

**City of Martinsburg
Regular Council Meeting
Thursday, September 12, 2019
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 (6:37 PM), Harriet Johnson, Dennis Etherington, Kevin Knowles, Ken Collinson, Kimberly Nelson and Jason Baker. Also present were: City Manager Mark Baldwin, Gena Long, City Recorder, City Attorney Kin Sayre, Police Chief Maury Richards; Utilities Director Steve Knipe, Fire Chief J.D. Hummingbird, Economic/Community Development Director Shane Farthing, CDBG/HOME Administrator Nancy Strine and Finance Director Mark Spickler.

3. Salute to Flag

Councilwoman Nelson led the salute to the flag.

4. Prayer—

Rev. Doctor Rufus Burton led the invocation.

5. Approve August 15, 2019 Regular Council Meeting Minutes and August 15, 2019 Special Meeting Minutes

Motion made by Councilman Knowles, seconded by Councilman Etherington, to approve the August 15 Regular and Special Meeting Minutes. Motion carried unanimously.

6. Approve July 2019 Administrative and Financial Report

Motion made by Councilman Etherington, seconded by Councilman Collinson, to approve the July 2019 Administrative and Financial Report. Motion carried unanimously.

7. Presentations

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

Ms. Barbie Frankenberry, Shenandoah Valley Chapter DAR, read the Proclamation.

8. Petitions from Citizens

Mr. David Haarberg, Winchester Avenue, provided the following statement:

I strongly support the proposed amendment to the zoning ordinance which allows Tourist Homes, such as Airbnb, “by right” in all residential districts of the city, as recommended to the Council by the Planning Commission.

I have no current or projected financial interest in Tourist Homes in Martinsburg or elsewhere. I am interested in good government, and good legislation which is good for the city. Having too many Airbnb properties seems about as much a problem to me as having too many choices of restaurant downtown. It’s a problem we should be happy to have.

I am familiar with Airbnb as a customer, having stayed at Airbnb properties in Montreal, Palm Springs and Colorado Springs. I also have a friend in DC who converted a long-term rental basement apartment into Airbnb. This decision resulted in a greater income, greater flexibility and far fewer problems for himself and neighbors how had previously observed illicit activities by long-term tenants who also tended to be in arrears on their rent.

Rationale for supporting the amendment:

1. Contrary to what some have argued, Tourist Homes, such as Airbnb do NOT have in inherently negative effect on neighbors, especially when compared to the impact of vacant or dilapidated long-term rental properties. Poorly maintained long-term rentals and vacant homes are the deleterious property uses which actually plague our city, and have toxic effect on neighbors. I live next door to a large vacant home and a half block from another one, both having fallen into notorious disrepair with no apparent legislative or other action by the City to alleviate. The City should take steps to protect us from real, rather than imaginary problems.
2. Airbnb has very high standards for both property owners and customers, and is self-regulating. Property owners and customers are both subject to online performance feedback with each use, and per performers are dropped or banned. Martinsburg should have such a good system in place to monitor its long-term rental property owners and renters. Unlike other properties in Martinsburg, Airbnb properties will not have garbage piled up in front, weeds growing in back, broken windows, or junked vehicles in the alley. Airbnb owners typically must visit their properties frequently to keep them presentable, unlike our typical unmotivated landlords.
3. Property owners should be allowed to use and maximize the use and value of their properties as either short-term or long-term rentals. Airbnb can either be a business enterprise or a lifeline for people who are house-rich but otherwise struggling to pay the bills. Owners in all residential districts (and those business districts already included by right) should be given the same opportunity to maximize the productivity of their property.
4. Visitors and current residents of the city should have ample choice of accommodations for themselves and their guests. I know residents who have used or plan to use Airbnb in Martinsburg to house family or friends visiting them there, and I would consider doing so for my own friends and family.
5. Some have said that they like knowing their neighbors and lament a loss of community supposedly threatened as a result of short-term rentals. Neighbors cannot control who lives next to them unless they purchase the property, and there is nothing that makes long-term occupants necessarily more friendly and respectful than short-term tenants. Having a problem with a short-term tenant is at least a short-term problem, and bringing specific problems to the attention of the owner or appropriate authorities is the same mechanism either way, except that a complaint may be more likely to have an impact in the case of an Airbnb property. Once again, I would rather have an Airbnb neighbor than vacant decaying properties or some of the long-term tenants gifted to our neighborhoods by some of the worst landlords, such as those local landlords repeatedly cited under our drug house ordinances.
6. Legislation of this type should be properly vetted through all offices of city government who have information or data which may be helpful. For example, the city's Community and Economic Development Director may have information on economic impact and best practices for regulation of Airbnb-type

properties, and the Chief of Police may have data on disturbances or complaints at local Airbnb properties. I have not checked with them myself, but I doubt that any data or background information they have would support the notion that Airbnb properties have been, or are likely to be detrimental to Martinsburg.

7. Some of the issues cited with short-term rentals, such as whether appropriate taxes are being paid, or whether there are code violations, are not fixable with this amendment, and the same concerns apply to all businesses in the city, particularly long-term rentals who owners register, and pay B&O tax and other fees on the honor system. Likewise, code violations and quality of life issues for tenants and neighbors are more likely to be addressed promptly and successfully via Airbnb's system than via our own permitting and property inspection processes. These are long-standing and deeply entrenched problems city government should be doing something about to improve our neighborhoods.

The proposed zoning amendment allowing tourist homes by right in all residential neighborhoods in Martinsburg is good for owners, visitors and the city as a whole. The current requirement for special exception is unnecessarily burdensome to property owners, and it has proven susceptible to objections not funded in reason and not supported by facts, which makes the process seem arbitrary and unfair to property owners. The amendment fixes that, and I urge City Council to pass it.

Mr. Tom Johnson, Hillcrest Drive, stated that the Board of Zoning Appeals hears Special Exception cases for Airbnb because there is currently no other rule in place. Airbnb is a business and allowing any business to skirt the rules in a residential neighborhood could cause issues. He encouraged officials to set rules in the upcoming Zoning Ordinance rewrite.

Ms. Barbara Bratina, Tennessee Avenue, asked Council to consider the Planning Commission recommendation. She encouraged maintaining the current requirement to seek a Special Exception and conduct a Public Hearing in RUA districts. Allowing Airbnb, by right, in residential districts takes away the voice and right to petition of the residents.

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

- a. Eastern Panhandle Transit Authority July 15, 2019 Meeting Minutes and Financial Reports**
- b. Main Street Martinsburg June 24, 2019 Meeting Minutes and financial statements**
- c. Development Authority of Berkeley County Board of Director's Minutes, January 2019-July 10, 2019**
- d. Resolution of Appreciation—Retired Police Officer Brian Rouse—33 years of service**
- e. For the Kids, by George, Children's Museum August 1, 2019 Meeting Minutes and Director's Report**
- f. Eastern WV Regional Airport Authority July 8, 2019 Meeting Minutes and Financial Reports**
- g. Planning Commission August 7, 2019 Meeting Minutes**
- h. Board of Zoning Appeals August 6, 2019 Meeting Minutes**

Motion made by Councilman Collinson, seconded by Councilman Knowles, to receive and file 9A-9H. Motion carried unanimously.

Councilman Etherington asked Council to pay attention to item 9E, specifically the report on the Escape Room, and keep it mind for Item 16 O.

10. Reports of Chairpersons of Council Standing Committees

a. Council as a Whole August 19, 2019 Committee Meeting Minutes

**Council as a Whole Committee Minutes
Monday, August 19, 2019—4:30 PM**

Present: Mayor George Karos, Kevin Knowles Kimberly Nelson, Gregg Wachtel, Dennis Etherington and Harriet Johnson

Others in Attendance: Mark Baldwin, City Manager; Mark Spickler, Finance Director and News Media

Unable to Attend: Jason Baker

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

1. FY 2019-2020 General Fund Budget

a. General Fund Unassigned Fund Balance (Unencumbered Balance)—Finance Director Mark Spickler, provided an overview of the General Fund Unassigned Balance.

b. City Manager Recommendations/Committee Discussion—City Manager Mark Baldwin provided an overview of recommendations for the FY 2019-2020 unassigned balance.

The consensus of the Committee was to forward the City Manager recommendations as suggested to City Council for approval (see attached).

c. FY 2019-2020 Budget—Going Level Overview—Finance Director, Mark B. Spickler, provided and overview of the going level report.

d. Discuss Mayor and City Council monthly/annual salaries: After discussion, the consensus of the Committee was not to increase Mayor and Council salaries.

2. City Manager Report—Update—City Manager provided an overview of on-going and upcoming City projects, City staff recommendations and sales tax fund.

City Manager recommended adding an additional Code Enforcement position to the Planning Department. Consensus of the Committee was to move forward to add the position. The Committee also recommended to continue evaluation of adding an “in-house” City Attorney and Assistant City Manager/Project Manager in the future.

11. Report of Mayor

Report the following vacancies:

- **Historic Preservation Review Commission (1)**
- **Parking Authority (2)**

12. Report of City Attorney

Discuss Potential Text Amendment Regarding Airbnb in the City of Martinsburg

City Attorney stated that it was brought to his attention that legislation was passed in the summer, as part of Home Rule amendments, that cities cannot restrict rental property in any district, long-term or short-term. This legislation may require the City to look at all rental housing ordinances, including Airbnb and tourist homes, and bring them into compliance, therefore, any ordinances on the issue would be premature.

The City Attorney also mentioned the Drug House ordinance, stating that an amendment might be forthcoming to deal with those landlords who find themselves in violation frequently.

13. Report of City Manager

14. Unfinished Business

15. New Business

a. First and Second Reading of Ordinance 2019-08 Amending Ordinance 2018-15 which Established Job Descriptions for Employees of the City of Martinsburg, West Virginia

Motion made by Councilman Collinson, seconded by Councilman Knowles, to read Ordinance 2019-08 through the first and second reading, by title only. Motion carried unanimously.

b. Approve/deny Resolution 2019-18—General Fund Revision #2 for FY 2019-2020

Motion made by Councilman Etherington, seconded by Councilman Collinson, to approve Resolution 2019-18. Motion carried unanimously.

c. Approve/deny Police Levy Fund Budget Revision # 1 for FY 2019-2020

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

d. Approve/deny Sanitation Fund Budget Revision #1 for FY 2019-2020

Motion made by Councilman Etherington, seconded by Councilwoman Johnson, to approve the Sanitation Fund Revision. Motion carried unanimously.

e. Approve/deny contract for professional services between the City of Martinsburg and Urban Design Ventures, LLC, for FY 2020 -2022 CDBG/HOME Programs-- \$29,500 annually.

Motion made by Councilman Collinson, seconded by Councilman Etherington, to approve the contract as submitted. Motion carried unanimously.

f. Approve Resolution 2019-19 adopting agreement between the City of Martinsburg and Morgan County Sheriff's Office for donation of two de-commissioned Martinsburg Police Vehicles

Motion made by Councilman Collinson, seconded by Councilwoman Johnson, to approve Resolution 2019-19. Motion carried unanimously.

g. Approve/deny Trick or Treat for children, 12 and under, in the City of Martinsburg—Thursday, October 31, 2019 from 6-8 PM

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

h. Discuss and take action as necessary regarding holiday schedule for Christmas and New Year's

Motion made by Councilman Knowles, seconded by Councilwoman Johnson, to approve Tuesday, December 24, 2019 as an additional holiday. Motion carried unanimously.

i. Approve/deny flu shots for City employees and elected officials--\$20 per employee

Motion made by Councilman Etherington, seconded by Councilwoman Johnson, to approve flu shots. Motion carried unanimously.

j. Approve/deny Life Chain Prayer Vigil in the Town Square Pedestrian Plaza on Sunday, October 6, 2019 from 2-3 PM, contingent upon proof of adequate liability insurance and payment of recommended fees for City services--\$0.00 recommended

Motion made by Councilman Collinson, seconded by Councilman Etherington, to approve Special Events Permit 2019-35, as requested. Motion carried unanimously.

k. Approve/deny Special Events Permit 2019-36 for Mountain State Apple Harvest Festival Parade and Apple Trample Race on Saturday, October 19, 2019 along attached route, contingent upon proof of adequate liability insurance and payment of recommended fees for City services, unless waived by ordinance--\$10,673.50 recommended

Motion made by Councilman Collinson, seconded by Councilman Etherington, to approve Special Events Permit 2019-36, as requested, waiving all fees for City services. Motion carried unanimously.

l. Approve/deny Special Events Permit 1937 for Walk to End Alzheimer's on Saturday, September 28, 2019 from 9 AM until noon, along attached route, contingent upon proof of adequate liability insurance and payment of recommended fees for City services--\$210.00 recommended

Motion made by Councilman Knowles, seconded by Councilwoman Nelson, to approve Special Events Ordinance 1937, as requested, waiving all fees for City services.

Legal Counsel Kin Sayre stated that the ordinance does not have a mechanism for waiving fees for those events not City sponsored or City co-sponsored because it would not be proper for the City to select which events to waive fees for. Waiving fees for this event would show preference.

Via roll call vote, motion failed.

Yes: Knowles, Nelson and Baker.

No: Wachtel, Johnson, Collinson, Etherington.

Motion made by Councilman Etherington, seconded by Councilwoman Johnson, to approve the event, contingent upon payment of liability insurance and payment of fees for City services. Motion carried, Baker voting no.

m. Approve/deny Special Events Permit 1938 for the Hope Event in the Town Square Pedestrian Plaza on Saturday, October 26, 2019 from 11 AM until 5PM (total hours), contingent upon proof of adequate liability insurance and payment of any recommended fees for City services--\$0.00 recommended

Motion made by Councilman Knowles, seconded by Councilwoman Nelson, to approve Special Events Permit 1938, as requested. Motion carried unanimously.

n. Approve/deny request from Ghostly Gala for letter of endorsement to the ABCA for wine and beer sales and to temporarily close the 100 block of E. Martin on Saturday, October 26, 2019 from 6 PM until 2 AM

Motion made by Councilman J. Baker, seconded by Councilman Knowles, to approve.

Motion made by Councilman Etherington, seconded by Councilman Wachtel, to table the request until more information was available.

Via roll call vote, motion to table carried.

Yes: Wachtel, Johnson, Etherington, Collinson.

No: Nelson, Knowles, Baker.

o. Approve/deny request from For the Kids, by George Children's Museum to serve alcohol at the Caperton Train Station on October 18, 2019 for a fundraising event; Approval to include Letter of Endorsement to the ABCA

Councilman Etherington asked if the Council had set a policy to limit alcohol to one event per year. Councilwoman Nelson stated that there was alcohol at the previous escape room earlier in the year and they were requesting another similar event. As no one was aware if a formal policy had been set previously, discussion concluded.

Motion made by Councilman J. Baker, seconded by Councilman Knowles, to approve. Via roll call vote, Motion carried unanimously.

p. Approve/deny request from West Virginia Sports Promotions for Letter of Endorsement to ABCA for Annual Toughman Contest on Friday, February 28-Saturday, February 29, 2020, to be held at the Berkeley 2000 Recreation Center

Motion made by Councilman J. Baker, seconded by Councilman Etherington, to approve the request. Motion carried unanimously.

q. Approve/deny Amendment to Special Events Permit 2019-15, approved March 14, 2019, to change the date of the Main Street Martinsburg Christmas Parade from Saturday, November 30, 2019 to Tuesday, December 3, 2019 at 7:00 PM.

Motion made by Councilman Knowles, seconded by Councilman Collinson, to approve the amendment. Motion carried unanimously.

r. Discuss and take action as necessary on The Martinsburg Initiative Center for Disease Control (CDC) Grant Funding (see attached)

Police Chief Maurice Richards discussed the program and its successes, and upcoming potential revenue sources.

No action was taken.

s. Approve/deny bid recommendation for purchase of two (2) 2019 F-550 dump trucks for the Public Works Department with associated equipment and warranties--\$140,066 (total)

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

t. Approve/deny bid recommendation for 2019 winter salt recommendation—Clearlane Salt—Cargill Deicing Technology--\$107.31/ton

Motion made by Councilman J. Baker, seconded by Councilwoman Johnson, to approve the recommendation.
Motion carried unanimously.

**u. Approve/deny bid recommendation for Public Works Department asphalt vibratory compactor--\$2,283.95—
Tri-County Rental**

Motion made by Councilman J. Baker, seconded by Councilman Etherington, to approve the bid recommendation.
Motion carried unanimously.

**v. Approve/deny Pay Application # 14 for W. Harley Miller for the Martinsburg Police Department/Municipal Court
building--\$463,860.00**

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

**w. Approve/deny Change Order #4 between the City of Martinsburg and Silling Associates for the Martinsburg
Police Department/Municipal Court-\$11,705 and 0 days.**

Motion made by Councilman Etherington, seconded by Councilman Collinson, to approve Change Order #4. Motion
carried unanimously.

x. Approve/deny Pay Application #1 for Rite Lite Signs for Gateway/Wayfinding Signage Project--\$105,767.10

Motion made by Councilwoman Johnson, seconded by Councilman Collinson, to approve Pay Application #1.

Executive Session

Council went into Executive Session for personnel and real estate 7:17 PM.

Meeting adjourned by unanimous consent at 7:25 PM.

George Karos, Mayor

Gena Long, City Recorder