



MAYOR AND COUNCIL

MEETING NO. 01-20
Monday, January 6, 2020 – 7:00 PM

AGENDA

Agenda item times are estimates only. Items may be considered at times other than those indicated.

Any person who requires assistance in order to attend a city meeting should call the ADA Coordinator at 240-314-8108.

7:00 PM **1. Convene**

2. Pledge of Allegiance

3. Agenda Review

7:05 PM **4. City Manager's Report**

7:10 PM **5. Proclamation**

A. Certificate of Recognition for the Richard Montgomery High School Jazz Ensemble

7:15 PM **6. Community Forum**

Any member of the community may address the Mayor and Council for 3 minutes during Community Forum. Unless otherwise indicated, Community Forum is included on the agenda for every regular Mayor and Council meeting, generally between 7:00 and 7:30 pm. Call the City Clerk/Director of Council Operation's Office at 240-314-8280 to sign up to speak in advance or sign up in the Mayor and Council Chamber the night of the meeting.

7. Mayor and Council's Response to Community Forum

8. Mayor and Council Announcements

7:35 PM **9. Discussion, Instructions, Possible Introduction and Possible Adoption of an Ordinance to Amend Chapter 16 of the Rockville City Code Entitled "Public**

Ethics" So as to Amend, Delete, and Add Definitions; and to Amend the Purpose and Policy, Administration, and Enforcement Sections Contained in Article I; Amend the Conflicts of Interest Provisions in Article II; Amend the Financial Disclosure Provisions in Article III; Amend the Lobbying Provisions in Article IV; and Add a New Article VI Entitled "Whistleblower Protection."

8:35 PM **10. Discussion Regarding Letter on Open Meetings Act Violations**

9:05 PM **11. Consent**

A. Authorize the City Manager to Execute the Revocable License Agreement Between the Mayor and Council of Rockville and 204 N. Stonestreet Properties, LLC to Temporarily Occupy a Portion of the North Stonestreet Avenue Right-Of-Way During the Construction of the Adjacent Self-Storage Building at 204 North Stonestreet Avenue

B. Award of IFB #05-20, Stream Restoration Spot Repairs: Bullards Park and Woodley Gardens Park, to Old Line Construction in the Amount of \$692,017.77

9:10 PM **12. Review and Comment - Mayor and Council Action Report**

A. Action Report

13. Review and Comment - Future Agendas

A. Future Agendas

14. Old/New Business

9:25 PM **15. Adjournment**

The Mayor and Council Rules and Procedures and Operating Guidelines establish procedures and practices for Mayor and Council meetings, including public hearing procedures. They are available at: <http://www.rockvillemd.gov/mcguidelines>.



Mayor & Council Meeting Date: January 6, 2020

Agenda Item Type: Recognition

Department: City Clerk/Director of Council Operations Office

Responsible Staff: Niles Anderegg

Subject

Certificate of Recognition for the Richard Montgomery High School Jazz Ensemble

Recommendation

Staff recommends that the Mayor and Council read, approve and present a certificate of recognition to Dr. Peter Perry, Musical Director, Richard Montgomery High School Jazz Ensemble and Damon Monteleone, Principal, Richard Montgomery High School and members of the Richard Montgomery High School Jazz Ensemble.

Discussion

The Richard Montgomery Jazz Ensemble is led by Dr. Peter Perry, Director of the Instrumental Music Department at Richard Montgomery High School, Rockville, Maryland.

The Richard Montgomery Jazz Ensemble is one of seven performing ensembles at Richard Montgomery High School. This smaller ensemble is specifically devoted to playing jazz styles of music. The Richard Montgomery High School Jazz Ensemble consistently receives critical acclaim at local, national, and international levels. In addition to performing concerts and for festivals throughout the year, it has performed on local television and for events around the Washington D.C. metropolitan area. The ensemble was invited to perform as part of the 2019 Yilan International Arts Festival in Yilan, Taiwan.

During the Ensemble's trip to Yilan, the members of the ensemble served as "student ambassadors" for the Rockville Sister City Corporation as part of Rockville Sister City Corporation's continuing efforts of growing the partnership between Rockville and its newest Sister City Yilan Taiwan. The students of the ensemble were outstanding members of the trip and demonstrated what it means to be Citizen Diplomats.

Mayor and Council History

This is the first time this item has been brought before the Mayor and Council.

Attachments

Attachment 5.A.A: Richard Montgomery HS Jazz Ensemble (PDF)


Sara Taylor-Ferrell, City Clerk/Director of Council Operations 12/31/2019



The Mayor and Council of Rockville

Recognition

Richard Montgomery High School Jazz Ensemble

The Richard Montgomery High School Jazz Ensemble participated in the 2019 Yilan International Arts Festival, along with Teacher and Director Dr. Peter Perry. Rockville's Student Ambassadors continue to promote the essence of Rockville Sister City relationship with Yilan.

Richard Montgomery High School Jazz Ensemble continues to demonstrate the Rockville Sister City Program values of mutual understanding and friendship in Rockville and across the globe.



Bridget Donnell Newton
Bridget Donnell Newton, Mayor

Monique Ashton
Monique Ashton, Councilmember

Beryl L. Feinberg
Beryl L. Feinberg, Councilmember

David E. Myles
David Myles, Councilmember

Mark Pierzchala
Mark Pierzchala, Councilmember

January 6, 2020



Mayor & Council Meeting Date: January 6, 2020
 Agenda Item Type: D & I, Possible Introduction & Possible Adoption
 Department: City Attorney's Office
 Responsible Staff:

Subject

Discussion, Instructions, Possible Introduction and Possible Adoption of an Ordinance to Amend Chapter 16 of the Rockville City Code Entitled "Public Ethics" So as to Amend, Delete, and Add Definitions; and to Amend the Purpose and Policy, Administration, and Enforcement Sections Contained in Article I; Amend the Conflicts of Interest Provisions in Article II; Amend the Financial Disclosure Provisions in Article III; Amend the Lobbying Provisions in Article IV; and Add a New Article VI Entitled "Whistleblower Protection."

Recommendation

Staff recommends that the Mayor and Council further discuss the Ethics Commission's recommended amendments to Chapter 16 of the City Code entitled "Public Ethics" (the "Public Ethics Ordinance") and the Mayor and Council's requested changes.

If no further revisions to the ordinance are required, the ordinance can be introduced. (Attachment A)

If the Mayor and Council wish to proceed with adoption of the ordinance at the same meeting, the ordinance should first be introduced and then a motion should be made to waive the layover period. If the motion to waive the layover period is approved by an affirmative vote of least four members of the Mayor and Council, a motion to adopt the ordinance may then proceed.

If the Mayor and Council introduce, but do not adopt the ordinance, it will be brought back at a later date for adoption.

Change in Law or Policy (remove this section if not needed)

The ordinance would amend the Public Ethics Ordinance.

Discussion

The attached proposed ordinance amendments reflect the Mayor and Council's requested changes from the April 8, 2019 meeting. (April 8, 2019 Staff Report is attached as Attachment

B.) The Ethics Commission reviewed and approved the changes with minor modifications. The proposed ordinance is ready for final review and adoption.

Each of the Mayor and Council's requested changes and research requests are addressed below:

PROPOSED ETHICS ORDINANCE – MAYOR AND COUNCIL REVISIONS

1. Section 16-1 Definitions –

Request:

Mayor and Council requested that the City Clerk and Deputy City Clerk positions be included in the definition of Department Head.

Response:

The addition of Deputy City Clerk to the definition of Department Head has been made. The City Clerk is an appointed employee and is already covered under appointed official or employee.

2. Section 16-1 Definitions –

Request:

Mayor and Council requested that the Ordinance be reviewed to determine the optimal place to address government bonds.

Response:

That addition has been made to the Definition of Interest, specifically to the items that the definition of Interest does not include. This is the most appropriate section of the Ethics Code in which to address the issue of government bonds being excluded from those interests that must be reported. The State Ethics Commission has stated in several advisory opinions that a government-owned bond does not need to be listed on a financial disclosure statement. Specifically, the State Ethics Commission has “generally advised persons in the financial disclosure context that bond holdings in government entities are not disclosable as interests in business entities on financial disclosure statements.” Opinion No. 91-11.

3. Section 16-1 Definitions –

Request:

Mayor and Council requested research be conducted to determine if there is a level of controlling interest in stocks that is required to be reported, or what threshold percentage of ownership in a corporation or business entity requires disclosure. For example, if you own less than 1% of stock, or do not own enough stock to constitute a controlling interest in a corporation.

Response:

The Maryland Public Ethics Law and Regulations, Ethics Commission Opinions, and the Model Laws do not have a specific ownership threshold triggering disclosure. This question was discussed with the State Ethics Commission General Counsel's office, and

they confirmed that there is no stock ownership threshold below which reporting is not required. All stock ownership is required to be disclosed. There are no recent changes or proposed changes regarding minimum thresholds or percentages of stock ownership triggering disclosure.

4. Section 16-2 Purpose and Policy –

Request:

Section 16-2(c) – Clarify reference to employees to reflect the specific employees named in Section 16-1. That addition has been made.

Section 16-2 – Councilmember Pierzchala proposed adding an additional subsection to address elected officials violating the City Code and Charter.

Response:

The State Public Ethics Law, the Model Laws and the existing City Ethics Ordinance (especially the Purpose and Policy provisions, and the Ethics Commissions’ duties provisions) show a specific intent that these laws be liberally construed (except for the criminal sanction provisions) to enable and ensure public trust in the functioning of government. There is not, however, an intent to broaden the purview of the statutes or of Ethics Commissions to address violations of City Codes or Charters beyond the specific ethics provisions. This interpretation was discussed with the State Ethics Commission General Counsel’s office, and they agreed with this interpretation. The recommendation of staff is to address violations of the City Code or Charter under Rockville City Code, Chapter 1 General Provisions, which addresses violations of the City Code, as elected officials are not exempted from those provisions.

5. Section 16-3 Administration –

Section 16-3(a) – Councilmember Pierzchala questioned the change that the Ethics Commission members would be appointed by the Mayor with confirmation of Council. Councilmember Feinberg requested that the Section remain unchanged overall until the Boards and Commissions Task Force makes its recommendations to Mayor and Council.

Request:

Section 16-3(a)(5) – Councilmember Feinberg requested that the one (1) month advanced reminder for filing a financial disclosure statement be changed to include both a two (2) month and one (1) month reminder.

Response:

That addition has been made.

Request:

Section 16-3(i) – Councilmember Feinberg requested that “in a timely manner” be changed to “within thirty (30) days of a decision.”

Response:

That addition has been made.

Request:

Section 16-3(l) – Councilmember Feinberg requested that both instances of “shall” be changed to “must” and that the provision include notification to filers that the filing requirements have been met.

Response:

Those additions have been made.

6. Section 16-4 Enforcement –Request:

Section 16-4(a)(2) – Councilmember Pierzchala requested that the language “or amended report” be added to this provision.

Response:

That addition has been made.

Request:

Section 16-4(b)(4) – Councilmember Pierzchala requested that research be conducted regarding enforcement of continuing violations, specifically each day constituting a separate offense.

Response:

This language is present in the State Public Ethics Law and the Model Laws, and no case law or advisory opinions address the issue of each day constituting a separate offense. As currently written, subsection (b) strikes a balance between minor reprimand for small, infrequent violations and the potential for stronger enforcement for repeat, willful violations, by the specific use of the word “may” (which is permissive rather than mandatory). It allows the Commission the necessary discretion and latitude to choose the appropriate level of enforcement for each unique violation. This interpretation was discussed with the State Ethics Commission General Counsel’s office, and they agreed with this interpretation.

7. Section 16-23 Gifts or Favors –Request:

Section 16-23(a)(1) – Councilmember Feinberg requested research be conducted as to whether the word “thing” can be removed or clarified.

Response:

The language has been clarified to mirror the language of the State Ethics Law and Model Codes. Specifically, “. . . whether in the form of service, loan, employment, promise, or anything of economic value regardless of the form without adequate and lawful consideration, from any person . . .”

Request:

Section 16-23(c)(3) – Mayor and Council queried if the term “reasonable” should be defined and requested research of other governments’ ethics laws to see if reasonable is specifically defined.

Response:

A review of the State Public Ethics Law, the Model Laws and other governments’ ethics laws shows that the term “reasonable” is not defined. Defining the term “reasonable” within the ordinance is not recommended. A codified definition of “reasonable” will very likely be constricted and quickly outdated. Leaving the term undefined allows for accommodation of fluctuations in monetary value, and an advisory opinion can be sought should a situation warrant.

8. Section 16-24 Representing private interests before agencies or courts –

Request:

Mayor and Council requested that pronouns be changed to gender-neutral throughout the provision.

Response:

Those changes have been made.

9. Section 16-63 (Elected Officials and Candidates for Elected Office) Statement Required –

Request:

Section 16-63(g) – Mayor and Council requested research be conducted as to whether the provision can require a member of the City Clerk’s staff to be present when a person examines or copies financial disclosure statements.

Response:

The State Public Ethics Law, the Model Laws and other governments’ ethics laws do not have such language. We recommend against adding such specific language because the current provision requiring persons examining or copying financial disclosure statements record their names and home address, and the name of the person whose financial disclosure statement was reviewed, will likely be viewed by the State Ethics Commission as adequate protections balanced against the potential of chilling public inquiry. However, requiring review be conducted in the City Clerk’s Office in a space visible to City staff for general monitoring would be reasonable. This interpretation was discussed with the State Ethics Commission General Counsel’s office, and they agreed with this interpretation.

Request:

Section 16-63(g) – Mayor and Council requested research as to whether copying a financial disclosure statement includes scanning.

Response:

The State Public Ethics Law, the Model Laws and other governments’ ethics laws do not have language specifically addressing scanning. No case law or advisory opinions specifically address scanning. The Maryland Attorney General’s Public Information Act Manual, however, offers guidance. The Maryland Attorney General’s Office has interpreted the Maryland Public Information Act to encompass scanning as an acceptable method of copying. Specifically, “to further the PIA’s general purposes, agencies should voluntarily accede to the requester’s choice of format unless doing so imposes a significant, unrecoverable cost or other burden on the agency. . . . For example, an agency typically should allow a requester to make copies with a hand-held scanner unless the mechanism by which the scanner operates could harm the document.” Maryland Public Information Act Manual, 14th ed., p. 6-2 (2015). Thus, scanning is permissible. This interpretation was discussed with the State Ethics Commission General Counsel’s office, and they agreed with this interpretation.

10. Section 16-76 Lobbying Disclosures –

Request:

Section 16-76(d) – Mayor and Council requested that language be added to include Ethics Commission review of lobbying disclosure statements for compliance similar to Ethics Commission review of financial disclosure statements.

Response:

That addition has been made.

11. Section 16-81 Whistleblower Protection –

Request:

Mayor and Council requested that language be added to this provision that makes explicit that if it is found that an elected or appointed official or employee has made a fraudulent complaint, that person is not exempt from and will be subject to discipline under applicable provisions of the City Code and the Personnel Policies and Procedures Manual.

Response:

That addition has been made with a modification by the Ethics Commission. The modification is to clarify that the reference to disciplinary action in this provision, is specific to this Chapter and does not extend to the broader City Code and Charter.

Mayor and Council History

The Ethics Commission presented a comprehensive set of proposed amendments to the Mayor and Council on April 24, 2017 and participated in a work session on those amendments on October 29, 2018. One item discussed at the work session was brought forward and adopted by the Mayor and Council on March 25, 2019. At the April 8, 2019 meeting, Mayor and Council requested several changes be made to the proposed ordinance and requested Staff conduct research into questions regarding stock ownership percentages and enforcement.

Boards and Commissions Review

The Ethics Commission reviewed the Mayor and Council's requested changes to the proposed ordinance and approved the changes with minor modifications. The redlined version of the proposed amendments to the Public Ethics Ordinance with Mayor and Council's changes (as slightly modified by the Ethics Commission) is included as Attachment A.

Next Steps

If the Mayor and Council do not introduce the ordinance, direction should be provided on what further changes, if any, should be made to the draft ordinance.

If the Mayor and Council introduces, but does not adopt the ordinance, the ordinance will be brought back for adoption at a later meeting date.

Attachments

- Attachment 9.a: Attach A-Draft Ordinance-amendments to Ch 16 Ethics (PDF)
Attachment 9.b: Attach B-April 8 2019 staff report (PDF)

Debra Yerg Daniel

Debra Yerg Daniel, City Attorney

12/31/2019

Ordinance No. _____ ORDINANCE: To amend Chapter 16 of the Rockville City Code, entitled "Public Ethics" so as to Amend, Delete, and Add Definitions; and to Amend the Purpose and Policy, Administration, and Enforcement Sections Contained in Article I; Amend the Conflicts of Interest Provisions in Article II; Amend the Financial Disclosure Provisions in Article III; Amend the Lobbying Provisions in Article IV; and Add a New Article VI Entitled "Whistleblower Protection."

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE,
MARYLAND, as follows:

SECTION I – That Chapter 16 of the Rockville City Code entitled "Public Ethics" be amended as follows:

Chapter 16

PUBLIC ETHICS

ARTICLE I. IN GENERAL

Sec. 16-1. Definitions.

Appointed officials means officials of the City appointed to their position, whether salaried or not, by (i) the Mayor and confirmed by the Council or (ii) by the Mayor and Council, ~~whether salaried or not.~~

Business entity means any corporation, general or limited partnership, limited liability company, sole proprietorship (including a private consultant operation), joint venture, unincorporated association or firm, institution, trust, foundation, or other organization, whether or not operated for profit. Business entity does not include a governmental entity.

~~City Attorney means the City Attorney or other attorney designee.~~

~~Commission means the Ethics Commission, unless otherwise provided.~~

Department head means:

- (1) the Deputy City Manager;
- (2) the Director of the Department of Planning and Development Services;
- (3) the Director of the Finance Department;
- (4) the Director of the Department of Human Resources;
- (5) the Director of the Department of Information Technology;
- (6) the Chief of Police for the Rockville City Police Department;
- (7) the Director of the Department of Public Works;
- (8) the Director of the Recreation and Parks Department;
- (9) the Director of Communications;
- (10) the Director of Procurement;
- (11) the Deputy City Attorney;
- (12) the Deputy Director of the Finance Department; and
- (13) the Director of Management and Budget;:
- (14) the Deputy City Clerk.

Domestic Partner means a relationship between two individuals who:

- (1) Are co-habiting and are not related to each other by blood or marriage;
- (2) Are not married or in a civil union or domestic partnership with another individual;
- (3) Agree to be in a relationship of mutual interdependence in which each individual contributes to the maintenance and support of the other individual and the relationship, even if both individuals are not required to contribute equally to the relationship; and
- (4) For whom two or more of the following conditions exist:
 - (i) Joint liability of the individuals for a mortgage, lease or loan;
 - (ii) A joint checking account, joint investments, or a joint credit account;
 - (iii) A joint renter's or homeowner's insurance policy;
 - (iv) Coverage on the other individual's health insurance policy;
 - (v) Joint responsibility for child care, such as guardianship or school documents;
 or

(vi) A relationship or cohabitation contract.

Employee means an individual who is employed by the City of Rockville. Employee includes department heads but does not include elected or appointed officials.

(2) Ownership, or the ownership of securities of any kind representing or convertible into ownership, of more than three (3) percent of a business entity by a City an elected or appointed official or employee, or the spouse or domestic partner of an elected or appointed official or employee.

Immediate family means an individual's, a domestic partner, spouse and dependent children.

Interest means any legal or equitable economic interest, whether or not subject to an encumbrance or a condition, which was owned or held, in whole or in part, jointly or severally, directly or indirectly. In addition to any legal or equitable economic interest owned or held, interest shall also mean and include negotiations undertaken for the purpose of actually acquiring or obtaining a legal or equitable economic interest. For purposes of sections 16-64 and 16-69 "interest" applies to any interests held at any time during the calendar year for which a required statement is to be filed. "Interest" does not include:

- (1) An interest held in the capacity of a personal agent, representative, custodian, fiduciary, or trustee, unless the holder has an equitable interest therein;
- (2) An interest in a time or demand deposit in a financial institution;
- (3) An interest in an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period;
- (4) A common trust fund or a trust which forms part of a pension or profit-sharing plan which has more than twenty-five (25) participants and which has been determined by the Internal

Ordinance No.

-4-

Revenue Service to be a qualified trust under the Internal Revenue Code or a qualified tuition plan established pursuant to Section 529 of the Internal Revenue Code;

(5) A mutual fund or exchange traded fund that is publicly traded on a national scale unless the mutual fund is composed primarily of holdings of stocks and interests in a specific sector or area that is regulated by the individual's governmental unit; or

(6) An interest in a deferred compensation plan which has more than twenty-five (25) participants and which has been determined by the Internal Revenue Service to qualify under Section 457 of the Internal Revenue Code.

(7) Bond holdings in government entities.

~~Official and/or employee means any person elected to, appointed to or employed by the City or any City agency, board, commission, or similar entity whether or not paid in whole or in part with City funds and whether or not compensated.~~

~~Proper authority means the City Manager for salariied all employees under the authority of the City Manager, the City Attorney for all employees within the City Attorney's Office, the City Clerk for all employees within the Office of the City Clerk, and the Commission for all elected or appointed officials. and all others, except the Council shall be the "proper authority" for the City Manager, City Clerk, and City Attorney and his or her assistants.~~

~~Salaried decision-making employees means those salaried or contract employees of the City identified as professional and supervisory personnel, by the City Manager, based upon the provisions and regulations of the Fair Labor Standards Act.~~

~~Salaried nondecision-making employees means all employees of the City other than salaried decision-making employees.~~

Sec. 16-2. Purpose and policy.

(c) For the purpose of guarding against improper influence, the Council enacts this chapter to require ~~City appointed and elected~~ officials and ~~employees~~ Department Heads to disclose their financial affairs and to set minimum standards for their conduct of City business.

Sec. 16-3. Administration.

(a) There is an Ethics Commission that consists of 5 members appointed by the Mayor with the confirmation of the Council. ~~The Mayor shall consult with each Councilmember prior to the appointment of the original Commission members.~~ The Commission shall:

- (1) Devise, receive, and maintain all forms ~~as~~ required by this Chapter.
- (2) Develop procedures and policies for advisory opinion requests and provide published advisory opinions to persons subject to this Chapter regarding the applicability of the provisions of this Chapter to them.
- (3) Develop procedures and policies for the processing of complaints to make appropriate determinations regarding complaints filed by any person alleging violations of this chapter; ~~and~~
- (4) Conduct a public information program regarding the purposes and application of this Chapter; ~~and~~
- (5) Provide notice at least at two (2) months in advance and at one (1) month in advance of a person's obligation to file the financial disclosure statement required by Sections 16-63(a) or 16-66.

(c) *Term.* Commission members serve for a term of three (3) years, ~~except that the initial appointment of one member shall be for one year, two (2) members for two (2) years; and two (2) members for three (3) years.~~ Any vacancy must be filled only for the remainder of the unexpired term. A commission member may continue to serve until the Council confirms a successor.

(d) *Interpretation.* The City Attorney, ~~or designee,~~ shall be responsible for interpreting this Chapter and advising the Commission.

(i) *Advisory opinions.* Any elected or appointed official or other person subject to the provisions of this chapter may request an advisory opinion from the Commission concerning the application of this chapter. The Commission shall respond promptly to these requests, providing an opinion based on the facts provided or reasonably available to the Commission. Copies of these opinions, with the identity deleted, shall be made available to the public and posted to the City's website in a timely manner within thirty (30) days of a decision.

(l) The Commission shall must review the financial disclosure statements submitted under this Chapter for technical compliance with the provisions of this Chapter and shall must notify an individual submitting the financial disclosure statement of any material omissions or deficiencies.

Sec. 16-4. Enforcement.

(a) The Ethics Commission may:

- (1) Assess a late fee of \$10.00 per day up to a maximum of \$360.00 for a failure to timely file a financial disclosure statement or an amended financial disclosure statement required under ~~Division II~~ of this chapter.
- (2) Assess a late fee of \$10.00 per day up to a maximum of ~~\$360.00~~\$250.00 for a failure to file a timely lobbyist registration or lobbyist report or amended report required under Section 16-76 of this chapter.

(c) Upon direction by the Commission, the City Attorney, or designee, may file a petition for injunctive or other relief in the Circuit Court for Montgomery County, or any other court having proper venue for the purpose of requiring compliance with the provisions of this chapter. Upon direction by the Commission, the City Attorney, or other designated attorney, may seek:

(2) To have the court void an official action taken by an elected or appointed official or employee with a conflict of interest prohibited by this chapter when the action arises from or concerns the subject matter of the conflict and if the legal action is brought within ninety (90) days of the occurrence of the official action, if the court deems voiding the action to be in the best interests of the public; provided, however, that the court may not void any official action appropriating public funds, levying taxes, or providing for the issuance of bonds,
notes or other evidence of public obligation.

(e) A knowing violation of the provisions of Section 16-76 (lobbying provisions) of this chapter shall constitute a misdemeanor, conviction of which shall subject the violator to a fine not exceeding ten thousand dollars (\$10,000) or imprisonment for a term not exceeding one year, or both fine and imprisonment in the discretion of the court.

ARTICLE II. CONFLICTS OF INTEREST

Sec. 16-21. Scope.

~~This article is applicable to any person, whether compensated or not, whether full-time or part-time, who holds a position or appointment of any kind or nature in the government of the City.~~ [Reserved]

Sec. 16-22. Disclosure of confidential information.

Other than in the discharge of official duties, an elected or appointed official or employee may not disclose or use confidential information, that the elected or appointed official or employee acquired by reason of the elected or appointed official's or employee's public position and that is not available to the public, for the economic benefit or other private interest of the elected or appointed official or employee or that of another person.

Sec. 16-23. Gifts or favors.

(a) (1) No elected or appointed official or ~~employee salaried employee (decision-making or nondecision-making)~~ shall directly or indirectly solicit any gift, whether in the form of service, loan, ~~thing~~, employment, ~~or promise~~, or anything of economic value regardless of the form without adequate and lawful consideration, from any person, firm or corporation. (2) No elected or appointed official or ~~employee salaried employee (decision-making or nondecision-making)~~ shall directly solicit any gift or facilitate the solicitation of any gift on behalf of another person, from ~~a an individual regulated~~ lobbyist, whether in the form of service, loan, thing, or promise.

(b) An elected or appointed official or ~~employee salaried employee (decision-making or nondecision-making)~~ may not knowingly accept a gift, directly or indirectly from a person that the elected or appointed official or employee knows or has the reason to know:

- (1) Is doing business with or seeking to do business with the City;
- (2) Has a financial interest that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the elected or appointed official or employee;
- (3) Is engaged in an activity regulated or controlled by the elected or appointed official's or employee's department within the City.
- (4) Is a lobbyist with respect to matters within the jurisdiction of the elected or appointed official or employee.

(c) Notwithstanding subsections (a) and (b) above, and except as provided in subsection (d) below, an elected or appointed official or employee may accept the following unsolicited gifts:

- (3) Reasonable expenses for food, travel, or out-of-town lodging when an elected or appointed official or employee is scheduled for participation in a panel or speaking engagement at a meeting;

(5) Gifts from a person related to the elected or appointed official or employee by blood or marriage, or any other individual who is a member of the household of the elected or appointed official or employee;

(8) Honoraria for speaking at or participating in a meeting, provided that the offering of the honorarium is not related in any way to the elected or appointed official's or employee's official position.

(d) Paragraph (c) above does not apply to a gift:

- (1) that would tend to impair the impartiality and the independence of judgment of the elected or appointed official or employee receiving the gift;
- (2) of significant value that would give the appearance of impairing the impartiality and independence of judgment of the elected or appointed official or employee; or
- (3) Of significant value that the recipient elected or appointed official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the elected or appointed official or employee.

Sec. 16-24. Representing private interests before agencies or courts.

- (a) No ~~elected official member of the council or employee salaried employee (decision-making or nondecision-making)~~ may assist or represent the private interests of another for compensation in any matter before or involving the City or any agency of the City.
- (b) No ~~appointed or~~ elected or appointed official shall assist or represent the private interests of another where such ~~appointed or other~~ elected or appointed official has any official involvement with respect to determination of the private interest.
- (c) No elected or appointed official or employee shall represent private interests in any action or proceeding against the interests of the City in any litigation to which the City is a party other than personal injury cases involving the City. Notwithstanding the preceding sentence, except that such an elected or appointed official or employee may represent their immediate family, non-dependent children, or any other person for whom he the person is a personal fiduciary upon the filing of a written statement with the Municipal Custodian disclosing his the person's interest representation and providing evidence of no official involvement. The Municipal Custodian shall promptly notify the proper authority. to the proper authority, may represent a parent, spouse, child, ward, or other person for whom he is a personal fiduciary.
- (d) Except in a judicial or quasi-judicial proceeding, an elected or appointed official or employee may not assist or represent a party for contingent compensation in any matter before or involving the City.

Sec. 16-25. Dealing with city when interested.

(a) Except as provided in subsection (b)(4), all elected or appointed officials or ~~employees salaried employees (decision making or nondecision making)~~ are subject to this section.

(b) Except as permitted by Commission regulation or opinion, an elected or appointed official or employee must not participate in:

(1) Any matter in which, to the knowledge of the elected or appointed official or employee, the elected or appointed official or employee, or a qualified relative of the elected or appointed official or employee has an interest;

(2) Any matter in which any of the following is a party:

(i) A business entity in which the elected or appointed official or employee has a direct financial interest of which the elected or appointed official or employee may reasonably be expected to know;

(ii) A business entity for which the elected or appointed official, employee, or a qualified relative of the elected or appointed official or employee is an officer, director, trustee, partner or employee;

(iii) A business entity with which the elected or appointed official or employee or, to the knowledge of the elected or appointed official or employee, a qualified relative is negotiating employment or has any arrangement concerning prospective employment;

(iv) A business entity that is a party to an existing contract with the elected or appointed official or employee, or which, to the knowledge of the elected or appointed official or employee, is a party to a contract with a qualified relative if the contract reasonably could be expected to result in a conflict between the private interests of the elected or

appointed official or employee and the official duties of the elected or appointed official or employee;

(v) An entity, doing business with the City in which a direct financial interest is owned by another entity in which the elected or appointed official or employee has a direct financial interest, if the elected or appointed official or employee may be reasonably expected to know of both direct financial interests; or

(vi) A business entity that:

(A) The elected or appointed official or employee knows is a creditor or obligee of the elected or appointed official or employee or a qualified relative of the elected or appointed official or employee with respect to a thing of economic value; and

(B) As a creditor or obligee, is in a position to directly and substantially affect the interest of the elected or appointed official or employee or a qualified relative of the elected or appointed official or employee.

(3) A person who is disqualified from participating under paragraphs (1) or (2) of this subsection shall disclose the nature and circumstances of the conflict in accordance with section 16-46(b) and may participate or act if:

(i) The disqualification leaves a body with less than a quorum capable of acting;

(ii) The disqualified elected or appointed official or employee is required by law to act; or

(iii) The disqualified elected or appointed official or employee is the only person authorized to act.

Sec. 16-26. Land use decisions.

Any elected or appointed official or ~~employee salaried employee (decision making or nondecision making)~~ who has an interest in any proceeding or in any other manner regarding annexation, zoning or the use of land, or who has an interest which would be directly and economically impacted by the outcome of any proceeding, distinct from the public at large, regarding annexation, zoning, or other use of land (or whose spouse, domestic partner, parents, children, siblings or business associates have such interest) shall ~~make known to the proper authority disclose~~ the nature and extent of such interest in accordance with section 16-46(b) and shall disqualify himself on the record.

Sec. 16-27. Employment restrictions.

(a) Except when such interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict and as permitted by Commission regulation, an elected or appointed official or ~~employee salaried employee (decision making or nondecision making)~~ may not (1) be employed by, or have a financial interest in, any entity subject to his authority or that of the City agency, board, or commission with which he or she is affiliated or any entity which is negotiating or has entered into a contract with that agency, board or commission, or (2) hold any other employment relationship which would impair his/her impartiality or independence of judgment.

(c) A former elected or appointed official or ~~employee salaried employee (decision making or nondecision making)~~ may not assist or represent another party other than the City for compensation in a case, contract, or other specific matter involving the City if that matter is one in which he or she significantly participated as an official or employee. Compensation, for purposes of this subsection, does not include court-ordered reimbursement of out-of-pocket expenses including courts costs and attorney's fees.

(d) A former ~~elected official member of the Mayor and Council~~ may not assist or represent another party for compensation in a matter that is the subject of legislative action in the City for a period of two years after leaving office.

Sec. 16-28. Use of prestige of office.

No elected or appointed official or ~~employee salaried employee (decision making or nondecision making)~~ may intentionally use the prestige of his office for his own private gain or

that of another. The performance of usual and customary constituent services, without additional compensation, does not constitute the use of the prestige of office for private gain or that of another.

Section 16-30. Restrictions on Procurement

An individual or ~~business entity~~ ~~a person~~ that employs an individual who assists a City department in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement may not submit a bid or proposal for that procurement or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement. The Commission may establish exemptions from the requirements of this subsection for providing descriptive literature, sole source procurements, and written comments solicited by the procuring department.

ARTICLE III. FINANCIAL DISCLOSURE

DIVISION 1. GENERALLY

Sec. 16-46. ~~Appointed~~ Appointed and elected officials and employees.

(a) All appointed officials and ~~salaried decision-making employees~~ who are classified as exempt in accordance with the provisions of the Fair Labor Standards Act shall file with the Municipal Custodian, on or before April 30 of each year during the person's term in office or period of employment, a ~~financial disclosure~~ gift disclosure statement, under oath or affirmation, which shall disclose each gift in excess of twenty dollars (\$20.00) in value, or a series of gifts totaling one hundred dollars (\$100.00) or more from any one (1) person received at any time during the calendar year immediately preceding such year from entities doing business with the City; provided, however, gifts received from parents, spouses, domestic partners, or children, and meals and beverages need not be disclosed. Said financial disclosure statement shall include a description of the nature and value of the gift and the identity of the person from whom or on behalf of whom, directly or indirectly, the gift was received. ~~the approximate value of each gift disclosed.~~ Persons filing statements pursuant to section 16-63 or Section 16-68 shall not be required to file the additional statement described in this subsection.

(b) All elected or appointed officials and employees shall file a written statement, under oath or affirmation, with the Municipal Custodian disclosing any interest or employment that raise a conflict of interest or the appearance of a conflict of interest in connection with a specific proposed action by the employee or elected or appointed official, which would require

disqualification from participation pursuant to sections 16-25 and 16-26 sufficiently in advance of any anticipated action to allow adequate disclosure to the public. If a written statement is submitted to the Municipal Custodian pursuant to this section, the Municipal Custodian shall promptly notify the proper authority.

(c) The ~~statements~~~~reports~~ filed pursuant to this section shall be maintained by the Municipal Custodian as public records available for public inspection and copying in accordance with Sections 16-63(g) for statements filed by elected officials and 16-68(d) for statements filed by appointed officials and employees. The Municipal Custodian may not provide public access to an individual's home address that the individual has designated as the individual's home address.

DIVISION 2. ELECTED OFFICIALS AND CANDIDATES FOR ELECTED OFFICE

Sec. 16-62. Removal for failure to file financial disclosure statement.

~~In addition to any other penalties and enforcement actions provided for in this chapter, failure to file a financial disclosure statement under sections 16-61 and 16-63 shall constitute cause for removal of an elected official from office. Upon the failure of an elected official to file his/her financial disclosure statement as required, the Council shall hold a public hearing for the purpose of considering the removal of the elected official from office as provided for under the provisions of Article 23A, section 2(b)(25) of the Annotated Code of Maryland, presently in effect and as may be amended from time to time. Failure to file a financial disclosure statement as required by this chapter shall be prima facie evidence of nonfeasance in office.~~[Reserved]

Sec. 16-63. Statement required.

(a) Except as provided in subsection (d) below, each elected official shall file with the Municipal Custodian, on or before April 30 of each year during the person's term in office, the statement required by this division, for the calendar year immediately preceding each such year in office. If an individual subject to this section files a financial disclosure statement that does not include all of the information required, the Commission shall notify the individual in writing of the deficiencies and may require the filing of an amended financial disclosure statement.

(b) Except for a person who has filed a statement pursuant to subsection (a) for the same year or portion of the same year for which a statement otherwise would be required to be filed by this subsection, each candidate for election to office shall file with the Municipal Custodian, at or before the same time that person's nominating petition is filed, the statement required by this division, for the calendar year immediately preceding the year in which that nominating petition is filed and by April 30 annually thereafter until the election.

(g) All statements filed pursuant to this division shall be maintained by the Municipal Custodian and shall be made available during normal office hours for examination and copying by the public, subject, however, to such reasonable fees and administrative procedures as the Municipal Custodian may establish from time to time. The Municipal Custodian must not provide public access to an address that the individual has designated as the individual's home address. All statements shall be retained as public records for at least ~~four (4)~~ five (5) years from the date of their receipt by the Municipal Custodian.

(k) The Municipal Custodian shall require that any person examining or copying such statements shall record his/her name, home address, and the name of the person whose disclosure statement was examined or copied. The Municipal Custodian shall furnish to the person whose financial disclosure statement is being examined or copied the names and addresses of the persons examining or copying said financial disclosure statement. Notwithstanding the foregoing, this subsection (k) shall not apply to any examination or review of financial disclosure statements by members of the Commission as required by section 16-3(1).

Sec. 16-64. Contents of statement

The statement required to be filed by this division shall contain schedules disclosing the following interests of the person making the statement, together with the following information, for the filing year:

(2) A schedule of all interests in any corporation, partnership, limited liability partnership, or limited liability ~~company or corporation~~, whether or not the corporation, ~~or~~

partnership, ~~limited liability partnership, or limited liability company~~ does business with the City. This schedule, as to each such interest, shall include:

- a. The name and address of the principal office of the corporation, partnership, limited liability partnership, or limited liability ~~company~~corporation;

(4) A schedule of each gift in excess of Twenty Dollars (\$20.00) in value, or a series of gifts totaling one hundred dollars (\$100.00) or more from any one (1) person received at any time during the year for which the statement is filed by the person making the statement, or by any other person at the direction of the person making the statement, from, or on behalf of, directly or indirectly, any person who does business with the city or is regulated by the City; provided, however, gifts received from parents, spouses, ~~domestic partners~~, or children, campaign contributions which are otherwise reported as required by law, and meals and beverages need not be disclosed. This schedule, as to each such gift, shall include:

- a. A description of the nature and value of the gift; and
- b. The identity of the person from whom or on behalf of whom, directly or indirectly the gift was received;

DIVISION 3. MEMBERS OF DESIGNATED BOARDS AND COMMISSIONS; ~~CITY MANAGER; CITY ATTORNEY; CITY CLERK; DEPARTMENT HEADS~~

Sec. 16-66. Scope.

~~All members of and applicants for appointment to the designated boards and commissions~~ Every Department Head, the City Manager, City Attorney, and City Clerk, and members of and applicants for appointment to the designated boards and commissions are required to file the statements required in this division.

Sec. 16-68. Statement required.

(a) ~~Each member of a designated board or commission~~ An appointed official or employee subject to this Division shall file with the Municipal Custodian a financial disclosure statement required by this Division., ~~The financial disclosure statement shall be filed annually on or before April 30 of each year during which an appointed official or employee holds office or is employed by the City the person's term in office, the statement required by this division, for the preceding calendar year. immediately preceding each such year in office.~~ The statement shall be under oath or affirmation. If an individual subject to this section files a financial disclosure statement that does not contain all of the information required, the Commission shall notify the individual in writing of the deficiencies and may require the filing of an amended financial disclosure statement.

(f) The Municipal Custodian shall require that any person examining or copying such statements shall record his/her name, home address, and the name of the person whose disclosure statement was examined or copied. The Municipal Custodian shall furnish to the person whose financial disclosure statement is being examined or copied the names and addresses of the persons examining or copying said financial disclosure statement. Notwithstanding the foregoing, this subsection (f) shall not apply to any examination or review of financial disclosure statements by members of the Commission as required by section 16-3(l).

Sec. 16-69. Contents of statement

The statement required to be filed by this division shall contain schedules disclosing the following interests of the person making the statement, together with the following information, for the filing year:

(2) A schedule of all interests in any corporation, partnership, limited liability partnership, or limited liability ~~company~~corporation, whether or not the corporation, partnership, limited liability partnership, or limited liability company does business with the City. This schedule, as to each such interest, shall include:

a. The name and address of the principal office of the corporation, partnership, limited liability partnership, or limited liability ~~company~~ corporation;

(4) A schedule of each gift in excess of twenty ~~five~~ dollars (~~\$20.00~~~~25.00~~) in value, or a series of gifts totaling one hundred dollars (\$100.00) or more from any one (1) person received at any time during the year for which the statement is filed by the person making the statement, or by any other person at the direction of the person making the statement, from, or on behalf of, directly or indirectly, any person who does business with the city or is regulated by the City; provided, however, gifts received from parents, spouses, ~~domestic partners~~, or children, campaign contributions which are otherwise reported as required by law, and meals and beverages need not be disclosed. This schedule, as to each such gift, shall include:

(6) A schedule of all liabilities to any person doing business with the City owed at any time during the filing year, excluding retail credit accounts of the person making the statement and consumer (\$1,500.00 or less) or automobile loans made by banks, savings and loan associations or credit unions to the person making the statement; and all liabilities to any person doing business with the City owed at any time during the year for which the statement is filed, excluding retail credit accounts of the spouse, ~~domestic partner~~, or child of the person making the statement and consumer (\$1,500.00 or less) or automobile loans made by banks, savings and loan associations or credit unions to the spouse, ~~domestic partner~~, or child of the person making the statement, if the person making the statement was involved in the transaction giving rise to liability. This schedule, as to each such liability, shall include:

(7) A list of all members of the immediate family of the person making statements required by this article who are employed by the City in any capacity. ~~For the purpose of this paragraph, "immediate family" includes only spouse and dependent children.~~

Sec. 16-70. Interests attributable to persons making statements.

For the purposes of section 16-69, paragraphs (1), (2) and (3) and the disclosures therein required, the following shall be considered to be the interests of the person making the statement:

(1) Any interest held by the ~~immediate family spouse or a child~~ of the person making the statement, if such interest was at any time during the filing year directly or indirectly controlled by the person making the statement;

ARTICLE IV. LOBBYING DISCLOSURES**Sec. 16-76. Lobbying disclosures.**

(a) Any person who personally appears before any ~~City elected or appointed~~ official or employee with the intent to influence that person in the performance of his official duties, and who, in connection with such intent expends or reasonably expects to expend in a given calendar year in excess of two hundred fifty dollars (\$250.00) in the aggregate or fifty dollars (\$50.00) on any single ~~elected or appointed~~ official or employee on food, entertainment or other gifts for such ~~elected or appointed~~ officials, shall ~~be deemed a lobbyist and~~ file a registration statement with the Municipal Custodian not later than January 15 of the calendar year or within five (5) days after first making these appearances.

(c) Registrants under this section shall file a report within thirty (30) days after the end of any calendar year during which they were registered, disclosing the value, date, and nature of any food, entertainment or other gift provided to ~~a City~~ ~~an elected or appointed~~ official or employee. When a gift or series of gifts to a single ~~elected or appointed~~ official or employee exceeds fifty dollars (\$50.00) in value, the ~~elected or appointed~~ official or employee shall also be identified. [The Commission must review the lobbying registrations and reports submitted under this Chapter for technical compliance with the provisions of this Chapter and must notify the submitter of any material omission or deficiency.](#)

(d) The registrations and reports filed pursuant to this section shall be maintained by the Municipal Custodian as public records available for public inspection and copying.

ARTICLE VI. WHISTLEBLOWER PROTECTION

Sec. 16-81.

(a) The City, acting through its authorized personnel, shall not discharge or discriminate against or threaten to discharge or discriminate against an elected or appointed official or employee regarding compensation, terms, conditions, location, or the privilege of employment with the City because:

(1) The elected or appointed official or employee, whether acting as a complainant or on behalf of a complainant, reports or is about to report orally or in writing any alleged violation of this Chapter; or

(2) The elected or appointed official or employee, whether acting as a complainant or on behalf of a complainant, participates in an investigation, hearing, or inquiry held by the Commission in conjunction with a complaint filed under this chapter or any related court action.

(b) This section shall not apply to an elected or appointed official or employee who knowingly files a false complaint or knowingly makes a false statement to the Commission with respect to an alleged violation of this chapter. Any elected or appointed official or employee found to have knowingly made a false statement or false complaint under this provision shall be subject to discipline under applicable Code provisions and the Personnel Policies and Procedures Manual.

SECTION II – Except as provided in Section III, this ordinance shall become effective immediately upon adoption.

SECTION III – An obligation of a department head to a financial disclosure statement as required by Section 16-68 of the City Code shall become effective with the financial disclosure statement that is due by April 30, 2020.

NOTE: ~~Strikethrough~~ indicates material deleted

Underlining indicates material added

Ordinance No.

-21-

I hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the Mayor and Council at its meeting of _____.

Sara Taylor-Ferrell

City Clerk/Director of Council Operations

Attachment 9.a: Attach A-Draft Ordinance-amendments to Ch 16 Ethics (2881 : Discussion and Instruction and Possible Adoption Ethics



Mayor & Council Meeting Date: April 8, 2019
 Agenda Item Type: D & I, Possible Introduction & Possible Adoption
 Department: City Attorney's Office
 Responsible Staff: Eliot Schaefer

Subject

Discussion, Instructions, Possible Introduction and Possible Adoption of an Ordinance to Amend Chapter 16 of the Rockville City Code Entitled "Public Ethics" So as to Amend, Delete, and Add Definitions; and to Amend the Purpose and Policy, Administration, and Enforcement Sections Contained in Article I; Amend the Conflicts of Interest Provisions in Article II; Amend the Financial Disclosure Provisions in Article III; Amend the Lobbying Provisions in Article IV; and Add a New Article VI Entitled "Whistleblower Protection."

Recommendation

Staff recommends that the Mayor and Council discuss the Ethics Commission's recommended amendments to Chapter 16 of the City Code entitled "Public Ethics" (the "Public Ethics Ordinance").

If no revisions to the ordinance are required, the ordinance can be introduced.

If the Mayor and Council wish to proceed with adoption of the ordinance at the same meeting, the ordinance should first be introduced and then a motion should be made to waive the layover period. If the motion to waive the layover period is approved by four members of the Mayor and Council, a motion to adopt the ordinance may then proceed.

If the Mayor and Council introduce, but do not adopt the ordinance, it will be brought back at a later date for adoption.

Change in Law or Policy

The ordinance would amend the Public Ethics Ordinance.

Discussion

Background on the Public Ethics Ordinance

State legislation enacted during the General Assembly's 2010 Legislative session required counties and municipalities to adopt local ethics laws that, depending on the subject matter of

the law, are equivalent or similar to provisions contained in the Maryland Public Ethics Law.¹ In June 2013, the Mayor and Council adopted Ordinance No. 13-13 to amend the Public Ethics Ordinance so that the City complied with State requirements.

Since the adoption of Ordinance No. 13-13, the Public Ethics Ordinance has been amended twice. The Public Ethics Ordinance was first amended on August 1, 2018. The Mayor and Council adopted Ordinance No. 16-18 because of changes that were made to the Maryland Public Ethics Law during the General Assembly's 2017 Legislative session. The second amendment occurred on March 25, 2019. With that amendment, the Mayor and Council changed the filing deadline for financial disclosure statements from April 15 to April 30.

Discussion on Recommended Amendments

During 2017, the Ethics Commission undertook a comprehensive review of the Public Ethics Ordinance. The review included comparing the City's ordinance to ordinances of municipalities of similar size and to the State Ethics Commission's model ordinances. After completing its review, the Ethics Commission drafted recommended amendments with the intent of clarifying the Public Ethics Ordinance and strengthening it to better carry out its purpose.

Many of the amendments are recommended so that words and terms are used more consistently throughout the ordinance. For example, the Public Ethics Ordinance defines the term "domestic partner" but the term is not consistently used throughout the ordinance – in fact, the term is often omitted in places where it would seem appropriate to use it. The proposed amendments would fix some of the inconsistencies in the ordinance.

The recommended amendments also seek to clarify how and to whom certain provisions of the Public Ethics Ordinance apply. Specifically, the proposed amendments modify how "employees" are defined (for purposes of the Public Ethics Ordinance) and clarify which provisions apply to "employees" versus "elected officials" or "appointed officials." The Commission believes that the proposed amendments make the ordinance easier to read and more understandable.

While many of the proposed amendments seek to clarify the Public Ethics Ordinance, the Commission also recommends the following substantive changes: (i) adding certain employees to the individuals required to file financial disclosure statements; (ii) clarifying the Commission's role to review financial disclosure statements; and (iii) adding a whistleblower protection provision. A more detailed explanation of each recommendation is contained in the Summary of Recommended Amendments section.

¹ The 2010 law required counties and municipalities to adopt conflict of interest and financial disclosure provisions for elected officials that are at least equivalent to the State's provisions; financial disclosure provisions for candidates for elected office that are at least equivalent to State provisions; conflict of interest and financial disclosure provisions for employees and appointed officials that are similar to State provisions; and lobbying provisions that are substantially similar to State provisions.

On October 29, 2018, the Ethics Commission held a work session with the Mayor and Council to discuss the recommended amendments. The Mayor and Council provided direction on the Ethics Commission's recommended amendments.

A summary of the recommended amendments is included in this Staff Report and a redline draft of the Ethics Commission's recommended amendments is included as Attachment A. For context, the Ethics Commission's redlined draft contains the entirety of the Public Ethics Ordinance, which includes sections that are recommended to be amended as well as the sections that would remain unchanged. The redlined draft incorporates the direction provided by the Mayor and Council. The redlined draft also includes a comment box to identify areas where the Mayor and Council's direction has been incorporated into the draft.

In addition to the redlined version, a draft ordinance is included as Attachment B. The draft ordinance is being provided in the event the Mayor and Council decide to introduce the ordinance at this meeting. The draft ordinance includes only those sections that would be amended.

Summary of Recommended Proposed Amendments

As indicated above, Attachment A contains the Commission's recommended amendments to Chapter 16 and this portion of the Staff Report is best read in conjunction with that document. The italicized language in the summary details direction provided by the Mayor and Council during the work session.

Section 16-1 – Definitions.

Many of the recommended amendments are clarifying in nature. Words proposed to be amended, deleted, or added include:

- Appointed official – revised definition to clarify who is an appointed official and to be consistent with other sections of the City Code where appointment of officials is discussed.
- Business entity – revised to add "limited liability company" to the list of business entities as it is one of the more popular and prevalent business entities
- City Attorney – definition deleted. There are certain aspects of Chapter 16 that are specific to the City Attorney and not appropriate to be designated to another attorney, so this definition is deleted. The term "or designee" is added to the substantive provisions of the ordinance where appropriate.
- Department head – new definition added. The rationale for the new definition is contained in the explanation for Section 16-66. *Based on the direction from the Mayor and Council, three additional positions were added to the list of "department heads" – the Deputy City Attorney, the Deputy Director of the Department of Finance, and the Director of Management and Budget.*
- Employee – new definition added. This is done for clarity and consistency throughout Chapter 16.
- Financial interest – revised definition for clarity and consistency.

- Interest – revised definition for clarity.
- Interest – revised definition to exclude the following from the definition of interest: (i) 529 plans; and (ii) deferred compensation plans.
- Official and/or employee – definition deleted. Separate definitions for “employee” and “elected officials” and “appointed officials” are included in Chapter 16. Each group is treated somewhat differently throughout Chapter 16, so this definition is deleted so that the requirements imposed by Chapter 16 on each of the three groups are clear.
- Proper Authority – revised definition to reflect the employee-reporting structure of the city government.
- Salaried decision-making employees & Salaried nondecision making employees – definitions deleted. The use of these two terms was often done together, and the only place Chapter 16 distinguishes between the two is in Section 16-46(a). For clarity, these two terms are essentially combined into the definition of “employee” and Section 16-46(a) is revised accordingly.

Section 16-2 – Purpose and policy.

Subsection (c) – The terms “appointed and elected” are added before the term “officials” for clarification and consistency.

Section 16-3 – Administration.

Subsection (a) – The line regarding initial appointment of the Commission is deleted as no longer relevant.

Subsection (a)(5) – *Based on the direction from the Mayor and Council, a requirement for the Ethics Commission to provide notice of an individual’s financial disclosure statement at least one month in advance of the filing deadline would be added to the Ethics Commission’s duties.*

Subsection (c) – The language regarding the initial appointment terms of the Commission is deleted as no longer relevant.

Subsection (d) – The term “or designee” is being added in the reference to the City Attorney because of the definition change. (See recommended amendment to Section 16-1.)

Subsection (i) – The terms “appointed and elected” are added before the term “officials” for clarification and consistency. *Based on the direction from the Mayor and Council, a requirement that Ethics Commission Advisory Opinions be posted to City’s website has been added.*

Subsection (l) – A new subsection was created to grant the Commission the authority to review financial disclosure statements for technical compliance. Currently, Chapter 16 is silent as to whether the Commission is required, or even permitted, to review financial disclosure statements for filing compliance. The Commission has interpreted Chapter 16 in a way that if the Commission reviews the financial disclosure reports, it would be doing so under Sections 16-63(k) and 16-68(f), which would require the City Clerk to provide notice to the filers that the

statements were being reviewed. Under the recommended amendment, the Commission would be granted the authority to review the financial disclosure statements for the limited purpose of ensuring that there are no omissions or deficiencies in the submitted reports. If the Commission review uncovers any omissions or deficiencies, the Commission would be authorized to request that a filer submit an amended report. (See recommended amendments to Sections 16-63(a) and 16-68(a)). Under this review, the City Clerk would not be required to send filers notice of the review by the Ethics Commission. (See recommended amendments to Sections 16-63(k) and 16-68(f).)

Section 16-4 – Enforcement.

Subsection (a)(1) – A reference to the filing of an amended financial disclosure statement has been added to account for the changes discussed in Section 16-3(l).

Subsection (a)(2) – The maximum late fine that a lobbyist may be assessed for untimely filing is changed to be consistent with the maximum amount allowed by Section 16-(a)(1) (late fees for financial disclosure statements).

Subsection (c)(2) – The terms “appointed and elected” are added before the term “officials” for clarification and consistency.

Subsection (e) – With respect to a violation of the lobbying provisions, the mental state for a criminal conviction is changed from being silent to a “knowing” violation.

Section 16-21 – Scope.

It is recommended that this section be deleted in its entirety. While this Section states who the Conflicts of Interest Article is applicable to, the Commission believes this Section is unnecessary because each of the subsequent sections specifically identifies the group that is subject to the particular conflict of interest provision.

Section 16-22 – Disclosure of confidential information.

The terms “appointed and elected” are added before the term “officials” for clarification and consistency.

Section 16-23 – Gifts or favors.

Subsections (a), (b), (c), and (d) – Clarification and consistency.

Section 16-24 – Representing private interests before agencies or courts.

Subsection (a), (b), (c), and (d) – Clarification and consistency. Currently, Section 16-24 is not broken into subsections. It is one section that has four sentences. However, Section 16-24 has four clear concepts that apply to different groups and different situations. The Commission recommends breaking these concepts into four subsections for clarity. The new subsection (c) was revised for clarity.

Section 16-25 – Dealing with city when interested.

Subsections (a) and (b) – Clarification and consistency.

Section 16-26 – Land use decisions.

Clarification and consistency.

Section 16-27 – Employments restrictions.

Subsection (a) – Clarification and consistency.

Subsection (c) – Clarification and consistency. *(Revised from previous draft based on the direction from the Mayor and Council.)*

Subsection (d) – Clarification and consistency. *(Revised from previous draft based on the direction from the Mayor and Council.)*

Section 16-28 – Use of prestige of office.

Clarification and consistency.

Section 16-30 – Restrictions on procurement.

Clarification and consistency.

Section 16-46 – Appointed and elected officials and employees.

Section heading – The section, by its terms, applies to more than just appointed officials and employees. Subsection (b) applies to all officials and the section heading should be revised accordingly.

Subsection (a) – Clarification and consistency. The Commission recommends amending this section to clarify which employees must file a gift disclosure statement and to amend what must be reported to be consistent with the gift disclosure requirements applicable to elected officials and members of designated boards and officials.

Subsections (b) and (c) – Clarification and consistency.

Section 16-62 – Removal for failure to file financial disclosure statement.

The Commission recommends removing this section in its entirety. It is the Commission's understanding that under Maryland law, the Mayor and Council do not have the authority to remove another elected official from office for the failure to file a financial disclosure statement. The State Code referenced in this section grants a municipality the authority to remove an appointed officer from a board or commission – so by its terms the State Code is inapplicable to elected officials. Because the State Code section only applies to the removal of appointed officials, it should be deleted from this section. If an elected official fails to file a financial disclosure statement, the Commission has the authority to assess a late fee of up to \$360.00. Additionally, if a complaint is filed against an elected official and the Commission finds that a violation has occurred, the Commission can issue a compliance order or impose of fine of up to \$5,000.00. A finding of a violation by the Commission is public information.

Section 16-63 – Statements required.

Subsections (a) and (k) – See explanation contained in recommended amendments to Section 16-3, Subsection (l).

Subsection (g) – Because the City has changed the terms for its elected officials to 4 years, the Commission recommends amending Section 16-63(g) so that financial disclosure statements filed by elected officials and candidates for elected office are retained for 5 years by the City. The amendment would ensure that financial disclosure statements of elected officials from the year prior to the most recent election are retained by the City.

Section 16-64 – Contents of statement.

Subparagraphs (2) and (4) – Clarification and consistency.

Section 16-66 – Scope.

The Commission recommends amending the scope of individuals required to file financial disclosure statements. Currently under this section, only individuals serving on and applicants to the Planning Commission, Board of Appeals, Historic District Commission, and Ethics Commission are required to file financial disclosure statements. The Commission recommends expanding the scope of individuals required to file financial disclosure statements to include the City Manager, City Clerk, City Attorney, all of whom are individuals that the Mayor and Council appoint to run City offices. The Commission also recommends including the following positions to those who must submit a financial disclosure statement: Deputy City Manager, Director of the Department of Community Planning and Development Services, Director of Finance Department, Director of the Department of Human Resources, Director of the Department of Information Technology, Chief of Police, Director of the Department of Public Works, Director of the Recreation and Parks Department, Director of Communications, and Director of Procurement. *Based on the direction from the Mayor and Council, the Deputy City Attorney, Deputy Director of the Finance Department, and the Director of Management and Budget has been added to the list of “department heads” required to file financial disclosure statements.* Because all of the positions are responsible for department budgets or overseeing the expenditure of City money, the Commission believes that the purposes of this Chapter would be better carried out if these individuals are subject to the financial disclosure requirements.

If the Mayor and Council choose to introduce the ordinance and waive the layover period, the Ethics Commission recommends that the requirement of a department head to file a financial disclosure statement not begin until the 2020 filing cycle. The draft ordinance reflects the Ethics Commission’s recommendation.

Section 16-68 – Statement required.

Subsection (a) – In addition to clarification and consistency, changes to this section are necessary because of the change in scope of applicability of those required to file financial disclosure statements.

Subsections (a) and (f) - See explanation contained in recommended amendments to Section 16-3, Subsection (l).

Section 16-69 – Contents of statement.

Subparagraphs (2), (4), (6), and (7) – Clarification and consistency.

Subparagraph (4) – In addition to recommended changes regarding clarification and consistency, the Commission recommends amending the gift reporting threshold to \$20.00 to be consistent with the gift reporting threshold for elected officials.

Section 16-70 – Interests attributable to persons making statements.

Clarification and consistency.

Section 16-76 – Lobbying disclosures.

Subsections (a) and (c) – Clarification and consistency.

Section 16-81.

The Commission recommends adding a whistleblower protection provision to the Public Ethics Ordinance. The Public Ethics Ordinance from the City of College Park contains a whistleblower protection section, and the Commission believes that whistleblower protections are a good way to ensure the purposes of the Public Ethics Ordinance are carried out. A whistleblower protection provision would ensure that elected and appointed officials and employees can report ethical violations and participate in investigations without the fear of retaliation. In addition to benefiting officials or employees of the City, this helps carry out the purpose of maintaining the public's confidence and trust in carrying out City business.

Additional Considerations for the Mayor and Council – Amendments Permissible to the Public Ethics Ordinance as Allowed Pursuant to House Bill 879

During the 2017 General Session, the General Assembly enacted House Bill 879, which made amendments to the Maryland Public Ethics Law. The 2017 legislative changes contained “mandatory” provisions that all local governments with ethics laws are required to comply with as well as “permissive” provisions that a local government can adopt, if it chooses. The Mayor and Council adopted amendments to the Public Ethics Ordinance on August 1, 2018 to address the mandatory requirements of the law, but the permissive provisions were discussed by the Mayor and Council.

While none of the “permissive” provisions of House Bill 879 are included the Ethics Commission’s recommended amendments, the Mayor and Council may consider whether the Public Ethics Ordinance should include any of them. The State Ethics Commission’s synopsis on the permissive provisions is included as Attachment C. If the Mayor and Council wish to include any of the permissive provisions in the Public Ethics Ordinance, staff should be directed to draft an ordinance for the respective permissive provisions.

Mayor and Council History

The Ethics Commission presented a comprehensive set of proposed amendments to the Mayor and Council on April 24, 2017 and participated in a work session on those amendments on October 29, 2018. One item discussed at the work session was brought forward and adopted by the Mayor and Council on March 25, 2019.

Boards and Commissions Review

The Ethics Commission reviewed and approved the redline version of the Public Ethics Ordinance included as Attachment A as the Commission's recommended amendments.

Next Steps

If the Mayor and Council do not introduce the ordinance, direction should be provided on what changes, if any, should be made to the draft ordinance.

If the ordinance is introduced and the Mayor and Council do not move to waive the layover period and adopt the ordinance, staff will bring the ordinance back for Mayor and Council action at a later date.

Once an ordinance is adopted, staff will submit the amendment to the State Ethics Commission for its review and approval.

Attachments

Attachment 11.a: Redlined Version of Ethics Commission's Recommended Amendments to Chapter 16 (PDF)

Attachment 11.b: Draft Ordinance to Amend Chapter 16 (PDF)

Eliot Schaefer

Eliot Schaefer, Assistant City Attorney

4/3/2019



Mayor & Council Meeting Date: January 6, 2020
Agenda Item Type: Discussion
Department: City Manager's Office
Responsible Staff: Rob DiSpirito

Subject

Discussion Regarding Letter on Open Meetings Act Violations

Recommendation

Hold a discussion.

Discussion

David Hill read a statement regarding the November 14, 2019 opinion of the State of Maryland Open Meetings Compliance Board during the Mayor and Council's December 16, 2019 meeting. The Mayor and Council requested a discussion on the January 6, 2020 agenda with the statement from David Hill and the other attached documents provided.

Attachments

- Attachment 10.a: David Hill Statement to Mayor and Council Dec 16 2019 and State Board Opinion (PDF)
- Attachment 10.b: Planning Commission Motion 12-11-19 (PDF)
- Attachment 10.c: West End Citizens Association Correspondence (PDF)
- Attachment 10.d: Peerless Rockville Correspondence (PDF)

Jenny Kimball

Jenny Kimball, Deputy City Manager

12/31/2019

My topic is the attachment (which you were previously forwarded): an opinion by the State of Maryland, Open Meeting Compliance Board (an arm of the State Attorney General's office) that within one matter handled by the City in the last year, State law was violated on multiple occasions. At least two, dual sections each time, and two further additional violations. That totals six illegalities. That Board is expert in the State, authorized to oversee the Open Meeting Act, law that addresses fundamental rules for transparency of governments in Maryland. While the putative body for complaint is the Planning Commission, that body was acting primarily on advice and direction of City Attorney department, led by Debra Daniels. As an individual private citizen, I was the complainant that requested this review and opinion. As a land use commissioner for twenty years, I have experience with how application processes should proceed. What alarmed me and motivated filing this complaint was that I observed distortions in handling the Lockett House Garage site application, reconsideration, appellant handling and lack of follow-up. I used this recourse, short of a lawsuit, to get some expert review of what happened.

The resulting Open Meeting Compliance Board opinion is technically narrow, nevertheless unmistakably finds fundamental errors in the City government's conduct. The narrow issues are what obviously transpired in closed-door meetings, was not simply advice by counsel, but apparent discussion and decisions made behind closed doors or usurping the public body authority. This is not transparency, as required, by law, for municipal conduct. What further concerns me on this matter is: I believe deeper independent legal review would find further errors, than these narrowly considered aspects of meetings by this complaint board. I can provide a detailed list, with description of a dozen points worth reviewing. At City Hall, the citizens should have the Constitutional rights to receive due process from the outset and seek redress of our grievances from all levels of government. This opinion validates grievances.

The Open Meeting Compliance Board does not have the authority of a court to level punishment, make award, or compel further action. Now that their judgment is public, the City of Rockville has a responsibility to identify, reprimand and correct behavior that led to these violations. I recommend, you might engage in any of four actions, as follow-through on this opinion regarding poorly performed process. I urge the City government to fix the issues and eliminate recurrences.

1. Deliver censure, or more, for responsible parties. State law was broken multiple times within City operations. There needs to be accountability and consequence for that.
2. Accomplish retraining of City staff and commissioners regarding this State law and transparency. Apparently, commissioners either did not understand, were advised erroneously, or both. In the end, the erroneous actions cited here, came right through the City Attorney and her department. If the citizens cannot count on top down conformance with the law, what can they count on? Therefore, a thorough retraining, establishing accurate compliance, is in order.
3. The citizens deserve an independent review of these violations and how they happened. This could be an outside legal expert. The Planning Commission narrowly asked for this at their Dec. 11 meeting. They could use your support in making that happen for resources. Since the City Attorney department is complicit in the actions cited as illegal, they cannot be relied upon to review themselves.
4. A further independent review should be what motivated these violations. Why was the law broken? It is a different important question than "how" and needs to be in scope of the review mandate.

Another means here is a request to an Inspector General for their review. Trigger issues arose in this application from requests for reconsideration and a court appeal, that gave rise to closed door meeting sessions that were cited. As those requests for reconsideration have never been publicly acknowledged, disclosed or acted on, even in simple manner that those public documents are posted nowhere in this process. This smacks of a cover-up. Further, the original matter was dispute over a City policy that has not been produced upon multiple requests, regarding the division of adjudication authority between the Planning Commission and Historic District Commission, while contrary to explicit City Ordinance. Also the applicability of City historic overlay zoning and master planning was neglected, which puts it in question. The Mayor and Council, are ultimately responsible for City policies, the zoning ordinance and master planning. So what are they and what do they say and how play out?

There is a fifth option, which is do nothing. Then only the rebuke of contrary written opinion stings, but accomplishes no more except to enter on the public record that these illegal actions will go unpunished and uncorrected. I suggest that is paltry reaction and no progress at addressing the underlying poor performance with any fixes.

The blunder does not end with this opinion. The Open Meeting Act explicitly says, regarding response to a citation, the public body "... may not designate its counsel or another representative to provide the announcement and summary." Yet, the City Attorney staff insisted on providing the obliged summation statement and directed the chair of the cited body, to read it publicly as the obliged action. The chair of that body, fortunately and on her own volition, did not do that. Yet this was almost an aggravating further violation of State law, a seventh illegality advised by legal staff. Another blunder is, counsel explained to the Planning Commissioners that four violations occurred. There are four types of violations, but six instances. That seems a disingenuous reckoning. And as further bluster, I note that initial legal department response to limited distribution of this opinion claimed the excuse that staff changes in the State Board led to recent change in interpretation of the law. That is plainly ridiculous. In my service as a City Commissioner over a long period of time and with multiple City Attorneys, my training and former attorney direction given is precisely the same given in this opinion. If any other interpretation exists applicable to quasi-judicial actions, such is imagined among present legal staff to some non-conforming notion. I advise that any further legal aspect related to this matter warrants separation from the City Attorney department. They have shown incapable of following this law and now desperately biased on this matter.

Then, by advice from the same legal department, the Mayor and Council exhibited behavior verging toward similar lack of transparency in the last term. More than one third of your meetings in the last four year term, included a closed door portion. That is a large number for supposedly open, transparent government and especially lacking a string of extra intricate matters taken up. I advise this new Mayor and Council to reduce that number of closed-door sessions for the upcoming four years. Legitimate reasons do exist for close door meeting. Fourteen specific ones are allowed in the State Open Meeting Act. The most used and problematic one here is item G, to seek advice of counsel. That is to enable the delivery of sensitive legal advice. However, not all advice from counsel is sensitive or pertains to legal points warranting closed-door delivery. And, legal advice should be given, questioned only very directly, and no further discussion, let alone decisions on the subject matter are allowed behind closed doors.

The law "...does not allow for closed door discussion among members of the public body merely because an issue has legal ramifications." You, and further City public bodies, must perform disclose-able: informative, deliberative and decision parts of your duties publicly. The Compliance Board's judgement says: "The default direction should be toward open disclosure." City performance warrants a top-down reset on the meaning of open disclosure in its conduct.

In conclusion, the City Attorney, Debra Daniels, and her department failed on directing legally required transparency in City business, laid bare by these citations. Assuring City business proceeds legally is their primary professional purpose at City Hall. The senior City Attorney was in the meeting room, possibly leading the meeting, when a public body of the City, committed two illegalities on each of two occasions. So this is not solely a matter of lower level staff underperforming, while that may have occurred too. The City Attorney serves at Mayor and Council pleasure. That gives you supervisory responsibility of her conduct. As a citizen of Rockville and former commissioner, I call on you to discover why the law was broken, censure that, and fix it.

LAWRENCE J. HOGAN, JR.
Governor

APRIL C. ISHAK, ESC

BOYD K. RUTHERFORD
Lt. Governor



NANCY MCCUTCHAN DUDEN
PATRICK S. MEIGHAN

STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE BOARD

13 Official Opinions of the Compliance Board 68 (2019)

City of Rockville Planning Commission

November 14, 2019

The complaint alleges that the City of Rockville Planning Commission (“Commission”) violated the Open Meetings Act with regard to closed meetings that the Commission held on November 5, 2018, and August 7, 2019. The complaint states that the Commission held both meetings behind closed doors in order to discuss the question of whether it could entertain a civic association’s motion to reconsider an earlier decision on a land use matter. The Commission’s attorney responded on its behalf and provided us with minutes of the closed sessions. Under § 3-206(b)(3),¹ we must keep those minutes confidential, and so we will refer to their contents only in general terms. In the Commission’s response, it argues that its closed-door discussions did not include a reconsideration of its earlier decision and asserts that it acted correctly in denying the motion. We will only address the question of whether the Commission violated the Open Meetings Act.

1. The November 5, 2018 meeting

The Commission met on November 5, 2018, in what its notice described as a “special meeting.” The notice listed two agenda items. The first was: “Closed Session pursuant to Sections 3-305(b)(7) and 3-305(b)(8) of the General Provisions Article of the Annotated Code of Maryland to consult with 1) staff regarding pending litigation and 2) counsel to obtain legal advice (Site Plan STP2018-00354, 107 West Jefferson Street).”² The second agenda item was “Adjourn.” The Commission’s subsequent public disclosures, made in its November 14, 2018 open session minutes, show that the purpose of the November 5 closed session was to obtain legal advice on

¹ Statutory references are to the General Provisions Article of the Annotated Code of Maryland.

² We refer the Commission to the Act’s requirements for giving notice of an open session held only for the purpose of holding a vote on a motion to close. A notice that describes an entirely closed session does not convey to the public that it may attend. *See* Open Meetings Act Manual, Chapter 2, Part B. In this case, Commission staff told the civic association’s president, after she asked whether there would be a public vote on a motion to close the meeting, that the public could attend to observe the Commission vote to close the meeting. However, that information, provided to her on the afternoon before the meeting, was not the same thing as published notice to the general public of its right to attend. We find that the Commission violated § 3-305(d), because, given the deficient notice, the vote was not truly public.

13 Official Opinions of the Compliance Board 68 (2019)

November 14, 2019

Page 2

an association's request for reconsideration. The open session minutes further show that, during the closed session, the Commission voted to adopt a motion to "have the City Attorney's Office respond to the request on behalf of the Commission, to clarify any inaccuracies and to not consent to the request."

Under § 3-305, a public body may close a public meeting to discuss a subject that falls within one of the fifteen exceptions listed in § 3-305(b), so long as the public body makes certain disclosures both before and after the meeting, and so long as its presiding officer conducts a vote, in open session, on a motion to close the meeting. § 3-305(d). We are to construe the exceptions "strictly in favor of open meetings of public bodies." § 3-305(a). Sections 3-305(b)(7) and 3-305(b)(8), respectively, permit a public body to close a meeting "to consult with counsel to obtain legal advice" and to "consult with staff . . . about pending or potential litigation."

The Commission's summary of the closed session causes us to focus our discussion on the applicability of § 3-305(b)(7), the "legal advice" exception.³ That exception, as we have long construed it, "does not allow for closed discussion among members of the public body merely because an issue has legal ramifications." 1 *OMCB Opinions* 53, 54 (1993); see also 11 *OMCB Opinions* 38, 39 (2017). Instead, the exception "is to be narrowly construed to cover only the interchange between the client public body and its lawyer in which the client seeks advice and the lawyer provides it." 1 *OMCB Opinions* 1, 5 (1992). The exception thus ceases to apply "[o]nce the advice has been sought and provided." See 1 *OMCB Opinions* 145, 149 (1995); see also Open Meetings Act Manual, Chapter 4, Part G (summarizing our opinion on this exception). Here, the Commission permissibly heard the legal advice in closed session, but then, impermissibly, remained in closed session to decide on its course of action. We find that the Commission violated § 3-301, the general requirement that public bodies meet in open session, and § 3-305 by exceeding the scope of the legal advice exception.

We note that this violation was entirely avoidable. On the evening before this "special meeting," for which the Commission apparently gave short notice,⁴ the association's president emailed staff to say that she had just learned of it and to ask some questions about compliance with the Act. Noting that the meeting had only one substantive agenda item, she asked:

After the consultations [with staff and counsel] are completed, will the Planning Commission hold deliberations and make a decision on whether or not to consider

³ The summary is borne out by the closed session minutes, which, we note, the Commission did not adopt until October of this year. Minutes, including closed session minutes, are to be adopted "as soon as practicable after a public body meets." § 3-306(b). We find that the Commission did not meet that requirement.

⁴ One member of the public received the Commission's email notice of the meeting, which was held on a Monday, with a transmission time of the evening of the preceding Friday. We have no information either on when the meeting was posted on the website or on whether the matter was so urgent as to require counsel's advice on short notice.

13 Official Opinions of the Compliance Board 68 (2019)

November 14, 2019

Page 3

the request for reconsideration? Will these deliberations and the decision be held in public in accordance with the Maryland Public Meetings Act?

In response, staff, “on behalf of” the Chair and Commission, stated: “The Planning Commission will not be considering the requests for reconsideration in the closed session. Should the matter be remanded back to the Planning Commission, any deliberations on the requests will be held in open session.” Unfortunately, it appears that the Commission did not stick to that plan; after the closed session, it reported that it had decided, in closed session, “to not consent to the request.”

2. The August 7, 2019 meeting

In Summer 2019, the complainant, as president of a second civic association, asked the Commission about the status of the request for reconsideration that his association had submitted to the Commission. On August 7, 2019, the Commission published a meeting agenda that listed various items. The first item, under a heading for “Closed Session,” was a “Vote to go into Closed Session pursuant to Section 3-305(b)(7) of the General Provisions Article of the Annotated Code of Maryland to consult with counsel to obtain legal advice regarding reconsideration of Site Plan STP2018-00354, 107 West Jefferson Street.” In that session, too, the Commission heard counsel’s advice, as permitted by § 3-305(b)(7), and, there again, in closed session, the Commission took action on that advice, as was *not* permitted by the Act. By contrast to the November 2018 closed session, which was called specially to consider the matter, the August 2019 meeting was a regular session, and the Commission considered a number of items in open session. Our point is that the Commission could have easily discussed the matter in the open session that it held immediately after the closed session; certainly, there were no logistical obstacles. In any event, the Commission violated the Act with regard to both closed sessions.

Conclusion

With regard to the Complainant’s allegations that the Commission violated the Act by holding closed-session discussions not authorized by the Act, we find that the Commission violated §§ 3-301 and 3-305 during both closed sessions. We encourage the Commission to view open discussion as the default route.

We have also noted a violation of § 3-305(d), regarding the wording of the Commission’s notice in such a way as to effectively exclude the public from observing the Commission’s vote on the motion to close, and § 3-306(b), regarding the timeliness of the Commission’s adoption of the closed session minutes of the 2018 special meeting.

Open Meetings Compliance Board

April C. Ishak, Esq.

Nancy McCutchan Duden, Esq.

Patrick S. Meighan, Esq.

Planning Commission Motion regarding independent analysis**December 11, 2019**

Don Hadley: I make a motion, as a Planning Commission, we request staff to obtain independent analysis and opinion which reviews the record of the pending matter, that is, the actions we took and the opinions of the compliance board to identify items that it finds that we did wrong, or not consistently with law, (inadvisably) and that we did right and that are somewhere in between, and from that, provide suggestions they may offer for ways in which our procedures can be improved or must be improved

Seconded by Ann Goodman (and John Tyner)

Motion was approved unanimously.

Jenny Kimball

From: noreen bryan <noreen1945@yahoo.com>
Sent: Monday, November 25, 2019 8:16 AM
To: Planning Commission
Cc: mayorcouncil; Robert DiSpirito; Brian Shipley; Patricia Woodward; Jack Gelin
Subject: Independent Review by Outside Counsel Required by Violations of the Open Meetings Act
Attachments: Reconsideration request-v4-FINAL-18-09-24.mmr edits.doc; Msg M and C et al ending law suit -19-01-31.docx

Members of the Planning Commission:

Recently the West End Citizens Association (WECA) obtained a copy of the decision by the State of Maryland Open Meetings Act Compliance Board in which the Board found that the Planning Commission had committed four violations of the Act during two closed sessions on November 5, 2018 and August 7, 2019 as part of its review and approval of the application for the Lockett garage at 107 W. Jefferson Street (STP2108-00354).

Throughout the process of review and approval of the Lockett garage both City staff and the Planning Commission were acting under the guidance of Rockville's legal staff. This guidance has resulted in violations of the Open Meetings Act. It calls into question the competency of the legal staff, the validity of their advice to Boards and Commissions, and the legal staff's failure to execute its responsibility to provide accurate legal guidance to Boards and Commissions.

WECA representatives participated in the review and approval of the application from the beginning at the Pre-Application Area meeting until approval was given and WECA's request for reconsideration was denied. Throughout that process WECA raised many concerns of fact and law. Initially these concerns were raised with the staff of Rockville's Community Planning and Development Services (Planning Staff). It is our understanding that Planning Staff shared WECA's concerns with Rockville's legal staff. Because of the significance of these concerns WECA pressed for a response and an explanation. When CPDS staff indicated that they could not provide WECA representatives with answers because of legal constraints, WECA asked to have a meeting with the city's legal staff. Mr. Ricky Barker, on behalf of the Planning Staff, informed us that city attorneys were not available to address our concerns.

At the hearings and deliberations conducted by the Planning Commission, WECA believes that its concerns were not clearly presented or adequately addressed. Thereafter, WECA filed for reconsideration of the decision approving the application. A full enumeration of the mistakes of fact and law, misinformation and omissions identified by WECA is provided in the message requesting reconsideration. A copy is attached to this message.

The request for reconsideration was denied and thereafter, WECA filed a petition with the Circuit Court. We did this to preserve the opportunity to seek the help of the courts to evaluate our concerns. However, on closer examination WECA withdrew its petition and sent a letter to the City explaining that WECA believed that the most productive way to correct mistakes was through working together with the City rather than the courts. A copy of this message is attached. No response was ever received to this message.

As stated earlier, throughout the process of review and approval of the Lockett garage both the staff and the Planning Commission were acting under the guidance of Rockville's legal staff. Their guidance resulted in violations of the Open Meetings Act. On November 5, 2018, WECA President, Noreen Bryan, and WECA Executive Board members, Patricia Woodward and Jacques Gelin, waited outside the meeting room where the closed session of the Planning Commission was being held. We were there in preparation for joining the meeting if it went from closed to open session. After a time, the attendees of the meeting departed and it became apparent that the Planning Commission would not hold an open meeting that night.

When we learned a few days later that a decision to deny the request for consideration had been made in the closed session, we were surprised and dismayed believing that the decision was made in conflict with the Open Meetings Act. Since we were excluded from the closed session we do not know what guidance was provided by the City's legal staff. However, we do know from the decision of the Open Meetings Act Compliance Board that it resulted in violations of

the Open Meetings Act. This leaves WECA with great concerns about the validity of legal guidance provided by the city's attorneys.

To assure that future decisions of the Planning Commission are legally valid, an independent assessment is warranted and WECA believes that outside legal counsel is necessary. City attorneys have been too involved to be able to provide arms-length advice and, more importantly, the recent decision of the Compliance Board shows that their guidance has led to violations of law. Further, having observed other mistakes of facts and law as a participant in the review and approval of this application, WECA believes it is essential that the assessment address not only the Open Meetings Act, but also the whole of the review and approval process for the Lockett garage. In specific WECA recommends that independent counsel:

- address policies and procedures of Boards and Commissions that will preclude any further violations of the Open Meetings Act
- and, conduct an assessment of the whole review and approval process of the Lockett garage to determine if other mistakes of fact and law were made, and if there were, determine what remedial actions should be taken to preclude repetition of these mistakes in the future.

This is would not be a re-trying of the case. Rather it would address issues raised by this case, that are far-reaching and will affect future applications. A case in point is the scope of the duties and responsibilities of the Planning Commission vis-a vis the Historic District Commission. WECA observed during the Lockett case that guidance provided by the City's legal staff was contrary to the Zoning Ordinance. Even though WECA raised this issue with the planning and legal staffs, no one on the City's staff responded to our concerns. This issue needs to be resolved and can only be done by outside, independent counsel.

Thank you for your consideration of this matter, which has wide-ranging consequences for the legality and fairness of the processes that the Planning Commission and other Rockville Boards and Commissions use. The review by outside counsel is essential to ensure that Rockville's Boards and Commissions are not only acting legally and fairly, but that they are perceived as such by citizens.

Respectively,

Brian Shipley, President, West End Citizens Association

Noreen Bryan, Vice President, West End Citizens Association

Patricia Woodward, Executive Board Member, West End Citizens Association

Jacques Gelin, Executive Board Member, West End Citizens Association

WEST END CITIZEN'S ASSOCIATION
Rockville, Maryland
www.weca.us



27 September 2018

R. James Wasilak
 Chief of Planning
 City of Rockville
 100 Maryland Avenue
 Rockville, Maryland 20850

Subject: Request for Reconsideration for Application for a Garage at 107 West Jefferson Street, STP2018-00354.

Pursuant to Section V.R. of the Planning Commission Rules of Procedure (Reconsideration), the West End Citizens Association (WECA) requests reconsideration of the Planning Commission's written September 21, 2018 approval of application STP2018-00354 for a garage on the historic Lockett property at 107 West Jefferson Street ("Planning Commission Decision" or "Decision"). WECA seeks reconsideration of the Decision on grounds that it is based on mistakes of fact, on mistakes of law, and for other good cause, *i.e.*, the Decision is based on misleading information in the record. These mistakes of fact and law, and the misleading information in the record, are reflected in the staff report, in the staff briefing and discussions at the public hearing before the Planning Commission on 12 September 2018, and were incorporated in the Planning Commission's Decision. As a result of its reliance on the mistakes of fact and law in the record, and its reliance on the misleading information that flowed from those mistakes, the Planning Commission's Decision improperly granted approval in this case under the legal standards governing this application. Accordingly, WECA is requesting that the Planning Commission grant this request for reconsideration and conduct a new hearing on the underlying application.

Underlying Zoning Ordinance Policy –The Planning Commission's Powers and Duties regarding Historic Preservation and Historic District Zoning in Level 2 Site Plans:

Comprehensive and accurate interpretation of the policy in the Zoning Ordinance regarding historic preservation and historic district zoning is critical to a fair and comprehensive review by the Planning Commission of an application for a Level 2 Site Plan.

The Zoning Ordinance is explicit in assigning **exclusive** responsibility for review and approval of Level 2 Site Plans to the Planning Commission. ¹ In order to approve an application the Planning Commission must find that the application does **not conflict** with the Master Plan **or constitute a violation** of the Zoning Ordinance.² The Zoning Ordinance does not exclude any provision of the Plan or the Ordinance from this review.³ Since the Master Plan has a chapter devoted to historic preservation and the Zoning Ordinance has a section devoted to historic district zones⁴, the Planning Commission must conform with the policies therein. **Therefore, the Planning Commission has the power and duty to assess whether the policies and regulations of historic preservation and historic district zoning are met in an application for a Level 2 Site Plan.**

In performing its duties, the Planning Commission has the discretion, but is not required to request a courtesy review from the Historic District Commission.⁵ Only if the Planning Commission determines that advice from the HDC is desirable, a request is made. Advice from the HDC is not mandatory.

MISTAKES OF FACT AND LAW, MISINFORMATION AND OMISSIONS associated with:

The Staff Report for the Planning Commission of 12 September 2018 that:

- Fails to tell the Planning Commission that the Luckett property is located in an Historic District Zone. It states only that the property is located in the MXT zone. This omission misinformed the Planning Commission and misled them to believe that only the regulations of the MXT zone applied to its review of the application.
- Fails to tell the Planning Commission that the Historic District Zone is an overlay zone that places **additional** regulations on the property.⁶ Since these additional regulations are omitted from the staff report, the Planning Commission did not address them in its review.
- Fails to delineate what the additional regulations are. To date these additional regulations have not been provided to the Planning Commission.
- Fails to tell the Planning Commission that it must assess the policies, recommendations and regulations of Chapter 8 of the Master Plan. Therein a critical policy states, "*The residential character in the O-2 (Transitional Office Zone [now the MXT zone] should be continued even though many of the structures are now used for non-residential purposes.*" ⁷ The staff report fails to address **any** of the policies or recommendations regarding historic preservation contained in the Master Plan.

- Fails to address the meaning of “residential character of the O-2 zone” and thereby fails to address the standards that the application must meet in order to conform with this policy.

Staff Guidance to the Planning Commission on September 12, 2018 that:

- Misinformed the Planning Commission that it has no power or duty regarding historic preservation and historic district zones. In so doing it led the Planning Commission to believe that its powers and duties were other those specified in the Zoning Ordinance. Further, the staff failed to address the point paper of 8 September 2018 provided by the West End Citizens Association (WECA) which provided a careful delineation of the powers and duties of the Planning Commission regarding historic preservation and historic district zones. By diminishing the powers and duties of the Planning Commission, it was led to incorrectly narrow its evaluation of the application, thereby invalidating its conclusions.
- Failed to inform the Planning Commission that the property is located in an Historic District Overlay zone. The staff’s oral briefing only said that the property is located in the MXT zone in spite of the fact the citizens met with the staff on August 24th to bring to their attention the omission of the historic district zone from the staff’s initial report and analysis prepared for August 8, 2018. When the staff failed to acknowledge this information from citizens, WECA representatives conducted extensive research of the Zoning Ordinance and the Master Plan resulting in a point paper that addresses the policy and standards of historic preservation and historic district zoning in a Level 2 Site Plan review and approval. WECA provided the point paper to staff on 8 September 2018. The staff failed to respond to citizens or address any of the citizens’ analysis in its oral briefing to the Planning Commission.
- Failed to address the policies and recommendations regarding historic preservation in the Master Plan. Even though there is a critical policy about preserving “the residential character in the O-2 Zone,” the staff omitted this portion of the Master Plan from its analysis and its findings.
- Failed to provide accurate information about the appropriateness and the completeness of the courtesy review of the garage conducted by the HDC in February 18, 2016. At the time of the HDC courtesy review the garage was only a top-level concept not a fleshed-out application. Accordingly, it is not surprising that the HDC did not evaluate the garage in detail. Moreover, since the HDC has not conducted a more recent review of the garage, it has never been evaluated for its conformance to historic design guidelines or Secretary of the Interior Standards. In spite of this lack of analysis and information, the staff misled the Planning Commission into believing that sufficient analysis

had been done in the courtesy review of February 2016 and that further review was not warranted.

Approval Letter of 21 September 2018 that:

- Fails, as in the Staff Report and the presentation for the Planning Commission at the public hearing on 12 September 2018, to address **all** pertinent portions of the Master Plan in making the Finding *v. Be in Conflict with the Plan*. The omission of findings regarding Chapter 8 of the Plan, *Historic Preservation*, means that critically important policies of the Plan have been left out of the analysis and approval of the application. As stated at the beginning of this request, the Planning Commission must address all portions of the Master Plan. The Zoning Ordinance does not specifically exclude any portions of the plan from purview of the Planning Commission.⁸ This omission has led to incomplete evaluation of the application and the failure to address aspects of the application that may be in conflict with the Plan.

In specific, the approval was made without deliberation on the Master Plan's policy for "**Enhancement of the Individual Character of Historic Districts**," which states, "*The residential character in the O-2 (Transitional Office) Zone [now the MXT zone] should be continued even though many of the structures are now used for non-residential purposes.*"⁹ The approval letter in its finding *v. Be in Conflict with the Plan* states that "the proposed garage will be compatible with the residential character of the main building."¹⁰ This statement does not address the portion of the Master Plan that makes policy for the preservation of the residential character of **the whole** of the O-2 [now MXT] zone in historic districts, not just an individual property. This omission of the policies of Chapter 8 of the Master Plan is an egregious one that was brought to the attention of the staff prior to the issuance of the Staff Report. Yet it was not addressed in the staff's report of staff's presentation and discussions with the Planning Commission at the public hearing on 12 September 2018.

- Fails, as in the Staff Report and the presentation for the Planning Commission at the public hearing on 12 September 2018, to address all pertinent portions of the Zoning Ordinance in making the Finding *vi. Constitute a violation. Be in Conflict with the Plan*. The approval letter fails to address compliance with the standards required by the Historic District Zone overlay,¹¹ wherein the property for the proposed garage is located. This is a critical omission which cannot be overlooked if the approval of the proposed garage is to be fair and valid.

CONCLUSION: Based on the mistakes of fact and law explained herein, and based on the misleading information that flowed from those mistakes, which formed the basis of and which were incorporated into the Planning Commission Decision, WECA asks that the Planning Commission grant this request for reconsideration and conduct a new hearing on the underlying application.

Respectfully,

Noreen Bryan, President, West End Citizens Association

Patricia Woodward, Past President, West End Citizens Association

Jacques Gelin, Past Recording Secretary, West End Citizens Association

¹ The Powers and Duties of the Planning Commission delineated in Zoning Ordinance (ZO 25.04.02), including “*Reviewing and acting upon site plan and project plan applications in accordance with provisions of article 7.*” (ZO 25.04.02.b.1.(c)).

² Findings required for Site Plan Approval by the Planning Commission (ZO 25.07.01.a.3)

³ Ibid

⁴ Chapter 8 of the 2002 Comprehensive Master Plan is devoted to historic preservation. Section 14.01 of the Zoning Ordinance is Historic District Zones.

⁵ Courtesy reviews provided to the Planning Commission, specifically “*Providing courtesy review to the Planning Commission and Mayor and Council as requested, for projects within or adjacent to historic resources.*” ZO 25.04.04.b.1.(d).

⁶ “*The regulations of the historic district zones are in addition to the underlying residential or nonresidential zoning regulations.*” (ZO 25.14.01.b.1)

⁷ 2002 Comprehensive Master Plan, Chapter 8- Historic Preservation p. 8-14

⁸ See Footnotes 1 and 2.

⁹ 2002 Comprehensive Master Plan, Chapter 8- Historic Preservation p. 8-14

¹⁰ Approval Letter for Major Site Plan Amendment STP2018-00354 of September 21, 2018, p. 4.

¹¹ Zoning Ordinance Section 14.01, Historic District Zones.

Dear Mme Mayor, Members of the City Council, Members of the Planning Commission and City Manager:

I am submitting this letter to explain why the West End Citizens Association (WECA) felt compelled to bring a lawsuit and why we have ultimately decided to withdraw our suit against the Planning Commission challenging the Commission's approval of the Site Plan application for a new detached garage on the historic Lockett property at 107 West Jefferson Street (Case#: STP2018-00354).

WECA participated in the review of the Site Plan application from its inception. Based on the staff report and the deliberations of the Planning Commission, WECA believed that the decision to approve the garage was fundamentally flawed having been based on mistakes of law and facts. Accordingly WECA requested that the decision of the Planning Commission be reconsidered. The reasons for the request are summarized in the message to the Planning Commission on 27 September 2018 (Attachment 1).

The Planning Commission did not schedule review of the request for reconsideration until after the deadline for filing for judicial review. Since the outcome of reconsideration, even whether it would be granted, was unknown, WECA had only two choices- give up its rights to judicial review or file with the courts. Accordingly, WECA filed with the Maryland Circuit Court as a stop-gap measure to protect its rights. Thereafter, WECA's attorney provided evidence that showed that many jurisdictions take up reconsideration requests even when a legal action is pending. The City's legal staff did not address this evidence and held firm that the Planning Commission should not address the reconsideration request.

WECA was left with a difficult decision of whether or not to pursue the lawsuit. WECA's goal has always been to work collaboratively with the City-staff and its Boards and Commissions. Where differences in views arise we desire to have City policies which require that issues and concerns raised by citizens not only be addressed, but given a fair hearing and evaluation as well, which, by the way, WECA does not believe occurred in the Lockett case. Further, our goal is to assure that decisions made by Boards and Commission are fair and follow City policies and laws.

Our decision to withdraw from the lawsuit has not been done because we have changed our views. The WECA Executive Board still believes that mistakes of law and fact were made in the Lockett case. However, WECA does not believe that pursuit of the lawsuit would be the most effective approach to bring about changes in the way that citizens and their views are incorporated into the development review process. Lawsuits are very expensive for citizens. They are lengthy and adversely affect citizens and developers. They are by nature adversarial and are rarely effective in addressing processes. Further they do not create a constructive way for City staff, Boards and Commissions, and citizens to work together in the interest of better City governance.

In the interest of improving the way that historic properties and citizen's views are addressed in the review of proposed developments, WECA requests that the City examine the Lockett case to determine whether or not mistakes were made and how they can be avoided in the future. To that end WECA recommends that the City create a Working Group of stakeholders for this purpose. WECA believes that the Lockett case has far reaching consequences for all of Rockville's historic properties, whether they will be preserved or allowed to degrade. Further, WECA believes that it is in the interest of the City to have a reasonable and fair way for citizens to engage in the development review process. To these ends, we request that you support the examination of the Lockett case.

Sincerely,

Noreen Bryan
President
West End Citizens Association
301-762-1256

Attachment 1

Request for Reconsideration Re: Lockett Garage (Case#: STP2018-00354)

207 S. Washington Street
Rockville, Maryland 20850
27 September 2018

Jim Wasilak
Chief of Planning
City of Rockville
100 Maryland Avenue
Rockville, Maryland 20850

Subject: Request for Reconsideration for Application for a Garage at 107 West Jefferson Street, STP2018-00354.

Pursuant to Section V.R. of the Planning Commission Rules of Procedure (Reconsideration), the West End Citizens Association (WECA) requests reconsideration of the Planning Commission's written September 21, 2018 approval of application STP2018-00354 for a garage on the historic Lockett property at 107 West Jefferson Street ("Planning Commission Decision" or "Decision"). WECA seeks reconsideration of the Decision on grounds that it is based on mistakes of fact, on mistakes of law, and for other good cause, *i.e.*, the Decision is based on misleading information in the record. These mistakes of fact and law, and the misleading information in the record, are reflected in the staff report, in the staff briefing and discussions at the Public Hearing before the Planning Commission on 12 September 2018, and were incorporated in the Planning Commission's Decision. As a result of its reliance on the mistakes of fact and law in the record, and its reliance on the misleading information that flowed from those mistakes, the Planning Commission's Decision improperly granted approval in this case under the legal standards governing this application. Accordingly, WECA is requesting that the Planning Commission grant this request for reconsideration and conduct a new hearing on the underlying application.

Underlying Zoning Ordinance Policy –The Planning Commission's Powers and Duties regarding Historic Preservation and Historic District Zoning in Level 2 Site Plans:

Comprehensive and accurate interpretation of the policy in the Zoning Ordinance regarding historic preservation and historic district zoning is critical to a fair and comprehensive review by the Planning Commission of an application for a Level 2 Site Plan.

The Zoning Ordinance is explicit in assigning exclusive responsibility for review and approval of Level 2 Site Plans to the Planning Commission.ⁱ In order to approve an application the Planning Commission must find that the application does **not conflict** with the Master Plan **or constitute a violation** of the Zoning Ordinance.ⁱⁱ The Zoning Ordinance does not exclude any provision of the Plan or the Ordinance from this review.ⁱⁱⁱ Since the Master Plan has a chapter devoted to historic preservation and the Zoning Ordinance has a section devoted to historic district zones^{iv}, the Planning Commission must conform with the policies therein. **Therefore, the Planning Commission has the power and duty to assess whether the policies and regulations of historic preservation and historic district zoning are met in an application for a Level 2 Site Plan.**

In performing its duties, the Planning Commission has the discretion, but is not required to, request a courtesy review from the Historic District Commission.^v Only if the Planning Commission determines that advice from the HDC is desirable is a request made. Advice from the HDC is not mandatory.

MISTAKES OF FACT AND LAW, MISINFORMATION AND OMISSIONS associated with:

The Staff Report for the Planning Commission of 12 September 2018 that:

- Fails to tell the Planning Commission that the Lockett property is located in an Historic District Zone. It states only that the property is located in the MXT zone. This omission misinformed the Planning Commission and misled them to believe that only the regulations of the MXT zone applied to its review of the application.
- Fails to tell the Planning Commission that the Historic District Zone is an overlay zone that places **additional** regulations on the property.^{vi} Since these additional regulations are omitted from the staff report, the Planning Commission did not address them in its review.
- Fails to delineate what the additional regulations are. To date these additional regulations have not been provided to the Planning Commission.
- Fails to tell the Planning Commission that it must assess the policies, recommendations and regulations of Chapter 8 of the Master Plan. Therein a critical policy states, *“The residential character in the O-2 (Transitional Office Zone [now the MXT zone] should be continued even though many of the structures are now used for non-residential purposes.”*^{vii} The staff report fails to address any of the policies or recommendations regarding historic preservation contained in the Master Plan.
- Fails to address the meaning of “residential character of the O-2 zone” and thereby fails to address the standards that the application must meet in order to conform with this policy.

Staff Guidance to the Planning Commission on September 12, 2018 that:

- Misinformed the Planning Commission that it has no power or duty regarding historic preservation and historic district zones. In so doing it led the Planning Commission to believe that its powers and duties were other than those specified in the Zoning Ordinance. Further, the staff failed to address the point paper provided by the West End Citizens Association (WECA) which provided a careful delineation of the powers and duties of the Planning Commission regarding historic preservation and historic district zones (see attached). By diminishing the powers and duties of the Planning Commission, it was led to incorrectly narrow its evaluation of the application, thereby invalidating its conclusions.
- Failed to inform the Planning Commission that the property is located in an Historic District Overlay zone. The staff's oral briefing only said that the property is located in the MXT zone in spite of the fact the citizens met with the staff on August 24th to express concerns about the omission of the historic district zone from the staff's initial report and analysis prepared for August 8, 2018. When the staff failed to acknowledge this information from citizens, WECA representatives conducted extensive research of the Zoning Ordinance and the Master Plan resulting in a point paper that addresses the policy and standards of historic preservation and historic district zoning in a Level 2 Site Plan review and approval. WECA provided the point paper to staff on September 8, 2018 (see attached). The staff failed to respond to citizens or address any of the citizens' analysis in its oral briefing to the Planning Commission.
- Failed to address the policies and recommendations regarding historic preservation in the Master Plan. Even though there is a critical policy about preserving "the residential character in the O-2 Zone," the staff omitted this portion of the Master Plan from its analysis and its findings.
- Failed to provide accurate information about the appropriateness and the completeness of the courtesy review of the garage conducted by the HDC in February 18, 2016. At the time of the courtesy review the garage was a top-level concept not a fleshed-out application. Accordingly, it is not surprising that the HDC did not evaluate the garage in detail. Moreover, since there has not been a more recent review of the garage by the HDC, the garage has never been evaluated for its conformance to historic design guidelines or Secretary of the Interior Standards. In spite of this lack of analysis and information, the staff misled the Planning Commission into believing that sufficient analysis had been done in the courtesy review of February 2016 and that further review was not warranted.

Approval Letter of September 21, 2018 that:

- Fails, as in the Staff Report and the presentation for the Planning Commission at the public hearing on September 12, 2018, to address all pertinent portions of the Master Plan in making the Finding *v. Be in Conflict with the Plan*. The omission of findings regarding Chapter 8 of the Plan, *Historic Preservation*, means that critically important policies of the Plan have been

left out of the analysis and approval of the application. As stated at the beginning of this request, the Planning Commission must address all portions of the Master Plan. The Zoning Ordinance does not specifically exclude portions of the plan from purview of the Planning Commission.^{viii} This omission has led to incomplete evaluation of the application and the failure to address aspects of the application that may be in conflict with the Plan.

In specific, the approval was made without deliberation on the Master Plan's policy for "**Enhancement of the Individual Character of Historic Districts,**" which state, "*The residential character in the O-2 (Transitional Office) Zone [now the MXT zone] should be continued even though many of the structures are now used for non-residential purposes.*"^{ix} The approval letter in its finding *v. Be in Conflict with the Plan* states that "the proposed garage will be compatible with the residential character of the main building."^x This statement does not address the portion of the Master Plan that makes policy for the preservation of the residential character of **the whole** of the O-2 [now MXT] zone in historic districts, not just an individual property. This omission of the policies of Chapter 8 of the Master Plan is an egregious one that was brought to the attention of the staff prior to the issuance of the Staff Report. Yet it was not addressed in the staff's report of staff's presentation and discussions with the Planning Commission at the public hearing on September 12, 2018.

- Fails, as in the Staff Report and the presentation for the Planning Commission at the public hearing on September 12, 2018, to address all pertinent portions of the Zoning Ordinance in making the Finding *vi. Constitute a violation. Be in Conflict with the Plan*. The approval letter fails to address compliance with the standards required by the Historic District Zone overlay,^{xi} wherein the property for the proposed garage is located. This is a critical omission which cannot be overlooked the approval of the proposed garage is to be fair and valid.

CONCLUSION: Based on the mistakes of fact and law explained herein, and based on the misleading information that flowed from those mistakes, which formed the basis of and which were incorporated into the Planning Commission Decision, WECA asks that the Planning Commission grant this request for reconsideration and conduct a new hearing on the underlying application.

Respectfully,

Noreen Bryan, President, West End Citizens Association

Patricia Woodward, Past President, West End Citizens Association

Jacques Gelin, Past Recording Secretary, West End Citizens Association

-
- i The Powers and Duties of the Planning Commission delineated in Zoning Ordinance (ZO 25.04.02), including “*Reviewing and acting upon site plan and project plan applications in accordance with provisions of article 7.*” (ZO 25.04.02.b.1.(c)).
 - ii Findings required for Site Plan Approval by the Planning Commission (ZO 25.07.01.a.3)
 - iii Ibid
 - iv Chapter 8 of the 2002 Comprehensive Master Plan is devoted to historic preservation. Section 14.01 of the Zoning Ordinance is Historic District Zones.
 - v Courtesy reviews provided to the Planning Commission, specifically “*Providing courtesy review to the Planning Commission and Mayor and Council as requested, for projects within or adjacent to historic resources.*” ZO 25.04.04.b.1.(d).
 - vi “*The regulations of the historic district zones are in addition to the underlying residential or nonresidential zoning regulations.*” (ZO 25.14.01.b.1)
 - vii 2002 Comprehensive Master Plan, Chapter 8- Historic Preservation p. 8-14
 - viii See Footnotes 1 and 2.
 - ix 2002 Comprehensive Master Plan, Chapter 8- Historic Preservation p. 8-14
 - x Approval Letter for Major Site Plan Amendment STP2018-00354 of September 21, 2018, p. 4.
 - xi Zoning Ordinance Section 14.01, Historic District Zones.

Jenny Kimball

From: noreen bryan <noreen1945@yahoo.com>
Sent: Monday, December 9, 2019 10:04 AM
To: Planning Commission
Cc: Brian Shipley; mayorcouncil; Robert DiSpirito
Subject: Discussion of the Violations of the Open Meetings Act

Dear Chairperson Sherman and Members of the Planning Commission:

On November 25, 2019 the West End Citizens Association (WECA) sent you a message with our concerns and recommendations regarding the violations of the Open Meetings Act and potentially other violations of law. These occurred during the review and approval of the Lockett Garage at 107 W. Jefferson Street. Looking at the agenda of the Planning Commission scheduled for December 11, 2019, it does not appear that the violations of the Open Meetings Act or our message will be addressed at that meeting. Since we have not had a response from you, we are writing to inquire when and if the concerns raised in our message will be addressed.

Thank you for your help,

Brian Shipley, President, West End Citizens Association
 Noreen Bryan, Vice President, West End Citizens Association
 Patricia Woodward, Executive Board Member, West End Citizens Association
 Jacques Gelin, formerly, Executive Board Member, West End Citizens Association

Jenny Kimball

From: noreen bryan <noreen1945@yahoo.com>
Sent: Friday, December 13, 2019 4:22 PM
To: Planning Commission
Cc: mayorcouncil; Brian Shipley; Patricia Woodward; Larry Giammo; jane.m.pontius@gmail.com; Donna Sprague; Jen Timmick; dennis.cain; Robert DiSpirito; Ricky Barker; Jim Wasilak
Subject: Independent Assessments regarding the Review and Approval of the Lockett Garage

Dear Chairman Littlefield and Members of the Planning Commission:

Thank you very much for approving an independent assessment of the violations of the Open Meetings Act associated with the review and approval of the Lockett Garage. As you know from our previous messages, one in advance of the November 5, 2018 meeting where violations occurred, that citizens were and continue to be very concerned that the business of Boards and Commissions be conducted in public in accordance with the Open Meetings Act. Hence, we are very appreciative that you have decided to obtain a clearer understanding of the violations to assure that the legal advice provided to the Planning Commission in the future will not lead to further violations of law. Further, the review would identify best practices that could lead to revisions of the policy and procedures of the Planning Commission.

To assure that the scope of work of outside counsel, that will be hired for the independent review, fully meets your goals, WECA recommends that the Statement of Work (SOW) for the independent review be submitted for your approval prior to its release. With the SOW, a list of firms, that can provide the quality and depth of knowledge needed, should be presented for your assessment.

We, also, appreciate your commitment to accountability and transparency. However, absent from the discussion last evening was accountability to engage in a timely manner with citizens. The failure to notify citizens that the violations of the open meetings would be discussed on Wednesday past illustrates this concern. Even though WECA sent a message asking if the topic would be part of that meeting, we received no response. The requested information was not available until it was posted on the City's website in the late afternoon within a few hours of the meeting. This puts citizens in a very difficult position. WECA believes that this is unfair to citizens and is counter to the goal of transparency.

Failure to respond to citizens occurred throughout the review and approval of the Lockett garage wherein WECA raised significant questions of law and fact. To date none of these questions have been answered. Of particular concern are the duties and responsibilities of the Planning Commission regarding historic properties. At the hearing of September 12, 2018 legal counsel, through staff, advised that the Planning Commission had essentially no role regarding historic properties in the review and approval of Level 2 Site Plans. WECA's review of the zoning code indicates that this is contrary to the code and therefore incorrect application of the law. This issue was raised at the time of the review and again in WECA's message to you on November 25, 2019. Resolution of this issue and others are critical to assure that future actions taken by the Planning Commission will meet the intent and provisions of the zoning code. Accordingly, WECA believes that it is critical that these issues be addressed in addition to the violations of the Open Meetings Act.

At the meeting of the Planning Commission on December 11, 2019, the chairperson recommended that these additional issues be addressed by an Ad Hoc Group of stakeholders. WECA supports the formation of this Group. Further, WECA recommends that the stakeholders include a commissioner from the Planning

Commission, another from the Historic District Commission, citizen representatives of WECA and experts on historic preservation from Peerless Rockville. WECA and Peerless have conducted in depth research into the issues and have significant knowledge to share. Further, since the City's largest collection of historic properties is located in the West End, residents of this neighborhood have a significant stake in assuring that these historic resources are preserved. Lastly, based on the adverse outcomes to date, a fresh assessment is needed that necessarily excludes both the City's legal staff and the planning staff associated with the Lockett case from participating as stakeholders in the Ad Hoc Group.

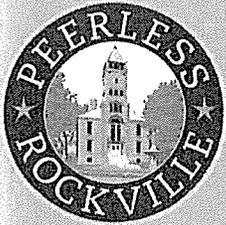
In summary, WECA fully supports the independent review that was approved on Wednesday evening and recommends establishment of an Ad Hoc Group to address issues of consequence that will affect future decisions involving historic districts.

Respectfully,

Brian Shipley, President, West End Citizens Association

Noreen Bryan, Vice President, West End Citizens Association

Patricia Woodward, Member, Executive Board of West End Citizens Association



Preserving Rockville's Heritage

City of Rockville Planning Commission
111 Maryland Ave.
Rockville, MD 20850

November 25, 2019

Dear Chairperson Sherman and Members of the Commission,

Peerless Rockville has been made aware of the recent opinion by the State of Maryland Open Meetings Compliance Board finding the City of Rockville Planning Commission violated the provisions of the Act by holding closed-session discussions not authorized by the Act. These violations occurred in association with discussion and guidance by the City Attorney's office regarding Site Plan Amendment STP201800354 at 107 W. Jefferson St., and subsequent review of reconsideration requests and pending litigation of the Commission's decision at the September 12, 2018 meeting.

Peerless Rockville at this point does not seek to reopen the Planning Commission's decision, but we contend that in addition to the violations cited by the Open Meetings Compliance Board, there may be other irregularities and instances in which the Board received and acted upon advice of Counsel given outside the scope permitted by the Maryland Open Meetings Act. We strongly feel that at this junction the City of Rockville Planning Commission must address these violations and its lack of transparency – and further believe there must be an independent review of the process and procedures as they pertain to Peerless Rockville's September 26, 2018 request for reconsideration of STP201800354.

Acting in our role as an advocacy organization for our members and the general Rockville community, Peerless Rockville closely followed STP201800354 and was in fact one of two community organizations to submit requests for reconsideration of the Commission's September 12 decision based on perceived omissions, incomplete findings, and mistakes of law. Peerless Rockville duly followed all required rules of procedure for reconsideration and submitted our request to the Planning Commission September 26, 2018. According to Planning Commission rules, this request should have been recognized at the next open meeting on October 10, 2018.

When this did not occur, we inquired with the City on the status of the request. Peerless Rockville's Executive Director and President Harold Pskowski met with Director of Planning Ricky Barker, City Manager Rob Dispirito, and Chief of Planning Jim Wasilak on October 15,

2018. At this time, we were told the reconsideration would be heard at the October 24, 2018 meeting and that staff was preparing a report. On October 17, 2018, we were informed by the Director of Planning that the City was unable to process our request for reconsideration due to pending litigation. On October 19, 2018, we sought greater clarity, and asked the Director of Planning for the City to “provide us with the legal basis, law, statute and/or judicial case law guiding the City’s decision to not move forward on our request.” If a decision was made in closed session on November 5, 2018 on reconsideration and pending litigation, as is cited by the decision of the Open Meetings Compliance Board, Peerless Rockville was neither informed of this decision nor availed of the deliberation of the Planning Commission.

The notification of the violation of Open Meetings Act from the Maryland Open Meetings Compliance Board states that the City of Rockville Planning Commission met on November 5, 2018, in closed session and made the decision not to consent to the reconsideration. The Open Meetings Compliance Board also states that the August 7, 2019 open meeting of the Planning Commission erroneously went to closed session on this subject. They found that both these meetings were thus in violation of the Open Meetings Act, as well as the wording of the Commission’s notice in such a way as to effectively exclude the public from observing the Commission’s vote on the motion to close, and the timeliness of the Commission’s adoption of the closed session minutes of the 2018 special meeting.

Peerless Rockville shares the opinion of the Maryland Open Meetings Compliance Board that the Planning Commission should view open discussion as the default route. **We express strong concern that over multiple instances the Planning Commission adjourned to closed session, sought and then acted on the advice of Counsel when the Maryland Open Meetings Act “does not allow for closed discussion among members of the public body merely because an issue has legal ramifications.”** We are left with no transparent discussion of our request for reconsideration and a general perception that decisions were being made not by the public body but by the City Attorney’s office itself. Whether this perception is true or not cannot be known to us. However, we note the Planning Commission and City staff was acting on guidance from the City of Rockville Attorney’s office, therefore we request that any reviews, statements, and/or actions be undertaken by an independent body or Counsel.

Peerless Rockville believes a complete and transparent review of the procedures and policies applied to STP201800354 are in order as they pertain to zoning and Master Plan enforcement regulations put in place to protect Rockville’s irreplaceable historic resources.

Sincerely,



Nancy Pickard
Executive Director

City of Rockville Planning Commission
 111 Maryland Ave.
 Rockville, MD 20850

September 26, 2018

Dear Chairperson Sherman and Planning Commissioners,

Peerless Rockville, Historic Preservation, Ltd., requests the PC reconsider the matter of STP201800354, the recent Major Site Plan amendment for a large garage at 107 W. Jefferson St., on the site historically known as the Cooke Luckett House, heard on September 12, 2018.

We request reconsideration on the basis that the Planning Commission action on this application failed to fulfill its responsibilities under the Zoning Ordinance. Its findings were incomplete and a mistake of law.

Under ZO Sec. 25.04.02, the PC decides relevant applications in accordance with all applicable zoning, and under Sec. 25.07.01 with all aspects of the Master Plan. No findings were made relative to overlay zoning and historic properties portions of the City Ordinance and Master Plan. The ordinance does not allow for delegation of these responsibilities, contrary to counsel and staff advice otherwise.

The approved motion on this matter only enunciated findings by reference to those recommended in the staff report. However, those recommendations did not address all the considerations required by the ordinance. What was omitted are findings on the overlay zone applicable to the site. ZO Sec. 25.03.02 clearly establishes that overlay zones "... either add to or modify the requirements of the underlying zone." Sec. 25.14.01 clearly includes the Historic District Overlay Zone as such an overlay zone. Therefore, the Planning Commission is responsible for applying such land use and zoning restrictions to any site plan action. This is not an authority that can be delegated entirely to the HDC. Staff apparently recommended delegation to the HDC on the premise that that PC and HDC consideration might overlap in part and hence both were unnecessary in this regard. We cannot find any such premise in the ordinance and suggest this is an administrative policy that conflicts with the requirements of the ordinance.

In fact, the HDC has no authority over Site Plan Amendments. It issues Certificates of Approval that make no findings on compliance with the Master Plan and general land use. There are indeed two separate approvals that are required for a development on a historic property, a Site Plan and a Certificate of Approval.

11/25/2019

Peerless Rockville Historic Preservation, Ltd. Mail - Reconsideration



Nancy Pickard <director@peerlessrockville.org>

Reconsideration

Fri, Oct 19, 2018 at 3:15 PM

Nancy Pickard <director@peerlessrockville.org>

To: Ricky Barker <rbarker@rockvillemd.gov>, Harold Pskowski <pskowski@verizon.net>, David Hill <DavidHill@tigger2.us>, ddaniel@rockville.gov
 Cc: planning.commission@rockvillemd.gov, mayorandcouncil@rockvillemd.gov, Robert DiSpirito <RDiSpirito@rockvillemd.gov>, Jim Wasilak <jwasilak@rockvillemd.gov>
 Bcc: Hanne Hotmailat <hannehotmailat@hotmail.com>, "Morgan Sullivan (US)" <morgan.sullivan@am.jll.com>, Pat Wolff <superwolff@hotmail.com>, Patrice Lucid <pmilucid@verizon.net>, Paul Hillstrom <paul@hillstromrealestate.com>, Paul Newman <newman1259@live.com>, Suzan Pittman <suzanwp@gmail.com>, John Becker <beckerjec@gmail.com>, cwalters@rockville.gov

Good Afternoon Ricky,

Thank you for updating Peerless Rockville regarding the matter of our request for reconsideration of Site Plan Amendment STP2018-00354. I was informed by Jim Wasilak and yourself on Monday, October 15 that this matter would be on the Planning Commission's October 24th agenda, and that a staff report was underway. I am unclear as to the process, policies, and procedures going forward to guide this issue at this time. Additionally, the Board of Directors and I have several questions in regard to the procedures and policies followed in response to our request for reconsideration.

As it is our desire to move forward with this request for reconsideration in a timely manner, we respectfully request a meeting with you, the City attorney, and Directors from the Peerless Rockville Board prior to the Wednesday, October 24, 2018 Planning Commission meeting.

We request answers/guidance on the following questions:

1. Was Peerless Rockville's request for reconsideration considered/discussed at the October 10 Planning Commission meeting?
 - 1b. If so what was the outcome? can you provide us with minutes or media of the meeting?
 - 1c. If not... Why not? The Planning Commission's own Rules of Procedure outline the procedural response to requests for reconsideration and clearly state that "At the next possible regular meeting the Commission shall either grant or deny the request"
2. Peerless Rockville would like to know the legal basis/argument of the case before the Circuit Court AND how it does or does not differ from the legal elements of our own reconsideration request.
3. Peerless Rockville understands we have followed all legal and procedural requirements in submitting our request for reconsideration. We strongly believe it to be the responsibility of the City to provide us with the legal basis, law, statute and/or judicial case law guiding the City's decision to not move forward on our request.

Myself and a Board representative will be available on Monday and Tuesday for a meeting with you, relevant staff members, and City legal staff. Please let me know as soon as possible how you will accommodate this request.

Thank you,

Nancy

Nancy Pickard
 Executive Director
 Peerless Rockville
 P.O. Box 4262, Rockville, MD 20849-4262
 301-762-0096
 director@peerlessrockville.org
 www.peerlessrockville.org
Preserving Rockville's Heritage

On Wed, Oct 17, 2018 at 6:21 PM Ricky Barker <rbarker@rockvillemd.gov> wrote:
 [Quoted text hidden]



Attachment 10.d: Peerless Rockville Correspondence (2927 : Discussion Regarding Letter on Open Meetings Act Violations)



Mayor & Council Meeting Date: January 6, 2020
 Agenda Item Type: Consent
 Department: PW - Engineering
 Responsible Staff: David Waterman

Subject

Authorize the City Manager to Execute the Revocable License Agreement Between the Mayor and Council of Rockville and 204 N. Stonestreet Properties, LLC to Temporarily Occupy a Portion of the North Stonestreet Avenue Right-Of-Way During the Construction of the Adjacent Self-Storage Building at 204 North Stonestreet Avenue

Recommendation

Staff recommends that the Mayor and Council authorize the City Manager to execute a Revocable License Agreement (Agreement) between the Mayor and Council of Rockville and 204 N. Stonestreet Properties, LLC, in a form acceptable to the City Attorney, for a portion of North Stonestreet Avenue.

Discussion

The owner of the property at 204 North Stonestreet Avenue, has requested the use of the adjacent North Stonestreet Avenue right-of-way during the construction of a self-storage facility at the subject property. The portion of the North Stonestreet Avenue right-of-way requested for use by the owner, 204 N. Stonestreet Properties, LLC includes the parking lane along the project site's frontage located between Woodland Road and Park Road. An exhibit showing the area of the proposed license agreement is provided (Attachment A). The justification for the request is as follows:

- There is insufficient space on-site and/or within the portion of the right-of-way between the existing curb and the proposed building and its associated stormwater management facilities to allow for the majority of the necessary construction-related activities necessary (i.e. trailers, equipment, receiving and storing materials).
- A continuous public sidewalk does not currently exist on the west side of North Stonestreet Avenue, so pedestrian access will not be impacted during construction. As required by the Site Plan, the applicant will construct a public sidewalk along the property's frontage as part of the development.
- Vehicular access will not be impeded as the use of the adjacent right-of-way is limited to the parking lane on the west side of North Stonestreet Avenue.

- The temporary use of the parking lane during construction will prevent the use of four existing metered parking spaces; however, the use of the parking spaces will not impact access to adjacent commercial properties or local residential properties.

The agreement provides for an initial term of one-year and if necessary, up to three six-month extensions granted at the discretion of the City Manager. The Applicant anticipates that construction related activities within the license agreement area to be necessary for 18-months.

204 N. Stonestreet Properties, LLC will maintain all required insurance policies as approved by the City's Risk Manager. The agreement requires that 204 N. Stonestreet Properties, LLC indemnify and hold the City harmless against any claim of liability or loss from personal injury or property damage.

Mayor and Council History

This is the first time this item has been brought before the Mayor and Council.

Fiscal Impact

204 N. Stonestreet Properties, LLC will be required to pay \$6,024.00 before occupying the North Stonestreet Avenue ROW. This rental income is based on a 12-month occupancy and is calculated as the maximum lost revenue from the parking rate (\$0.50/hour), multiplied by the parking hours (6am - 6pm, Monday through Friday), for four parking spaces over 1 year. The extension payments will generate \$3,012.00 in rental income for each six-month increment, with a maximum of three extensions. The revenue generated from this agreement will be received in the General Fund since the General Fund supports the annual Parking Fund debt service payments. This revenue was not foreseeable, and thus not included in the 2020 adopted budget.

Next Steps

Upon Mayor and Council approval, the City Manager will execute a revocable license agreement with 204 N. Stonestreet Properties, LLC in a form acceptable to the City Attorney.

Attachments

Attachment 11.A.a: Attachment A (PDF)

Jenny Kimball

Jenny Kimball, Deputy City Manager

12/31/2019



BALTIMORE & OHIO RAILROAD CO.

LOT 43
24,975 S.F. OR
0.5733 AC
PLAT 25560

P/O LOT 34
ANASTASIOS & VASILIS
VASSILAS
P/O LOTS 34 AND 35
L. 34418 F. 731

ASPHALT
PAVING
BENEATH
STRUCTURE

LINDA WALKER
P/O LOT 30
L. 18126 F. 352

LIMITS OF UPPER
FLOORS 2-5

NORTH STONESTREET AVENUE
VARIABLE WIDTH R/W
LIBER 5308, FOLIO 667
(FORMERLY KNOWN AS BALTIMORE AVENUE)
PLAT BOOK 4, PLAT 341

REVOCABLE LICENSE AGREEMENT
AREA 1,350SF OR 0.03AC

LEGEND

 AREA TO BE INCLUDED IN THE REVOCABLE LICENSE AGREEMENT

RCMR LLC
P/O LOTS 9, 10, AND 11
BLCK F LOT P8
L. 16600 F. 299
32,964 S.F.



Johnson ♦ Bernat ♦ Associates, Inc.

205 N. Frederick Avenue, S. 100
Gaithersburg, Maryland 20877
Tel. (301) 963-1133
Fax: (301) 963-6306
www.jba-inc.net

TITLE

**REVOCABLE LICENSE AGREEMENT FOR
A CONSTRUCTION MANAGEMENT AREA**

204 N. STONESTREET

CITY OF ROCKVILLE, MARYLAND

DRAWN BY: AMB

SCALE: 1"=40'

PAGE 1 OF 1

DATE: 12/4/19

Attachment 11.A.a: Attachment A (2885 : Authorize the City Manager to Execute the Revocable License Agreement Between the Mayor and



Mayor & Council Meeting Date: January 6, 2020
 Agenda Item Type: Consent
 Department: PW - Engineering
 Responsible Staff: Diron Baker

Subject

Award of IFB #05-20, Stream Restoration Spot Repairs: Bullards Park and Woodley Gardens Park, to Old Line Construction in the Amount of \$692,017.77

Recommendation

Staff recommends that the Mayor and Council award IFB #05-20, Stream Restoration Spot Repairs: Bullards Park and Woodley Gardens Park, to Old Line Construction of Dunkirk, MD in the amount not to exceed \$692,017.77.

Discussion

Bullards Park Spot Repair and Woodley Gardens Park Spot Repair projects will reduce erosion threatening public infrastructure, provide long-term channel stability, and prevent the reoccurrence of the lateral bank erosion. They are part of the Stream Restoration Spot Repair CIP project where projects are identified based upon risk to public safety, or public or private property.

Bullards Park

The Bullards Park Stream Restoration Spot Repair Project is located south of Calvert Road and west of Roxboro Road within the West End Neighborhood (see Attachment 1. Bullards Map). The project will protect public infrastructure and enhance approximately 340 linear feet of an unnamed tributary to Watts Branch, part of the Potomac River Watershed. The project originates at a 48-inch storm drain outfall south of Calvert Road and continues onto the Rockville Christian Church property. The design approach focuses on protecting an existing sanitary sewer crossing and reducing current channel instabilities while minimizing impacts to trees.

Woodley Gardens Park

The Woodley Garden Park Spot Repair Project is located at Woodley Garden Park along Watts Branch, east of Nelson Street and West of Smallwood Road adjacent to the West End Neighborhood (see Attachment 2. Woodley Map). Within Woodley Gardens Park, directly upstream of the pedestrian bridge path crossing, a section of Watts Branch is experiencing lateral bank erosion. As part of the 2010/2011 Woodley Gardens Stream Restoration Project, rock was placed across the stream channel to protect the existing sanitary sewer crossing. The stream, finding the path of least resistance, is cutting around the rock and into the bank. This is

leading to failure of the left stream bank and significant lateral erosion for approximately 40 feet. The project will repair the eroded stream bank, protect the existing sanitary sewer, and prevent the reoccurrence of the stream cutting around any proposed armoring of the existing sanitary sewer.

Public Notification and Engagement

Staff held a community meeting at Bullards Park on June 12, 2018, to present information and solicit input on the conceptual design. Material provided at the meeting included the expected project goals and outcomes, design alternatives, and the potential impacts to the community. On February 7, 2019, staff held a follow up meeting at the Rockville Presbyterian Church and presented the final design, which incorporated the feedback received at the first meeting.

Information regarding this project is posted on the City's website. Neighborhood advisories will be mailed at least two weeks in advance of construction.

Procurement

Staff prepared and publicly issued IFB #05-20 on October 3, 2019 in accordance with Rockville City Code section 17-61. IFB #05-20 was posted on the City's website, and electronically provided to 434 prospective bidders via the State of Maryland e-Maryland Marketplace. Of the 434 prospective bidders, using the new systems reporting capabilities, 41 were Disadvantaged Business Enterprises (DBE) and 67 were Minority Business Enterprises (MBE).

Sealed bids were received and opened on November 7, 2019. The following bids were received.

Vendor	MFD Status	Location	Amount
Old Line Construction	Non-DBE/MBE	Dunkirk, MD	\$692,017.77
HGS, LLC	Non-DBE/MBE	Warrenton, VA	\$711,607.00
Triangle Contractors	Non-DBE/MBE	Jefferson, MD	\$747,267.00
AB Construction	MBE	Lanham, MD	\$765,393.00
SMC	MBE/DBE	Hunt Valley, MD	\$883,531.67
D&F Construction	MBE	Forestville, MD	\$913,424.50
Shamrock Environmental	Non-DBE/MBE	Browns Summit, NC	\$937,803.26
SMI Services	Non-DBE/MBE	Bowie, MD	\$944,095.40
Anchor Construction	Non-DBE/MBE	Washington, DC	\$1,008,246.75
Highway and Safety	Non-DBE/MBE	Gaithersburg, MD	\$1,237,133.90

Old Line Construction is the lowest, responsive and responsible bidder. Their proposed unit prices have been deemed fair and reasonable by staff, and their total bid was within two percent of the Engineer's estimate for the project construction. Staff found their references for this bid to be satisfactory.

Fiscal Impact

This CIP funds the design, inspection and construction of stream restoration spot repairs. Just over \$650,000 was included in the FY20 adopted Stream Restoration Spot Repairs CIP for this project (see Attachment 3. SD16 FY20 Adopted Budget). An additional \$95,000 was transferred to this project from Storm Drain Rehab (SA16) to ensure sufficient funding for the repairs covered by this award, as well as adequate contingency funding. The \$95,000 was available from the Storm Drain Rehab project due to contingency funds leftover from completed work, and assessment cost savings. Therefore, sufficient funds exist in SD16 CIP project for this award, as well as reasonable contingency dollars (8%), which is consistent with other stream projects.

Next Steps

Upon Mayor and Council approval, the Procurement Division will obtain insurance certificates, one hundred percent performance and payment bonds, appropriate contract signatures, and issue a contract to Old Line Construction.

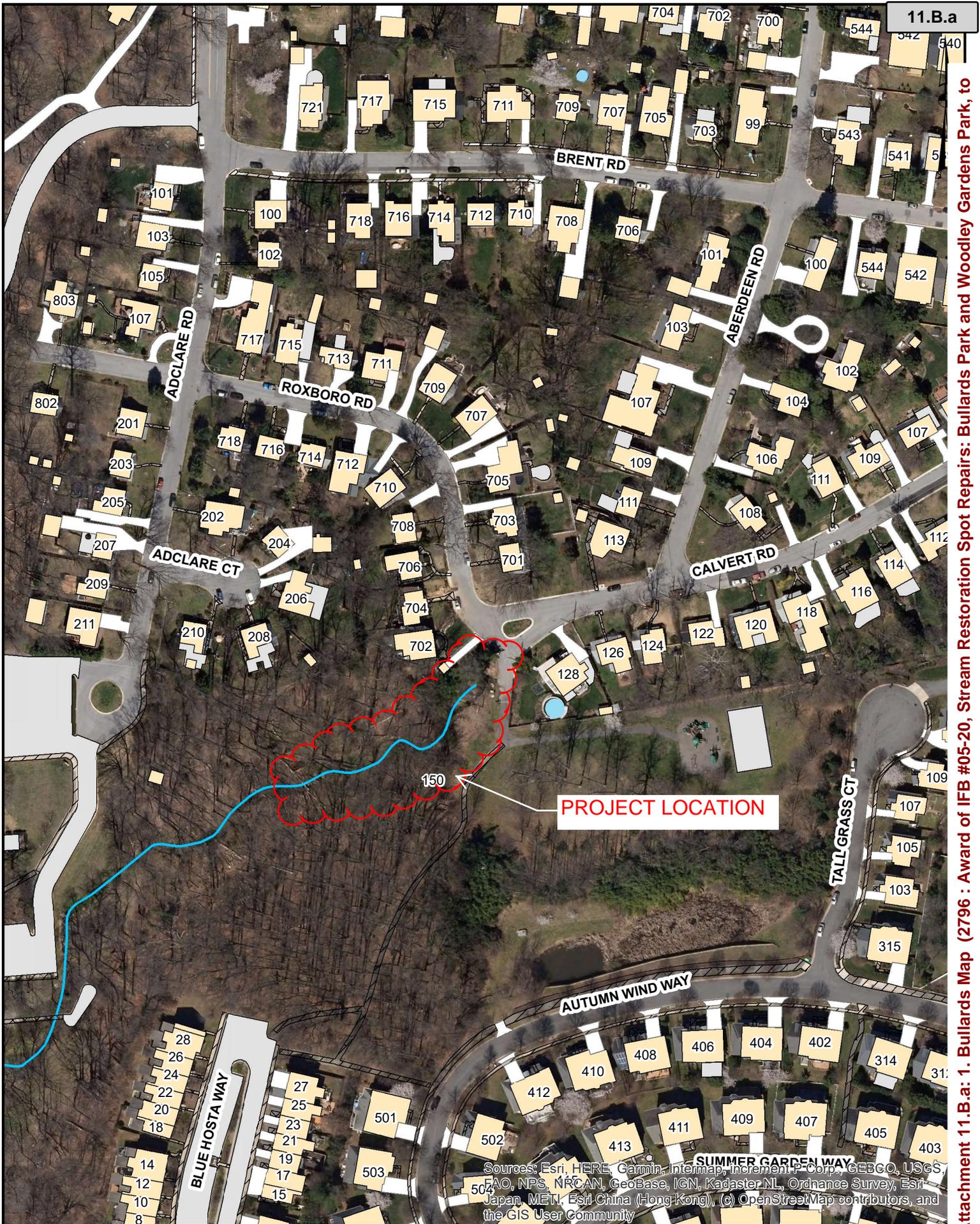
Attachments

- Attachment 11.B.a: 1. Bullards Map (PDF)
- Attachment 11.B.b: 2. Woodley Map (PDF)
- Attachment 11.B.c: 3. SD16 FY20 ADOPTED BUDGET (PDF)

Jenny Kimball

Jenny Kimball, Deputy City Manager

12/31/2019



11.B.a

Attachment 11.B.a: 1. Bullards Map (2796 : Award of IFB #05-20, Stream Restoration Spot Repairs: Bullards Park and Woodley Gardens Park, to

PROJECT LOCATION

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community



Department of Public Works
 Engineering Division
 111 Maryland Avenue • Rockville, Maryland 20850-2364
 Phone 240.314.8500 • Fax 240.314.8539

**Bullards Park
 Spot Repair**

DATE:
 2019 DEC 23
 AUTHOR:



PROJECT LOCATION

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

Attachment 11.B.b: 2. Woodley Map (2796 : Award of IFB #05-20, Stream Restoration Spot Repairs: Bullards Park and Woodley Gardens Park,



Stream Restoration Spot Repairs: FY16-FY20 (SD16)



Description: This project funds the design and construction of stream restoration spot repairs. Stream restoration projects are identified and prioritized through the City watershed study and planning process or by areas identified as posing an immediate risk to public safety, or public or private property. Major stream restoration projects are funded as separate CIP projects.

Changes from Previous Year: Project total increased due to additional funding required for Bullards Park construction to ensure stability. Future projects, including Watts Branch spot repair within Woodley Gardens Park have been added based on recent issues.

Current Project Appropriations

Prior Appropriations:	785,000
Less Expended as of 4/15/19:	245,718
Total Carryover:	539,282
New Funding:	150,000
Total FY 2020 Appropriations:	689,282

Critical Success Factor: Stewardship of Infrastructure/Env.

Mandate/Plan: NPDES Permit; 2011 Cabin John Creek, 2013 Rock Creek, and 2015 Watts Branch Watershed Assessments; 2010 Chesapeake Bay TMDL; 2010 Water Resources Element; 1972 Clean Water Act

Anticipated Project Outcome: Stabilization of stream banks, protection of public infrastructure and private property, and reduction in TMDL pollutant loads.

Project Timeline and Total Cost by Type: FY 2020 increase is for Bullards Park construction cost to ensure stability. Future projects, including Watts Branch spot repair within Woodley Gardens Park, have been added based on recent issues.

Type	Estimated Start		Estimated Completion		Estimated Cost (through FY 2020 only)			
	Original	Current	Original	Current	Original	Current	\$ Change	% Change
Planning / Design	FY 2016	FY 2016	FY 2020	FY 2020	304,000	150,000	(154,000)	-51%
Construction	FY 2016	FY 2016	FY 2020	FY 2020	430,000	785,000	355,000	83%
Other	-	-	-	-	-	-	-	-
Project Total (\$):					734,000	935,000	201,000	27%

Project Funding: This project is fully funded. This project is considered a routine capital maintenance project and is funded in five year increments. *Funding beyond FY 2020 will be included in a future project, but is shown here for consolidated planning purposes.*

Source	Prior	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Future	Total
Paygo (SWM)	785,000	150,000	159,000	-	485,000	174,000	-	1,753,000
Total Funded (\$)	785,000	150,000	159,000	-	485,000	174,000	-	1,753,000
Unfunded (SWM)	-	-	-	-	-	-	-	-
Total w/Unfunded (\$)	785,000	150,000	159,000	-	485,000	174,000	-	1,753,000

Operating Cost Impact: No measurable impact.

Fund	Prior	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Future	Total
SWM	-	-	-	-	-	-	-	-

Project Manager: Diron H. Baker, Senior Civil Engineer, 240-314-8533.

Notes: FY 2020 work includes the construction of the Bullards Park spot repair and the Watts Branch spot repair within Woodley Gardens Park. The budget is estimated based on the size of the specific spot repairs comparable to other stream restoration spot repairs implemented within the last five years. Projects are identified through City watershed studies, resident inquiries and other staff assessments.



Mayor & Council Meeting Date: January 6, 2020
Agenda Item Type: Review and Comment
Department: City Manager's Office
Responsible Staff: Jenny Kimball

Subject

Action Report

Recommendation

Staff recommends that the Mayor and Council review and comment on the Action Report.

Attachments

Attachment 12.A.a: MC Action Report Master 2019 _REVISED (PDF)

Jenny Kimball

Jenny Kimball, Deputy City Manager

12/31/2019

Blue - new items to the list.

Red - latest changes.

Mayor and Council Action Report

Ref. #	Meeting Date	Staff/ Dep	Response Method	Direction to Staff / Action Taken / Status	Timeline
2014-23	9/8/11	R&P	Future agenda	King Farm Farmstead Status: The Mayor and Council discussed the King Farm Farmstead on May 20, 2019 and directed staff to prepare a request for information (RFI) on potential future uses of the Farmstead. RFI #06-20 was posted online (https://www.rockvillemd.gov/bids.aspx?bidID=586), with responses due November 22, 2019. The submission deadline has been extended to Friday, January 17, 2020. Staff will report to the Mayor and Council on the responses received.	January 2020
2015-14	7/13/15	CMO	Future agenda	Purchasing Study Response Status: A status report on the Procurement Action Plan is being provided every six months. An update was shared on May 13, 2019, the next update will be on January 27, 2020 .	Ongoing
2016-12	9/26/16	HR	Future agenda	Vacancy Report Provide a Vacancy Report to the Mayor and Council at the end of each Quarter. Status: The Fiscal Year 2020 first quarter report was shared on October 21, 2019 meeting. The next report will be shared with the Mayor and Council on the January 27, 2020 agenda.	January 27, 2020
2016-16	10/10/16	PDS	Future agenda	Global Issues on BRT Schedule another discussion on BRT with the City of Gaithersburg and Montgomery County, to include broader issues such as governance and finance. Consider holding the meeting in Gaithersburg. Status: County transportation is studying alternatives to identify a recommended alternative for design of the MD 355 route. A recommended alternative for the Viers Mill route was selected. The project is funded for preliminary design in the County Budget for FY23.	Ongoing
2016-18	10/24/16	PDS	Future agenda	FAST – Faster, Smarter, More Transparent (Site Plan/Development Review Improvements) Provide regular updates on the status of the work. Status: A FaST update was provided to the Mayor and Council on November 18, 2019. PDS staff is working on a follow up memo to present to Mayor and Council at a future meeting.	Ongoing

Ref. #	Meeting Date	Staff/ Dep	Response Method	Direction to Staff / Action Taken / Status	Timeline
2017-6	2/27/17	CMO	Email	<p>Minority-, Female- & Disabled-Owned Businesses Provide updates on the Procurement Division’s activities to engage and support minority-, female- and disabled-owned businesses. Status: A report is being shared every six months. An update was shared on May 13, 2019. The next update will be on January 27, 2020.</p>	Ongoing
2017-11	6/12/17	R&P	Agenda item	<p>Deer Population in Rockville Continue to monitor the deer population. Consider action steps and gather community input. Status: The Mayor and Council directed staff to implement the pilot deer culling program. Staff will bring required changes to the City Code for Mayor and Council for approval.</p>	September- November 2020
2018-1	1/22/18	Finance	Action Report	<p>Utility Billing System Provide updates on the replacement of the Velocity Payment System, powered by Govolution. Status: Contracts are in place, a kick off meeting was held and implementation underway, with estimated completion in July 2020.</p>	July 2020
2018-7	6/18/18	CMO	Agenda Item	<p>LGBTQ Initiatives Identify and implement Mayor and Council suggestions. Status: R-zone signs were installed and all employees have completed “The Respectful Workplace” training.</p> <p>An update on the status of gender-neutral bathroom installation was emailed to the Mayor and Council on August 13. Staff provided the Mayor and Council a prioritized list of outstanding gender-neutral bathroom installations, and comments about a timeline for those installations, by e-mail on November 21.</p>	Ongoing

Attachment 12.A.a: MC Action Report Master 2019 _REVISED (2933 : Action Report)

Ref. #	Meeting Date	Staff/Dep	Response Method	Direction to Staff / Action Taken / Status	Timeline
2018-8	6/18/18	CMO/RCPD /R&P	Town Meeting	<p>Opioid Town Meeting Schedule a Town Meeting on the opioid crisis, to include prevention, enforcement and treatment. Status: Rockville Goes Purple Committee members met with high school principals on November 6, 2019 to gather input on Rockville Goes Purple collaborating with the schools on prevention efforts. A Rockville Goes Purple Committee meeting was held to discuss the principals' input on December 3. A subset of the committee will work on a strategic plan for the coming year.</p>	Ongoing
2018-11	8/1/18	PDS	Agenda Item	<p>Neighborhood Shopping Centers Discuss mechanisms to encourage neighborhood shopping center revitalization and explore additional zoning and uses</p>	Summer 2020
2018-15	10/8/18	PDS	Future Agenda	<p>Short-Term Residential Rentals Discuss how to manage short-term residential rentals' (e.g., Airbnb) impact on city neighborhoods and explore options for taxing users. Status: Short-term residential rentals will be discussed on January 13 and February 24.</p>	April 2020
2018-19	10/15/18	HR	Future Agenda	<p>Volunteer Program Discuss whether the Mayor and Council want to direct the City Manager to create a centralized volunteer program. Status: A report on the number of volunteers and volunteer hours for the first half of FY20 will be provided on the January 13, 2020 agenda.</p>	January 13, 2020
2019-1	10/29/18	PDS	Future Agenda	<p>Accessory Structures Status: The Mayor and Council authorized the filing of a Zoning Text Amendment on April 8. A workshop was held on May 29th for the public to learn more about these proposed regulations. A public hearing was held on July 15 and October 7, 2019. Discussion and Instruction was held on September 16, 2019. Mayor and Council and staff determined that there are outstanding issues to continue flushing out and to discuss further at a future meeting. This topic will be discussed at the February 24, 2020 meeting.</p>	February 24, 2020

Attachment 12.A.a: MC Action Report Master 2019_REVISED (2933 : Action Report)

Ref. #	Meeting Date	Staff/ Dep	Response Method	Direction to Staff / Action Taken / Status	Timeline
2019-2	2/25/19	R&P/PDS	Agenda Item	<p>RedGate Golf Course Property On June 17, 2019, the Mayor and Council instructed staff to bring a scope of work for a master planning consultant, to be considered in conjunction with the Recreation & Parks strategic plan report. The Mayor and Council can then decide whether to proceed with an RFP for master planning of the Redgate site. Status: Staff expects to have the Recreation & Parks strategic plan in January 2020 and to bring the plan and the topic of master planning the site before the Mayor and Council on February 3, 2020. The City Attorney's Office will provide an update to Mayor and Council on outstanding Billy Casper Golf items.</p>	February 3, 2020
2019-3	10/29/18	CAO	Memo	<p>Ethics Provide list of the companies that the City does business with, so that the Mayor and Council can complete required financial disclosures by April 30, 2019 Status: The Mayor and Council discussed comprehensive revisions to the Ethics Ordinance proposed by the Ethics Commission on April 8, 2019. Staff is working with the Ethics Commission to follow up on Mayor and Council questions and comments. This item will be scheduled for the January 6 Mayor and Council meeting.</p>	January 6, 2020
2019-4	3/25/19	PDS	Future Agenda	<p>Business Improvement Districts (BIDs) and Tax Increment Financing (TIF) Discussion of potential City uses of BIDs and TIFs Status: This item will be included on a May or June Mayor and Council agenda.</p>	May/ June 2020
2019-7	4/1/19	R & P	Memo	<p>Child Care Services Discuss city provision of child care services (history of the current program, community need for the service, private sector market, expansion to additional Rockville locations). Status: This item was discussed on September 9, 2019. Staff answered questions about child care cost recovery by email the week of October 14, 2019. A worksession discussion occurred on November 25, 2019. Additional information was provided via e-mail to the Mayor and Council on November 26, 2019. Staff is preparing a strategy to follow up on the worksession discussion.</p>	Summer 2020
2019-9	4/1/19	HR	Memo	<p>Reduction in Force (RIF) Policy Prepare a Reduction in Force (RIF) policy, to be incorporated in the Personnel Policy and Procedures Manual update. Mayor and Council will receive an updated RIF policy in the revised Personnel Manual by January 31, 2020, for discussion on February 24.</p>	January 31, 2020

Ref. #	Meeting Date	Staff/ Dep	Response Method	Direction to Staff / Action Taken / Status	Timeline
2019-10	4/1/19	HR	Email	Personnel Policy and Procedures Manual Update Share an update on the status of this effort. Status: The Mayor and Council received an update on this effort by email on May 6, 2019. It is anticipated that the draft will be ready for Mayor and Council review by January 31, 2020 and placed on the February 24 agenda for discussion.	January 31, 2020
2019-11	4/1/19	HR	Future Agenda	Retirement Incentive/Employee Buyout Program Provide information about employee buyout programs and discuss the potential for a Rockville program. Status: Director of Finance provided an update to the Mayor and Council via email on May 3, 2019.	Summer 2020
2019-12	4/1/19	Police	Future Agenda	Parking Enforcement at Street Meters Share an overview of Rockville’s current program and how other local jurisdictions handle parking enforcement at street meters, including hours of enforcement. Status: Parking meter operations was a component of the Mayor and Council’s parking discussion on July 15th, 2019. Staff will continue to discuss this topic with FRIT and will keep the Mayor and Council informed as developments occur.	Ongoing
2019-14	6/3/19	PDS	Future Agenda	Voluntary Rent Increases Discuss City guidelines for rent increases instituted by landlords. Status: Staff is preparing a recommendation to be discussed at the January 27 meeting, in conjunction with the Affordable Housing agenda item.	January 27, 2020
216019-15	9/16/19	CMO	Future Agenda	County Bill 24-19 Landlord Tenant Relations –Obligations of Landlord—Air Conditioning Monitor County Council consideration of the Bill. Status: Staff shared an e-mail update on Bill 24-19 on December 3, 2019. Staff will inform the Mayor and Council of the date when the Council will begin its consideration of Bill 24-19. Updates to the County Council agenda will not be posted until January 10, 2020. As soon as the agendas are posted, an update will be provided.	TBD

Attachment 12.A.a: MC Action Report Master 2019 _REVISED (2933 : Action Report)

Ref. #	Meeting Date	Staff/ Dep	Response Method	Direction to Staff / Action Taken / Status	Timeline
2019-16	9/16/19	CMO	Future Agenda	<p>County Bill 29-19 Health and Sanitation – Electronic Cigarettes— Distribution; Resolution to Adopt Bill 29-19 as a Board of Health Regulation; Zoning Text Amendment 19-06 Vape Shops Monitor County Council consideration of the Bill, Resolution, and Text Amendment Status: A Public hearing was held on November 5, 2019. On November 25, 2019, the Health and Human Services Committee discussed and approved the bills. The bills, to be considered by the full Montgomery County Council after the new year (TBD), include:</p> <ul style="list-style-type: none"> • Bill 29-19 – Health and Sanitation–Electronic Cigarettes; • Bill 31-19 – Health and Sanitation–Electronic Cigarettes – Distribution-Use and Possession; and • Bill 32-19–Health and Sanitation- Flavored Electronic Cigarettes. <p>On December 9, the Mayor and Council approved a letter in support of the County vaping legislation. Updates to the County Council agenda will not be posted until January 10, 2020. As soon as the agendas are posted, an update will be provided.</p>	January 2020
2019-17	12/9/2019	CMO/PDS/Finance	Worksession	<p>Town Center Parking – Explore improvements to parking in Town Center Status: CMO met with the new FRIT Executive on December 11. Staff is continuing discussions with the new FRIT Executive and will keep the Mayor and Council informed of progress on parking issues.</p>	Ongoing
2019-18	12/9/2019	DPW/PDS	Worksession	<p>Town Center Road Diet – Study and report to Mayor and Council on suggestions in the TAP report and discussion at the Mayor and Council’s TAP worksession. Status: Public Works examination of options is underway.</p>	TBD
2019-19	12/16/2019	City Clerk/Director of Council Operations	Worksession	<p>Board and Commissions Task Force Work Session – Continue the Mayor and Council’s discussion at a worksession. The first worksession after budget worksessions conclude is June 22.</p>	Tentative June 22

Attachment 12.A.a: MC Action Report Master 2019 _REVISED (2933 : Action Report)

CLOSED/COMPLETED

Ref. #	Meeting Date	Staff/Dep	Response Method	Direction to Staff / Action Taken / Status	Timeline
2019-20	12/16/2019	City Clerk/Director of Council Operations	Meeting	Post-Election Presentation – The community meetings about the 2019 election are scheduled for January 30 and February 8. A Board of Supervisors of Elections report to the Mayor and Council on the 2019 election is scheduled for March 2.	Completed



Mayor & Council Meeting Date: January 6, 2020
Agenda Item Type: Review and Comment
Department: City Clerk/Director of Council Operations Office
Responsible Staff: Sara Taylor-Ferrell

Subject

Future Agendas

Recommendation

Attachments

Attachment 13.A.a: 01.13.20 Mock Agenda (DOC)

Attachment 13.A.b: Future Agendas 1.06.2020 (XLS)

A handwritten signature in black ink that reads "Sara Taylor-Ferrell".

Sara Taylor-Ferrell, City Clerk/Director of Council Operations 12/31/2019



MAYOR AND COUNCIL

MEETING NO.

Monday, January 13, 2020 – 7:00 PM

MOCK AGENDA

Agenda item times are estimates only. Items may be considered at times other than those indicated.

Any person who requires assistance in order to attend a city meeting should call the ADA Coordinator at 240-314-8108.

- 6:00 PM 1. **Convene in Open Session to vote on motion to go into Closed Session pursuant to Section 3-305(b)(1)(i) of the General Provisions Article of the Annotated Code of Maryland to discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of the City Manager, an employee over whom the Mayor and Council has jurisdiction.**
2. **Closed Session**
- 7:00 PM 3. **Reconvene into Open Session**
4. **Pledge of Allegiance**
5. **Agenda Review**
- 7:05 PM 6. **City Manager's Report**
- 7:10 PM 7. **Community Forum**

Any member of the community may address the Mayor and Council for 3 minutes during Community Forum. Unless otherwise indicated, Community Forum is included on the agenda for every regular Mayor and Council meeting, generally between 7:00 and 7:30 pm. Call the City Clerk/Director of Council Operation's Office at 240-314-8280 to sign up to speak in advance or sign up in the Mayor and Council Chamber the night of the meeting.

8. **Mayor and Council's Response to Community Forum**

- 9. Mayor and Council Announcements**
- 7:30 PM **10. Consent**
- A. Financial Incentive Agreement with Aronson, LLC**
- 7:35 PM **11. FY 2021 Budget Public Hearing**
- 8:20 PM **12. Discussion and Instructions: Short-Term Residential Rentals**
- 9:05 PM **13. Authorization to File Zoning Text Amendment Application to Amend Section 25.21.21 of the Zoning Ordinance to Modify the Tree Planting Requirements for New Residential Lots Containing Townhouses, Duplexes and Other Attached Units**
- 9:35 PM **14. Discussion and Instructions on the City Charter Review**
- 10:20 PM **15. Update on the Rockville Volunteer Program**
- 10:35 PM **16. Review and Comment - Mayor and Council Action Report**
- A. Action Report**
- 17. Review and Comment - Future Agendas**
- 18. Old/New Business**
- 10:50 PM **19. Adjournment**

The Mayor and Council Rules and Procedures and Operating Guidelines establish procedures and practices for Mayor and Council meetings, including public hearing procedures. They are available at: <http://www.rockvillemd.gov/mcguidelines>.

Meeting : 01/27/20 07:00 PM (10 items)

Category	Estimated Agenda Time Needed (in minutes)	Title
Review and Comment	10	Action Report
Presentation	15	FY19 Procurement Annual Report
Presentation	15	Procurement Action Plan Update
Presentation	15	FY19 MFD Update
Presentation and Discussion	60	FY 2021 Mayor and Council Budget Survey Results and Priorities
Discussion	5	Fiscal Year 2020 Second Quarter Vacancy Report
Consent	5	Resolution to Establish Maximum Rate of Rent Increase Required Under Chapter 18 of the City Code Entitled "Voluntary Rent Guidelines and Notice Requirements of Rent Increases" as Required Under Section 18-194
Discussion and Instructions	25	Discussion, Instructions of Policy Concepts Aimed at Increasing the City's Affordable Housing Stock through Increased MPDU Set-Aside Requirement and Expanded Application of In-Lieu Payment Options
Presentation	60	A Study of Arts and Culture: City of Rockville
Recognition	20	Recognition of Major Donors and Partners of the City of Rockville's 2019 Holiday Drive
Total Meeting Time (in Hours)	3 HRS 50 MINS	

Meeting : 02/03/20 07:00 PM (3 items)

Category	Estimated Agenda Time Needed (in minutes)	Title
Discussion and Instructions	60	Compensation & Classification Study Presentation
Presentation and Discussion	60	RedGate: Discussion of Scope of Work
Presentation	60	Discussion of the Recreation and Parks Strategic Plan
Total Meeting Time (in Hours)	3 HRS 0 MINS	

Meeting : 02/24/20 07:00 PM (10 items)

Category	Estimated Agenda Time Needed (in minutes)	Title

Attachment 13.A.b: Future Agendas 1.06.2020 (2939 : Future Agendas)

Future Agendas
Tentative as of 1/6/2020

Authorization	30	Authorization to File Amendment for Short-Term Residential Rentals
Presentation	30	Presentation of the Fiscal Year 2021 Proposed Operating Budget and Capital Improvements Program
Introduction	5	Introduction of an Ordinance to Appropriate Funds and Levy Taxes for Fiscal Year 2021
Introduction	5	Introduction of a Resolution to Establish the Service Charge Rate for Municipal Refuse Collection
Introduction and Possible Adoption	15	Introduction, and Possible Adoption, of an Ordinance to Amend Ordinance #__-19 to Appropriate Funds and Levy Taxes for Fiscal Year 2020 (Budget Amendment #2)
Presentation	10	Second Quarter FY 2020 Financial Report
Discussion and Instructions	45	Personnel Policy and Procedures Manual Presentation and Possible Adoption
Authorization	45	East Rockville Residential Design Guidelines and Standards: Briefing and Possible Authorization
Authorization	30	Authorization to File Zoning Text Amendment for Parkland Dedication
Discussion and Possible Approval	20	Discussion and Possible Adoption - Accessory Structures Zoning Text Amendment
Total Meeting Time (in Hours)	3 HRS 55 MINS	

Meeting : 03/02/20 07:00 PM (4 items)

Category	Estimated Agenda Time Needed (in minutes)	Title
Presentation and Discussion	45	Board of Supervisors of Elections - 2019 Vote by Mail Election Presentation
Public Hearing	45	FY 2021 Budget Public Hearing
Work Session	90	Fiscal Year 2021 Mayor and Council Budget Worksession
Authorization	30	Authorization to File Zoning Text Amendment to Modify Section 25.09.05 of the Zoning Ordinance, the Regulations for Fences in Residential Zones
Total Meeting Time (in Hours)	3 HRS 30 MINS	

Meeting : 03/23/20 07:00 PM (3 items)

Category	Estimated Agenda Time Needed (in minutes)	Title
Public Hearing	45	FY 2021 Budget Public Hearing
Work Session	90	Fiscal Year 2021 Mayor and Council Budget Worksession

**Future Agendas
Tentative as of 1/6/2020**

Discussion	60	Discussion of Compensation and Classification Study
Total Meeting Time (in Hours)	3 HRS 15 MINS	