

**City Of Martinsburg
Regular Council Meeting
Thursday, August 11, 2016
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 p.m. The following Council Members were present: Gregg Wachtel, Harriet Johnson, Dennis Etherington, Kevin Knowles, Ken Collinson, Mark Baker and Jason W. Baker. Also present were: Mark Baldwin, City Manager; Kin Sayre, Legal Counsel; Gena Long, City Recorder; Police Chief Maury Richards, Steve Knipe, Utilities Director, City Engineer/Planning Director Michael Covell, Community Development Administrator Nancy Strine and Utilities Director Jeff Wilkerson.

3. Salute to Flag

Councilman Knowles led the Salute to the Flag.

4. Prayer—

Pastor Vernon Cartwright, Serenity Seventh Day Adventist, led the invocation.

5. Approve July 28, 2016 Special Meeting Minutes

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve the July 28, 2016 Special Meeting Minutes. Motion carried unanimously.

6. Approve June 2016 Administrative and Financial Report

Motion made by Councilman Collinson, seconded by Councilman Etherington, to approve the June 2016 Administrative and Financial Report. Motion carried unanimously.

7. Presentations

a. Resolution of Appreciation for Retiring Water Department Systems Operator Rosetta Eversole

The City Recorder read the Resolution and presented it to Ms. Eversole.

b. Resolution of Appreciation for Retiring Wastewater Department Crew Chief Melvin Prince

The City Recorder read the Resolution and presented it to Mr. Prince.

c. Resolution of Appreciation for Retiring Public Works Department Laborer Cletus Faircloth

The City Recorder read the Resolution and presented it to Public Works Director Jeff Wilkerson.

d. Make Comment on ABCA Zoning Form for Class B “Carry Out” License Relating to Caribbean Produce—500 N. High Street

The applicant was not in attendance, the request will be heard at the next meeting.

e. Make Comment on ABCA Zoning Form for CFI Martinsburg, LLC (dba Chili’s Grill and Bar)—884 Foxcroft Avenue

Mr. Paul Truskey, Chili's, stated that the franchise was glad to be finally establishing a location in Martinsburg. The hours will be from 11AM until 11 PM Monday through Friday, open until midnight on Saturday and until 10 PM on Sunday.

Council welcomed the applicant to the City of Martinsburg and motion was made by Councilman Etherington, seconded by Councilman Knowles, to forward the Zoning Form to the ABCA, without comment. Motion carried unanimously.

8. Petitions from Citizens

Mr. Richard Anderson, NAACP Legal Redress Committee, stated that the Journal reported that less than 1% of the City of Martinsburg is comprised of minority individuals.

Mr. Hubert Smith, NAACP President, stated that he has concerns about minority employment in City administrative positions and the Police Department. He stated that the City is not doing enough to hire minorities.

Ms. Abigail Benjamin and Ms. Hannah Benjamin, Martinsburg, spoke about clean water. According to the Washington Post, Ms. Benjamin stated, over 6 million Americans have been exposed to POFA and that Martinsburg should continue to see itself as leader on this issue. She encouraged the City to hold public meetings and invite all citizens. She also spoke about Hannah's involvement in the Extreme Scholar Program which was involved in a project that tested the water at Poor House Farm and engaged in activities, such as tree plantings, to improve quality.

Ms. Sarah Hembrey, Falling Waters, spoke about petitions signed by downtown residents about two important issues, heroin addiction and police harassment. She stated that until law enforcement is adequately staffed, every encounter will be stressful. She also stated that people are afraid to call 911 when someone overdoses if they have concerns that they will also be prosecuted. She stated that the concept of situational immunity needs to be more well-known, because a call to 911 can save lives.

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

- a. Correspondence from FEMA regarding the City of Martinsburg's entry into the National Flood Insurance Program (NFIP) and a CRS Class 8 rating
- b. Correspondence from the American Heart Association regarding the Silver Performance Achievement Award achieved by the Martinsburg Fire Department
- c. For the Kids, by George Children's Museum July 2016 Board Meeting Minutes
- d. Martinsburg/Berkeley County Public Library Minutes for June 23, June 29 and July 22, 2016
- e. Eastern WV Regional Airport Authority Minutes for June 7 and June 27, 2016

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to receive and file item 9A-9H. Motion carried unanimously.

10. Reports of Chairpersons of Council Standing Committees

11. Report of Mayor

- a. Council as a Whole Committee Meeting Scheduled for Tuesday, August 16, 2016 at 4:30 PM

12. Report of City Attorney

a. Discuss Suggested Panhandling Ordinance Document

Mr. Sayre stated that the reported document contains suggested ordinance sections to regulate panhandling within the City of Martinsburg. He explained that the City was approached by Berkeley County and asked to create an ordinance that would be consistent in both jurisdictions. He suggested that Council review the suggested ordinance sections and make recommendations on what sections they might like to adopt, if any. He stated that the City ordinance should be substantially consistent with the County ordinance so that there is no confusion. He also added that panhandling is a problematic issue as First Amendment rights cannot be infringed and illegal regulation can be very costly in court.

Councilman M. Baker stated that he believes that it would be appropriate to appoint a small committee to meet with the County to try to get on the same page. He warned that the permitting aspect has been attempted in the City of Martinsburg and it may be best to avoid that.

Councilman Knowles stated that he is glad to see the City moving forward on this issue, and that downtown has needed such policy for a very long time. He stated that Council needs to adopt a forward thinking mentality to help solve the issues downtown.

Police Chief Richards stated that he has reviewed the Ordinance suggestions and they have promise. He asked that Council not discount the permitting suggestion, as it would help with enforcement.

Mayor Karos stated that he would also like to see progress on this, that it has been an issue downtown for many years and suggested that Mr. Sayre work with Norwood Bentley, Counsel for Berkeley County, to resolve any issues. He was suspect of the permit portion of the ordinance.

Mr. Sayre stated that permitting is not standard practice and any attempt to establish a permitting system must be cognizant of First Amendment rights.

Councilman J. Baker suggested getting an opinion from the Attorney General.

Mr. Sayre stated that the Attorney General would give an opinion in relation to WV law, but not Federal statute. He stated that it may be sufficient to move forward with the other sections of the suggested ordinance and leave the permitting aspect out. He stated that he will work with Mr. Bentley to move forward with a comprehensive plan for both the City and County.

Councilman M. Baker stated that permitting can cause several issues, such as increased work for the Police Department.

Chief Richards urged Council to keep an open mind, as there are several potential advantages to having the permitting requirement, such as the ability to deny permits to those individuals who are guilty of other infractions included in the panhandling ordinance.

Councilman Knowles suggested the attorneys work on the issue before a consensus was made.

The consensus of Council was for Mr. Sayre to work with Mr. Bentley to draft an ordinance. Councilman Knowles, Councilman J. Baker and Councilman Collinson were in favor of considering a permit and the remainder of Council was not.

b. Discuss Draft Events Permit Ordinance

Mr. Sayre stated that a draft ordinance has been provide and is being reviewed by staff. He stated that Council cannot regulate events based on content and must respect free speech and right to assembly as guaranteed by the First Amendment. He stated that the draft ordinance deals with liability insurance and other important factor.

City Manager Mark Baldwin added that the draft ordinance will not significantly change the way events are approved, but will just solidify the policy and make it more clear to applicants and staff.

c. Discuss Draft B&O/Licensing Fees Ordinance for Vendors at Events in the City of Martinsburg

Mr. Sayre recommended issuing a temporary vendor license for events, such as those hosted by Main Street Martinsburg or at the Roundhouse, with a flat fee to cover licensing and the tax.

Councilman J. Baker asked if hosting organizations will be able to do all of the paperwork, preventing the vendors from being required to come to City Hall individually to complete the paperwork. Mr. Sayre responded that the vendors will have the forms on hand and they can remit all of them to City Hall with appropriate fees.

Councilman J. Baker noticed that the ordinance references community or charity events and asked why for profit events cannot be included. Mr. Sayre stated that the proposed ordinance is up for comment, and that can be reviewed if Council wishes.

Councilman J. Baker mentioned trade shows, which are for profit, but would benefit the City. Mr. Sayre cautioned that if the ordinance is expanded too much, it will put vendors in competition with brick and mortar businesses, which is why the proposed ordinance is restricted to special events approved by Council.

Councilman Wachtel asked if Council would consider blocking off the street if requested by for-profit events. Mr. Sayre replied that all vendors are for-profit businesses, but typically the sponsoring agency is not.

Councilman Knowles agreed with extending the ordinance to include events sponsored for profit, as the economic spin-off from events like trade shows would benefit many businesses and that a business friendly atmosphere is an important tool for economic development.

Mr. Sayre and Council agreed that some changes should be made to the language and it should be brought back to Council.

13. Report of City Manager

Nothing further to report.

14. Unfinished Business

a. Third and Final Reading of Ordinance 2016-22 Amending the City of Martinsburg Code, Part Five—General Offenses, Article 545—Weapons and Explosives, by Amending and Reenacting Section 545.10—Fireworks: Definition, Sale, Possession and Discharge

Motion made by Councilman J. Baker, seconded by Councilman Knowles, to read Ordinance 2016-22 through the third and final reading, by title only, and approve. Motion carried unanimously.

b. Third and Final Reading of Ordinance 2016-23 Amending Ordinance 2016-20, which Established Job Descriptions for Employees of the City of Martinsburg, West Virginia

Motion made by Councilman Knowles, seconded by Councilman Collinson, to read Ordinance 2016-23 through the third and final reading, by title only, and approve. Motion carried unanimously.

c. First and Second Reading of Ordinance 2016-24 to An Ordinance to Add and Amend the Text of The City of Martinsburg Zoning Ordinance At Article IV "General Regulations" Section 400 "Sign" to amend and reenact comprehensive sign regulations (Previously tabled—see attached letter)

Motion made by Councilman M. Baker, seconded by Councilman Collinson, to bring Ordinance 2016-24 from the table. Motion carried unanimously.

Motion made by Councilman Knowles, seconded by Councilman M. Baker, to read Ordinance 2016-24 through the first and second reading, by title only. Motion carried unanimously.

d. Approve/deny amended request from Martinsburg Renew to close a portion of W. Martin Street, between N. Kentucky and Elijah Street, for the purposes of holding a block party on Saturday, September, 17, 2016 from 4 PM until 8 PM, contingent upon proof of adequate liability insurance (previously tabled, see attached amended request)

Motion made by Councilman M. Baker, seconded by Councilman J. Baker, to bring the request from the table. Motion carried 6-1, Councilman Wachtel voting no.

Ms. Janis Wright, Boardmember for Martinsburg Renew, was present to answer any questions.

Police Chief Richards stated that this new request still involves the closing of a street, but is reduced to one block, which alleviates many issues. He stated that traffic can be re-routed. Chief Richards was concerned about setting future policy, but felt those issues would be addressed with the proposed special events ordinance.

Ms. Wright stated that there would be some activities at Leeland Park and some at MLK Park, and the street closure would allow safe travel between.

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

15. New Business

a. Approve/deny request from Mountain State Apple Harvest Festival to hold the Mountain State Apple Harvest Festival Grand Feature Parade on Saturday, October 22, 2016 beginning at 1 PM, contingent upon proof of adequate liability insurance

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to approve the request from the Mountain State Apple Harvest Festival, contingent upon proof of adequate liability insurance. Motion carried unanimously.

Mr. Chris Amores stated that he would ask that Council extend the approval to include the Apple Trample, which begins at 10 AM. Mr. Baldwin asked that this be included on future request, along with the route.

b. Approve/deny 3rd annual "Building Steam" fundraising event at the Caperton Train Station as requested by For the Kids, by George Children's Museum, to be held on Friday, November 18, 2016 from 6:45 until 10:00 PM, contingent upon proof of adequate liability insurance

Motion made by Councilman J. Baker, seconded by Councilman M. Baker, to approve the request as presented, contingent upon proof of adequate liability insurance. Motion carried unanimously.

c. Approve/deny placement of a Downtown Health and Fitness Kiosk, which will extend into the City of Martinsburg right of way, on the King Street side of the Martinsburg/Berkeley County Public Library Plaza—101 W. King Street

Motion made by Councilman Knowles, seconded by Councilman Knowles, to approve the placement of the kiosk. Motion carried unanimously.

Councilman J. Baker asked if Main Street Martinsburg will maintain the kiosk. Executive Director Randy Lewis stated that they will.

d. Approve/deny authorization for Mayor to sign amended agreement between City of Martinsburg and Habitat for Humanity of the Eastern Panhandle for old Lot #14 (now Lot #17—102 Humanitarian Way), in the Auburndale Subdivision—\$33,650.85—2012 CHDO Funds

Councilman J. Baker recused himself, with consent of Council, from Items 15 D, 15 E and 15 F.

Motion made by Councilman Collinson, seconded by Councilman Knowles, to approve the authorization to sign the agreement for the 2012 CHDO Funds. Motion carried 6-1, Councilman J. Baker recused.

e. Approve/deny authorization for Mayor to sign amended agreement between City of Martinsburg and Habitat for Humanity of the Eastern Panhandle for old Lot #15 (now Lot #19—104 Humanitarian Way), in the Auburndale Subdivision—\$45,646.35—2013 CHDO Funds

Motion made by Councilman Collinson, seconded by Councilman Knowles, to approve the authorization to sign the agreement for the 2013 CHDO Funds. Motion carried 6-1, Councilman J. Baker recused.

f. Approve/deny authorization for Mayor to sign amended agreement between City of Martinsburg and Habitat for Humanity of the Eastern Panhandle for Lot #20—106 Humanitarian Way, in the Auburndale Subdivision—\$48,665.55—2014 CHDO Funds

Motion made by Councilman Wachtel, seconded by Councilwoman Johnson, to approve the authorization for the agreement for the 2014 CHDO Funds. Motion carried 6-1, Councilman J. Baker recused.

g. Approve/deny authorization for Mayor to sign Memoranda of Agreement to transfer HOME Match credit to Habitat for Humanity of the Eastern Panhandle, Inc. for FY 2012, 2013 and 2014

Motion made by Councilman Wachtel, seconded by Councilman Knowles, to approve the authorization for the Mayor to sign the MOA to transfer HOME match credit for FY 2012, 2013 and 2014. Motion carried unanimously.

h. Approve/deny contract for professional services between the City of Martinsburg and Urban Design Ventures, LLC, for FY 2017-2019 CDBG/HOME Programs. Year one and two \$38,000 per year and year three \$59,500

Motion made by Councilman Wachtel, seconded by Councilman Knowles, to approve the contract for professional service as presented. Motion carried unanimously.

i. Discuss American Legion Rental Agreement and take action as necessary

Mayor Karos reminded Council that the current lease agreement expires at the end of December 2016.

Councilman J. Baker added that the current rent is \$525 monthly.

Councilman Etherington asked if the disposition of the building would be discussed at the Committee meeting.

Councilman J. Baker stated that the City's building is in poor condition and the City has no use for it for government functions. The original intent was to use the building for a possible future police station, but bringing it up to code would not be cost effective. Councilman J. Baker stated that the building needs to be taken down rather than putting more money into it to make it usable for the Legion or anyone. He stated that a decision today gives the Legion ample notice of the need to find a new location. When the Legion has vacated, everything will need to be removed from the site, not just covered over, and the property can be used for additional parking until another use is determined. Councilman J. Baker reminded Council that the City has recently passed ordinances which require owners to care for their properties; yet the City owns and operates a depilated building. Councilman J. Baker recommended giving immediate notice of the decision not to renew to the lease to American Legion Post.

Motion made by Councilman J. Baker, seconded by Councilman Knowles, to send notice that the lease will not be renewed in December. Motion carried unanimously.

j. Discuss removal of fence located at the rear of the City Hall Parking Lot and take action as necessary

Councilman M. Baker pointed out that the parking lot is very tight, especially for large vehicles. He also added that if something happened on W. Race Street which blocked through traffic, it would not be possible to get police cars out of the parking lot; if the fence is removed there would be emergency egress onto College Street. The original purpose of the fence, Councilman M. Baker stated, was to prevent spillover from the lawn of a home that once sat on the property; but that home is no longer there and the fence no longer serves a purpose.

Motion made by Councilman M. Baker, seconded by Councilman Collinson, to remove the fence. Motion carried unanimously.

k. Authorize City Recorder to schedule surplus auction for Saturday, October 1, 2016

Motion made by Councilman Knowles, seconded by Councilman J. Baker, to authorize the City Recorder to schedule the auction. Motion carried unanimously.

l. Approve/deny recommendations for use of Brownfields Grant to advance the following two sites for Phase 1 Environmental Site Assessment—Interwoven Mills and Thorn Lumber

Motion made by Councilman Knowles, seconded by Councilman J. Baker, to approve the recommendation and advance the selected sites. Motion carried unanimously.

m. Approve/deny Agreement for Administrative Services between the City of Martinsburg and Region 9 Planning and Development Council—Advanced Land and Water, Inc. Hydrogeological Reconnaissance and Feasibility Evaluation--\$7,350

Motion made by Councilman Knowles, seconded by Councilman J. Baker, to approve the Agreement for Administrative Service in the amount of \$7,350. Motion carried unanimously.

n. Confirm purchase and installation of new air conditioning unit for Market House Building—Miller's Electric Company, Inc.--\$6,799

Motion made by Councilman Etherington, seconded by Councilman J. Baker, to confirm the purchase and installation of the air conditioning unit at the Market House. Motion carried unanimously.

o. Approve/deny HRI Inc.'s Application for August 2016 Payment #2 for the Church Street Stormwater Project--\$109,990.69

Motion made by Councilman Etherington, seconded by Councilman Collinson, it approve Payment Application #2 for the Church Street Stormwater Project. Motion carried unanimously.

p. Approve Resolution 2016-22 authorizing HRI Inc.'s Application for August 2016 Payment # 32 for the WWTP Upgrade Project--\$1,417,321.85

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve Resolution 2016-22.
Motion carried unanimously.

17. Executive Session

Adjournment

Motion adjourned by unanimous consent at 7:45 PM.

George Karos, Mayor

Gena Long, City Recorder