

**City of Martinsburg  
Regular Council Meeting  
Thursday, April 9, 2020  
The J. Oakley Seibert Council Chambers**

Due to COVID-19 protocols and in accordance with the Berkeley County Health Department's order restricting number of persons permissible per square footage, this meeting was held telephonically with a public access call-in number for the public hearings. The meeting was also streamed live to the City's Facebook page. The meeting started late due to technical issues.

With a quorum present, the regular session of the Martinsburg City Council was called to order by Mayor George Karos at 6:43 PM. The following Council Members were present via telephone: Harriet Johnson, Gregg Wachtel Dennis Etherington, Kevin Knowles, Ken Collinson, Kimberly Nelson and Jason Baker. Physically present were City Manager Mark Baldwin and City Attorney Kin Sayre. Also present telephonically were: Gena Long, City Recorder, City Engineer/Planning Director Kim Petrucci and Finance Director Mark Spickler.

**3. Salute to Flag**

Mayor Karos led the salute to the flag.

**4. Prayer—**

Mayor Karos led the invocation.

**5. Approve March 12, 2020 Regular Council Meeting Minutes**

Motion made by Councilman Etherington, seconded by Councilman Baker, to approve the March 12, 2020 Regular Council Meeting Minutes. Motion carried unanimously.

**6. Approve March 24, 2020 Emergency Special Meeting Minutes**

Motion made by Councilman Wachtel, seconded by Councilman Collinson, to approve the March 24, 2020 Emergency Special Meeting Minutes. Motion carried unanimously.

**7. Approve February 2020 Administrative and Financial Report**

Motion made by Councilman Etherington, seconded by Councilwoman Johnson, to approve the February 2020 Administrative and Financial Report. Motion carried unanimously.

**8. Public Hearing to solicit citizen comment on Ordinance 2020-02 Setting Forth Sewer Rates, Minimum Charge, Disconnect/Reconnect/Administrative Charges, Service Connection Charge, Delayed Payment Penalty, and Capital Improvement Fees for the City of Martinsburg, West Virginia**

**9. Public Hearing to solicit citizen comment on Ordinance 2020-03 Setting Forth Water Rates, Minimum Charge, Reconnection Charge, Service Connection Charge, Delayed Payment Penalty, and Capital Improvement Fees for the City of Martinsburg, West Virginia**

Mayor Karos combined the public hearings and opened the public hearings at 6:50 PM.

Ms. Barbara Bratina, N. Tennessee Avenue and Mr. Bill Caldwell, N. Tennessee Avenue, referenced earlier written comments (below), and added that the public hearings were improper due to the inability of the public to attend and the technical issues in accessing the call.

Mr. Peter Anselmo was concerned about the public's ability to access the call due to technical issues.

Kim Unger, Wilson Street, stated the hearing was unethical and the issue should be tabled until the COVID-19 situation is over.

Christine Unger, S. Raleigh Street, stated that she simply cannot pay the higher rates, they are very difficult for senior citizens.

Fran Taylor, Memorial Park Avenue, stated that the public is not privy to the audit issue and that a 16% increase is very high.

David Anderson, Music Court, stated that the "tax increase" is not appropriate at this time and asked that it be postponed.

The following written comments were received in advance of the meeting:

Shirley Gordon: To all of the officials or Board Members of this Authority: I think you should take a very hard look at your hefty increase to be effective 1Jun20. Way out of line. Also, the crisis this country is encountering at the present time. Thanks.

Candice Rogers: As a resident of the City as with many others wanting to attend your council meeting to discuss rate changes for sewer and water, it is hardly in anyone's best interest during these days of social distancing and stay at home orders from our Governor for a meeting to be held regarding how our money should be spent on water and sewer.

The very definition of essential does not cover a decision to either give citizens a voice on how our money is spent or possibly get sick if you do attend. Social distancing cannot be practiced in a meeting room.

Facebook and the internet are not a solid option for many and to penalize our citizens in direct conflict with all available information regarding this pandemic is strangely counter-intuitive.

I am asking for the date to be changed until some time in the perceived safer future and the bill to be put on hold when everyone has a voice without risking their health.

Edward Leazenby: I would assume that as people are under a stay at home order due to the COVID-19 pandemic that the April 9 meeting and vote at 6:30 PM in the J. Oakley Siebert Chambers of the City of Martinsburg on proposed Ordinance 2020-002 and 2020-03 is being delayed. Can you tell me if there has been a new date set? It would be rather unsafe and unfair time to hold a meeting and put a lot of people in close proximity to each other on public matters, I would think.

Brenda Deussing: I recognize the governmental restrictions limit residents attending the meeting. The time for information is very short before the city intends to implement the increase. How long has the City, its officials, and council known they need to comply with the requirements for the bond by a certain date. What adjustments are considered for those who do not use the minimum in their category but still pay

the set rate for that grouping. The proposed increase will prove a hardship for retired persons living on a fixed income and for many who are now out of work and may be not able to work for months.

Wendy Bowers: I would like to express my displeasure to the proposed increase in water and sewerage. As a resident and renter of Martinsburg, WV, this will impact renters immensely! This will cause hardship in ways of higher rates, higher rent and the inability to be able to afford a lot of life's necessities. A great amount of individuals are barely living paycheck to paycheck. This increase would bring greater stress on an already stressed household income. Please consider what I am saying as I cannot express myself any stronger in opposing this increase.

Nicole Snyder, Capital Development: We would like to voice our concerns on the proposed increase for the water and sewer rates on small business. The proposed increases would cause increases to all of our tenants, whether it comes directly out of their pocket or comes in the form of a rent increase for properties that include water and sewer in their rent. We strongly oppose this proposed increase.

James Parkinson: I would certainly hope that at a time of crisis like the one we are currently in that this increase would be put on hold.

Melanie Climis: I'm emailing to comment on the proposed increase of water and sewer rates Ordinances 2020-02 and 2020-03. I have three points to make. The first is that now, with 10% of our State's civilian workforce under extreme duress and countless others stressed financially, it is not the time to be putting increases of any kind into play. This matter should be tabled entirely until we have some idea of what our collective economic situation is after the worst of the COVID-19 situation is behind us.

The second is that a rate hike of 16% in one go indicates mismanagement of our resources. Comparisons to surrounding area utility rates is irreverent. What is at issue is the cost of Martinsburg water and sewer service. To let expenses build up to require a 16% increase indicates that someone has not been paying attention to maintenance, accounting or other elements of the cost of supplying residents with reliable water and sewer service.

The third and final point is that, at some future date, when we are ready to implement rate increases (referring back to point number one), increases must be capped at a yearly rate of around 4%. We are not a city of wealthy residents and businesses to begin with. After the economic devastation of COVID-19, many will be markedly worse off. To put an excessive burden related to basic necessities on economically stressed taxpayers is very bad business and will backfire in terms of the general health and wellbeing of our City.

I also have a question, what are the other possibilities for generating funds, such as a bond issue.

John Sheely, Jr.: The City of Martinsburg needs to consider the number of elderly people living within the city limits when making decisions on rate increases of any kind.

The city initiated a 1% sales tax that was supposed to do away with the B&O tax and, we all know how that went, even though you're collecting a lot more than Finance Director Mark Spickler estimated. Not to mention he wanted to sue some of that money to hire an assistant to basically do his job. The City wants to raise water rates because the state auditor found deficiencies in the city audit. Who does the audit? Isn't that Spickler's job? And now, Spickler suggests that the City raise the water/sewer rates more than

what is needed based on his projection that the City might need to raise them again in a year. I don't have a lot of confidence in his projections based on past performance. Don't raise the rates any more than needed. If, at the end of next year, the state auditor finds it's necessary to do it again, then address the problem at that time, that's why you ran for and got elected to your job. Why make the citizens of Martinsburg pay more than is needed?

Just a few years back, the City doubled water and sewer rates because of the Chesapeake Bay Reclamation plan that was being forced on us by the federal government. Besides, you haven't done anything about helping the citizens of Martinsburg, forcing the fire and ambulance fees annually instead of monthly or semi-monthly like the water/sewer fees.

Do something positive for a change making people pay more than necessary, because they might need to do so in the future doesn't fall in that category.

George Daniels: Once again, the City officials are being shortsighted and proposing something that is unbalanced, unfair and counter-productive. A base rate hike on water and sewer services unfairly targets smaller households and those who act responsibly by conserving water usage. Instead, people should have to pay higher rates for excessive and wasteful usage. This is the same antiquated thinking that allows people who produce 6, 8, 10 bags of garbage a week and slumlords who throw out mattresses and furniture when people move, to pay the same monthly garbage rate as someone who throws out 1-2 lonely bags of garbage a week. Stop penalizing those of us that are acting responsibly by attempting to conserve our limited resources. Irresponsible and wasteful people are the ones who should bear the burden of their behavior. If you wonder why people are leaving the city limits and why new businesses are reluctant to locate here, these are some of the issues they evaluate.

Barbara Bratina: I am writing to ask that the City Council table the public hearing for water and sewer rate increases.

1. The public hearing must be tabled until there is appropriate notification to the residents of Martinsburg as to how the public hearing will be facilitated. The PSC may have stated that the public hearing can proceed as scheduled, but, with the new changes it is unconscionable for City Council to hold the hearing tomorrow, April 9, 2020. Especially since the procedure and venue has changed and the public has not been given enough time to hear about the change and about how the public hearing will be held. Several weeks ago, letters were sent to residents stating that the public hearing would be held in the J. Oakley Seibert Council Chambers ..interested parties may appear and be heard at such time..." And as late as Thursday, April 2, 2020 (one week before the hearing) there was a notice in the classified section of the Journal that a public hearing "shall be held in the J. Oakley Seibert Council Chambers... Interested parties may appear and be heard at such time with respect to the passage of the proposed ordinance. I realize the Governor has required that no more than three (3) people be together at the same time, but to have changed the venue and manner of participation in the public hearing just three days before the meeting is not acceptable. The fact that the change in change in the public hearing was not announced on the City of Martinsburg's website until April 6, 2020 is not acceptable. The Journal posted an article on Thursday, April 8, 2020, one day before the public hearing stating that there was a change in venue and the public may call in their comments. A three day and one day notification is woefully inadequate. Many residents would not bother to check the website believing that the City council would have to postpone the public hearing. Also, very few residents actually subscribe to the Journal, so the public is not aware of this

change. Quite frankly, since the change was publicly posted in the paper one day before the hearing, then April 7, 2020 should start the required public notification. This public hearing should not be held on April 9, 2020 but should be postponed to another time when proper notification to the residents can be made. Please table this hearing and give proper notification to the residents for a true public hearing.

2. This is not the time, during a pandemic, to increase the water and sewer rates. The City of Martinsburg is on a strict stay at home order. Many businesses in the City are closed, through no fault of their own, and are trying to do what is best for the community by staying closed. Because of this, many of our residents have no income coming in. Imagine being told that your business, your life work, is non-essential. Imagine being told that your job, your way of earning a living and your way of taking care of your family, is non-essential. Even the few businesses which are open have had to lay off workers because of the downturn in the public using their services. I know the City Council had no idea in March, when the 1<sup>st</sup> and 2<sup>nd</sup> readings of the water and sewer increases were voted on, that there would be a pandemic and the majority of the city would be shut down and out of work. Things have drastically changed for the City of Martinsburg and her residents. No one knows how long this pandemic will last. Residents are worried about paying for their rent/mortgages, food, medication and health care. Due to the loss of employment, they are worried about how to take care of their families. Do not add to the burden and worries of residents by increasing the water and sewer rates at this time. In the best interest of, and for the sake of, the residents of the City of Martinsburg, please table the water and sewer rate increases.

The following had phoned and left messages with City staff in opposition to the increase: Patricia Hosby, Jan Ruppenthal, Matthew Murphy, Deanna Stanley, and Patricia Jenson.

As there was no further comment, the public hearing closed at 7:09 PM.

Motion made by Councilman Collinson, seconded by Councilman Knowles, to move Item 16 U up on the agenda.

## **10. Presentations**

### **11. Petitions from Citizens**

### **12. Receive and File Reports—Minutes—Correspondence of the Following:**

**a. Eastern West Virginia Regional Airport Authority February 10, 2020 Meeting Minutes and Financial Report**

**b. Eastern Panhandle Regional Planning and Development Council—Region 9—October 15, 2019 Meeting Minutes and Financial Report**

Motion made by Councilman Wachtel, seconded by Councilman Baker, to receive and file Items 12A-12B. Motion carried unanimously.

### **13. Reports of Chairpersons of Council Standing Committees**

#### **14. Report of Mayor**

**a. Reminder of Special City Council Meeting for Tuesday, April 21 2020 (per State Code) at 5 PM to approve levy rates and other business as necessary**

**Report the following vacancies:**

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

**15. Report of City Attorney**

**a. Update on petition from Police Chief Maurice Richards located at 1310 W. Martin Street, owners of record, F. Dennis Clarke, Lola Clarke and Timmothy Clarke (Item 18 D)**

City Attorney Kin Sayre stated that a public hearing needs to be scheduled and suggested mid to late May.

Councilman Baker requested that this hearing be postponed until the COVID issues have resolved, it is not a necessity at this time.

Councilman Wachtel advised setting the hearing for May and continuing if necessary. He has received several calls and would like to move forward on the issue.

Councilman Baker agreed that the property does need to be cleaned up, but this is a hearing that could result in a man losing his property, and felt that it was important to ensure that a true public hearing could be held.

Motion made by Councilwoman Nelson, seconded by Councilman Wachtel, to place this item on a May agenda. Motion carried 6-1; Baker voting no.

**16. Report of City Manager**

**17. Unfinished Business**

**a. First and Second Reading of Ordinance 2020-02 Setting Forth Sewer Rates, Minimum Charge, Disconnect/Reconnect/Administrative Charges, Service Connection Charge, Delayed Payment Penalty, and Capital Improvement Fees for the City of Martinsburg, West Virginia**

Motion made by Councilwoman Nelson, seconded by Councilman Wachtel, to read Ordinance 2020-02 through the third and final reading, by title only, and adopt.

Councilman Wachtel asked what the consequences may be for tabling this item.

Finance Director Mark Spickler replied that the City is in violation of our bond coverage, if compliance is not met, the bond holder could sue the City in Circuit Court. The matter was referred, by the Auditor, to the Prosecuting Attorney and the City must correct the deficiency by July 1.

Councilman Wachtel asked if the City were to wait until next year, if the rates would be higher.

Finance Director Mark Spickler stated that if this gets tabled today, the City may have to wait until next year and it is likely the rates would increase further. He explained that when bonds are issued, they are based on estimates and when actual costs came in, the City rates weren't sufficient.

Mr. Spickler added that the City is not insensitive to the economic issues surround COVID-19 and has been discussing options to provide relief to ratepayers.

Councilman Baker called for the question.

Via roll call vote, motion carried 5-2 as follows. Yes: Wachtel, Etherington, Knowles, Collinson, Nelson. No: Johnson and Baker.

**b. First and Second Reading of Ordinance 2020-03 Setting Forth Water Rates, Minimum Charge, Reconnection Charge, Service Connection Charge, Delayed Payment Penalty, and Capital Improvement Fees for the City of Martinsburg, West Virginia**

Motion made by Councilman Baker, seconded by Councilman Wachtel, to read Ordinance 2020-03 through the third and final reading, by title only, and adopt.

Via roll call vote, motion carried 5-2 as follows. Yes: Wachtel, Etherington, Knowles, Collinson, Nelson. No: Johnson and Baker.

**c. Third and Final Reading of Ordinance 2020-04 Amending Ordinance 2019-13, which Established Job Descriptions for Employees of the City of Martinsburg, West Virginia**

Motion made by Councilman Collinson, seconded by Councilman Baker, to read Ordinance 2020-04 through the third and final reading, by title only, and adopt. Via roll call vote, motion carried unanimously. Yes: Wachtel, Johnson, Etherington, Knowles, Collinson, Nelson, Baker.

**d. Third and Final Reading of Ordinance 2020-05 Amending Ordinance 2020-04, which Established Job Descriptions for Employees of the City of Martinsburg, West Virginia**

Motion made by Councilman Wachtel, seconded by Councilman Collinson, to read Ordinance 2020-05 through the third and final reading, by title only, and adopt. Via roll call vote, motion carried unanimously. Yes: Wachtel, Johnson, Etherington, Knowles, Collinson, Nelson, Baker.

**18. New Business**

**a. Approve/deny Resolution 2020-07 authorizing agreement between the City of Martinsburg and the West Virginia Division of Highways regarding the Rock Cliff Drive Intersection (Federal Project CMAQ/0010(273)D/State Project U302-10-1.38)**

Motion made by Councilman Wachtel, seconded by Councilwoman Nelson, to approve. Motion carried unanimously.

**b. Discuss and take action as necessary regarding matters related to CoVid-19 and recent Families First Coronavirus Response Act Federal legislation**

City Manager Mark Baldwin stated that there are no action items at this time, however, there will be emergency purchase items on the next agenda, as well as permission to increase the credit limit on the City's credit card for the purposes of making emergency purchases.

**c. Discuss and take action as necessary regarding June 9, 2020 City of Martinsburg General Election options**

City Attorney Kin Sayre explained the recent Executive Orders from the Governor, which determined that City elections, if previously scheduled on June 9, should be held on July 7 or in conjunction with the county, if possible. Per discussions with Berkeley County, it was not feasible to hold an election concurrently because of the time needed to program voting machines. Mr. Sayre added that it was his understanding from the Municipal League that other dates are being considered because of the 4<sup>th</sup> of July holiday.

Motion made by Councilman Wachtel, seconded by Councilman Collinson, to hold the City election on July 7, 2020.

Councilman Baker was opposed to July 7, as it could result in voter suppression due to the holiday. He projected those would be very busy travel days, especially after the stay-at-home orders currently in place. He also asked how

the election can be in July when Mayoral and Council terms end June 30. City Attorney Sayre explained that, per City Code, the Mayor and Council occupy their seats until replaced by vote or appointment, therefore, the existing Council would hold those seats.

Councilman Baker moved to table the previous motion.

After further discussion from the City Attorney and City Recorder, Councilman Wachtel and Councilman Collinson agreed to amend their motion to hold the City election on July 28, 2020. Via roll call vote, motion passed. Yes: Wachtel, Johnson, Etherington, Knowles, Collinson, Nelson, Baker.

**d. Schedule nuisance hearing for property located at 1310 W. Martin Street/F. Dennis Clarke, Lola Clarke/Timothy Clarke**

See item 15 A.

**e. Approve/deny nullification of May 12, 2020 holiday due to rescheduling of election to June 9, 2020 (already a City holiday)**

Motion made by Councilman Knowles, seconded by Councilman Collinson, to make this change. Motion carried unanimously.

**f. Approve/deny Special Events Permit 2020-26 for American Foundation of Suicide Prevention's Out of Darkness Walk for Saturday, October 3, 2020 from 2-5 PM, along attached route, 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 Councilwoman Johnson, to approve Permit 2020-26, as submitted, contingent upon proof of adequate liability insurance. Motion carried unanimously.

**g. Discuss and take action as necessary on request from the Olde Berkeley Garden Club for \$670 for Gateway Sign Landscaping Project (grant funding in the amount of \$8,000) and up to \$900 (dispersed seasonally) for the Small Project at the Town Square (grant funding in the amount of \$1,000)**

Motion made by Councilman Wachtel, seconded by Councilwoman Nelson, to approve as requested. Motion carried unanimously.

**h. Approve/deny purchase of six (6) X Series Cardiac Monitors with associated equipment—179,430.66 (includes 44,000 credit for trade-in of equipment)**

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

**i. Approve/deny rejection of single bid for Big Springs Water Treatment Plant Granular Activated Change-out of Vessels 1B, 2B, and 3A (see letter from OBG/Ramboll)**

Motion made by Councilwoman Nelson, seconded by Councilman Collinson to approve the rejection of the bid. Motion carried unanimously.

**j. Approve/deny withholding liquidated damages in the amount of \$5,230.85 from final payment of RiteLite Signs, Inc for Gateway/Wayfinding signage project**

Motion made by Councilman Etherington, seconded by Councilwoman Johnson, to approve withholding in the amount of \$5,230.85. Motion carried unanimously.

**k. Approve/deny Pay Application #6 for RiteLite Signs, Inc for Gateway/Wayfinding signage project--\$49,673.12**

Motion made by Councilwoman Johnson, seconded by Councilman Knowles, to approve. Motion carried unanimously.

**l. Approve/deny Pay Application to W. Harley Miller for Martinsburg Police Department/Municipal Court Project--\$245,387**

Motion made by Councilman Wachtel, seconded by Councilwoman Nelson, to approve. Motion carried unanimously.

Meeting adjourned by unanimous consent at 8:15 PM.

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George Karos, Mayor

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Gena Long, City Recorder