TUESDAY, JANUARY 15, 2019
CITY OF COLLEGE PARK
COUNCIL CHAMBERS

7:30 P.M.
MAYOR AND COUNCIL REGULAR MEETING
AGENDA

COLLEGE PARK MISSION STATEMENT
The City Of College Park Provides Open And Effective Governance And Excellent Services That Enhance The Quality Of Life In Our Community.

1. MEDITATION

2. PLEDGE OF ALLEGIANCE: Led by Councilmember Mitchell

3. ROLL CALL

4. ANNOUNCEMENTS

5. CITY MANAGER’S REPORT

6. ACKNOWLEDGMENTS

7. PROCLAMATIONS AND AWARDS - Proclamation in support of the W.K. Kellogg Foundation declaration of January 22, 2019 as The National Day of Racial Healing

8. AMENDMENTS TO AND APPROVAL OF THE AGENDA

9. PUBLIC COMMENT ON CONSENT AGENDA AND NON-AGENDA ITEMS - Speakers are asked to provide their name and address for the record, and are given three minutes to address the Council.

10. PRESENTATIONS - Presentation of Ceremonial $2,500 Public School Education Grant Checks to:
   - Berwyn Heights Elementary School - Amanda Alerich, Principal
   - Buck Lodge Middle School - Arnoldo Jimenez, ESOL Department Chair
   - High Point High School - Monica Welch, PD Coordinator/ILT Chair

11. PUBLIC HEARINGS

12. CONSENT AGENDA - Note: Consent Agenda items are routine items of business that are collectively presented for approval through a single motion. A Councilmember may request that an item be pulled from the Consent Agenda and placed under Action Items for separate discussion and action.
19-G-01 Approval of minutes of the December 4, 2018 Worksession and the December 11, 2018 Regular Meeting and Worksession.


19-R-01 Resolution of the Mayor and Council of the City of College Park Adopting the Recommendation of the Advisory Planning Commission regarding Variance Application Number CPV-2018-12, 9630 Narragansett Parkway, College Park, Maryland, recommending Approval of a 6-Foot Front Yard Setback Variance from the Prince George’s County Zoning Ordinance Sec. 27-442 (C) Table II with Conditions, and a Lot Coverage Of 1% for the Front Porch and Denial of the Remainder of the Lot Coverage Variance Request From Sec. 27-442 (E) Table IV. (Appeal period ends January 12)

19-R-02 Resolution of the Mayor and Council of the City of College Park Adopting the Recommendation of the Advisory Planning Commission Regarding Variance Application Number CEO-2018-03, 7018 Wake Forest Drive, College Park, Maryland, Recommending Approval of an Appeal from City Code §87-23 C. to permit the construction of a fence more than 3-Feet high in the front yard. (Appeal period ends January 12)

19-G-03 Approval of a contract with M-NCPCC for staffing to support the operations of the College Park Senior Program’s social activities for individuals age 62 and over – Scott Somers, City Manager and Peggy Higgins, Director of Youth, Family and Senior Services

19-G-04 Approval of a Declaration of Covenants for a double-wide concrete curb-cut and driveway apron at 8719 36th Avenue (Hu) – Steve Halpern, City Engineer

19-G-05 Approval of a Declaration of Covenants for a non-standard driveway apron at 9808 53rd Avenue (Tang) – Suellen Ferguson, City Attorney

13. ACTION ITEMS

18-O-10 Discussion of amendments to, and adoption of, 18-O-10, An Amended Ordinance Regulating Small Wireless Telecommunications Structures In The Public Rights-Of-Way – Suellen Ferguson, City Attorney

If introduced, the Public Hearing will be held on January 29, 2019 at 7:30 p.m. in the Council Chambers

Casualty, Health Or Property Insurance Or Self-Insuring Casualty, Health Or Property Risks.

If introduced, the Public Hearing will be held on January 29, 2019 at 7:30 p.m. in the Council Chambers.

19-CR-01 Discussion and Possible Introduction of a Charter Resolution of the Mayor and Council of the City of College Park, Amending Article VI, “Meetings”, § C6-3, “Closed Sessions”, to Authorize the Mayor and Council to Meet in Closed Session to Discuss Cybersecurity Under Certain Circumstances

If introduced, the Public Hearing will be held on February 12, 2019 at 7:30 p.m. in the Council Chambers.

19-G-06 Appointments to Boards and Committees

14. MAYOR AND COUNCILMEMBER REPORTS/COMMENTS
15. STUDENT LIAISON’S REPORT/COMMENTS
16. CITY MANAGER’S REPORT/COMMENTS
17. GENERAL COMMENTS FROM THE AUDIENCE
18. ADJOURN

➢ This agenda is subject to change. For the most current information, please contact the City Clerk at 240-487-3501.

➢ Public Comment is taken during Regular Business meetings on the second and fourth Tuesdays of the month in one of the following ways. All speakers are requested to complete a card with their name and address for the record.
  o To comment about a topic not on the meeting agenda: Speakers are given three minutes to address the Council during “Public Comment on Non-Agenda Items” at the beginning of each Regular Meeting.
  o To comment on an agenda item during a Regular Business meeting: When an agenda item comes up for consideration by the Council, the Mayor will invite public comment prior to Council deliberation. Speakers are given three minutes to address the Council on that agenda item.

➢ In accordance with the Americans with Disabilities Act, if you need special assistance, please contact the City Clerk’s Office at 240-487-3501 and describe the assistance that is necessary.
PROCLAMATION

The National Day of Racial Healing
**Proclamation**

City of College Park, Maryland

“A National Day of Racial Healing”

WHEREAS, we have all witnessed racial divisiveness in America’s urban, rural, suburban, and tribal communities that threatens the very core of this great country’s unified front; and

WHEREAS, just like those who came before us, it is our duty to protect the children of this country and maintain communities in which they may all be given the opportunity to succeed; and

WHEREAS, children have the right to be provided every opportunity to learn, grow, and thrive in nurturing environments that don’t violate their safety, dignity, and humanity; and

WHEREAS, every single person has the capability to make a simple change within him or herself that can have a profound effect on an entire society; and

WHEREAS, if we all dedicate ourselves to the principles of truth, racial healing and transformation, we can all bring about the necessary changes in thinking, behavior, and systems that will propel this great country forward as a place where racial biases will become a thing of the past; and

WHEREAS, racial healing is a vital and crucial commitment to the education, social, mental and overall well-being of all our children; and

WHEREAS, the City of College Park, in conjunction with others throughout the United States of America, acknowledges January 22, 2019 as the “National Day of Racial Healing,” and urges all residents to promote racial healing and transformation in the ways that are best suited for them individually, as a means to working together to ensure the best quality of life for every child.

NOW, THEREFORE, I, Patrick L. Wojahn, Mayor of the City of College Park, do hereby proclaim that this City honors and recognizes January 22, 2019 as the “National Day of Racial Healing.”

Proclaimed this _____ day of _____________________, 2019.

____________________________
Patrick L. Wojahn
MAYOR
PRESENTATIONS

Presentation of Ceremonial $2,500 Public School Education Grant Checks to:

- Berwyn Heights Elementary School - Amanda Alerich, Principal
- Buck Lodge Middle School - Arnoldo Jimenez, ESOL Department Chair
- High Point High School - Monica Welch, PD Coordinator/ILT Chair
19-G-01
Minutes
PRESENT: Mayor Wojahn; Councilmembers Kabir, Kennedy, Brennan, Dennis, Day, Rigg, Kujawa, and Mitchell.

ABSENT: None.

ALSO PRESENT: Scott Somers, City Manager; Bill Gardiner, Assistant City Manager; Janeen Miller, City Clerk; Suellen Ferguson, City Attorney; Terry Schum, Director of Planning; Miriam Bader, Senior Planner; Kacy Rohn, Community Planner; Bob Ryan, Director of Public Services; Alex Tobin, Student Liaison.

Mayor Wojahn opened the Worksession at 7:30 p.m.

CITY MANAGER’S REPORT: Mr. Somers reviewed items in the weekly bulletin, discussed the leaf collection schedule, reminded residents not to rake leaves into the street and to separate limbs from leaves, and announced upcoming holiday events.

AMENDMENT TO/APPROVAL OF THE AGENDA: A motion was made by Councilmember Mitchell and seconded by Councilmember Kabir to add “University of Maryland Repurposing Golf Course” to tonight’s agenda. Councilmember Rigg asked if this is to be added as a Worksession discussion item or as a Special Session action item. Councilmember Mitchell said she is hoping the outcome would be approval of a letter, which would be a Special Session item. Councilmember Rigg said he has not seen any information on the proposal. The vote on the motion to amend the agenda to add this as a Special Session item was 4-4. The Mayor broke the tie with a “No” vote, so the motion failed. The agenda was approved without amendment (Rigg/Dennis) 8-0-0.

DISCUSSION ITEMS:

1. Oral Argument in Case CPV-2018-10, Robert Kidwell, 4705 Howard Lane: See transcript in lieu of minutes. A motion was made by Councilmember Rigg and seconded by Councilmember Day to accept the recommendation of the Advisory Planning Commission as per page 16 of the Council packet and approve the request for variance. The motion passed 8-0-0. The City Attorney will draft a resolution ratifying the Council’s action for next week’s agenda.

2. Follow-up discussion of a program for surveillance cameras on private property: Mr. Ryan reviewed the staff report and said staff is recommending a pilot incentive program, rather than a registry, using existing FY ’19 funds for a pilot project. He discussed the Ring Technology Incentive Program used in Arcadia, Ca. Council is interested in pursuing that type of a program. Staff will research and return with what the City would require of residents and the parameters of a program. Council requested staff to include the Comcast and D.C. programs in their research. Councilmember Kennedy is not in favor of the incentive program.
3. **Discussion on the noise ordinance:** Mr. Ryan reviewed the staff report.
   - Regarding Bullet #1 on Page 83 of the packet to adopt an amendment allowing exemptions to Chapter 138 for special events: Would there be any noise limit at all? There should be some parameters for events in parks or on school property.
   - Regarding Bullet #2 on Page 83 of the packet to adopt an amendment to more clearly define noise and time limits for construction and commercial property maintenance: We get complaints about early mornings, not evenings. After discussion of various alternatives, Council took a straw poll on 8:00 a.m. to 9:00 p.m. only on weekends. 4-4 tie, Mayor voted yes. Council wants to get feedback from residents. Clarify that County, State and Federal projects are exempted.
   - Regarding Bullet #3 on Page 83 of the packet regarding a wailing ordinance: The only reason for an amendment to the Code would be so the City could issue a municipal infraction/fine. This is an unlikely scenario because these groups are moving targets, and for officer safety you wouldn’t send a CEO to follow and quiet loud groups in the street. Police are effective in quieting groups without a Code change.

Return Future W/S with suggested revisions.

[A motion to extend the meeting was made by Councilmember Kennedy and seconded by Councilmember Brennan. 8-0-0.]

4. **Appointments to Boards and Committees** – Appointments to the Complete Count Committee, MWCOG Boards, Airport Authority, and Charter Review Commission for next week’s agenda.

5. **Requests for/Status of Future Agenda items** – None

6. **Mayor and Councilmember Comments** – College Park Woods Trail groundbreaking, College Park Chorale concert, Calvert Hills tree lighting, Coffee Club, Lakeland tree lighting, PGCMA Legislative Dinner tomorrow night, and Save the Date for the Martin Luther King Tribute event on January 12.

7. **City Manager's Comments** – None.

**ADJOURN:** A motion was made by Councilmember Brennan and seconded by Councilmember Day to adjourn the Worksession, and with a vote of 8-0-0, Mayor Wojahn adjourned the Worksession at 11:00 p.m.
MINUTES
Regular Meeting of the College Park City Council
Tuesday, December 11, 2018
Council Chambers
7:30 p.m. – 11:26 p.m.

PRESENT: Mayor Wojahn; Councilmembers Kabir, Kennedy, Brennan, Dennis, Day, Rigg, Kujawa, and Mitchell.

ABSENT: None.

ALSO PRESENT: Scott Somers, City Manager; Bill Gardiner, Assistant City Manager; Janeen S. Miller, City Clerk; Suellen Ferguson, City Attorney; Terry Schum, Director of Planning; Robert Marsili, Director of Public Works; Brenda Alexander, Assistant Director of Public Works; Steve Halpern, City Engineer; Kacy Rohn, Community Development Planner; Alex Tobin, Student Liaison;

Mayor Wojahn opened the Regular Meeting at 7:30 p.m.

ANNOUNCEMENTS:
Councilmember Kabir announced the North College Park Community Association meeting and the Duvall Field Visioning Session at Davis Hall.

Councilmember Brennan announced the Chick-Fil-A developer meeting tomorrow at the College Park Community Center.

Councilmember Kujawa attended the College Park Woods Connector Trail groundbreaking and picked up some new trail maps. Bonnie McClellan received a Champion Award from the Office of Community Engagement.

Councilmember Mitchell also discussed the Connector Trail groundbreaking.

CITY MANAGER’S REPORT: Mr. Somers reported on Breakfast with Santa, the Annual Tribute to Dr. Martin Luther King, Jr.; and the Duvall Field Visioning event.

AMENDMENTS TO AND APPROVAL OF THE AGENDA: A motion was made by Councilmember Kujawa and seconded by Councilmember Mitchell to amend the agenda to add a “Letter to the University of Maryland Facilities Council regarding the UMD Golf Course” (Item #18-G-156) after tonight’s presentation. The motion was approved 8-0-0. The agenda, as amended, was approved (Dennis/Mitchell) 8-0-0.

PUBLIC COMMENT ON CONSENT AGENDA AND NON-AGENDA ITEMS:
Dave Dorsch, resident: Extend the safety rail on US 1; open Rhode Island Avenue to Campus Drive before Purple Line construction begins; he doesn’t like the design plan for the Child Care Center in the Calvert Road school.

Matthew Talley, resident: He is a student and the new Vice President of External Affairs for the Interfraternity Council of the University of Maryland. As the formal representative to the City Council he wanted to introduce himself.

011
Oscar Gregory, resident: He is skeptical of the recommendations in the bulk trash report and thinks it is a backhanded way of taxing residents.

PRESENTATION: Carlo Colella, UMD Vice President of Administration and Finance, reviewed the University’s PowerPoint (attached) on the proposed partial repurposing of the UMD Golf Course for recreational fields.

CONSENT AGENDA: A motion was made by Councilmember Day and seconded by Councilmember Dennis to adopt the Consent Agenda, which consisted of:

18-G-152 Award of contract to Playground Specialists, Inc. in the amount of $57,036.00 for the renovation of the Crystal Springs playground to a fit-lot, subject to the approval of the City Attorney, and authorize the City Manager to sign

18-R-25 Approval of a Resolution to ratify the Mayor and Council’s decision in CPV-2018-08, Wanjing Hu, for 8719 36th Avenue

18-R-24 Approval of a Resolution to ratify the Mayor and Council’s decision in CPV-2018-10, Robert Kidwell, for 4705 Howard Lane

18-G-154 Approval of a transcript in lieu of minutes for Oral Argument CPV-2018-16, 9808 53rd Avenue held on October 9, 2018; approval of minutes from the November 13, 2018 Worksession; November 13, 2018 Special Session; November 20, 2018 Regular Meeting; and November 26, 2018 Legislative Dinner. Approval of confidential minutes of the closed sessions of April 3, April 17, July 17, September 11, September 17, and September 25, 2018, provided separately.

The motion carried 8-0-0.

ACTION ITEMS:
ADD: 18-G-156: Discussion of a letter to the UMD Facilities Council about the Proposed Partial Repurposing of the UMD Golf Course

A motion was made by Councilmember Mitchell and seconded by Councilmember Kujawa to send a letter to the UMD Facilities Council opposing in its entirety the current plan to repurpose a portion of the golf course for recreation fields.

Comments from the audience:
Sen. Jim Rosapepe, resident: Senator Rosapepe gave credit to the UMD for their open and transparent posture on this project, but does not support this proposal and is in favor of the motion.

Del. Joseline Peña-Melnyk, resident: She is in favor of preserving the land and supports the motion.

Normand Bernache, resident: He has a membership in the golf course and supports the motion.
Suchitra Balachandran, resident:  She opposes the proposed development and supports the motion.

[A motion was made by Councilmember Rigg and seconded by Councilmember Day to remove the Bulk Trash Worksession item from tonight’s agenda due to time constraints. The motion passed 8-0-0.]

Jon Robinson, non-resident:  The Cool Spring Terrace Civic Association has discussed this development and are opposed. They support the motion.

Markian Melnyk, resident:  He opposes the proposed development and supports the motion.

Maria Mackie, resident:  She is in favor of preserving the land and supports the motion.

Ben Reichart, resident:  He is a UMD student and is opposed to this motion. He is in support of the proposed development.

Matthew Talley, resident:  He is a UMD student and uses the golf course, opposes the proposed development, and supports the motion.

Oscar Gregory, resident:  He supports the motion.

Mary King, resident:  She is in favor of preserving the land and supports the motion.

Laura Branah, resident:  She is a UMD student and is opposed to this motion. She is in support of the proposed development.

Sam Doyle, non-resident:  He lives in Acredale, opposes the proposed development, and supports the motion.

Peter King, resident:  He opposes the proposed development and supports the motion.

Jazs, resident:  She is in favor of preserving the land and supports the motion.

Jonathan Allen, SGA President:  Suggests waiting until further study is done before taking a position.

Councilmember Kennedy will not support the motion but would like a compromise letter that does not go so far as complete opposition.

Councilmember Rigg would prefer a win-win position but will support the motion.

Councilmember Mitchell requested her colleague’s support for the motion.

Roll Call Vote:
Yes:  Rigg, Kujawa, Mitchell
No: Kabir, Kennedy, Brennan, Dennis, Day
The motion failed 3-5-0.

Discussion continued:
Mr. Tobin requested that Council wait until more students have provided feedback before taking a position.

Councilmember Brennan does not support a letter of strict opposition and wants to consider alternatives such as lighting existing fields, partnership with nearby M-NCPPC golf course.

Councilmember Dennis does have concerns but prefers a letter that expresses our concerns and continues the discussion.

Councilmember Day wants to hear from the students before making a decision; there will be other opportunities to comment.

A motion was made by Councilmember Brennan and seconded by Councilmember Kennedy to send a letter expressing the Council’s concerns and the impacts articulated tonight, rather than stating complete opposition to the project.

[A motion was made by Councilmember Kennedy and seconded by Councilmember Dennis to extend the meeting until 11:00 p.m. The motion carried 8-0-0.]

Jon Robinson, non-resident: Does not oppose more playing fields, just at this location.

Peter King, resident: Does not support the amendment.

Delegate Pena-Melnyk, resident: She does not support the amendment.

Suchitra Balachandran, resident: She does not support the amendment.

Matthew Talley, resident: Supports the request that the University pursue alternatives.

Mary King, resident: She does not support the amendment.

Jazs, resident: She wants to see the feedback that the University has received; opposes the amendment.

Oscar Gregory, resident: Does not support the amendment.

Councilmember Kabir opposes “But, if the Facilities Council moves forward...” language and prefers that the letter just state our concerns.

After hearing the comments expressed tonight, Councilmember Mitchell will oppose this compromise position.
Councilmember Rigg hears valid arguments on both sides and thinks it might be best to stay silent on the matter.

[A motion was made by Councilmember Day and seconded by Councilmember Kennedy to suspend Council’s rules and to continue the meeting. The motion passed 7-1-0 (Rigg opposed) and the meeting continued.]

Mr. Tobin said few students use the golf course.

Councilmember Rigg thinks the letter infers that the University isn’t concerned with quality of life impacts and he disagrees with that.

Roll Call Vote:
Yes:  Dennis, Grennan, Kennedy, Rigg
No:  Mitchell, Kujawa, Day, Kabir
4-4 tie.

Mayor Wojahn thinks it is important to weigh in at this time and votes Yes.

Motion passes 5-4.

18-O-10 Possible Amendment to, and Adoption of, 18-O-10, Wireless Telecommunications facilities in Public rights-of way

Due to the lateness of the hour, a motion was made by Councilmember Day and seconded by Councilmember Mitchell to remove this item from the agenda tonight and hear it at a later date. The motion passed 8-0-0.

18-G-155 Appointments to Boards and Committees

A motion was made by Councilmember Brennan and seconded by Councilmember Day to make the following appointments to the Complete Count Committee: Gloria Aparicio-Blackwell (pending receipt of application), Michael Glowacki, Melissa Sites, Councilmember Day, Councilmember Mitchell and Heidi Biffl. To the Charter Review Commission: Virdina Gibbs, John Krouse, Nora Eidelman, Dan Alpert, Nathan Rickard, Peter King, Cameron Thurston, Brooks Boliek. Reappointments to the Airport Authority: Dave Kolesar and Dave Dorsch. The motion passed 8-0-0.

WORKSESSION DISCUSSION AFTER THE REGULAR MEETING:
1. Presentation on Hollywood Road sidewalk feasibility study and discussion of next steps - Terry Schum, Director of Planning and consultant Mike Norton, Norton Land Design, LLC:
Ms. Schum explained that the consultant has completed the feasibility study, and with Council support tonight, will proceed with 30% design, then an RFP would be issued for 100% design. The project is funded through 100% design. The consultant held a community meeting with a lot of public engagement, and those comments have been incorporated in the study. Mr. Norton reviewed his PowerPoint (attached). The sidewalk is proposed for the south side of Hollywood Road due to large trees and utilities on the north side. Council said OK to moving forward.

**ADJOURN:**
A motion was made by Councilmember Rigg and seconded by Councilmember Brennan to adjourn the Regular Meeting, and with a vote of 8-0-0, Mayor Wojahn adjourned the Regular Meeting at 11:26 p.m.

____________________________________
Janeen S. Miller, CMC              Date
City Clerk                        Approved
19-G-02

Transcript in lieu of minutes:

11-20-18 Oral Argument in Case CPV-2018-08

12-04-18 Oral Argument in Case CPV-2018-10
CITY OF COLLEGE PARK

REGULAR CITY COUNCIL MEETING

TUESDAY

NOVEMBER 20, 2018

The College Park City Council convened in the City Hall Council Chambers, 4500 Knox Road, College Park, Maryland, at 7:30 p.m., Patrick L. Wojahn, Mayor, presiding.

CITY COUNCIL MEMBERS PRESENT:

PATRICK L. WOJAHN, Mayor
P.J. BRENNAN, Member
ROBERT W. DAY, Member
MONROE DENNIS, Mayor Pro Temp
FAZLUL KABIR, Member
KATE KENNEDY, Member
DUSTYN BURKART KUJAWA, Member
JOHN RIGG, Member

COUNCIL STAFF PRESENT:

YVETTE T. ALLEN, City Clerk's Office
BILL GARDINER, Asst. City Manager
MIRIAM BADER, Senior Planner
SUELLEN M. FERGUSON, City Attorney
SERENA SAUNDERS, Asst. Student Liaison
TERRY SCHUM, Dept. Of Planning Director
SCOTT SOMERS, City Manager
ALEX TOBIN, Student Liaison
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Oral Arguments:
CPV-2018-08, Wanjing Hu, 8719 36th Avenue ..... 3
MAYOR WOJAHN: All right. At this point without objection, I'd like to go back to our oral argument, CPV-2018-08. I believe Wanjing Hu is here. And I believe staff, Ms. Bader will be starting us off.

MS. SCHUM: Oh, right. Okay. Thank you Mr. Mayor, members of the Council. This is Case CPV-2018-08. Wanjing Hu, 8719 36th Avenue Oral Argument.

So I'm just going to start off with a few brief remarks and then turn it over to the senior planner, Ms. Bader, to give you an orientation of the case.

So this particular case was heard by the Advisory Planning Commission on September 6th, 2018, where the APC recommended approval of a lesser variance than that requested by the applicant.

The applicant then appealed the recommendation of the APC and requested oral
argument on September 26th, which was within the allotted appeal period for doing so. And there were no other parties of record in this case.

So the entire record is before you in a packet, including the verbatim transcript of the public hearing that was held before the APC. It's also been provided to the applicant.

Do you have your record of the case?

Okay. All right. And I want to remind you that all the testimony made tonight must be limited to the facts and information that was contained in this record, made before the APC at the original public hearing.

The rules of procedure for tonight's meeting are also included in your package. And the order of presentation tonight will be staff orientation first, and then oral argument made by the applicant, who as I mentioned earlier is the only party of record.

There's no one here to argue for the recommendation of the APC. This is just oral argument against the recommendation that the APC
has made. And so there's really no need to have any rebuttal, therefore.

The applicant will have 30 minutes, if you need it, to make your case before the City Council. And the City Council will also have the opportunity to ask questions, okay, of you.

And then at the conclusion of tonight's hearing, you, the Mayor, and Council may accept, deny or modify the recommendation of the APC, or return this application to the APC to take further testimony or to reconsider their recommendation.

So I'm just reminding you of those rules for oral argument and with that I'll turn it over to Ms. Bader, who will give you an orientation to the case and then Mr. Hu, you'll be able to come up and speak your --

MAYOR WOJAHN: Okay. Thank you, Ms. Schum. At this time, are there any questions about the rules of the hearing? I know we've been through this before, so. All right, thank you. Ms. Bader, good evening.
MS. BADER: Good evening Mayor and Council. For the record, Miriam Bader, senior planner. The property is located in the Crystal Spring subdivision, west of University Boulevard and south of Metzerott Road.

This is an aerial photograph of the property and the surroundings. You can see the subject property outlined in red. The house and immediate neighborhood are zoned R55, single family residential, which is indicated in the yellow color. Subject property is shown in the red.

This map shows the impervious surface for the property and the adjoining properties. Driveway encroaching in front of the house and two-car driveways are characteristic of this street as you can see from this slide.

The applicant desires to widen his driveway, which creates the need for two variances: an encroachment waiver and a lot coverage variance. The zoning ordinance does not allow driveways to encroach in front of the --
front of a house and lot coverage in the R55 zone is limited to 30 percent.

The rectangular property consists of two 20-foot wide lots. The blue rectangle indicates the building footprint for a one-story, 912 square foot house that was built in 1969.

The area in yellow shows the existing ten-foot wide driveway. The area in green shows the proposed expanded driveway, and the area in red shows the proposed lengthening of the driveway.

This is a photo of the house on 36th Avenue, you can see it's a regular size apron and regular size driveway, ten foot wide.

This shows you the left side of the property, and here's the right side of the property. And this is across the street from the house. And this is looking down the street. And this is another view of the street.

By a four/two vote, the APC made the following recommendation to approve the parking area encroachment in front of the house and a lot
coverage variance of five percent, to allow an increase in the width of the driveway but denied any increase in the length. That's why I put an X here. They didn't approve that.

This recommendation was based on the following findings of facts and conclusions of law. The property has a total square footage of 3,880 square feet and a width of 40 feet.

The majority, 60 percent of the properties, are significantly wider than the subject property and the paved area of the street is only 19 feet wide. Driveway encroachment and two-car wide driveways are common on this street.

There is a fire lane on the same side as the house that allows no parking, and there is limited parking on the other side of the road, the west side of the street, due to curb cuts and other limitations.

The APC made the following three conclusions of law. One, the property has an exceptionally narrow width and small size. In addition, the narrow width of the street and fire
lane along the east side of the street significantly limit on-street parking.

Two, denial of the variances could result in more vehicles parking on street, which could impede access of emergency vehicles.

Three, granting the encroachment variance and modified lot coverage variance will not substantially impair the intent, purpose, and integrity of the master plan because most homes in this block can accommodate two cars. This concludes the orientation.

MAYOR WOJAHN: Thank you, Ms. Bader. Questions? Okay. At this time I'll -- I believe Mr. Hu has the opportunity to speak. Good evening, Mr. Hu.

MR. HU: Good evening. Thank you for the opportunity for me to come here. Yeah, basically my application was to widen the parking space and also extend it so that it can fit three cars.

I bought this house in 2014 but I couldn't move in because the parking situation
there only fit one car. I have four drivers in my house and the street in front of my house is not parkable, on both sides of the street is not parking, is not allowed to park.

And the street, only one side of the street is parkable. Only portion of the one side is parkable. And most of the houses have double driveway that further limit the parking space.

So people living in my house have to find parking space like far away from the house or even on other streets. So I cannot move in myself, and I rent it out. It's also still very difficult for me to rent out each time.

And the current resident, every day they have to find other parking space. Sometimes they cannot find parking space even on other streets, so they park their car on the lawn and the result, they get a whole bunch of parking tickets, like a whole bunch of parking tickets.

And the last one was about two weeks ago, and the two cars parking on the lawn in addition to the one parking on the driveway. So
they have three cars. The variance granted before approval, will widen the driveway only that allowed two cars, but still cannot solve the problem.

And without sufficient parking space, I cannot use the house effectively as intended, so I ask for the approval to also extend the driveway so that I can fit three cars. And that also can ease the parking stress on the street for others, for the community.

The street was very narrow, very limited parking space. I think that's all I have.

MAYOR WOJAHN: All right. Thank you, Mr. Hu. Are there questions for the applicant first? So the issue before us, if I understand it correctly is to, is whether to grant the additional variance to go beyond what the APC did to grant the additional variance to extend the length of the driveway.

MR. HU: Right.

MAYOR WOJAHN: And you're saying that
this would allow, this would allow the third vehicle to park in the driveway, if I understand it correctly?

MR. HU: Correct.

MAYOR WOJAHN: Okay. And one thing, this may be a question for staff or for the attorney. The criteria to apply is whether or not the strict application of the zoning ordinance would result in a peculiar and unusual practical difficulty to the applicant.

Does that relate to how, not having the ability -- I guess, the question that I think, the issue before us is whether being able to only park two cars in the applicant's driveway in this case would be an unusual, practical and unusual difficulty, practical and unusual difficulty -- I'm sorry -- peculiar and unusual practical difficulty compared to parking three.

MS. FERGUSON: The APC clearly did not find that in Number 2. They saw the issue as being more of impeding the emergency vehicles. They did not find that having two parking spaces
instead of three was an unusual -- was a real hardship.

And so that isn't, that's not what they found from the situation. I believe that the zoning law requires two off-street parking spaces for a single family home. Is that correct?

MS. BADER: That's a requirement for new construction only, so many existing homes do not have two off-street parking spaces, so they are not required to comply.

MS. FERGUSON: Agreed. But in terms of new housing, housing being bought now or constructed now, it's two spaces are considered to be the correct amount for a single family home.

MAYOR WOJAHN: All right. Thank you. So that may help clarify what the issue is that we need to determine. I'll open it --- well, at this point are there any other questions for the applicant? I asked that already but just to be sure.
Okay. So I'll take discussion and proposals for where, how to proceed. Mr. Rigg?

MR. RIGG: So since I was called out specifically at the APC as being concerned about lot coverage, I would point out that I am concerned about lot coverage.

Thirty percent lot coverage is the requirement of the R55 zone, which is what prompts the lot coverage variance that the applicant is requesting. I've generally subscribed to, you know, the thought that we should minimize lot coverage variance to the maximum extent practicable while still substantively attaining reasonable accommodations for applicants.

And I think the APC struck a pretty nice, struck a pretty nice balance of doing those things. There is still -- and this is a tiny little lot. So some lot coverage is very likely, you know, appropriate but I like that, that minimizes the amount of lot coverage while still giving the applicant substantial relief.
So people who know this neighborhood better can tell me more about the drainage in this particular neighborhood. But I know that throughout the city drainage is a concern and in particular storm water management infrastructure is a concern.

And the truth is, every little bit helps in terms of permeable versus non-permeable surfacing. So even though this is a lot coverage difference between what the applicant has requested of nine percent, and the five percent that the APC has proposed that we accept, I find that four percent to be compelling.

So I would be inclined to affirm the APC's decision.

MAYOR WOJAHN: Okay. Thank you, Mr. Rigg. Other comments? Mr. Brennan?

MR. BRENNAN: I'm inclined to do the same. I did just want to ask a question maybe of staff to help clarify for me because I couldn't find it or maybe it's not in there.

When the widened portion, the green
portion of the drive way is constructed, would
the apron also be widened as well, or would it
remain a single apron?

MS. BADER: The applicant has not
requested to widen the apron, so it will remain,
you know, a single wide driveway apron.

MR. BRENNAN: And would the, would the
Council have any discretion on that?

MS. FERGUSON: Not as part of this
proceeding. Generally speaking if there's going
to be a widening of a driveway apron, that comes
to you separately as a request from the owner of
the property, is reviewed by the city engineer
who then makes a recommendation to you.

And generally speaking it's granted if
otherwise appropriate upon the agreement of the
owner that they will maintain the additional
concrete portion that's not part of the single-
wide driveway that every resident or every owner
is entitled to.

So that's a separate process though
and would come to you. And it's still open.
That's something that this owner could do at any time.

MR. BRENNAN: Well has there been any precedence for granting a variance and also prescribing that the widening of the apron be a part of that, at least from a functional use of the property?

MS. FERGUSON: No, because they are two different things. One is a referral from the county about county zoning requirements. And the other is whether or not the city is agreeable to a double wide apron.

And that is done upon, as I said, request of the owner. This owner has not requested that so far. If in fact there's a situation where because of the single wide driveway apron the cars are driving over the grass, and that maybe what you're concerned about, they'll be cited for that and requested to make an application to have the double wide driveway apron.

Generally speaking in situations like
this, that would be granted, or be recommended by
the engineer and then it would be up to the
Council to grant it. But there have been other
instances where it has been.

MR. BRENNAN: So I'll ask this in one
more way is, would there be any possibility of
adding a condition to approving the final
variance for the green section to widen the
driveway?

MS. FERGUSON: No, because that's not
part of the criteria that you are given from the
county. We have to, we have to follow what the
county does. And I don't know of anything that -
- in the three criteria that relates to the width
of the driveway apron.

We've never, that's to my
recollection, that has not been required
previously. We have in prior decisions noted for
everyone including the Council, but also for the
owner, that the variance decision is separate
from obtaining a widened apron, that they have to
follow another process for that.
MR. BRENNAN: Okay.

MS. BADER: But/ I think what the council member is asking is, is there a way to streamline process since that, a request like that would just come back before this same body and perhaps tonight the applicant could be asked if that would be desirable.

And if so, is there a way that the Council could, you know, approve the variance as, you know, affirm the decision of the APC, with the additional approval of the driveway widening. Is that what you're getting at --

MR. BRENNAN: I think so.

MS. BADER: -- Council Member Brennan?

Okay.

MS. FERGUSON: That is, that is certainly a possibility and something that could be handled at staff level when these requests come in, that subject if in fact the variance is going to be granted, then there could be a concurrent request for widening the driveway apron.
But it goes to another part of city staff. It goes to the engineer and at this point, none of this has gone through the engineer.

And the declaration of covenants that goes along with that has not been put together. Can that happen? Certainly. Those two things can be put together at the same time once it's realized that if in fact the variance is granted, that is what would happen.

MR. BRENNAN: Great. That's all very helpful information. I'll just repeat that I plan to affirm the recommendations of the APC and I hope that the applicant will work with staff so that we can streamline the process and not have to revisit those types of things in the future, if he so chooses to do that. Thank you.

MAYOR WOJAHN: All right. Thank you, Mr. Brennan. Do we know, is it, this may not be in the record, but I guess it's a question to the applicant whether or not he is actually interested in widening the --
MR. HU: Yeah. That would be, that would be better for the car to go in and out. Yeah.

MAYOR WOJAHN: Okay.

MR. HU: And also with the two parking spaces still enough, they will still from time to time get citation ticket from parking on the lawn because of three cars, from time to time they cannot find parking space even on other streets, not only on that street.

It's very limited. The two car parking spaces cannot solve the problem.

MAYOR WOJAHN: Yeah. I think one thing to just bear in mind since we may be revisiting this issue in the future if you do decide to apply for a widened driveway, is that widening the driveway also does limit the number --- although I suppose it's not so much an issue because you can't park on that side of the road anyway.

MS. BADER: Correct.

MAYOR WOJAHN: Okay. All right. So
in normal cases that would be a concern because--

MS. FERGUSON: At least right there you can't.

MAYOR WOJAHN: What's that?

MS. FERGUSON: There's a fire lane all the way down. Okay.

MAYOR WOJAHN: Okay. So you can't park on that side in front of the driveway anyway, no matter --

MR. HU: Right. Not parking.

MAYOR WOJAHN: And so widening the driveway, the apron wouldn't remove any parking spaces. Okay. Thanks. Let's see, I get a sense thus far that the general direction of the Council is to, is to maintain the -- uphold the decision of the APC.

Is there anybody would like to raise any concern about moving in that direction? Okay. Then I will take a motion at this time. Mr. Rigg?

MR. RIGG: I move that we affirm the decision of the APC that the approval of the
requested encroachment and a five percent lot coverage variance for the driveway to allow for an increase in width of the driveway of ten feet and deny the increase in length.

MS. KENNEDY: Second.

MAYOR WOJAHN: All right. A motion and a second. And I think it was part of the motion to direct the attorney to draft a resolution affirming the APC's decision, so that's part of the motion.

MS. FERGUSON: Yes, I will do that.

MAYOR WOJAHN: All right. So I assume that's --

MR. RIGG: I further, yes ---

MAYOR WOJAHN: Okay. All right.

MR. RIGG: --- request that the attorney draft a motion affirming the APC's decision.

MAYOR WOJAHN: Okay. Is there, do you have any further discussion?

MR. RIGG: No, sir.

MAYOR WOJAHN: Okay. Any further
discussion by the council? Okay. Seeing none, I'll call the question. All those in favor say aye.

(Chorus of ayes.)

MAYOR WOJAHN: Opposed, abstentions? The motion carries. Thank you, Mr. Hu. And you can consult with the staff about the application to widen the apron.

(Whereupon, the above-entitled matter went off the record at 9:02 p.m.)
CITY OF COLLEGE PARK
MARYLAND

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CITY COUNCIL

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REGULAR MAYOR AND COUNCIL MEETING, ITEM 1:
ORAL ARGUMENT IN CASE CPV-2018-10,
ROBERT KIDWELL, 4705 HOWARD LANE

+ + + + +

TUESDAY
DECEMBER 4th, 2018

+ + + + +

The City of College Park Council convened a Regular Mayor and Council Meeting in Council Chambers, City Hall, 4500 Knox Road, College Park, Maryland, pursuant to notice at 7:30 p.m., Patrick L. Wojahn, Mayor, presiding.

CITY COUNCIL MEMBERS PRESENT:

PATRICK L. WOJAHN, Mayor
P.J. BRENNAN, Member
ROBERT W. DAY, Member
MONROE DENNIS, Mayor Pro Temp
FAZLUL KABIR, Member
KATE KENNEDY, Member
DUSTYN BURKART KUJAWA, Member
JOHN RIGG, Member
DENISE MITCHELL, Member
STAFF PRESENT:

JANEEN S. MILLER, City Clerk
BILL GARDINER, Assistant City Manager
MIRIAM BADER, Senior Planner
SUELLEN M. FERGUSON, City Attorney
TERRY SCHUM, Director, Department of Planning
SCOTT SOMERS, City Manager
ALEX TOBIN, Student Liaison
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P-R-O-C-E-D-I-N-G-S

7:37 p.m.

MAYOR WOJAHN: And we'll move onto Item No. 1 on the discussion, which is oral argument in Case CPV-2018-10, Robert Kidwell, 4705 Howard Lane. And we'll start with our staff report.

MS. SCHUM: Thank you, Mr. Mayor. For the record, Terry Schum, Planning Director. In the case you stated as CPV-2018-10 the Applicant is Robert Kidwell and the site address is 4705 Howard Lane.

I do want to explain that, although there is one case number and one application filed here, the application was actually for four different lots of exactly the same size requesting the exact same lot coverage variance related to proposed construction. So it was a little bit unusual, but given the circumstances it was accepted this way given the fact that the request was exactly the same and the lots were exactly the same size.
So everything was the same, but four separate resolutions were actually issued and prepared for each of the lots and only the address, 4705 Howard Lane, for one lot is the subject of the appeal tonight. So the other three lots that were part of this case number are not part of this appeal tonight. So I just wanted to call that to your attention and make sure you were clear about that.

So this oral argument was originally scheduled for November 20th and was continued to this date at the request of the Applicant, and this case was heard by the Advisory Planning Commission on September 6th, and the APC voted unanimously to recommend approval of the variance request.

Then on October 9th, exceptions to the APC’s recommendation were filed by one of the eight parties of record in this case, Martha K. Dunn represented here tonight by her attorney Walter W. Green. The entire record of this case, including a verbatim transcript of the APC public
hearing, has been provided to you in your packet and all testimony made tonight must be limited to the facts and information that are contained in this record made before the Advisory Planning Commission.

So, as you know, the rules of procedures are part of the packet you have before you. And the order of presentation tonight will be as listed in the procedure, so we'll start with staff orientation. So I'll turn this over to Ms. Bader to do that in just a minute, followed by oral argument against the APC's recommendation.

Now the rules allow 30 minutes for each side of an argument, so as I said, the first argument is made by the Appellant. And there were four parties of record actually opposed to this application at the APC hearing and tonight in the room, I only see two, which is the Appellant and her attorney.

And then arguing in favor of the APC recommendation there were four parties of record
at the APC hearing in support. Tonight I see two parties here, the Applicant and his architect who spoke before the APC.

And following that oral argument there will be 10 minutes of rebuttal permitted for each side.

So if there aren't any questions about the procedures, I'll turn this over to Ms. Bader to provide staff orientation.

MAYOR WOJAHN: All right. Thank you, Ms. Schum. I just want to be clear on this because this is the first time I think I've ever presided over a hearing --

MS. SCHUM: Right.

MAYOR WOJAHN: -- where the -- there is a --

MS. SCHUM: You actually have an argument.

MAYOR WOJAHN: -- where we actually -- right. So the first, it will be the Applicant.

MS. SCHUM: No, first it will be the Appellant. So arguing against the recommendation
of the APC which supported the Applicant's variance request.

      MAYOR WOJAHN: Okay.

      MS. SCHUM: And so up to 30 minutes is permitted, but there appears to be probably just the attorney speaking, although Ms. Dunn certainly can speak as well. I don't see any other parties of record in opposition in the audience.

      Oh, they just came in. So they were actually registered in support of the application at the APC, but tonight they can speak in any way they please.

      MAYOR WOJAHN: Okay. So --

      MS. SCHUM: So I see two additional parties of record, but they do have to choose, and whichever side you choose to speak on, you will just be part of that 30-minute time period. So you have to work it out amongst yourselves.

      MAYOR WOJAHN: Okay.

      MS. SCHUM: And I'll try to ascertain that in a minute.
MAYOR WOJAHN: Okay. Great.

MS. SCHUM: Okay?

MAYOR WOJAHN: All right. So we will proceed then with an orientation by the Planning --

MS. SCHUM: Yes.

MAYOR WOJAHN: -- staff on the case.

MS. SCHUM: Okay.

MAYOR WOJAHN: And we have Miriam Bader from our staff.

Good evening, Ms. Bader.

MS. BADER: Good evening, Mayor and Council. For the record, Miriam Bader, Senior Planner.

Okay. You can see highlighted in yellow those are the four properties that requested the variance. The lots are located on Howard Lane which is between Rhode Island Avenue and Dartmouth Avenue. And they're also in the Old Town College Park Historic District. The four properties are all rectangular lots with a width of 55 feet and a length of 92.5 feet. The
lots all have an area of 5,088 square feet.

Here's a location map just so you can see where it is. So you see Norwich and -- on the north and then College Avenue. And then on the west you see Rhode Island and on the east Dartmouth. And Howard Lane is right there. The one that's highlighted in blue is the one that there's the oral argument about.

In order for the Applicant to construct a home, a porch and a freestanding garage and driveway, a lot coverage variance of 12 percent was requested. Here is an aerial photo of the subject property. You can see I put the address labels on there. So 4705 is what the Applicant is appealing. And then 4702 is the property that she owns. So 4702 College -- faces College is indicated -- it's outlined in red. And then if you're wondering about 7501, that's the Penn Marva Plumbing Company, just to get yourself oriented. And then also there's, like, a storage area here. That's not a house.

For the zoning you can see indicated
in yellow, that's R-55 single family residential. The red is C-1, which is local commercial. And that shows you Penn Marva Plumbing Supply. And then this is where there used to be a dry cleaners. And the Appellant's lot is here. It's lots 10, 11 and 12. That's highlighted in green. And then this was the lot that requested the lot coverage variance.

This map shows the impervious surface for the adjoining properties. The brown indicates building footprint and the gray indicates the pavement or the impervious surface. This is the same site plan that applies to all four lots. That's how they requested one variance for all those lots, because they all are using the same site plan.

The lot is currently undeveloped, but proposed improvements on the lot include a two-story house with a 1,280-square-foot footprint including a covered front porch, a 250-foot optional detached garage and 600-square-foot porous paver driveway. The variance granted is
for the maximum amount of lot coverage that would be needed.

The future property owners may develop the property with reduced lot coverage variance should they decide to build a smaller house or not build the freestanding garage or porch. So they wanted to not have to constantly come back for variances for every single lot, but just do it at one time for the maximum. But the Applicant could always -- the person that buys the property could always build less.

The first property to develop, which was 4707 Howard Lane, requested and received a lot coverage variance of 13 percent and a front yard setback of 3 feet. The second property to develop was 4714 Howard Lane. That requested and received a lot coverage variance of 11 percent. These four lots requested a variance of 12 percent. So it's right in between the smallest number and the biggest number. And then there was another lot that developed that didn't need any kind of lot coverage variance.
This shows you what a possible front elevation might look like. And then this is an alternative front elevation.

This is a photograph of Howard Lane. And this shows you the lot that is being appealed: 4705. And this is located on the south side of Howard Lane.

By unanimous decision the APC made a recommendation to the City Council to support a lot coverage variance of 12 percent to accommodate a porch, a detached garage and a porous paver driveway. This recommendation was based on the following findings of facts and conclusions of law.

I just pulled out some of the key findings of fact. All of the findings of facts are in your report. I covered a number of them while I was going through the slides, but the key findings of facts are that the most current stormwater management regulations will be complied with to the complete Kidwell Subdivision. Howard Lane is a new road built
within a 30-foot right-of-way and due to this limited right-of-way the road is one-way west and on-street parking is only permitted on the north side of the street. So that's why there's that needed driveway and garage because there's very limited on-street parking.

Another key finding of fact was that the properties on Howard Lane are developed under a Memorandum of Understanding with the City that requires, in pertinent part, homes to be owner-occupied for a minimum of 10 years and to meet the Old Town College Park Historic District Guidelines.

Finally, a key finding of fact is that, according to the Old Town College Park Historic District Guidelines, regarding driveways and garages, it specifies that they should be freestanding garages and that there should be a narrow driveway to serve it. Also in terms of the recommendation for porches, they do encourage new construction to incorporate porches. So to meet these two requirements of the historic
district guidelines, it increases your amount of lot coverage.

The APC made the following three conclusions of law: one, there's an extraordinary situation associated with the property because constructing a new home with features such as porches and detached garages to comply with the Old Town College Park Historic District Guidelines results in increased lot coverage. On-street parking is limited to only one side of the street, and this increases the need for off-street parking.

Two, the strict application of the zoning ordinance would result in a peculiar and unusual practical difficulty to the Applicant by inhibiting the ability to follow the recommendations of the historic district guidelines and provide features that are attractive to owner-occupants.

And three, granting the lot coverage variances will strengthen the intent, purpose and integrity of the Old Town College Park Historic
District Guidelines by facilitating compliance with the guidelines and the City's goal of increasing home ownership in the Old Town neighborhood.

And this concludes staff's review.

MAYOR WOJAHN: Okay. Any questions for staff at this time? Dr. Kabir?

MEMBER KABIR: Thank you. Can I ask a clarifying question about the variance?

MAYOR WOJAHN: Okay.

MEMBER KABIR: All right. If it's okay, because I hope I'm not going -- so the variance is about -- percent is 12 percent lot coverage. In one of the diagrams about the porch I think it was showing 25 feet from the property line.

MS. BADER: Right.

MEMBER KABIR: What is the minimum requirements?

MS. BADER: Twenty-five feet.

MEMBER KABIR: Is it 25 or 30?

MS. BADER: No, it's 25 feet.
MEMBER KABIR: So that is fine?

MS. BADER: So it meets it. It didn't need the front yard setback. It meets it.

MEMBER KABIR: So then setback-wise it is fine, but --

MS. BADER: Right.

MEMBER KABIR: -- the variance is about the entire coverage?

MS. BADER: Right. And a lot of it you can see here is because of this driveway.

MEMBER KABIR: Okay.

MS. BADER: But, yes, this is --

MEMBER KABIR: For some reason I thought 30 feet.

MS. BADER: -- 25 feet, so it meets the setback.

MEMBER KABIR: Okay. Thank you.

MAYOR WOJAHN: Thank you, Dr. Kabir. Any other questions for staff at this time?

(No response.)

MAYOR WOJAHN: Okay. Seeing none, I'll invite the Appellants up to present their
case.

MS. BADER: Oh, you know what, if I can just add one thing just to clarify it. The County counts it as lot coverage even if it's porous paver driveway. So in terms of stormwater management, the porous pavers would absorb water, but the county considers lot coverage lot coverage if anything -- if you can drive a car on it. So I just want to clarify that.

MAYOR WOJAHN: Thank you. Before the Appellant begins I just want to remind everyone for clarity's sake that we have established a record in this case that is based on the hearing before the Advisory Planning Commission that the only facts that we can consider this evening are the facts that have been established on the record. So items outside of the record, even if they are relevant to the case, may not be presented to and may not be considered by the Council. What's relevant for tonight is what's on the record.

So with that I'll invite the Appellant
MR. GREEN: Thank you, Mr. Mayor, Council. Walter Green and I'm here on behalf of Kay Dunn who is the owner, as you heard, of 4702 College Avenue, which backs up to the subject property.

My understanding of the variance that was granted is that it was not actually granted in connection with the porous paver driveway, that that was included in the lot coverage calculation that would be fine without a variance; that the variance was granted for the garage and the covered porch. And that's -- I want to -- and I don't know if there's a way to clarify that, because that -- the way the variance --

MAYOR WOJAHN: You can see on this --

(Simultaneous speaking.)

MR. GREEN: -- documentation was written, is it said that it was for the actual garage and the covered porch. It doesn't affect my argument really. I just -- I think it's
important to have exactly what the variance was and what it applied to.

MAYOR WOJAHN: My understanding, and correct me if I'm wrong, is that the variance is for the overall lot coverage which includes all the things that are on the lot --

MS. FERGUSON: It is.

MAYOR WOJAHN: -- including the driveway, including the garage, including the home, that that all added together make up the total lot coverage. The variance is granted -- the variance is necessary because the -- because that total lot coverage is over the limit.

MR. GREEN: Okay. Well, the language of the variance itself states that it was granted for the optional detached garage and the covered porch to be incorporated into the design.

MEMBER RIGG: Mayor, if it helps, page 25 of the packet shows the calculation.

MR. GREEN: And it's -- as I understand it, like I said, it's based upon the -- our issues are with the garage and the covered
porch, to sum that up. And the reason why is because what happens when you have the -- a garage and a covered porch such as this on a small lot is it does increase the water runoff, and there's nothing within the variance grant that's suggested by the APC that provides for catching this additional runoff. And one of the things that was brought out at the hearing was that, with 4707 that was developed, Ms. Dunn owns the lot that's adjacent to that, there has been additional runoff as a result of the 13 percent variance that was granted to that lot and the water now pools onto Ms. Dunn's property.

MAYOR WOJAHN: Sir, Mr. Green, I'd ask you to stop for a second there because I think runoff from an adjacent property, that is not -- is that a fact that's established on the record, Ms. Ferguson?

MS. FERGUSON: Not that I understand. There was some testimony about -- from Ms. Dunn about -- from the transcript that she has had water pooling, but I don't know that there was
any definitive testimony as to where that came from or how it came there. And that would not be relevant, frankly, to this property in any event.

I mean, it obviously sets up a problem that she's experiencing, but that doesn't affect the ability to develop on this property.

MAYOR WOJAHN: Thank you, Ms. Ferguson.

I'm going to have to ask you to please stick to the record of what was discussed and the facts that were established on the record at the APC hearing.

MR. GREEN: It does sound like there were facts that were discussed concerning Ms. Dunn's property that's adjacent to 4707. It is relevant because what happened is that a variance was granted for that property as well, which is part of this record. As part of the staff report, it is stated that 4707 received a 13 percent variance.

The issue that we have on this particular variance is that the guidelines,
actually the law, in terms of granting a variance are not supported here. As an additional -- as an adjacent lot owner Ms. Dunn owns the property directly behind this one. If there is not some condition within the plan for this variance that captures the additional runoff water that will occur, then what is likely to happen is flooding and pooling of water after the development of this now empty lot onto Ms. Dunn's property on College Avenue.

Now in order to have a variance found you needed to -- or the Advisory Committee under Section 190-4 of the City of College Park Code, you needed to find all three requirements, that there was some sort of exceptional narrowness, shallowness or shape, some sort of exceptional topographic condition or other extraordinary situation or condition in order to grant the variance in the first place.

In this particular instance, this lot does not have any of those characteristics. There's no exceptional narrowness, shallowness or
shape. There's no exceptional topographic conditions at all. In fact, there are no extraordinary situations or conditions at all that would justify this additional lot coverage. The basis that the APC used was, well, we need to comply with the historic guidelines.

Well, in fact the historic guidelines can be complied with, and simply all that needs to happen if a covered porch is what is important, then the footprint would just be -- is reduced by six feet. A little bit more than that, but you just reduce the footprint. It doesn't change the character of the property. It simply changes the character of what is to be built there. By simply reducing the size of the home, which, as you just heard, is an option, it's something that the owner could do.

Well, if it's something that the owner could do, then we know that this particular footprint is not required. It's not necessary. There's nothing exceptional about having this particular footprint, which means that the very
first piece of the puzzle in order to grant a variance in the first place isn't met. And if any one of those three requirements isn't met, a variance can't be granted, at least according to the College Park Code, the — again, the second requirement is that there's a strict — if the strict application of the county zoning ordinance will result in peculiar and unusual practical difficulties to or exceptional or undue hardship would occur to the owner of the property. Well, the owner of the property right now is Mr. Kidwell.

There's no hardship in complying with the lot coverage. The garage is already shown as an option. Well, if it's an option, then if we don't have it, there's no unnecessary hardship. There is nothing peculiar and it's not practicable one way or the other. So the second prong is also not met here.

The idea that the historic guidelines require a detached garage, that's not accurate. The purpose for — at least claimed purpose for
the garage is -- part of it is parking. And you can have just as much parking by having the porous paver driveway without the garage. In fact, the garage, the size of it does not lend itself to parking a full-size vehicle in it and having anything else at all.

And when you look at the surrounding properties on College Avenue and Norwich in particular, which is -- Howard Lane is right in between those, none of those properties with the exception of 4707 that was originally built, has its own garage. There is another garage on -- related to a property at College Avenue, but it's actually on a lot that is too small to build a house and that's actually a lot that --

MAYOR WOJAHN: Mr. Green, one second.

I think -- is this -- are these facts that --

(Simultaneous speaking.)

MS. FERGUSON: I don't think any of those facts are in evidence in this transcript about who has a garage and who doesn't have a garage in the surrounding neighborhood.
MR. GREEN:  Well, actually they are.  They're in your packet.  There's a diagram that was shown a few minutes ago that actually shows all of the homes on Norwich and the homes on College Avenue, and you can see that they don't have garages.  So those facts are actually in the record.

MS. FERGUSON:  Can we put that back up again, please?

MR. GREEN:  No, it's the grid that had the four lots outlined.  There you go.  You can see that there's only one structure that has a garage of the homes that are on Norwich, which are the ones behind: 4708, 4710, 4712.  None of those homes on Norwich with the exception of the one on the very end, which is actually an address for Dartmouth -- none of those homes have garages.

On the College Avenue side after the Delmarva Plumbing there's no garage on those first three lots there on College Avenue, however, there is a garage that is on the Howard
Lane side, and that's a separate lot because you actually can't build a house on that particular lot. So it's two doors down from 4705. That small structure -- that right there is an external garage, but it's actually located just simply on that lot. There's no home on that lot.

So in terms of keeping with the style of the homes that are here, every house there on Norwich is a ranch. It's not a two-story. They don't have porches. They don't have garages.

The properties that are on College Avenue there, the same thing. There's -- one of them has a porch; the other two do not. They just simply have a small stoop.

So if the basis of granting the variance is in keeping with the neighborhood or having the new construction blend into the existing neighborhood, a new construction with a garage doesn't actually blend. It is actually quite different than what's already there. The same with having the porch. While it's part of the guideline, it's not part of this particular
area in that, right now, none of these homes have porches.

The -- so what I'm getting at is that there aren't any extraordinary circumstances. If you actually want to keep in line with what's present now, you would not have a porch and you wouldn't have a garage.

The variance does not serve the ends that are stated as the basis for the grant. And there is very simply an easy alternative here rather than granting a variance, which again, as I stated, is for 4705 to just simply have the same lot coverage and reduce the size of the home, which is -- was already stated as part of the staff report, that that is an available option. It's not necessary to have a variance in order to develop this property.

So the concern that we have is that the current stormwater management regulations, although -- that stated that those will be complied with, those are written for properties that don't require a variance. So if you are
going to uphold the variance, then what should happen is there should be conditions that go with it. There are relatively simple design changes that could occur such as a dry well which could be placed during construction onto 4705 so that 4705 captures the additional runoff that's created by the 12 percent variance.

And right now one of the things for you all to consider is what's the runoff for this property right this second. Well, it's a flat lot. It's empty. There is no runoff at all. But once you start increasing lot coverage, that's what you're going to have. You're going to have increased lot coverage because there's nowhere for this water to go.

MAYOR WOJAHN: Mr. Green, I'm sorry. I believe that you're going beyond the record again. In this case we're talking about whether or not there's runoff from that particular property.

MS. FERGUSON: That's correct.

MR. GREEN: In terms of the variance
if the basis is that compliance with the historic
guidelines and this property is to blend in, then
the variance isn't necessary. It should not have
been granted in the first place.

The basis that granting the variance
provides features that are, quote, attractive to
owner-occupants is also not a valid basis to
grant a variance. The design of the property --
there are many multiple designs that could be
made; I've already mentioned several that do not
require a variance at all.

Now the Memorandum of Understanding,
it's referenced in this particular record,
however, it's not included in the record. So the
specific terms and conditions of the Memorandum
of Understanding are actually not contained,
however, the decision to grant the variance was
based in part upon that Memorandum of
Understanding. So while I've been admonished for
going outside the record here, apparently that's
exactly what the APC did because the Memorandum
of Understanding is not part of this record
either.

The portions of the Memorandum of Understanding that are actually related or referenced here by the APC are that the property is to be owner-occupied for at least 10 years. Whether there is a porch or a garage was not part of -- at least not referenced in the terms of the MOU that has been entered into.

The reason I bring up the 10-year requirement is because one of the basis that the APC relied upon in granting the variance was that by granting the variance they are increasing the promotion of home ownership with this particular property. Well, under the MOU, at least as stated in the staff report and by the APC -- under the MOU the issue of home ownership is already addressed. It has to be. Anything that's developed on this particular property is to be owner-occupied for 10 years. You don't need the variance in order to promote home ownership because it's already been done in connection with the MOU.
The only thing that's actually being promoted by granting the variance is the seller's bottom line because presumably if you have a garage and you have increased lot coverage, you have a bigger home which you can sell for more money. But that's not the reason to grant a variance.

So based upon the application and the APC's decision, the variance shouldn't have been granted in the first place because it doesn't comply with law. If this body is going to uphold the variance, I would ask that it be modified, that there be additional stormwater management to deal with the additional runoff that's going to be created as a result of additional lot coverage. That is something that the Applicant can easily address.

And I want it to be clear: Ms. Dunn is not attempting to prevent development of this lot. She simply wants to protect her own property interest, which all of you should also be interested in protecting as well, because it
may not just relate to Ms. Dunn's property. It could end up harming any one of the other additional adjacent properties there with this additional runoff.

So for the reasons that I've stated I would ask that you all deny the variance and if you are going to grant it, that you modify it and you put some conditions on it to protect Ms. Dunn's property. If you have any questions, I'm happy to answer them. If not, that concludes my portion of this argument.

MAYOR WOJAHN: Thank you, Mr. Green.

Are there any questions for the Appellant?

Mr. Rigg?

MEMBER RIGG: Mr. Green, you suggested that -- and I'm a little unclear having been not through this process before what's in scope and what's out of scope, but you specifically asked that the Applicant consider stormwater mitigation measures such as dry wells in your argument. In reflecting back on the record, the transcript on
page 66 talks a lot -- Mr. Kidwell to the APC spoke a lot about his plans to mitigate stormwater runoff from the property including dry wells. So I mean, it does appear as though that is evidence in the record as being an accommodation that the Applicant was making.

MR. GREEN: Well, Mr. Rigg, I thank you for pointing that out. My issue is that it's not included in the grant of the variance. So if Mr. Kidwell is, as you stated -- if he made that representation to the APC, then when he has his opportunity to speak here, maybe that's something that can be addressed and that that could be a condition to the variance, that it's actually written in as part of it. Simply having the Applicant state I intend to do this, if it's not part of the variance, then it's not required, which is what part of the concern is here.

So I think that's a very good point that you bring up and I appreciate you pointing it out that that was in part addressed, but it wasn't included in the grant of the variance.
The variance was granted without any conditions whatsoever. And that's part of the issue that we have. That's one of the reasons why we're here is that it was granted without conditions.

So that is one way to solve the problem that we have with the grant of the variance is to -- and you do have that opportunity. This body can modify the variance without granting it exactly the way that it was originally granted.

MEMBER RIGG: So an additional question. The Advisory Planning Commission found in its report, on Council packet page 16, that several conclusions of law applied, all of which regarded, I think it's fair to say, around a requirement to comply with the Old Town College Park Historic District Guidelines. And they thus asserted that, because the property was required to comply with such guidelines, the variance could be granted.

I think -- are you saying that the Old Town Historic District Guidelines aren't
applicable in this case? I'm a little bit lost on that portion of your argument.

MR. GREEN: No, I'm not saying that. I -- this particular property is within the Old Town Historic District, so no, I'm not saying that the guidelines are not applicable. I'm saying that in order to comply with the guidelines, you don't need to have the variance, in particular with the porch. You simply do not need additional lot coverage to have a porch on this particular property with a home.

What the porch affects is the size of the home. And as part of the staff report it was stated that a future owner could choose to build a smaller home, meaning that it's not necessary to have a 1200-foot footprint with the external porch in order to comply with the historic guidelines. You simply have a smaller home and then you have a porch with that smaller home. So the only thing that actually changes is the square footage of the interior of the house.

In order to comply with the historic guidelines...
guidelines it doesn't state that you need a 1200-foot footprint for the exterior of the home. It doesn't say you need a 2,000-square-foot house or a 4,000-square-foot house. It simply says that porches and porticos are encouraged. Well, the design can include a porch without actually increasing the lot coverage. You simply make the home a little bit smaller.

So the historic district guidelines, it is possible -- it's not only possible, it's easy for the historic guidelines to be complied with without the variance. And that's the fallacy in the APC's conclusion of law. You don't need a variance to comply with the guidelines.

MAYOR WOJAHN: Ms. Ferguson, do we have the -- do we have on the record the historic property guidelines?

MS. FERGUSON: Well, it's part of the law, so you -- and I think they were quoted also in the decision, but the historic district requirements are part of the law that was
approved by Prince George's County for this area.

MAYOR WOJAHN: Okay. So the specific provisions -- if we'd like to see the specific provisions that Mr. Green is referring to --

MS. FERGUSON: Certainly.

MAYOR WOJAHN: -- are they --

MS. FERGUSON: It's part of the law.

MAYOR WOJAHN: Are they in the record or are they -- can we --

MS. FERGUSON: They're like any other part of the law. You can always look at them.

MAYOR WOJAHN: I mean, I'd like to actually see what he's talking about in terms of the guidelines.

MEMBER RIGG: May I ask, while we're looking for that, do you mind if I ask another question to Mr. Green?

MAYOR WOJAHN: Actually, I want to go back to the first question that you asked because I think there is -- I think Ms. Ferguson -- (Simultaneous speaking.)

MS. FERGUSON: I did have something to
say about that. Council Member Rigg is correct.

There is a reference in the record about the plans, the stormwater management plans for this property that Mr. Kidwell will be required to follow as the owner when construction occurs. That is something that is not part of the scope for the APC. That is handled by the County’s Department of Public Works and goes through DPIE in terms of getting the stormwater management plans. So that is not something that is part of the zoning aspect of this case.

And as you know, the powers that you are exercising right now are ones that you have received from the County through the state law. And that's where you get your criteria from, but that does not mean that you can interfere with something that the County has pretty much sole jurisdiction over at this point, which is the stormwater management.

MEMBER RIGG: That's helpful.

MS. FERGUSON: So I think that's the reason that the APC would not get into that area,
because they can inquire as to whether or not that's been dealt with. They were told that it has been dealt with through the County's offices, and that was the end of the inquiry. And frankly I'm not clear on how else under the law they could go any further than that.

MR. GREEN: If I may, I'd like to address that point that Ms. Ferguson just brought up. I disagree, that this body may put whatever conditions it requires on the grant of variance. And one of those conditions could be and should be, if you're going to grant the variance, that any water drainage must be the same as it is right now or less as far as water coming off of this property onto any adjacent property. And that very well may be a condition.

How that is accomplished -- that's a stormwater management issue that I think Ms. Ferguson is correct that could be dealt with at the permitting office, but in terms of granting the variance where runoff is a concern because the variance is requesting additional impervious
surfaces as part of the overall lot coverage, the condition can be and should be that any water drainage, any plans, it must be the same flow as is currently that is shed from that undeveloped piece of land, or less. And the permitting office for Prince George's County will see to it that that condition is met. But that is a condition that can be added to the grant of a variance. And that just has to do with the flow of the water.

And frankly, if that's the condition that the watershed from this property after development is done is exactly what it is right now or less, that's satisfies the problem that we have with the additional lot coverage, because right now this variance does not have that condition. It doesn't have any conditions. It simply yes, you can have the additional lot coverage.

MEMBER RIGG: If were to hypothetically assert such a condition, would the city be in any position to monitor or enforce
that?

MR. GREEN: The County would be for sure.

MEMBER RIGG: But this is --

MR. GREEN: I don't know what all the agreements --

MEMBER RIGG: -- this would be a City requirement.

MR. GREEN: I don't know what all your agreements are with the County in terms of code enforcement, but --

MEMBER RIGG: I'm looking at staff.

MAYOR WOJAHN: Yes, I think -- Ms. Ferguson, do you want to comment on that?

MS. FERGUSON: That -- those types of conditions are conditions that the County would place and the other County offices don't impose those variance -- the zoning review for these properties doesn't get into that because all they do is require that they -- there be a stormwater management concept plan and final plan, and that's handled by other County offices. That's
all that there is. That's a requirement of the law anyway, and generally speaking that's not something that a variance would get into. I've never seen a variance case deal with stormwater management in that way.

MEMBER RIGG: So a question for staff then. Do we have any reason to believe that the County requirements for stormwater management would be anything other than the attorney for the Exceptant is asserting; that is, that the stormwater from the location be no greater than, equal to or less than the stormwater runoff than under the current condition?

MS. FERGUSON: My understanding from this record is in fact that that would be required, and I think if you hear from Mr. Kidwell's architect who's here --

MEMBER RIGG: That's what the record seems to indicate. That's why I'm inquiring.

MS. FERGUSON: -- the testified about that previously.

MEMBER RIGG: Okay.
MS. FERGUSON: So that's something you can inquire into when they're presenting their case.

MAYOR WOJAHN: I have sort of a -- I think a more foundational question for staff here, and Ms. Ferguson, maybe you can help me, because I'm looking at the conclusions that the APC made regarding the three requirements. I don't see any particular reference to stormwater management with the exception of current stormwater management regulations be complied with. That wasn't necessarily -- at least with the possible exception of the third requirement, that was not a basis for their -- whether or not the stormwater management --

MS. FERGUSON: Right.

MAYOR WOJAHN: -- could be handled on site was not a basis for their conclusion.

MS. FERGUSON: No, they don't regulate that. It was presented to them, as you saw. And in terms of the third requirement, you know, the law says that the master plan includes any
Historic Preservation Plan. So we know that. So No. 3 is appropriately referencing the fact that it upholds the master plan because this historic district is part of that master plan. But the stormwater management was not the basis for this decision. There was -- that's not their --

within their purview.

MAYOR WOJAHN: And therefore not within our purview in considering this case, right?

MS. FERGUSON: That's my opinion as your lawyer, yes.

MAYOR WOJAHN: Yes, thank you.

MR. GREEN: My opinion is different. I think that you have the opportunity to put conditions on the variance, and I actually object to Ms. Ferguson's making statements such as "I never have seen." If we're limited to this record as you have limited me to this record, then we really shouldn't be talking about outside influences, which is exactly what just happened. So sticking with this record, the variance
doesn't have any conditions on it. That's one of the problems. It's one of the many problems.

In terms of the conclusions of law, this variance doesn't actually comply with the requirements of this City's Code in order to grant the variance in the first place.

And I believe you had some additional questions?

MEMBER RIGG: I did. I had one more question; I'm sorry, and then I'll yield the floor. I appreciate my colleague's forbearance and your forbearance, Mr. Green.

You mentioned a moment ago that you -- well, you asserted that the porch, that the builder, the Applicant could simply reduce the porch and thereby reduce the lot coverage. So I did some quick math on that. If the porch is 6 by 22, which on page 25 of the packet agenda in the record is 132 square feet, that reduces the total coverage to 1,988, which is about a 9 percent lot coverage variance. Is that -- is there something magical about a 9 percent lot
coverage variance versus the proposed 11 percent lot coverage variance that your client or you find less objectionable?

MR. GREEN: I think maybe I wasn't clear with my statement about the porch. I wasn't saying to reduce the porch. What I was saying is you reduce the entire home to encompass the porch, number one. I treat the porch and the garage as two separate pieces here. The garage isn't necessary. It doesn't comply with the requirements to have a variance granted in the first place.

And the basis that APC gave was to increase the parking. Well, in fact by putting the garage on you're actually decreasing the parking in all likelihood because the garage isn't big enough to accommodate a full-size vehicle if you put anything else in the garage. I lived in College Park for nearly my entire life until about seven years ago. I continue to have my office here. I am very familiar with the fact that very few people actually use the garage as
(Simultaneous speaking.)

MS. FERGUSON: Mr. Green, you're testifying again.

MAYOR WOJAHN: Pretty clearly outside of the record.

MS. FERGUSON: Sorry.

MR. GREEN: Common sense dictates that that is the actual fact.

MAYOR WOJAHN: Conditions in the rest of the City are not part of the record in this case. I appreciate you sticking to the record.

MEMBER RIGG: I have no further questions. Thank you.

MAYOR WOJAHN: Thank you, Mr. Rigg.

At this time I'll call Mr. Kidwell for the Applicant to present a case in support of the recommendation of the APC.

MR. KIDWELL: Yes, my name is Bob Kidwell. I'd like to start out by correcting your procedures a little bit.

MAYOR WOJAHN: Point of order.
MR. KIDWELL: The way it was supposed to work was that Mr. Green would talk and then I would talk and questions would come later.

I had prepared a whole script of what I was going to say, but based on what he has said, there's a lot of confusion that I hope I can clear up.

MAYOR WOJAHN: Okay. There's a point of order. Yes?

MEMBER RIGG: I believe there are two other persons of record present and I just wanted to make sure that we've explicitly given them the opportunity to --

MS. FERGUSON: What side are they on?

MEMBER RIGG: Okay.

MS. FERGUSON: What side are they on?

MEMBER RIGG: All right. Thank you. I think the record -- they're not interested in testifying at this time.

MS. FERGUSON: Okay.

MEMBER RIGG: Thanks.

PARTICIPANT: Proceed, Mr. Kidwell.
MR. KIDWELL: So I'm going to be totally off script and try to remember the key issues that have arisen and will try to address those.

There's been a lot of talk about the -- complying with the Historic District Guidelines. Well, the guidelines were something I think the city worked very hard to produce and there was a lot of effort that went into those. And they were finalized and approved about the time this project was getting underway. And the MOU that I signed with the City requires us to comply with those guidelines. So we're doing our best to do that.

MAYOR WOJAHN: Mr. Kidwell, I do have to ask you as well to please --

MR. KIDWELL: Okay.

MAYOR WOJAHN: -- stick to what's on the record.

MR. KIDWELL: It's going to be difficult, but I'll try.

MAYOR WOJAHN: I understand. I
appreciate it.

MR. KIDWELL: The guidelines do have an impact on the variance request. The guidelines call for houses to have porches and houses to have detached garages in the rear. And that directly impacts the lot coverage. Mr. Green was a little bit confused about what is included in the lot coverage. It is the total square footage of any structures that are built plus the square footage of the driveway, and it doesn't make any difference what the driveway is constructed of.

In this particular case we're showing a site plan that shows a home with a porch and a long driveway with a garage in the rear. If you add up the square footage of the house and porch, it comes to about -- and the garage, it comes to about a 30 percent lot coverage which would not require a variance. However, when you build a long driveway leading back to a garage in the rear, that adds about 12 percent to the lot coverage and thus we're required to get a
variance.

As has been pointed out, we're proposing that the driveway be constructed with porous pavers. You might not be familiar with that. These are not pavers that butt up against each other and make an almost impervious surface.

These pavers were what were used for Bob Swanson and Joan Carol Poor's house at 4707.

The paving stones are a quarter to half-inch apart. The crack between the pavers is filled with pea gravel and they all rest on a base of stone and gravel that is 12 to 18 inches deep. And a driveway constructed that way really constitutes an enormous stormwater management structure. Any water that falls on the driveway will rapidly percolate into the driveway and the stone and gravel underneath it. And any water that may be adjacent to that that flows onto the driveway will be managed as well.

Now there's been a lot of talk about the county's stormwater management requirements, and that's been one of my big challenges to
understand and cope with the new county and state requirements. And all four of the remaining lots in this project will be required to comply with all of the regulations.

Regulations essentially state that any water that comes off of a structure: a house, porch, garage, must be managed on the lot. And as Mr. Green has pointed out the way to do that is through dry wells, which is the common name for what are now called stormwater management structures. In effect, they are excavated pits that are filled with gravel and any downspouts or water that is flowing off the structures has to be directed into one of these stormwater management structures so that it can percolate into the ground and not leave the lot on which the structure is built.

This particular area -- I guess this is new information. I was going to say is built over a sand and gravel bed and the structures will work --

MEMBER RIGG: That's not --
MR. KIDWELL: -- exceptionally well.

MEMBER RIGG: Yes, that's not on the record then.

MR. KIDWELL: Yes, I'm sorry. At the time of the APC, the final plans for the stormwater management had not been created, but I can say that there will be a stormwater structure in the back to cover the back of the house and the roof of the garage and one in the front to cover the -- any stormwater that comes off the front of the structure. The driveway will be -- even though it counts towards lot coverage, the stormwater management will be done by the driveway given the way it's constructed.

Another critical part of the county requirements is what's called a fine grading plan, and in this case -- it's a very detailed document, and basically from the entrance to the garage to the street, Howard Lane, will all be graded towards the street, which will be an improvement over the way the lot currently sits.

Unimproved it appears flat, but it actually
gradually slopes towards the back towards Ms. Dunn's property and the Penn Marva lot.

So when we're finished, we will actually be improving the stormwater management for the lot. Less water will be able to flow onto a neighbor's lot. Any of that water would just be from the grass area in the back yard. And given the infiltration rate for this area it would be highly unusual for any water flow to occur.

MAYOR WOJAHN: Ms. Kidwell, I think the issue of -- Mr. Rigg is raising whether that's on the record. I believe the issue of grading and slope of the lot was discussed on the record, at least.

MS. FERGUSON: I remember the single -- the fine grading plan was referenced.

MR. KIDWELL: It's part of the stormwater management.

MEMBER RIGG: Perhaps that is so.

MR. KIDWELL: David Kacar is here. He's the architect for the project.
David, have I said anything that's wrong or have I left anything out that you're --

MR. KACAR: I just have two --

MAYOR WOJAHN: Please come to the podium. Thank you.

MR. KACAR: Good evening. David Kacar, Classic Design and Build. I'm a registered architect in the State of Maryland, and I just have two important points to make regarding support of the staff report in the record.

The first one is that the house built on 4705 will require a historic area work permit, and that entails going before a local historic board as well as going to a very formal county approval process. And working with the county staff we will comply with the historic guidelines. And part of those guidelines requires that a garage is -- if you have a garage you cannot have a garage in the front, you can't have it on the side, it must be in the rear of the property, if you build a garage which
requires -- and that's a very historic thing that makes the houses look historic. Some of the older houses in College Park have -- I'm getting off the record, but have garages in the back. That's part of the historic guidelines.

So with that requirement we had to get a variance. We are required to get a variance. And that's -- that dictates that we got the variance, that we get the variance. That's the first important part. And then there will be historic area work permit, a formal county-regulated permit that we comply with those guidelines.

The second important part I'd like to make is that the -- that we will comply with the stormwater management noted in the staff report and the record and that all 42 percent will be in compliance with the guidelines. That's all 42 percent of the driveway, the garage, the house, the porch. That is the 30 percent plus the 12 percent more will be regulated and complied with.

Those are my two points. If you have
any questions, be glad to answer.

MAYOR WOJAHN: Thank you, Mr. Kacar and Ms. Kidwell.

Are there any questions? Mr. Rigg?

MEMBER RIGG: Mr. Kidwell, Mr. Kacar, a question. The Exceptant asserted that it was an economic choice or a business decision made on behalf of you, Ms. Kidwell, to choose the variance of the size that you were choosing and that the request for a variance would not be triggered if the footprint of the house were smaller and/or there were not garage with a long driveway. Can you respond to that?

MR. KIDWELL: Well, we're trying to build a new owner-occupied neighborhood in Old Town and we have to build houses that would be attractive to homeowners. And any buyer wants a house with certain features. Porches add to the desirability of the house.

MAYOR WOJAHN: I do think we're going --

MR. KIDWELL: In reality --
MAYOR WOJAHN: Mr. Kidwell, I do think we're going a little bit beyond the record here. What is the -- you're trying to --

MEMBER RIGG: The question is, was there a requirement that triggered -- a requirement of the historic -- sorry, let me get the term right -- the historic district guideline that triggered the lot coverage variance that you requested?

MR. KIDWELL: The rear garage and long driveway creates the biggest square footage requirement for a variance. Porches, as you pointed out, add visual appeal, but the square footage is not that great.

Let me talk about what would happen if you deny the variance. The logical response would be to move the -- cut out the driveway, which as we intend to build doesn't add to the stormwater problem at all. It manages the stormwater quite well. And the driveway would be shortened and we'd have a situation where cars are parking in the front of the house. If you
drive around this block, the most unattractive portion of this neighborhood is all the cars parked in the front yards of these houses.

MAYOR WOJAHN: I'm fairly certain that that's beyond the record, Mr. Kidwell.

MR. KIDWELL: True, true.

MR. KACAR: I have another point.

MR. KIDWELL: Oh, David has a --

MR. KACAR: I'd just to try to answer your question directly.

MEMBER RIGG: Thank you.

MR. KACAR: The houses that we're proposing are I would say, I would characterize them as kind of the minimum size house. It's a -- they are modestly sized houses.

MEMBER RIGG: Can you remind me of the square footage, the --

(Simultaneous speaking.)

MR. KACAR: Like a footprint of about 1,000 square feet which will accommodate basically an open plan house. That's living, dining, kitchen and then maybe one other room and
a powder room on the -- one or two other rooms and a powder room on the first floor. So these are modest. These are relatively modest houses by other standards, but they are modest houses, a total footprint around 2,000 to 2,200 total square footage. So these are modest and they're not pushing it to the maximum. They're modest homes. There's a modest garage. These are not -- it's really the minimum that we need to be able to --

(Simultaneous speaking.)

MEMBER RIGG: -- compared to my house, but I appreciate that.

(Laughter.)

MEMBER RIGG: This is definitely --

(Laughter.)

PARTICIPANT: They're comfortable homes.

MEMBER RIGG: That's not on the record. I withdraw.

MAYOR WOJAHN: Okay. Additional questions? Dr. Kabir?
MEMBER KABIR: Yes, thank you. So kind of piggybacking on my colleague's question, and I hope I stay within the scope of the record.

I understand you are trying to stay within the guidelines of the historic district and that's the reason you are building the porch and the driveway probably. But what I still am not quite clear, could you still maintain all these criteria of the historic district by reducing, or rather considering to reduce the footprint of the building you're trying to build?

MR. KACAR: Well, you couldn't do a garage, you couldn't do a driveway.

MEMBER KABIR: No, I'm talking about the footprint of the building.

MR. KACAR: Of the house?

MEMBER KABIR: House.

MR. KACAR: Well, you'd have to eliminate 600 or more square feet. You wouldn't have any footprint left. You'd have 400 square feet to do a house. You couldn't do anything in that. You couldn't even make one -- you'd have
one room, two rooms.

MEMBER KABIR: You probably --

MR. KACAR: You could not make a house.

MEMBER KABIR: You probably didn't need a long driveway. Could probably reduce.

MR. KACAR: You could do a shorter driveway, sure. So even if it's 400 less, a 600-square-foot footprint there would be un-sellable.

MR. KIDWELL: The shorter driveway is the response that would occur and it's self-defeating because all it does is remove a stormwater management structure that improves the management of the stormwater on the lot and moves the cars to the front. It really would be self-defeating.

MAYOR WOJAHN: Additional questions?

(No response.)

MAYOR WOJAHN: Okay. Is there anybody else here that's a party of record that would like to testify in support of the recommendation of the APC? I should have asked that too for the
against the recommendation of the APC. Is there anybody that would like to speak on either side who's a party of record?

(No response.)

MAYOR WOJAHN: Okay. All right. Well, then in that case, thank you, Mr. Kidwell.

And I'll invite up the Applicant, Mr. Green, on behalf of his attorney -- or his client, rather, for rebuttal.

MR. GREEN: I'll try to be brief. In connection with the historic guidelines what the guidelines state is that the design should blend with the surrounding properties. This particular design with the porch and the garage, as I stated before, it doesn't actually blend with what we have on College Avenue and what we have on Norwich, which are the two surrounding blocks other than Howard Lane that was created.

The garage itself that is proposed here, the garage is not porous. The paver driveway absolutely is. If you look at pages 8 and 9 in the staff report, which you have
actually page 8 up there with the -- with all the dimensions, the garage and the porch together are 372 square feet. If you were to remove those two items, you still have a very long driveway, however, the lot coverage without the covered porch and without the detached garage then is at 34 percent, only 4 percent over the 30 percent that is required under R-55.

As I stated a moment ago, the garage and that covered porch, those two items are not porous. So that's the concern that we have. It's just simply that you're increasing the lot size -- I'm sorry, the lot coverage. You're increasing the coverage with a non-porous structure.

In terms of the size of this house, the footprint is 1,200 square feet, however, the -- as I understand it, it's a two-story home with a basement. I mean, that's what it says. Well, that's three living floors. That's actually 3,600 square feet of living space, if you include a basement, which is what the plans in the record
state. So you're not talking about a small ranch-style house like you have on Norwich. You're talking about a 3,600-square-foot structure.

And what we're talking about is removing the covered porch and the detached garage or simply including the covered porch as part of the 1,200-foot footprint, which is not how it's made here. What would that do in terms of the overall 3,600 square feet? It might reduce it by about 300 square feet. That's ultimately how it could happen. Frankly, the design -- there are so many different options for designs where it could be incorporated that you really don't lose very much square footage at all, but the variance that's granted, that doesn't even encourage a design that would have the porch incorporated into that 1,200 square foot. In fact, the variances that's granted encourages the opposite. It says use as much property up to the 12 percent variance that you can.

So what I'm asking on behalf of Ms.
Dunn is that you either don't grant the variance because it's actually not necessary under the circumstances, or that you do grant it that you modify it. What I just proposed to you would be a 4 percent variance, and you would still have almost that entire driveway, which would cover the issue that has been raised about parking.

I don't have the exact number there from the curb back to the beginning of the garage. It looks like it's about 70 -- is it 10 by 60? I can't -- I don't see that it says 60, but that -- oh, I see it. Okay. Thank you. But, so, you've got 60 feet worth of space to park. That's the reality of what you would have without the garage, without that area.

Or if you didn't have the garage and you continued the driveway for another 20 feet, you've got another car there. But you don't have that non-porous surface, which is what the garage creates. If you have a porous paver drive that goes a little further, again that's one of those conditions that you all can put on this and that
alleviates the issue of the runoff that is Ms. Dunn's main concern here.

But at the end of the day this variance simply isn't necessary. It's not necessary to abide by the MOU, at least the portions that we have in the record and it's not necessary to abide by the historic guidelines. And without it you've still got 3,600 square feet of livable space.

If there aren't any other questions, that concludes my argument.

MAYOR WOJAHN: Any further questions for Mr. Green?

(No response.)

MAYOR WOJAHN: Okay. Thank you very much.

Is there anybody else at this time who's a party of record that would to speak in rebuttal?

(No response.)

MAYOR WOJAHN: All right. Seeing none, Ms. Ferguson?
MS. FERGUSON: I think that Council had asked for the more specific historic district requirements.

MAYOR WOJAHN: Yes, do we have --

MS. FERGUSON: Were you able to pull the book up?

MS. BADER: No, but it's in my report. I put in the relevant section.

MS. FERGUSON: Well, Council's asked for -- maybe it's missed or they -- you want it pointed out in the record, but maybe they want to see the entire book. I don't know.

MS. BADER: The entire book? I can run downstairs and --

MAYOR WOJAHN: I think just I was interested in particular related -- in the provisions related that are relevant here, not necessarily the whole book. But I know there are some listed in the staff report, I think. Would you point out to me where that is exactly?

MS. BADER: Yes, I mean, I summarized it right here. It's quoted directly. Regarding
driveways and garages, quote, "New construction should conform" --

MEMBER BRENNAN: Ms. Bader, I think you need a microphone.

MS. BADER: It was in the staff report, but I also quoted it here in the key findings regarding driveways and garages. And then this is directly from the guidelines. It says, "New construction should conform" -- and then it was something that wasn't relevant -- "by providing narrow driveways and freestanding garages to the side and rear of the primary dwelling."

And then the second one regarding porches, "New construction will blend better with the historic district if porches or porticos are incorporated in the design."

But one thing that I want to point out, I mean, it was -- it's in the application that there are seven lots that Ms. Kidwell was developing. Three have already been built. They have been built with the detached garage and with
the porch and it went through the Historic Preservation Commission and went through the Local Advisory Commission.

And the Local Advisory Commission wanted it with the porch and with the detached garage. They said that that's what defines the historic character they want, not Norwich. It's not -- you don't just randomly pick out some houses and say that's the historic character. The historic character is all of Old Town College Park Historic District, not just three houses.

So what Mr. Kidwell was doing was creating an in-town historic area and the LAC looked at what that -- they wanted that image to be. We're not just talking about one individual house. We're talking about seven lots and that this is going to establish its own little historic area-kind of thing. I mean, it's neoclassical, but --

MS. FERGUSON: I have a question, Ms. Bader. Are the houses on Norwich contributing properties in this district?
MS. BADER: No, they're not contributing. So they're not trying to imitate those houses.

MS. FERGUSON: The ones on Norwich that did not have the garages are not being required to do anything under the historic district requirements?

MS. BADER: That's correct.

MAYOR WOJAHN: Thanks.

MEMBER KABIR: Can I ask a question of staff?

MAYOR WOJAHN: Dr. Kabir?

MEMBER KABIR: So the three houses that's been built are -- do they also have 12 percent lot coverage variance?

MS. BADER: Yes, one has 13 percent; one has 11 percent. And then one decided that he does not want a garage, so that met it. The part that's causing him to go over is that 600-square-foot garage. I mean, driveway. Driveway.

MEMBER RIGG: In fact, if I do the math right, if you were to exclude the 600-
square-foot driveway, he'd be right around 30 percent. There wouldn't be a variance required.

MS. BADER: Correct. He's over by 594 square feet.

MEMBER RIGG: Right. And so this is -- I mean, this is something; and I know that one, two, three -- am I missing more -- of us have served on the APC, that we've grappled with the APC level a lot is when homeowners typically choose to do the right thing and use pervious surfaces for things like driveways, it still gets counted against the lot coverage regardless of -- and the stated purpose of lot coverage is to control sort of stormwater runoff, but that's not -- that modification is not even made by the County. So anyway, I'm just raising that point as something we've grappled with a lot.

MAYOR WOJAHN: All right. At this point I think we're done with the testimony part of the hearing, and so now we can to -- unless there's any further questions?

MS. SCHUM: Rebuttal for the other
side?

MAYOR WOJAHN: Oh, we do rebuttal from the other side as well?

MS. SCHUM: Yes.

MAYOR WOJAHN: Sorry. Thank you.

Mr. Kidwell?

MR. KIDWELL: I'll try to be quick.

We're not trying to blend in with houses on Norwich or anywhere else. We're trying to comply with the historic district requirements. There's no requirement that we build houses that mimic houses on Norwich or anywhere else.

The driveway counts against lot coverage. Mr. Green suggested that if we removed the garage and extend the driveway to provide more parking that wouldn't require a variance, but actually it would create the same situation. We'd need exactly the same variance because the driveway counts.

And we've committed to deal with all the water that flows off of the structures, so the fact that the garage is -- has an impervious
roof doesn't add to any stormwater problem that may occur on any adjacent lots. It will be managed on the lot at 4705.

Mr. Kacar, do you have any rebuttal?

MR. KACAR: Just one clarification on what Mr. Kidwell said. He said that -- not that we committed to, but it is required that we comply with the stormwater management to get a county permit. Thank you.

Mr. Kidwell: It's an arduous task to get a county permit and we're complying with it. Any questions?

MAYOR WOJAHN: Questions for Mr. Kidwell or Mr. Kacar?

(No response.)

MAYOR WOJAHN: All right. Seeing none, thank you. And at that -- that means that at this time we are done with the testimony portion of the hearing, and we'll move onto discussion and open it up to the Council to bring forth a proposal on what -- how we should address the APC's recommendation.
Ms. Kennedy?

MEMBER KENNEDY: Did I miss -- are we voting on this this week? Next week? How is -- or not voting on it? Are we --

(Simultaneous speaking.)

MAYOR WOJAHN: You can have some discussion tonight and then go forward with it. I think we would like to have a recommendation of the Council on how to proceed tonight and then we will -- we would typically have a resolution that we vote on at a --

MEMBER KENNEDY: Or we try to go into special session to --

MEMBER BRENNAN: Oh, we should vote on it tonight, I think. That was the question that I asked on --

(Simultaneous speaking.)

MS. SCHUM: You would actually vote on it tonight at the conclusion of the hearing. You can accept the recommendation of the APC, deny it, modify it or remand the case back to the APC for further testimony. But you would take action
tonight. It would be ratified when you approve the formal written resolution.

MAYOR WOJAHN: Right, that's what I meant. And the formal written resolution comes --

MS. SCHUM: Comes to a regular meeting.

MAYOR WOJAHN: Right, which will be next week. So we do --

MEMBER KENNEDY: Because we don't have to --

MAYOR WOJAHN: You will decide tonight whether or not to make -- whether or not to proceed with accepting the APC's recommendation, remanding it back for further discussion or reversing or modifying the recommendation.

Ms. Kennedy?

MEMBER KENNEDY: Well, I have my thoughts, but I'll let those in the district talk first, I guess.

MAYOR WOJAHN: Mr. Rigg?

MEMBER RIGG: I guess then since I've been fat-fingered to say something, I guess I'll say something.
(Laughter.)

MEMBER RIGG: So this is a new development in the heart of District 3. It accomplishes a broader public policy purpose for the City of College Park and that is it establishes for a 10-year period an owner-occupied enclave of new construction that complies with historic district architectural standards.

Historic district architectural standards are something that -- and the features of historic districts even if they aren't in the standards are things that the APC has grappled with on many different occasions. In fact, virtually everybody in Calvert Hills has an existing condition that's over the lot coverage for the very reason of having long driveways.

MAYOR WOJAHN: I do have to also remind Council that we do have to stick to the record.

MEMBER RIGG: Oh, I thought we were making -- okay. Fine then.
MAYOR WOJAHN: Any factual issues that are brought up have to be on the record.

MEMBER RIGG: Okay. I'm sorry. I'm still unclear on the process here.

MAYOR WOJAHN: I know. I hate being such a stickler --

MEMBER RIGG: No, no, no. No, that's fine.

MAYOR WOJAHN: -- on this, but it is required.

MEMBER RIGG: I don't mind at all. I just am uncertain exactly how to proceed given that constraint.

So I guess I find compelling the APC's argument that concludes that there's an extraordinary situations associated with the property because of compliance with the Old Town College Park Historic District Guidelines.

I find compelling the Applicant's statements on the record both tonight and on page 33 of the Council packet, 33 and 34 of the Council packet that there's an extensive
stormwater management requirement.

I find compelling -- I also find compelling however the Exceptant that the -- Ms. Dunn's argument that stormwater management is an abiding issue in this area. I know that from personal experience. However, we also know from personal experience, and as is established in the record, that DPIE is pretty rigid with this stuff and that the amount of stormwater management that has to go into engineering and new development in particular in this area and other areas of the county is fairly rigid.

So I don't see in my judgment that the City Council has -- well, I don't believe that I would be able to support an action other than accepting the APC's unanimous recommendation. And I would, if a motion is in order, I would like to offer a motion.

MAYOR WOJAHN: All right. Thank you.

MEMBER RIGG: The motion would be that the City Council accept the --

PARTICIPANT: Do we go to special
session?

MAYOR WOJAHN: No, we don't need to go
to a special session when it's part of a hearing.

MEMBER RIGG: That the APC -- that the City -- that we accept the APC's finding as articulated on page 16 of the Council packet that an extraordinary situation is associated with the property in Sections 2.1, 2.2, and 2.3 in the manner stated therein and that the City Council accept the APC -- or accept the variance.

MEMBER DAY: Second.

MAYOR WOJAHN: Thank you, Mr. Rigg. We have a second by Mr. Day.

Further discussion? Mr. Rigg, do you have any further discussion at this time?

MEMBER RIGG: No, sir.

MAYOR WOJAHN: Okay. Then we need to go to the Council for further discussion.

Okay. Seeing none, I'll call the question. All those in favor of the motion, please signify by saying aye?

(Chorus of ayes.)
MAYOR WOJAHN: Opposed?
(No response.)

MAYOR WOJAHN: Abstentions?
(No response.)

MAYOR WOJAHN: Motion carries. Thank you very much. I appreciate your going through the process and please if you have any questions, we'll be working on a formal resolution that will be brought forward at the regular meeting next week, and that should resolve the issue.

MEMBER RIGG: Do we need a -- do we have a second resolution?

MS. FERGUSON: Yes.

MEMBER RIGG: I just don't know what the process is.

MAYOR WOJAHN: All right. Then we'll move on and our next item on the agenda is a follow-up discussion of a program for surveillance cameras on private property.

(Whereupon, the above-entitled matter went off the record at 9:03 p.m.)
19-R-01
CPV-2018-12
9630 Narragansett Parkway
### AGENDA ITEM NUMBER 19-R-01

**Prepared By:** Miriam Bader, Senior Planner  
**Presented By:** Miriam Bader  
**Meeting Date:** January 15, 2019  
**Consent Agenda:** Yes

**Originating Department:** Planning, Community and Economic Development

**Action Requested:** Approval of a resolution to approve the APC’s recommendation for CPV-2018-12, 9630 Narragansett Parkway.

**Strategic Plan Goal:** Goal #3: High Quality Development and Reinvestment

**Background/Justification:**
On December 6, 2018, the College Park Advisory Planning Commission (APC) discussed the applicant’s (Siratchat Onnuch) proposal to replace and enlarge a covered front porch and replace and enlarge a concrete driveway. The APC recommended approval for a 6-foot front yard setback variance and 1% lot coverage variance for a covered front porch with conditions to obtain all County and City permits, and denial of the 12% lot coverage variance for expansion of the driveway.

The Appeal period expires January 12, 2019.

**Fiscal Impact:** None

**Council Options:**
1. Approval of 19-R-01

**Staff Recommendation:** N/A

**Recommended Motion:**
I move that 19-R-01 be approved.

**Attachment:**
19-R-01
NOTICE OF FINAL DECISION
of the
MAYOR AND COUNCIL
of the
CITY OF COLLEGE PARK

RE: Case No. CPV-2018-12 Name: Siratchat Onnuch

Address: 9630 Narragansett Parkway, College Park, MD 20740

Enclosed herewith is a copy of the Resolution setting forth the action taken by the Mayor and Council of the City of College Park in this case on the following date:


CERTIFICATE OF SERVICE

This is to certify that on January 17, 2019 the attached Resolution was mailed, postage prepaid, to all persons of record.

NOTICE

Any person of record may appeal the Mayor and Council decision within thirty (30) days to the Circuit Court of Prince George's County, 14735 Main Street, Upper Marlboro, MD 20772. Contact the Circuit Court for information on the appeal process at (301) 952-3655.

Janeen S. Miller, CMC
City Clerk

Copies to: Advisory Planning Commission
City Attorney
Applicant
Parties of Record
PG Co. DER, Permits & Review Section
M-NCPBC, Development Review Division
City Public Services Department
RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK
ADOPTING THE RECOMMENDATION OF THE ADVISORY PLANNING
COMMISSION REGARDING VARIANCE APPLICATION NUMBER CPV-2018-12, 9630
NARRAGANSETT PARKWAY, COLLEGE PARK, MARYLAND, RECOMMENDING
APPROVAL OF A 6-FOOT FRONT YARD SETBACK VARIANCE FROM THE PRINCE
GEORGE'S COUNTY ZONING ORDINANCE SEC. 27-442 (C) TABLE II WITH
CONDITIONS, AND A LOT COVERAGE OF 1% FOR THE FRONT PORCH AND
DENIAL OF THE REMAINDER OF THE LOT COVERAGE VARIANCE REQUEST
FROM SEC. 27-442 (E) TABLE IV.

WHEREAS, the City of College Park ("City") has, pursuant to §190-1 et seq. of the Code of
the City of College Park ("City Code"), and in accordance with Sec. 27-924 of
the Prince George's County Zoning Ordinance (hereinafter, "Zoning
Ordinance"), enacted procedural regulations governing any or all of the
following: departures from design and landscaping standards, parking and
loading standards, sign design standards, and variances for lot coverage, setback,
and similar requirements for land within the corporate boundaries of the City,
alternative compliance from landscaping requirements, certification, revocation,
and revision of nonconforming uses, and minor changes to approved special
exceptions; and

WHEREAS, the City is authorized by § 190-1 et seq. to grant an application for a variance
where, by reason of exceptional narrowness, shallowness, shape, topography, or
other extraordinary situation or condition of the specific parcel of property, the
strict application of the Zoning Ordinance would result in peculiar and unusual
practical difficulties or an exceptional or undue hardship upon the owner of the
property, and a variance can be granted without substantial impairment of the
intent, purpose and integrity of the General Plan or Master Plan; and

WHEREAS, the Advisory Planning Commission ("APC") is authorized by §190-3 of the City
Code to hear requests for variances from the terms of the Zoning Ordinance with
respect to lot size, setback, and similar requirements including variances from
Sec. 27-442(e) Table IV and Sec. 27-442 (c) Table II, and to make
recommendations to the City Council in connection therewith; and

WHEREAS, Sec. 27-442 (e) Table IV of the Zoning Ordinance specifies a minimum front
yard setback of 25-feet in the R-55 zone; and

WHEREAS, Sec. 27-442 (c) Table II of the Zoning Ordinance stipulates a maximum lot
coverage of 30 percent in the R-55 zone; and

WHEREAS, on September 27, 2018, Siratchat Onnuch ("Applicant"), submitted an
application for a 13% lot coverage variance and a 6-foot front yard setback
variance to replace and enlarge a covered front porch and repair and expand a
cement driveway at 9630 Narragansett Parkway, College Park, Maryland
("Property"); and
WHEREAS, on December 6, 2018, the APC conducted a hearing on the merits of the variance, at which time the APC heard testimony and accepted evidence, including the staff report, exhibits, and the staff presentation with respect to whether the subject application meets the standards for granting a variance set forth in §190-4 of the City Code.

WHEREAS, based upon the evidence and testimony presented, the APC voted 6-0-0 to recommend the approval of a 6-foot front yard setback variance from the Zoning Ordinance sec. 27-442 (c) Table II with conditions, and a lot coverage of 1% for the front porch, and denial of the remainder of the lot coverage variance; and

WHEREAS, the Mayor and Council are authorized by §190-6 of the City Code to accept, deny or modify the recommendation of the APC or return the variance application to the Commission to take further testimony or reconsider its recommendation with respect to variance requests; and

WHEREAS, the Mayor and Council have reviewed the recommendation of the APC as to the application for a variance and in particular have reviewed the APC’s findings of fact and conclusions of law; and

WHEREAS, no exceptions have been filed.

NOW THEREFORE, the Mayor and Council are in agreement with and hereby adopt the findings of fact and conclusions of law of the APC with regard to CPV-2018-12 for a 6-foot front yard setback variance and a 1% lot coverage variance for a covered porch.

Section 1 Findings of Fact

1.1 The Property is odd-shaped with an area of 5,890 square feet. The front and side property lines are at 90-degree angles to one another, but the rear property line is at an acute and obtuse angle with the side property lines, respectively, creating an unusual shape. The lot width averages to 72.58 feet and the length averages to 85 feet.

1.2 The Property is improved with a two-story brick house with a 5’ by 11’ front porch, a 10’ by 12’ shed and a 11.7’by 31’ concrete driveway that can accommodate two cars.

1.3 The existing front porch encroaches into the front yard by 5 feet.

1.4 The Applicant proposes to increase the size of the existing front porch to 6’ by 34.4’ to improve its functionality and appearance, which will exceed lot coverage by 1% and encroach into the front yard setback by an additional one foot.

1.5 The Applicant proposes to increase the size of the existing driveway to accommodate two more cars which will increase lot coverage by 12%.

1.6 The house and immediate neighborhood are zoned R-55, single-family residential.
1.7 There is grass that separates the driveway from the lead walk to the house.

1.8 According to SDAT records, the original house (884 square feet, 1-story, frame) was built in 1952 and razed on January 1, 2007. Current SDAT records do not indicate any improvements on the lot. A new house was constructed in 2007 (according to aerial photography) and is 1,511 square feet. There is a County permit for fire damage repairs issued on November 17, 2006 and a County permit for a 12 x 36 addition issued on December 12, 2005, both issued to Carlos Ruiz, the Property owner at the time. No raze permit or building permit for a new house exist in the County or City files.

Section 2 Conclusions of Law

For the front yard setback:

2.1 The Property has an exceptional shape in that the rear lot line is at a unique (non-90 degree) angle which impacts the placement of the house on the lot.

2.2 Denial of the setback variance will cause an undue hardship upon the Applicant by preventing the construction of a reasonably sized, functional, front porch (6’ by 34.4’). The current porch (5’ by 11’) already encroaches into the front yard setback by 5 feet.

2.3 The failure to obtain all required permits should be rectified.

2.4 Granting the front yard setback variance will not substantially impair the intent, purpose and integrity of any applicable plans since the existing porch already encroaches by 5’. The proposed new construction will improve the aesthetics of the house and the neighborhood.

For the lot coverage variance:

2.5 Denial of the variance for the expanded driveway will not cause an undue hardship for the Applicant. The driveway already provides two off street parking spaces.

2.5 Granting a lot coverage variance of 752 square feet or 12% is significant and does impair the intent, purpose and integrity of applicable plans.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the City of College Park to approve CPV-2018-12 for a 6-foot front yard setback variance and 1% lot coverage variance for a covered front porch with the following conditions:

1. All required building permits and any required Use and Occupancy Permit are obtained from Prince George’s County.

2. All required building permits and any required Occupancy permit are obtained from the City of College Park, if needed.

And

Denial of a lot coverage variance of 12% for expansion of a driveway.
ADOPTED, by the Mayor and Council of the City of College Park at a regular meeting on the 15th day of January, 2019.

CITY OF COLLEGE PARK

Janeen S. Miller, CMC
City Clerk

Patrick L. Wojahn, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Suellen M. Ferguson
City Attorney
<table>
<thead>
<tr>
<th><strong>Originating Department:</strong></th>
<th>Planning, Community and Economic Development</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Action Requested:</strong></td>
<td>Approval of a resolution to approve the APC’s recommendation for CEO-2018-03, 7018 Wake Forest Drive.</td>
</tr>
<tr>
<td><strong>Strategic Plan Goal:</strong></td>
<td>Goal #3: High Quality Development and Reinvestment</td>
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**Background/Justification:**
On December 6, 2018, the College Park Advisory Planning Commission (APC) discussed the applicants’ (Matthew and Dana Sawyer) proposal to replace a recently removed 42-inch chain-link fence with a 4-foot high picket fence. The APC unanimously recommended approval of the requested 1-foot front-yard fence height variance with the condition that the fence comply with the County Code, Sec. 27-421. Corner lot obstructions.

The Appeal period expires January 12, 2019.

**Fiscal Impact:**
None

**Council Options:**
1. Approval of 19-R-02

**Staff Recommendation:**
N/A

**Recommended Motion:**
*I move that 19-R-02 be approved.*

**Attachment:**
19-R-02
NOTICE OF FINAL DECISION
of the
MAYOR AND COUNCIL
of the
CITY OF COLLEGE PARK

RE: Case No. CEO-2018-03 Name: Matthew and Dana Sawyer
Address: 7018 Wake Forest Drive, College Park, MD 20740

Enclosed herewith is a copy of the Resolution setting forth the action taken by the Mayor and Council of the City of College Park in this case on the following date: January 15, 2019.

CERTIFICATE OF SERVICE

This is to certify that on January 17, 2019 the attached Resolution was mailed, postage prepaid, to all persons of record.

NOTICE

Any person of record may appeal the Mayor and Council decision within thirty (30) days to the Circuit Court of Prince George's County, 14735 Main Street, Upper Marlboro, MD 20772. Contact the Circuit Court for information on the appeal process at (301) 952-3655.

Janeen S. Miller, CMC
City Clerk

Copies to:
Advisory Planning Commission
City Attorney
Applicant
Parties of Record

PG Co. DER, Permits & Review Section
M-NCPPC, Development Review Division
City Public Services Department
RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK
ADOPTING THE RECOMMENDATION OF THE ADVISORY PLANNING COMMISSION
REGARDING VARIANCE APPLICATION NUMBER CEO-2018-03, 7018 WAKE FOREST
DRIVE, COLLEGE PARK, MARYLAND, RECOMMENDING APPROVAL OF AN APPEAL
FROM CITY CODE §87-23 C. TO PERMIT THE CONSTRUCTION OF A FENCE MORE
THAN 3-FEET HIGH IN THE FRONT YARD

WHEREAS, the City, in accordance with §25-303 of the Land Use Article, Annotated Code
of Maryland, has adopted §87-23, “Fences”, of the City Code, and established
 certain restrictions on the construction and reconstruction of fences on
residential properties, including a height restriction on front yard fences; and

WHEREAS, pursuant to §15-19 of the Code of the City of College Park (“City Code”), the
Advisory Planning Commission (“APC”) is authorized to hear appeals of the
provisions of Chapter 87, Building Construction, of the City Code; and

WHEREAS, the City is authorized by §87K to grant a variance where by reason of an
extraordinary situation or condition, the strict application of the Fence
Ordinance would result in peculiar and unusual practical difficulty to or an
exceptional or undue hardship upon the owner of the property; and a variance
can be granted without substantial impairment of the intent, purpose and
integrity of the Fence Ordinance; and where, if applicable, the variance is
consistent with the Design Guidelines adopted for the locally designated
Historic District, and the fence for which a variance is requested incorporates
openness and visibility as much as is practicable, provided that the fence shall
not be constructed of chain link unless the material is consistent with the
surrounding neighborhood; and

WHEREAS, on October 11, 2018, Matthew and Dana Sawyer (“Applicants”), submitted an
appeal from provisions §87-23 C. to replace a recently removed 42-inch chain-
link fence with a 4-foot high fence in the front yard on their property located at
7018 Wake Forest Drive, College Park, Maryland (“Property”); and

WHEREAS, on December 6, 2018, the APC conducted a hearing on the merits of the
variance and on the dimensions, placement and materials, at which time the
APC heard testimony and accepted evidence, including the staff report, exhibits,
and the staff presentation with respect to whether the subject application meets
the standards for granting an appeal set forth in §87K of the City Code.

WHEREAS, based upon the evidence and testimony presented, the APC voted 6-0-0 to
recommend that the variance be approved and that the submitted details for the
dimensions, placement and materials of the retaining wall be permitted; and

WHEREAS, the Mayor and Council are authorized by §87-19 of the City Code to accept,
deny or modify the recommendation of the APC or return the variance
application to the Commission to take further testimony or reconsider its
recommendation with respect to variance requests and are authorized by City
Code §87-19(d) to review the approval of the dimensions, placement and
materials of retaining walls; and
WHEREAS, the Mayor and Council have reviewed the recommendation of the APC as to the application for a variance and the dimensions, placement and materials of the retaining wall and in particular have reviewed the APC’s findings of fact and conclusions of law; and

WHEREAS, no exceptions have been filed.

NOW THEREFORE, the Mayor and Council are in agreement with and hereby adopt the findings of fact and conclusions of law of the APC with regard to CEO-2018-03 for a 1-foot front-yard fence height variance.

Section 1 Findings of Fact

1.1 The Property is a squarish-shape corner through lot with street frontage on three sides of the property creating three “front yards.”

1.2 The Property contains 12,000 square feet and is improved with a 2.5-story, multi-family brick structure that was built in 1940, a detached garage, and shed.

1.3 There are two 6-foot high stockade fences facing Wake Forest Drive that will be replaced in-kind. This work is permitted without a variance since they are not considered front yard fences due to the location setback behind the front plane of the house.

1.4 A 42-inch chain-link fence along the Guilford Road frontage and part of the Fordham Lane frontage was recently removed.

1.5 The surrounding properties are a mixture of R-18 and R-55.

1.6 The City fence ordinance permits a 3-foot high fence in the front yard.

1.7 The Property is located on a heavily trafficked and exposed street corner (Guilford Road and Wake Forest Drive).

1.8 The one-foot fence height variance is needed for the fence along Guilford Road and for part of the fence along Fordham Lane.

1.9 The proposed white picket fence will incorporate openness.

1.10 The increase in height from 3-feet to 4-feet is necessary to safeguard the owners’ toddler and dog.

1.11 Sec. 27-240 of the County Code does not apply since the County only regulates fences that exceed 4-feet in height.

Section 2 Conclusions of Law

2.1 An extraordinary condition exists in that the Property is a corner through lot with street frontages on three sides creating three “front” yards and is part of a heavily trafficked and exposed street corner (Guilford Road and Wake Forest Drive).
2.2 Denial will result in an undue hardship by preventing the Property owner from adequately safeguarding their child and dog on the heavily trafficked and exposed street corner.

2.3 Granting the variance will not impair the intent, purpose or integrity of the Fence Ordinance. It is consistent with the intent of the fence ordinance as it allows the home owner to replace a chain-link fence with improved materials.

2.4 The property is not located in a Historic District that is regulated by locally-adopted design guidelines.

2.5 The proposed picket fence incorporates openness and is not chain-link.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the City of College Park to approve CEO-2018-03 for a 1-foot front-yard fence height variance with the condition that the fence comply with Sec. 27-421. Corner lot obstructions (sight-triangle regulations) of the County Code.

ADOPTED, by the Mayor and Council of the City of College Park at a regular meeting on the 15th day of January, 2019.

CITY OF COLLEGE PARK

Janeen S. Miller, CMC
City Clerk

Patrick L. Wojahn, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Suellen M. Ferguson
City Attorney
19-G-03

Approval of a contract with M-NCPPC
## CITY OF COLLEGE PARK, MARYLAND
### REGULAR MEETING AGENDA ITEM

<table>
<thead>
<tr>
<th>AGENDA ITEM</th>
<th>19-G-03</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prepared By:</td>
<td>Peggy Higgins, Director</td>
</tr>
<tr>
<td>Meeting Date:</td>
<td>01/15/2019</td>
</tr>
<tr>
<td>Presented By:</td>
<td>Scott Somers, City Manager Peggy Higgins, Director</td>
</tr>
<tr>
<td>Consent Agenda:</td>
<td>Yes</td>
</tr>
</tbody>
</table>

### Originating Department:
Youth, Family and Senior Services

### Action Requested:
Approval of $50,000 M-NCPPC grant contract.

### Strategic Plan Goal:
Goal 6: Excellent Services

### Background/Justification:
The City of College Park has received a $50,000 M-NCPPC grant for staffing to support the operations of the its Senior Program’s social activities for individuals age 62 and over. The attached grant contract is required for receipt and use of the funds.

### Fiscal Impact:
Receipt of $50,000 grant

### Council Options:
1) Approve contract to accept the funds
2) Amend contract and then approve
3) Reject contract and grant funds

### Staff Recommendation:
Approval of the M-NCPPC contract.

### Recommended Motion:
*I move that the Council approve the contract with M-NCPPC for a $50,000 grant for staffing to support the operations of the City’s Senior Program’s social activities for individuals age 62 and over.*

### Attachments:
Contract with M-NCPPC
CONTRACT

THIS CONTRACT ("Contract") made as of July 1, 2018 (the "Effective Date"), by and between The Maryland-National Capital Park and Planning Commission, 6611 Kenilworth Avenue, Riverdale, Maryland 20737, a public body corporate and agency of the State of Maryland hereinafter called the "Commission", and City of College Park ("Contractor"), located at 4500 Knox Road College Park, Maryland 20740.

RECITALS

WHEREAS, pursuant to the Maryland Annotated Code, Land Use Article, the Commission has authority to initiate, conduct, direct or cause to be conducted or directed under its supervision a comprehensive program of recreation which may include physical, social, mental and creative opportunities for leisure-time participation as deemed advisable.

WHEREAS, Contractor's mission is to serve a municipality of approximately 35,000 residents in the northern part of Prince George's County, Maryland.

WHEREAS, by action undertaken pursuant to Maryland Annotated Code, Land Use Article, the governing body of Prince George's County, Maryland, has appropriated for Contractor certain funds totaling $50,000 in Council Bill 22-2018.

WHEREAS, the Commission and the Contractor desire to cooperate with each other to provide staffing to support the operations of City of College Park Seniors Program's social activities for individuals age 62 and above.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do covenant and agree as follows:

1. **Scope of Services and Term.** Contractor shall furnish all labor, materials and incidental supplies necessary or appropriate to perform the Scope of Services set forth in Exhibit A attached hereto and incorporated herein. The term of this Contract ("Term") shall be July 1, 2018 through June 30, 2019, and Contractor shall substantially complete the Work no later than the last day of such Term. Any terms or conditions that are required to be completed after the expiration of this Contract shall survive the expiration of this Contract.

2. **Compensation.** The Commission shall pay Contractor in consideration for performing the Scope of Services a sum not to exceed $50,000 ("Program Fee"). The Program Fee shall be paid to Contractor after the completion of the Scope of Services and the submission of proper invoice(s) to the Commission. The Contractor shall prepare the invoices to the reasonable satisfaction of the Commission's Secretary-Treasurer and shall not submit invoices more frequently than once a month. Said invoices shall include supporting documentation or financial reports for expenses and a narrative report adequately describing the Scope of Services provided and shall contain a separate line item for each of the tasks outlined in Exhibit A. Supporting documentation shall also include Contractor's
publication(s) demonstrating the required acknowledgement of the Commission as a contributor and the Commission logo, as further described in paragraph 3.5 below. The Contractor shall not be entitled to any remaining portion of the Program Fee for any expenses that are incurred after June 30, 2019. All invoices should be submitted to the Commission’s coordinator for this Contract: Anthony Nolan, Division Chief, M-NCPPC, 7833 Walker Drive, Suite 100, Greenbelt Maryland 20770. (“Commission Coordinator”).

3. Financial Reporting and Other Requirements.
3.1 Contractor has authorized Peggy Higgins, Director of College Park Youth, Family Services, to serve as the liaison to the Commission’s Coordinator.
3.2 Contractor shall submit a current list of its Board of Directors and a copy of its current bylaws to the Commission (if applicable).
3.3 Contractor shall provide the Commission with a final program and financial report for the Term by August 1, 2019.
3.4 Contractor shall provide the Commission with a fully audited fiscal report no later than November 1, 2019.
3.5 Contractor shall recognize and acknowledge the Commission as a contributor in all publications that reference Contractor’s programs or whenever acknowledgements are given. This acknowledgement should include the following language: “Made possible in part through funding provided by the Maryland-National Capital Park and Planning Commission, Department of Parks and Recreation, Prince George’s County.” In addition, this language is to be accompanied by a logo provided by the Commission’s Contract Coordinator.
3.6 Contractor shall use funds as outlined in Exhibit A. Should any changes to the estimated costs of the proposed schedule of activities exceed more than 10%, Contractor shall make a written request to the Commission for permission to re-direct use of funds. Funds shall not be used for expenses related to fundraising.
3.7 Intentionally omitted.
3.8 Intentionally omitted.
3.9 The Contractor acknowledges and agrees that it shall retain its business records for at least three (3) years and that the Commission shall have the right to examine the Contractor’s records. Upon request, the Commission’s auditor may examine the Contractor’s records for verification of any expenses or costs incurred by the Contractor to determine whether the Contractor is in compliance with the terms contained herein.
3.10 The Commission may withhold reimbursement for services that are publicized without the required acknowledgement. Failure to abide by any of the requirements contained in this Paragraph 3 shall be deemed a material breach of this Contract, subject this Contract to immediate termination by the Commission, and may make Contractor ineligible for future contracts with the Commission.

4.1 Contractor shall be bound by and comply with (at its sole cost and expense) all federal, state and local laws, ordinances and regulations (hereinafter collectively referred to as “Laws”) applicable to the obligations provided under this Contract. Without limiting the generality of the foregoing, Contractor expressly covenants that it shall comply with all applicable Laws pertaining to wages, workers’ compensation, equal employment opportunity,
and shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, color, national origin, or disability within the meaning of such Laws.

4.1.2 Also without limiting the generality of the foregoing, Contractor expressly covenants that any personnel provided to perform the services herein shall apply for a national and State criminal history records check according to the requirements provided under Title 5 of the Family Article of the Annotated Code of Maryland, at Subtitle 5, Part VI. Any personnel provided by Contractor shall complete and submit the application required for this purpose no later than thirty (30) days from the signing of this Contract or, for newly hired personnel, at the time personnel is hired. Further, the Contractor shall return the affidavit attached hereto and incorporated herein as Exhibit C, to the Commission, listing the names of all personnel who have applied for a criminal history records check, the dates of the applications, a warrant and representation that it shall take any appropriate action regarding the information received as a result of the criminal history record checks, and that the reports are subject to inspection by the Commission. No payments shall be released to the Contractor until the Commission is in receipt of the affidavit and failure to submit the affidavit shall be considered a material breach of this Contract.

4.2. Contractor shall be bound by and comply with the Commission’s Policy Guidelines for Project Charges which are attached hereto as Exhibit D.

5. Termination. This Contract may be terminated by the Commission upon thirty (30) days written notice. In the event of such termination, Contractor shall receive compensation for valid services rendered prior to such termination. Notwithstanding any provision in this Contract, the Commission may immediately terminate this Contract for cause for the following reasons: any non-performance; incomplete service; fraud; any fraudulent representation in any invoice or verification required to obtain payment under this Contract; any derogatory information obtained in connection with the criminal history records checks; or services performed in conflict with the terms and conditions of this Contract. The occurrence of any of these conditions shall constitute a material breach of this Contract and the Commission may terminate this Contract with written notice to Contractor effective immediately.

6. Indemnification and Hold Harmless. Subject to and without waiving common law and other governmental immunities and the provisions §5-301 et seq., Local Government Tort Claims Act, Courts and Judicial Proceedings Article, Annotated Code of Maryland, Contractor shall defend, indemnify and hold harmless the Commission, its commissioners, officers, directors, agents, servants and employees, and their respective heirs, personal and legal representatives, guardians, successors and assigns, from and against any and all claims, threats, liabilities, taxes, interest, fines, penalties, suits, actions, proceedings, demands, damages, losses, costs and expenses (including attorneys' and experts' fees and court costs) of every kind and nature arising out of, resulting from, or in connection with:

6.1. Contractor’s activities pursuant to this Contract, including, without limitation, any act or omission by Contractor’s employees, agents, guests and invitees;
6.2. Any misrepresentation or breach by the Contractor of any representation or warranty contained in this Contract;

6.3. Any non-performance, failure to comply or breach by Contractor of any covenant, promise or agreement of Contractor contained in this Contract, except as to any such non-performance, failure or breach approved in advance by the Commission or caused by the Commission's contributory negligence; or,

6.4. Any debts, obligations, duties and/or liabilities of Contractor not expressly assumed by the Commission pursuant to the provisions contained in this Contract.


7.1. Notices. Except as otherwise herein expressed as to the submission of invoices and required reports, any notice, request, demand, and consent or other communications required or may be given under this Contract shall be given in the following manner:

7.1.1. If to the Commission, by First Class US mail with postage prepaid to:

Anthony Nolan, Division Chief
Special Programs Division
7833 Walker Drive, Suite 110
Greenbelt, M.D. 20770

with copy to:

Executive Director
The Maryland-National Capital Park and Planning Commission
6611 Kenilworth Avenue, Suite 402
Riverdale, MD 20737

General Counsel
The Maryland-National Capital Park and Planning Commission
6611 Kenilworth Avenue, Suite 200
Riverdale, MD 20737

7.1.2 If to Contractor, by First Class US mail with postage prepaid to:

Peggy Higgins, LCSW-C
Director, College Park Youth, Family and Senior Services
4912 Nantucket Road
College Park, MD 20740 240-487-3550

7.2. Severability; Incorporated Terms; and Order of Precedence. Any provision of this Contract that is held by a court or tribunal of competent jurisdiction to be prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability, without invalidating or rendering unenforceable the remaining provisions of this Contract. In the event of any conflict between the terms and conditions expressed in this Contract and those expressed
in any Exhibit annexed hereto, the terms and conditions expressed herein shall be deemed to control.

7.3. **Integration; Amendment; Waiver; Assignment.** This instrument contains the entire and integrated Contract made by and between the parties hereto and pertaining to the subject matter hereof. The terms and conditions expressed herein shall supersede all prior negotiations, representations or agreements, either written or oral. No provision of this Contract may be amended, waived, or otherwise modified without the prior written consent of all of the parties hereto. No action taken pursuant to this Contract, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement herein contained. The waiver by any party hereto of a breach of any provision or condition contained in this Contract shall not operate or be construed as a waiver of any subsequent breach or of any other conditions hereof.

7.4. **Section Headings.** The section and other headings contained in this Contract are for reference purposes only and shall not affect the meaning or interpretation of this Contract.

7.5. **Counterparts.** This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

7.6. **Applicable Law; Jurisdiction and Venue; Service of Process.** This Contract was made in the State of Maryland, and shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Maryland. All suits, proceedings and other actions relating to, arising out of or in connection with this Contract shall be submitted to the *in personam* jurisdiction of the courts of the State of Maryland and venue for all such suits, proceedings and other actions shall be in Prince George's County, Maryland. The parties hereby waive any claim against or objection to *in personam* jurisdiction and venue in the courts of Prince George's County, Maryland.

7.7. **Use of Genders.** Whenever used in this Contract, the singular shall include the plural and vice versa, and the use of any gender shall include all genders and the neuter.

7.8. **Authorization and Validity of Agreements.** The signatories hereto, each and respectively, warrant that he or she has the full right, power and authority to execute, acknowledge, seal and deliver this Contract and to perform the transactions contemplated by this Contract. This Contract has been duly executed, acknowledged, sealed and delivered by the parties as their legal, valid and binding obligations, enforceable against the parties, respectively, in accordance with its terms.

7.9. **No Partnership or Joint Venture.** Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture for any purpose whatsoever.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, the parties hereto have executed and delivered this Contract under seal, with the intention of making it a sealed instrument, on the date first above written.

WITNESSED BY:

Name: Janeen S. Miller, CMC, City Clerk

CITY OF COLLEGE PARK

By: __________________________
Name: Scott Somers
Title: City Manager

ATTEST:

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

By: __________________________
Joseph C. Zimmerman
Secretary Treasurer

Patricia Colihan Barney
Executive Director
Exhibit A
Scope of Services
By and Between the Maryland-National Capital Park and Planning Commission and
CITY OF COLLEGE PARK SENIOR PROGRAMMING

Control No. 390221-000

DATE: July 1, 2018, to June 2019

The scope of work (the “Work”) requires the City of City of College Park (“Contractor”) provide staffing to support operations that for social activities for individuals age 62 and above. Without limiting the generality of the foregoing, the Contractor shall undertake the following tasks enumerated below. However, **in no event shall the Commission pay the Contractor more than $50,000 of the costs.**

**Primary duties include:**
Research, planning, administration, coordination and implementation of 166 activities a year which includes the Seniors Activity Team’s four local events a year; four outings for College Park seniors who are physically disabled; three times a week Senior Social Center activities (150 a year); payment collection from 45 seniors per trip for 8 day excursion trips a year and the development and distribution of on-going publicizing of activities.

The labor-intensive duties of the day trip eight times a year include on-going engagement with each senior approved for each trip, tracking and collecting of payments and, as necessary, working the wait list of seniors to assure full attendance, completing a day of activities and attending and supervising each trip to assure smooth implementation.

The twice-a-week Senior Social Center opened in September 2016 and has been a successful venture. From September through June 2017, 37 seniors participated in various activities, totaling 609 contacts. From July 2018 through June 2019, 86 Seniors participated in various activities, totaling 823 contacts. The success of the Center has resulted in an increase in programming from two to three times a week.

**Social programming staff** consists of 30 hour a week social coordinator – primarily responsible for day to day operation, planning and implementation of 166 social activities for approval, preparation of draft monthly newsletter, a collection of trip payments and as necessary, working the wait list of seniors, developing on-going relationships with participating seniors.

**Administrative Assistant** - 10 hours a week - responsible for assisting the Seniors Social Coordinator in Senior Social Center activities or in the absence of the Coordinator, hosting Center events. Assist in the preparation of the mail out of the monthly newsletter, handling resident calls regarding social activities, maintaining data on Center attendance, collecting payments for the city's day trips.

**Administrator/Supervisor** - 10 hours a week. Overall responsibility for the administration and implementation of social activities. Provide direct supervision of the Seniors Social Coordinator and Administrative Assistant. Final approval of planning of social activity events, budget, invoices.
## City of College Park Staffing Expenses for Senior Social Activities July 2018 – June 2019

<table>
<thead>
<tr>
<th>Position</th>
<th>Subtotal</th>
<th>Subtotal</th>
<th>Total</th>
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<tr>
<td>Seniors Social Coordinator</td>
<td>18,111</td>
<td>21,987</td>
<td>40,098</td>
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<tr>
<td>Seniors Program Manager</td>
<td>22,196</td>
<td>14,075</td>
<td>36,271</td>
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<tr>
<td>Administrative Assistant</td>
<td>1,910</td>
<td>5,845</td>
<td>7,755</td>
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<td><strong>Total</strong></td>
<td>42,217</td>
<td>41,907</td>
<td>84,124</td>
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## City of College Park Details of Staffing Expenses for Senior Social Activities July – December 2018

### 07/01 – 9/30/2018 – 13 weeks

<table>
<thead>
<tr>
<th>Date</th>
<th>Position</th>
<th>Employee</th>
<th>Hours</th>
<th>Salary + Fringe</th>
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</thead>
<tbody>
<tr>
<td>07/01 – 09/14/2018</td>
<td>Seniors Social Coordinator</td>
<td>Deidre Massey</td>
<td>11 wks x 20 hrs</td>
<td>4,945</td>
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<td>07/01 – 09/03/2018</td>
<td>Seniors Program Manager</td>
<td>Angela Burns</td>
<td>9 wks x 10 hrs</td>
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<td>09/04 – 09/30/2018</td>
<td>Seniors Social Coordinator</td>
<td>Beatrice Bangura</td>
<td>4 wks x 25 hrs</td>
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<td>09/04 – 09/30/2018</td>
<td>Seniors Program Manager</td>
<td>Angela Burns</td>
<td>4 wks x 15 hrs</td>
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<td>09/17 – 09/30/2018</td>
<td>Social activities duties and</td>
<td>Deidre Massey</td>
<td>2 wks x 10 hrs</td>
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<td></td>
<td>hours decrease</td>
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### 10/01 – 12/31/2018 – 13 weeks

<table>
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<th>Hours</th>
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<td>Admin Assistant</td>
<td>Deidre Massey</td>
<td>3 ½ wks x 10 hrs</td>
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<td>3 ½ wks x 20 hrs</td>
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<td>10/01 – 10/24/2018</td>
<td>Seniors Social Coordinator</td>
<td>Beatrice Bangura</td>
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<td>10/25 – 12/7/2018</td>
<td>Seniors Social Coordinator</td>
<td>Deidre Massey</td>
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<td>12/10 – 12/31/2018</td>
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<td>hours decrease</td>
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<td>11/26 – 12/30/2018</td>
<td>Seniors Social Coordinator</td>
<td>Donna Jones</td>
<td>5 wks x 30 hrs</td>
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**TTL Salaries and Fringe** | 42,217
# City of College Park Details of Anticipated Staffing Expenses for Senior Social Activities January – June 2019

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<th>Hours</th>
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<td>01/01 – 6/30/2019</td>
<td>Admin Assistant</td>
<td>Deidre Massey</td>
<td>11 wks x 20 hrs</td>
<td>5,845</td>
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<tr>
<td>07/01 – 09/03/2018</td>
<td>Seniors Program Manager</td>
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<td>14,075</td>
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<td>TTL Salaries and Fringe</td>
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<td>41,907</td>
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**TTL FY Staffing Expenses**  
42,216 + 41,907 = $84,123
Exhibit B
Certificate of good standing issued by the Maryland Department of Assessments and Taxation

NA
Exhibit C
[Affidavit]

By and Between The Maryland-National Capital Park and Planning Commission and
CITY OF COLLEGE PARK SENIOR PROGRAMMING

I, , under the penalties of perjury do solemnly swear:

1. I am the____________ of the City of College Park.

2. As the Director of Recreation, I have personal knowledge of the facts contained herein and I am authorized to submit this affidavit on behalf of the City of College Park.

3. The following personnel will be providing services under the Contract with The Maryland-National Capital Park and Planning Commission ("Commission"), and said personnel, in compliance with Title 5 of the Family Article of the Annotated Code of Maryland, at Subtitle 5, Part VI, have applied for a federal and state criminal history records check on the dates shown below:

<table>
<thead>
<tr>
<th>Name of Personnel</th>
<th>Date of Application</th>
<th>Application Number</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
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</tbody>
</table>

4. On behalf of the City of College Park, I warrant and represent that any new personnel hired during the term of the Contract with the Commission shall immediately file for a federal and state records check.

5. On behalf of the City of College Park, I warrant and represent that any appropriate action shall be taken regarding the information received as a result of the criminal history record checks and the reports shall be subject to inspection by the Commission upon request.

I do solemnly swear and affirm under the penalties of perjury that the information contained herein is true to the best of my knowledge, information and belief.

_____________________________  _______________________
Printed Name:_________________  Date
Exhibit D

POLICY GUIDELINES FOR PROJECT CHARGES

Mission of the Prince George’s County Department of Parks and Recreation

All project charges and program support placed in our adopted operating budget by the Prince George’s County Council shall fully meet the Department of Parks and Recreation, Prince George’s County mission and core services in accordance with Maryland Annotated Code, Land Use Article. In order to receive the project charge payments, entities must enter into a contract with the Commission clearly defining the scope of the services to be provided and the reimbursement process. The services must also meet the core mission of the Commission as authorized in the Maryland Annotated Code, Land Use Article. Such determinations shall be made by the Department of Parks and Recreation, Legal, and Finance. This determination shall be made prior to a contract being transmitted to the County, municipality or organization. The Department’s mission and core services are as follows:

In partnership with County citizens, provide comprehensive park and recreation programs, facilities, and services which respond to changing needs within our communities. Strive to preserve, enhance, and protect open spaces to enrich the quality of life for the present and future generations in a safe and secure environment.

Develop and maintain a comprehensive park system by maintaining all parks, roads, grounds and structures, and protect patron and property safety.

Provide recreation programs and services by providing sports, leagues, clinics, tournaments, camps, recreation and interpretative classes, and leisure/recreation experiences.

Preserve the environment and open space, and conserve natural resources.

Reimbursable Expenses

- The Prince George’s County Department of Parks and Recreation shall only reimburse the County, municipalities, and organizations for expenses that are directly related to the mission and core services of the Department that are being provided by the County, municipality or organization.
- The Commission’s Secretary-Treasurer shall make the final determinations as to which expenses are allowable and which are not.
- These determinations along with the complete budget and scope of services (statement of work) for the project charges and program support shall be identified in the contract between the Commission and the County, municipality or organization.
- The general types of expenses that are allowed include:
  - Direct staff costs to operate and manage the program or provide the services
  - Supplies and materials directly associated with the program or services
  - Contracted services that are directly related to operating and managing the programs or providing the services
- No overhead or pro-rated type administrative costs will be allowed.
- Payment requests must be accompanied by an invoice for actual costs incurred along with supporting documents and/or financial reports with sufficient detail to enable the Commission to
verify that the costs were incurred for the programs identified and that the Commission property
taxes used as the funding source are being spent on allowable purposes.

- Advance payments are not allowable.
- For non-County government entities, if the costs are for capital improvements or for operating
costs in advance of a capital improvement, a use agreement must be executed to enable the
Commission to receive fair value for the funding provided.
- For salary/compensation expenses, the County, municipality or organization shall provide a
payroll register or a suitable mechanism to verify payroll expenses. For supplies and materials,
other services and charges including contracted services, and any capital purchases, the County,
municipality or organization shall provide receipts with original signatures verifying that the
goods or services were received.
- Contract should describe what documentation will be required.
- All work or services must be fully complete or provided by the end of the fiscal year (June 30) in
which the funding was approved by the County Council

**Vendor Requirements**

- Statement of Work per the above sections
- By-Laws (for Non-Profits)
- Affidavit
- Certificate of Good Standing from State of Maryland (for Non-Profits)
- Articles of Incorporation
19-G-04

Declaration of Covenants for a double-wide concrete curb-cut and driveway apron at 8719 36th Avenue
AGENDA ITEM: 19-G-04

Prepared By: Steven E. Halpern
Presented By: Steven E. Halpern
Meeting Date: January 15, 2019
Proposed Consent Agenda: Yes

Originating Department: Administration

Issue Before Council: Request for A Driveway Apron Variance To Construct A Double Wide Concrete Curb-Cut and Driveway Apron At 8719 36th Avenue

Strategic Plan Goal: Goal 4: Quality Infrastructure

Background/Justification:
Attached is a letter dated November 21, 2018 from Mr. Wanjing Hu, owner of the property at 8719 36th Avenue, requesting permission to construct a double wide concrete curb-cut and driveway apron to access his Council-approved double wide driveway.

City policy requires staff to review requests for non-standard driveway aprons (those that differ from the City standard) and recommend approval or disapproval to the Mayor and Council. Mr. Hu is requesting permission to construct a double wide curb-cut and driveway apron to match the previously approved double wide driveway. The City Standard is a singlewide concrete driveway apron and curb-cut. The standard driveway apron is 17 feet wide at the street and 10 feet wide at the property line. Standards attached. It is the intent of the policy established by the Mayor and Council on March 26, 1996 to have the property owners of non-standard driveway aprons assume financial responsibility for the replacement of that portion of the driveway apron in excess of the City Standard, and to convey this responsibility to all future owners of the property if the variance request is approved.

Mr. Hu appeared before the Advisory Planning Commission (APC) on September 7, 2018 requesting that he be allowed to construct a double wide driveway in front of his house. Based on the evidence and testimony presented at the variance hearing the APC recommended that Mr. Hu's existing driveway be widened by 10 feet. Mr Hu appealed the APC recommendation because he wanted a driveway width in excess of 10 feet. Mr. Hu's appeal was heard by the Mayor and Council on November 20, 2018 at a regular Council meeting. The Mayor and Council concurred with the APC recommendation.

8719 36th Avenue is located in the Crystal Spring Subdivision and is located on the east side of the street between Crystal Spring Road and the dead end. 36th Avenue is a very narrow local residential street within a 25-ft right-of-way. The street is a closed (curbs on both sides of the street) variable width street that varies from 10 feet to 19 feet in width, provides for two way traffic, and on-street parking is located only along the west side of the street where the street is at its widest distance.

It is staff's opinion that the construction of a double wide curb-cut and driveway apron will not impact future on-street parking or affect the traffic operation of 36th Avenue in any way.

Mr. Hu is agreeable with the condition that a Declaration of Covenants be a condition for granting approval for constructing a double wide concrete driveway apron and recognizes that the property owner shall be solely responsible for all construction costs associated with this work.

Based on staff’s review of Mr. Hu's request for permission to construct a doublewide concrete curb-cut and driveway apron, it is recommended that his request be granted.

Fiscal Impact:
None
**Council Options:**
1. Grant Mr. Hu's request to construct a non standard double wide curb-cut and driveway apron, and enter into a Declaration of Covenants.
2. Do not approve Mr. Hu's request
3. Direct staff to conduct additional research
4. Table action to a later Council meeting

**Staff Recommendation:**

# 1

**Recommended Motion:**

*Approve a request for a non-standard driveway to construct a double wide curb-cut and driveway apron at 8719 36th Avenue*

**Attachments:**

Letter from Mr. Wanjing Hu requesting a double wide curb-cut variance
Location Map
City Standards: Singlewide Driveway Apron and Curb
Good morning Steve,

I am requesting double wide curb cut and driveway apron. 36th Ave is an exceptionally narrow street. The street section in front of my house is a no-parking zone, on both sides, and extremely narrow. And parking space on the whole street is very limited. My application for widening my driveway from single to double was approved. Currently with single driveway, it is already difficult to get in and out of the driveway due to the narrowness of the street and with neighboring fence sit right beside my driveway. With double driveway, it will be almost impossible to get into the new driveway through the existing single apron. Double wide curb cut and driveway apron is required. Thank you for your consideration!

Sincerely,

Wanjing Hu
8719 36th Avenue

By: College Park Engineering
Date: November 28, 2018
Source: M-NCPPC GIS
COMBINATION CONCRETE CURB & GUTTER
STANDARD No. 1

Scale 1" = 1'-0"

1½" Expansion Joint

Concrete Driveway Entrance. See Std. No. 2

SPECIFICATION SUMMARY:
1. Subgrade thoroughly compacted with vibratory or pneumatic compactor - unsatisfactory material replaced with S.R.C. Spec. G.P. - 1.
2. Concrete shall not be placed on frozen subgrade.
3. Forms - steel or wood subject to approval of Municipal Engineer.
4. Camel's hair brush finish & clear cure.
5. Concrete - Air Entrained, 60/2 bag portland cement concrete, Max. Slump = 4 inches.

City of College Park

APPROVED:

DATE: May 24, 1977

ST. G. THOMAS
MAYOR

ENGINEER

GREENHORNE & O'MARA
CIVIL ENGINEERS - LAND SURVEY
8215 Kenilworth Ave. Riverdale, Md.
APPLETON 7-2122

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STANDARD DRIVEWAY ENTRANCE
STANDARD NO. 2

For reconstruction remove C.G. to nearest joint, & replace in 10' sections.

TYPICAL FRONT VIEW

Contraction Joint Full width

Expansion Joint here if concrete drive abuts

3-1/2" d Bars, 4" Centers Full width
Std. Drop Curb
See Std.#1

1/2" Expansion Joint,
Bottom to be flat plane for full 17' width; thickness 6" thru,
14" wide drop & 10 1/2" edges of 17' width.

Std. Sidewalk
See Std.#4.

TYPICAL CROSS SECTION

SPECIFICATION SUMMARY:

1. Subgrade thoroughly compacted with vibratory or pneumatic compactor - unsatisfactory material replaced with S.R.C. Spec. G.P. - 1.
2. Concrete shall not be placed on frozen subgrade.
3. Forms - steel or wood - subject to approval of Municipal Engineer.
4. Hair broom finish & clear cure
6. Special attention is called to thickened edges.
7. All expansion joint material shall be premoulded, non-extrudable, asphalt impregnated.

City of College Park

APPROVED

DATE: 1/1/72

MAYOR

ENGINEER

GREENHORNE & O'MARA
CIVIL ENGINEERS - LAND SURVEYORS
6715 Kenilworth Ave Riverdale, Md.

Scale As Shown Date Jan. 1972

M-1159-L

159
19-G-05

Declaration of Covenants for a non-standard driveway apron at 9808 53rd Avenue
**CITY OF COLLEGE PARK, MARYLAND**  
**WORKSESSION AGENDA ITEM**

**AGENDA ITEM: 19-G-05**

**Prepared By:** Suellen M. Ferguson, City Attorney  
**Meeting Date:** January 15, 2019  
**Presented By:** Suellen M. Ferguson  
**Proposed Consent Agenda:** Yes

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<td>Issue Before Council:</td>
<td>Request for A Driveway Apron Variance To Construct A Double Wide Concrete Curb-Cut and Driveway Apron At 9808 53rd Avenue</td>
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<td>Strategic Plan Goal:</td>
<td>Goal 4: Quality Infrastructure</td>
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**Background/Justification:**

City policy requires staff to review requests for non-standard driveway aprons (those that differ from the City standard) and recommend approval or disapproval to the Mayor and Council. The City Standard is a singlewide concrete driveway apron and curb-cut. The standard driveway apron is 17 feet wide at the street and 10 feet wide at the property line. It is the intent of the policy established by the Mayor and Council on March 26, 1996 to have the property owners of non-standard driveway aprons assume financial responsibility for the replacement of that portion of the driveway apron in excess of the City Standard, and to convey this responsibility to all future owners of the property if the variance request is approved.

Ms. Tang appeared before the Advisory Planning Commission (APC) on May 12, 2018 requesting that she be allowed a variance not to exceed 14 feet in width and 28 feet in length of parking area in the front of the dwelling. Based on the evidence and testimony presented at the variance hearing the APC recommended that Ms. Tang’s request be reduced to 8.25 feet by 28 feet of parking area in the front yard. Ms. Tang appealed the APC recommendation because she wanted a driveway width in excess of the APC recommendation. Ms. Tang’s appeal was heard by the Mayor and Council on November 20, 2018 at a regular Council meeting. The Mayor and Council concurred with the APC recommendation. An authorization from Mayor and Council to enlarge the driveway apron to 22- feet in width at the street and 15- feet in width at the property line is requested.

Ms. Tang will be required to sign a Declaration of Covenants as a condition for granting approval for constructing a double wide concrete driveway apron and to recognize that the property owner shall be solely responsible for all construction costs associated with this work.

**Fiscal Impact:**  
None

**Council Options:**

1. Approve a non-standard double wide curb-cut and driveway apron, and enter into a Declaration of Covenants.  
2. Do not approve the non-standard driveway  
3. Direct staff to conduct additional research  
4. Table action to a later Council meeting

**Staff Recommendation:**

# 1

**Recommended Motion:**

Approve a request for a non-standard driveway to construct a double wide curb-cut and driveway apron at 8719 36th Avenue
Attachments:
Declaration of Covenants will be provided on Tuesday, January 15, 2019
Discussion of amendments to, and adoption of, 18-O-10, An Amended Ordinance Regulating Small Wireless Telecommunications Structures In The Public Rights-Of-Way
CITY OF COLLEGE PARK, MARYLAND
REGULAR AGENDA ITEM

AGENDA ITEM NUMBER 18-O-10

Prepared By: Suellen M. Ferguson
City Attorney

Meeting Date: January 15, 2019

Presented By: Suellen M. Ferguson
City Attorney

Consent Agenda: No

Originating Department: Public Works Department

Action Requested: Adoption of An Amended Ordinance Of The Mayor And Council Of The City Of College Park To Amend Chapter 172, “Streets And Sidewalks” And Chapter 110, “Fees and Penalties: To Regulate Deployment And Installation Of Wireless Facilities And Support Structures In The City Rights-Of-Way And To Require A Permit and Set a Fee and Access Payment

Strategic Plan Goal: Goal 4: Quality Infrastructure

Background/Justification:
Beginning in 2016, the City began receiving “applications” from Mobilitie (or companies related to it) to install small cells and distributed antenna systems (“DAS”) in City rights-of-ways. A DAS system involves placing an antenna on an existing pole or on a pole to be installed. The City has no application for or specific regulations related to this type of installation, and this is the first request of this type to be received.

On September 26, 2018. The FCC adopted its Declaratory Ruling and Third Report Order on the Wireless and Wireline. This Ruling and Order significantly limits the ability of the City to regulate placement of small wireless facilities in rights-of-way. It imposes a “shot clock” of 90 days to respond to a request for co-location of a facility and 120 days for a new facility. It further imposes limits on permit fees and access fees. The attached Amended Ordinance complies with the FCC Order, and can be subject to amendment if the Order is overturned or changed on appeal.

This ordinance applies only to the rights-of-way. The County has not yet adopted the zoning ordinance changes required for this type of placement on private property. Once they have done so, the City can proceed to adopt regulations for private property.

The Public Hearing was held on October 23, 2018.

Fiscal Impact:
The proposed Amended Ordinance would require an application fee, and an access fee.

Council Options:
1. Adopt the ordinance
2. Amend and adopt the ordinance
3. Do nothing.

Staff Recommendation:
Option #1

Recommended Motion:
I move to adopt the Amended Ordinance Of The Mayor And Council Of The City Of College Park To Amend Chapter 172, “Streets And Sidewalks” And Chapter 110, “Fees and Penalties: To Regulate Deployment And Installation Of Wireless Facilities And Support Structures In The City Rights-Of-Way And To Require A Permit and Set a Fee and Access Payment
Attachments:
1. Amended Ordinance for adoption.
AMENDED ORDINANCE
OF THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK,
AMENDING CITY CODE CHAPTER 172, “STREETS AND SIDEWALKS” TO
RENAME THE CHAPTER, DIVIDE THE CHAPTER INTO ARTICLE I,
“GENERAL PROVISIONS” AND ARTICLE II, “WIRELESS
TELECOMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY”
AND ADD §172-7, “SCOPE”, §172-8 “DEFINITIONS”, §172-9 “GENERAL
STANDARDS FOR WIRELESS TELECOMMUNICATIONS FACILITIES IN
THE RIGHTS-OF-WAY”, § 172-10 “APPLICATION SUBMISSION
REQUIREMENTS”, §172-11 “TERMINATION OF PERMIT/BREACH”; §175-12,
“INFRASTRUCTURE OWNED OR CONTROLLED BY THE CITY”, §172-13,
INSURANCE, §172-14, MAKE-READY WORK, §172-15 RIGHT-OF-WAY
REPAIR, §172-16. FACILITIES NO LONGER NEEDED, §172-17 SURETY BONDS
AND AMEND CHAPTER 110, “FEES AND PENALTIES”, §110-1, “FEES AND
INTERESTS” TO PROVIDE FOR CERTAIN STANDARDS AND
REGULATIONS RELATING TO THE LOCATION OF SMALL WIRELESS
TELECOMMUNICATIONS TOWERS, ANTENNAS, AND OTHER
STRUCTURES WITHIN THE CITY'S PUBLIC RIGHTS-OF-WAY OR ON
CITY PROPERTY, CONSISTENT WITH FEDERAL AND STATE LAW; AND
PROVIDING A FEE AND ANNUAL CHARGE.

WHEREAS, §5-202 of the Local Government Article of the Annotated Code of
Maryland provides that the Mayor and Council of the City of College Park have the authority to
pass such ordinances as it deems necessary to preserve peace and good order, and to protect the
health, comfort and convenience of the residents of the municipality; and

WHEREAS, the City Charter, Article XI, “Public Ways, Sidewalks and Special
Assessments”, §§11-2 and 11-3, authorize the City to control its rights of way and make
provision for construction in the rights of way; and

WHEREAS, the Mayor and Council determined that it is in the public interest to
provide for regulation of the installation of wireless telecommunications facilities in the
City’s rights of way that is consistent with federal and state law.
Section 1. NOW THEREFORE, BE IT ORDAINED AND ENACTED, by the Mayor and Council of the City of College Park, Maryland that Chapter 172, “Streets and Sidewalks” be and it is hereby repealed, re-enacted and amended to rename the chapter and divide the chapter into Articles I and II to read as follows:

Chapter 172, Streets, [and] Sidewalks, PUBLIC PROPERTY AND RIGHTS-OF-WAY

ARTICLE I GENERAL PROVISIONS

ARTICLE II WIRELESS TELECOMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY

Section 2. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park Maryland that Chapter 172 “Streets and Sidewalks”, Article II, §172-7, “Scope”, be and it is hereby enacted to read as follows:

§172-7 SCOPE.

A. IN GENERAL. UNLESS EXEMPTED, EVERY PERSON WHO DESIRES TO PLACE A SMALL WIRELESS TELECOMMUNICATIONS FACILITY IN CITY RIGHTS-OF-WAY, TO INCLUDE DEPLOYMENT OF PERSONAL WIRELESS SERVICE INFRASTRUCTURE, OR MODIFY AN EXISTING WIRELESS TELECOMMUNICATIONS FACILITY, INCLUDING WITHOUT LIMITATION FOR THE:

(1) COLLOCATION OF A SMALL WIRELESS FACILITY;

(2) ATTACHMENT OF A SMALL WIRELESS FACILITY TO A POLE OWNED BY AN AUTHORITY;

(3) INSTALLATION OF A POLE:
MODIFICATION OF A SMALL WIRELESS FACILITY OR A POLE.

MUST OBTAIN A WIRELESS PLACEMENT PERMIT AUTHORIZING THE PLACEMENT OR MODIFICATION.

B. EXEMPTIONS. THE FOLLOWING ARE EXEMPTED FROM THE REQUIREMENTS OF THIS CHAPTER:

(1) THE PLACEMENT OR MODIFICATION OF WIRELESS TELECOMMUNICATIONS FACILITIES ON SUPPORTING STRUCTURES OWNED, OR UNDER THE CONTROL OF, THE CITY, THE USE OF WHICH IS SUBJECT TO A CONTRACT FOR USE OF THE FACILITY BETWEEN THE CITY AND THE ENTITY OR ENTITIES THAT OWN OR CONTROL THE WIRELESS TELECOMMUNICATIONS FACILITY;

(2) THE PLACEMENT OR MODIFICATION OF WIRELESS FACILITIES BY THE CITY OR BY ANY OTHER AGENCY OF THE STATE SOLELY FOR PUBLIC SAFETY PURPOSES.

(3) MODIFICATIONS TO AN EXISTING WIRELESS TELECOMMUNICATIONS FACILITY THAT MAKES NO MATERIAL CHANGE TO THE FOOTPRINT OF A FACILITY OR TO THE SURFACE OR SUBSURFACE OF A PUBLIC STREET IF THE ACTIVITY DOES NOT DISRUPT
OR IMPEDE TRAFFIC IN THE TRAVELED PORTION OF A STREET, AND IF THE WORK ACTIVITY DOES NOT CHANGE THE VISUAL OR AUDIBLE CHARACTERISTICS OF THE WIRELESS TELECOMMUNICATIONS FACILITY. THE CITY, BY REGULATION, MAY ALSO EXEMPT WIRELESS TELECOMMUNICATIONS FACILITIES THAT OTHERWISE ARE SUBJECT TO THE PROVISIONS OF THIS SECTION FROM THE OBLIGATION TO OBTAIN A PERMIT TO INSTALL OR MODIFY A WIRELESS TELECOMMUNICATIONS FACILITY WHERE IT IS DETERMINED THAT BECAUSE OF THE PHYSICAL CHARACTERISTICS OF THE PROPOSED FACILITIES, AND THE WORK ASSOCIATED WITH THEM, SUCH A PERMIT IS NOT REQUIRED TO PROTECT THE PUBLIC HEALTH, WELFARE OR SAFETY, TO MAINTAIN THE CHARACTER OF A NEIGHBORHOOD OR CORRIDOR, OR TO OTHERWISE SERVE THE PURPOSES OF THIS ORDINANCE.

(4) INSTALLATION OF A MOBILE CELL FACILITY OR A SIMILAR STRUCTURE FOR A TEMPORARY PERIOD IN CONNECTION WITH AN EMERGENCY OR EVENT, BUT NO LONGER THAN REQUIRED FOR THE EMERGENCY
OR EVENT, PROVIDED THAT INSTALLATION DOES NOT INVOLVE EXCAVATION, MOVEMENT OR REMOVAL OF EXISTING FACILITIES, AND THAT AT LEAST 30 DAYS PRIOR WRITTEN NOTIFICATION IS PROVIDED TO THE CITY, AND CONSENT FOR PLACEMENT IS GRANTED.

(5) A MICRO WIRELESS FACILITY STRUNG BETWEEN TWO UTILITY POLES AS DEFINED IN §172-8 AND PROVIDED FURTHER THAT THE INSTALLATION DOES NOT REQUIRE REPLACEMENT OF THE STRAND, OR EXCAVATION, MODIFICATION OR REPLACEMENT OF THE UTILITY POLES.

C. OTHER APPLICABLE REQUIREMENTS. IN ADDITION TO THE WIRELESS TELECOMMUNICATIONS PERMIT REQUIRED HEREIN, THE PLACEMENT OF A WIRELESS TELECOMMUNICATIONS FACILITY IN THE PUBLIC-RIGHTS OF WAY REQUIRES THE PERSONS WHO WILL OWN OR CONTROL THOSE FACILITIES TO OBTAIN THE FRANCHISES, LICENSE AGREEMENTS AND PERMITS REQUIRED BY APPLICABLE LAW, AND TO COMPLY WITH APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, APPLICABLE LAW GOVERNING RADIO FREQUENCY (RF) EMISSIONS.

D. PUBLIC USE. EXCEPT AS OTHERWISE PROVIDED BY MARYLAND LAW, ANY USE OF THE RIGHT OF WAY AUTHORIZED PURSUANT TO
THIS CHAPTER WILL BE SUBORDINATE TO THE CITY’S USE AND USE BY THE PUBLIC.

Section 3. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park Maryland that Chapter 172 “Streets and Sidewalks”, Article II, §172-8, “Definitions”, be and it is hereby enacted to read as follows:

§172-8 DEFINITIONS. TERMS USED IN THIS ARTICLE SHALL HAVE THE FOLLOWING MEANINGS:

A. APPLICATION: A FORMAL REQUEST, INCLUDING ALL REQUIRED AND REQUESTED DOCUMENTATION AND INFORMATION SUBMITTED BY AN APPLICANT TO THE CITY FOR A WIRELESS PLACEMENT PERMIT.

B. APPLICANT: A PERSON FILING AN APPLICATION FOR PLACEMENT OR MODIFICATION OF A WIRELESS TELECOMMUNICATIONS FACILITY IN THE RIGHTS-OF-WAY.

C. ANTENNA: COMMUNICATIONS EQUIPMENT THAT TRANSMITS AND/OR RECEIVES ELECTROMAGNETIC RADIO FREQUENCY SIGNALS USED IN THE PROVISION OF WIRELESS SERVICES. THIS DEFINITION DOES NOT APPLY TO BROADCAST ANTENNAS, ANTENNAS DESIGNED FOR AMATEUR RADIO USE, OR SATELLITE DISHES FOR RESIDENTIAL OR HOUSEHOLD PURPOSES.

D. ANTENNA EQUIPMENT: EQUIPMENT, SWITCHES, WIRING, CABLES, POWER SOURCES, SHELTERS OR CABINETS ASSOCIATED WITH AN
ANTENNA, LOCATED AT THE SAME FIXED LOCATION AS THE ANTENNA, AND, WHEN COLLOCATED ON A STRUCTURE, IS MOUNTED OR INSTALLED AT THE SAME TIME AS SUCH ANTENNA.

E. APPLICABLE LAWS/CODES: UNIFORM BUILDING, FIRE, SAFETY, ELECTRICAL, PLUMBING, OR MECHANICAL CODES ADOPTED BY A RECOGNIZED NATIONAL CODE ORGANIZATION TO THE EXTENT SUCH CODES HAVE BEEN ADOPTED BY THE CITY, INCLUDING ANY AMENDMENTS ADOPTED BY THE CITY, OR OTHERWISE ARE APPLICABLE IN THE JURISDICTION.


G. CERTIFICATE OF COMPLETION: A DOCUMENT THAT IS REQUIRED FROM AND ISSUED BY THE CITY CONFIRMING THAT ALL WORK DESCRIBED IN THE APPLICATION, AS APPROVED: (I) WAS PROPERLY PERMITTED, INCLUDING, WITHOUT LIMITATION, ALL REQUIRED PERMITS FOR BUILDING, ELECTRICAL WORK, STREET OR CURB CUTTING, AND EXCAVATION; (II) WAS DONE IN COMPLIANCE WITH AND FULFILLMENT OF ALL CONDITIONS OF ALL PERMITS, INCLUDING ALL STATED DEADLINES; (III) WAS FULLY CONSTRUCTED AND/OR PLACED AS APPROVED AND PERMITTED; AND (IV) WAS FINALLY INSPECTED BY THE CITY, AND WAS APPROVED BY THE CITY AFTER SAID FINAL INSPECTION
H. RIGHTS-OF-WAY: THE TERM RIGHTS-OF-WAY INCLUDE ANY PORTION OF ANY STREET, ROAD OR PUBLIC WAY WHICH THE CITY HAS THE RESPONSIBILITY TO MAINTAIN OR MANAGE.

I. MICRO WIRELESS FACILITY: A SMALL WIRELESS FACILITY HAVING DIMENSIONS NO LARGER THAN 24 INCHES IN LENGTH, 15 INCHES IN WIDTH AND 12 INCHES IN HEIGHT AND AN EXTERIOR ANTENNA, IF ANY, NO LONGER THAN 11 INCHES.

J. SMALL WIRELESS FACILITY: CONSISTENT WITH SUBPART U, PART 1 OF TITLE 47, “STATE AND LOCAL GOVERNMENT REGULATION OF THE PLACEMENT, CONSTRUCTION, AND MODIFICATION OF PERSONAL WIRELESS SERVICE FACILITIES”, A FACILITY THAT MEETS EACH OF THE FOLLOWING CONDITIONS:

a. THE STRUCTURE ON WHICH ANTENNA FACILITIES ARE MOUNTED—

i. IS 50 FEET OR LESS IN HEIGHT, OR

ii. IS NO MORE THAN 10 PERCENT TALLER THAN OTHER ADJACENT STRUCTURES, OR

iii. IS NOT EXTENDED TO A HEIGHT OF MORE THAN 10 PERCENT ABOVE ITS PREEXISTING HEIGHT AS A RESULT OF THE COLLOCATION OF NEW ANTENNA FACILITIES; AND
b. EACH ANTENNA (EXCLUDING ASSOCIATED ANTENNA EQUIPMENT) IS NO MORE THAN THREE CUBIC FEET IN VOLUME; AND

c. ALL ANTENNA EQUIPMENT ASSOCIATED WITH THE FACILITY (EXCLUDING ANTENNAS) ARE CUMULATIVELY NO MORE THAN 28 CUBIC FEET IN VOLUME; AND

d. THE FACILITY DOES NOT REQUIRE ANTENNA STRUCTURE REGISTRATION;

e. THE FACILITY DOES NOT RESULT IN HUMAN EXPOSURE TO RADIOFREQUENCY RADIATION IN EXCESS OF THE APPLICABLE SAFETY STANDARDS SPECIFIED BY FEDERAL LAW

J. SUPPORT STRUCTURE: ANY STRUCTURE CAPABLE OF SUPPORTING A BASE STATION.

K. TOWER: ANY STRUCTURE BUILT FOR THE SOLE OR PRIMARY PURPOSE OF SUPPORTING ANY FCC-LICENSED OR AUTHORIZED ANTENNAS AND THEIR ASSOCIATED FACILITIES, INCLUDING STRUCTURES THAT ARE CONSTRUCTED FOR WIRELESS COMMUNICATIONS SERVICES INCLUDING, BUT NOT LIMITED TO, PRIVATE, BROADCAST, AND PUBLIC SAFETY SERVICES, AS WELL AS UNLICENSED WIRELESS SERVICES AND FIXED WIRELESS
SERVICES SUCH AS MICROWAVE BACKHAUL, AND THE ASSOCIATED SITE. THIS DEFINITION DOES NOT INCLUDE UTILITY POLES.

L. UTILITY POLE: A STRUCTURE IN THE RIGHTS OF WAY DESIGNED TO SUPPORT ELECTRIC, TELEPHONE AND SIMILAR UTILITY LINES. A TOWER IS NOT A UTILITY POLE.

M. WIRELESS PERMIT: A PERMIT ISSUED PURSUANT TO THIS CHAPTER AND AUTHORIZING THE PLACEMENT OR MODIFICATION OF A WIRELESS TELECOMMUNICATIONS FACILITY OF A DESIGN SPECIFIED IN THE PERMIT AT A PARTICULAR LOCATION WITHIN THE RIGHTS OF WAY; AND THE MODIFICATION OF ANY EXISTING SUPPORT STRUCTURE TO WHICH THE WIRELESS TELECOMMUNICATIONS FACILITY IS PROPOSED TO BE ATTACHED.

N. WIRELESS SERVICE PROVIDER. AN ENTITY THAT PROVIDES WIRELESS SERVICES TO END USERS.

O. WIRELESS INFRASTRUCTURE PROVIDER: A PERSON THAT OWNS, CONTROLS, OPERATES OR MANAGES A WIRELESS TELECOMMUNICATION FACILITY OR PORTION THEREOF WITHIN THE RIGHT-OF-WAY.

P. WIRELESS REGULATIONS: THOSE REGULATIONS ADOPTED TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE.
Q. WIRELESS TELECOMMUNICATIONS FACILITY, OR FACILITY: A FACILITY AT A FIXED LOCATION CONSISTING OF A BASE STATION, ANY ACCESSORY EQUIPMENT, AND THE TOWER AND UNDERGROUND WIRING, IF ANY, ASSOCIATED WITH THE BASE STATION.

Section 4. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park Maryland that Chapter 172 “Streets and Sidewalks”, Article II, §172-9, “General Standards for Wireless Telecommunications Facilities in the Rights-of-Way” be and it is hereby repealed, re-enacted and amended to read as follows:

§172-9 GENERAL STANDARDS FOR WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHTS-OF-WAY.

A. GENERALLY. WIRELESS TELECOMMUNICATIONS FACILITIES SHALL MEET THE MINIMUM REQUIREMENTS SET FORTH IN THIS CHAPTER AND THE WIRELESS REGULATIONS APPROVED BY THE MAYOR AND COUNCIL, IN ADDITION TO THE REQUIREMENTS OF ANY OTHER APPLICABLE LAW.

B. REGULATIONS. THE WIRELESS REGULATIONS AND ADMINISTRATIVE DECISIONS ON APPLICATIONS FOR PLACEMENT OF WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHTS OF WAY SHALL, AT A MINIMUM, ENSURE THAT THE REQUIREMENTS OF THIS SECTION ARE SATISFIED, UNLESS IT IS DETERMINED THAT APPLICANT HAS
ESTABLISHED THAT DENIAL OF AN APPLICATION WOULD, WITHIN THE MEANING OF FEDERAL LAW, PROHIBIT OR EFFECTIVELY PROHIBIT THE PROVISION OF PERSONAL WIRELESS SERVICES, OR OTHERWISE VIOLATE APPLICABLE LAWS OR REGULATIONS. IF THAT DETERMINATION IS MADE, THE REQUIREMENTS OF THIS CHAPTER AND ANY CITY WIRELESS REGULATIONS MAY BE WAIVED, BUT ONLY TO THE MINIMUM EXTENT REQUIRED TO AVOID THE PROHIBITION.

C. STANDARDS. WIRELESS TELECOMMUNICATIONS FACILITIES SHALL BE INSTALLED AND MODIFIED IN A MANNER THAT:

(1) MINIMIZES RISKS TO PUBLIC SAFETY, AVOIDS PLACEMENT OF ABOVEGROUND FACILITIES IN UNDERGROUND AREAS, AVOIDS INSTALLATION OF NEW SUPPORT STRUCTURES OR EQUIPMENT CABINETS IN THE PUBLIC RIGHTS OF WAY, AND MAXIMIZES USE OF EXISTING STRUCTURES AND POLES, AVOIDS PLACEMENT IN RESIDENTIAL AREAS WHEN COMMERICAL AREAS ARE REASONABLY AVAILABLE, AND OTHERWISE MAINTAINS THE INTEGRITY AND CHARACTER OF THE NEIGHBORHOODS AND CORRIDORS IN WHICH THE FACILITIES ARE LOCATED;

(2) ENSURES THAT INSTALLATIONS ARE SUBJECT TO PERIODIC REVIEW TO MINIMIZE THE INTRUSION ON THE RIGHTS OF WAY;

AND
(3) ENSURES THAT THE CITY BEARS NO RISK OR LIABILITY AS A RESULT OF THE INSTALLATIONS, AND THAT SUCH USE DOES NOT INCONVENIENCE THE PUBLIC, INTERFERE WITH THE PRIMARY USES OF THE PUBLIC RIGHTS OF WAY, OR HINDER THE ABILITY OF THE CITY OR OTHER GOVERNMENT AGENCIES TO IMPROVE, MODIFY, RELOCATE, ABANDON OR VACATE THE PUBLIC RIGHTS OF WAY OR ANY PORTION THEREOF, OR TO CAUSE THE IMPROVEMENT, MODIFICATION, RELOCATION, VACATION OR ABANDONMENT OF FACILITIES IN THE RIGHTS OF WAY.

(4) ENSURES THAT LOCATION OF FACILITIES ON EXISTING POLES OR STRUCTURES IS WITHIN THE TOLERANCE OF THOSE POLES OR STRUCTURES.

D. CONCEALMENT. PERMITS FOR WIRELESS TELECOMMUNICATIONS FACILITIES SHALL INCORPORATE SPECIFIC CONCEALMENT ELEMENTS TO MINIMIZE VISUAL IMPACTS, AND DESIGN REQUIREMENTS ENSURING COMPLIANCE WITH ALL STANDARDS FOR NOISE EMISSIONS. UNLESS IT IS DETERMINED THAT ANOTHER DESIGN IS LESS INTRUSIVE, OR PLACEMENT IS REQUIRED UNDER APPLICABLE LAW:

(1) ANTENNAS LOCATED AT THE TOP OF SUPPORT STRUCTURES SHALL BE INCORPORATED INTO THE STRUCTURE, OR
PLACED

WITHIN SHROUDS OF A SIZE SUCH THAT THE ANTENNA APPEARS TO BE PART OF THE SUPPORT STRUCTURE;

(2) ANTENNAS PLACED ELSEWHERE ON A SUPPORT STRUCTURE SHALL BE INTEGRATED INTO THE STRUCTURE, OR BE DESIGNED AND PLACED TO MINIMIZE VISUAL IMPACTS.

(3) RADIO UNITS OR EQUIPMENT CABINETS HOLDING RADIO UNITS AND MOUNTED ON A UTILITY POLE SHALL BE PLACED AS HIGH AS POSSIBLE ON A SUPPORT STRUCTURE, LOCATED TO AVOID INTERFERING WITH, OR CREATING ANY HAZARD TO, ANY OTHER USE OF THE PUBLIC RIGHTS OF WAY, AND LOCATED ON ONE SIDE OF THE UTILITY POLE. UNLESS THE RADIO UNITS OR EQUIPMENT CABINETS CAN BE CONCEALED BY APPROPRIATE TRAFFIC SIGNAGE, RADIO UNITS OR EQUIPMENT CABINETS MOUNTED BELOW THE COMMUNICATIONS SPACE ON UTILITY POLES SHALL BE DESIGNED SO THAT THE LARGEST DIMENSION IS VERTICAL, AND THE WIDTH IS SUCH THAT THE RADIO UNITS OR EQUIPMENT CABINETS ARE MINIMALLY VISIBLE FROM THE OPPOSITE SIDE OF THE SUPPORT STRUCTURE ON WHICH THEY ARE PLACED.
(4) WIRING AND CABLING SHALL BE NEAT AND CONCEALED WITHIN OR FLUSH TO THE SUPPORT STRUCTURE, ENSURING CONCEALMENT OF THESE COMPONENTS TO THE GREATEST EXTENT POSSIBLE.

(5) GROUND-MOUNTED EQUIPMENT ASSOCIATED WITH A WIRELESS TELECOMMUNICATIONS FACILITY SHALL BE PERMITTED ONLY WHERE CONSISTENT WITH THE PORTION OF THE CORRIDOR IN WHICH IT IS TO BE PLACED, AND MAY BE REQUIRED TO BE UNDERGROUND, LOCATED IN ALLEYS OR OTHERWISE SHIELDED. IN NO EVENT MAY GROUND-MOUNTED EQUIPMENT INTERFERE WITH PEDESTRIAN OR VEHICULAR TRAFFIC.

(6) NO PERMIT SHALL BE ISSUED OR EFFECTIVE UNLESS IT IS SHOWN THAT THE WIRELESS TELECOMMUNICATIONS FACILITY WILL COMPLY WITH FEDERAL COMMUNICATION COMMISSION ("FCC") REGULATIONS GOVERNING RADIO FREQUENCY ("RF") EMISSIONS. EVERY WIRELESS FACILITY SHALL AT ALL TIMES COMPLY WITH APPLICABLE FCC REGULATIONS GOVERNING RF EMISSIONS, AND FAILURE TO COMPLY THEREWITH SHALL BE A TREATED AS A MATERIAL VIOLATION OF THE TERMS OF ANY PERMIT OR LEASE.
(7) NO TOWERS SHALL BE PERMITTED IN THE PUBLIC RIGHTS OF WAY, AND NO WIRELESS TELECOMMUNICATIONS FACILITIES SHALL BE PERMITTED ABOVE-GROUND IN UNDERGROUND AREAS; PROVIDED THAT THE CITY MAY PERMIT PLACEMENTS WHERE ALL ELEMENTS OF THE WIRELESS TELECOMMUNICATIONS FACILITY ARE CONCEALED AND THE FACILITY DOES NOT APPEAR TO A CASUAL OBSERVER TO BE A WIRELESS TELECOMMUNICATIONS FACILITY.

(8) NO PERMIT SHALL ISSUE EXCEPT TO WIRELESS SERVICE PROVIDERS WITH IMMEDIATE PLANS FOR USE OF THE PROPOSED WIRELESS TELECOMMUNICATIONS FACILITY; OR WIRELESS INFRASTRUCTURE PROVIDERS WITH CONTRACTS WITH WIRELESS SERVICE PROVIDERS WHICH REQUIRE THE SERVICE PROVIDER IMMEDIATELY TO USE THE PROPOSED WIRELESS TELECOMMUNICATIONS FACILITY.

(9) UNLESS APPROPRIATELY PLACED, AND CONCEALED, SO THAT THE SIZE OF THE FACILITY CANNOT BE INCREASED EXCEPT WITH THE DISCRETIONARY APPROVAL OF THE CITY, NO WIRELESS TELECOMMUNICATIONS FACILITY IS PERMITTED IN RIGHTS-OF-WAY IN ALLEYS.
(10) NOT WIRELESS TELECOMMUNICATIONS FACILITY IS PERMITTED IN ANY LOCAL HISTORIC DISTRICT WITHOUT THE APPROVAL OF THE PRINCE GEORGE’S COUNTY HISTORIC PRESERVATION COMMISSION.

Section 4. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park Maryland that Chapter 172, “Streets and Sidewalks”, Article II, §172-10, “Application submission requirements” be and it is hereby enacted to read as follows:

§ 172-10 APPLICATION SUBMISSION REQUIREMENTS AND FINAL INSPECTION.

A. SUBMISSION. APPLICANT SHALL SUBMIT A PAPER COPY AND AN ELECTRONIC COPY OF ANY APPLICATION, AMENDMENTS OR SUPPLEMENTS TO AN APPLICATION, OR RESPONSES TO REQUESTS FOR INFORMATION REGARDING AN APPLICATION, TO THE DESIGNATED CITY DEPARTMENT.

B. CONTENT. AN APPLICATION MUST CONTAIN:

(1) THE NAME OF THE APPLICANT, ITS TELEPHONE NUMBER AND CONTACT INFORMATION, AND IF THE APPLICANT IS A WIRELESS INFRASTRUCTURE PROVIDER, THE NAME AND CONTACT INFORMATION FOR THE WIRELESS SERVICE PROVIDER THAT WILL BE USING THE WIRELESS TELECOMMUNICATIONS
FACILITY;

(2) A COMPLETE DESCRIPTION OF THE PROPOSED WIRELESS TELECOMMUNICATIONS FACILITY AND THE WORK THAT WILL BE REQUIRED TO INSTALL OR MODIFY IT, INCLUDING BUT NOT LIMITED TO DETAIL REGARDING PROPOSED EXCAVATIONS, IF ANY; DETAILED SITE PLANS SHOWING THE LOCATION OF THE WIRELESS TELECOMMUNICATIONS FACILITY, AND SPECIFICATIONS FOR EACH ELEMENT OF THE WIRELESS TELECOMMUNICATIONS FACILITY, CLEARLY DESCRIBING THE SITE AND ALL STRUCTURES AND FACILITIES AT THE SITE BEFORE AND AFTER INSTALLATION OR MODIFICATION; AND A DESCRIPTION OF THE DISTANCE TO THE NEAREST RESIDENTIAL DWELLING UNIT AND ANY CONTRIBUTING HISTORICAL STRUCTURE WITHIN 500 FEET OF THE FACILITY. BEFORE AND AFTER 360 DEGREE PHOTO SIMULATIONS MUST BE PROVIDED. THE ELECTRONIC VERSION OF AN APPLICATION MUST BE IN A STANDARD FORMAT THAT CAN BE EASILY UPLOADED ON A WEB PAGE FOR REVIEW BY THE PUBLIC.

(3) AN APPLICATION FOR MODIFICATION OF AN ELIGIBLE SUPPORT STRUCTURE MUST CONTAIN INFORMATION
SUFFICIENT TO SHOW THAT THE APPLICATION QUALIFIES UNDER 47 C.F.R. SECTION 1.40001. THE APPLICATION MUST RELATE TO AN EXISTING WIRELESS TELECOMMUNICATIONS FACILITY THAT HAS BEEN APPROVED BY THE CITY PURSUANT TO THIS ARTICLE. BEFORE AND AFTER 360 DEGREE PHOTO SIMULATIONS MUST BE PROVIDED WITH DETAILED SPECIFICATIONS DEMONSTRATING THAT THE MODIFICATION DOES NOT SUBSTANTIALLY CHANGE THE PHYSICAL DIMENSIONS OF THE EXISTING APPROVED STRUCTURE.

(4) AN APPLICATION FOR A PERMIT SHALL BE SUBMITTED IN THE FORMAT AND MANNER SPECIFIED BY THE DESIGNATED DEPARTMENT. APPLICATIONS MUST CONTAIN ALL INFORMATION REQUIRED HEREIN AND BY ANY WIRELESS REGULATIONS TO DEMONSTRATE THAT APPLICANT IS ENTITLED TO THE PERMIT REQUESTED.

(5) APPLICANT MUST PROVIDE ANY INFORMATION UPON WHICH IT RELIES IN SUPPORT OF A CLAIM THAT DENIAL OF THE APPLICATION WOULD PROHIBIT OR EFFECTIVELY PROHIBIT THE PROVISION OF SERVICE IN VIOLATION OF FEDERAL LAW, OR OTHERWISE
VIOLATE APPLICABLE LAW. APPLICANTS ARE NOT PERMITTED TO SUPPLEMENT THIS SHOWING IF DOING SO WOULD PREVENT CITY FROM COMPLYING WITH ANY DEADLINE FOR ACTION ON AN APPLICATION.

(6) PROOF THAT NOTICE HAS BEEN MAILED TO OWNERS OF ALL PROPERTY, AND THE RESIDENT MANAGER FOR ANY MULTI-FAMILY DWELLING UNIT THAT INCLUDES TEN (10) OR MORE UNITS, WITHIN 300 FEET OF THE PROPOSED WIRELESS TELECOMMUNICATIONS FACILITY.

(7) A COPY OF ANY POLE OR STRUCTURE ATTACHMENT AGREEMENT MUST BE PROVIDED, AS WELL AS SUFFICIENT INFORMATION TO DETERMINE THAT THE INSTALLATION CAN BE SUPPORTED BY AND DOES NOT EXCEED THE TOLERANCES OF THE POLE OR STRUCTURE.

(8) PAYMENT OF ANY REQUIRED FEES.

(9) BEFORE A PERMIT IS ISSUED, CONCURRENT AGREEMENT TO ANY REQUIRED FRANCHISE OR LICENSE AGREEMENT MUST BE PROVIDED.

(10) BEFORE A PERMIT IS ISSUED, CONCURRENT AGREEMENT TO ANY REQUIRED FRANCHISE OR LICENSE AGREEMENT MUST BE PROVIDED.

C. FEES. [THE APPLICATION FEE FOR WIRELESS]
TELECOMMUNICATIONS FACILITIES, APPLICANT MUST PROVIDE AN APPLICATION FEE, AND SHALL BE REQUIRED TO PAY ALL COSTS REASONABLY INCURRED BY CITY IN REVIEWING THE APPLICATION, INCLUDING COSTS INCURRED IN RETAINING OUTSIDE CONSULTANTS. APPLICANT SHALL ALSO PAY AN ACCESS FEE. FEES SHALL BE REVIEWED PERIODICALLY, AND RAISED OR LOWERED BASED ON COSTS THE CITY EXPECTS TO INCUR, WITH A REVIEW COMMENCING BY THE FIRST ANNIVERSARY OF THE EFFECTIVE DATE OF THIS ORDINANCE.

D. WAIVERS. REQUESTS FOR WAIVERS FROM ANY REQUIREMENT OF THIS ARTICLE SHALL BE MADE IN WRITING TO THE CITY MANAGER OR DESIGNEE. THE SAME MAY GRANT A REQUEST FOR WAIVER IF IT IS DEMONSTRATED THAT, NOTWITHSTANDING THE ISSUANCE OF A WAIVER, THE CITY WILL BE PROVIDED ALL INFORMATION NECESSARY TO UNDERSTAND THE NATURE OF THE CONSTRUCTION OR OTHER ACTIVITY TO BE CONDUCTED PURSUANT TO THE PERMIT SOUGHT.

E. PROCESSING OF APPLICATIONS. FOR SMALL WIRELESS FACILITIES, PERSONAL WIRELESS FACILITIES, AS THOSE TERMS ARE DEFINED UNDER FEDERAL LAW, AND ELIGIBLE FACILITIES REQUESTS, AS THAT TERM IS DEFINED UNDER FEDERAL LAW, APPLICATIONS WILL BE PROCESSED IN CONFORMITY WITH STATE, LOCAL AND FEDERAL LAW, AS AMENDED. CURRENTLY, THE FCC
HAS REQUIRED THAT SUCH APPLICATIONS BE PROCESSED WITHIN
60 DAYS OF RECEIPT OF A COMPLETED APPLICATION FOR
FACILITIES THAT WILL BE COLLOCATED ON PREEXISTING
STRUCTURES, AND 90 DAYS FOR NEW CONSTRUCTION.

F. REJECTION FOR INCOMPLETENESS. NOTICES OF
INCOMPLETENESS SHALL BE PROVIDED IN CONFORMITY WITH
STATE, AND LOCAL AND FEDERAL LAW. IF SUCH AN APPLICATION
IS INCOMPLETE, IT MAY BE REJECTED BY A WRITTEN ORDER
SPECIFYING THE MATERIAL OMITTED FROM THE APPLICATION, OR
THE CITY MAY NOTIFY THE APPLICANT OF THE MATERIAL
OMITTED AND PROVIDE AN OPPORTUNITY TO SUBMIT THE
MISSING MATERIAL. THE TIME IMPOSED BY FEDERAL, STATE OR
LOCAL LAW FOR THE PROCESSING OF AN APPLICATION DOES NOT
BEGIN TO RUN UNTIL AN APPLICATION IS COMPLETE.

G. FINAL INSPECTION. UPON COMPLETION OF THE APPROVED WORK,
THE APPLICANT MUST FILE A STATEMENT OF THE PROFESSIONAL
OPINION BY AN INDEPENDENT, QUALIFIED ENGINEER LICENSED IN
THE STATE OF MARYLAND THAT INDICATES THAT THE
INSTALLATION, BASED UPON THEIR ACTUAL INSPECTIONS, IN THEIR
OPINION AND TO THE BEST OF THEIR KNOWLEDGE, MEETS THE
REQUIREMENTS OF THE APPROVED PLAN DOCUMENTS. THIS
ARTICLE AND OTHER APPLICABLE LAW. CERTIFICATIONS MUST BE
SIGNED AND SEALED BY THE QUALIFIED ENGINEER MAKING THE
STATEMENT. UPON RECEIPT OF THE STATEMENT, AND ANY REQUIRED CITY INSPECTION, THE WORK MAY BE ACCEPTED AND A CERTIFICATE OF COMPLETION MAY BE ISSUED BY THE CITY.

Section 5. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park Maryland that Chapter 172, “Streets and Sidewalks”, Article II, §172-11, “Termination of permit/breach” be and it is hereby enacted to read as follows:

§172-11 TERMINATION OF PERMIT/BREACH.

A. FOR BREACH. A WIRELESS TELECOMMUNICATIONS PERMIT MAY BE REVOKED FOR FAILURE TO COMPLY WITH THE CONDITIONS OF THE PERMIT, FRANCHISE, LICENSE OR APPLICABLE LAW. UPON REVOCATION, THE WIRELESS TELECOMMUNICATIONS FACILITY MUST BE REMOVED WITHIN 30 DAYS OF WRITTEN NOTICE; PROVIDED THAT REMOVAL OF SUPPORT STRUCTURE OWNED BY CITY, A UTILITY, OR ANOTHER ENTITY AUTHORIZED TO MAINTAIN A SUPPORT STRUCTURE IN THE RIGHT OF WAY NEED NOT BE REMOVED, BUT MUST BE RESTORED TO ITS PRIOR CONDITION, EXCEPT AS SPECIFICALLY PERMITTED BY THE CITY. ALL COSTS INCURRED BY THE CITY IN CONNECTION WITH THE REVOCATION AND REMOVAL SHALL BE PAID BY ENTITIES
WHO OWN OR CONTROL ANY PART OF THE WIRELESS TELECOMMUNICATIONS FACILITY.

B. FOR INSTALLATION WITHOUT A PERMIT. A WIRELESS TELECOMMUNICATIONS FACILITY INSTALLED WITHOUT A WIRELESS PERMIT (EXCEPT FOR THOSE EXEMPTED BY THIS ARTICLE) MUST BE REMOVED WITHIN 30 DAYS OF WRITTEN NOTICE; PROVIDED THAT REMOVAL OF SUPPORT STRUCTURE OWNED BY CITY, A UTILITY, OR ANOTHER ENTITY AUTHORIZED TO MAINTAIN A SUPPORT STRUCTURE IN THE RIGHT OF WAY NEED NOT BE REMOVED, BUT MUST BE RESTORED TO ITS PRIOR CONDITION, EXCEPT AS SPECIFICALLY PERMITTED BY THE CITY. ALL COSTS INCURRED BY THE CITY IN CONNECTION WITH THE REVOCATION AND REMOVAL SHALL BE PAID BY ENTITIES WHO OWN OR CONTROL ANY PART OF THE WIRELESS TELECOMMUNICATIONS FACILITY.

C. TERM. A WIRELESS PERMIT, OTHER THAN A PERMIT ISSUED PURSUANT TO AN ELIGIBLE FACILITIES REQUEST, SHALL BE VALID FOR A PERIOD OF FIVE (5) YEARS. AN ELIGIBLE FACILITIES PERMIT SHALL EXPIRE AT THE SAME TIME THE PERMIT FOR THE UNDERLYING EXISTING WIRELESS TELECOMMUNICATIONS FACILITY EXPIRES. A PERSON HOLDING A WIRELESS TELECOMMUNICATIONS PERMIT MUST
EITHER REMOVE THE WIRELESS TELECOMMUNICATIONS FACILITY UPON EXPIRATION (PROVIDED THAT REMOVAL OF SUPPORT STRUCTURE OWNED BY CITY, A UTILITY, OR ANOTHER ENTITY AUTHORIZED TO MAINTAIN A SUPPORT STRUCTURE IN THE RIGHT OF WAY NEED NOT BE REMOVED, BUT MUST BE RESTORED TO ITS PRIOR CONDITION, EXCEPT AS SPECIFICALLY PERMITTED BY THE CITY); OR, AT LEAST 90 DAYS PRIOR TO EXPIRATION, MUST SUBMIT AN APPLICATION TO RENEW THE PERMIT, WHICH APPLICATION MUST DEMONSTRATE THAT THE IMPACT OF THE WIRELESS TELECOMMUNICATIONS FACILITY CANNOT BE REDUCED. THE WIRELESS TELECOMMUNICATIONS FACILITY MUST REMAIN IN PLACE UNTIL IT IS ACTED UPON BY THE CITY, AND ANY APPEALS FROM THE CITY’S DECISION ARE EXHAUSTED.

Section 6. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park Maryland that Chapter 172 “Streets and Sidewalks”, Article II, §172-12, “Infrastructure owned or controlled by the City” be and it is hereby enacted to read as follows:

§172-12. INFRASTRUCTURE OWNED OR CONTROLLED BY THE CITY.
THE CITY MAY NEGOTIATE AGREEMENTS FOR USE OF CITY OWNED OR CONTROLLED LIGHT STANDARDS AND TRAFFIC SIGNALS IN THE PUBLIC RIGHTS OF WAY FOR PLACEMENT OF WIRELESS TELECOMMUNICATIONS
FACILITIES ON THOSE STRUCTURES. THE AGREEMENT SHALL SPECIFY THE COMPENSATION TO THE CITY FOR USE OF THE STRUCTURES. THE PERSON SEEKING THE AGREEMENT SHALL ADDITIONALLY REIMBURSE THE CITY FOR ALL COSTS THE CITY INCURS IN CONNECTION WITH ITS REVIEW OF, AND ACTION UPON THE PERSON’S REQUEST FOR AN AGREEMENT.

Section 7. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park Maryland that Chapter 172 “Streets and Sidewalks”, Article II, §172-13, “Insurance” be and it is hereby enacted to read as follows:

§172-13. INSURANCE.

A. THE CITY SHALL REQUIRE A WIRELESS PROVIDER TO INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICIALS, OFFICERS AND EMPLOYEES AGAINST ANY LOSS, DAMAGE, OR LIABILITY TO THE EXTENT THAT IT IS CAUSED BY THE NEGLIGENT OR WILLFUL ACT OR OMISSION OF THE WIRELESS PROVIDER WHO OWNS OR OPERATES SMALL WIRELESS FACILITIES OR POLES IN THE RIGHT-OF-WAY, ITS AGENTS, OFFICERS, DIRECTORS, REPRESENTATIVES, EMPLOYEES, AFFILIATES, OR SUBCONTRACTORS, OR THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS, OR REPRESENTATIVES.

B. DURING THE PERIOD IN WHICH THE FACILITIES OF A WIRELESS PROVIDER ARE LOCATED ON OR ATTACHED TO THE CITY’S ASSETS OR RIGHTS-OF-WAY, THE CITY MAY REQUIRE A WIRELESS PROVIDER TO:
(1) CARRY, AT THE WIRELESS PROVIDER'S SOLE COST AND EXPENSE, THE FOLLOWING TYPES OF THIRD-PARTY INSURANCE:

(i) PROPERTY INSURANCE FOR ITS PROPERTY'S REPLACEMENT COST AGAINST ALL RISKS;

(ii) WORKERS' COMPENSATION INSURANCE, AS REQUIRED BY LAW;

AND

(iii) COMMERCIAL GENERAL LIABILITY INSURANCE WITH RESPECT TO ITS ACTIVITIES ON CITY IMPROVEMENTS OR RIGHTS-OF-WAY TO AFFORD PROTECTION WITH LIMITS NOT INCONSISTENT WITH ITS REQUIREMENTS OF OTHER USERS OF CITY IMPROVEMENTS OR RIGHTS-OF-WAY, INCLUDING COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE;

AND

(2) INCLUDE THE CITY AS AN ADDITIONAL INSURED ON THE COMMERCIAL GENERAL LIABILITY POLICY AND PROVIDE CERTIFICATION AND DOCUMENTATION OF INCLUSION OF THE CITY IN A COMMERCIAL GENERAL LIABILITY POLICY AS REASONABLY REQUIRED BY THE CITY.

Section 8. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park Maryland that Chapter 172 “Streets and Sidewalks”, Article II, §172-14, “Make-Ready Work” be and it is hereby enacted to read as follows:

§172-14. MAKE-READY WORK.
A. THE CITY MAY PROVIDE A WIRELESS PROVIDER THE OPTION OF EITHER HAVING THE WIRELESS PROVIDER PERFORM ANY NECESSARY MAKE-READY WORK THROUGH THE USE OF QUALIFIED CONTRACTORS AUTHORIZED BY THE CITY, OR HAVING THE CITY PERFORM ANY NECESSARY MAKE-READY WORK AT THE SOLE COST OF THE WIRELESS PROVIDER.


Section 9. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park Maryland that Chapter 172 “Streets and Sidewalks”, Article II, §172-15, “Right of Way Repair” be and it is hereby enacted to read as follows:

§172-15 RIGHT-OF-WAY REPAIR.

WIRELESS PROVIDER SHALL BE REQUIRED TO PROMPTLY:

A. REPAIR ANY DAMAGE TO THE PUBLIC RIGHT-OF-WAY OR ANY DAMAGES TO FACILITIES IN THE RIGHT-OF-WAY DIRECTLY CAUSED BY THE ACTIVITIES OF THE WIRELESS PROVIDER; AND

B. RETURN THE RIGHT-OF-WAY TO THE RIGHT-OF-WAY’S CONDITION PRIOR TO THE DAMAGES CAUSED BY THE WIRELESS PROVIDER.
Section 10. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park Maryland that Chapter 172 “Streets and Sidewalks”, Article II, §172-16, “Facilities no longer needed” be and it is hereby enacted to read as follows:

§172-16. FACILITIES NO LONGER NEEDED.

A. A WIRELESS PROVIDER SHALL PROMPTLY NOTIFY THE CITY OF A DECISION TO REMOVE FROM SERVICE A WIRELESS FACILITY LOCATED ON A PUBLIC RIGHT-OF-WAY.

B. A WIRELESS PROVIDER SHALL REMOVE A WIRELESS FACILITY THAT IS NO LONGER NEEDED FOR SERVICE AND LOCATED ON A PUBLIC RIGHT-OF-WAY AT THE SOLE COST AND EXPENSE OF THE WIRELESS PROVIDER.

C. IF THE CITY CONCLUDES THAT A WIRELESS FACILITY HAS BEEN ABANDONED IN PLACE, THE CITY MAY REMOVE THE WIRELESS FACILITY AND INVOICE THE WIRELESS PROVIDER FOR THE ACTUAL AND DOCUMENTED COST INCURRED BY THE CITY FOR REMOVAL.

D. UNTIL A WIRELESS FACILITY THAT IS LOCATED ON PUBLIC RIGHT-OF-WAY IS REMOVED FROM THE PUBLIC RIGHT-OF-WAY, A WIRELESS PROVIDER SHALL PAY ALL FEES AND CHARGES DUE THE CITY, REGARDLESS OF WHETHER A WIRELESS FACILITY IS OPERATIONAL.
Section 11. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park Maryland that Chapter 172 “Streets and Sidewalks”, Article II, §172-17, “Surety bonds” be and it is hereby enacted to read as follows:

§172-17 SURETY BONDS

A. THE CITY MAY REQUIRE A SURETY BONDING FOR WIRELESS PROVIDERS.

B. THE PURPOSE OF A SURETY BOND REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE TO:

(1) PROVIDE FOR THE REMOVAL OF ABANDONED OR IMPROPERLY MAINTAINED SMALL WIRELESS FACILITIES, INCLUDING THOSE THAT THE CITY REQUIRES TO BE REMOVED TO PROTECT PUBLIC HEALTH, SAFETY, OR WELFARE, AND RESTORE THE RIGHTS-OF-WAY; AND

(2) RECOUP RATES OR FEES THAT HAVE NOT BEEN PAID BY A WIRELESS PROVIDER, SUBJECT TO THIRTY (30) DAYS PRIOR WRITTEN NOTICE TO THE WIRELESS PROVIDER AND THE OPPORTUNITY TO PAY THE RATES OR FEES OUTSTANDING.

Section 12. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 110 “Fees and Penalties”, §110-1, “Fees and interest” be and is hereby repealed and reenacted with amendments to read as follows:

§110-1 Fees and interests.
The following enumerations are the current fees, rates, charges and interests applicable in the City of College Park:

<table>
<thead>
<tr>
<th>Chapter/Section</th>
<th>Description</th>
<th>Fee/Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>172-10(C)</td>
<td>APPLICATION FEE</td>
<td></td>
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$500 FOR UP TO FIVE SMALL WIRELESS FACILITIES, WITH AN ADDITIONAL $100 FOR EACH SMALL WIRELESS FACILITY OVER FIVE, OR $1,000 FOR NON-RECURRING FEES FOR A NEW POLE, NOT A COLLOCATION INTENDED TO SUPPORT ONE OR MORE SMALL WIRELESS FACILITIES

ACCESS FEE - $270 PER SMALL WIRELESS FACILITY PER YEAR

Section 13. **BE IT FURTHER ORDAINED AND ENACTED** by the Mayor and Council of the City of College Park that, upon formal introduction of this proposed Ordinance, which shall be by way of a motion duly seconded and without any further vote, the City Clerk shall distribute a copy to each Council member and shall maintain a reasonable number of copies in the office of the City Clerk and shall post at City Hall, to the official City website, to the City-maintained e-mail LISTSERV, and on the City cable channel, and if time permits, in any City newsletter, the proposed ordinance or a fair summary thereof together with a notice setting out the time and place for a public hearing thereon and for its consideration by the Council.
The public hearing, hereby set for 7:30 P.M. on the 23rd day of October, 2018, shall follow the publication by at least seven (7) days, may be held separately or in connection with a regular or special Council meeting and may be adjourned from time to time. All persons interested shall have an opportunity to be heard.

After the hearing, the Council may adopt the proposed ordinance with or without amendments or reject it. This Ordinance shall become effective on ______________________, 2019 provided that, as soon as practicable after adoption, the City Clerk shall post a fair summary of the Ordinance and notice of its adoption at City Hall, to the official City website, to the City-maintained e-mail LISTSERV, on the City cable channel, and in any City newsletter.

If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid and enforceable.

INTRODUCED by the Mayor and Council of the City of College Park, Maryland at a regular meeting on the 9th day of October, 2019.

ADOPTED by the Mayor and Council of the City of College Park, Maryland at a regular meeting on the _____ day of ___________________ 2019.

EFFECTIVE the _____ day of ____________________, 2019.

ATTEST: CITY OF COLLEGE PARK
By: _____________________________  
Janeen S. Miller, CMC, City Clerk

By: ____________________________________  
Patrick L. Wojahn, Mayor

APPROVED AS TO FORM AND 
LEGAL SUFFICIENCY:

______________________________  
Suellen M. Ferguson, City Attorney
19-O-01

Discussion, and possible introduction, of an Ordinance Of The Mayor And Council Of The City Of College Park Amending Chapter 4
Prepared By: Jill Clements, 
Director of Human Resources

Presented By: Jill Clements

Meeting Date: 01/15/2019

Consent Agenda: No

Originating Department: Human Resources

Action Requested: Introduce Ordinance 19-O-01 to amend Chapters 4 and 62 of the City Code.

Strategic Plan Goal: Goal 6: Excellent services

Background/Justification:
Chapter 4, Administrative Organization, and Chapter 62, Personnel and Employee Benefits, of the City Code require updating to reflect current practice and code references, to incorporate changes that have been approved by the Council, and to incorporate changes requested by the City Manager. A draft ordinance is attached that shows the current language and the proposed changes. Comments for some changes that may not be self-explanatory follow.

Chapter 4 ADMINISTRATIVE ORGANIZATION

§4-2. A. 2 – Remove reference to the Assistant City Manager and the Police Commissioner. The Assistant City Manager role is addressed elsewhere, and we do not have a Police Commissioner.

A.3 - The City Manager would like to have full authority to select the Assistant City Manager without the approval of the Mayor and Council; to eliminate the requirement of giving the Assistant City Manager a contract; and to eliminate the requirement for the Assistant City Manager to live in the City.

§4-3 The Department of Human Resources will be added to the list of departments and job titles to reflect changes that were made under City Manager Finz in 2003.

Eliminate 4 Attachment 1 – “Table 1 Organization Chart” as unnecessary. Since 1999 the City of College Park Organization Chart has been adopted by reference with the annual budget ordinance, as required, and is available there in updated form.

Chapter 62 PERSONNEL AND EMPLOYEE BENEFITS

ARTICLE I describing the Service Recognition Program for employees is eliminated. This function is described fully in the approved Personnel Regulations and does not need to be duplicated in the Code.

§62.-2 becomes §62.-1 and we have added the last sentence to clarify that elected and appointed officials are not entitled to employee benefits other than those required by law, such as workers compensation and the option to participate in the Maryland State Pension Plan.

§62-4 becomes §62-3 and the City Manager’s job description has been updated to reflect current duties. In the next section the Assistant City Manager’s job duties are eliminated and will be outlined, similarly to other employees, in a job description that is not part of the City Code.

§62-5 becomes §62-4 and in §62-4A language has been added to clarify what changes to personnel and employee benefits must be approved by the Mayor and Council.

§62-6 Conduct of Employees is eliminated because this topic is fully covered in the approved Personnel Regulations.
ARTICLE III Pension Plan is renamed, renumbered and rewritten to reflect what has been done. The pension plan currently described was terminated in the 1990s. The City joined the Maryland State Retirement and Pension System in 2014.

ARTICLE IV Local Government Health Benefits Trust is, renumbered and rewritten to reflect changes that have taken place over many years and leaves only language required for us to have participated in the Health Benefits Trust.

Fiscal Impact:
None

Council Options:
1. Introduce Ordinance 19-O-01 and schedule the Public Hearing
2. Consider other options and changes.
3. Take no action.

Staff Recommendation:
#1

**Recommended Motion:**
I move to introduce Ordinance 19-O-01 to update and change Chapters 4 and 62 of the City Code to reflect current practice and code references, to incorporate changes that have been approved by the Council, and to incorporate changes requested by the City Manager. A public hearing will be scheduled for January 29, 2019.

Attachments:
1. Draft Ordinance 19-O-01
ORDINANCE
OF THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK AMENDING
CHAPTER 4, “ADMINISTRATIVE ORGANIZATION” BY REPEALING AND RE-
ENACTING §4-2, “GENERAL FORM OF ORGANIZATION”, §4-3, “DEPARTMENTS”,
§4-4, “FINANCE DEPARTMENT”, ENACTING §4-9, “HUMAN RESOURCES
DEPARTMENT”, RENUMBERING §§4-9 THROUGH 4-11, AND DELETING 4
ATTACHMENT 1, CITY OF COLLEGE PARK TABLE I, ORGANIZATION CHART;
AND AMENDING CHAPTER 62 “PERSONNEL AND EMPLOYEE BENEFITS” BY
DELETING ARTICLE I, “EMPLOYEE RECOGNITION PROGRAM”, §62-1
“OPERATION OF PROGRAM”, RENUMBERING ARTICLE II, “PERSONNEL
SYSTEM” AS ARTICLE I, AND ARTICLE IV, “LOCAL GOVERNMENT HEALTH
BENEFITS TRUST” AS ARTICLE III, RENUMBERING AND RENAMING ARTICLE
III, “PENSION PLAN” AS ARTICLE II, “PENSION AND RETIREMENT PLANS”
REPEALING AND REENACTING §§62-2 “ESTABLISHMENT; APPLICABILITY”,
“RESPONSIBILITIES OF MAYOR AND COUNCIL”, §62-8 “ADOPTION BY
REFERENCE”, §62-9 “PLAN TO BE LEGAL AND BINDING”, §62-12
“PARTICIPATION APPROVED”, AND DELETING §62-4.1 “RESPONSIBILITIES OF
THE ASSISTANT CITY MANAGER”, §62-6 “CONDUCT OF EMPLOYEES”, §62-7
“PAYMENT OBLIGATIONS” AND §62-15 “RESPONSIBILITIES OF CITY
OFFICIALS, EMPLOYEES AND AGENTS” TO MAKE CERTAIN CHANGES IN THE
PERSONNEL CODE, INCLUDING TO REMOVE OUTDATED OR UNNECESSARY
PROVISIONS, CHANGE CERTAIN REQUIREMENTS WITH RESPECT TO THE
ASSISTANT CITY MANAGER, REFLECT THE HUMAN RESOURCES
DEPARTMENT AS A CITY DEPARTMENT AND UPDATE CODE REFERENCES.

WHEREAS, pursuant to §5-201 et seq. of the Local Government Article, Annotated
Code of Maryland, the City of College Park, Maryland (hereinafter, the “City”) has the power to
pass such ordinances as it deems necessary to protect the health, safety and welfare of the citizens
of the municipality and to prevent and remove nuisances; and

WHEREAS, Chapters 4 and 62 were adopted by the Mayor and Council to set the
organization and duties of the City Manager and City departments and work force and to provide
for salary, pay and classification, benefits and insurance; and
WHEREAS, a number of the provisions in Chapters 4 and 62 duplicate provisions of the Personnel Manual or other legislative enactments; and

WHEREAS, certain provisions in Chapters 4 and 62 do not conform to current City practice; and

WHEREAS, Chapters 4 and 62 require updating of provisions and code references; and

WHEREAS, the Mayor and Council have determined that the City Manager should select the Assistant City Manager; and

WHEREAS, the Mayor and Council have determined that it is in the public interest to revise Chapters 4 and 62.

Section 1. NOW THEREFORE, BE IT ORDAINED AND ENACTED, by the Mayor and Council of the City of College Park, Maryland that Chapter 4, “Administrative Organization”, § 4-2, “General form of organization”, be and is hereby repealed, reenacted and amended to read as follows:

§ 4-2. General form of organization

The general form of organization for the government of the City shall be as follows:
(1) The Mayor and City Council shall have final authority and responsibility over all of the affairs of the City.
(2) The City Manager shall be the chief agent of the Mayor and Council, shall be responsible for the general operations of the City government and shall be directly responsible to the Mayor and Council for the conduct of said operation. [The City Manager shall select and appoint an Assistant City Manager to assist the City Manager in the day-to-day management of the City. The City Manager shall also serve as the Police Commissioner pursuant to provisions of § C9-3 of the City Charter. The Assistant City Manager shall serve as Police Commissioner during the absence of the City Manager.]
(3) Assistant City Manager. The Assistant City Manager shall be hired by the City Manager [, subject to the approval of the Mayor and City Council. The terms and conditions of employment of the Assistant City Manager shall be set forth in a contract [approved by the Mayor and City Council. The Assistant City Manager shall reside within the City of College
The Assistant City Manager shall perform such duties as the City Manager may require and shall act as the City Manager in the City Manager's absence.

(4) City Clerk. The City Clerk shall be within the jurisdiction of the City Manager. During the absence or unavailability of the City Clerk, the City Manager may designate some other City employee to serve as acting City Clerk.

(5) Such Citizens Advisory Boards as the Mayor and City Council may from time to time establish shall be directly responsible to the Mayor and Council and shall also act in an advisory capacity to the City Manager.

(6) The City Attorney shall be directly responsible to the Mayor and City Council and shall also act in an advisory capacity to the City Manager and the heads of the several departments.

(7) The heads of the several departments shall be directly responsible to the City Manager.

(8) The personnel employed by the several departments shall be directly responsible to the head of the department in which they are employed or to such supervisory personnel as said department head may designate.

B. * * * *
   * * * * *

Section 2. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 4, “Administrative Organization”, §4-3, “Departments”, be and is hereby repealed, reenacted and amended to read as follows:

§4-3. Departments.
A. The general government operations of the City shall be subdivided for administrative purposes in the following manner, each subdivision being designated a department and placed under the direct supervision of a department head appointed by the City Manager:
   (1) Finance Department.
   (2) Public Services Department.
   (3) Public Works Department.
   (4) Planning, Community and Economic Development Department.
   (5) Youth, Family and Senior Services Department.
   (6) HUMAN RESOURCES

B. The title of the several department heads shall be, respectively, as follows:
   (1) Finance Director.
   (2) Public Services Director.
   (3) Public Works Director.
   (4) Planning, Community and Economic Development Director.
(5) Youth, Family and Senior Services Director.

(6) HUMAN RESOURCES DIRECTOR

Section 3.  BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 4, “Administrative Organization”, §4-4, “Finance Department”, be and is hereby repealed, reenacted and amended to read as follows:

§ 4-4 Finance Department.
The Finance Department shall be responsible for the following operations and such other operations as may hereafter be assigned thereto by the Mayor and City Council and/or the City Manager:
A. – D. *
E. [Personnel affairs.]
F. Maintenance of all City finance records.
G. F. Investments of City moneys made by the Finance Director and/or City Manager under the provisions of § 17-101 et seq., of the Local Government Article, Annotated Code of Maryland.
H. G. All of the several financial affairs and operations of the City as to collections.
(1) – (3) *
I. H. Collection of all moneys due to the City, to include taxes, special assessments, penalties, interest, licenses, permits and charges for services.

Section 4.  BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 4, “Administrative Organization”, §4-9 “Human Resources Department” be and is hereby enacted to read as follows:

§4-9. HUMAN RESOURCES DEPARTMENT.
THE HUMAN RESOURCES DEPARTMENT SHALL BE RESPONSIBLE FOR THE FOLLOWING OPERATIONS AND SUCH OTHER OPERATIONS AS MAY HEREAFTER BE ASSIGNED BY THE MAYOR AND CITY COUNCIL AND/OR THE CITY MANAGER:

A. ADMINISTER THE PERSONNEL SYSTEM
B. MAINTAIN ALL PERSONNEL RECORDS
C. OVERSEE THE EMPLOYMENT PROCESS, INCLUDING RECRUITING, EXAMINING, INVESTIGATING AND DETERMINING QUALIFICATIONS FOR ALL POSITIONS IN THE PERSONNEL SYSTEM.
D. ADMINISTER EMPLOYEE BENEFITS, INSURANCE, PENSION AND RETIREMENT.
E. ADMINISTER BARGAINING AGREEMENT

Section 5. **BE IT FURTHER ORDAINED AND ENACTED** by the Mayor and Council of the City of College Park that Chapter 4, “Administrative Organization”, §4-9 “Use of personnel” be and is hereby re-numbered as §4-10.

Section 6. **BE IT FURTHER ORDAINED AND ENACTED** by the Mayor and Council of the City of College Park that Chapter 4, “Administrative Organization”, §4-10 “Construal of provisions” be and is hereby re-numbered as §4-11.

Section 7. **BE IT FURTHER ORDAINED AND ENACTED** by the Mayor and Council of the City of College Park that Chapter 4, “Administrative Organization”, §4-11 “Addition and abolishment of departments” be and is hereby re-numbered as §4-12.

Section 8. **BE IT FURTHER ORDAINED AND ENACTED** by the Mayor and Council of the City of College Park that Chapter 4, “Administrative Organization”, 4 Attachment 1, City of College Park Table I, Organization Chart, be and is hereby deleted in its entirety.

Section 9. **BE IT FURTHER ORDAINED AND ENACTED** by the Mayor and Council of the City of College Park that Chapter 62, “Personnel and Employee Benefits”, Article I, “Employee Recognition Program”, §62-1 “Operation of program” be and is hereby deleted in its entirety as follows:

**Article I Employee Recognition Program**

[§ 62-1 Operation of program.]
There is hereby established a Service Recognition Program which shall operate in the following manner:
A. Those eligible shall be regular employees of the City and members of the Mayor and Council and such other individuals as the Mayor and Council shall determine.
B. Awards shall consist of service recognition pins or other suitable devices as determined by the Mayor and Council and as may be appropriate but shall be based on the following schedule:
(1) Initial award: after completing two years of service.
(2) Second award: after completing five years of service.
(3) Succeeding awards: on the basis of five-year increments of service to the city.
C. Awards shall be made at regular meetings of the Mayor and Council or as determined by the Mayor and Council and as appropriate.

Section 10. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 62, “Personnel and Employee Benefits”, Article II, “Personnel System”, be and is hereby renumbered as Article I, which shall include renumbered §§62-1 through 62-4.

Section 11. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that that Chapter 62, “Personnel and Employee Benefits”, Article I, “Personnel System”, §62-2 “Establishment; applicability” be and is hereby repealed, reenacted, renumbered and amended to read as follows:

§ 62-[2]1 Establishment; applicability.

By virtue of the authority vested in the Mayor and Council by [Article 23A of the] §4-101 ETSEQ., LOCAL GOVERNMENT ARTICLE, Annotated Code of Maryland [(1957 Edition, as amended)], there is hereby established a personnel system for the City of College Park. All offices, employments and positions now existing or hereafter created within the City service, except [that of the Assistant City Manager and] those filled by election or by direct appointment of the Mayor and City Council, are hereby placed within the jurisdiction of said personnel system and shall be subject to such rules and regulations and procedures as are hereinafter set forth and which may be set forth by virtue of the provisions of this article. ELECTED AND APPOINTED OFFICIALS ARE NOT ENTITLED TO EMPLOYEE BENEFITS EXCEPT THOSE OTHERWISE MANDATED BY LAW.

Section 12. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that that Chapter 62, “Personnel and Employee Benefits”, Article I, “Personnel System”, §62-3 “Implementation” be and is hereby repealed, reenacted, renumbered and amended to read as follows:
§ 62-[3]2 Implementation.

The responsibility for implementing this article and for the general supervision of the personnel system is hereby vested in the City Manager. [City Manager shall be the personnel officer.]

Section 13. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 62, “Personnel and Employee Benefits”, Article I, “Personnel System”, §62-4 “Responsibilities of City Manager” be and is hereby repealed, reenacted and amended to read as follows:

§62-[4]3 Responsibilities of City Manager.

The City Manager shall be responsible for the following:
A. Making recommendations to the Mayor and Council with regard to the classification of positions and compensation therefor; the administration of the classification system and the rates of compensation; and the inclusion of said recommendations each year in the budget submitted to the Mayor and City Council.
B. Establishing qualifications for all employment positions.
C. Determining the appointment, transfer, promotion, demotion, suspension, dismissal or any such change in an employee’s status.
D. Preparing the fiscal year budget for review by Mayor and Council.
E. Making recommendations concerning measures calculated to increase efficiency and to promote the interest and welfare of employees.
F. Devising necessary administrative procedures to execute the policies of the Mayor and City Council.
G. Administering such rules and regulations and procedures as may be set forth by the Mayor and City Council.
H. Providing supervision and leadership to department directors and exercising direction over programs and duties administered by those departments.
I. Developing and maintaining an effective working relationship with all department directors, the Mayor and Council, other municipal...
OFFICIALS, CIVIC ASSOCIATIONS, COUNTY AND STATE OFFICIALS AND THE RESIDENTS OF THE CITY OF COLLEGE PARK.

I. MONITORING SPECIFIC PROJECTS, REVIEWING STATUS AND PROGRESS WITH SENIOR STAFF, REPORTING TO MAYOR AND COUNCIL AS REQUIRED.

J. DEVELOPING NEW AND REVISED RECOMMENDED POLICIES, STRATEGIES AND PROCEDURES DESIGNED TO IMPROVE CITY OPERATIONS AND SERVICE TO THE PUBLIC.

K. ENSURING STAFF SUPPORT AS DIRECTED OR AS NECESSARY FOR THE MAYOR AND COUNCIL AND ASSISTING IN THE PREPARATION OF THE AGENDA FOR MAYOR AND COUNCIL.

L. UNDERTAKING UNION NEGOTIATIONS.

M. INTERPRETING AND AMENDING PERSONNEL REGULATIONS AND ADMINISTRATIVE POLICIES, INCLUDING THE PERSONNEL MANUAL, OTHER THAN THOSE ISSUES FOR WHICH AUTHORITY IS SPECIFICALLY RESERVED TO THE MAYOR AND CITY COUNCIL, INCLUDING §62-4 OF THIS CHAPTER.

N. SUCH OTHER DUTIES AS THE MAYOR AND COUNCIL MAY REQUIRE.

Section 14. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 62, “Personnel and Employee Benefits”, Article I, “Personnel System”, §62-4.1 “Responsibilities of the Assistant City Manager” be and is hereby repealed in its entirety as follows:

[§ 62-4.1 Responsibilities of Assistant City Manager.

The Assistant City Manager shall be responsible [, as part of the Assistant City Manager's contractual obligations,] for the following:

A. Assisting the City Manager in the duties and responsibilities prescribed by Charter for the day-to-day management of the City government.

B. Providing supervision and leadership to department directors and exercising direction over programs and duties administered by those departments.

C. Participating in the preparation of the City’s annual budget and capital improvement program.

D. Serving as Acting City Manager in the City Manager’s absence.

E. Developing and maintaining an effective working relationship with all department directors, the Mayor and Council, other municipal officials, civic associations, county and state officials and the citizens of the City of College Park.

F. Monitoring assigned specific projects, reviewing status and progress with senior staff, reporting internally and to Mayor and Council as required.]
G. Providing, as directed by the City Manager interdepartmental coordination and implementation of municipal programs and preparation of special studies relating to all phases of the City's operation.
H. Developing new and revised recommended policies, strategies and procedures designed to improve City operations and service to the public.
I. Reviewing state and county legislation, preparing recommendations and background material for Mayor and Council.
J. Representing the City in relations with the County Cable Coalition; COG Electric Deregulation Technical Advisory Committee; Maryland Municipal League Departments and committees.
K. Providing staff support as directed or as necessary for the Mayor and Council and assisting in the preparation of the agenda for Mayor and Council.
L. Performing work in the areas of personnel, purchasing and union negotiations as assigned.
M. Such other duties as the City Manager may require.

Section 15. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 62, “Personnel and Employee Benefits”, Article I, “Personnel System”, §62-5 “Responsibilities of Mayor and Council” be and is hereby repealed, reenacted, renumbered and amended to read as follows:

§ 62-[S] 4 Responsibilities of Mayor and Council.
The Mayor and Council shall:
A. Adopt personnel policies WITH RESPECT TO POSITIONS, CLASSIFICATION, STAFF LEVELS, PAY AND THE FOLLOWING BENEFITS: INSURANCE, PENSION, RETIREMENT AND AMOUNT OF PAID LEAVE, in conformity with and in furtherance of this article.
B. Authorize staff levels (number of positions) with the adoption of the annual budget.
C. Approve, establish or modify all salary schedules for classes of positions [as provided that, in connection] with the adoption of the annual budget[as the Mayor and Council shall approve the salary schedules].
D. Individual members of the Mayor and Council shall not direct or request the recommendation of any person to, or [his] removal from, employment by the City Manager or in any manner dictate the recommendation of any potential employee to the Mayor and Council by the City Manager. Except for the purpose of inquiry, Council members shall deal with the administrative service solely through the City Manager, and no Council member shall give orders to any subordinates of the City Manager either publicly or privately.
Section 16.  BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 62, “Personnel and Employee Benefits”, Article I, “Personnel System”, §62-6 “Conduct of employees” be and is hereby repealed in its entirety as follows:

[§ 62-6 Conduct of employees.
A. Political activity shall be prohibited.
(1) No employee shall, directly or indirectly, use or seek to use his/her official position, authority, or influence to control or modify the political action of any other person, nor shall any employee, during duty hours, engage in any form of political activity.
(2) With respect to College Park City elections, no employee shall take part in any political movement or actively support any candidates or support any group of candidates in any manner other than by casting his or her own ballot.
B. No employee shall solicit or receive any money or thing of value from any other City employee for any political purpose.
C. Acceptance of a gift of other valuables by a public officer or employee, when given under circumstances indicating the hope or expectation of receiving a favor or better treatment than that accorded the public generally, is prohibited.
D. City officials and employees shall avoid conflicts of interest in the award of City contracts.
E. Violation of any provision of this section shall constitute grounds for immediate dismissal. In addition, the following may constitute grounds for dismissal or suspension:
(1) Misfeasance, malfeasance, or nonfeasance in the performance of duties.
(2) Any violation of law, official rules, regulations or orders or failure to obey any lawful or reasonable direction when such action amounts to insubordination or a serious breach in discipline.
(3) Conviction of a felony or of any infamous or disgraceful offense.
(4) Willful or repeated negligence in performing duties.
(5) Sustained conduct detrimental to the efficiency and morale of the service.
(6) Misuse of public funds.
(7) Falsifying reports or records.
(8) Intoxication while on duty.]

Section 17.  BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 62, “Personnel and Employee Benefits”,
Article I, “Personnel System”, §62-7 “Effective date” be and is hereby repealed in its entirety as follows:

[§ 62-7 Effective date.
The effective date of this article shall be March 30, 1988. However, the provisions of this article shall be retroactive to January 6, 1988.]

Section 18. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 62, “Personnel and Employee Benefits”, Article III, “Pension Plan”, be and is hereby renamed and renumbered as Article II, “Pension and Retirement Plans”, which shall include renumbered §§62-8 through 62-9.

Section 19. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 62, “Personnel and Employee Benefits”, Article II, “Pension and Retirement Plans”, §62-8 “Adoption by reference” be and is hereby repealed, reenacted, and amended to read as follows:

§ 62-8 [Adoption by reference.] ADOPTION OF PENSION AND RETIREMENT PLANS.
[The improved pension plan for City employees, named the "City of College Park Money Purchase Plan," is adopted retroactive to January 1, 1989, effective July 1, 1989.] THE MAYOR AND COUNCIL MAY ADOPT SUCH PENSION AND RETIREMENT PLANS, TO INCLUDE THE MARYLAND STATE RETIREMENT AND PENSION SYSTEM PURSUANT TO § 31-111.8 OF THE STATE PERSONNEL AND PENSIONS ARTICLE, ANNOTATED CODE OF MARYLAND, AS THEY MAY DEEM APPROPRIATE.

Section 20. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 62, “Personnel and Employee Benefits”, Article II, “Pension and Retirement Plans”, §62-9 “Plan to be legal and binding” be and is hereby repealed, reenacted, and amended to read as follows:

§ 62-9 [Plan to be legal and binding.] IMPLEMENTATION OF PENSION AND RETIREMENT PLANS
The City Manager is authorized to execute such necessary technical documents, AND TAKE THOSE ACTIONS NECESSARY, TO IMPLEMENT AN ADOPTED PENSION AND/OR RETIREMENT PLAN [so as to make the City of College Park Purchase Plan legal and binding].

Section 21. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 62, “Personnel and Employee Benefits”, Article IV, “Local Government Health Benefits Trust”, be and is hereby renumbered as Article III, which shall include amended, renumbered §62-10.

Section 22. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 62, “Personnel and Employee Benefits”, Article III, “‘Local Government Health Benefits Trust”, §62-10 “Statutory authorization” be and is hereby repealed in its entirety as follows:

§ 62-10 Statutory authorization.
[Political subdivisions and municipal corporations of the State of Maryland (collectively "local governments"), including the City of College Park, are authorized by Article 48A, § 482B, of the Annotated Code of Maryland (1991 Replacement Volume) (the "Act"), to pool together for the purpose of purchasing health insurance or self-insuring health risks.]

Section 23. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 62, “Personnel and Employee Benefits”, Article III, “‘Local Government Health Benefits Trust”, §62-11 “Determination” be and is hereby repealed in its entirety as follows:

§ 62-11 Determination.
A. Pursuant to the authority granted in the Act, certain local governments, including the City of College Park, have determined that it is necessary and desirable to pool together for the purpose of providing health benefits to public entities providing employees and retirees and their dependents cost containment and managed care advice to participants, all for the public purpose of reducing the cost of providing health benefits to public entity employees and retirees and their dependents.
B. The City of College Park has determined that it is in the best interests of the citizens of the City of College Park for the City of College Park to participate in the Local Government Health Benefits Trust (the "trust") and to adopt this article pursuant to the Act approving and directing
the execution and delivery of the local government health benefits trust agreement to be dated as of July 1, 1990 (the “trust agreement”).

Section 24. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 62, “Personnel and Employee Benefits”, Article III, “‘Local Government Health Benefits Trust”, §62-12 “Participation approved” be and is hereby repealed, reenacted, renumbered and amended to read as follows:

§ 62-12 Participation approved.
The participation of the City of College Park in the Local Government Health Benefits Trust, INCLUDING THE LOCAL GOVERNMENT HEALTH BENEFITS TRUST AGREEMENT DATED JULY 1, 1990 AND AMENDMENTS THERETO, is hereby approved. ANY PAYMENT OBLIGATION OF THE CITY UNDER THE TRUST AGREEMENT SHALL BE A GENERAL OBLIGATION OF THE CITY TO WHICH ITS FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER IS PLEDGED AND MAY NOT BE SUBJECT TO ANNUAL APPROPRIATION BY THE CITY. THE CITY MANAGER IS AUTHORIZED TO TAKE ANY AND ALL ACTION NECESSARY OR APPROPRIATE TO EFFECT THE PARTICIPATION OF THE CITY IN THE TRUST AND TO EXECUTE AND DELIVER ALL DOCUMENTS, INSTRUMENTS, CERTIFICATES AND OPINIONS NECESSARY OR APPROPRIATE IN CONNECTION THEREWITH.

Section 25. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 62, “Personnel and Employee Benefits”, Article III, “‘Local Government Health Benefits Trust”, §62-13 “Execution and delivery of trust” be and is hereby repealed in its entirety as follows:

[§ 62-13 Execution and delivery of trust.
The trust agreement approved, and the City Manager is hereby authorized and directed to execute and deliver to the trust the trust agreement with such changes as the Mayor and Council may approve, such approval to be evidenced conclusively by the City Manager’s execution and delivery of the trust agreement.]

Section 26. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 62, “Personnel and Employee Benefits”, Article III, “‘Local Government Health Benefits Trust”, §62-14 “Payment obligations” be and is hereby repealed in its entirety as follows:
§ 62-14 Payment obligation.
Pursuant to the Act, any payment obligation of the City of College Park under the trust agreement shall be a general obligation of the City of College Park to which its full faith and credit and unlimited taxing power is pledged and may not be subject to annual appropriation by the City of College Park.

Section 27. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 62, “Personnel and Employee Benefits”, Article III, ““Local Government Health Benefits Trust”, §62-15 “Responsibilities of City officials, employees and agents” be and is hereby repealed in its entirety as follows:

§ 62-15 Responsibilities of City officials, employees and agents.
All officials, employees and agents of the City of College Park are hereby authorized and directed to take any and all action necessary or appropriate to effect the participation of the City of College Park in the trust and to execute and deliver all documents, instruments, certificates and opinions necessary or appropriate in connection therewith.

Section 28. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that, upon formal introduction of this proposed Ordinance, which shall be by way of a motion duly seconded and without any further vote, the City Clerk shall distribute a copy to each Council member and shall maintain a reasonable number of copies in the office of the City Clerk and shall post at City Hall, to the official City website, to the City-maintained e-mail LISTSERV, and on the City cable channel, and if time permits, in any City newsletter, the proposed ordinance or a fair summary thereof together with a notice setting out the time and place for a public hearing thereon and for its consideration by the Council.
The public hearing, hereby set for ______ P.M. on the ________ day of _____________________, 2019, shall follow the publication by at least seven (7) days, may be held separately or in connection with a regular or special Council meeting and may be adjourned from time to time. All persons interested shall have an opportunity to be heard.
After the hearing, the Council may adopt the proposed ordinance with or without amendments or reject it. This Ordinance shall become effective on ________________, 2019 provided that, as soon as practicable after adoption, the City Clerk shall post a fair summary of the Ordinance and notice of its adoption at City Hall, to the official City website, to the City-maintained e-mail LISTSERV, on the City cable channel, and in any City newsletter.

**INTRODUCED** by the Mayor and Council of the City of College Park, Maryland at a regular meeting on the ______ day of ______________________ 2019.

**ADOPTED** by the Mayor and Council of the City of College Park, Maryland at a regular meeting on the ______ day of ______________________ 2019.

**EFFECTIVE** the ______ day of ______________________, 2019.

**ATTEST:**

CITY OF COLLEGE PARK

By: _____________________________ By: __________________________________
Janeen S. Miller, CMC, City Clerk Patrick L. Wojahn, Mayor

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY:**

Suellen M. Ferguson, City Attorney
Discussion, and possible introduction, of an Ordinance Of The Mayor And Council Of The City Of College Park Amending Chapter 54, “Local Government Insurance Trust
CITY OF COLLEGE PARK, MARYLAND
REGULAR MEETING AGENDA ITEM

**AGENDA ITEM: 19-O-02**

**Prepared By:** Jill Clements,
Director of Human Resources

**Meeting Date:** 01/15/2019

**Presented By:** Jill Clements

**Consent Agenda:** No

**Originating Department:** Human Resources

**Action Requested:** Introduce Ordinance 19-O-02 to amend Chapter 54 of the City Code.

**Strategic Plan Goal:** Goal 6: Excellent services

**Background/Justification:**
Chapter 54, Local Government Insurance Trust, of the City Code requires updating to reflect current practice and code references. A draft ordinance is attached that shows the current language and the proposed changes.

Chapter 54, Local Government Insurance Trust, was originally adopted to enable City participation in the Local Government Insurance Trust as authorized by State law. Most provisions are no longer needed because the Trust was successfully established long ago. This amendment includes simplified language to continue the authorization for the City to participate and its commitment to funding, to confirm the Trust Agreement as amended, and to delete unnecessary provisions.

**Fiscal Impact:**
None

**Council Options:**
1. Introduce Ordinance 19-O-02 and schedule the Public Hearing.
2. Consider other options and changes.
3. Take no action.

**Staff Recommendation:**
#1

**Recommended Motion:**
I move to introduce Ordinance 19-O-02 to amend Chapter 54, Local Government Insurance Trust, to continue the authorization for the City to participate in the Trust and its commitment to funding, and to confirm the Trust Agreement as amended and to delete unnecessary provisions. A public hearing will be scheduled for January 29, 2019.

**Attachments:**
1. Draft Ordinance 19-O-02
ORDINANCE

WHEREAS, pursuant to §5-201 et seq. of the Local Government Article, Annotated Code of Maryland, the City of College Park, Maryland (hereinafter, the “City”) has the power to pass such ordinances as it deems necessary to protect the health, safety and welfare of the citizens of the municipality and to prevent and remove nuisances; and

WHEREAS, Chapter 54 was adopted by the Mayor and Council pursuant to §19-602 et seq. of the Insurance Article, Annotated Code of Maryland, as amended; and

WHEREAS, a number of the provisions in Chapter 54 were adopted to authorize the initial participation by the City in insurance pools for the purpose of purchasing casualty, HEALTH or property insurance or self-insuring casualty, or property risks; and

WHEREAS, these provisions are no longer necessary; and

WHEREAS, Chapter 54 as amended will continue to authorize the City to participate in and fund insurance pools for the purpose of purchasing casualty, or property insurance or self-
insuring casualty, or property risks, and also for insuring the health of its employees by such means, including specifically the Local Government Insurance Trust; and

WHEREAS, the Mayor and Council have determined that it is in the public interest to revise and update Chapters 54.

Section 1. NOW THEREFORE, BE IT ORDAINED AND ENACTED, by the Mayor and Council of the City of College Park, Maryland that Chapter 54, “Local Government Insurance Trust”, Article I, “Findings”, §54-1 “Statutory authority” be and is hereby repealed, re-enacted and amended to read as follows:

§ 54-1 [Statutory authority]. AUTHORITY TO ENTER INTO INSURANCE POOLS

[Political subdivisions and municipal corporations of the State of Maryland (collectively “local governments”), including the City of College Park, are authorized by Article 48A, § 482B, of the Annotated Code of Maryland (1991 Replacement Volume)] A. PURSUANT TO §19-602 ET SEQ. OF THE INSURANCE ARTICLE, ANNOTATED CODE OF MARYLAND, AS AMENDED, THE CITY IS AUTHORIZED [(the "Act")], to pool together WITH OTHER POLITICAL SUBDIVISIONS AND MUNICIPAL CORPORATIONS OF THE STATE for the purpose of purchasing casualty, HEALTH or property insurance or self-insuring casualty, HEALTH or property risks, AND TO APPROVE BY RESOLUTION ANY MEASURES REQUIRED TO DO SO, INCLUDING WITHOUT LIMITATION ENTERING INTO TRUSTS AND CAPITALIZATION AGREEMENTS, AND EXECUTING AND DELIVERING ALL NECESSARY AND APPROPRIATE ENABLING DOCUMENTS, INSTRUMENTS, CERTIFICATES AND OPINIONS.

B. THE CITY IS AUTHORIZED TO CONTINUE TO PARTICIPATE IN THE LOCAL GOVERNMENT INSURANCE TRUST FOR THE PURPOSE OF PURCHASING CASUALTY, HEALTH OR PROPERTY INSURANCE OR SELF-INSURING CASUALTY,
HEALTH OR PROPERTY RISKS, THROUGH ITS TRUST AGREEMENT, AS AMENDED, WHICH IS HEREBY CONFIRMED AND RATIFIED, AND OTHER REQUIRED AGREEMENTS, AND TO FUND SAID PARTICIPATION.

Section 2. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 54, “Local Government Insurance Trust”, Article I, “Findings”, §54-2 “Establishment of trust” be and it is hereby deleted in its entirety as follows:

[§ 54-2 Establishment of trust. The Local Government Insurance Trust (the “trust”) was established on July 1, 1987, pursuant to the Act and the local government insurance trust agreement for the purpose of enabling local governments to pool together to provide insurance protection for casualty and property risks and to provide risk management and loss control services for local governments, all for the public purpose of minimizing the cost of casualty insurance and property insurance claims and administration to local governments.]

Section 3. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 54, “Local Government Insurance Trust”, Article I, “Findings”, §54-3 “Authority to enter into agreement” be and it is hereby deleted in its entirety as follows:

[§ 54-3 Authority to enter into agreement. The Act, as amended by Chapter 459 of the Laws of Maryland of 1988, authorizes any local government to enter into an agreement to capitalize or otherwise fund an insurance pool established under the Act. The Act, as amended by Chapter 459 of the Laws of Maryland of 1988, further provides that:
A. Such agreement may have such provisions, terms and conditions and may be of such duration as the local government, by resolution, may determine.
B. Any payment obligation in such agreement shall be a general obligation of the local government to which its full faith and credit and unlimited taxing power is pledged and may not be subject to annual appropriation by the local government.
C. Such payment obligation may be undertaken without regard to any limitations set forth in the Charter of the local government or other applicable public local or public general law that would otherwise apply and without complying with any procedures set forth in the Charter of the local government or other applicable public local or public general law that would otherwise be required.]

Section 4. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 54, “Local Government Insurance Trust”, Article
I, “Findings”, §54-4 “Additional capital provided” be and it is hereby deleted in its entirety as follows:

§54-4 Additional capital provided.
Pursuant to the authority granted in the Act, as amended by Chapter 459 of the Laws of Maryland of 1988, the trust and certain local governments, including the City of College Park, have determined that it is necessary and desirable to provide additional capital and surplus for the insurance pools administered by the trust for the benefit of local governments covered by the insurance pools administered by the trust (the "capitalization program").

Section 5. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 54, “Local Government Insurance Trust”, Article I, “Findings”, §54-5 “Documents” be and it is hereby deleted in its entirety as follows:

§54-5 Documents.
Pursuant to the authority of the Act, as amended by Chapter 459 of the Laws of Maryland of 1988, the trust has prepared and submitted to the City of College Park for approval the following documents in order to implement the capitalization program:
A. A cash contribution coverage and capitalization agreement to be dated as of July 1, 1989 (the "cash capitalization agreement"), by and among the trust and certain local governments participating in the capitalization program (collectively the "cash capital participants").
B. The second amended and restated trust agreement to be dated as of July 1, 1989 (the "LGIT agreement"), by and among the trust and those local governments participating in the trust.

Section 6. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 54, “Local Government Insurance Trust”, Article I, “Findings”, §54-6 “Effect of agreements” be and it is hereby deleted in its entirety as follows:

§54-6 Effect of agreements.
Collectively, the cash capitalization agreement and the LGIT agreement, when approved, executed and delivered, will:
A. Enable the trust to raise the capital necessary to support additional coverages, including excess liability coverage, environmental cleanup coverage and environmental liability coverage (the "capital coverage").
B. Enable the trust to make the capital coverage available to each cash capital participant.
C. Require each cash capital participant to make a capital contribution in cash on or before the date specified in the cash capitalization agreement.

Section 7. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 54, “Local Government Insurance Trust”, Article
I, “Findings”, §54-7 “Determination to participate” be and it is hereby deleted in its entirety as follows:

[§ 54-7 Determination to participate.
The City of College Park has determined that it is in the best interests of the citizens of the City of College Park for the City of College Park to participate in the capitalization program and to adopt this chapter, pursuant to the Act, approving and directing the execution and delivery of the cash capitalization agreement and the LGIT agreement.]

Section 8. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 54, “Local Government Insurance Trust”, Article I, “Findings”, §54-8 “Capital contribution” be and it is hereby deleted in its entirety as follows:

[§ 54-8 Capital contribution.
A. By means of this chapter, the City of College Park approves, accepts and agrees to pay a capital contribution in the principal amount of $32,859 under the terms and conditions of the cash capitalization agreement.
B. Under the terms of the Act, as amended by Chapter 459 of the Laws of Maryland of 1988, the capital contribution approved by this chapter and any interest payable thereon will be a general obligation of the City of College Park to which its full faith and credit and unlimited taxing power is pledged and will not be subject to annual appropriation by the City of College Park.]

Section 9. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 54, “Local Government Insurance Trust”, Article II, “Participation in trust”, §54-9 “Program and participation approved” be and it is hereby deleted in its entirety as follows:

[§ 54-9 Program and participation approved.
A. The capitalization program is hereby approved.
B. The participation of the City of College Park in the capitalization program is hereby authorized and approved.]

Section 10. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 54, “Local Government Insurance Trust”, Article II, “Participation in trust”, §54-10 “Contribution authorized” be and it is hereby deleted in its entirety as follows:
§ 54-10 Contribution authorized.
The City of College Park is hereby authorized and directed to make a capital contribution to the trust in the amount of $32,859 pursuant to the terms and conditions of the cash capitalization agreement. Pursuant to the Act, the capital contribution in the amount of $32,859 and any interest payable thereon under the terms and conditions of the cash capitalization agreement shall be a general obligation of the City of College Park to which its full faith and credit and unlimited taxing power is pledged and may not be subject to annual appropriation by the City of College Park.

Section 11. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 54, “Local Government Insurance Trust”, Article II, “Participation in trust”, §54-11 “Agreements approved” be and it is hereby deleted in its entirety as follows:

§ 54-11 Agreements approved.

A. The cash capitalization agreement, in substantially the form attached hereto as Exhibit A, is hereby approved, and the City Manager is hereby authorized and directed to execute and deliver to the trust and the other cash capital participants the cash capitalization agreement in substantially the form attached hereto as Exhibit A, with such changes as the City Manager may approve, such approval to be evidenced conclusively by the City Manager’s execution and delivery of the cash capitalization agreement.

B. The LGIT agreement, in substantially the form attached hereto as Exhibit B, is hereby approved, and the City Manager is hereby authorized and directed to execute and deliver to the trust the LGIT agreement in substantially the form attached hereto as Exhibit B, with such changes as the City Manager may approve, such approval to be evidenced conclusively by the City Manager’s execution and delivery of the LGIT agreement.

Section 12. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 54, “Local Government Insurance Trust”, Article II, “Participation in trust”, §54-12 “Execution of program” be and it is hereby deleted in its entirety as follows:

§ 54-12 Execution of program.
All officials, employees and agents of the City of College Park are hereby authorized and directed to take any and all action necessary or appropriate to effect the participation of the City of College Park in the capitalization program and to execute and deliver all documents, instruments, certificates and opinions necessary or appropriate in connection therewith.
Section 13. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 54, “Local Government Insurance Trust”, Article II, “Participation in trust”, §54-13 “Declaration” be and it is hereby deleted in its entirety as follows:

§ 54-13 Declaration.
Article I of this chapter is hereby declared to be and shall at all times and for all purposes be deemed to be the findings of the City of College Park in connection with its decision to participate in the capitalization program, to make a capital contribution in the amount of $32,859 and to approve, execute and deliver the cash capitalization agreement and the LGIT agreement.}

Section 14. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that the designations of Article I and Article II are no longer required for Chapter 54, “Local Government Insurance Trust”, and so are hereby deleted.

Section 15. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that, upon formal introduction of this proposed Ordinance, which shall be by way of a motion duly seconded and without any further vote, the City Clerk shall distribute a copy to each Council member and shall maintain a reasonable number of copies in the office of the City Clerk and shall post at City Hall, to the official City website, to the City-maintained e-mail LISTSERV, and on the City cable channel, and if time permits, in any City newsletter, the proposed ordinance or a fair summary thereof together with a notice setting out the time and place for a public hearing thereon and for its consideration by the Council.

The public hearing, hereby set for ______ P.M. on the ______ day of ___________________, 2019, shall follow the publication by at least seven (7) days, may be held separately or in connection with a regular or special Council meeting and may be adjourned from time to time. All persons interested shall have an opportunity to be heard.
After the hearing, the Council may adopt the proposed ordinance with or without amendments or reject it. This Ordinance shall become effective on ________________, 2019 provided that, as soon as practicable after adoption, the City Clerk shall post a fair summary of the Ordinance and notice of its adoption at City Hall, to the official City website, to the City-maintained e-mail LISTSERV, on the City cable channel, and in any City newsletter.

INTRODUCED by the Mayor and Council of the City of College Park, Maryland at a regular meeting on the _______ day of ______________________ 2019.

ADOPTED by the Mayor and Council of the City of College Park, Maryland at a regular meeting on the _______ day of ______________________ 2019.

EFFECTIVE the _______ day of ______________________, 2019.

ATTEST: 

CITY OF COLLEGE PARK

By: _____________________________ By: _____________________________

Janeen S. Miller, CMC, City Clerk Patrick L. Wojahn, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

______________________________

Suellen M. Ferguson, City Attorney
19-CR-01

Charter change to update C6-3
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<th><strong>Prepared By:</strong> Suellen M. Ferguson, City Attorney</th>
<th><strong>Meeting Date:</strong> January 15, 2018</th>
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<tr>
<td><strong>Presented By:</strong> Suellen M. Ferguson, City Attorney</td>
<td><strong>Consent Agenda:</strong> No</td>
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<th><strong>Originating Department:</strong> Administration</th>
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<th><strong>Action Requested:</strong> Introduction of Article VI, “Meetings”, § C6-3, “Closed Sessions”, to authorize the Mayor and Council to meet in Closed Session to discuss cybersecurity under certain circumstances.</th>
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<th><strong>Strategic Plan Goal:</strong> Goal 4: Quality Infrastructure</th>
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<th><strong>Background/Justification:</strong></th>
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<td>In 2018, the General Assembly adopted HB 695, which authorizes the City to meet in closed session to discuss cybersecurity under certain circumstances. This bill recognizes the security issues raised by the vulnerability of networks to cyber-attack that will allow unauthorized access to personal and security information and allows certain matters to be discussed in closed session. The Charter Amendment attached will update the City Charter to reflect current state law.</td>
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<th><strong>Fiscal Impact:</strong></th>
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<td>None</td>
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<tr>
<th><strong>Council Options:</strong></th>
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<tr>
<td>1. Introduce the Charter Amendment and schedule a Public Hearing.</td>
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<td>2. Amend and introduce the Charter Amendment.</td>
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<td>3. Do nothing</td>
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<th><strong>Staff Recommendation:</strong></th>
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<tr>
<td>Option #1</td>
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<th><strong>Recommended Motion:</strong></th>
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<tr>
<td><em>I move to introduce Charter Amendment 19-CR-01 to amend Article VI, “Meetings”, § C6-3, “Closed Sessions”, to authorize the Mayor and Council to meet in Closed Session to discuss cybersecurity under certain circumstances.</em></td>
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<tr>
<th><strong>Attachments:</strong></th>
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CHARTER RESOLUTION
OF THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK,
AMENDING ARTICLE VI, “MEETINGS”, § C6-3, “CLOSED SESSIONS”, TO
AUTHORIZE THE MAYOR AND COUNCIL TO MEET IN CLOSED SESSION
TO DISCUSS CYBERSECURITY UNDER CERTAIN CIRCUMSTANCES

A Charter Resolution of the Mayor and Council of the City of College Park, adopted pursuant to the authority of Article XI-E of the Constitution of Maryland and §4-301 et seq., Local Government Article, Annotated Code of Maryland, as amended.

WHEREAS, the General Assembly adopted HB 695, which authorizes the City to meet in closed session to discuss cybersecurity under certain circumstances; and

WHEREAS, the Mayor and Council have determined that it is in the public interest to amend Article VI, “Meetings”, §C6-3, “Closed sessions”, to include cybersecurity as a basis for closing a meeting.

Section 1. NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of College Park that Article VI, “Meetings”, §C6-3, “Closed sessions” be repealed, re-enacted and amended to read as follows:

§ C6-3 Closed sessions.
Nothing in this article shall prevent the Mayor and Council from holding a closed session when one or more of the following criteria are met, but no ordinance, resolution, rule or regulation shall be finally adopted at such a closed session. To be held, a closed session shall require a supermajority vote of all Councilpersons present, defined as one more than a simple majority of Councilpersons present. The Council may meet in closed session, or adjourn in open session to a closed session, only to:
A. Discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation or performance evaluation of appointees, employees,
or officials over whom it has jurisdiction; or to consider any other personnel matter that affects one or more specific individuals;
B. Protect the privacy or reputation of individuals with respect to a matter that is not related to public business;
C. Consider the acquisition of real property for a public purpose and matters directly related to such acquisition;
D. Consider a matter that concerns the proposal for a business or industrial organization to locate in Prince George's County;
E. Consider the investment of public funds;
F. Consider the marketing of public securities;
G. Consult with counsel to obtain legal advice;
H. Consult with staff, consultants, or other individuals about pending or potential litigation;
I. Conduct collective bargaining negotiations or consider matters that relate to the negotiations;
J. Discuss public security if the Council determines that public discussion would constitute a risk to the public or to public security, including:
   (1) The deployment of fire and police services and staff; and
   (2) The development and implementation of emergency plans;
K. Prepare, administer, or grade a scholastic, licensing, or qualifying examination;
L. Conduct or discuss an investigative proceeding on actual or possible criminal conduct;
M. Comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter; or
N. Before a contract is awarded or bids are opened, discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the Council to participate in the competitive bidding or proposal process.

O. DISCUSS CYBERSECURITY, IF IT IS DETERMINED THAT PUBLIC DISCUSSION WOULD CONSTITUTE A RISK TO:

   (1) SECURITY ASSESSMENTS OR DEPLOYMENTS RELATING TO INFORMATION RESOURCES TECHNOLOGY;

   (2) NETWORK SECURITY INFORMATION, INCLUDING INFORMATION THAT IS:

       A. RELATED TO PASSWORDS, PERSONAL IDENTIFICATION NUMBERS, ACCESS CODES, ENCRYPTION, OR OTHER COMPONENTS OF THE SECURITY SYSTEM OF A GOVERNMENTAL ENTITY;

       B. COLLECTED, ASSEMBLED, OR MAINTAINED BY OR FOR
A GOVERNMENTAL ENTITY TO PREVENT, DETECT, OR INVESTIGATE CRIMINAL ACTIVITY; OR

C. RELATED TO AN ASSESSMENT, MADE BY OR FOR A GOVERNMENTAL ENTITY OR MAINTAINED BY A GOVERNMENTAL ENTITY, OF THE VULNERABILITY OF A NETWORK TO CRIMINAL ACTIVITY; OR

(3) DEPLOYMENTS OR IMPLEMENTATION OF SECURITY PERSONNEL, CRITICAL INFRASTRUCTURE, OR SECURITY DEVICES.

Section 2. BE IT FURTHER RESOLVED by the Mayor and Council of the City of College Park that this Charter Resolution was introduced on the _____ day of ______________________, 2019. It is adopted this _____ day of ______________________, 2019, and that the amendment to the Charter of the City of College Park, hereby proposed by this enactment, shall be and become effective upon the fiftieth (50th) day after its passage by the City unless petitioned to referendum in accordance with §4-304 of the Local Government Article, Annotated Code of Maryland within forty (40) days following its passage. A complete and exact copy of this Charter Resolution shall be posted in the City offices located at 4500 Knox Road, College Park, Maryland for forty (40) days following its passage by the Mayor and Council and a fair summary of the Charter Resolution shall be published in a newspaper having general circulation in the City not less than four (4) times, at weekly intervals, also within the forty (40) day period following its adoption by the City.

Section 3. BE IT FURTHER RESOLVED that, within ten (10) days after the Charter Resolution hereby enacted becomes effective, either as herein provided or following referendum, the City Manager for the City of College Park shall send separately, by mail, bearing a postmark from the United States Postal Service, to the Department of Legislative Services, one copy of the following information concerning the Charter Resolution: (i) the complete text of this Resolution; (ii) the date of referendum election, if
any, held with respect thereto; (iii) the number of votes cast for and against this Resolution by the Council of the City of College Park or in the referendum; and (iv) the effective date of the Charter Resolution.

Section 4. BE IT FURTHER RESOLVED that the City Manager of the City of College Park be, and hereby is, specifically enjoined and instructed to carry out the provisions of Sections 2 and 3 as evidence of compliance herewith; and said City Manager shall cause to be affixed to the minutes of this meeting (i) an appropriate Certificate of Publication of the newspaper in which the fair summary of the Charter Resolution shall have been published; and (ii) shall further cause to be completed and executed the Municipal Charter or Annexation Resolution Registration Form.

Section 5: BE IT FURTHER RESOLVED that if any provision of this Resolution or the Charter adopted by this Resolution, or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect the other provisions or any other application of this Resolution or of the Charter which can be given effect without the invalid provisions or application, and to this end, all the provisions of this Resolution and of the Charter are hereby declared to be severable.

INTRODUCED by the Mayor and Council of the City of College Park at a regular meeting on the _______day of ______________________ 2019.

ADOPTED by the Mayor and Council of the City of College Park at a regular meeting on the _______ day of ______________________ 2019.

EFFECTIVE the _______ day of _______________________, 2019.
ATTEST:

Janeen S. Miller, CMC, City Clerk

CITY OF COLLEGE PARK,

By _________________________________

Patrick L. Wojahn, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Suellen M. Ferguson, City Attorney
19-G-06

Appointments to Boards and Committees
• Victoria Evans to the Seniors Committee
• Councilmember Rigg as alternate to the COG Region Forward Coalition