

**City of Martinsburg  
Regular Council Meeting  
Thursday, August 13, 2020  
The J. Oakley Seibert Council Chambers**

With a quorum present, the regular session of the Martinsburg City Council was called to order by Mayor Harriet Johnson at 6:30 PM. The following Council Members were present: Cory Roman, Steve Knipe, Dennis Etherington, Kevin Knowles, Ken Collinson, Kimberly Nelson, and Jason Baker. Also present were City Manager Mark Baldwin, Assistant City Manager Andy Blake, City Attorney Kin Sayre, City Recorder Gena Long, Police Chief George Swartwood, Fire Chief J.D. Hummingbird, Public Works Director Jeff Wilkerson and Utilities Director Jim Kelly.

**3. Salute to Flag**

Councilman Knipe led the salute to the flag.

**4. Prayer—**

Pastor Tim Guerino, Martinsburg Union Rescue Mission, led the invocation.

**5. Approve July 9, 2020 Regular Council Meeting Minutes**

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve the July 9, 2020 Regular Council Meeting Minutes. Motion carried unanimously.

**6. Approve July 20, 2020 Special Meeting Minutes**

Motion made by Councilman Collinson, seconded by Councilman Etherington, to approve the July 20, 2020 Special Council Meeting Minutes. Motion carried unanimously.

**7. Approve July 27, 2020 Special Meeting Minutes**

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve the July 27, 2020 Special Council Meeting Minutes. Motion carried unanimously.

**8. Approve August 3, 2020 Special Meeting Minutes**

Motion made by Councilman Collinson, seconded by Councilman Etherington, to approve the August 3, 2020 Special Council Meeting Minutes. Motion carried unanimously.

**9. Approve August 5, 2020 Special Meeting #1 Minutes**

Motion made by Councilman Etherington, seconded Councilman Knowles, to approve the August 5, 2020 Special Meeting #1 Minutes. Motion carried unanimously.

**10. Approve August 5, 2020 Special Meeting #2 Minutes**

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve the August 5, 2020 Special Meeting #2 Minutes. Motion carried unanimously.

**11. Approve June 2020 Administrative and Financial Report**

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve the June 2020 Administrative and Financial Report. Motion carried unanimously.

## **12. Presentations**

### **a. Make comment on ABCA Zoning Form for M&A Warriach, LLC, DBA 7-11 25306B, 201 Winchester Avenue**

Mr. Harmandeep "Harman" Warriach, Ashburn VA, Ms. Lisa Black, 7-11, and Mr. Desi Desormeaux, 7-11, were present to answer questions and concerns.

Ms. Black explained that Mr. Warriach was the prospective franchisee for this store and is seeking a liquor license from the ABCA.

Councilman Knowles stated that there have been several issues with that store that the Council had requested to be addressed and asked about the status of these issues.

Ms. Black replied that the interior had been remodeled, grocery options have been expanded, ashtrays have been removed from the exterior and mood music is being played to reduce loitering. Cameras and lighting have been upgraded, screening bushes have been removed and a fence is being installed.

Councilman Knowles asked about a security guard.

Ms. Black stated that the other improvements have helped with the loitering issues but they will continue to evaluate the need for a security guard.

Councilman Knowles asked if they have been continuing to sell alcohol following the nuisance hearing in December 2019.

Ms. Black state that they have maintained the ABCA license, and this request is for the franchisee to secure a license.

Councilwoman Nelson thanked 7-11 for expanding grocery options as she had requested. She recommended purchasing a higher quality of alcohol to increase the quality of the clientele in the store. She stated that the current clientele buys "hooch" from the bottom shelf and carries it down the railroad tracks where the bottles are discarded and broken. She also pointed out that, while the loitering on the store property may have decreased, individuals can be seen loitering across the street drinking from brown paper bags.

Ms. Black stated that they can look into the alcohol being sold.

Councilman Roman agreed that there is a loitering issue and recommended that if 7-11 knows people are doing this, they should refuse service to them.

Mr. Warriach responded that he will be bringing his experience to this store and there are some options to discourage this type of behavior, such as increasing the quality of the liquor being sold, not selling to intoxicated individuals and training staff.

Councilman Roman suggested that the staff be trained to check identification as that location is known among youth for selling to minors and not checking identification.

City Attorney Kin Sayre reminded Council that they do not have the ability to approve or deny the application, but to forward it to the ABCA with or without comment. He suggested that Council move to forward this application with comment.

City Manager Mark Baldwin asked Mr. Wariach if he was moving to Martinsburg or if he would be managing this location from his current address. He also commended 7-11 for the efforts they have made and noted that in the previous 30-60 days, there has been an increase in foot traffic in the areas and at the store.

Mr. Wariach replied that he will be moving to the area as soon as the franchise documents are completed.

Mr. Baldwin stated that he looks forward to working with the new franchise owners. He shared several photographs of overgrowth and debris at the location and asked Mr. Wariach to ensure that such issues are mitigated promptly.

Councilman Baker asked how many calls for service have been recorded for the location.

Chief Swartwood replied that from January to July, 2020, there are 309 calls for service. Some are from traffic stops initiated by the police, but many are for public intoxication, littering and garbage accumulation, noise ordinance violations and loitering on surrounding properties. He stated that this store is the first glimpse into our downtown as it sits at the intersection of two major thoroughfares and that 7-11 must do a better job of maintaining it. He also recommended a uniformed security person to be employed at the store.

Councilman Baker asked if any of the calls were drug related. As they were, he asked why the drug house ordinance has not been initiated against the property. He believed that this business should not be in operation without a security guard.

Councilman Knowles asked about the number of calls for service in comparison to the number of calls from the same time period from last year. Chief Swartwood stated that he does not have those numbers, however, he does not believe there has been a substantial decrease.

Councilman Baker stated that this business is a nuisance and the Council is doing nothing about it.

City Manager Baldwin asked if the franchise agreement was a done deal, or Mr. Wariach is a prospective franchisee.

Mr. Wariach stated that the projected date for finalization is August 27.

Mr. Baldwin asked that Mr. Wariach stay in contact with City officials to help ensure that this business is a benefit to downtown Martinsburg.

Motion made by Councilman Baker, seconded by Councilman Knowles, to forward the Zoning Form to the ABCA with comment. Motion carried unanimously.

**b. Make Comment on ABCA Zoning Form for JayShip, DBA CJ's Corner Store, 432 W. Martin Street**

Ms. Crissy Shipley, CJ's Corner Store, was present to answer questions and concerns.

Councilman Baker asked Chief Swartwood if he had any issues with this request.

Chief Swartwood stated that he has nothing on record, the area is somewhat residential, and the business owner should be advised to curb loitering and noise violations should they occur.

Councilwoman Nelson asked if there were plans for the existing signs to be removed.

Ms. Shipley replied that she is waiting on sign approval from the HPRC and Planning Department for her signage and intends to replace it.

Councilwoman Nelson asked what kind of alcohol Ms. Shipley intends to sell.

Mr. Sayre replied that this would be a beer and wine license, not a liquor license as 7-11 has.

Councilwoman Nelson asked about the hours at the store.

Ms. Shipley stated that the operating hours will be 9 AM until 9 PM, closed on Tuesdays.

Councilman Knowles stated that Ms. Shipley had heard the previous discussion about the issues with 7-11 and asked that Ms. Shipley keep that in mind and is hopeful that she will run a good and successful business.

Councilman Baker added that loitering is already an issue in that area and suggested that Ms. Shipley speak with the management at nearby Bob's Carry Out to see what actions they take to prevent loitering at that location.

Motion made by Councilman Knowles, seconded by Councilman Collinson, to forward the Zoning Form to the ABCA without comment. Motion carried unanimously.

**d. Mr. Chris Kyle, Shentel, regarding non-exclusive cable franchise agreement**

Mr. Kyle, Shentel, stated that they are seeking to enter into a non-exclusive video franchise with the City of Martinsburg. Shentel is prepared to make a multi-million-dollar investment to provide cable and broadband internet options to the City of Martinsburg. The project is a long-term view for economic development opportunities. Shentel is currently working on projects in Winchester, Charles Town and Ranson to provide high quality high-speed broadband service, which will allow further work from home options to residents and digital options for students. He stated that it will be a disruptive process, as fiber will be run all over town to provide the service.

Councilman Baker asked Assistant City Manager Blake for his thoughts as he had worked in Ranson previously.

Mr. Blake responded that he has no objection to the project and is familiar with the agreement.

Councilwoman Nelson asked how the infrastructure will compare to Google Fiber.

Mr. Kyle replied that the infrastructure is superior.

Councilman Roman asked how the rates will compare to Comcast, who currently holds a franchise agreement with the City.

Mr. Kyle stated that the rates are comparable to Comcast, and Shentel does not charge more to customers who wish to subscribe only to internet service.

Councilman Roman stated that Comcast has been very good at assisting low-income customers with free internet or reduced rates, especially for students, during the COVID-19 pandemic. He asked if Shentel offers similar programs.

Mr. Kyle stated that Comcast is very good at that type of thing and that Shentel is in the process of development similar community forward programs, but he does not have details at this time.

Mr. Kyle described the process, which will include engineering, site analysis, permitting, and actual infrastructure development. He stated that, once the process gets started, he estimates that it will be twelve months until it can be offered to customers. The building and maintenance will create local jobs.

### **13. Petitions from Citizens**

Mr. Christian Riddell, representing John Orem, approached Council regarding the drug house ordinance which he felt was unfair to landlords and tenants, especially those who were evicted. He asked that the City consider some amendments to address issues which he felt were unconstitutional.

Ms. Barbara Bratina, N. Tennessee Avenue, stated that as a resident and business owner, she is in favor of the drug house ordinance and feels it is very beneficial and successful. She stated that she has managed rental units in Baltimore, and by conducting thorough background and reference checks, they were able to prevent any drug issues in the units.

Councilman Baker asked if he could comment on the prior petitions as a Councilperson, and if not, he would like to make a petition as a citizen.

City Attorney Kin Sayre advised that, as Mr. Riddell's complaint may become a suit in the very near future, that Council refrain from making comment.

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

**a. Transportation Alternatives Program Electronic Intent to Apply Form for Martinsburg-Tuscarora Community Trail Project, as filed 7/29/2020**

**b. Transportation Alternatives Program Electronic Intent to Apply Form for N. Queen Street Streetscape Improvements—Phase 3, as filed 7/31/2020**

**c. Resignation of H. D. Boyd from the Martinsburg Fire Civil Service Commission, effective immediately.**

**d. Notification of appointment of Ms. Donna Harmison to the Martinsburg Fire Civil Service Commission, effective July 7, 2020**

**e. Eastern Regional Airport Authority June 8 and June 22, 2020 Meeting Minutes and Financials**

**f. Martinsburg-Berkeley County CVB June 24, 2020 Meeting Minutes**

**g. Memorandum from Mayor George Karos to Jimmy Wriston, WVDOT Deputy Secretary, regarding funding for renovation and upgrading of the Old Mill Road Bridge**

**h. Historic Preservation Review Commission July 6, 2020 Meeting Minutes**

**i. Board of Zoning Appeals July 7, 2020 Meeting Minutes**

**j. Martinsburg Planning Commission July 1, 2020 Meeting Minutes**

**k. Resignation of Tom Johnson from the Board of Zoning Appeals, effective immediately**

Motion made by Councilman Baker, seconded by Councilman Knowles, to receive and file Items 14A-14K. Motion carried unanimously.

**15. Reports of Chairpersons of Council Standing Committees**

**16. Report of Mayor**

**a. Schedule Council as a Whole Committee Meeting to be held on Tuesday, August 25, 2020**

Mayor Johnson scheduled the Council as Whole Committee meeting to take place immediately following a Special City Council meeting to begin at 5 PM on the same date.

**b. Future Committee Meeting to be scheduled on Community/Economic Development Initiatives**

The meeting will be scheduled at a later date.

**c. Appoint Steve Knipe to the Martinsburg Planning Commission to serve as ex-officio member**

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

**d. Appoint Shari Persad (current alternate) as a regular member of the Board of Zoning Appeals to fill an unexpired term ending 1/1/2022 (vacated by Tom Johnson)**

Motion made by Councilman Etherington, seconded by Councilman Knipe, to approve the appointment. Motion carried 6-1; Baker voting no.

**e. Appoint David Tyler Kemp to the alternate position on the Board of Zoning Appeals to fill an unexpired term ending 1/1/2022 (vacated by Shari Persad)**

Motion made by Councilman Baker, seconded by Councilwoman Nelson, to approve the appointment. Motion carried unanimously.

**Report the following vacancies:**

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

- **Human Relations Committee (1)**

**17. Report of City Attorney**

**18. Report of City Manager**

**19. Unfinished Business**

**20. New Business**

**a. First and Second Reading of Ordinance 2020-11, amending Ordinance 2020-09 which Established Job Descriptions for Employees of the City of Martinsburg, West Virginia**

City Manager Mark Baldwin explained that the permit tech would replace the second department secretary.

Motion made by Councilman Etherington, seconded by Councilman Collinson, to read the first and second reading of Ordinance 2020-11, by title only. Motion carried unanimously.

**b. First and Second Reading of Ordinance 2020-12 to 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 2017-02 of The City of Martinsburg, West Virginia.**

Councilwoman Nelson asked for further information on this update. City Attorney Sayre and Fire Chief Hummingbird stated that the City is required to adopt the codes as they are adopted by the State.

Motion made by Councilman Etherington, seconded by Councilman Collinson, to read Ordinance 2020-12 through the first and second reading, by title only. Motion carried 6-1; Baker voting no.

**c. First and Second Reading of Ordinance 2020-13 To Amend and Re-Enact Portions of The Codified Ordinances of The City of Martinsburg, Part Seventeen – Building and Housing Code, Article 1711 – West Virginia State Building Code, Section 1711.01 – Adoption; And Repealing Ordinance Number 2019-02 Of the City of Martinsburg, West Virginia**

Councilman Knowles asked if the update would add more work to an already understaffed department.

City Attorney Sayre replied that, like the Fire Code, the City is required to adopt the codes as they are adopted by the State. City Recorder Long added that the changes in this ordinance seem to deal primarily with the changes to the Fire Code as it relates to Building Code.

Motion made by Councilman Etherington, seconded by Councilman Knowles, to read Ordinance 2020-13 through the first and second reading, by title only. Motion carried 6-1; Baker voting no.

**d. Approve/deny [Resolution 2020-19](#) authorizing intergovernmental agreement between City of Martinsburg and South-Central Planning and Development Commission for MyGovernmentOnline software (\$0 up-front cost/monthly fee based on usage)**

Councilwoman Nelson asked if we have an idea of monthly cost.

Assistant City Manger Blake responded that it will be approximately \$900 monthly, which will be cost savings to the City as the current contract for Planning software will be vacated. He also added that, as this is an agreement with another government entity, it can be adopted by resolution as opposed to a bid process.

Motion made by Councilman Etherington, seconded by Councilman Baker, to adopt Resolution 2020-19. Motion carried unanimously.

**e. Approve/deny request from BCA-CV to tie pink ribbons to parking meters, utility poles and trees in the downtown area in recognition of the Pain the Town Pink awareness campaign**

Motion made by Councilman Baker, seconded by Councilwoman Nelson, to approve the request. Motion carried unanimously.

**f. Approve/deny Special Events Permit 2020-32 for Cornerstone Bible Church's request to hold the Life Chain Prayer Vigil in the Town Square Pedestrian Plaza on Saturday, October 4, 2020 from 2-3 PM, contingent upon proof of adequate liability insurance, compliance with any COVID-19 related protocols in place at the time of event and payment of any recommended fees for City services (\$0.00 recommended)**

Motion made by Councilman Collinson, seconded by Councilman Baker, to approve contingent upon proof of insurance and compliance with COVID protocols. Motion carried unanimously.

**g. Approve/deny lease for hand Fed SendPro C425 Mailing System postage meter for the Martinsburg Police Department with Pitney Bowes--\$164.96 monthly for 36 months**

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

**h. Approve/deny issuance of ID Cards to retired Martinsburg Police Department officers pursuant to Law Enforcement Officers' Safety Act (LEOSA)**

Motion made by Councilwoman Nelson, seconded by Councilman Knowles, to approve the issuance of ID cards. Motion carried unanimously.

**i. Approve/deny firearms qualification record application, release and waiver for retired Martinsburg Police Department officers**

Motion made by Councilman Knowles, seconded by Councilman Collinson, to approve the application, release and waiver. Motion carried unanimously.

**j. Approve/deny release and waiver for third party organizations and individuals for use of the firearms range**

Motion made by Councilman Knowles, seconded by Councilman Etherington, to approve the release and waiver. Motion carried unanimously.

**k. Approve/deny bid recommendation for CDBG Street paving (bid opening 8/11)**

No action.

**l. Approve/deny bid recommendations for General Fund street paving (bid opening 8/11)**

No action.

**m. Approve/deny Change Order #10 for Martinsburg Police Department/Municipal Court Project—2,526**

Motion made by Councilman Collinson, seconded by Councilman Etherington, to approve Change Order #10. Motion carried unanimously.

**n. Approve/deny Pay Application #27 for Martinsburg Police Department/Municipal Court Project--\$35,257**

Motion made by Councilman Etherington, seconded by Councilman Knipe, to approve Pay Application #27. Motion carried unanimously.

**o. Approve/deny Pay Application #2 to Snyder Environmental for E. Martin Street Utility relocation project--\$108,710**

Motion made by Councilman Etherington, seconded by Councilwoman Nelson, to approve Pay Application #2. Motion carried unanimously.

**p. Discuss and take action as necessary regarding advertisement for bid for W. King Street and Alabama Avenue traffic signal upgrade project**

City Manager Mark Baldwin explained that this issue had been previously discussed. There are currently contractors in town working on the State's ADA project and Public Works has put together a good spec package. He recommended that the City advertise for bids at this time.

Councilman Baker asked if the State had recommended deleting the light.

The City Manager replied that the State wasn't able to work with the City on this light as it is not in their system.

Councilman Baker stated that the quantity of student pedestrians has decreased since the light was installed and asked if the city could consider a flashing light when school is not in session.

Councilman Etherington replied that the bus garage has requested that the light remain in service and that having a sometimes-flashing light might cause driver confusion.

City Manager Baldwin added that the new light would be modern with appropriate pedestrian crossing pads and sensors, so there should be less time that one might have to wait at a red light with no traffic crossing.

Motion made by Councilman Knowles, seconded by Councilman Etherington, to advertise for bids for the upgrade and replacement of this traffic light. Motion carried 6-1; Baker voting no.

**21. Executive Session**

City Council entered Executive Session at 7:48 PM for legal purposes.

City Council entered Regular Session at 8:35 PM.

**20 q. Discuss/take action as necessary regarding potential registration of claim in on-going opioid litigation**

Motion was made by Councilman Knowles, seconded by Councilman Etherington, to execute Memorandum of Understanding to allow the City to register a claim in ongoing opioid legislation. Motion carried 6-1; Baker voting no.

Councilman Baker was opposed to entering into a class action suit, referring to it as "dirty money."

Council adjourned by unanimous consent at 8:38 PM.

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Harriet Johnson, Mayor

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Gena Long, City Recorder