

**City of Martinsburg
Regular Council Meeting
Thursday, September 13, 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 George Karos at 6:30 PM. The following Council Members were present: Gregg Wachtel, Harriet Johnson, Dennis Etherington, Kevin Knowles, Ken Collinson and Mark Baker. Absent was Jason Baker. Also present were: Mark Baldwin, City Manager; Gena Long, City Recorder, City Attorney Kin Sayre, Police Chief Maury Richards; Fire Chief Paul Bragg; Community Development Director Nancy Strine; City Engineer/Planning Director Kim Petrucci; Public Works Director Jeff Wilkerson, Utilities Director Steve Knipe and Finance Director Mark Spickler

3. Salute to Flag

Councilman Knowles led the salute to the Flag.

4. Prayer—

Mayor Karos delivered the invocation.

5. Approve August 16, 2018 Regular Council Meeting Minutes

Motion made by Councilman Etherington, seconded by Councilman Collinson, to approve the August 16, 2018 Regular Council Minutes. Motion carried unanimously.

6. Approve July 2018 Administrative and Financial Report

Motion made by Councilman Etherington, seconded by Councilwoman Johnson to approve the July 2018 Administrative and Financial Report. Motion carried unanimously.

7. Presentations

a. Recent rain event(s) update—Public Works Director Jeff Wilkerson and Utilities Director Steve Knipe

Jeff Wilkerson, Public Works Director, stated that over 30 inches of rain have fallen in the City since May 2018; the average for the entire year in this region is 35 inches. On August 21, the City received approximately five inches of rain in two hours; and on August 31 there were 2 inches of rainfall in 45 minutes. The water is not evaporating at the rate it is falling and the water has no where to go, therefore there has been wide-spread flooding. Two to four more inches of rain are expected early next week and high winds from Hurricane Florence are apt to topple trees and cause power outages, which will impact the City's ability to pump stormwater. Mr. Wilkerson stated that sandbags are available for City residents.

Steve Knipe, Utilities Director, stated that the United States Geological Survey monitors stream conditions and water levels. The water table currently surpasses records set in 1972. The ground has no more capacity to absorb water. He advised those who had experienced flooding during the 8/21 and 8/31 storms to be prepared for further flooding with the arrival of rains from Hurricane Florence.

b. Make Comment on ABCA Zoning Form for BPizza of West Virginia, LLC, d.b.a. Blaze Pizza—925 Foxcroft Avenue, Ste. H

Mr. James Hallman, Manager of Blaze Pizza, was present for questions. Mayor Karos asked about the hours of the establishment. Mr. Hallman stated that they open at 11 AM and close at 10 PM Sunday-Thursday and 11 PM on Friday and Saturday.

Motion was made by Councilman Wachtel, seconded by Councilman Etherington, to forward the Zoning Form to the ABCA without comment. Motion carried unanimously.

C. Make comment on ABCA Zoning Form for Fifty-One Eleven, LLC—500 Williamsport Pike

Mr. Abdollah Hadavand, owner, was present for questions or comments. Mr. Hadavand stated that the anticipated hours of operation are from 7 AM until 3 AM. The location is on Rte. 11, behind Domino's Pizza.

Motion made by Councilman Wachtel, seconded by Councilwoman Johnson, to forward the Zoning Form to the ABCA without comment. Motion carried unanimously.

D. Proclamation—Constitution Week—Shenandoah Valley Chapter National Society Daughters of the American Revolution

The City Recorder read the Proclamation and presented it to members of the DAR.

E. Proclamation—National Drive Electric Week—September 15-22, 2018

The City Recorder read the Proclamation and presented it to the representatives of the event.

F. Presentation Concerning PFOA/PFOS—Paul Napoli, Tate Kunkle, Napoli/Schkolnik Law Firm and Mark Calantonio, Fitsimmons Law Firm

The individuals were not present due to anticipated travel difficulty associated with Hurricane Florence.

F. Berkeley County Teen Court Initiative Presentation—Staci Rohn and Hal VanMetre

Ms. Rohn stated that the Teen Court Program is designed to be an option for non-violent first-time juvenile offenders. The court members are also students allowing cases to be heard and consequences determined by a jury of their peers. The offenders are required to participate in community service and to serve as a juror in future hearings.

Mr. VanMetre representing Berkeley County Schools, stated that the program is to be offered to students in North and South Middle, as well as Martinsburg High School. The project can help with mentoring of vulnerable students as well as teaching consequences of poor choices.

Ms. Rohn added that the law requires the judge to be an individual holding a law degree. The law also allows cities and counties to assess a \$5 per traffic ticket charge to fund the program. She is asking the City to allow this assessment as well as the use of the Court Room.

City Attorney Kin Sayre stated that the Council would need to pass an ordinance to allow the \$5 assessment, and that it would not apply to parking tickets.

The Mayor asked that Ms. Rohn work out the details of the court room use with the Police Department and Chief Magistrate Buckner.

Councilman Knowles added that this has been a successful program in other jurisdictions and he is glad to see it in Berkeley County.

8. Petitions from Citizens

Ms. Carrie Ramsey, 703 Mill Race Drive, presented the following statement:

August 21, 2018—initial sewage spill from manholes and toilet;

August 22, 2018—clean up \$6,000. 1 day lost employment \$400

August 23, 2018—first phone calls to City offices

August 30, 2018—AC unit repair by Griffith Energy Services \$216.95

August 31, 2018—Power wash \$290

September 4, 2018—Travelers Insurance investigator visit

September 6-7, 2018—calls to Matt Shackelford at Travelers requesting lodging

September 8, 2018—asthma attack, respiratory infection, visit to MedExpress \$50 office visit, \$40 medication

September 9, 2018—2nd call to Stormwater hotline

September 12, 2018—first night in hotel paid by Travelers Insurance (21 days w/o habitable lodging, no food allowance)

Home is still uninhabitable due to sewage in yard and along Mill Race Drive between 700-703. Cannot get mail, pull into driveway or walk dog without being exposed to raw sewage. Berkeley County Health Department advises this is a significant health risk. Sewage still spilling from manholes at 700-701 and at end of driveway of 703 Mill Race Drive. Expecting new sewage inundation with each rainfall. Photographic and video evidence in my possession.

Home was to go on market for sale September 1, 2018, asking price \$230,000. Berkeley County Assessor's Office values land and dwelling Lot 12 Section 2 Briarwood at \$168,300. Estimated loss of property value--\$20,000-\$30,000 (Toxic Incident History must be disclosed to potential buyers by law.)

Spring/Summer 2017—Bill Queen gets building permit for large structure against FEMA guidelines from 1980's regarding water runoff and construction in Briarwood. Homes downhill from this begin to experience increase in water, flooding.

Mill Race has not been mowed to facilitate drainage in several years. FEMA rerouted the Mill Race in the 1980's. It should not have water in it. Currently, the Mill Race drainage pipes that go under Mill Race Drive are completely clogged with debris from both sides.

Costs

Estimate to rebuild walls—Hutzler Building and Contracting--\$12,000

Estimate to repair floor—Sherwin Williams—incomplete at this time.

Estimate to repair flood—Carpet World--\$3,452.65

Currently paying electric bill, internet bill, homeowner's insurance and real estate taxes on a dwelling that is not livable at an estimated cost of \$470 monthly.

Currently having to board my dog.

Currently living at Fairfield Inn and Suites--\$169 daily/one month stay--\$5,070 before tax.

Questions

1. What is the City doing to repair/upgrade sewer lines?
2. When is the anticipated completion date?
3. Cost of repair?
4. How do I know this will not happen in the future?
5. Why are large businesses moving here without upgrades to the City's infrastructure?
6. Why are building permits being issued in Briarwood against FEMA recommendations?
7. Why are there no existing ordinances that prohibit pumping of water which flows into others' property such as exist for snow removal?
8. Will the City purchase my home and property in lieu of repeat claims for sewage damage due to insufficient stormwater drainage? This would seem more cost-effective.

Partial Cost to City for Claim—August 21 incident

\$61,119.60 for sewage mitigation and rebuild

\$34,421.85 for contents

\$95,541.45 total to date.

Ms. Ramsey added that she was appreciate of City staff help, particularly thanking Mr. Joe Cool from the Water Department.

Mr. Stephen Youngblood, 1002 Carrie Way, stated that he is experiencing issues with water run-off and flooding of his home. The problem is long-term and is partially caused by run-off from his neighbor's property. He stated that Code Enforcement has been out several times and given warnings, but no citations have been issued. He has attempted to reach the City Engineer several times and has had no response.

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

- a. Martinsburg-Berkeley County Public Library Commission May 24 and June 21, 2018 Meeting Minutes**
- b. Hagerstown/Eastern Panhandle Metropolitan Planning Organization May 16, 2018 Meeting Minutes and Projects Update**
- c. Comcast Memorandum regarding changes to the channel lineup effective September 12, 2018**
- d. Eastern Panhandle Transit Authority July 16, 2018 Board of Director's Meeting Minutes and Financial Reports**
- e. Correspondence, dated August 23, 2018, from Mayor Karos to the Berkeley County Council regarding the City's position on Animal Control services**
- f. Eastern WV Regional Airport July 9 and July 16th Board Minutes and Financial Reports**

Motion made by Councilman Collinson, seconded by Councilman Knowles, to receive and file items 10A-10F. Motion carried unanimously.

10. Reports of Chairpersons of Council Standing Committees

11. Report of Mayor

a. Reappoint the following to the Code Appeals Board 10/1/2018-10/1/2021:

**Michael Maphis
James Dailey**

Motion made by Councilman Knowles, seconded by Councilman Collinson, to reappoint Mr. Maphis and Mr. Dailey to the Code Appeals Board through 10/1/2021. Motion carried unanimously.

b. Report the following vacancies:

- **Board of Zoning Appeals (1 alternate)**
- **Parking Authority (2)**
- **Human Relations Committee (2)**
- **Airport Authority (1)**
- **Code Appeals Board (engineer or architect) and alternate (2)**

12. Report of City Attorney

a. Discuss Correspondence, Dated 8/30/2018, from the Berkeley County Council to the City of Martinsburg Regarding Animal Control Services

Mr. Sayre stated that his interpretation of the memorandum was that the County Animal Control would provide service to City residents only to the extent covered by County ordinances. They will not enforce City specific ordinances, such as the maximum dog limit or animals restricted by zoning.

13. Report of City Manager

City Manager Mark Baldwin stated that a special meeting may be required to approve the paving bid, to be opened the following week.

He stated that Oak Street Bridge is now complete and open to traffic. Burke Street construction has been delayed by the weather.

14. Unfinished Business

a. Third and Final Reading of Ordinance 2018-15 Amending Ordinance 2018-11 Which Established Job Descriptions for Employees of The City of Martinsburg, West Virginia

Motion made by Councilman Etherington, seconded by Councilwoman Johnson, to read Ordinance 2018-15 through the third and final reading, by title only, and adopt. Motion carried unanimously.

b. Third and Final Reading of Ordinance 2018-16 Amending the City of Martinsburg Zoning Map to Rezone an Unimproved Parcel South of Meridian Parkway Containing Approximately 14.52 Acres from BP (Planned Business) to BC (Community Business)

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to read Ordinance 2018-16 through the third and final reading, by title only, and adopt. Motion carried unanimously.

c. Third and Final Reading of Ordinance 2018-17 annexing to the City of Martinsburg a parcel of real estate consisting of .8821 acres and identified upon Berkeley County, West Virginia tax maps in the Opequon tax district,

map 10 as Parcel 8.3 and providing for the institution of the necessary proceedings before the County Council of Berkeley County, West Virginia, in accordance with West Virginia code § 8-6-4 (annexation without election).

Motion made by Councilman Etherington, seconded by Councilman Collinson, to read Ordinance 2018-17 through the third and final reading, by title only, and adopt. Motion carried unanimously.

This will now go to the Berkeley County Council for final approval.

d. First and Second Reading of Ordinance 2018-18 Amending the City of Martinsburg Zoning Map to Rezone an Unimproved Parcel Identified as the South-Western end of Triamigas Drive, Containing Approximately .8821 Acres from Unzoned to BC (Community Business)

Motion made by Councilman Etherington, seconded by Councilman Collinson, to read Ordinance 2018-18 through the third and final reading, by title only, and adopt. Motion carried unanimously.

15. New Business

a. First and Second Reading of Ordinance 2018-19 to Amend and Reenact the City of Martinsburg Personnel Rules and Policies, Section VI—Benefits, B. Holiday Pay

Motion made by Councilman Etherington, seconded by Councilman Wachtel, to read Ordinance 2018-19 through the first and second reading, by title only. Motion carried 4-2, Knowles and Collinson voting no.

b. Approve/deny Resolution 2018-15 Authorizing Participation in the Eastern Panhandle Home Consortium of WV for the Period of July 1, 2019-June 30, 2021

Motion made by Councilman Collinson, seconded by Councilman Knowles, to approve Resolution 2018-15. Motion carried unanimously.

c. Approve/deny Housing Consortium Cooperative Agreement by and between the City of Martinsburg and the Counties of Berkeley, Jefferson and Morgan, West Virginia

Motion made by Councilman Etherington, seconded by Councilman Knowles, the agreement. Motion carried unanimously.

d. Approve/deny Trick or Treat for children, 12 and under, in the City of Martinsburg—Wednesday, October 31, 2018, 6-8 PM

Motion made by Councilman Etherington, seconded by Councilwoman Johnson, to approve trick or treat. Motion carried unanimously.

e. Discuss and take action as necessary regarding holiday schedule for Christmas and New Year's (see example)

Motion made by Councilwoman Johnson, seconded by Councilman Wachtel, to approve December 24, 26 and 31, 2018 as additional City holidays. Motion carried unanimously.

f. Approve/deny flu shots for City employees and elected officials--\$20 each (payable by City) and HEP A vaccinations, cost TBD (payable by City)—administered by Berkeley County Health Department

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve the flu shots and Hep A shots. Motion carried unanimously.

Councilman M. Baker asked about Hep B shots. Mr. Baldwin responded that they can check with the health department and offer those as well, and that the City already offers that to employees that may come in contact with the virus.

g. Approve/deny Special Events Permit 1821 for St. Joseph Catholic Church's Our Lady of Guadalupe Procession, Sunday, December 9, 2018, 2018 from 7 AM until 7:45 AM, contingent upon proof of adequate liability insurance and payment of any recommended fees for City services (\$0.00 recommended)

Motion made by Councilman Collinson, seconded by Councilman Knowles, to Special Events Permit 1821 as requested. Motion carried unanimously.

h. Approve/deny Special Events Permit 1822 for Mountain State Apple Harvest Festival's request for the MSAHF Grand Feature Parade and Apple Trample Race, to be held on Saturday, October 20, 2018 along the attached route(s), from 10:30 AM until 3:30 PM, contingent upon proof of adequate liability insurance and payment of any recommended fees for City services (\$13,793.50 recommended, unless waived in accordance with ordinance)

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve Special Events Permit 1822, waiving fees in accordance with ordinance. Motion carried unanimously.

i. Approve/deny Special Events Permit 1823 for Main Street Martinsburg and Healthy Berkeley's Farm to Fork Event to be held on Sunday, September 23, 2018 from 4 PM until 9 PM (5 hours total reservation) in the Town Square Pedestrian Plaza, contingent upon proof of adequate liability insurance and payment of any recommended fees for City services unless waived in accordance with ordinance--\$0.00 recommended; approval to include letter of endorsement to ABCA

Motion made by Councilman Collinson, seconded by Councilman Knowles, to approve Special Events Permit 1823, to include letter of endorsement to the ABCA. Motion carried unanimously.

j. Approve/deny Special Events Permit 1824 for Cornerstone Baptist Church's Life Chain Prayer Vigil to be held on Sunday, October 7, 2018 from 2-3 PM in the Town Square Pedestrian Plaza, contingent upon proof of adequate liability insurance and payment of any recommended fees for City services--\$0.00 recommended

Motion made by Councilman Wachtel, seconded by Councilman M. Baker, to approve Special Events Permit 1824. Motion carried unanimously.

k. Approve/deny Special Events Permit 1825 for Main Street Martinsburg's Banner Auction to be held on Sunday, September 30 from 2:30 PM until 4 PM in the Town Square Pedestrian Plaza, contingent upon proof of adequate liability insurance and payment of any recommended fees for City services, unless waived in accordance with ordinance--\$0.00 recommended

Motion made by Councilman Wachtel, seconded by Councilman Collinson, to approve Special Events Permit 1825. Motion carried unanimously.

l. Approve/deny Special Events Permit 1826 for Main Street Martinsburg's Chili Cook-off to be held on Saturday, September 29, 2018 from noon until 6 PM (6 total hours) in the Town Square Pedestrian Plaza and E. King Street, contingent upon proof of adequate liability insurance and payment of any recommended fees for City service unless waived in accordance with ordinance-\$537.25 recommended; approval to include letter of endorsement to ABCA

Motion made by Councilman Collinson, seconded by Councilwoman Johnson, to approve Special Events Permit 1826, waiving fees in accordance with ordinance and to include the letter of endorsement to the ABCA. Motion carried unanimously.

m. Approve/deny Breast Cancer Awareness Cumberland Valley's request to tie pink ribbons on the parking meters, utility poles and trees along Queen and King Streets—October 1-October 12

Motion made by Councilman Collinson, seconded by Councilman M. Baker, to approve the request as submitted. Motion carried unanimously.

n. Approve/deny request from US General Services Administration to place bollards in the City Right of Way for additional security at the W. Craig Broadwater Federal Building Courthouse—217 W. King Street

City Manager Mark Baldwin asked that any motion should be contingent upon the GSA continuing to work with City staff on design.

Representatives from the General Services Administration were present to describe the project. The 225 bollards will be placed on shallow mounts, 36-48 inches apart. The sidewalk will be ADA complaint and they will take care to avoid disrupting any utility lines. The bollards are required to meet the requirements of a new mandate. They intend to begin work in February and will continue to work with City staff in every way possible.

Mr. Sayre stated that the liability would be on the Federal Government, however, in the event of an incident it is likely that both entities would be enjoined in a lawsuit.

o. Discuss and take action on bid for Gateway/Wayfinding Signage Project—Color.ad--\$495,287

The City Manager recommended that Council reject the bid and go back out for bids soon. Even after working with the bidder, the final number is far higher than anticipated.

Motion made by Councilman M. Baker, seconded by Councilman Collinson, to reject the bid and go back out for bids. Motion carried unanimously.

p. Approve/deny bid recommendation for Stormwater Management Geotechnical Services Project—Triad Engineering, Inc.--\$11,500 (see memo)

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

q. Approve/Deny Joint Funding Agreement (JFA) between the Department of the Interior U.S. Geological Survey and the City of Martinsburg for partial operation and maintenance of a streamgaging station on Tuscarora Creek in Martinsburg, October 1, 2018-September 30, 2019--\$4,200.00 (Utilities Department).

Motion made by Councilman M. Baker, seconded by Councilman Collinson, to approve the JFA. Motion carried unanimously.

r. Discuss and take action as necessary on draft Berkeley County Collaboration and Strategic Action Plan--HIDTA

Motion made by Councilman Knowles, seconded by Councilman Collinson to approve the draft and, at the City Manager's recommendation, the motion was amended and seconded to reserve the right to review and accept amendments and funding sources before final approval. Motion carried unanimously.

s. Approve/deny Pay Application # 4 for W. Harley Miller for the Martinsburg Police Department/Municipal Court building--\$375,660

Motion made by Councilman Etherington, seconded by Councilman Collinson, to approve the pay application. Motion carried unanimously.

t. Approve/deny quote recommendation for landscaping replacement at E. Burke Street Parking Lot—Rocky Ridge Landscaping nursery--\$2,750.00

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve the recommendation. Motion carried unanimously.

u. Approve/deny bid recommendation for deicing salt—Cargill Deicing Technology Clearlane Salt--\$98.54/ton

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

Executive Session

Motion made by Councilman Knowles, seconded by Councilman Collinson, to go into Executive Session at 7:42PM for legal and personnel matters. Motion carried unanimously.

Meeting adjourned by unanimous consent at 7:55 PM

George Karos, Mayor

Gena Long, City Recorder