

**City Of Martinsburg
Regular Council Meeting
Thursday, February 8, 2018
The J. Oakley Seibert Council Chambers**

With a quorum present, the regular session of the Martinsburg City Council was called to order by Mayor Karos at 6:30 p.m. The following Council Members were present: Gregg Wachtel, Harriet Johnson, Kevin Knowles, Ken Collinson, Mark Baker and Jason W. Baker. Absent was Dennis Etherington. Also present were: Mark Baldwin, City Manager; Gena Long, City Recorder, City Attorney Kin Sayre, Police Chief Maury Richards; Fire Chief Paul Bragg; City Engineer/Planning Director Kim Petrucci; Public Works Director Jeff Wilkerson, Finance Director Mark Spickler, and Utilities Director Steve Knipe.

3. Salute to Flag

Boy Scouts Troop 13 led the salute to the flag.

4. Prayer—

Reverend Doctor Kenneth Walker, Trinity United Methodist Church delivered the invocation.

5. Approve January 11, 2018 Regular Council Meeting Minutes

Motion made by Councilman Knowles, seconded by Councilwoman Johnson, to approve the January 11, 2018 Regular Meeting Minutes. Motion carried unanimously.

6. Approve December 2017 Administrative and Financial Report

Motion made by Councilman Wachtel, seconded by Councilman Collinson, to approve the December 2017 Administrative and Financial Report. Motion carried unanimously.

7. Presentations

a. Make Comment on ABCA Application for FlamZ Fi'Wi Spot—765 Foxcroft Avenue

Ms. Veronica Williams was present to answer questions.

Mayor Karos asked about the proposed hours. Ms. Williams stated that the establishment would be open from 9 AM until 2:30 AM, Monday through Friday.

Motion made by Councilman Collinson, seconded by Councilman Wachtel, to submit the Zoning Form to the ABCA without additional comment. Motion carried unanimously.

8. Petitions from Citizens

Ms. Barbara Bratina, N. Tennessee Avenue, offered the following statement:

I urge the Martinsburg City Council to appeal, to the WV State Supreme Court, Judge Wilkes's decision which state that the Berkeley County Council and the Berkeley County Building Commission are exempt from the City of Martinsburg's Zoning Ordinance. One could argue that Judge Wilkes should not have accepted this case as a personal bias may exist; seeing as the Berkeley County Council President, Doug Copenhaver managed the political campaign of Judge Wilkes's daughter. A recusal from Judge Wilkes, citing a conflict of interest, would have been justified.

This decision sets a precedent, not only for the City of Martinsburg, but for every city in the State of West Virginia. All of the major cities in WV have a zoning ordinance which will be jeopardized. Far reaching implications, yet unknown, may develop from this ill-judged decision. We, who live in the City of Martinsburg, do so specifically because it has a zoning ordinance which protects us from incompatible uses, whereas the County does not. Martinsburg's Zoning Ordinance is our protection from disrespectful neighbors, falling property values, hazardous environments and a list of other possible violations to our quality of life. The Berkeley County Council has already proven itself to be disrespectful. They have shown their contempt for our City, our zoning, our city council and the citizens of Martinsburg. What more can we expect if we hand them the keys to the zoning of our city? We look to our City Council to protect and defend its citizens and our zoning. Please vote to appeal this decision to the West Virginia Supreme Court.

Thank you for allowing me to have my voice heard.

Mr. Ian Henderson, W. Burke Street, concurred with Ms. Bratina's statement, adding that he expects the City Council to seek remedy via the legal process.

There were no other petitions from citizens.

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

a. Main Street Martinsburg November 29, 2017 Meeting Minutes, Financial Statements and Events Planning Notes

b. Martinsburg Fire Department Annual Report for Calendar Year 2017

c. Hagerstown/Eastern Panhandle Metropolitan Planning Organization October 18, 2017 Meeting Minutes and Projects Update

d. Letter of Resignation of Steve Canby from the Martinsburg Fire Civil Service Commission, effective February 15, 2018 (Local 805 Appointment)

Motion made by Councilman Wachtel, seconded by Councilman Knowles, to receive and file item 9A-9D. Motion carried unanimously.

10. Reports of Chairpersons of Council Standing Committees

11. Report of Mayor

a. Reminder of Upcoming Special Election to Renew Police Levy—Tuesday, May 8, 2018

b. Appoint David Carroll to the Board of Zoning Appeals (Alternate) to Fill and Unexpired Term Ending 1/1/2019

Motion made by Councilman Knowles, seconded by Councilman Collinson, to appoint Mr. Carroll to the BZA as an alternate through 12/31/2018. Motion carried unanimously.

c. Report the following vacancies:

- **Board of Zoning Appeals (1 alternate)**
- **Parking Authority (2)**
- **Historic Preservation Review Commission (1)**
- **Human Relations Committee (1)**

Mayor Karos stated that he had submitted several names to the City Manager, and asked that Council do the same.

12. Report of City Attorney

13. Report of City Manager

a. Projects Update

Mr. Baldwin added that construction bids for the new Police Department/Municipal Court Building and that Silling Architects would review and make a recommendation for a future meeting. The bids were in line with the expected cost.

14. Unfinished Business

a. Third and Final Reading of Ordinance 2018-01 Amending and Reenacting the City of Martinsburg Code, Part 3: Traffic Code, by Amending Section 361.13: Fire Lanes; to Comply with WV State Code Section 17c-13-3

Motion made by Councilman Wachtel, seconded by Councilman Knowles, to read Ordinance 2018-01 through the third and final reading and approve. Motion carried unanimously.

16. New Business

A. First and Second Reading of Ordinance 2018-02 Amending and Reenacting the City of Martinsburg Code, Part 3: Traffic Code; Chapter 1: Administration; Article 301: Definitions, by adding "Autocycle."

Motion made by Councilman Wachtel, seconded by Councilman Knowles, to read Ordinance 2018-02 through the first and second reading, by title only. Motion carried unanimously.

B. First and Second Reading of Ordinance 2018-03 to Amend and Reenact the Codified Ordinances of the City of Martinsburg to Amend Part 3: Traffic Code; Chapter 5: Vehicular Operation; Article 345: Safety and Equipment; Section 345.29: Safety Equipment for Motorcyclists, Motorcycles, Motor-Driven Cycles and Mopeds

Motion made by Councilman Collinson, seconded by Councilman Wachtel, to read Ordinance 2018-03 through the first and second reading, by title only. Motion carried, Councilman J. Baker voting no.

c. First and Second Reading of Ordinance 2018-04 to Amend and Reenact the Codified Ordinances of the City of Martinsburg Code, Part 5: General Offenses Code; Article 529: Offenses Related to Persons; by Adding Section 529.08: Nonconsensual Disclosure of Private Intimate Images

Motion made by Councilman Knowles, seconded by Councilwoman Johnson, to read Ordinance 2018-04 through the first and second reading, by title only. Motion carried unanimously.

Councilman J. Baker stated that he wanted to confirm that this ordinance covers disclosure of intimate images only, as opposed to possessing or capturing images. Mr. Sayre replied that it prohibits nonconsensual disclosure of intimate images.

d. First and Second Reading of Ordinance 2018-05 to Amend and Reenact the Codified Ordinances of the City of Martinsburg to Amend Part 5: General Offenses Code; Article 533: Offenses Related to Property; Section 533.07: Littering and Deposit of Garbage, Rubbish, Junk, Etc.

Motion made by Councilman Wachtel, seconded by Councilwoman Johnson, to read Ordinance 2018-05 through the first and second reading, by title only. Motion carried unanimously.

e. First and Second Reading of Ordinance 2018-06 to Amend and Reenact the Codified Ordinances of the City of Martinsburg to Amend Part 3, Traffic Code; Article 345: Safety and Equipment; Section 345.02: When Lighted Lights are Required

Motion made by Councilman Collinson, seconded by Councilman Wachtel, to read Ordinance 2018-03 through the first and second reading, by title only. Motion carried unanimously.

f. First and Second Reading of Ordinance 2018-07 to Amend and Reenact the Codified Ordinance of the City of Martinsburg to Amend Part 3: Traffic Code, Article 345: Safety and Equipment; Section 345.09: Spotlights and Auxiliary Lights

Motion made by Councilman Wachtel, seconded by Councilman J. Baker, to read Ordinance 2018-07 through the first and second reading, by title only. Motion carried unanimously.

g. Approve/deny Resolution 2018-01 Authorizing Lease Agreement between the City of Martinsburg and Berkeley County Ambulance Authority for the Short-Term Lease of a 2013 Chevrolet Ambulance--\$75/day (expected to be reimbursed by auto insurance company)

Motion made by Councilman Wachtel, seconded by Councilman M. Baldwin, to approve Resolution 2018-01. Motion carried unanimously.

Councilman M. Baker asked about the damage to the ambulance. Chief Bragg replied that it appears to have damaged the cab and chassis, and that he anticipates the actual cost to repair may exceed the original estimate of approximately \$14K, but they will not know for sure until they begin the repairs. The ambulance is currently at the International dealership in Frederick, MD awaiting repairs.

h. Approve/deny Issuance of Special Events Permit 1801 for Main Street Martinsburg/Bucky's LTD Auto Body Norwalk Soap Box Derby Race to be held on Saturday, June 9, 2018 from 6:30 AM until 3:30 PM along the Attached Route, Contingent upon Proof of Adequate Liability Insurance and Payment of any Required Fees for City Services, unless Waived in Accordance with Ordinance 2016-32 (\$4,017.50 Recommended)

Motion made by Councilman J. Baker, seconded by Councilman M. Baker, to approve Permit 1801, as requested. Motion was amended and seconded to waive the recommended fees.

Councilman Wachtel asked if a previously requested list of participants and their addresses had been submitted to determine if any of the participants were City residents. Such a list was not available.

Vote on the original and amended motion carried, with Councilman Wachtel voting no.

i. Approve/deny Issuance of Special Events Permit 1802 for March of Dimes March for Babies to be held on Saturday, April 28, 2018 with Walking Portion to take Place from 9-11 AM, Contingent upon Proof of Adequate Liability Insurance and Payment of any Required Fees for City Services (\$140 Recommended)

Motion made by Councilman J. Baker, seconded by Councilman Collinson, to approve Permit 1802, as requested. Motion carried unanimously.

j. Approve/deny Issuance of Special Events Permit 1803 for Berkeley Heights Elementary 5K to be held on Saturday, April 21, 2018 from 8 AM until 10:30 AM, Contingent upon Proof of Adequate Liability Insurance and Payment of any Required Fees for City Services (\$490 Recommended)

Motion made by Councilman J. Baker, seconded by Councilman Knowles, to approve with no fee. City Attorney Kin Sayre stated that fees can only be waived as per the ordinance for City sponsored or co-sponsored events. City Manager Mark Baldwin added that the event had been held the previous year and the fee had been paid.

Motion amended by Councilman J. Baker to approve as submitted with recommended fee. Amendment was seconded by Councilman Knowles and was carried unanimously.

k. Approve/deny Issuance of Special Events Permit 1804 for Main Street Martinsburg Easter Parade/Pet Parade, to be Held on Saturday, March 31, 2018 from Noon until 2 PM on N. Queen Street and the Town Square Pedestrian Plaza from Noon until 2 PM, Contingent upon Proof of Adequate Liability Insurance and Payment of any Required Fee for City Services (\$0.00 Recommended)

Motion made by Councilman Collinson, seconded by Councilwoman Johnson, to approve Event Permit 1804 as requested. Motion carried unanimously.

l. Confirm Consensus of Council to Fund Repair of the Heating System at the Boys and Girls Club

Mr. Baldwin stated that they Club was still working on quotes, but it appears the repair will be approximately \$31,000. The unit has been temporarily fixed so that the building can be used.

Motion made by Councilman Wachtel, seconded by Councilwoman Johnson, to confirm the previous consensus of Council and fund the repairs.

Councilman M. Baker asked if the Boys and Girls Club was instructed to take the low bid or the best bid. Mr. Baldwin stated that the bid is expected to be in the \$30K range, but if it is substantially more, Council should be advised. Councilman J. Baker added that the low bidder may not necessarily be the best bid, but it should not be substantially more.

m. Approve/deny Purchase of Audio/Visual Equipment Upgrades for Martinsburg Fire Department Training room--\$5,519.31—EMS Capital Improvement

Motion made by Councilman Knowles, seconded by Councilman Collinson, to approve the purchase as requested. Motion carried unanimously.

n. Approve/deny Four (4) Temporary Seasonal Workers for the Public Works Department--\$19,200

Motion made by Councilman Collinson, seconded by Councilman Knowles, to approve the employment of four seasonal temporary workers. Motion carried unanimously.

o. Approve/deny Tow Summer Interns from Shepherd University for Work on an MS4 Project (Stormwater)--\$19,205.53

Motion made by Councilman Wachtel, seconded by Councilman Knowles, to approve the employment of two summer interns for MS4 Project. Motion carried unanimously.

p. Approve/deny bid recommendation for Kubota 700 Series Zero Turn Mower for the Public Works Department--\$7,495—Winchester Equipment Company

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

q. Approve/deny Snyder Environmental Pay Application #9 for the N. Queen Street Underpass Utility Relocation Project

No application was submitted.

r. Approve/deny Snyder Environmental Pay Application # 6 for Big Springs Water Treatment Plant Upgrade--\$284,326.11

Motion made by Councilman Collinson, seconded by Councilman Knowles, to approve Pay Application # 6 for the Big Springs Water Treatment Plant Upgrade. Motion carried unanimously.

s. Approve/deny Pro Contracting Pay Application #4 for Oak Street Bridge Utility Relocation Project--\$59,113.72

Motion made by Councilman Knowles, seconded by Councilman J. Baker, to approve Pay Application # 4. Motion carried unanimously.

t. Approve/deny Payment to HRI for WWTP Upgrade Project--\$87,363.50 (\$60K being Retained)

Motion made by Councilman Wachtel, seconded by Councilman J. Baker, to approve the payment. Motion carried unanimously.

Councilman M. Baker asked if there had been any further issues with the equipment. Steve Knipe replied that all issues have been corrected, that the retention of funds is for expenses incurred with previous issues.

u. Approve/deny Change Order #3 between the City of Martinsburg and O'Brien and Gere Engineers, Inc. for Big Springs WTP Interim Services for Treatment of PFAAs--\$62,888 and an Increase of 59 Days

Motion made by Councilman J. Baker, seconded by Councilman Wachtel, to approve Change Order # 3 as submitted. Motion carried unanimously.

Councilman M. Baker asked if the plant is in full operation. Mr. Knipe replied that it is at 50%, but will be fully operational by the end of February.

Motion made by Councilman Knowles, seconded by Councilman Etherington, to go into Executive Session for legal and real estate at 6:59 PM. Motion carried unanimously.

Mayor Karos thanked Boy Scout Troop 13 for coming. A spokesman for the troop stated that they were in attendance to earn their citizenship and community merit badge.

Executive Session

Motion made by Councilman Wachtel, seconded by Councilman J. Baker, to go into Executive Session at 7:27 PM for personnel, legal and real estate. Motion carried unanimously.

Meeting adjourned by unanimous consent at 7:45 PM

George Karos, Mayor

Gena Long, City Recorder