

October 23, 2018

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 23rd day of October, 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
Seventh District	Philip R. (Phil) Mason
Eighth District	Thomas (Tom) Mainella
Ninth District	Ronald J. (Ron) Straight, Sr.

Absent:

Sixth District	Dora Kay Grubb
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Also present were:

City Manager	Robin I. Gomez
City Attorney	Kevin Sansalone
City Clerk	Janet L. Keller

IN RE: EXCUSE COUNCILMEMBER GRUBB

Mayor Mainella asked for a motion to excuse Councilmember Grubb due to a work obligation.

Councilmember Mason moved to excuse Councilmember Grubb from tonight's meeting. The motion was seconded by Councilmember Straight.

The Mayor declared Councilmember Grubb excused by voice vote of Council.

IN RE: OPENING CEREMONIES

Rev. Richard Bowyer gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Mason.

APPROVAL OF MINUTES

Mayor Mainella noted that each member of Council had received a copy of the minutes from the Regular Meeting held on October 9, 2018.

Councilmember Merrifield moved to approve the minutes as submitted. The motion was seconded by Councilmember Yann.

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

IN RE: PROCLAMATION IN SUPPORT OF HUMAN RIGHTS COMMISSION

Mayor Mainella read a proclamation from the Marion County Chamber of Commerce in support of the Human Rights Commission Ordinance. The Mayor stated that the Marion County Chamber of Commerce supports the successful passage of the City of Fairmont's Referendum to re-enact the Human Rights Commission on the 2018 General Election.

PUBLIC HEARINGS

IN RE: AN ORDINANCE PROVIDING FOR AN AMENDMENT TO THE CITY OF FAIRMONT'S 2018-2019 ANNUAL BUDGET: GENERAL FUND

Pursuant to a notice duly published in the Times-West Virginian on October 15, 2018, a public hearing was convened to obtain citizen input on a proposed ordinance providing for a General Fund budget revision.

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

Mr. Gomez spoke in favor of the proposed ordinance. He noted that this was the second revision for this current fiscal year.

There being no one else to speak, the public hearing was called to a close at 7:12 p.m.

IN RE: AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT PROVIDING FOR AND AUTHORIZING THE PURCHASE OF THOSE CERTAIN PARCELS OF REAL ESTATE SITUATE IN THE CITY OF FAIRMONT, MARION COUNTY, WEST VIRGINIA, NAMELY:

CERTIFICATION #	DESCRIPTION	MAP	PARCEL #
245868	BLK 10 PT LT 10 (30X60)	03-40	177
246430	BLK 6 LT SECOND ST	03-02	02
246568	BLK 44 LT VA AVE	03-05	129
246570	LT 7 HAMILTON ST	03-28	22
246574	PT LT 2 SECOND ST & ALBERT CT	03-02	03
246577	LOT ALBERT COURT	03-02	07

FROM THE STATE OF WEST VIRGINIA DEPUTY COMMISSIONER OF DELINQUENT AND NON-ENTERED LANDS AS A RESULT OF THE NON-PAYMENT OF THE REAL ESTATE TAXES

Pursuant to a notice duly published in the Times-West Virginian on October 15, 2018, a public hearing was convened to obtain citizen input on a proposed ordinance authorizing the purchase of properties from the State of WV.

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

Mr. Gomez spoke in favor of the proposed ordinance. He noted this item is in keeping with our economic development to alleviate blight. He explained these were six parcels with structures that we acquired at the State of WV Tax Sale. He mentioned that each structure is beyond its useful life and we will be adding them to our demolition project to demolish these structures.

There being no one else to speak, the public hearing was called to a close at 7:15 p.m.

ANNOUNCEMENTS

IN RE: CHAMBER OF COMMERCE COMMENDED

Councilmember Moran thanked the Marion County Chamber of Commerce for their proclamation in favor of voting for the Human Right Ordinance.

IN RE: CELEBRATION OF LIGHTS

Councilmember Yann stated that that holiday season is starting at Morris Park. He reported that the South Fairmont Rotary is starting to put up all of

the displays and he understands that there will be over 400 displays this year. He noted that he was very impressed with the community involvement.

IN RE: FAMILY RESOURCE NETWORK

Councilmember Harger stated that earlier the Times-West Virginian, an article quoted him saying that there are 30 non-profit organizations in the city and county wide and in that article the number was up to 36 non-profit organizations city and county wide. He noted that emphasizes to him, not only are we the "Friendly City", but we are ready to help those who are here and who come here. He said kudos to Frank Jarman, Executive Director of the Family Resource Network and the work that they are doing.

IN RE: DRUG PARAPHERNALIA FOUND

Councilmember Harger reported the discovery of suspected drug paraphernalia in the area of the tunnel on the rail trail. He noted it was in the city limits down from Winfield Street. He noted that this was an issue and anything that discourages use of the rail trails is a problem for us to address. He mentioned that he brought it up with Chief Shine and his department and he equally agrees regarding the effort and wants to collaborate. He said the Chief even recommended use of an ATV during the summer time.

IN RE: DANCING WITH THE STARS EVENT

Councilmember Straight stated that he attended the "Dancing with the Stars" event. He noted more than 650 attended the event and they made a lot of money to help the United Way.

IN RE: COMPREHENSIVE PLAN OVERSIGHT

Councilmember Mason stated that regarding the Comprehensive Plan, he thought there was an oversight in the printing of the draft of the Comprehensive Plan in that there was a notion that we would attempt to close Benoni Avenue. He thought maybe it was an oversight and probably put in there prior to the printing of the final draft. He said that in order to support the Comprehensive Plan, he will need some kind of commitment that the item will be removed prior to consideration by the Council of the plan.

The Mayor said, along with Councilmember Mason, he thought Council needed some assurance or some revision that page 129 will be eliminated or

revised to state that we have no intentions in the near future closing the road in Coal Run Hollow.

Mr. Gomez said that we can certainly give consideration to modify it at the request of Mayor Mainella and Councilmember Mason. He then asked the City Attorney if we would have to introduce a different plan.

City Attorney Kevin Sansalone said he believed it would be substantive change.

Councilmember Mason said that it was not on the table yet for consideration.

Mr. Sansalone said that it is on the agenda to be introduced this evening.

The Mayor said that since we voted not to do that, it can't be done until Council would reverse that code.

Mr. Sansalone explained there was a resolution before Council previously to not close the road.

Councilmember Mason said that he was looking at this as an oversight or an error. He said that Councilmember Straight is the Chairman of that Commission and he would be able to tell me if there was discussion, he heard there wasn't any discussion, on that item. He said that if it is an oversight or an error, then the error can be fixed prior to introduction.

Mr. Sansalone said that was fine, if that is what you want then you have to go back to the Planning Commission and modify the plan and go through the process again.

Councilmember Moran said if that were to be done, the Comprehensive Plan could not be introduced tonight.

The City Attorney said correct, that would be his opinion because he believed if you are modifying the plan that's been presented through the process, then that's a substantive change and you would not be able to address the ordinance tonight, which is fine, if that's that Council wants to do.

Councilmember Straight stated even if we did approve this, that's subject to change later on that we can take that out. He then said that the Comprehensive Plan was a document in progress.

Mr. Sansalone said his understanding of the Comprehensive Plan is that it is a living document and it directs you with regard to planning and land use for

the next 10 years, it's subject to change. He went on to say that the previous comprehensive plan has been modified multiple times to add different elements to it. He then stated that if you adopt it with the offending page, you can come back at some point and amend it or you don't have to follow it to the "T" but he understands Councilmember Mason's concern. It's in there, he doesn't want it in there. If you want to take it out before you adopt it, then he believes you have to go back through the process and re-introduce it.

Councilmember Harger asked how threatening is that line because it addressed Benoni Avenue as it is being closed. He noted that it was not closed, so does that cancel itself out, it's not a closed road.

Councilmember Mason said that is why he described it as an error.

Mr. Sansalone said that if you are correcting an error . . .

Councilmember Mason said that an error can simply be edited.

Mr. Sansalone said that he was not arguing with him, an error can be edited, however, if it is a substantive change then it cannot be modified after it is introduced. If you consider that to be substantive and not just a typographical error, then his opinion would be that it has to be re-introduced.

Councilmember Mason said to look at the title. It is called a Comprehensive Plan. Comprehensive, the word means inclusive, all inclusive, and it covers a plan and a plan is a description of our intentions to accomplish certain things. That is a plan. If we approve this Comprehensive Plan that describes the closure of Benoni Avenue in defiance of the action that has already been taken by Council, then there is a definite conflict someplace. Council has already stated it is not our will to close Benoni, we have already stated that and to have included in the Comprehensive Plan, if we describe it correctly, which is a description of our intent to accomplish certain things, then we are conflicting ourselves. He went on to say that page 129 – Closure of Benoni – is in direct defiance of action already taken by Council. It should be viewed as an error, an oversight or simply go through the routine again and removed it because Council has already acted not to close Benoni Avenue.

Mayor Mainella explained that there are a lot of other things in the Comprehensive Plan that if we approve it tonight doesn't say it's going to happen.

Mr. Gomez stated that there were many items adopted in 2005 that have not been . . .

The Mayor then stated that there are a lot of other things that are going to happen that aren't in the Comprehensive Plan.

Councilmember Mason said this is an item that Council took action on. We took action and made a decision not to close Benoni, and now, early on, he thought it was an oversight, but now as he is hearing the discussion, maybe it wasn't an oversight, maybe it was intentionally placed in there, he did not know.

Mr. Gomez said that none of the items in the Plan have been removed. As it was introduced is what the document is in front of Council. He noted that multiple public hearings have been held.

Councilmember Mason said that Council is asked to approve this Plan.

Councilmember Straight noted that the mention of Benoni Avenue on page 129 of the Comprehensive Plan update was under the headline "Consider Options to Implement the Coal Run Greenway Project". He said that the Planning and Zoning Commission has worked on this religiously and have had setbacks and then kept coming back to redo it and he hoped that Council could go ahead and push this through and later on take a look at it. He mentioned again that page 129 says "Consider Options".

Councilmember Mason said that option has been considered. The consideration was that it would not be closed.

Mayor Mainella asked how much trouble it is, after it is adopted, to go back and make a revision to page 129.

Mr. Sansalone responded by saying to go back to the Planning Commission and they would have to present another ordinance to modify it to either remove it or change the language to say that Council considered the closure and adopted a resolution saying that it wasn't closed but other options may be available.

Mayor Mainella suggested doing that, moving it forward with the caveat that the Council is going to go back and address the offending language with the Planning Commission.

Councilmember Harger asked if it would be appropriate because the way it reads is a plan based on the closed road that is no longer closed so the plan

is not to close the road but what to do should that road be closed which it is not.

The City Attorney said that is why you would go back to the Planning Commission and they would suggest modifications to that language and provide a replacement page for 129 that presents the options and discusses the options and makes all of those options available as part of the plan.

Mr. Gomez explained that the ordinance will be introduced this evening and then a vote, and if the motion is not seconded, then the item dies. If it is, then it goes forward and Council votes to continue or not to continue. He added that the Comp Plan can be changed as we go along at any point in time.

Councilmember Mason said it is his intent, as long as he is here, is to take this thing seriously. It is a Comprehensive Plan. It is a description of our desire and the direction we wish the City to go in and he has seen too many of them sit on a shelf, collect dust and be ignored. He did not think we ought to do that. He thought we should take the Comprehensive Plan seriously and, if that is the case, he thought the item should be tabled until it can be brought back to Council in proper fashion in congruence with action that's already taken by Council, which as it is written now, is totally in conflict.

IN RE: NOVEMBER 6, 2018 ELECTION

The Mayor stated that this is the last meeting before the election and there is a levy on that ballot that funds volunteer fire departments. He said on the surface it appears that the people who live in Fairmont and already pay a fire fee would be paying an additional amount that would go towards the volunteer fire departments that are out in the county. He said that if you think of yourself as a citizen of Fairmont and Marion County, consider helping these fire departments out. He mentioned that we all go out of the City from time to time and if you consider yourself a citizen of Marion County, there would be some benefit to that. He noted that he was going to vote in favor of that levy and he hoped others would give it some consideration.

CITIZENS PETITIONS

IN RE: POLICE OFFICER SALARIES AND CERTIFICATION PAY

RICHARD BABBICH, 500 Quincy Street, spoke to Council regarding the salary for police officers and requested an increase in the certification pay

for current law enforcement officers that would apply for a position at the City of Fairmont Police Department. He said that currently Police Departments across the country are facing issues in recruiting and retention and it is affecting their department. He said, this year alone, they have hired 11 police officers for vacancies that have resulted from retirements or officers leaving for other opportunities. He explained that the last test given in September, nine individuals showed up to take the test and of those nine individuals, none passed the written exam. He said the FOP believes there are numerous ways to address this. He asked Council to look into the one-time incentive pay increase for officers that are already certified in which they would be able to receive a bonus for applying here, making it and being hired. Presently, our one-time incentive is \$3,000 but is lower than six local departments around Fairmont. He noted it was lower than Weston at \$10,000; Bridgeport at \$7,500; Clarksburg at \$5,000; Wheeling at \$5,000; Huntington at \$4,000 and Parkersburg at \$10,000. He mentioned that Morgantown does not have a hire-on bonus, however, they have a higher salary increase. He then stated that the Fairmont police officers make \$5,000 less than Bridgeport; \$4,000 less than Clarksburg; \$6,000 less than Morgantown and that is just looking at base patrolman first year pay. He then stated that the FOP would appreciate Council looking into this issue. Officer Babich then encouraged Council to do a ride along to see what they do on a daily basis.

Councilmember Mason stated that Council has review the data and looked at the comparison of the sign-on bonuses, salaries, medical/health coverage but one thing that was not included is what do the officers feel would be best to assist Council is recruiting additional officers and retaining officers. He asked if it was the salaries, the benefit or all of the above.

Officer Babich said obviously a salary increase would make all of the officers currently here happy and it will also help with recruitment.

IN RE: MARION COUNTY CHRISTMAS TOY SHOP

BUTCH TENNANT, Sylvan Avenue, addressed Council regarding the Marion County Christmas Toy Shop. He said that the Marion County Commission, Marion County Board of Education, Times-West Virginian, WVU Extension Service, local churches and civic and community groups are working together to host the 10th annual "Marion County Christmas Toy Shop". The event will be held on Friday, November 23rd and is open to Marion County children between the ages of birth – 14. Each year, the Christmas Toy Shop provides over 600 children with toys, books, and stocking stuffers. He encouraged everyone to support this year's event by either donating money to purchase toys, to donate toys, to volunteer or to serve as a drop-off

location.

IN RE: PROPERTY DAMAGE FROM SEWAGE ISSUE

PATRICK HODGES, 614 Benoni Avenue, addressed Council regarding property damage that was caused by a sewage issue. He said that he suffered property damage and tried to file a claim with the City of Fairmont but was told that he could not file a claim. He went on to say that he had sewage in his basement and feels like he was not given due process. He said that he should not have to show up at a Council meeting or call the Mayor in order to get due process. He said this was borderline discrimination or defamation of character or whatever you want to call it because what he has is simple stuff and not like the whole house was damaged. He just wants his stuff taken care of.

The Mayor said that he and Mr. Hodges already talked about his situation. He said that Mr. Hodges should have received a letter from Paula Friend who handles the claims explaining to him the situation. He then asked if Mr. Hodges received her letter.

Mr. Hodges responded by saying that her letter said that they looked into it, it's done.

The Mayor said no, it explained that that the City had no . . .

Mr. Hodges interrupted to say that there are two entities in this situation, the property owner and the City. The City has their side and he has his side. He said that he has not had the opportunity to file his evidence.

The Mayor asked Mr. Hodges to call him back and they can discuss it further.

Mr. Gomez said that he takes exception to the comments about discrimination or being treated differently. That is not what this was ever about and that is an untrue statement. We do take that directly. Mr. Hodges has communicated to our Utilities and with Paula who handles our claims and everything was reviewed and explained to him. He went on to say that the matter has been closed and if he has any other issue going forward, he may take it to a court. Everything has been reviewed and the City did not do anything wrong and we corrected the situation which was not on the City's side. He noted that it was on the resident's side and it has all been corrected. He said again, publicly, that he does take exception to the comments regarding discrimination because that is just not true and we do take that seriously and he will defend the action of all of our employees and do not accept those comments.

CITY MANAGER'S REPORT

IN RE: SALES TAX UPDATE

Mr. Gomez reported that the City received the most recent quarterly sales tax distribution which was rather positive, \$583,083.46 which was the highest quarterly distribution since the sales tax began on July 1, 2016.

IN RE: PAVING UPDATE

The City Manager stated that the contractor paved 10,915 tons of asphalt for 8.47 miles with a total cost of \$828,159.92. He said that, in addition to the milling of approximately 10 streets, was \$190,631.43. He noted that they did have to fix repairs on three streets for a total of \$189,374.26. He reported, so far to date, our paving for the season was over \$1,208,165.51.

IN RE: TRICK OR TREAT HOURS

Mr. Gomez announced that the trick or treat hours will be from 6:30 p.m. to 8:00 p.m. on Wednesday, October 31st.

IN RE: VOLUNTEER FIRE DEPARTMENT LEVY

The Manager stated that the Fire Levy is a county-wide fire levy and every registered voter can vote on the levy. The proceeds of that tax levy, if approved, will go to the 13 volunteer fire departments with none of those proceeds going to the City of Fairmont for our fire department. If the levy passes, the Fairmont fire fee will not be reduced.

CONSIDERATION OF COUNCIL BUSINESS

IN RE: ADOPTION, AN ORDINANCE PROVIDING FOR AN AMENDMENT TO THE CITY OF FAIRMONT'S 2018-2019 ANNUAL BUDGET: GENERAL FUND.

Mayor Mainella entertained a motion for the adoption of an ordinance providing for a General Fund budget revision.

Motion:

Councilmember Merrifield moved for the adoption of the proposed ordinance. Councilmember Harger seconded the motion.

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of those Councilmembers present and the ordinance designated as Ordinance No. 1790 was duly adopted.

IN RE: ADOPTION, AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT PROVIDING FOR AND AUTHORIZING THE PURCHASE OF THOSE CERTAIN PARCELS OF REAL ESTATE SITUATE IN THE CITY OF FAIRMONT, MARION COUNTY, WEST VIRGINIA, NAMELY:

CERTIFICATION #	DESCRIPTION	MAP	PARCEL #
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246574	PT LT 2 SECOND ST & ALBERT CT	03-02	03
246577	LOT ALBERT COURT	03-02	07

FROM THE STATE OF WEST VIRGINIA DEPUTY COMMISSIONER OF DELINQUENT AND NON-ENTERED LANDS AS A RESULT OF THE NON-PAYMENT OF THE REAL ESTATE TAXES

Mayor Mainella entertained a motion for the adoption of an ordinance authorizing the purchase of property from the State of WV Tax Sale.

Motion:

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

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of those Councilmembers present and the ordinance designated as Ordinance No. 1791 was duly adopted.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE OF THE CITY OF FAIRMONT ADOPTING THE 2018

COMPREHENSIVE PLAN UPDATE FOR THE CITY OF FAIRMONT, MARION COUNTY, WEST VIRGINIA, AND WHICH COMPREHENSIVE PLAN HAS BEEN APPROVED AND RECOMMENDED BY THE CITY OF FAIRMONT PLANNING COMMISSION, ALL IN ACCORDANCE WITH THE PROVISIONS OF WEST VIRGINIA CODE §8A-3-1 ET SEQ.

Mayor Mainella entertained a motion and second for the introduction of an ordinance adopting the 2018 Comprehensive Plan.

Motion:

Councilmember Merrifield moved for the introduction of the proposed ordinance. The motion was seconded by Councilmember Moran.

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

The Mayor declared the public hearing set for November 13, 2018 by voice vote of Council.

Councilmember Mason asked how we proceed with this so this item is congruent with action already taken by Council. He asked if Council tables it and sends it back to the Planning Commission or do we offer an amendment to remove the area that is in conflict with action already taken.

The Mayor stated that Council will have to decide that at the next meeting.

IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT PROVIDING AND AUTHORIZING THE TRANSFER OF THOSE CERTAIN PARCELS OF REAL ESTATE SITUATE IN THE CITY OF FAIRMONT, UNION DISTRICT, MARION COUNTY, WEST VIRGINIA, TO WIT:

**PT LT 1 (7753.40 SQ. FT.) VERMONT AVE., (PLAT 239-75)
DISTRICT 05 MAP 4 PARCEL 6; AND**

**PT LT 1 (6156.61 SQ. FT.) MORGANTOWN AVE. (PLAT
938-753)
DISTRICT 05 MAP 4 PARCEL 6.1**

FROM THE CITY OF FAIRMONT TO THE FAIRMONT BUILDING COMMISSION, A STATUTORY PUBLIC BODY OF THE CITY OF FAIRMONT, TO PROVIDE FOR AND FACILITATE THE DEVELOPMENT AND CONSTRUCTION OF A NEW EAST SIDE FIRE STATION;

APPROVING FORM AND DELIVERY OF THE TRANSACTIONAL DOCUMENTS

Mayor Mainella entertained a motion and second for the introduction of an ordinance authorizing the transfer of property for the new East Side Fire Station to the Fairmont Building Commission.

Motion:

Councilmember Straight moved for the introduction of the proposed ordinance. The motion was seconded by Councilmember Harger.

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

The Mayor declared the public hearing set for November 13, 2018 by voice vote of Council.

IN RE: ADOPTION, A RESOLUTION BY THE COUNCIL OF THE CITY OF FAIRMONT, WEST VIRGINIA, AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY FEDERAL EMERGENCY MANAGEMENT AGENCY FOR AN ASSISTANCE TO FIREFIGHTER GRANT IN THE AMOUNT OF \$240,789.00 TO ENHANCE THE OPERATIONS AND SAFETY OF THE FAIRMONT FIRE DEPARTMENT, AND IF SUCH GRANT IS AWARDED, FURTHER AUTHORIZING THE ACCEPTANCE THEREOF, AND PROVIDING THE CITY MANAGER WITH AUTHORITY TO DO ALL THINGS REASONABLE AND NECESSARY IN CONNECTION THEREWITH

Mayor Mainella entertained a motion for the adoption of a resolution authorizing the submission of a grant to enhance the operations and safety of the Fairmont Fire Department.

Motion:

Councilmember Harger 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 Mason.

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 those Councilmembers present.

ADJOURNMENT

The Mayor entertained a motion for adjournment.

Motion:

Councilmember Merrifield moved to adjourn the meeting. The motion was seconded by Councilmember Yann.

The Mayor declared the meeting adjourned by voice vote of Council at 8:12 p.m.