimously.

h. Approve/deny Parking Fund Budget Revision #1 for FY 2016-2017

Motion made by Councilman Etherington, seconded by Councilwoman Johnson, to approve Parking Fund Budget Revision #1. Motion carried unanimously.

i. Approve/deny \$16,700,000 General Fund Budget for FY 2017-2018

Motion made by Councilman Collinson, seconded by Councilman J. Baker, to approve General Fund Budget as presented. Motion carried unanimously.

j. Approve/deny \$70,000 Coal Severance Tax Fund Budget for FY 2017-2018

Motion made by Councilman Collinson, seconded Councilman J. Baker, to approve Coal Severance Tax Fund Budget as presented. Motion carried unanimously.

k. Approve/deny \$1,275,000 Police Levy Fund Budget for FY 2017-2018

Motion made by Councilman Wachtel, seconded by Councilman J. Baker, to approve Police Levy Fund Budget as presented. Motion carried unanimously.

l. Approve/deny \$825,000 Fire/EMS Fund Budget for FY 2017-2018

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve Fire/EMS Fund Budget as presented. Motion carried unanimously.

m. Approve/deny \$4,025,000 Sales Tax Fund Budget for FY 2017-2018

Motion made by Councilman Collinson, seconded by Councilman Wachtel, to approve Sales Tax Fund Budget as presented. Motion carried unanimously.

n. Approve/deny \$8,600,000 Water and Sewer Fund Budget for FY 2017-2018

Motion made by Councilman Etherington, seconded by Councilman Collinson, to approve the Water and Sewer Fund Budget as presented. Motion carried unanimously.

o. Approve/deny \$1,800,000 Sanitation Fund Budget for FY 2017-2018

Motion made by Councilman Etherington, seconded by Councilman J. Baker, to approve the Sanitation Fund Budget as presented. Motion carried unanimously.

p. Approve/deny \$175,000 Parking Fund Budget for FY 2017-2018

Motion made by Councilman Etherington, seconded by Councilwoman Johnson, to approve the Parking Fund Budget as presented. Motion carried unanimously.

q. Approve/deny Draft FY 2017-2018 Community Development Block Grant (CDBG) Program and HOME Investment Partnership Program Annual Action Plan

Motion made by Councilman J. Baker, seconded by Councilman Wachtel, to approve the Draft Action Plan. Motion carried unanimously.

r. Approve/deny FY 2017-2018 employee pay increases per Council as a Whole Committee March 20, 2017 recommended merit pay scale (as attached), effective July 1, 2017

Motion made by Councilman Knowles, seconded by Councilman Etherington, to approve FY 2017-2018 pay increases, effective July 1. Motion carried unanimously.

Councilman M. Baker added that the increases will be retroactive to July 1, as the review period does not end until June 30.

s. Authorize Mayor to send letter to Governor's Highway Safety Program informing of September 30, 2017 expiration of City's role as the agency administering the Region 6 Highway Safety Program (8 county region)—(State of WV in process of procuring another administering agency)

Chief Richards explained that the City of Martinsburg has been the sponsoring agency for 25 years, and while the City still will participate in the program, it is his assessment that the administrative burden is excessive.

Motion made by Councilman J. Baker, seconded by Councilman Wachtel, to approve the Mayor to send the letter terminating the City's role as administering agency as of September 30. Motion carried unanimously.

t. Approve/deny authorization to expend Water/Wastewater Department funds in the amount up to approximately \$3.5M for Big Springs Water Treatment Plant upgrades

Mr. Baldwin stated that this is the estimated amount, that bids will be sought for approval at the next Council meeting. There is currently no update from the ANG.

Councilman J. Baker asked at what point this could become a lawsuit matter, as the Air Force/ANG has admitted culpability and has compromised the City's water supply. Mr. Sayre replied that it is his belief that the agreement is forthcoming, there is just a timing issue at this time.

Councilman M. Baker added that the City cannot wait forever for the money, but does need to take care to ensure that citizens have adequate and safe drinking water.

Motion made by Councilman Collinson, seconded by Councilman M. Baker, to expend the needed funds for the Big Springs Water Treatment Plant upgrades. Motion carried unanimously.

u. Approve/deny authorization to expend Water/Wastewater Department funds in the amount of \$297,640 to close out WWTP Upgrade Project

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to authorize expenditure of necessary funds, up to \$297,640, to close out WWTP Upgrade Project. Motion carried 6-1, Councilman J. Baker voting no.

v. Approve/deny Judge Kershner's proposal to amend City Code Section 171.05 concerning the appointment and qualifications for the Police Court Judge, authorize City Attorney to draft ordinance

See item 11 V.

w. Approve/deny bid recommendation for City Hall Parapet Wall Project--\$29,500--W. Harley Miller Contractors

City Engineer/Planning Director Michael Covell explained that the top of the parapet wall has shifted and needs to be braced so it does not become more unstable or fall.

Councilman J. Baker asked if W. Harley Miller was the best choice, as he recalled a poor experience with them as the contractor on another project.

Motion made by Councilman Etherington, seconded by Councilman Collinson, to approve the bid recommendation, as presented. Motion carried unanimously.

x. Approve/deny Special Events Permit #1714 for the St. John's Lutheran Church for Palm Sunday Procession along the described route, on Sunday, April 9, 2017 from 10 to 10:30 AM, contingent upon proof of adequate liability insurance and payment of fees for City services—(\$0.00 recommended, per memo)

Motion made by Councilman Collinson, seconded by Councilman Etherington, to approve Special Events Permit 1714 contingent upon proof of adequate liability insurance. Motion carried unanimously.

y. Approve/deny Special Events Permit #1715 for the Main Street Martinsburg ROCS Classic Norwalk Soap Box Derby event, to be held on Saturday, June 10, 2017 (rain date of June 17) from 6:30 AM until 3:30 PM, along attached route, and in Town Square Pedestrian Plaza, contingent upon proof of adequate liability insurance and payment of fees for City services. (\$1922.50 for City Services, per memo, unless waived in accordance with the provisions of Section 155.09(b) of Ordinance 2016-32)

Motion made by Councilman Etherington, seconded by Councilman J. Baker, to approve Special Events Permit 1715 contingent upon proof of adequate liability insurance with fees waived, in accordance with Ordinance. Motion carried unanimously.

z. Approve/deny Special Events Permit #1716 for the March of Dimes March for Babies, along the attached route, to be held on Saturday, April 22, 2017 from 9 AM until 2 PM, contingent upon proof of adequate liability insurance and payment of fees for City services—(\$140.00 recommended, per memo)

Motion made by Councilman J. Baker, seconded by Councilman Collinson, to approve Special Event Permit 1716 contingent upon proof of adequate liability insurance and payment of recommended fees for City Services. Motion carried unanimously.

Councilman Knowles commented that his voting in favor of the event but is opposed to the fees. Mr. Baldwin added that the applicant has been advised of the fees and is in agreement.

aa. Authorize the City Attorney to file a Petition for Condemnation in the Circuit Court of Berkeley County against Eric J. Westergard for purposes of twenty (20) foot permanent rights of way and easements for the purpose of constructing, installing, operating, maintaining, replacing, and enlarging sewer lines, extensions and branches of tributary sewer lines and manholes. Grantee, its successors and assigns, contractors, employees and agents shall have right of ingress and egress at any time for the operation, repair maintenance replacement and enlargement of said sewer lines and appurtenances

Motion made by Councilman Etherington, seconded by Councilman Wachtel, to authorize the City Attorney to file the Petition for Condemnation. Motion carried 6-1, Councilman J. Baker voting no.

Mr. Sayre explained that he has been working with Mr. Westergard, who may be willing to sign a Right of Entry agreement and is asking for compensation. He asked for the authorization in case a compromise cannot be met.

18. Executive Session

Council entered Executive Session to discuss personnel at 5:52 PM.

Adjournment

Meeting adjourned by unanimous consent at 6:02 PM.

George Karos, Mayor

Gena Long, City Recorder