



# *City of Gaithersburg*

31 South Summit Avenue  
Gaithersburg, Maryland 20877

**DRAFT**

## Mayor and City Council Regular Session Minutes City Hall - Council Chambers Monday, October 17, 2016

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### **I. CALL TO ORDER**

A Mayor and City Council regular session was called to order at 7:30 p.m. with Mayor Ashman presiding. Council Members present: Harris, Sesma, Spiegel, and Wu. Council Member absent: Marraffa. Staff present: City Manager Tomasello, Deputy City Manager Enslinger, City Attorney Board, Assistant City Attorney Johnson, Economic and Business Development Director Lonergan, Director of Parks, Recreation, & Culture Potter, Planning and Code Administration Director Schlichting, Information Technology Director Cottrell, Director of Community & Public Relations Monaco, Planning Division Chief Matsen, Long Range Planning Manager Robinson, Community Planning Manager Schwarz, Planner II and Historic District Commission Liaison Berger, Planner Forbes, Community Services Division Manager Herndon, Community Services Case Coordinator Lofton, Digital & Social Media Specialist Smith, Neighborhood Services Division Chief Roman, Parks, Recreation and Culture Director Potter, Police Officer III Lane, and Municipal Clerk Stokes. Planning Commission present for joint public hearing: Bauer, Hopkins, Kaufman, Wessell and Winborne.

### **II. PLEDGE OF ALLEGIANCE**

The Pledge was led by Boy Scout Troop 221, Rachel Carson Elementary School, Gaithersburg, Maryland.

### **III. REFLECTION**

Mayor Ashman called for a moment of silence for his colleague Henry Marraffa who is still hospitalized, battling Leukemia.

### **IV. APPROVAL OF MINUTES**

#### **A. Regular Session held September 6, 2016**

Motion was made by Robert Wu, seconded by Ryan Spiegel, that minutes from the Regular Session held September 6, 2016, be adopted.

Vote: 4-0

**B. On-Site Work Session held September 12, 2016**

Motion was made by Michael Sesma, seconded by Robert Wu, that minutes from the On-Site Work Session held September 12, 2016, be approved.

Vote: 3-0-1 (Abstained: Spiegel)

**C. On-Site Work Session held September 26, 2016**

Motion was made by Neil Harris, seconded by Michael Sesma, that minutes from the On-Site Work Session held September 26, 2016, be approved.

Vote: 4-0

**V. APPOINTMENTS**

**A. Resolution of the City Council Confirming Appointments and a Reappointment Made by the Mayor to the Commission on Landlord-Tenant Affairs, Olde Towne Advisory Subcommittee and Police Advisory Committee**

The City Council confirmed the following appointments and reappointment made by the Mayor: Commission on Landlord-Tenant Affairs, John Monroe (appointment), 8 Melvin Street, Apt. 1032, Gaithersburg, Maryland 20877 and Joshua Fischer (appointment), 104 Park Avenue, #302, Gaithersburg, Maryland 20877, three-year terms; Olde Towne Advisory Subcommittee, Yvette Monroe (appointment), 8 Melvin Street, Apt. 1032, Gaithersburg, Maryland 20877, indefinite term; and the Police Advisory Committee, Charles Ferrell (reappointment), 227 Rolling Road, Gaithersburg, Maryland 20877, two-year term.

Motion was made by Michael Sesma, seconded by Ryan Spiegel, that a Resolution of the City Council Confirming Appointments and a Reappointment Made by the Mayor to the Commission on Landlord-Tenant Affairs, Olde Towne Advisory Subcommittee and Police Advisory Committee (Resolution No. R-55-16), be approved.

Vote: 4-0

**B. Resolution of the City Council Confirming an Appointment Made by the Mayor to the Board of Supervisors of Elections**

The City Council confirmed the following appointment made by the Mayor to the Board of Supervisors of Elections: William Snyder, 114 Fox Trail Terrance, Gaithersburg, Maryland 20878, four-year term.

Motion was made by Ryan Spiegel, seconded by Neil Harris, that a Resolution of the City Council Confirming an Appointment Made by the Mayor to the Board of Supervisors of Elections (Resolution No. R-56-16), be approved.

Vote: 4-0

**VI. OATH OF OFFICE****A. Oath of Office to Board of Supervisors of Elections Member**

Mayor Ashman administered the Oath of Office to William Snyder to serve a four-year term on the City's Board of Supervisors of Elections.

**VII. PRESENTATIONS****A. Certificate of Recognition of the Mayor and City Council Presented to Aliyar Agha-Khan**

Mayor Ashman recognized Aliyar Agha-Khan who established a "GoFundMe" campaign and has chosen the City of Gaithersburg Dolores C. Swoyer Camp Scholarship Fund as the recipient of donations totaling \$2,500. Mr. Khan is a 14 year old 9th grade student at Quince Orchard High School. His family has been residents of Gaithersburg for the past 10 years. Aliyar has a huge heart, a great sense of humor, and seems to like business and engineering. The Dolores C. Swoyer Camp Scholarship Fund was established in 1989 by Al and Dolores Swoyer in memory of their daughter. The Swoyer family wanted to set up the Fund in order to provide camp scholarships to Gaithersburg children who may not be able to afford participation in the City's recreation programs without assistance. During the operation of Gaithersburg's 2016 spring and summer programs, 97 families were approved for full or partial assistance. City of Gaithersburg subsidies enabled 71 children to attend Gaithersburg spring and summer camps. The total amount of financial assistance subsidies awarded during 2016 was \$26,983. The City is honored that Aliyar Agha-Khan chose the City of Gaithersburg as his beneficiary.

**B. Proclamation of the Mayor and City Council Launching the Gaithersburg Financial Fitness Challenge**

Mayor Ashman issued a proclamation to Sue Rogan, Director of Financial Education, Maryland Creating Assets, Savings and Hope (CASH) Campaign, launching the Gaithersburg Financial Fitness Challenge, "It's Your Money, Make it Count." This initiative of the Gaithersburg Mayor and City Council is being implemented in conjunction with members of the Financial Wellness Coalition and Bank On Gaithersburg. The Challenge takes place from October, 2016 to June, 2017. The program allows up to 200 qualifying City residents to earn points for activities related to financial wellness and be given the opportunity to:

- Explore banking, vocational, financial education, Volunteer Income Tax Assistance (VITA) and kids saves challenges
- Work one on one with a Financial Wellness Coalition partner
- Obtain points for completing monthly goals. Points qualify the participants for incentives such as gift cards from local businesses, entry passes to City recreational facilities, and children's prizes

Two Grand Prize drawings will be held in July, 2017, one for \$500 towards the payment of a non-revolving bill and one for a free week of camp through Gaithersburg's Summer in the City program. The program was made possible in part by a grant from the Cities for Financial Empowerment Fund, Inc. A representative from that organization will attend the Launch Party on Wednesday, October 26 from 5 to 7 p.m. at La Casita restaurant. The Gaithersburg Financial Fitness Challenge was modeled after Maryland CASH Academy's "Passport to

Prosperity.” Participants in the Gaithersburg Challenge are welcome to participate in the State Passport program as well. For more information please visit the City’s website at [www.gaithersburgmd.gov](http://www.gaithersburgmd.gov), or contact Tawana Lofton by phone at 301-258-6395 or via email at [tlofton@gaithersburgmd.gov](mailto:tlofton@gaithersburgmd.gov).

**C. Proclamation of the Mayor and City Council Designating October 2016 as “Domestic Violence Awareness Month” in the City of Gaithersburg**

Mayor Ashman issued a proclamation to bring awareness to Domestic Violence Awareness Month. Gaithersburg is committed to supporting the prevention of domestic violence and assisting those throughout our community who directly and indirectly suffer from its devastating effects. On Saturday, October 8, 2016 Gaithersburg was proud to join with Women Who Care Ministries, the Victims’ Rights Foundation, Sisters 4 Sisters Network and The People’s Community Baptist Church to present the 10th Annual “Restore the Joy” Domestic Violence Awareness Luncheon. The event included a dialog with a panel of experts, a resource fair and inspirational performances. Accepting the proclamation were Judith Clark, Women Who Care Ministries, Greg Wims, Victims’ Rights Foundation (not present), and Kim Barry representing The People’s Community Baptist Church.

**VIII. PUBLIC COMMENTS**

1. *Joshua Fisher, 104 Park Avenue*, reported on Domestic Violence Awareness Month and the agencies and resources offering support to individuals and families. Thanked the City for bringing awareness to this issue.
2. *Beth Junium, Saybrooke resident*, thanked the City for the installation of a crosswalk on Victory Farm Drive and expressed concern about children having challenges entering the crosswalk. Requested that the police look into it and have a presence there if necessary. Recognized and expressed support of retiring Sergeant Rudy Wagner and his important presence in their community.
3. *Aaron Rosenzweig, Gaithersburg resident*, spoke about the “tiny house” in Gaithersburg and urged members of the City Council to visit.
4. *Sherwin Wells, Help America Inc.*, non-profit organization looking to start a family self-sufficiency program in the area. Stated that he has spoken with landlords on East Diamond Avenue and Planning and Code department staff. Asked the City to consider an exception in the CBD Zone which precludes automotive businesses. Staff will follow up.

**IX. JOINT PUBLIC HEARING**

**A. Schematic Development Plan Application: SDP-7354-2016 Crown Neighborhoods 3 & 5**

Long Range Planning Manager Robinson presented the hearing advertised in the September 29 and October 6, 2016 issues of The Washington Post. The property was properly posted, notifications mailed and a notice was placed on the City’s website. There are currently 31 exhibits in the record file and available for review at City Hall during regular business hours. Applicant VII Crown Farm Owner LLC, submitted Schematic Development Plan (SDP) application SDP-7354-2016. The plan is in accordance with the approved and amended X-182 annexation agreement and Sketch Plan Z-315, known as the Crown Property Neighborhoods 3 and 5. The plan proposes a mix of uses, including 244 townhomes, 44 single-family detached units, 80 2-over-2 units, 509 multi-family units, and 15,000 square

feet of future commercial uses and associated road code waivers on approximately 42 acres of land. Mr. Robinson showed maps orienting the City Council and Commission to the site.

David Ramsey, Westbrook Properties, representing the applicant, outlined the presentation for Neighborhoods 3 and 5 and provided a brief update on current development of the overall Crown property. Stated that Crown is broken out into three major segments, Neighborhood 1 to the west, Neighborhood 2 in the middle and Neighborhoods 3 and 5 to the east. Downtown Crown is located in Neighborhood 1, consisting of commercial and retail. In addition, there is retail, the Cadence apartments, as well as 2-over-2 condominiums which are under construction. He further added that coming soon will be 128 loft style condos. Neighborhood 2 is adjacent to Neighborhood 1, consisting of the bulk for-sale residential homes. Said neighborhood is approximately 80% complete or under construction. Townhomes are expected to be completed by Spring of 2017 and single-family homes by late 2017 or early 2018. He noted that proposed improvements are split between Phase 1 and 2. An overview was provided of the housing types and product mix of Neighborhood 3 with 432 residential units comprised of single-family detached (SFD) units, townhomes, 2-over-2 units, and two condominium buildings. Neighborhood 3 also contains a stormwater management pond, a linear park system, and collected pocket parks and open areas. Neighborhood 5 is a stand-alone multi-family structure with ground floor commercial located at the corner of Decoverly Drive and Fields Road. It is proposed to be between 4-9 stories in height based partially upon grade changes. The commercial component is envisioned to be "neighborhood scaled retail" not to exceed 15,000 square feet. The applicant is proposing a commercial space which will contribute to the overall quality of the development on the ground floors.

Josh Sloan, reviewed the design guidelines used to adopt previous approvals which are being proposed for Neighborhoods 3 and 5. Stated that the objective was to adopt the previous approvals in the earlier neighborhoods, keeping with the key topics such as urban design, circulation, building heights, density, architectural controls for both the commercial and multi-family buildings (towns and detached), and the landscape and hardscape guidelines. He noted that densities will be concentrated near the mass transit. The circulation, connectivity and walkability of the street and sidewalk systems were reviewed. Stated that more open space and the enhancement of streetscapes are being integrated into the design. The building massing and facades are being maintained throughout the Crown development. He reiterated the diversity of housing with a surplus of parking for residents and visitors. The architectural elevations and roofing styles are also diverse. Stated that integrated pockets, screening and framing will be added to the linear park and central green. There are two primary focal parks; one centered along the linear park, fronting Crown Park Avenue and the second, a programmed pocket park. The comprehensive pathway plan links to the various open space elements, internal residential blocks, and connectivity to the proposed future CCT station and LSC Loop.

The presenters reported that Westbrook Properties have been working with WSSC to gain approvals and work out a construction timing and schedule for replacing water and sewer lines during the development phasing moving from south to north. The cost for replacing both water mains would be at the expense of the applicant. Neighborhood 3 would undergo construction and be completed by spring of 2017. The work for Neighborhood 5 is not anticipated until 2018.

In response to questions, staff stated that there is sufficient parking and noted that the proposed Neighborhood 5 would not be required to accommodate any future parking for the CCT. Parking for Neighborhood 5 would be located within a podium level and below-grade parking structure. Parking in Neighborhood 3 would be facilitated through podium parking (condos), garages, driveways, and on-street with the majority of blocks providing .5 spaces or greater per unit. Phase 2 improvements would widen Fields Road from Discoverly Drive down to Omega Drive to alleviate traffic. Also, a fully subsidized shuttle service will be expanded and made available for commuters based on demand. In addition, as the buildout occurs, the City will begin working with Montgomery County for the extension of Ride On bus service. Staff reviewed the sidewalk and pathway plan and informed the Council and Commission that the City and the applicant have been working with Montgomery County on the LSC Loop throughout Crown.

Long Range Planning Manager Robinson responded to affordable housing plan questions and provided background on the terms of the annexation agreement, stating that \$3M was given to the housing initiative fund. He reviewed the housing approvals of the annexation agreement. The owners of the various housing types and their HOAs were questioned. The applicant responded that it would be similar to other housing multi-family developments, noting that Crown is a bit more complex. It was stated that retail is currently conceptual, proposing neighborhood scale retail, smaller than downtown Crown and more localized. Justification for the proposed density on the north end of the site and the design plan for utilizing the open space were questioned and relief was requested by the City Council and Commission. Clarification was requested regarding the driveways and on-street parking proposed for single-family units.

Staff will continue to work with the applicant on refining the plan, identifying details that need further explanation and /or revisions. Specifically:

- addition of conceptual elevations for the single-family detached units;
- identifying all public utility easements on the schematic plan;
- relocating handicap parking spaces adjacent to the linear park pavilion; and
- amending the landscape plan to address WSSC comments related to species selections.

There were no speakers from the public.

Motion was made by Lloyd Kaufman, seconded by Daniel Winborne, that the Planning Commission's record on Schematic Development Plan Application: SDP-7354-2016 Crown Neighborhoods 3 and 5, remain open until 5 p.m. Friday November 18, 2016 (32 days) with anticipated recommendation December 7, 2016.

Vote: 5-0

Motion was made by Michael Sesma, seconded by Ryan Spiegel, that the Mayor and City Council's record on Schematic Development Plan Application: SDP-7354-2016 Crown Neighborhoods 3 and 5, remain open until 5 p.m. Friday December 16, 2016 (60 days) with anticipated Policy Discussion January 17, 2017.

Vote: 4-0

**X. FROM THE MAYOR AND CITY COUNCIL****A. Announcements****Michael Sesma**

1. Announced that the Mayor and City Council are seeking members to fill two (2) vacancies on the Board of Appeals. Resumes and letters of interest should be submitted by 5:00 pm on Tuesday, November 15, 2016 to: Mayor and City Council, 31 South Summit Avenue, Gaithersburg, Maryland 20877, or send via email to: [cityhall@gaithersburgmd.gov](mailto:cityhall@gaithersburgmd.gov). For more information contact Planner Caroline Seiden at 301-258-6330.
2. Announced that the Mayor and City Council and staff plan to conduct a Council in the Communities meeting with the Shady Grove Villages, Washingtonian Village, and Reserve at Crown Pointe communities on Wednesday, October 19, 2016, 7:30 p.m. at Fields Road Elementary School, One School Drive, Gaithersburg, Maryland. Please contact Neighborhood Services Division Chief Kevin Roman at 301-258-6340 for more information or if you need accessibility accommodations.
3. Thanked the citizens for volunteering to serve on the City's Boards, Commissions and Committees.
4. Congratulated Judith Clark and Women Who Care Ministries for their role in addressing domestic violence and providing services to those in need.
5. Applauded the changes for the recently held Oktoberfest event. Extended thanks to staff for organizing the event and to the many sponsors and volunteers who helped.

**Robert Wu**

1. Mentioned the Oktoberfest event and echoed its success.
2. Announced that the Mayor and City Council are seeking members to fill two (2) vacancies on the Historic District Commission. Incumbents have expressed an interest to be reappointed. Resumes and letters of interest should be submitted by 5:00 pm on Monday, November 7, 2016 to: Mayor and City Council, 31 South Summit Avenue, Gaithersburg, Maryland 20877, or send via email to: [cityhall@gaithersburgmd.gov](mailto:cityhall@gaithersburgmd.gov). For more information contact Planner Chris Berger at 301-258-6330.
3. Announced that on October 26, 7 p.m. at Ridgeview Middle School, the Montgomery County Council will be holding a public forum on small cell antennas in public rights-of-ways. Stated that he will be in attendance and hopes that staff will also attend.

**Ryan Spiegel**

1. Stated the County Council Public Forum mentioned above by his colleague was passed on to staff who will be in attendance to observe. Thank Council Member Wu for mentioning the meeting.
2. Wished the public Happy Sukkot, Rosh Hashanah and Yom Kippur observances.
3. Echoed comments made about those who have volunteered to serve on the City's Boards, Commissions and Committees.
4. Congratulated and expressed support for staff and community volunteers who helped launch the Financial Fitness Challenge.

5. Saluted those making a difference to combat Domestic Violence in our community. Mentioned he served from 2003 to 2006 on the Montgomery County Victim Services Advisory Board addressing the issue and advocating at the county level.
6. Reported on the Maryland Municipal League Fall Conference held in Solomons Island. Several key staff members were in attendance including City Attorney Board and Parks, Recreation and Cultural Director Potter. Important topics discussed were small cell facilities and police training. Stated that the Board adopted their Strategic Plan and formally adopted the legislative priorities for the coming year: stormwater management, highway user revenue, and cooperation between municipalities, the Maryland State Highway Administration and WSSC for construction purposes. Mentioned the Joint Montgomery and Prince Georges County Chapter meeting scheduled for Thursday, October 20th. Mentioned the launching of Time to Talk Maryland; a public service initiative of the league which will talk about racial equity issues and how to have dialogue to help move communities forward. Stated that the City was recognized by Sustainable Maryland and received an eco-friendly plaque that will be hung in City Hall.
7. Mentioned that he has been invited to speak at the University of District of Columbia Law School Legislative Clinic on October 18th and will focus on municipal governance and how items move through the legislative process.
8. Echoed the comments above about Oktoberfest.
9. Clarified the process for public comments and possible responses under from the Mayor and City Council. Mayor Ashman mentioned his decision to not respond to a speaker under public comments.
10. Announced the remaining upcoming activities and events scheduled for the month of October. More information for all of these events, including hours, admission fees, and ticket purchase, is available on the City's website: [www.gaithersburgmd.gov](http://www.gaithersburgmd.gov).

#### **Neil Harris**

1. Congratulated City staff, sponsors and volunteers on a great Oktoberfest event.
2. Reported that he, as a former Kentlands HOA President, had worked closely with Gaithersburg Police Sergeant Wagner in the past and he will be missed.
3. Reported on the passing of his neighbor and friend Allan Katz and expressed condolences to the family.
4. Responded to a speaker from Public Comments; the tiny house in question is really part of a zoning issue and accessory dwelling units are not permitted in that zone where it was built. Reported that, according to survey results, the neighborhood did not want accessory dwelling units to be allowed. Stated that the City has no legal authority to make a special exception in this case.
5. Announced the Mayor and City Council are seeking to fill vacancies on City Commissions, Boards and Committees. For more information and official announcements, visit the City's website at [www.gaithersburgmd.gov](http://www.gaithersburgmd.gov).

**Mayor Ashman**

1. Echoed comments made above about Oktoberfest.
2. Attended Restore the Joy Domestic Violence Awareness Luncheon on October 8th.
3. Attended the Wells/Robertson House Family Dinner on September 27th.
4. Announced the Mayor and City Council will conduct a work session on Monday, October 24, to receive annual briefings from the Multicultural Affairs Committee, Senior Advisory Committee, Cultural Arts Advisory Committee and the Gaithersburg Book Festival Committee.
5. Announced that the Mayor and City Council will not conduct a work session on Monday, October 31, 2016. The next regular session will be held on Monday, November 7, 2016, 7:30 p.m. at City Hall.

**XI. FROM THE CITY MANAGER****Tony Tomasello**

1. Mentioned the WSSC water line protection program, HomeServe. Stated that staff is working on a presentation spot that will be available on the City's website to better educate the public on the optional program.
2. Reported that electric vehicle charging stations have been installed at the parking garage in Olde Towne and the Activity and Benjamin Gaither Centers.
3. Reported on the new position of Trudy Schwarz as Planning Division Chief and the departure of Martin Matsen. Mr. Matsen thanked City staff and the Mayor and City Council on the opportunity to serve the Gaithersburg community.

**XII. ECONOMIC DEVELOPMENT UPDATE****Economic and Business Development Director Lonergan**

1. Announced that the City's Economic Development office will host its 3rd annual Developer's Luncheon on November 17th at The Retreat at Crown West. The luncheon will feature presentations by City staff to regional real estate brokers and developers and will highlight new projects, regulatory and legislative actions, transportation issues, and development opportunities within Gaithersburg.
2. Announced that a lease, totaling 1,589 square feet, was signed with the Goldberg Group Property Management at 9711 Washingtonian Boulevard which brought the building to a status of fully leased for the very first time. Staff will continue work in maintaining this momentum.

**XIII. ORDINANCES / RESOLUTIONS / REGULATIONS****A. Resolution of the Mayor and City Council Authorizing the City Manager to Enter into a Contract to Purchase Road Salt**

This resolution authorized the City Manager to award a contract to purchase road salt from Morton Salt Inc., 123 North Wacker Drive, Chicago, Illinois 60606, in the amount of One Hundred Sixty Thousand Dollars (\$160,000); said funds to be expended from the Operating Budget.

Motion was made by Michael Sesma, seconded by Neil Harris, that a Resolution of the Mayor and City Council Authorizing the City Manager to Enter into a Contract to Purchase Road Salt (Resolution No. R-57-16), be approved.

Vote: 4-0

**XIV. POLICY DISCUSSION****A. An Ordinance to Amend Chapter 24 (City Zoning Ordinance), Article XII, § 24-224, Entitled, "Definitions"; § 24-225.1, Entitled, "Powers and Duties of Historic District Commission"; § 24-226, Entitled, "Designation of Historic Districts and Historic Sites; Criteria"; and § 24-231, Entitled, "Moratorium on Alteration of Demolition"; and to add § 24-233.1, Entitled, Undue Economic Hardship" (CTAM-7359-2016)**

Planner II and Liaison to the Historic District Commission Berger, presented the above ordinance for policy discussion and final action. The Mayor and City Council and Planning Commission conducted a joint public hearing on August 1, 2016. No comments were made by the public during the hearing, but an email in support of the amendment was received. In response to questions and comments made during the hearing, Assistant City Attorney and Planning staff made revisions to the draft ordinance. The Planning Commission's record closed August 22, 2016 and they reviewed the proposed amendment and modifications during its September 7, 2016, meeting. It was recommended that the Mayor and City Council adopt the proposed amendment. The Mayor and City Council held open its record until 5:00 p.m. on September 20, 2016. One correspondence came in during this time in support of the proposed ordinance.

Motion was made by Neil Harris, seconded by Michael Sesma, that CTAM-7359-2016, An Ordinance to Amend Chapter 24 (City Zoning Ordinance), Article XII, § 24-224, Entitled, "Definitions"; § 24-225.1, Entitled, "Powers and Duties of Historic District Commission"; § 24-226, Entitled, "Designation of Historic Districts and Historic Sites; Criteria"; and § 24-231, Entitled, "Moratorium on Alteration of Demolition"; and to add § 24-233.1, Entitled, Undue Economic Hardship" (Ordinance No. O-10-16), be adopted.

Vote: 4-0

**XV. CONSOLIDATED POLICY DISCUSSION**

- A. **An Ordinance to Amend Chapter 15A of the City Code, Entitled, "Parks and Other Properties," so as to Amend Section 15A-1, Entitled, "Definitions" and Section 15A-8, Entitled, "Tobacco Products" and An Ordinance to Amend Chapter 18A of the City Code, Entitled, "Smoking and Tobacco Products Placement," so as to Amend Section 18A-1, Entitled, "Definitions" Section 18A-2, Entitled, "Smoking Prohibited in Certain Places," Section 18A-3, Entitled, "Exceptions" and Section 18A-6, Entitled, "Designated Smoking Areas"**

Assistant City Attorney Johnson presented the above for consolidated policy discussion and final action. The Mayor and City Council on May 2, 2016, asked City staff to prepare an ordinance that would broadly prohibit the use of any tobacco product on public property, including the use of cigarettes, e-cigarettes and any other tobacco product. The attached Ordinances include changes to City Code Chapter 15A, focusing on parks and public property, and Chapter 18A on smoking and tobacco use to address vaping (use of e-cigarettes). Montgomery County has regulated tobacco use in County Code §24-9. The Ordinances were introduced at the Mayor and City Council meeting held on August 1, 2016. A consolidated public hearing was held during the Mayor and City Council meeting on September 6, 2016, with a record closing date on September 26, 2016. Staff prepared alternative ordinances to address the comments received during the public hearing. There were three emails received, all in support of the proposed ordinances and one offered an amendment. In response to the discussion during the hearing, staff provided a memorandum dated September 20, 2016, addressing the concerns and questions about limited barber and beauty shop exception and reports and finding of second hand vapor from e-cigarettes. Staff proposed two alternative options for both 15A and 18A. For 15A, the options would take tobacco products out of the definition entirely if the focus was on smoking and vaping alone. The overall prohibition would be limited to the smoking and vaping. In addition, options to broaden the outside exception or a modification to allow ongoing times for said exception or a broader approach.

The majority were in favor of Options #2. Concerns and questions regarding definitions, the inclusion and risks of e-cigarettes and chewing tobacco, limited authority of the City Manager to use discretion and not hinder City services and the workplace, purpose of the ordinance was to address public nuisances and not the regulation of one's behavior. The cost of providing healthcare benefits for employees was noted.

City Manager Tomasello mentioned discussions to do outreach to employees and the public before the effective date of January 1, 2017, to allow for transition and signage requirements. Staff was directed to further review housekeeping amendments and additional signage requirements at a future public hearing. It was suggested to do public outreach prior to any future amendments to the ordinances. Staff was thanked for developing the ordinances and addressing the questions and concerns.

Motion was made by Ryan Spiegel, seconded by Neil Harris, that Option #2, an Ordinance to Amend Chapter 15A of the City Code, Entitled, "Parks and Other Properties," so as to Amend Section 15A-1, Entitled, "Definitions" and Section 15A-8, Entitled, "Tobacco Products" (Ordinance No. O-11-16), be adopted.

Vote: 4-0

Motion was made by Neil Harris, seconded by Ryan Spiegel, that Option #2, an Ordinance to Amend Chapter 18A of the City Code, Entitled, "Smoking and Tobacco Products Placement," so as to Amend Section 18A-1, Entitled, "Definitions" Section 18A-2, Entitled, "Smoking Prohibited in Certain Places," Section 18A-3, Entitled, "Exceptions" and Section 18A-6, Entitled, "Designated Smoking Areas" (Ordinance No. O-12-16), be adopted with amended language to 18A-2.

Vote: 4-0

## **XVI. STAFF GUIDANCE**

### **A. ASDP-7407-2016 - Courtesy Review of a Request for Approval of an Amendment to Schematic Development Plan for the Property Located at 15710 Shady Grove Road**

Planner Forbes presented the above for courtesy review before the Mayor and City Council. The applicant, Vanessa MacDonald of Carvana, on behalf of the property owner Alex Associates c/o Aubinoe Management, submitted an application ASDP-7407-2016 for amendment to Schematic Development Plan. The subject property is located at 15710 Shady Grove Road and zoned MXD (Mixed Use Development). The applicant had requested to demolish the existing Bugaboo Creek Steakhouse restaurant building to construct a 8,200 square foot Carvana automobile fulfillment center and seventy (70) foot car display tower. The property was annexed into the City of Gaithersburg in 1991 and was zoned H-M (Hotel-Motel). In 1994, the property was approved for an 8,470 square foot restaurant. The property was rezoned to MXD as part of the comprehensive rezoning following the adoption of the 1997 Land Use Master Plan. Pursuant to Section 24-198 (C)(2), for amendments to Schematic Development Plans involving change in use or changes other than to use, following a Courtesy Review presentation by staff, the Council shall either:

1. Deem that the application has a minor effect and thereby direct the Planning Commission to make a final decision; or
2. The Council may direct that the amendment be referred to the Planning Commission for further evaluation, public hearing and recommendation. The Council shall thereafter approve or disapprove the recommendation of the Planning Commission.

The proposed building footprint will be slightly smaller than the existing restaurant building. The site plan is proposing to increase the pervious (green space) with afforestation areas and reduce the paving. The Office of Economic Development has provided support for the proposed use and recommended to have the Planning Commission make the final decision on the application in order to promote an efficient site plan entitlement process. Based on these factors, staff recommended that the City Council find the application to have a minor effect and direct the Planning Commission to make a final decision on the amendment. The applicant, Carvana is an online automotive retailer. Customers can purchase pre-owned vehicles through a user-friendly website which provides the opportunity for a 360° view of the vehicle prior to purchase. The lift system houses their inventory of cars in a tower, coin-operated by a vending machine. Not all agreed that it was a minor change.

Motion was made by Neil Harris, seconded by Robert Wu, directing the Planning Commission to make a final decision on ASDP-7407-2016, an Amendment to Schematic Development Plan for the Property Located at 15710 Shady Grove Road.

Vote: 3-1 (Opposed: Spiegel)

**XVII. FROM THE CITY ATTORNEY / DEPUTY CITY MANAGER / OTHER STAFF**

**City Attorney Board**

1. Mentioned that there is a proposal at the State level to bring back legislation during this coming legislative session to expand standing to contest comprehensive rezoning by local government. Stated that staff will again testify in opposition. of the bill.
2. Reported that the Board of Supervisors of Elections will be meeting on November 11 to discuss the electronic campaign finance reporting system and options for the 2017 election.

**Community Planning Manager Schwarz**

1. Thanked the Mayor and City Council for their support and opportunity to step into the position of Planning Division Chief.

**XVIII. CORRESPONDENCE**

- A. Staff
- B. Outside

**XIX. ADJOURNMENT**

There being no further business to come before this session of the City Council, the meeting was duly adjourned at approximately 10:20 p.m.

Respectfully submitted,

Doris Stokes, Municipal Clerk