

**City Of Martinsburg
Regular Council Meeting
Thursday, March 10, 2016
The J. Oakley Seibert Council Chambers**

With a quorum present, the regular session of the Martinsburg City Council was called to order by City Attorney Kin Sayre at 6:30 p.m. The following Council Members were present: Don Anderson, H.D. Boyd, Dennis Etherington, Kevin Knowles, Gregg Wachtel, Ken Collinson 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, Fire Chief Paul Bragg, Community Development Director Nancy Strine, Finance Director Mark Spickler, City Engineer/Planning Director Michael Covell and Utilities Director Jeff Wilkerson.

Motion made by Councilman Wachtel, seconded by Councilman Baker, that Councilman at Large Gregg Wachtel chair the meeting in the absence of Mayor George Karos. Motion carried unanimously.

3. Salute to Flag

Councilman Knowles led the Salute to the Flag.

4. Prayer—

Mark Mooney, Otterbein United Methodist Church, led the invocation.

5. Approve February 11, 2016 Regular Meeting Minutes

Motion made by Councilman Etherington, seconded by Councilman Collinson, to approve the February 11, 2016 Regular Meeting Minutes. Motion carried unanimously.

6. Approve January 2016 Administrative and Financial Report

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

7. Presentations

a. Introduction of Chelsie Davis, Executive Director of For the Kids, by George Children's Museum

Ms. Davis was not available.

b. Make Comment on WVABCA Zoning Form—The Wherehouse—411 Auburn Street—C&D Assets

Ms. Mary Dulyea, C&D Assets, was present. She stated that the location is an event center and is requesting a one-time ABC license. The license will be for a tavern, but the venue is for events only.

Police Chief Richards had no issue.

Mayor Karos advised the applicants that the Zoning form would be forwarded without comment.

c. Paul Williams—2017 Southern Heritage Day Festivities

Mr. Paul Williams, representing Sons of the Confederate Veterans, requested that Council allow a parade on Queen Street from the Square to E. Race Street on March 4, 2017 in celebration of Southern Heritage Days from 10

AM until noon. He stated that the hosting organization is comprised of direct descendants of southern soldiers and/or politicians and is a 501C3 organization. Mr. Williams stated that the 2016 event, held exclusively in the E. Race Street Park, was peaceful.

Mr. Sayre stated that Council can consider this request, but they will need a written request to be included on an agenda in order to approve or deny.

8. Petitions from Citizens

Rev. Kermit Hoffman, Hedgesville, WV, Chaplin for the Sons of the Confederate Veterans (SCV) spoke in favor of the request to hold a parade and rally in Martinsburg. Mr. Hoffman gave a brief history of the SCV and added that heritage is not about defending slavery, but states' rights.

Peter Miller, S. Queen Street, read the following into the record:

I spoke to a business owner about my "letter" criticizing our City government. He stated police would come after me. He was half-right.

I received a letter from the Building Inspector, citing me for minor infractions.

For over 20 years the roof of my back step, clearly visible from the street, lacked a gutter. Citation.

The McFarland House, on my block, has a porch without a gutter, two small windows on the third floor lacking glass, un-painted window frames and peeling paint. Citation?

Several neighborhood porches lack gutters. As do some on the 500 block of West King. The County building on Stephen Street has crumbling window frames. Citation?

I had my fence replaced years ago. The Building Inspector demanded it be no more than four feet high. Since then, numerous higher fences have been built on the west end of town. Will they be made to be taken down? Hell no!

Wind knocked down a tree in my backyard five years ago. Now I'm cited. Trees are down in Boydville. Citation?

Lowes delivered lumber for home repairs. It is neatly stacked. Citation!

Building Inspector citations are issued vindictively and selectively. If a "second class" citizen speaks out the City government or its friends, Watch out!

If I take a copy of "BOCA" and walk every street in the City and log in every violation, will anything be done? Yes—to me.

"City Council" is a misnomer. The City really is run by an unholy trinity of business owners, bankers and attorneys who look out for their own interests. I made numerous legitimate complaints—public urination, extreme noise, open containers about one of their "protected" businesses. Result: police harassment, a false arrest, etc. I am not safe in my house. I'm afraid when I go out in public.

I pay taxes, but am refused police protection. I'm considering placing an "ISIS" flag in my yard, at least the FBI will keep watch on my house.

I recently called City police about an extreme noise violation on my block. Dispatcher stated that “all officers are involved in a foot chase on the North end.” A minute later, two marked City units leisurely drove down Queen Street.

On 17 December, I walked into the mid-town 7-11. Two officers were drinking coffee, one spoke to me demeaningly. I calmly replied “I prefer that you not speak to me unless it is police related.” He stated that he was offended. He continued haranguing me. As I left, he yelled “Good Night, Mr. Miller.” That night I suffered chest pains. Why am I not safe in public?

Thank you officers Shelton and Parks for nearly ruining my Christmas. I pray for you.

Robert Moore, Inwood, discussed the importance of education regarding the Civil War and stated that Confederate Flags are a symbol of heritage.

Charles Godlove, Ward IV, stated that he has met with Chief Richards and he is impressed.

Christina Lundberg, Candi Court, asked that Council allow burning of debris and yard waste on Spring Cleanup day.

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

- a. Berkeley County Animal Control December 2015 Incident Report
- b. Human Relations Committee November 16, 2015 Meeting Minutes
- c. Letter of resignation from Sally Jackson, Martinsburg-Berkeley County Library Commission, received February 11, 2016
- d. Letter from Xfinity regarding installation fees, dated February 17, 2016
- e. Eastern Panhandle Transit Authority February 17, 2016 Minutes and Financial Report
- f. Martinsburg Police Department 2015 Annual Report

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

10. Reports of Chairpersons of Council Standing Committees

a. Council as a Whole Committee February 23, 2016 Meeting Minutes

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve the February 23, 2016 Meeting Minutes as follows. Motion carried unanimously.

Council as a Whole Committee Minutes

Tuesday, February 23, 2016—4:30 PM

Present: Mayor George Karos, Councilmembers Kevin Knowles, Jason Baker, Dennis Etherington, Ken Collinson and Don Anderson.

Others in Attendance: Mark S. Baldwin, City Manager and Mark B. Spickler, Finance Director

Unable to Attend: H.D. Boyd, Jr., and Gregg Wachtel

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

- a. **FY 2016-2017 Budget Overview Update:** Mark Spickler, Finance Director, provided an overview of the budget through December 2015.
- b. **Discuss 2016-2017 Property Tax Levy Rates:** Consensus of the Committee was not to increase property tax levy rates above the 3% allowable per State Code. Additional levy rate information to be provided at the Committee meeting scheduled for March 15, 2016.
- c. **Outside Agencies/Other Governmental Agencies (per attached list of recommendations to be funded from the General Fund and Coal Severance Account)**
 1. **M-BC Eastern Regional Airport Authority**—consensus of the Committee was to approve the \$15,000 minimum required (3) member allocation. It was also the consensus of the Committee to reduce their funding request of \$19,285 to \$15,000 (this would maintain the additional three (3) members recently appointed.) The total of \$30,000 will be budgeted in the GF.
 2. **M-BC Parks and Rec**—consensus of the Committee was to provide an allocation of \$300,000 (\$100,000 allocation, \$170,000 H/M Tax and \$30,000 capital improvements). The \$100,000 allocation (additional \$15,000 from previous years' allocation contingent upon the Lambert Park Pool remaining open the public seven days a week).
 3. **Apple Harvest Festival**—consensus was to allocate \$4,000 this year (\$2,000 more than previous years' allocation). It was the Committee's desire to see the Apple Harvest festivities remain in downtown Martinsburg.
 4. **The BE-Hive**—consensus was to allocate \$5,000 (additional \$1,500 from last years' allocation).
- d. **Discuss additional funding for E. Burke Street Bridge**—consensus of the Committee was to approve the additional funding in the amount of \$351,000 for this project.

Next meeting is scheduled for Tuesday, March 15, 2016 4:30 PM.

11. Report of Mayor

- a. **Schedule Special City Council Meeting for Tuesday, March 22, 2016 at 5 PM to approve budgets and other action as necessary**
- b. **Schedule Special City Council Meeting for Tuesday, April 19, 2016 at 5 PM to approve levy rates (per State Code)**
- c. **Schedule Special City Council Meeting for, Tuesday, June 21, 2016 at 5:00 PM to begin the Canvass and declare the results of the June 14, 2016 City Election.**
- d. **Schedule Special Council Meeting for Thursday, June 23, 2016 at 5:00PM for purposes of certifying the results of the June 14, 2016 City Election.**
- e. **Schedule Special Council Meeting for Thursday, June 30, 2016 at 5:00 PM.**

f. Schedule Special Council Meeting for Thursday, June 30, 2016, immediately following the adjournment of the Special Council Meeting beginning at 5:00 PM, for purposes of administering the Oath of Office to the Mayor and Council as elected at the June 14, 2016 City Election—to take effect at 12:00 AM (midnight) on July 1, 2016.

Mayor Karos scheduled the above meetings.

g. Appoint Vanessa Williamson to fill an expired term on the Martinsburg-Berkeley County Convention and Visitors Bureau Board—1/1/2016-1/1/2018

Motion made by Councilman Knowles, seconded by Councilman Baker, to accept the Mayor's recommendation to appoint Vanessa Williamson to the M-BC CVB Board through January 1, 2018. Motion carried unanimously.

h. Appoint Brance McCune, Sr. to the Historic Preservation Review Commission to fill an unexpired term 1/21/2014-1/21/2017

Motion made by Councilman Baker, seconded by Councilman Knowles, to accept the Mayor's recommendation to appoint Brance McCune to the HPRC through January 21, 2017. Motion carried unanimously.

12. Report of City Attorney

a. Discuss the following proposed ordinances:

1. Drug and Gang Houses; Houses of Prostitution and other Disorderly Houses;

2. Recklessly Permitting the Physical Condition or Facilities of Residential Real Estate to Become or Remain in any Condition which Endangers the Health or Safety of any Person

3. Requirement of Watchman for Vacant or Open Buildings

Mr. Sayre explained that, with a consensus of Council, these ordinances could move to the first and second reading at the next Council meeting.

Motion made by Councilman Baker, seconded by Councilman Knowles, to send these ordinances to the Planning Commission.

Mr. Sayre attempted to explain that these ordinances are not appropriate for the Planning Commission, but the question was called for, and assed by unanimous aye.

Chief Richards addressed Council, asking that they reconsider the previous vote as putting these ordinances before the Planning Commission would only cause delay. He asked that Council vote the ordinances up or down, but to take action.

Chief Richards went on to say that these ordinances are the first step in attempting to find a resolution to the serious drug problem in Martinsburg. There are no high volume drug dealers to target, but rather small dealers operating out of rental properties. The ordinances are not intended to punish responsible landlords who work the department to get drugs out of their properties, but to address the problem of a few absentee landlords who collect the rents but take no responsibilities for the conditions or activities in their rental properties.

Chief Richards gave an overview of the ordinances. The first, dealing with drug, gang and prostitution houses, would kick in if there were two or more incidents in a twelve month period. The police department can then ask the court to declare the property a "drug house" and the landlord would be notified and given thirty (30) days to take serious action or be penalized. He stated that the City can never get to the root of the problem if the

properties are not cleaned up, and these ordinances will allow the City to make Martinsburg safe again by cleaning up one block at a time.

Councilman Knowles stated that the ordinances are fine, but they should still go the Planning Commission.

City Manager Mark Baldwin asked what the Planning Commission could do with these ordinances. Mr. Sayre stated that he is not sure what the Planning Commission can do. The duty of the Planning Commission is to make recommendations relating to the Zoning Ordinance, not the Codified Ordinance. He stated that the next Planning Commission meeting will be in April, but is not sure if there will be time to make that agenda. The City Recorder stated that these ordinances should not have a public posting requirement as they are not Planning Commission business, and Mr. Sayre agreed.

Councilman Etherington asked if any of these ordinances fall under the purview of the Planning Commission and if not, why Council vote to send them to the Planning Commission.

Motion made by Councilman Etherington to reconsider the motion to send them to the Planning Commission. Motion died for lack of a second.

13. Report of City Manager

None.

14. Unfinished Business

a. Third and Final Reading of Amended Ordinance 2016-03: An Ordinance to Add to and/or Amend the Text of the Martinsburg Zoning Ordinance (MZO) at Article VI: "Design Regulations" to Include Clarifying Language and Regulations for Storage Buildings, Storage Shipping-bins, Donation Drop-off Bins, and Temporary Structures

Motion made by Councilman Baker, seconded by Councilman Knowles, to read Ordinance 2016-03, as amended, through the final reading and approve. Motion carried unanimously.

15. New Business

a. Approve Resolution 2016-06 Authorizing the Execution of a Supplemental Agreement with the West Virginia Department of Transportation, Division of Highways (Division) with Regard to Funding Associated with the Burke Street Bridge Replacement (State Project # S302-BUR/KE-1) Project in the City of Martinsburg, West Virginia-\$351,000 additional City funding

Motion made by Councilman Collinson, seconded by Councilman Baker, to approve Resolution 2016-06. Motion carried unanimously.

b. Approve Resolution 2016-07 Authorizing George Karos, Mayor of the City of Martinsburg to Enter into a Contractual Agreement with the West Virginia Division of Motor Vehicles to Receive and Administer Supplemental Grant Funds in the Amount of \$117,952.30 Pursuant to the Provisions of the West Virginia Governor's Highway Safety Program.

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve Resolution 2016-07. Motion carried unanimously.

c. Approve/deny Berkeley Heights Elementary School's request to hold a 5K race on Saturday, April 16, 2016, contingent upon proof of adequate liability insurance—route attached

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve the request as submitted, contingent upon proof of adequate liability insurance. Motion carried unanimously.

d. Approve/deny Deliverance Ministries' request to resume use of the Town Square for monthly prayer sessions, including food service, on the second Tuesday of each month, beginning at 7 PM, contingent upon proof of adequate liability insurance

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

e. Approve/deny request from Berkeley Family Medicine, in partnership with the Good Samaritan Free Clinic and the Coalition for the Homeless, to offer sack lunches, first aid kits and clothing donations on the Town Square Pedestrian Plaza on Saturday, May 7 from 11 AM until 1 PM, contingent upon proof of adequate liability insurance

Motion made by Councilman Collinson, seconded by Councilman Knowles, to approve the request as submitted, contingent upon proof of adequate liability insurance. Motion carried unanimously.

f. Approve/deny request from Berkeley County Ministerial Association (BCMA) to hold a Good Friday crosswalk along the streets of downtown Martinsburg on Friday, March 25, beginning at 10:30 AM, contingent upon proof of adequate liability insurance

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

g. Approve/deny "Take Pride in your Community" Spring Clean Up event for Saturday, May 21, 2016

Motion made by Councilman Etherington, seconded by Councilman Baker, to approve May 21, 2016 for the Spring Cleanup event. Motion carried unanimously.

Councilman Baker asked if the burn ban can be lifted for that day. City Manager Mark Baldwin replied that, per ordinance, it is allowed two times per year because burning causes problems with other City residents.

Mr. Sayre stated that there would need to be a future agenda item to officially suspend enforcement of the ordinance, if that was Council's wish.

Public Works Supervisor Jeff Wilkerson stated that public works does collect brush and debris for residents; they would just have to telephone Public Works if they were unable to bring it to the recycling center.

Fire Chief Bragg added that the City does not have the authority to allow residents to burn garbage at any time, only yard waste.

h. Approve/deny agreement between the City of Martinsburg and Zambelli Fireworks for the July 4, 2016 fireworks demonstration--\$10,000

Motion made by Councilman Baker, seconded by Councilman Boyd, to approve the agreement for Independence Day Fireworks in the amount of \$10,000 which City Manager stated was budgeted. Motion carried unanimously.

i. Approve/deny appointment of Debra Dorsey and Tracy Smith as 2016 General Election Ballot Commissioners

Motion made by Councilman Collinson, seconded by Councilman Knowles, to approve the appointment of 2016 Ballot Commissioners. Motion carried unanimously.

j. Approve/deny change in polling location for Precinct 15 (Opequon Elementary) in Ward IV to North Middle School for the June 14, 2016 General Election, as customary polling place is under construction

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve the change in polling location. Motion carried unanimously.

k. Approve/deny bid recommendation for stump grinder for the Public Works Department—Alban Caterpillar--\$5,910

Motion made by Councilman Baker, seconded by Councilman Knowles, to approve the recommendation.

City Manager Mark Baldwin stated that the funds are from one of three grants from the State. So far, the City has only received authorization for this one.

l. Discuss Rock Cliff Drive/Tavern Road proposed intersection designs

Councilman Etherington stated that he would prefer a stop light over a roundabout.

City Manager stated that it could be further discussed in Committee.

m. Approve/deny Police and Fire Explorer Post Constitution and By-Laws

Motion made by Councilman Knowles, seconded by Councilman Etherington, to approve the Fire/Explorer Post Constitution and Bylaws. Motion carried unanimously.

n. Approve/deny purchase of the following for the Martinsburg Police Department: four (4) Ford Explorers—State Contract--\$25, 518 each, total \$102,072; Outfitting of vehicles--\$6,000 each, total \$24,000; ten (10) Vision in-Car Cameras—Kustom Signal, Inc.--\$5,147 each, total \$51,740. Total purchases--\$177,812 (Police Levy)

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

Councilman Baker asked if the vehicles will be lettered and lighted and if the Police Department intends to sell the four vehicles being replaced. Chief Richards responded in the affirmative to all.

o. Approve/deny Change Order #16 between the City of Martinsburg, HRI, Inc., and O'Brien and Gere for the WWTP Upgrade Project Construction--\$35,697

Motion made by Councilman Etherington, seconded by Councilman Knowles, to approve Change Order # 16. Motion carried 6-1, Councilman Anderson voting no.

p. Approve/deny Resolution 2016-06 authorizing HRI Inc.'s Application for March 2016 Payment #27 for the WWTP Upgrade Project--\$ 1,932,574.75

Motion made by Councilman Baker, seconded by Councilman Etherington, to approve Resolution 2016-06. Motion carried 6-1, Councilman Anderson voting no.

16. Executive Session

Motion made by Councilman Wachtel, seconded by Councilman Etherington, to enter Executive Session for personnel, legal and real estate matters at 7:24 PM. Motion carried unanimously.

Adjournment

Motion adjourned by unanimous consent at 7:45 PM.

George Karos, Mayor

Gena Long, City Recorder