

APPROVED:

ATTEST:

MAYOR AND COUNCIL  
ROCKVILLE, MARYLAND  
September 19, 2011  
7:00 p.m.  
Meeting No. 26-11

PRESENT:

Mayor Phyllis Marcuccio, Councilmember John Britton, Councilmember Piotr Gajewski, Councilmember Bridget Donnell Newton, and Councilmember Mark Pierzchala

STAFF PRESENT:

City Manager Scott Ullery, City Attorney Debra Daniel and Acting City Clerk Brenda Bean

- 1A. Motion** to convene in Executive Session pursuant to Section 10-508(a)(7) of the State Government Article of the Annotated Code of Maryland to consult with counsel to obtain legal advice regarding a personnel matter. The Mayor and Council convened in Executive Session pursuant to Section 10-508(a)(7) of the State Government Article of the Annotated Code of Maryland to consult with counsel to obtain legal advice regarding a personnel matter.

Moved by Councilmember Pierzchala, seconded by Councilmember Newton and unanimously approved.

The Mayor and Council met in Executive Session at 6:15 on Monday, September 19, 2011 in the Diamondback Conference Room, Rockville City Hall, 111 Maryland Avenue, Rockville, Maryland.

Present at the Executive Session were Mayor Phyllis Marcuccio, Councilmember John Britton, Councilmember Piotr Gajewski, Councilmember Bridget Donnell Newton, and Councilmember Mark Pierzchala. Also present were City Attorney Debra Yerg Daniel, and Deputy City Clerk Brenda Bean (for part of the meeting).

The topic of discussion involved the resignation of the city clerk. The Mayor and Council took actions in connection with the city clerk's resignation.

The executive session adjourned at 7:10 p.m.

**1. Convene**

The Mayor and Council convened in regular session in the Mayor and Council Chambers, Rockville City Hall, on Monday, September 19, 2011 at 7:15 pm.

**2. Pledge of Allegiance**

Mayor Marcuccio led all present in the Pledge of Allegiance.

### **3. Agenda Review**

There were no changes to the agenda.

### **4. City Manager's Report**

Mr. Ullery reported that item 11A appeared to be missing some pages and that it should be removed from the Consent Agenda. He then introduced Chief Terry Treschuk who presented an overview of the Montgomery County Proposed Curfew Law, Bill No. 25-11. Chief Treschuk said that, if enacted, the law would apply in all municipalities within the County. He encouraged the Mayor and Council to review the materials that had been provided and said that he would continue to monitor the situation to see what the County ends up doing with this legislation. Mayor Marcuccio noted that the calls for service seemed to be trending downward. Councilmember John Britton asked if there were any jurisdictions that had come out against the curfew and the Chief responded there were none that he is aware of. Councilmember Pierzchala said that we could opt into it or do nothing and by doing the latter, the teens would come to Rockville. The Mayor and Council instructed staff to continue to watch the matter and advise accordingly.

### **5. Presentation - Chamber of Commerce Update**

Prior to the Chamber of Commerce report, Mayor Marcuccio asked for a moment of silence for two members of the community who had recently passed away, Officer Lonnie Prather and George Snowden, Sr.

Andrea Jolly, Executive Director of the Rockville Chamber of Commerce reported on the following:

1. Restaurant Week
2. Rockville Rewards Program moving along very well
3. Sign ordinance work continues and will report back in about two weeks
4. Working with staff of REDI and Non Profits in preparation for The Rockville Summit.
5. Productive meeting held last week about high performance buildings. Tower Companies was on hand and gave insight on their efforts to become high performance.
6. An October breakfast is planned and the topic of conversation will center on efforts in broadband.
7. Mix and Mingle at Austin Grill on September 20.
8. The Chamber will elect a new Board in October and will have a corporate volunteer committee.

Councilmember Britton mentioned that the Rockville Summit will be held on October 18th. He gave an overview of the program and said that he hopes for a broad and diverse turnout. He said there will be great discussion on economic capabilities and hindrances as we continue into economic development.

### **6. Appointments/Announcements of Vacancies**

Mayor Marcuccio announced the vacancies to City boards and commissions

**7. Proclamation - Declaring September 26, 2011 as Family Day - A Day to Eat Dinner with your Children.**

Councilmember Newton read the proclamation.

**Motion:** to declare September 26, 2011 as Family Day - A Day to Eat Dinner with your Children.

Moved by Councilmember Britton, seconded by Councilmember Pierzchala and unanimously approved.

**8. Proclamation - Declaring September 24, 2011 as Worldwide Day of Play**

Councilmember Mark Pierzchala read the proclamation and presented it to Raynell Cooper, the Student Youth Representative on the Recreation and Parks Board, who encouraged everyone to participate in Worldwide Day of Play.

**Motion:** to declare September 24, 2011 as Worldwide Day of Play.

Moved by Councilmember Newton, seconded by Councilmember Britton and unanimously approved.

**9. Citizen's Forum**

<i>Citizen</i>	<i>Issue</i>
Ronald Rehm	West Montgomery Alley paving and drainage issue.
Cheryl Moss Herman	Recommended CIP by MCPS Superintendent and new school construction in the Richard Montgomery High School cluster.
Sandra Menso	Bicycle Committee Bike Friendly Cities Awards Program. The City of Rockville is making application for the 2012 award.
Ruth Hanessian	Science Cafe meeting September 20 and the important point of view on car safety; Birthday party on September 23rd for her blue and gold macaw bird celebrating its first birthday.
Keith Sanderson	Trail guide for Maryvale Park.

**10. Mayor and Council's Response to Citizen's Forum and Announcements**

The following members of the Mayor and Council responded to comments made during Citizens' Forum: Mayor Marcuccio, Councilmembers Britton, Gajewski, Newton and Pierzchala.

**11. Consent Agenda**

- A. Adoption of Resolution to revise the schedule of various user and regulatory fees for the City of Rockville
- B. Renewal of the City's software maintenance agreement with CGI Technologies and Solutions Inc. (CGI) of Fairfax Virginia
- C. Award contract increase of \$354,906.82 to Venable LLP for legal services
- D. Award contract to Venable LLP for legal services in an amount up to \$500,000.00
- E. Approval of Minutes

Pursuant to earlier discussion in the City Manager's Report, Consent Agenda Item 11A was removed. Councilmember Newton also requested that items C and D be removed.

**Motion:** to approve Consent Agenda items, B and E

Moved by Councilmember Newton, seconded by Councilmember Britton and unanimously approved.

**Re: Removal of Consent Agenda Items C and D**

Councilmember Newton asked for clarification on the contract for legal services. Ms. Daniel said that there are specialized areas outside the expertise of the attorneys in her office and that there are funds, outside of her budget that contribute to outside counsel fees. Some issues requiring the engagement of outside counsel include bonds, pension issues, Town Square CIP issues, etc.

**Motion:** to approve Consent Agenda items C and D.

Moved by Councilmember Newton, duly seconded by Councilmember Pierzchala and unanimously passed.

**Re: Removal of Consent Agenda item 11A**

City Manager Ullery said that staff had not been sufficiently explicit in informing the Mayor and Council about changes in practice, namely: 1) all public entities will be charged fees where they were not before; and 2) to correct an inconsistency in charging fees for affordable housing. Councilmember Newton had raised the issue of exemption for business purposes and Mr. Ullery said that information is also now contained in the staff report.

**Motion:** to approve Consent Agenda Item 11A

Moved by Councilmember Pierzchala, seconded by Councilmember Gajewski with Mayor Marcuccio and Councilmembers Britton, Gajewski and Pierzchala voting "aye," and Councilmember Newton voting "nay."

**12. Public Hearing - SCA2011-00099 - Application to close and abandon an unimproved alley right-of-way between Woodland Road and Ashley Manor Drive**

Mayor Marcuccio introduced the item and called upon the applicant of the subject property, Gustavo Alanso, who testified and restated the reason for his application. There being no other persons wishing to testify, Mayor Marcuccio declared the public hearing closed and said that the record would remain open until 5:00 pm on September 30, 2011. A full transcript of the public hearing can be found in the official file in the office of the City Clerk.

**13. Public Hearing - Community needs and priorities for Rockville's upcoming application for Community Development Block Grant funds (CDBG Program Year 38/City FY 13 and 14).**

Mayor Marcuccio introduced the item and called upon those persons who wished to testify. The Mayor and Council heard testimony from four individuals, the full transcript of which can be found in the official file maintained by the office of the City Clerk. There being no other persons wishing to testify, Mayor Marcuccio declared the public hearing closed and said that the record in this matter would remain open until 5:00 p.m. on September 30, 2011.

**14. Presentation - Briefing for a Project Plan application (PJT2012-00002, Twinbrook Partners) that has been filed for a mixed-use development at 1592 Rockville Pike 9:30 pm**

Timothy Eaden on behalf of Northwestern Mutual Life Insurance Company, owners of the subject property, provided a brief overview of the project. The large, mixed use project, "Twinbrook Metro Place," is located at Rockville Pike at the Twinbrook Metro Station. Mr. Eaden talked about the various features and aspects that he believes will make the project a success. He said that Twinbrook is a vibrant active, community and believes this project will be a perfect fit for the neighborhood.

Jim Alexander with Twinbrook Partners presented the project Twinbrook Metro Place and said that the project will provide an extraordinary opportunity that will embrace a transit oriented, smart growth space at a metro stop. He said that project is designed to be a 24-7 balanced community where people can live work dine and play. He spoke of the street grid and building blocks that will bring a much gentler scale to a large asphalt area. Mr. Alexander talked about the plans for block A, B and C and covered the vision for traffic, public right of way and open space.

There was ensuing discussion by the Mayor and Council which covered areas such as: the Chapman Avenue alignment, the number of stories in each of the buildings; the number and placement of MPDU units throughout the site; the number of rental units; the average size of the apartments, retail opportunities and the desire for community-based retailers; Chapman Avenue will be a nice, retail focused neighborhood street; hotel analysis results and the need for a limited service hotel.

At the conclusion of the presentation, Mayor Marcuccio thanked Mr. Eaden for the presentation and said that she appreciates having a general sense of what the project will be.

**15. Discussion and Instructions - Citizens Implementation Committee**

City Manager Ullery said that this item is being returned as a result of direction the Mayor and Council provided back in April. Mr. Ullery laid out the scope and the timeframe and said that the recruitment process was a success and was impressed with the quality of the responses that

were received. This group could well fulfill the work that the Council has directed. Of the eleven individuals that applied, eight were residents of Rockville.

Councilmember Newton asked if the Planning Commission and Board of Appeals applicants applied on their own or if they were recommended. Ms. Swift responded that those groups were sought out for volunteers and that Mr. Dion Trahan, who is a member of the Planning Commission, volunteered. Councilmember Newton said that she had spent a considerable amount of time reviewing this topic from online meetings and urged others to do the same. She said that the Mayor and Council have not yet had an in-depth, good conversation on the topic. Councilmember Newton believed that this was to be a citizen group and does not think a developer is an appropriate addition. She believes the group's composition should all be Rockville residents and is of the opinion that eleven members is too large. Mayor Marcuccio said that, as long as the developer or business owner is a resident of the City, she is comfortable with that appointment. Councilmember Britton pointed out that what was submitted is not a selected group, but, rather only applicants. He does not oppose the resident requirement and said that too much energy is being expended to second guess the process. He recommended that the Council decide on categories, if any, they would like to eliminate. Councilmember Newton asked for the removal of the last three names on the list of eleven, who do not live in Rockville. Councilmember Gajewski said that we asked for volunteers to give us advice and that we should listen to those that stepped forward, whether in the City or out of it. If they have insights as to how this can move forward, he would be willing to give them the opportunity to advise the Mayor and Council. If they have perspective, why would we not want that expertise? Councilmember Pierzchala said that we are looking for ways to solve alternative dispute resolution and ways to engage citizens, and if developers, or others who live outside the City can bring that expertise, is worth consideration. He does not want to exclude people just because they live outside the City.

Referring to a current member of the Asian American Task who is an applicant, Councilmember Gajewski noted that was he does not live in the City but could bring tremendous perspective by virtue of already serving the City. Councilmember Britton said the intent of the process, in terms of public discussion, was to get a balance and though he appreciates all the applications, he believes it should be restricted to residents. He, too, agrees that the final three names on the list should be eliminated stating that a body comprised of 8 members, rather than eleven, is more manageable.

Councilmember Gajewski said that excluding a business member in Rockville just because they don't reside in the City seems terribly unfriendly to the business community. Councilmember Pierzchala echoed that thought and creates an unfortunate division between business owners and citizens where it does not have to exist.

**Motion:** to appoint Eileen Bernstein, Jeffery Alan Lynch, Barry Klein, Sushil Birla, Elyse Gussow, Dion Santana Trahan, Peter Mork, and Linda MacDermid, to the Citizen Implementation Committee, and that they be given until February, 2012 to complete their work.

Moved by Councilmember Newton, seconded by Councilmember Britton.  
Mayor Phyllis Marcuccio, Councilmembers Britton, Gajewski, and Newton approved.  
Councilmember Mark Pierzchala opposed.

**16. Authorization - Discussion of possible revisions to the definition of "family" in the Zoning Ordinance**

Deane Mellander presented the background and said that staff had looked at how other jurisdictions defined "family" and how the current definition has evolved over time. He suggested that these proposed changes to the Code would make the intent of the legislation clearer. Councilmember Pierzchala said that it was discussed before and that the action this evening was designed to clear it up.

**Motion:** to authorize the filing of a Text Amendment that will further clarify the definition of "family" in the Zoning Ordinance.

Moved by Councilmember Mark Pierzchala, seconded by Councilmember Bridget Donnell Newton and unanimously approved.

**17. Adoption - Ordinance to amend Chapter 16 entitled "Public Ethics" of the Rockville City Code so as to bring it into compliance with provisions of state law**

City Attorney Debra Daniel presented the background, stating that she spoke with the General Counsel of the State Ethics Commission who has not yet had the opportunity to review the City's draft amendment to its Ethics Ordinance. Ms. Daniel recommended that the Mayor and Council not take action this evening and wait to receive comments back from the State before the provisions are finalized and adopted. Ms. Daniel said that the process moving forward would be to receive comments from the Commission and bring that information back to the Mayor and Council. Ms. Daniel said that she was assured by the General Counsel that Rockville is in compliance regarding the October 1, 2011 date. She asked the Mayor and Council for direction in terms of whether or not they would like additional language in the ordinance that addresses the appointment of a chairman and whether or not the Ethics Commission would be subject to financial disclosure provisions that the Planning Commission, the Board of Appeals and the Historic District Commission were subject to. If the Mayor and Council are interested, that language could be added. Ms. Daniel mentioned that Councilmember Newton, through her involvement with the MML Legislative Committee, said there have been concerns expressed by some municipalities with respect to the new financial disclosure requirements as they relate to spouses and dependent children. Ms. Daniel, again, recommended that it not be adopted this evening and asked for Mayor and Council guidance regarding appointment of a chair person and whether or not the city's ethics commission be subject to the financial disclosure requirements.

Mayor Marcuccio said that as part of the board and commission review, there were concerns about adding the new language and she believes that the old language is what should be used here, which allows for the Council to appoint a chair. Councilmember Pierzchala said that the Mayor and Council need to specify whether the Commission will appoint the Chair or whether the Mayor and Council will appoint the Chair. Councilmember Britton agrees that the Chair should be appointed by the Mayor and Council. There was consensus by the Mayor and Council for the City Attorney to add language providing for appointment of the Chair by the Mayor and Council. Another item of importance is whether or not the Mayor and Council wish for the Ethics Commission to be subject to the same financial disclosure requirements that the Mayor and Council, Planning Commission, Board of Appeals and Historic District Commission are subject to. Councilmember Pierzchala does not want to subject more people than necessary to this requirement. Councilmember Newton believes that they should be subjected to this requirement because they are deciding on others. Councilmember Newton believes in full transparency, but this is far reaching. Councilmember Newton said that it would be helpful to see a copy of the form to see, precisely, what information is being requested. She asked if

they could see the ordinance that the City of Frederick adopted. Councilmember Newton worries that this requirement may prevent too many people from serving, and also its affect on employees of the City. Councilmember Pierzchala agrees that this is onerous and could be counterproductive. He suggested that a legislative priority to soften the ordinance be considered. Councilmember Gajewski asked why the language was not in the model law and suggested that there was probably a good reason for this. He would like more information on that discussion before weighing in. There was consensus by the Mayor and Council for Ms. Daniel to add language that the Ethics Commission should be subject to financial disclosure requirements.

**18. Mayor and Council Liaisons to Boards and Commissions Report**

Councilmember Gajewski attended a meeting of the Fallsgrove HOA and said Darnestown Road was discussed. There is much work to be done in terms of collaboration with the State and said that we need to find new mechanisms so that we can address concerns of state roads within city limits.

**19. Review and Comment - Future Agenda and Tentative Agendas**

Mr. Ullery said that Human Resources will have an agenda item for the September 26 meeting concerning a recommendation on the Executive Search Firm for the City Manager position. Regarding the City Clerk position, Councilmember Gajewski would like a discussion on this and suggested that it be placed on the agenda for next week. Councilmember Pierzchala asked when the Naming Rights Agreement would come back and Mr. Ullery responded that it would likely come back for the meeting on October 3.

**20. Review and Comment - Mayor and Council Action Report**

There were no action items discussed.

**21. Old/New Business**

There were no old or new business items discussed.

**22. Adjournment**

**Motion:** to adjourn

There being no further business and upon Motion by Councilmember Pierzchala, seconded by Councilmember Newton and unanimously approved, the meeting adjourned at 10:11 pm.