

**November 13, 2018**

The regular meeting of the City Council of the City of Fairmont was held at 7:00 p.m. on the 13<sup>th</sup> day of November, 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
City Clerk	Janet L. Keller
Police Chief	Steve Shine
Fire Chief	Edward Simmons

**IN RE:     OPENING CEREMONIES**

Rev. D.D. Meighen gave the invocation followed by the Pledge of Allegiance to the Flag led by Councilmember Straight.

**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 23, 2018.

Councilmember Harger 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 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.**

Pursuant to a notice duly published in the Times-West Virginian on October 29, 2018, a public hearing was convened to obtain citizen input on a proposed ordinance to adopt the 2018 Comprehensive Plan.

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

Councilmember Grubb stated that she was very much opposed to the Comprehensive Plan. She said the ordinance was being submitted as an updated ordinance but this was originally done in May, 2017 and has not been updated and it is the same one that has been resubmitted as was used before. She noted it was the same draft plan with a new front page and she did not feel it was right to be submitted for the Plan for 2019.

Councilmember Mason agreed with Councilmember Grubb and stated her comments were well taken.

Motion:

Councilmember Mason moved to amend the Comprehensive Plan as submitted to strike page 129 from the Plan. The motion was seconded by Councilmember Yann.

Councilmember Straight stated, at this time, he did not think they can make a motion. He said that once you introduce the public hearing, it's open up to the public and consideration of Council business, at that point in time, Council has the right to do what they want to do.

Mayor Mainella stated he did not think they can do that either.

Councilmember Mason said that Robert's Rules of Order indicate that an amendment to something before Council can be amended at any time.

The Mayor noted that anytime we revert to Robert's Rules is when it is not

covered under our own Rules.

City Attorney Kevin Sansalone said that was correct.

Councilmember Mason asked what is in our Charter that covers this.

Mayor Mainella stated it was not in the Charter, it was in Council's Rules and Regulations.

Mr. Sansalone said that he did not believe Councilmember Mason can make a motion to amend the ordinance without going back to the Planning Commission and having it corrected and a new ordinance submitted. He told Councilmember Mason that he can vote "no" on this ordinance which is the action before Council tonight. He said that you can also move to table the ordinance but he did not believe there was an opportunity to amend the ordinance once it has been introduced according to the City's Charter. The Charter requires that it be introduced in final form and once introduced it cannot be amended.

Councilmember Mason said it was a draft.

Mr. Sansalone said it was not a draft. The ordinance is in final form and it was in final form when it was submitted to Council.

Mr. Gomez said the ordinance is not a draft. It is a final ordinance up for vote of the Council.

Mr. Sansalone then read from the Charter Section 2.13 – every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject matter . . . and then goes on to say how the ordinance is to be prepared with strikeouts and repeals. He said again that the ordinance has to be introduced in the form required for final adoption, which has been done in this case. If Council chooses to resubmit the Comprehensive Plan draft back to the Planning Commission and then have it resubmitted to Council, that is their opportunity or their entitlement to do so but the ordinance would have to be either tabled or voted down. He went on to say that even if it is tabled, at the next meeting it has to be either taken off the table but that would still not provide for an amendment.

Mr. Sansalone told Councilmember Mason to vote "no" and send it back to the Planning Commission.

Councilmember Mason said that since it is silent in terms of amendment

which he thinks is a flaw, he thought Council ought to have the opportunity to amend at Council meetings.

The Mayor told Councilmember Mason what he thinks and what is in the Code are two separate things.

Councilmember Mason said it is silent, therefore, he would think Robert's Rules ought to take over.

Mr. Sansalone said that he disagreed with Councilmember Mason. It is not silent. It says that the ordinance has to be introduced in final form which will preclude an amendment and the rule precludes an amendment for obvious reasons because then, not that this would ever happen, but will preclude Council from sticking things in there that have not been subject to the first reading, had not been subject to the second reading, and had not been the subject of the legal advertisements that are required under the Charter. Council's Rules of Order and the Charter do preclude an amendment because it says the ordinance has to be introduced in final form. They are not silent, they may not dictate in terms of an amendment but they do dictate in terms of introduction in final form.

Councilmember Mason said that he attempted to strike page 129 from the Plan and he was kept from doing that because it had to be introduced before we could do that.

The Mayor interjected to say that was not the case.

Councilmember Mason said you are saying now that it has been introduced, it can't be amended.

Mr. Sansalone said that the opportunity for Council to reject the Plan and reject the ordinance is to vote "no" during Council's business. He said that would require that another ordinance be introduced and during the period prior to the introduction of the second ordinance, the Plan could be either be amended, whatever the Manager would direct Sandra Scaffidi to do, but now is not the time for an amendment because the Charter precludes amendment of an ordinance after its introduction and first reading for obvious reasons.

Councilmember Harger said if approved, does it lend itself to reverse Council's decision only for movement.

Mr. Sansalone said that it does not lend itself to reverse or set aside the resolution that was adopted closing the road. The Comprehensive Plan

portion of the Charter in 6.02 clearly says that Council may from time to time modify the Comprehensive Plan so even after adoption of this particular Plan, at the direction of the Manager, Sandra Scaffidi could introduce at the Planning Commission level the modification of it to either amend the language of page 129 to be consistent with the resolution and to direct that it either be removed in its entirety or that further study be done or whatever Council's prerogative is with regard to that particular page of the Comprehensive Plan. He noted that the past Comprehensive Plan has had multiple amendments from the time that it was introduced and enacted in 2005 until now. It's not set in stone and can be changed at any time.

Councilmember Harger stated that this does not signal future closure of Benoni Avenue and to change the language you have to go back to the Planning Commission after this is approved.

Mr. Sansalone said that is correct.

Councilmember Mason said if you read 6.03 of the Charter, it refers to an ordinance that might be passed by Council in conflict with the Comprehensive Plan. In the final four lines, under 6.03, "upon adopting any such ordinance which might be in conflict with the Plan, the Council shall make findings and report on the relationship between the ordinance and the Comprehensive Plan and, in the event that the ordinance does not accord with the Comprehensive Plan, the Plan shall be deemed to be amended in accordance with such findings and report." He said in this case it is the reverse of what is described in 6.03. Councilmember Mason went on to say that 6.03 describes a situation where Council passes an ordinance in conflict with the Comprehensive Plan, in the case before us, the Planning Commission is proposing something in conflict with what Council has already deemed appropriate. The situation we have is the opposite of what is described in the Charter, however, the end result is the same.

Mr. Sansalone stated that he disagreed.

Councilmember Mason said that once Council makes a decision and the Plan is deemed amended.

Mr. Sansalone said again that he disagreed. He said the action of Council to close or leave the road open was done by resolution and the resolution does not have any bearing or effect on an ordinance and an ordinance is a more formal action than a resolution so your resolution was not the expression of the formal will of Council. It was simply a resolution, it was not an ordinance, and he did not agree with Councilmember Mason that the adoption of this would be a repeal by implication of that particular resolution

particularly when you read the language on page 129 and you read all of the other provisions of the Charter with that section of page 129 the provisions of the Code that say that it could be modified at any time by ordinance and the original ad that you are contemplating that has the formality of an ordinance does not. He stated again that he disagreed with Councilmember Mason.

Councilmember Mason said that what it boils down to is the Plan for whatever reason is in defiance with the decision that has already been made by Council.

Mr. Sanslone said that his point only being that Council can either act to adopt this ordinance after it's been introduced or vote "no" in which case then it would be reverted back to the Planning Commission at the direction of the City Manager for further action and re-introduction of a subsequent ordinance. They do not have the opportunity to amend it that is his only point. He said that he has no personal preference whether Council adopts the ordinance or does not adopt the ordinance, he just wants it to be done in the proper manner.

**BARRY BLEDSOE**, 171 Bailey Circle, urged Council to vote "no" and make them send it back to the Planning Commission and ask them to give you a Comprehensive Plan that is not contradictory to what the Council has already adopted.

**GENE KISNER**, 1599 Clifton Road, said apparently this changes the complexion of our city. It wasn't wanted before and it is not wanted now. He then urged Council to vote "no" and send it back to the Planning Commission.

**AARON ASHLEY**, asked each Councilmember to get the flaws worked out of this and vote "no" and send it back and kick the can down the road so we are not voting on something we already done once. We have all expressed that we want the road left open and page 129 doesn't declare whether or not that will happen. It's easier to send it back and come back here and do it again.

Mr. Sanslone asked to make one point in response to Mr. Ashley's comments. He said that this has been before Council on three occasions in addition to the introduction of the ordinance on October 9<sup>th</sup>. There have been two work sessions and in addition to the two work sessions there have been at least one presentation by the Chairman of the Planning Commission and there have been other public hearings. In addition to that, there have been eleven hearings before the Planning Commission on the ordinance and

nobody objected. He stated that Mr. Ashley did not object, Mr. Kisner did not object, and Mr. Bledsoe did not object, and Councilmember Mason did not object, and Councilmember Grubb did not object.

Councilmember Mason said he begged his pardon.

Mr. Sansalone said Councilmember Mason did object on October 9<sup>th</sup>, so he retracted his statement about Mr. Mason. In addition to that, there were meetings in the community and they were at different hours, some were in the morning and some were in the afternoon, there were nine meetings in the community at large with regard to the Comprehensive Plan where people had the opportunity to contribute to the Plan, to make comment on the Plan and to determine whether the things that were being recommended by the Planning Commission were appropriate for the City of Fairmont. It is his understanding that very few people attended any of these particular meetings that were in the public at large or at the Planning Commission level or at the City Councilmember level, including Mr. Ashley, Mr. Bledsoe and Mr. Kisner. They have had the opportunity to complain and object and they have not done so and to do so at the 11<sup>th</sup> or 12<sup>th</sup> hour and making staff work even harder than they already work is not appropriate. He stated again that he has no personal preference with regard to the Plan, if you vote "no" that is your prerogative and if you recommend to the City Manager that the Planning Commission amend it but to always wait to the last hour all it does is force staff to go back and do the work again.

Mayor Mainella said that the in crux to this issue is thinking that we are going to go back on our resolution and close the road and there is no intention of that even though it is in the Comprehensive Plan. There is a lot of stuff in that Plan, like an idea to put bike racks on the front of buses, he never heard anyone mention that. There are a lot of items that are speculation that you hope happens, maybe it will and maybe it won't. This is just something that is in there, as you know we voted. There has never been such a lopsided issue since he has been on Council to keep the road open and we voted in favor of keeping the road open. It said that if it was on Facebook that we are going to close the road, he didn't know what it was, but it was misinformation.

There being no one else to speak, the public hearing was called to a close at 7:25 p.m.

**IN RE: 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

Pursuant to a notice duly published in the Times-West Virginian on October 29, 2018, a public hearing was convened to obtain citizen input on a proposed ordinance authorizing the transfer of property for the new East Side Fire Station to the Fairmont Building Commission.

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

There being no one to speak, the public hearing was called to a close at 7:26 p.m.

### ANNOUNCEMENTS

#### **IN RE: HUMAN RIGHTS COMMISSION REFERENDUM**

Mayor Mainella stated that the Human Rights Commission ordinance passed the referendum and has been adopted by City Council. He noted that he did not agree with the tactics used to get the petition signed in retrospect but he is happy that it turned out the way it did because the people in Fairmont determined, on their own, the outcome of the Human Rights Commission. He noted that it was determined by the citizens of Fairmont and hopefully, the controversy with that is over with and, at some point, Council will name members to that Commission and we will go from there.

Councilmember Mason agreed with the comments about the Human Rights Commission. There was a lot of time spent on that and a lot of individuals were involved in promoting and educating people on the Human Rights

Commission. There was a major campaign to turn this into something it was not. The citizens voted to approve an ordinance and direction for our City that says that we will not discriminate against people who want housing, who wants jobs, who want to live a free life and that is the definition of a Friendly City.

Councilmember Moran thanked everyone for working so hard on getting the Human Rights Commission ordinance passed and thanked everyone who voted for it.

Councilmember Harger stated that he too was in support of the Human Rights Commission and was glad that it passed.

Councilmember Merrifield said he was glad that the people of Fairmont got to vote and that's the way it should always be.

**IN RE: 25<sup>TH</sup> HOLIDAY HISTORIC HOME TOUR**

Councilmember Grubb stated that this will be the 25<sup>th</sup> holiday historic home tour. She noted it will be held on Saturday, December 29<sup>th</sup> and tickets will go on sale next week.

**IN RE: MEMORIAL SERVICE**

Councilmember Yann reported there was a memorial service at the United Methodist Church that he attended and one of the speakers was Mrs. Ron Straight speaking for the Jewish people. It was for the shooting of the Jewish people in Pennsylvania. He noted that it would have been worse if they had not had active shooter training. He said that Chief Shine has been very active in trying to get that into the school system and he understands that it has been working quite well.

**IN RE: FLAGS FOR VETERANS DAY**

Councilmember Merrifield stated that the Fairmont Rotary Club and Boy Scout Troop 120 installed 550 strong US Flags for Veteran's Day and he wanted to thank all veterans for their service.

**CITIZENS PETITIONS**

**IN RE: INCREASE SALARIES FOR POLICE OFFICERS**

**RICHARD BABICH**, representing FOP Lodge #69 addressed Council regarding an increase in salaries for police officers. He stated that he hoped

Council will be supportive of the Fairmont Police Department.

**IN RE: HUMAN RIGHTS COMMISSION**

D.D. MEIGHEN, 3 Park Drive, thanked the City Manager, Mayor and Council for helping pass the Human Rights Commission and allowing it to appear as a referendum on the ballot. It showed people as to why they should support the ordinance. There are good people here in Fairmont and it showed it was a right thing to do. He said we want to make Fairmont, and this is a big start, for being an inclusive and welcoming city.

**IN RE: HUMAN RIGHTS COMMISSION**

GENE KSINER, 1599 Clifton Road, stated that in the 1960's and early 1970's great portions of the citizens of this nation fought for equal rights. We want everyone to have equal rights. He said that Council's petition has granted special rights to certain people. Special rights to a selected group, he personally felt that, as it was presented and as it was passed, was wrong. He said that he was not against those people having rights but he is against them having any rights above anybody else. Nice and simple, he said.

**CITY MANAGER'S REPORT**

**IN RE: THANK YOU TO ALL VETERANS**

Mr. Gomez thanked all veterans for their service.

**IN RE: DEMOLITION BID**

The City Manager stated that a notice was sent to Empire Builders to demolish the 12 structures that we brought before Council. This will help to alleviate blight and to spread economic growth.

**IN RE: MARKET IN THE PARK**

Mr. Gomez reported that the Market in the Park will begin Saturday, November 17<sup>th</sup> at Morris Park. He said the event will begin at 6:00 p.m. and all attendees will have to park at East Fairmont High School and shuttles will be constantly driving folks back and forth from East Fairmont High School to Morris Park to enjoy the Market in the Park.

CONSIDERATION OF COUNCIL BUSINESS

**IN RE: ADOPTION, 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 for the adoption of an ordinance to adopt the 2018 Comprehensive Plan.

Councilmember Mason stated that he already had a motion on the floor and it had been seconded.

The Mayor said that his motion was not valid.

The Mayor asked again if there was a motion to adopt the ordinance as listed on the agenda.

Motion:

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

Roll call was taken by the Clerk and the following votes were recorded:

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

The Mayor declared the ordinance adopted by majority vote of Council and the ordinance designated as Ordinance No. 1792 was duly adopted.

**IN RE: ADOPTION, 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:**

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

Motion:

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

Roll call was taken by the Clerk.

The Mayor declared the ordinance adopted by unanimous vote of Council and the ordinance designated as Ordinance No. 1793 was duly adopted.

**IN RE: INTRODUCTION, FIRST READING, SET PUBLIC HEARING, AN ORDINANCE PROVIDING FOR THE TRANSFER OF ONE (1) 2007 FORD CROWN VICTORIA OWNED BY THE CITY OF FAIRMONT TO THE MARION COUNTY POLICE RESERVES**

Mayor Mainella entertained a motion and second for the introduction of an ordinance providing for the transfer of a 2007 Ford Crown Victoria owned by the City of Fairmont to the Marion County Police Reserves.

Motion:

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

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

The Mayor declared the public hearing set for November 27, 2018 by voice vote of Council.

**IN RE: ADOPTION, A RESOLUTION OF THE COUNCIL OF THE CITY OF FAIRMONT, WEST VIRGINIA, AUTHORIZING THE SUBMISSION OF AN APPLICATION WITH THE BROWNFIELDS ASSISTANCE CENTER FOR A GRANT TO FUND, IN PART, THE DESIGN OF A RAIL TRAIL PATHWAY IN THE CITY OF FAIRMONT, 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 application with the Brownfields Assistance Center for a grant to fund the design of a rail trail pathway in the City of Fairmont.

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 Straight.

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: ADJOURN TO EXECUTIVE SESSION**

Mayor Mainella moved that Council adjourn to Executive Session under WV Code Section §6-9A-4 under Item #2 under 2.11 of the City Charter. The motion was seconded by Councilmember Straight.

The Mayor declared the meeting adjourned to Executive Session by voice vote of Council at 7:55 p.m.

**IN RE: MEETING RECONVENED**

Mayor Mainella declared the meeting reconvened at 8:25 p.m.

**IN RE: TWO APPOINTMENTS, FAIRMONT AIRPORT AUTHORITY,  
THREE-YEAR UNEXPIRED TERMS TO END OCTOBER 1, 2019**

Mayor Mainella entertained a motion for two appointments to the Fairmont Airport Authority for three-year unexpired terms to end October 1, 2019.

Motion:

Councilmember Straight moved to appoint Joseph Garcia and Leonard Lucas to the Fairmont Airport Authority for three-year unexpired terms to end October 1, 2019. The motion was seconded by Councilmember Warner.

Roll call was taken by the Clerk.

The Mayor declared Joseph Garcia and Leonard Lucas appointed to the Fairmont Airport Authority for three-year unexpired terms to end October 1, 2019 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 8:32 p.m.