

July 24, 2018

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 24th day of July, 2018, at the Public Safety Building located at 500 Quincy Street in Fairmont, West Virginia.

Mayor Mainella called the meeting to order.

Councilmembers present were:

First District	Marianne Moran
Second District	Frank G. Yann
Third District	Warren G. Harger, Jr.
Fourth District	Kenneth (Brad) Merrifield
Fifth District	Fran Warner
Sixth District	Dora Kay Grubb
Seventh District	Philip R. (Phil) Mason
Eighth District	Thomas (Tom) Mainella
Ninth District	Ronald J. (Ron) Straight, Sr.

Also present were:

City Manager	Robin I. Gomez
City Attorney	Kevin Sansalone
Representing City Clerk	Paula Friend
Police Chief	Steve Shine
Police Sergeant	Eric Hudson

IN RE: OPENING CEREMONIES

Minister Howard Brooks, Morningstar Baptist Church, gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Merrifield.

APPROVAL OF MINUTES

Mayor Mainella noted that each member of Council had received a copy of the minutes from the Regular Meeting held on July 10, 2018.

Councilmember Mason moved to approve the minutes as submitted. The motion was seconded by Councilmember Straight.

The Mayor declared the minutes approved as submitted by voice vote of Council.

PUBLIC HEARINGS

IN RE: AN ORDINANCE AMENDING AND SUPPLEMENTING THE PROVISIONS OF PART ONE-ADMINISTRATIVE CODE, CHAPTER FIVE - OFFICERS AND DEPARTMENTS, ARTICLE 131 POLICE DEPARTMENT, SECTION .06 RULES AND REGULATIONS, OF THE FAIRMONT CITY CODE TO ELIMINATE THE REQUIREMENT THAT THE RULES AND REGULATIONS GOVERNING THE POLICE DEPARTMENT AND ITS MEMBERS MUST BE APPROVED BY COUNCIL

Pursuant to a notice duly published in the Times-West Virginian on July 16, 2018, a public hearing was convened to obtain citizen input on a proposed ordinance requiring the Police Department rules and regulations to be approved by Council.

The Mayor asked if anyone present desired to speak to the proposed ordinance.

Police Chief Steve Shine spoke in favor of the ordinance. He explained the constraints faced by the Police Department by submitting new rules to Council the way the process is now. He said the process to approve policy right now is going to take at least two to three weeks and we don't have that luxury with some of them. He then explained what a monumental task it is to try to add to or change policy in the format that it is now. He also mentioned that there are certain things that probably should be introduced to Council, specifically in regards to investigative procedures, panic alarms responses, etc. but these things get updated constantly and he sends out at least two to three things per month that affects our current operating policy and some things are in our policy now that are now out of our control. Some things are dictated by 911 and how they call in and how they get information and this is not for public release and should not be discussed in a forum but that is how we operate. He then talked about the firearms policy and said that the policy manual is less than a page and half long but the actual way that we train people with firearms is over a 100 page document. He closed by saying that he hoped that a lot of the information and emails that he put out show that he is not trying to usurp authority but he is just trying to bring his department into the same manner of approval as every other department within the City.

City Manager Robin Gomez spoke in favor of the ordinance. Mr. Gomez said that as has been communicated to Council through the various emails, including a multitude of information they have received from the Police Chief, this explains that this is the only department that has this provision in

our code of ordinances. The City's Charter provides and directs under this form of government that our administrative executive powers are delegated to the City Manager, which includes the oversight of the nine departments and the services that we provide. The Police Department is the only department that has this requirement, which does not make the process any different than it currently is with the exception that any change or policy or procedure has to come before Council.

The City Manager then said that under our City Code 131.06 falls under the administrative regulations of Part One of the Administrative Code. There is one section that specifically identifies officers and departments and the departments that are listed include the Police Department and in reviewing those articles, the only relevant language in all of those articles relates to the Police Department. There is little to any language that actually stipulates what processes or procedures of any of the other departments.

Councilmember Brad Merrifield spoke in favor of the ordinance. He stated that he was a firm believer in letting people do their jobs and giving them the tools to do them unless they give you a reason not to trust them. With the amount of trust that we already put in the Police Department, we are already all in. Having a technicality that makes it more cumbersome to get paperwork done does not make a lot of sense. He said that as per Chief Shine, if things start going sideways, Council just needs five votes to reverse everything and take it back to the way it was.

ERIC HUDSON, Fairmont Police Sergeant, spoke in favor of the proposed ordinance. He is also the Secretary for FOP Lodge 69 and has been for eight or nine years. He wanted to bring to Council's attention that the FOP unanimously supports Chief Shine in this endeavor. This is just a streamlining of what needs to be done.

RICHARD BOWYER, resident of Fairmont and the only living surviving member of the original Charter Board, spoke against the proposed ordinance. He said a couple Councilmembers called him and asked for some background since he served on the Charter Board. He said that they had spent months in the process of developing the City Charter, bringing in consultants and model charters. He said that we just did not adopt things because they were in a model some place, we spent time discuss all of these issues. He said that he cannot honestly say how much and at what length this aspect was discussed. He stated that his concerns were that the work of the Police Department is the most that affects the public. He said the Council, as the elected representatives, are the direct representatives of the public and to place the matter in the hands of an employee, the City Manager, and his appointee, removes that immediate direct relationship

between the public, their elected representatives. He went on to say that today's environment, around the country, to maintain the Council's responsibility protects the City Manager.

Councilmember Grubb spoke against the proposed ordinance. She said after talking to several people, she still doesn't know how she feels about it. She said we have an excellent Police Chief and Police Department. She was not concerned about now but what could happen in the future. She feels this is the one area of government that should be contained by City Council. She also feels that they need to know what is happening with each area of the problems that we have within the City and County. She thinks people will feel more comfortable if they can come to a Councilmember instead of having to go to one person to make these decisions. She also thinks the Police Department is entirely different than the Fire Department or the Water Department or any other departments. She thinks this is going a little bit fast and would like to see some sort of a plan that was completely drawn out instead of completely relinquishing all power.

There being no one else to speak, the public hearing was called to a close at 7:20 p.m.

PROCLAMATION PRESENTATION

IN RE: 35TH ANNUAL NATIONAL NIGHT OUT

Mayor Mainella read and presented a proclamation to Police Chief Steve Shine naming Tuesday, August 7, 2018 as the 35th Annual National Night Out. The National Night Out event will take place at Veterans Plaza and is meant to enhance the relationship between residents and law enforcement and allows interaction under positive circumstances.

IN RE: DISABILITY ACTION CENTER DAY

Mayor Mainella read and presented a proclamation to Julie Sole (Disability Action Center Executive Director), Rick Garcia and Gia Deasy (Disability Action Center Board Members) naming Saturday, August 4, 2018 as Disability Action Center Day. They will be celebrating their 60th anniversary on Saturday.

ANNOUNCEMENTS

IN RE: MARION COUNTY CONVENTION AND VISITOR'S BUREAU

Councilmember Moran said that she placed packets from the CVB that

contain the new visitors guide as well as other marketing materials at Council's seats. She also reminded everyone that Thursday, July 26th at the CVB they will be unveiling their new branding.

IN RE: DISABILITY ACTION CENTER

Councilmembers Straight, Mason and Grubb commended Julie Sole for her work at the DAC.

IN RE: APPRECIATION FOR CHIEF SHINE

Councilmember Grubb and Councilmember Warner thanked Chief Shine for his work.

IN RE: TRAFFIC COUNT ON BENONI AVENUE

Councilmember Mason said that there was recently a traffic count on Benoni Avenue and the average daily count was 449 vehicles.

CITIZENS PETITIONS

IN RE: TV CHANNEL 19

Rev. D. D. Meighen spoke regarding the transition today of Spectrum Cable to all digital services and the loss of Channel 19. He said that Channel 19 should now be Channel 561 but is not active yet. He said that his concern is that Spectrum is supposed to be involved in the community but this action has removed them from the community. Channel 19 is not listed on the channel lineup, on the website or on the phone calls to them, nor is Channel 18, the sister station. He said he was never consulted about this move. He is asking City Manager Gomez to contact Spectrum to help them get back on the air. He stated that according to FCC Regulations, anytime a town or city has a franchise agreement with the cable company, the cable company has to provide a local channel for local programming.

City Manager Gomez said he will contact Spectrum to get this resolved as quickly as possible, especially since they are bound by our franchise agreement.

CITY MANAGER'S REPORT

IN RE: PAVING PROJECT

City Manager Gomez said we are waiting for a start date for our milling and paving. Hopefully this will start in the next two weeks. Milling will begin on Morgantown Avenue and Haymond Street. It should be completed in about a month.

IN RE: DISABILITY ACTION CENTER

City Manager Gomez congratulated the DAC for their services and encouraged everyone to attend their 60th Anniversary on Saturday, August 4th from 9:00 a.m. to 1:00 p.m. for the open house.

IN RE: NATIONAL NIGHT OUT

Mr. Gomez announced that the National Night Out event will be at Veterans Square on Tuesday, August 7th from 6pm - 9pm. There will be business and non-profit vendors with free food and activities. The purpose is to allow people to get to know the Police Officers a little better and develop positive, working relationships with the Police Department. He also commended the work and professionalism of the Officers and Police Chief Steve Shine. He encouraged citizens to call the Police Department or 911 to report suspicious activity.

IN RE: MCPARC

Mr. Gomez thanked Marion County Parks and Recreation Commission for their continued events and activities at Palatine Park. He thanked Marion County Commissioner Rick Garcia directly (who was in attendance) for their continued support of those events.

IN RE: WEST VIRGINIA MUNICIPAL LEAGUE

City Manager Gomez reminded everyone that from August 7-10, he would be attending the WVML Conference in Morgantown along with City Clerk Janet Keller, Mayor Mainella, Deputy Mayor Yann, Councilmember Moran and Councilmember Straight.

IN RE: PUBLIC WORKS DEPARTMENT APPRECIATION

Mr. Gomez thanked Public Works for cleaning up another large dump site near the Disability Action Center. These are areas where a sizable amount of trash such as tires, shopping carts and numerous bags of trash have been dumped and was removed by Public Works staff. City Manager Gomez said

that so far, he has collected over 145 tires and 78 shopping carts himself.

IN RE: LOCUST AVENUE DEMOLITION

City Manager Gomez stated that a dilapidated structure on Locust Avenue was torn down by the property owners recently.

IN RE: SALES TAX REVENUE UPDATE

Mr. Gomez updated Council on the fourth and final sales tax revenue proceeds for FY18 from the State of WV. The proceeds from April through May totaled \$521,342.32, which brought the total of the 1% sales tax proceeds for the entire year to \$1,932,988.69, which was \$400,000.00 above the budget so that speaks well to our continuing economic growth in the City. The majority of that funding goes to help fund the Police and Fire Pensions.

Additionally, the Thanksgiving holiday falls on November 22nd, which will give five full shopping weekends between Thanksgiving and Christmas.

IN RE: DEMOLITION BIDS

Councilmember Mason mentioned that he has not seen a list of the most recent demolition bids.

The Manager replied that we have not finalized it. He noted that we are in the process right now of having the structures tested for asbestos which impacts the bid. When we issue the bid, we have to include the reports under the WV Department of Environmental Protection laws so we are hoping to have that concluded perhaps by the end of this week, if not next week. Then the bid will be issued no later than the first week of August. The Manager noted that it will include the abutment at the entrance to Palatine Park.

Councilmember Mason asked if that meant the "ugly wall".

Mr. Gomez replied yes.

CONSIDERATION OF COUNCIL BUSINESS

IN RE: ADOPTION, AN ORDINANCE AMENDING AND SUPPLEMENTING THE PROVISIONS OF PART ONE-ADMINISTRATIVE CODE, CHAPTER FIVE - OFFICERS AND DEPARTMENTS, ARTICLE 131 POLICE DEPARTMENT, SECTION .06 RULES AND REGULATIONS GOVERNING THE POLICE DEPARTMENT AND ITS MEMBERS MUST BE APPROVED BY COUNCIL

Mayor Mainella entertained a motion for the adoption of an ordinance providing for an amendment to the rules governing the Police Department.

Motion:

Councilmember Warner moved for the adoption of the proposed ordinance. Councilmember Straight seconded the motion.

Discussion:

Councilmember Mason stated he would vote no on the ordinance after speaking to a member of the Charter Board. He read a statement he had prepared stating that, in his opinion, the authority should not rest solely with the City Manager and Police leadership.

Below is the prepared statement that Councilmember Mason read:

"My position on the ordinance to remove approval of police rules and regulations from authority of Council has not changed. I will vote no on this ordinance. I today spoke with a member of the Charter Board whose work ultimately resulted in the creation of the City Manager form of government for Fairmont we have today. He indicated the Board enjoyed the benefit of advice from citizens, consultants and legal counsel. The decision to have police rules and guidelines authority retained by Council was a conscious decision and not an oversight. The very nature of police work, in my opinion, dictates citizen participation and ownership of police rules, regulations and guidelines. This is accomplished through action of duly elected members of Council, the representatives of Fairmont citizens. I agree with the position of the original Charter Board. Council as citizen representatives should assure citizen participation and ownership of police rules through authority of Council. That authority should not rest solely with the City Manager and police leadership, in my opinion. Further, in reference to the eloquent Lakota prayer presented at the recent Council meeting we, Council, should make decisions with consideration of their impact "four generations" into the future. We might not be so fortunate as to have such marvelous City Manager and Police leadership down the road as we have

today. It is far easier to give away authority than to take it back.” He said again he will vote no on this ordinance.

Councilmember Harger said that he agreed with Chief Shine in that the law enforcement community is fast-paced, evolving, changing community. If the Police Chief has to delay his actions or administration, it could be detrimental to the community and the individual citizens. The City Manager answers to Council and he feels he has been very responsive to Council. The Law Enforcement community has things that are not for public release for the protection of the public that are involved in these matters. Also, the Police Department needs to be able to act without that public exposure. He said that he will be voting yes on this ordinance.

Councilmember Merrifield reminded everyone that when the original document was written, we were living in a much different time in the amount of problems and issues that the police today have to deal with. He said that a lot of that used to be handled at home before it got to where the Police Department had to deal with it. The amount of adversity and people coming out against the Police Department is a very dangerous thing for our country and for our society. He said he will be voting yes to allow the Police Department to do their job as they have been doing it and not making it cumbersome knowing that Council still has the authority with a 5-4 vote to change things and turn the ship around, if we have to.

Councilmember Mason asked why it was so cumbersome.

Mayor Mainella said that it had been explained in the Police Chief’s address.

Councilmember Moran stated: “I will be voting no on this. I had asked Robin to give me some specific instances where the Police Chief or the Police have been hindered by the current ordinance as is and he said there wasn’t so I just don’t like to change things if it isn’t broken so to me it isn’t broken and I will be voting no”.

Roll call was taken by the Clerk.

Councilmember Warner	Yes	Councilmember Grubb	No
Councilmember Straight	Yes	Councilmember Merrifield	Yes
Councilmember Harger	Yes	Mayor Mainella	Yes
Councilmember Mason	No	Councilmember Moran	No
Councilmember Yann	No		

The Mayor declared the ordinance adopted by majority vote of Council and the ordinance designated as Ordinance No. 1783 was duly adopted.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT PROVIDING FOR THE GRANTING OF A QUITCLAIM EASEMENT TO DOUGLAS CLINE OVER, ALONG AND ACROSS A CERTAIN PORTION OF THE RIGHT OF WAY BEGINNING AT A POINT IN DAYTON STREET AND RUNNING NORTH AND BEING PARALLEL TO AND LYING BETWEEN BARNES STREET AND HALL STREET, IN THE CITY OF FAIRMONT, FAIRMONT CITY DISTRICT, MARION COUNTY, WEST VIRGINIA FOR THE PURPOSE OF ACCOMMODATING THE PORTION OF A RECENTLY BUILT GARAGE THAT LIES ON THE RIGHT OF WAY

Mayor Mainella entertained a motion for the introduction of an ordinance granting a quitclaim easement to Douglas Cline.

Mayor Mainella noted that the ordinance died for lack of a motion.

IN RE: ADOPTION, A RESOLUTION OF THE COUNCIL OF THE CITY OF FAIRMONT APPROVING AND ADOPTING AN AMENDMENT TO THE RULES AND REGULATIONS OF THE POLICE CIVIL SERVICE COMMISSION OF THE CITY OF FAIRMONT ADOPTED BY THE COMMISSION ON JANUARY 13, 2000, AND APPROVED BY COUNCIL ON FEBRUARY 22, 2000, TO PROVIDE FOR AMENDMENTS TO RULE 4.04 *NOTICE OF VACANCY AND EXAMINATION* AND RULE 6.04 *THE COMPETITIVE PROCESS* TO MIRROR THE NOTICE REQUIREMENTS OF WEST VIRGINIA CODE 8-14-13

Mayor Mainella entertained a motion for the adoption of a resolution approving an amendment to the Police Civil Service Rules and Regulations.

Motion:

Councilmember Mason moved for the adoption of the proposed resolution and the reading of a synopsis in lieu of the entire resolution. The motion was seconded by Councilmember Warner.

The Clerk read the proposed resolution by synopsis for the first time.

Roll call was taken by the Clerk.

The Mayor declared the resolution adopted by unanimous vote of Council.

IN RE: ONE RE-APPOINTMENT, HISTORIC PRESERVATION REVIEW COMMISSION, TERM TO END JANUARY 1, 2021

Mayor Mainella entertained a motion for one re-appointment to the Historic Preservation Review Commission for a term to end January 1, 2021.

Motion:

Councilmember Harger moved to re-appoint Tracy Evans to the Historic Preservation Review Commission for a term to end January 1, 2021. The motion was seconded by Councilmember Moran.

The Mayor declared Tracy Evans re-appointed to the Historic Preservation Review Commission for a term to end January 1, 2021 by unanimous vote of Council.

ADJOURNMENT

The Mayor entertained a motion for adjournment.

Motion:

Councilmember Mason moved to adjourn the meeting. The motion was seconded by Councilmember Straight.

The Mayor declared the meeting adjourned by voice vote of Council at 7:59 p.m.