

**City of Martinsburg
Regular Council Meeting
Thursday, September 10, 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 Knowles led the salute to the flag.

4. Prayer—

Pastor A. J. Roberts, The Church at Martinsburg, led the invocation.

5. Approve August 13, 2020 Regular Council Meeting Minutes

Motion made by Councilman Etherington, seconded by Councilman Collinson, to approve the August 13, 2020 Regular Council Meeting Minutes. Motion carried unanimously.

6. Approve August 25, 2020 Special Meeting Minutes

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve the August 25, 2020 Special Council Meeting Minutes. Motion carried unanimously.

7. Approve July 2020 Administrative and Financial Report

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

8. Presentations

a. Make comment on ABCA Zoning Form for Lemen Enterprises, Inc., DBA 7-Eleven #10670B, 1015 N. Queen Street (liquor license renewal)

Mr. Daryl Lemen, 1015 N. Queen Street, was present for questions or concerns.

Police Chief George Swartwood stated that this is an outstanding store, there are limited calls for service, and it is an example of what a 7-eleven should be.

Motion made by Councilman Etherington, seconded by Councilman Baker, to forward to the ABCA without comment. Motion carried unanimously.

b. Proclamation—Constitution Week, September 17-23, 2020—Shenandoah Valley National Society Daughters of the American Revolution

Mayor Johnson read the Proclamation and presented it to members of the DAR.

9. Petitions from Citizens

Mr. Mark Palmer, 1425 W. King Street, spoke regarding item 16X. He requested that the City abandon a portion of the alley. He currently maintains the property. He is only asking for the portion adjacent to his own properties as the remainder of the alley is used.

Motion made by Councilman Collinson, seconded by Councilman Knipe, to move item 16X up on the agenda.

Councilwoman Nelson asked what it means to abandon an alley and asked if it meant that Mr. Palmer did not wish to maintain it any longer. City Attorney Kin Sayre explained the concept of a “paper alley”. To close it, the City would prepare an ordinance and convey the property to the adjacent property owners. The City would reserve utility rights of way.

Councilman Etherington recommended abandoning the entire alley. Mr. Palmer stated that he would withdraw his request under those circumstances, as he knows that some of the neighbors would not be in favor of that action.

Mayor Johnson suggested that staff review the request and consider the options.

Councilman Baker asked if the City isn’t doing maintenance, what does it matter if the alley is abandoned in whole or in part. He agreed with Councilman Etherington’s suggestion to abandon the entire alley, as dead-ended alleys cause problems for future property owners. Mr. Palmer added that a retaining wall dead ends the alley currently.

Councilman Knowles stated that he would be amenable to Mr. Palmer’s request to abandon a portion of the alley if other potentially impacted neighbors are in agreement.

Consensus was for staff to review.

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

- a. Comcast memorandum(s) regarding programming changes**
- b. Martinsburg-Berkeley County Convention and Visitor’s Bureau July 28, 2020 Meeting Minutes**
- c. Hagerstown/Eastern Panhandle Metropolitan Planning Organization Interstate Council May 20, 2020 Meeting Minutes and Projects Update**
- d. Eastern Panhandle Regional Planning and Development Council—Region 9 June 22, 2020 Meeting Minutes**
- e. Eastern West Virginia Regional Airport Authority July 13, 2020 Meeting Minutes and Financial Statements**
- f. Letter of Resignation from the Human Relations Committee from Leonard Harris**

g. Legal notice of October 8, 2020 public hearing and non-exclusive cable franchise agreement between Shenandoah Cable Television, LLC

h. Transportation Alternatives Grant Application for N. Queen Street Underpass Streetscape Project

i. Transportation Alternatives Grant Application for design of Martinsburg-Tuscarora Community Trail Project

j. The Housing Authority of the City of Martinsburg October 29, 2019, February 4, 2020, April 28, 2020, May 26, 2020, June 16, 2020, June 30, 2020 and July 21, 2020 Meeting Minutes

Motion made by Councilman Knowles, seconded by Councilwoman Nelson, to receive and file Items 10A-10J. Motion carried unanimously.

11. Reports of Chairpersons of Council Standing Committees

Motion made by Councilman Collinson, seconded by Councilman Knowles, to approve the Council as a Whole Minutes for August 25, 2020, as follows. Motion carried unanimously.

**Council as a Whole Committee Minutes
Tuesday, August 25, 2020—approximately 5:15 PM
Immediately following Special City Council Meeting at 5 PM**

Present: Mayor Harriet Johnson, Kevin Knowles, Kimberly Nelson, Ken Collinson, Cory Roman, Steve Knipe, Dennis Etherington and Jason Baker.

Others in Attendance: Mark Baldwin, City Manager, Andy Blake, Assistant City Manager, Mark Spickler, Finance Director, and News Media

Unable to Attend:

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

1. FY 2020-General Fund Budget

a. General Fund Unassigned Fund Balance (unencumbered balance)—Finance Director Mark Spickler provided and overview of the General Fund Unassigned Balance.

b. City Manager Recommendations/Committee Discussion—City Manager Mark S. Baldwin provided an overview of recommendations for the FY 2020-2021 Unassigned Balance.

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

c. FY 2020-2021 Budget—Going Level Overview—Finance Director Mark Spickler provided an overview of the going level report.

2. City Manager Report—Update—City Manager provided and overview of ongoing and upcoming City projects, City staff recommendations and sales tax fund.

12. Report of Mayor

a. Appoint Elected Official to Serve on Hagerstown/Eastern Panhandle Metropolitan Planning Organization or name City Manager as alternate to the elected official to attend the meetings—recommend Mark S. Baldwin to serve

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve Mark S. Baldwin to serve on HEPMPO board. Motion carried unanimously.

b. Appoint Mayor Harriet Johnson as Mayoral appointment to the Region 9 Planning and Development Council through June 30, 2022 (vacated by George Karos)

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

Mayor Johnson reminded Council of Main Street Martinsburg's upcoming clean-up date and asked Council to attend and bring a canned good for donation.

Mayor Johnson discussed October 14 and October 19 as dates for Committee meetings and asked Council to keep both dates open for meetings beginning at 5 PM.

Report the following vacancies:

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

13. Report of City Attorney

a. Non-exclusive cable franchise agreement between City of Martinsburg and Shenandoah Cable Television, LLC (SHENTEL)—see item 10 G

City Attorney Kin Sayre pointed out the agreement draft and notice of public hearing included in the packet.

b. Draft Changes to Drug House Ordinance

Mr. Sayre stated that, after conversations with Councilman Baker and Chief Swartwood, some changes were being drafted to the ordinance which include notification to the property owner before charging them under the ordinance.

Councilman Baker thanked the Chief for his willingness to negotiate and give property owners time to correct the situation before being publicly shamed. He was happy with the amendments as presented.

14. Report of City Manager

City Manager had nothing further to report.

Councilman Knowles asked about the status of the new Police Department/Municipal Court building. Chief Swartwood stated that some IT issues with dispatch are being resolved. Custodial services are in negotiation. The City had bid for security services, however, no bids were received. Late September/early October is possible for a move-in date.

15. Unfinished Business

16. New Business

a. First and Second Reading of Ordinance 2020-14, amending Ordinance 2020-11 which Established Job Descriptions for Employees of the City of Martinsburg, West Virginia

Motion made by Councilman Collinson, seconded by Councilman Knowles, to read the first and second reading of Ordinance 2020-14, by title only. Motion carried unanimously.

b. First and Second Reading of Ordinance 2020-15 Prohibiting the Digging or Drilling of Groundwater Wells in the City of Martinsburg, West Virginia

Councilman Roman asked about annexations, especially on the west end, where City water might not be available and if the City would be required to expand services to meet the needs of those customers. Mr. Sayre responded that if municipal services are not available, there are provisions in the ordinance to exempt those properties.

Councilman Baker asked why this ordinance was necessary. He agreed with Councilman Roman's concerns and added that well drilling is cost prohibitive for urban residents, and unnecessary when municipal services are available.

Mr. Jeff Mitchell, Triad Engineering, addressed Council. He stated that the State of West Virginia requires that groundwater must be protected, even if it is not being used as potable water. This ordinance allows for remediation of brownfields and removal of underground storage tanks without the need to bring the groundwater to drinking water standards, which is a very costly endeavor.

Mr. Sayre, City Attorney, disclosed that Bowles Rice is a tenant on one of the properties in question for this type of development.

Assistant City Manager Andy Blake stated that such ordinances can be city-wide or site-specific. The draft ordinance presented to Council allows for exemptions for municipal use and for property owners to apply for the exemption, which comes to Council.

Councilwoman Nelson asked if there are benefits to this for brownfields development. Mr. Mitchell stated that there are, as the State's groundwater protection act requires an ordinance or a covenant to be in place.

Councilman Baker stated that he took no issue with the ordinance for urban developed areas, but was concerned about property rights for outlying residents. Mr. Blake stated that is the reason for the exemption application process, which offers further protection to residents as it allows for testing and research on groundwater in any specific area.

Councilman Knowles called for the question.

Motion made by Councilman Collinson, seconded by Councilman Knowles, to read Ordinance 2020-15 through the first and second reading, by title only. Motion carried 5-2; Baker and Roman voting no.

c. Approve Resolution 2020-21 concerning the City of Martinsburg's General Fund Budget Revision #2 for FY 2020-2021

Motion made by Councilman Etherington, seconded by Councilman Collinson, to approve Resolution 2020-21. Motion carried unanimously.

d. Approve/deny Sanitation Fund Budget Revision #1 for FY 2020-2021

Motion made by Councilman Etherington, seconded by Councilman Baker, to approve the budget revision. Motion carried unanimously.

e. Approve/deny request from Main Street Martinsburg for hardware for banners along W. King Street--\$4,000

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

f. Approve/deny flu shots for City employees and officials--\$20.00 each

Motion made by Councilman Knowles, seconded by Councilman Etherington, to approve the flu shots. Motion carried unanimously.

g. Approve/deny USGS Water Monitoring Agreement (Streamgaging) between the City of Martinsburg and the United States Geological Survey--\$4,200

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

h. Approve/deny bid recommendation for W. King Street/Alabama Avenue traffic signal upgrade--\$183,450—Pritchard Signal and Light Company

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

i. Approve/deny Construction Contract between City of Martinsburg and Jefferson Asphalt for General Fund City street repaving--\$709,563

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

j. Approve/deny Change Order #1 between the City of Martinsburg and Jefferson Asphalt for General Fund City Street repaving--\$48,000

City Manager Mark Baldwin explained the streets that will be included in the change order. He also mentioned that notifications to the public of street work and parking restrictions will be made as promptly as possible.

Motion made by Councilman Etherington, seconded by Councilwoman Nelson, to approve the Change Order. Motion carried unanimously.

k. Approve/deny Construction Contract between the City of Martinsburg and Jefferson Asphalt for CDBG City Street repaving--\$46,442

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

l. Approve/deny Change Order #1 between the City of Martinsburg and Jefferson Asphalt for CDBG City Street repaving--\$57,400

Motion made by Councilman Etherington, seconded by Councilman Baker, to approve the Change Order. Motion carried unanimously.

m. Approve/deny Change Order #11 between the City of Martinsburg and W. Harley Miller for Martinsburg Police Department/Municipal Court Project--\$2,389

Motion made Councilman Etherington, seconded by Councilwoman Nelson, to approve the Change Order. Motion carried unanimously.

n. Approve/deny Pay Application #28 for Martinsburg Police Department/Municipal Court Project--\$2,697.00

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

o. Approve/deny contract for custodial services for new Martinsburg Police Department/Municipal Court Building

City Manager Mark Baldwin explained that this was bid, but since there is no history or data on cleaning this structure, the City will be working with the contractor on pricing as they go, on a month by month basis. The current rate is \$62,400 annually.

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

p. Approve/deny three-year agreement with Action Training Systems for interactive courses for the Martinsburg Fire Department--\$6,750 (General Fund)

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

q. Approve/deny amended additional services from O'Brien and Gere (OBG) for wastewater treatment plant--\$2,428 (total \$9,659/\$7,231 approved in August)

Motion made by Councilman Etherington, seconded by Councilman Knipe, to approve. Motion carried unanimously.

r. Approve/deny agreement between City of Martinsburg and Alpha Associates for Bidding and Construction Phase Fee Proposal for Train Station Corridor Project--\$107,852.75

City Manager Mark Baldwin explained this is was in relation to the amended agreement with WVDOT in which the City would work directly with the engineering service for inspection and other services. These funds will be applied toward the City's required 20% match.

Motion made by Councilman Etherington, seconded by Councilman Knipe, to approve. Motion carried unanimously.

s. Discuss and take action as necessary regarding additional work on CSX right of way adjacent to White Avenue in conjunction with Train Station Corridor Grant Project

City Manager Mark Baldwin explained that this area requires maintenance and upon speaking with the State Rail Authority, he is under the impression that there will be no issue with the City developing this area for parking.

Councilman Baker asked if CSX plans to eventually abandon this railroad crossing. Mr. Baldwin was not sure, however, can inquire about this.

Motion made by Councilman Etherington, seconded by Councilman Knowles, to move forward with this project. Motion carried unanimously.

t. Approve/deny request from WV Division of Highways for waiver from any City ordinance related to noise to allow for night time work for the Rock Cliff Intersection Improvement Project—February 1-December 31, 2021

Mr. Ken Clohan, WVDOT, was present to address questions and concerns.

Councilwoman Nelson asked who this would impact; who is trying to sleep during these hours.

Mr. Clohan replied that this is a very busy intersection and it would be difficult to work on this during the day, and doing so would cause considerable time delays.

Councilman Collinson stated that there are fourteen homes on that section of Tavern Road, as well the adjacent Greenbrier subdivision.

Councilwoman Nelson asked if work could be conducted around the clock. Mr. Clohan replied that they have not established a schedule as of yet, however, such schedule would be intended to minimize disruption to traffic flow.

Motion made by Councilman Etherington, seconded by Councilman Baker, to grant the waiver. Motion carried unanimously.

u. Approve/deny rental agreement with Innovative, Inc., for GIS Hypervisor server for the Wastewater Treatment Plant-- Stormwater Management Department--\$1,098.29/month for 27 months

Motion made by Councilman Etherington, seconded by Councilman Knipe, to approve the agreement. Motion carried unanimously.

v. Discuss and take action regarding allowing urban deer hunting on City-owned property off Meadowbrook Drive near Oatesdale Park

Motion made by Councilman Etherington, seconded by Councilman Baker, to approve the urban deer hunt on this property. Motion carried 6-1; Nelson voting no.

w. Approve/deny purchase of Dodge Ram extended-cab pick-up truck for the Planning Department--\$24,514 (\$20,000 previously approved)—Stephens Auto Center State Contract

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

x. Discuss and take action as necessary on request to abandon a portion of the alley adjacent to 1425 W. King Street/204-206 S. Delaware Avenue

See Petitions from Citizens. No action taken at this time.

y. Approve/deny agreement with CGI Communications for 2020 Community Development Program—see memo

Motion made by Councilwoman Nelson, seconded by Councilman Etherington, to approve the agreement. Motion carried unanimously.

z. Discuss and take action as necessary regarding Trick or Treat in the City of Martinsburg for children 12 and under—Saturday, October 31, 2020 from 6-8 PM (see recommendation)

The City Manager stated that, if council approves trick or treat hours, any COVID protocols between now and then may alter the decision. He also stressed that the decision to participate should be up the individuals, however, the City will assign extra patrols during those hours.

Motion made by Councilman Knowles, seconded by Councilman Etherington, to hold trick or treat in the City of Martinsburg, on Saturday, October 31, 2020 from 6-8 PM for children 12 and under. Motion carried unanimously.

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

Motion made by Councilman Collinson, seconded by Councilman Knowles, to approve December 24 and December 31, 2020 as additional holidays for City of Martinsburg employees. Motion carried unanimously.

bb. Approve/deny amendment to contract with MyGovernmentOnline to include work order system and GPS in vehicles—Public Works and Utilities Departments (see attached memo for pricing)

Utilities Director Jeff Wilkerson stated that this will allow for more effective and efficient provision of services.

Motion made by Councilman Etherington, seconded by Councilwoman Nelson, to approve the amendment. Motion carried unanimously.

cc. Approve/deny bid recommendation for 2020 bulk deicing salt—Cargill Deicing Technology--\$101.94/ton (Clearlane)

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

dd. Approve/deny Change Order #2 between City of Martinsburg and Snyder Environmental for E. Martin Street Utility relocation project—30 day time extension--\$0.00

Motion made by Councilman Collinson, seconded by Councilwoman Nelson, to approve the Change Order. Motion carried unanimously.

ee. Approve/deny Pay Application #3 to Snyder Environmental for E. Martin Street Utility relocation project--\$97,502.40

Motion made by Councilman Knowles, seconded by Councilman Knipe, to approve the pay application. Motion carried unanimously.

ff. Approve/deny scope of work for City of Martinsburg Stormwater Financing and Outreach Study, Phase III—GKY & Associates--\$11,850

Councilwoman Nelson asked why this was so expensive. City Manger Mark Baldwin replied that the consultant must prepare the information and data for the presentation and that is part of the cost.

Public Works Director Steve Knipe added that this will finalize funding amounts for two grants.

Motion made by Councilman Etherington, seconded by Councilman Collinson, to approve the scope of work. Motion carried unanimously.

gg. Approve/deny Change Order #1 between Capital Business Interiors and City of Martinsburg for Martinsburg Police Department/Municipal Court Project—\$5,300

Motion made by Councilman Etherington, seconded by Kc, to approve the change order. Motion carried unanimously.

hh. Approve/deny Change Order #3 between the City of Martinsburg and Snyder Environmental—E. Martin Street Train Station Corridor Project (additional wastewater line lateral work) –not to exceed \$110,955

City Manager Mark Baldwin explained that the water line laterals are part of the existing project. Council should consider replacing the sewer line laterals while the area is already disturbed. The contractors are also suggesting stormwater work from Queen to Spring Streets and another change order may be forthcoming.

Motion made by Councilman Etherington, seconded by Councilwoman Nelson, to approve the Change Order. Motion carried unanimously.

ii. Approve/deny funding request from Roundhouse Authority--\$4,718—contribution toward new restroom facility

City Attorney Kin Sayre stated that some information had come to light since the agenda was prepared. Per the City's Public Service Commission tariffs, the City has capital development fees for new service that we are required to collect and waiting those fees is not recommended. The Roundhouse is asking for reimbursement for those fees, should they be required. Upon further investigation, it was determined that this may not be new service, which would eliminate the fees.

Councilman Knipe stated that he believes this is existing service and complies with the ordinance.

No action was needed.

Council entered Executive Session at 8:00 PM for legal purposes.

Council entered Regular Session and adjourned at 8:23 PM.

Harriet Johnson, Mayor

Gena Long, City Recorder