



*Gaithersburg*

*A CHARACTER COUNTS!*

CITY OF GAITHERSBURG  
MINUTES OF A REGULAR CITY COUNCIL MEETING  
MONDAY, SEPTEMBER 21, 2009

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A meeting of the Mayor and City Council was called to order at 7:30 p.m., Mayor Katz presiding. Council Members present: Ashman, Drzyzgula, Marraffa, Sesma and Spiegel. Staff present: City Manager Jones, Assistant City Managers Felton and Tomasello, Planning and Code Administration Director Ossont, Community Planning Director Schwarz, Planner Marsh, Public Works Director Arnoult, City Attorney Board (arrived at 8 p.m.) and Municipal Clerk Stokes.

**I. PLEDGE OF ALLEGIANCE**

The Pledge was led by James Clifford, Sr., Esq., recipient of the 2009 Distinguished Friend of Gaithersburg Award.

**II. INVOCATION**

In lieu of an invocation, Mayor Katz called for a moment of silence.

**III. APPROVAL OF MINUTES**

Motion was made by Council Member Ashman, seconded by, Council Member Marraffa, that the minutes of the Mayor and Council regular meeting held August 3, 2009, be approved.

Vote: 5-0

Motion was made by Council Member Marraffa, seconded by, Council Member Drzyzgula, that the minutes of the Mayor and Council work session held August 24, 2009, be approved.

Vote: 5-0

Motion was made by Council Member Sesma, seconded by, Council Member Spiegel, that the minutes of the Mayor and Council special meeting held August 31, 2009, be approved.

Vote: 5-0

Motion was made by Council Member Drzyzgula, seconded by, Council Member Sesma, that the minutes of the Mayor and Council work session held August 31, 2009, be approved.

Vote: 5-0

**IV. CONSENT ITEMS****A. Resolution of the Mayor and City Council Authorizing the City Manager to Negotiate and Execute a Contract for the Reconstruction of the Inspiration Lane Wall**

This resolution authorized the City Manager to negotiate and execute a contract for the above service with Olney Masonry Corporation, 11343 Maryland Avenue, Beltsville, Maryland 20705, in the estimated amount of One Hundred One Thousand Dollars (\$101,000); said funds to be expended from the Capital Improvements Budget.

**B. Resolution of the Mayor and City Council Authorizing the City Manager to Negotiate and Execute a Contract for Construction of the Morris Park Press Boxes Project**

This resolution authorized the City Manager to negotiate and execute a contract for the above service with G-W Management Services, 11600 Nebel Street, Suite 202, Rockville, Maryland 20852, in the estimated amount of Ninety-One Thousand Five Hundred Fifty-Three Dollars (\$91,553); said funds to be expended from the Capital Improvements Budget.

Motion was made by Council Member Marraffa, seconded by, Council Member Ashman, that the consent agenda (Resolution Nos. R-66-09 and R-67-09), be approved.

Vote: 5-0

**V. APPOINTMENTS****A. Resolution Confirming a Reappointment**

This resolution confirmed the following: **Multicultural Affairs Committee**, Ken Weiss (reappointment), 7823 Mystic View Court, Derwood, Maryland 20850, two-year term.

Motion was made by Council Member Sesma, seconded by, Council Member Spiegel, that a RESOLUTION OF THE CITY COUNCIL CONFIRMING A REAPPOINTMENT BY THE MAYOR TO THE MULTICULTURAL AFFAIRS COMMITTEE (Resolution No. R-68-09), be approved.

Vote: 5-0

**VI. PRESENTATION****A. Proclamation**

Mayor Katz issued a proclamation designating September 17 - 23, 2009, as *Constitution Week* in the City of Gaithersburg. The proclamation was accepted by Kathryn George, Constitution Week Committee Chair, Hungerford's Tavern Chapter, Daughters of the American Revolution. September 17, 2009, marked the 222<sup>nd</sup> anniversary of the signing of the Constitution of the United States of America. It is of the greatest importance that all citizens reflect on the privilege of being an American and recognize the historic document that governs our lives.

**VII. PUBLIC APPEARANCES**

1. *Clark Day, 26 Walker Avenue*, thanked the City and staff for organizing the 28<sup>th</sup> annual Celebrate Gaithersburg in Olde Towne. Expressed support for the three citizens recognized during the event.
2. *Thomas Rowse, 101 Dogwood Drive, member of the Olde Towne Advisory Committee (OTAC)*, referred to the letter submitted by the committee concerning the new committee alignment.

- Requested that OTAC still report to the Mayor and Council and not the Economic Development Committee due to specific issues of Olde Towne businesses and residents. Suggested liaisons from each committee attend the others regular meetings and provide updates on all activities.
3. *Dr. Robert Wilson, Jr., 9 DeSellum Avenue*, responded to the comments made by Montgomery Preservation Incorporated (MPI) regarding his rezoning application Z-311 and CSP-09-001. Stated the organization submitted the comments three minutes before the closing of the record; not allowing the applicant to address the errors in their communication. While MPI expressed opposition and ask that the application be denied, neighbors expressed support for the project.
  4. *Karen Fishman*, spoke on the speed camera lights installed near Lakeside Apartment and submitted a petition from tenants in opposition to the installation. City Manager Jones updated the Mayor and Council stating that a response was given to Ms. Fishman regarding her concerns and the speed cameras will be activated at the end of the month. Following the installation, staff will observe, consider any complaints, and re-evaluate, if necessary.

#### **VIII. FROM THE MAYOR AND CITY COUNCIL/ANNOUNCEMENTS**

##### **Council Member Ashman**

1. Announced the Mayor and City Council Fall Retreat scheduled for Saturday, September 26, 2009. The one-day session will be held from 9 a.m. to 3 p.m. at the Gaithersburg Upcounty Senior Center. The tentative agenda includes review of the City's Strategic Plan, a presentation relating to City finances, and proposed expenditure and revenue enhancements for FY 2011.
2. Urged citizens to subscribe to Alert Gaithersburg, the City's emergency notification system.
3. Echoed congrats to staff for their efforts to coordinate Celebrate Gaithersburg in Olde Towne. Mentioned that the musical selections were great.
4. Reported that Council Member Drzyzgula, as Chair of the Council of Governments Chesapeake Bay and Water Resources, will testify on behalf of the committee and region on September 22, 2009, and represent the City of Gaithersburg.

##### **Council Member Spiegel**

1. Expressed regrets for not participating in Celebrate Gaithersburg in Olde Towne due to the observance of the Jewish holiday Rosh Hashanah.
2. Congratulated the individuals and organization for receiving the annual citizenship awards. In addition, he congratulated Ken Weiss on his reappointment to the Multicultural Affairs Committee. Expressed well wishes to those celebrating the upcoming various holidays and as is the tradition of his faith, asked forgiveness of those he wronged. Shared the importance of recognizing and celebrating Constitution Week and the swearing in of new citizens at the naturalization ceremony during Celebrate Gaithersburg.
3. Announced that the City and the Friends of Wells/Robertson are celebrating National Recovery Month by hosting the 5<sup>th</sup> Annual Recovery Month Picnic on Saturday, September 26, 2009 at Bohrer Park from 1 – 6 p.m..

##### **Council Member Marraffa**

1. Announced that the Mayor and City Council of Gaithersburg plan to conduct a closed Executive Session immediately following its regularly scheduled meeting on Monday, October 5, 2009 at City Hall. The meeting is proposed to be closed pursuant to Section 10-508(a)(4) of the State Government Article of the Annotated Code of Maryland, to consider matters that concern a proposal for a business to locate, expand or remain in the City. The closed executive session will be conducted pursuant to a motion properly adopted during the session of the Mayor and City

Council on Monday, October 5, 2009.

2. Thanked staff and volunteers for the recent events in Gaithersburg. Congratulated (Diamond Drugs, James Clifford, and Joan More) the recipients of the annual citizenship awards mentioned above.
3. Attended a meeting with the National League of Cities (NLC) to discuss the stimulus package and its impact on cities. Mentioned the visit to Congress and discussions with Senators Nancy Pelosi and Bayh.

#### **Council Vice President Sesma**

1. Announced that Gaithersburg will join with Montgomery County and co-sponsor a Housing Fair and Financial Fitness Day on Saturday, October 3 from 10 a.m. to 3 p.m. at the Activity Center at Bohrer Park.
2. Echoed congrats to the winners of the 2009 Outstanding Organization (Diamond Drugs/owner Dukaye Berek), Distinguished Friend (James Clifford) and Distinguished Citizen Awards (Joan More). Thanked staff for their efforts to organize Celebrate Gaithersburg. Congratulated the restaurants that participated in the food tasting competition event. Thanked all who supported the Wells/Robertson House benefit event at IHOP and the Gaithersburg Police during their event at The End Zone.
3. Attended the rally at the University of Maryland, College Park. Reported that President Obama made an appearance and talked about Healthcare Reform which is an important topic for all. Asked citizens to communicate with their elected members of Congress on said issue.

#### **Council Member Drzyzgula**

1. Announced the City has joined with Women Who Care Ministries and the Victim's Rights Foundation to co-sponsor the 3<sup>rd</sup> annual Domestic Empowerment Luncheon on Saturday, October 10, 2009 from 11 a.m. to 3 p.m., Gaithersburg Holiday Inn.
2. Enjoyed the Celebrate Gaithersburg at Olde Towne Day, thanked staff, and congratulated the three citizenship award recipients.
3. The State's Secretary of Planning Richard Hall spoke at a recent Maryland Municipal League Chapter meeting. Reported that new training requirements for Planning Commissioners is being developed by the State and that a law was passed in 1970 requiring the State to develop a master plan which is now being implemented. Mentioned that the State is giving additional Energy Block Grants to ensure that funds had been received by all municipalities for energy projects.
4. Attended along with other Council members the County Council's public hearing on the Gaithersburg West Master Plan. Mayor Katz presented testimony and other members of the City Council had one-on-one with individual County Council members to ensure that Gaithersburg's concerns were expressed.
5. Reported that the Save the Bay plans had not worked well and mentioned the major contributors polluting waterways. As mentioned earlier, she will testify on behalf of the Council of Governments Chesapeake Bay and Water Resources Committee.

#### **Mayor Katz**

1. Requested that the meeting minutes include the following press release announcing the winners of the City's 2009 Outstanding Organization, Distinguished Friend and Distinguished Citizen Awards:

**Gaithersburg, MD.** During the 28th annual "Celebrate Gaithersburg in Olde Towne" street festival on September 20, 2009 the Mayor and City Council announced the winners of the 2009 Outstanding Organization, Distinguished Friend and Distinguished Citizen Awards. The tradition of recognizing individuals and organizations that make a positive impact on the Gaithersburg community has continued since 1988. For its longstanding contributions to the health and well being of Gaithersburg residents, and for demonstrating a high ethical standard in the way it conducts its business, the Outstanding Organization award was presented to Diamond Drugs, Inc., and its owner/pharmacist, Dukaye Berek. There has been a drug store on the corner of Summit and Diamond Avenues since 1849. In 1992 Berek purchased the business, and together with his employees, quickly established Diamond Drugs as the type of place where residents could get caring, personalized service. From helping clients navigate the confusing world of health insurance, to the patience they've shown with special needs customers, to consulting with physicians to discuss lower cost medications, to consulting with the City of Gaithersburg's Wells/Robertson House staff about possible medication side effects for residents in recovery, the Diamond Drugs staff was honored for continuing to epitomize Gaithersburg's commitment to good character. The award was presented by Council Member Cathy Drzyzgula on behalf of Council Member Ryan Spiegel, who was unable to attend the event.

The Distinguished Friend award is presented to individuals who make significant contributions to Gaithersburg, but who do not reside within the City limits. This year the award was presented to James R. Clifford, who was described as a visionary, dedicating himself to the revitalization of Gaithersburg's Olde Towne district for the past 25 years. In her remarks, Council Member Drzyzgula praised Clifford for his commitment to preserving the City's unique history while at the same time relentlessly pursuing new developments and improvements to maintain the vitality of the City's historic commercial center. Clifford co-founded and chaired the Olde Towne Community Development Corporation, founded and chaired the Olde Towne Gaithersburg Business Association, and was a member of the Gaithersburg Downtown Review Committee for nearly a decade. An attorney by trade, Clifford is a tireless supporter of the Boy Scouts, and is partly responsible for helping over 15 Scouts rise to Eagle rank in the past 15 years. He is also actively involved with the Montgomery County Agricultural Fair.

Joan More, a Gaithersburg resident for the past 51 years, was presented with the 2009 Distinguished Citizen Award by Council Vice President Mike Sesma. An unwavering commitment to the democratic process led her to volunteer on the City's Board of Supervisors of Elections, on the Elections Ordinance Review Committee, and as an Election Judge. She also serves on the City of Gaithersburg Landlord-Tenant Affairs Commission, and the Gaithersburg-Washington Grove Fire Department Fire Safety Board, and has served as Chief Judge with the Maryland State Board of Elections. In the early 1960's More and her husband opened the Double B, a small, hometown diner and bus ticket depot along Rt. 355. After the closing of the diner she worked as an insurance agent with several local agencies and as a property manager with prominent Gaithersburg businessman Lawson King. She went back to the insurance industry in the late 1980's and retired in July of 2009. The award was presented to More for her strength of character, for her efforts to ensure that the democratic process is upheld and for her longstanding service to the Gaithersburg community. For more information please contact the City Manager's office at 301-258-6310 or visit the City's website at [www.gaithersburgmd.gov](http://www.gaithersburgmd.gov).

2. Announced that next March, all households in Gaithersburg will receive a 10-question U.S. Census Questionnaire and urged citizens to fill it out, send back, and be counted in the Census 2010.
3. Mayor Katz requested the following:

Motion was made by Council Member Drzyzgula, seconded by Council Member Marraffa, that the Mayor and City Council of Gaithersburg conduct a closed Executive Session immediately following its regularly scheduled meeting on Monday, September 21, 2009 at City Hall, pursuant to Section 10-508(a)(8) of the State Government Article of the Annotated Code of Maryland, to consult with staff, consultants, or other individuals about

pending or potential litigation.

Vote: 5-0

4. Referred to the testimony given earlier by Dr. Wilson and the letter received from MPI. Asked for an update on the legal questions raised by MPI. City Attorney Board stated the issued is scheduled for the October 5 Mayor and Council meeting for any official action. A letter was received from MPI and staff will prepare a memorandum addressing the issues raised.
5. Asked for an update on the East Deer Park Bridge meeting. Assistant City Manager Felton responded that CSX Transportation contact Gaithersburg and Washington Grove to schedule a meeting concerning the Humpback Bridge. He stated an opening of the bridge occurred three weeks ago. Unfortunately, CSX formally requested additional height (9") for the bridge to allow double-stack container cars to pass underneath. The meeting held was for informational purposes for both jurisdictions and options were discussed. The City is looking to coordinate the next steps with Washington Grove and Montgomery County followed by a public discussion.
6. Suggested a discussion to decide whether or not to go to public hearing to consider separating the current bodies of the Historic District Commission and Mayor and City Council. City Manager Jones responded that it has been a priority to schedule, earliest date would be November 30th to allow staff time to gather the necessary information for the discussion.
7. Expressed concern with the City's process for sending out hearing notices and suggested that the notice be addressed to the occupant or owner. In addition, staff was directed to post a sign on the property being discussed.
8. Stated he received an email regarding noise concerns at the City Hall Pavilion and other sites. Directed staff to review the City's noise ordinance. City Manager Jones responded that staff has prepared a memorandum that will be forthcoming to the Mayor and City Council.
9. Announced the following meeting schedule:
  - no work session, Monday, September 28, 2009.
  - next regular meeting Monday, October 5, 2009.

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MAYOR KATZ RECESSED THE MAYOR AND COUNCIL MEETING AT 8:25 P.M.  
FOR A HISTORIC DISTRICT COMMISSION MEETING. THE MAYOR AND  
COUNCIL MEETING RECONVENED AT 8:30 P.M.

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## **IX. ORDINANCES, RESOLUTIONS, AND REGULATIONS**

### **A. Resolution for Legal Services Associated With the City's 2010 State Legislative Agenda**

This resolution authorized and directed the City Manager to negotiate and execute a contract with Rifkin, Livingston, Levitan & Silver, LLC, 225 Duke of Gloucester Street, Annapolis, Maryland 21401, for legal services associated with the City's 2010 State legislative agenda, in an amount not to exceed Thirty-Seven Thousand Five Hundred Dollars (\$37,500); said funds to be expended from the Operating Budget.

Motion was made by Council Member Drzyzgula, seconded by, Council Member Marraffa, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A CONTRACT WITH RIFKIN, LIVINGSTON, LEVITAN & SILVER, LLC FOR LEGAL SERVICES ASSOCIATED WITH THE CITY'S 2010 STATE LEGISLATIVE AGENDA (Resolution No. R-69-

09), be approved.

Vote: 5-0

## **X. POLICY DISCUSSION AND STAFF GUIDANCE**

### **A. T-390 - Ordinance to Amend Chapter 24 of the City Code, Entitled, "Zoning," Article V, Entitled, "Site Development Plans," §24-173, Entitled, "Development of Property Subject to Plan," to amend §§ 24-173(a) and 24-173(b) and to Create § 24-173(d) so as to Allow a Timely Development Schedule**

Community Planning Director Schwarz stated that the above was the subject of a joint public hearing on July 6, 2009 with the record closing on August 7, 2009. She further stated that during the Mayor and City Council's discussions on the Strategic Directions, City staff was challenged to identify ideas that would foster development in the City. The proposed ordinance was drafted in an effort to improve the City of Gaithersburg's Site Development Approval process. Staff believes that given the current economic circumstances, the increased complexity in obtaining financing, the increased complexity of site plan conditions and the number of different agencies (besides the City) that are required to approve the official site and building drawings, the proposed text amendment will improve the workings of the City's development process. Additionally the proposed new Section 24-173(d) will grant relief to projects caught in the midst of the lending crisis. Currently § 24-173 states that site plan approvals will expire 365 days or one year after their approval. This section allows an applicant to request two one extensions after the first year of approval (1 yr + 1 yr + 1 yr = 3 yrs). This text amendment proposes a two (2) year approval of the site plan with the option to request a 1-yr extension. Applicants will have the option for approval of a site plan for a total of three years as they did before (2 yrs + 1 yr = 3 yrs). Additionally, site plans and amendments to site plans that were approved between January 1, 2007 and December 31, 2008 (12 projects), may request an additional one year extension and could have an approval for four years.

Motion was made by Council Member Sesma, seconded by, Council Member Spiegel, that T-390, AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE, ENTITLED, "ZONING," ARTICLE V, ENTITLED, "SITE DEVELOPMENT PLANS," §24-173, ENTITLED, "DEVELOPMENT OF PROPERTY SUBJECT TO PLAN," TO AMEND §§ 24-173(A) AND 24-173(B) AND TO CREATE § 24-173(D) SO AS TO ALLOW A TIMELY DEVELOPMENT SCHEDULE (Ordinance No. O-12-09), be adopted.

Vote: 5-0

### **B. Z-313/SDP-09-003 – Consolidated Discussion, Amendment to the Sketch Plan and Schematic Development Plan Approval for the Stevenson Property, Requesting Approval for the Overnight Storage of Commercial Vehicles on 5.7 Acres of Property. The Site is Located on Metropolitan Grove Road, North of the CSX Railroad Tracks and South of Interstate I-270**

Planner Marsh stated that the above application requests approval to use and maintain the property as an overnight storage lot for commercial vehicles. The applicants are proposing minimal site changes, which include minor modifications for sediment erosion control and forest conservation. No other infrastructure improvements to the site or Metropolitan Grove Road are being proposed at this time. A joint public hearing was held on August 3, 2009. The Planning Commission recommended denial of both Z-313 and SDP-09-003 at their September 2, 2009 meeting. The Council's record closed at 5:00 pm September 4, 2009. As it relates to Z-313, staff is seeking guidance from the Mayor and City Council on whether to prepare an ordinance approving the sketch plan amendment or a resolution denying the sketch plan amendment. In the case of SDP-09-003, the Mayor and Council should direct staff to prepare a resolution of approval or denial. Staff prepared and provided a recommendation to the Mayor and City Council.

City Attorney Board added that the difficulty with the application is the finding of compliance with the City's Master Plan. Staff had reviewed not only the City's ordinance but ordinances of other jurisdictions that would allow approval of a temporary use with conditions such as a limited duration. Staff recommended that the above application be continued to have the opportunity to develop an ordinance allowing temporary uses with conditions that would apply to not only this property, but other pending applications and future projects. The proposed ordinance would amend Chapter 24 and have to go through the Planning Commission process which would take approximately three months.

Motion was made by Council Member Ashman, seconded by, Council Member Sesma, that Z-313, be tabled with no final action taken.

Vote: 5-0

Motion was made by Council Member Ashman, seconded by, Council Member Sesma, that SDP-09-003, be tabled with no final action taken.

Vote: 5-0

Staff was directed to move expeditiously to draft an ordinance for the Mayor and Council's review that would allow temporary uses with conditions. Staff was further directed to provide a cost analysis to handle traffic on the City road in and out of the property.

**C. An Ordinance to Amend Chapter 2 of the City Code, Entitled "Administration", Article II, Entitled "Municipal-County Relations", Section 2-6 Thereof, Entitled "Exemption From Montgomery County Legislation and Regulations Within the City" so as to Include the Provisions of Article 4 Entitled "Home Energy Loan Program" of Chapter 18A of the Montgomery County Code Entitled "Environmental Sustainability", as Being Applicable and Enforceable Within the City**

On April 14, 2009, the Montgomery County Council enacted Expedited Bill No. 6-09 (Article 4 of Chapter 18A). The bill establishes a Home Energy Loan Program to assist homeowners with the costs of making energy efficiency improvements or of installing renewable energy devices. Pursuant to the bill, the loan is repaid through the property tax bill, and will automatically transfer the obligation to repay to the purchaser in the event the property is sold. The bill also requires that the Executive Branch develop regulations to implement the loan program. The regulations are expected to be completed by October 2009. The bill does not currently apply in the City of Gaithersburg so loans will not be available to City residents unless the City Council takes action to remove the general exemption from County law pursuant to Section 2-6 of the City Code. The program is consistent with the City's sustainability goals that include promoting energy conservation and reducing green house gas emissions from existing residential structures. Additionally, the bill could provide relief to City residents who are experiencing increased utility costs. The draft ordinance would make Article 4 of Chapter 18A of the Montgomery County Code applicable within the City of Gaithersburg. Assistant City Manager Felton stated that a public hearing was held on August 17, 2009 and the record closed at 5 p.m. on August 27, 2009. Testimony was received on behalf of the City's Environmental Affairs Committee in favor of the ordinance.

Motion was made by Council Member Spiegel, seconded by, Council Member Sesma, that AN ORDINANCE TO AMEND CHAPTER 2 OF THE CITY CODE, ENTITLED "ADMINISTRATION", ARTICLE II, ENTITLED "MUNICIPAL-COUNTY RELATIONS", SECTION 2-6 THEREOF, ENTITLED "EXEMPTION FROM MONTGOMERY COUNTY LEGISLATION AND REGULATIONS WITHIN THE CITY" SO AS TO INCLUDE THE PROVISIONS OF ARTICLE 4 ENTITLED "HOME ENERGY LOAN PROGRAM" OF CHAPTER 18A OF THE MONTGOMERY COUNTY CODE ENTITLED "ENVIRONMENTAL

SUSTAINABILITY", AS BEING APPLICABLE AND ENFORCEABLE  
WITHIN THE CITY (Ordinance No. O-13-09), be adopted.

Vote: 5-0

**XI. FROM THE ASSISTANT CITY MANAGER, CITY ATTORNEY AND OTHER STAFF**

**City Attorney Board**

Announced that the Board of Supervisors of Elections met earlier this evening and certified two candidates for Mayor (Sidney A. Katz and Richard Koch), and three candidates for Council (Henry F. Marraffa, Jr., Michael A. Sesma, and Tom Rowse).

**XII. ADJOURNMENT**

There being no further business to come before this session of the City Council, the meeting was duly adjourned at 8:45 p.m.

Respectfully submitted,

*Doris R. Stokes*

Doris R. Stokes  
Municipal Clerk