

SPECIAL MEETING
October 28, 2013

The Special Meeting of the Annapolis City Council was held on October 28, 2013 in the Council Chamber. Mayor Cohen called the meeting to order at 7:03 p.m.

Present on Roll Call: Mayor Cohen, Aldermen Budge, Paone, Alderwomen Hoyle, Finlayson, Aldermen Littmann, Kirby, Pfeiffer, Arnett

Staff Present: City Attorney Hardwick, City Manager Mallinoff, Human Resources Director Rensted, Finance Director Miller, Planning and Zoning Director Arason, Chief of Comprehensive Planning Nash, Chief of Historic Preservation Craig, Public Works Director Jarrell

Approval of Agenda

- Alderwoman Finlayson moved to amend the agenda to delete the approvals of the Journal of Proceedings. Seconded. CARRIED on voice vote.

PETITIONS, REPORTS AND COMMUNICATIONS

U.S. Postal Service on New Retail location within the City of Annapolis

Rick Hancock, PO Box 27497, Greensboro, NC 27498-103, Real Estate Specialist - C Facilities representing United States Postal Service gave a brief presentation on the possible relocation of the post office located at Church Circle in Annapolis.

Comments by the General Public

Nancy Williamson, 808 Chesapeake Avenue, Annapolis, Maryland 21403 spoke in opposition to R-49-12.

Mike Pantelides, 178 S. South Wood Avenue, Annapolis, Maryland 21401 spoke on the ratification of the union contracts, in opposition to R-49-12 and on the O-19-13.

Fredrik Broen, 74 East Street, Annapolis, Maryland 21401 representing Ward One Residents Association spoke in favor of Alderman Budes Amendments to R-49-12.

Heather Hurtt, 820 Chester Avenue, Annapolis, Maryland 21401 representing Connect Annapolis spoke in favor of R-49-12.

Vanessa Kirby-Forte, 260 A Hilltop Lane, Apt 104, Annapolis, Maryland 21401 spoke on the founding fathers, the City of Annapolis and slavery.

Fred Delavan, Esq., 170 Jennifer Road, Suite 240, Annapolis, Maryland 21401 representing Blumenthal, Delavan & Williams, P.A., spoke on O-19-13.

Philip Dales, Esq., 200 Westgate Circle, Annapolis, Maryland 21401 representing Hyatt & Weber spoke on O-19-13.

Denise Worthen, 65 Southgate Avenue, Annapolis, Maryland 21401 spoke in favor of R-49-12 Amended.

Brian Cahalan, 49 West Street, Annapolis, Maryland 21401 thanked the Council for serving, spoke on the amendment regarding the promenade to the Draft City Dock Master Plan, parking and building height in Historic Districts.

Michel Fox, 20 Windwhisper Lane, Annapolis, Maryland 21403 spoke on O-47-11.

Pete Chambliss, 119 Prince George Street, Annapolis, Maryland 21401 spoke on R-49-12, bigger buildings and the tourist.

Janet Norman, 787 Annapolis Neck Road, Annapolis, Maryland 21401 spoke on City Election Process, Election Flyers in Ward 6, and the death threats made to an individual for questioning a Candidates Campaign Fund Report.

Malina Koerschner, 16 Thompson Street, Annapolis, Maryland 21401 spoke in favor of R-49-12, spoke on the circulator and the Bladen Street Parking Garage.

Lew Bearden, 100 Compromise Street, Annapolis, Maryland 21401 representing the Fleet Reserve Club spoke on R-49-12.

Doug Smith, 5 Revel Street, Annapolis, Maryland 21401 spoke on the report from the Historic Preservation Commission.

- Mayor Cohen declared petitions, reports and communications closed.

Honoring Alderwoman Classie Gillis Hoyle

Mayor Cohen on behalf of the City Council presented Alderwoman Classie Gillis Hoyle with a proclamation in recognition of her 12 years of service as Alderwoman of Ward 3.

BUSINESS and MISCELLANEOUS

Ratification of Proposed Union Memoranda of Understanding

City Manager Mallinoff gave a brief presentation on Interest Base Bargaining and answered questions from Council. Human Resources Director Rensted was present and answered questions from Council.

Eric Paltell, 1823 York Road, Timonium, MD 21093-5119 representing Kollman & Saucier, P.A. was present and answered questions from Council.

- At 8:43 p.m., Mayor Cohen requested Alderwoman Finlayson preside over the meeting during his absence. At 8:56 p.m. Mayor Cohen resumed the duties of the Chair.
- Alderman Paone moved to postpone the vote to ratification of the proposed Understanding between the City of Annapolis and AFSCME LOCALS 3406 & 3162, IAFF LOCAL 1926, and UFCW LOCAL 400 until Wednesday, October 30, 2013. Seconded. DEFEATED on voice vote.
- Alderwoman Finlayson moved to ratify the Memoranda's of Understanding between the City of Annapolis and AFSCME LOCALS 3406 & 3162, IAFF LOCAL 1926, and UFCW LOCAL 400. Seconded. CARRIED on voice vote.
- Mayor Cohen accepted into the record a letter from the City of Annapolis Advisory Commission, c/o Frederick C. Sussman, Esq., Chair, P.O. Box 2289, Annapolis, Maryland 21404-2289 dated October 24, 2013.

Budget Revisions Requests

Finance Director Miller gave a brief presentation on the budget revision requests and answered questions from Council.

Planning and Zoning Director Arason was present and answered questions from Council.

The Finance Committee reported favorably on the budget revision requests.

GT-2-14 department of Planning and Zoning, Transfer to Contract Services \$31,800.00 Transfer from Salaries \$31,800.00

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GT-3-14 department of Mayor's Office, Transfer to Special Projects \$4,554.00 Transfer from Community Grants \$ 4,554.00

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GT-4-14 department of Fire, Increase Revenue County 508 Fund \$29,955.42 Increase Supplies \$29,955.42.

- Alderwoman Finlayson moved to approve budget revision requests GT-2-14, GT-3-14 and GT-4-14. Seconded. CARRIED on voice vote.

Appointments

- Alderman Pfeiffer moved to approve the Mayor's appointment or re-appointment of the following individuals:

10/28/13	Transportation Board	Alex Pline
10/28/13	Transportation Board	Ann Widener
10/28/13	Transportation Board	Elizabeth Dolezal
10/28/13	Transportation Board	Jennifer West-Miser
10/28/13	HACA Board of Commissioners	Richard Callahan
Seconded.	CARRIED voice vote.	

LEGISLATIVE ACTION – 2nd READER ORDINANCES AND RESOLUTIONS

R-49-12 2012 City Dock Master Plan - For the purpose of adopting the Draft City Dock Master Plan as an addendum to the 2009 Annapolis Comprehensive Plan.

Planning and Zoning Director Arason gave a brief presentation and answered questions from Council. Chief of Historic Preservation Craig was also present and answered questions from Council.

Chris Jakubiak, 222 Courthouse Court, Suite 1 C, Towson, Maryland 21204 representing Jakubiak Town & City Planning was present and answered questions from Council.

Development Consultant Caroline Moore, 3430 2nd Street, Suite 320 Baltimore, MD 21225 representing Ekistics, LLC was present and answered questions from Council.

- Alderman Budge moved to adopt R-49-12 on second reading. Seconded. on 10/7/13
- Alderman Budge moved amendment #2 Management Entity to amend R-49-13 as follows:

On page 33, Amend the title of Section A so that it reads “Management ~~Entity~~ ~~on~~ OF City Dock”

Delete “or entity” from the second sentence of the last paragraph: “The purview of any management function or entity should include....” Seconded. CARRIED on voice vote.

The meeting was recessed at 10:17 p.m. and reconvened at 10:34 p.m.

- Alderman Budge moved amendment #3 A Building Height to amend R-49-13 as follows:

3. A. Building Height, on page 13, last sentence: replace "small tolerances" with "tolerances up to three feet".

“In order to facilitate new construction in the Opportunity Sites, the Historic Preservation Commission, as part of its review, should have the authority to grant ~~small~~ tolerances UP TO THREE FEET to allowable height if new construction is not otherwise feasible. Seconded. A ROLL CALL vote was taken:

YEAS: Mayor Cohen, Aldermen Littmann, Pfeiffer, Arnett, Budge
NAYS: Alderman Kirby, Paone, Alderwomen Hoyle, Finlayson
CARRIED: 5/4

- Alderman Arnett moved to amend Budge amendment #3 A Building

Height, on page 13, as follows:

To strike "tolerances up to three feet" and insert "tolerances up to 10 percent".
Seconded. DEFEATED on voice vote. A ROLL CALL vote was taken:

YEAS: Aldermen Littmann, Pfeiffer, Arnett, Budge

NAYS: Mayor Cohen, Alderman Kirby, Paone, Alderwomen Hoyle, Finlayson

DEFEATED: 4/5

- Alderman Budge moved amendment #3 B Parking to amend R-49-13 as follows:

3. B. Parking, on page 23, beginning of second sentence in third paragraph: Insert the word "permanently" and change "significant" to "10 percent", thus:

"Before PERMANENTLY removing a ~~significant number~~ TEN PERCENT OR MORE of THE CITY OWNED parking spaces or formal or informal loading zone spaces in the City Dock study area, the City of Annapolis will develop and present to City Council for approval a Parking Management Plan which identifies and considers...." Seconded. CARRIED on voice vote.

- Alderman Paone moved to amend Alderman Budge #3 B as follows:

3. B. Parking, on page 23, beginning of second sentence in third paragraph: Insert the word "permanently" and change "significant" to "5 percent", thus:

"Before PERMANENTLY removing a ~~significant number~~ FIVE PERCENT OR MORE of THE CITY OWNED parking spaces or formal or informal loading zone spaces in the City Dock study area, the City of Annapolis will develop and present to City Council for approval a Parking Management Plan which identifies and considers...." Seconded. DEFEATED on voice vote.

- Alderman Budge moved amendment #3 C Waterfront Set-Back to amend R-49-13 as follows:

On page 37, second sentence of second paragraph: replace "minimum 30 -foot" setback "50 to 55-foot".

"In order to accommodate these uses, the WMC District should incorporate a ~~minimum 30-foot~~ 50 to 55-FOOT setback from the water for primary structures, and a 20-foot setback from the Northwest side of Newman Street." Seconded. CARRIED on voice vote.

- Alderman Arnett moved to amend R-49-12 as follows:

To move the following paragraph to the top of page 108, of the October 14, 2013: Annotated Draft after "Scale and New Buildings" insert the following:

"NEW CONSTRUCTION IN THE OPPORTUNITY SITES MUST PRESERVE THE DESIGN GUIDELINES AND ARCHITECTURAL PRINCIPLES FOUND THROUGHOUT THE HISTORIC LANDMARK DISTRICT WITH REGARDS TO SCALE, MASSING, AND RHYTHM AND REMAIN SUBJECT TO REVIEW AND APPROVAL BY THE HISTORIC PRESERVATION COMMISSION, AS IS PRESENTLY THE CASE. IN ORDER TO FACILITATE NEW CONSTRUCTION IN THE OPPORTUNITY SITES, THE HISTORIC PRESERVATION COMMISSION, AS PART OF ITS REVIEW, SHOULD HAVE THE AUTHORITY TO GRANT SMALL TOLERANCES TO ALLOWABLE HEIGHT IF NEW CONSTRUCTION IS NOT OTHERWISE FEASIBLE." Seconded. CARRIED on voice vote.

- Alderman Arnett moved the Historic Preservation Commission amendment to amend R-49-12 as follows:

On pages 12-13, insert

“C. Language Remaining and /or Amended: “Two and One Half stories are recommended”. Similar logic used above applies to the use of this specific but undefined language, however even more so. The HPC makes the following observation: the Halsey field house is a one story building. Use of this type of descriptor in the content of evaluating the appropriateness of new construction that maintains the integrity of the District is not meaningful. **The HPC recommends this language be stricken for the Plan. If the Council wishes to retain the language, we recommend it be amended to read: “Two and one half stories are envisioned but subject to analysis of specific design proposals within the existing historic context.”** Seconded. CARRIED on voice vote.

- Alderman Arnett moved the Historic Preservation Commission amendment to amend R-49-12 as follows:

On page 12-13 insert

“D. Language Inserted: “The City must prepare a professional cultural landscape report that recognizes the National Historic Landmark Designation and applies the Secretary of Interior’s Standard for Treatment of Historic Properties in assessing the significant historic assets in the vicinity, conducting a viewshed analysis, and determining the impact of the proposed developments on these properties and other aspects that may be pertinent.” The HPC supports this amendment and requests that the following changes to the language be made in order to clearly communicate that the possible move of the Dock Street buildings toward Market Slip must be studied. “The city must prepare a professional cultural landscape report that recognizes the National Historic Landmark Designation and applies the Secretary of Interior’s Standards for treatment of Historic Properties in assessing the significant historic assets in the vicinity, conducting a viewshed analysis, and determining **what, if any, adverse effect would occur on the integrity of the District if the proposed move of the existing building line from Dock Street towards Market Slip**” Seconded. CARRIED on voice vote.

- Alderman Arnett moved the Historic Preservation Commission amendment to amend R-49-12 as follows:

page 17:

- A. Language Inserted: “ The City will prepare, for council approval, a plan for the intersections and crosswalks in the study area which considers the area’s dual role as both a destination and a thoroughway, gathering space for pedestrians, pedestrian and bicycle access to and through city dock, wayfinding, bus and truck access, loading, and unloading, and the constraints of the historical context”. **The HPC concurs with this amendment and asks for additional language to be inserted at the end of the sentence “(as determined by the cultural landscape report).”**

Seconded. CARRIED on voice vote.

- Alderman Arnett moved the Historic Preservation Commission amendment to amend R-49-12 as follows:

On page 17, insert “**THE ENTIRE CITY DOCK STUDY AREA LIES WITHIN AN IDENTIFIED FLOODPLAIN AREA. FEMA RULES NO LONGER ALLOW FOR EITHER MAJOR RENOVATIONS OR CONSTRUCTION OF NEW BUILDINGS HABITABLE SPACE WITHIN A FLOODPLAIN. ALTHOUGH FEMA DOES NOT HAVE JURISDICTION OVER CONSTRUCTION AT CITY DOCK, THEIR RULES MEAN HABITABLE SPACE BUILT BELOW THE 100-YEAR FLOODPLAIN WILL BE UNINSURED AND INELIGIBLE FOR DISASTER ASSISTANCE IN FUTURE FLOOD EVENTS. IN ORDER TO ALLOW REHABILITATION OF EXISTING BUILDINGS AND THE CREATION OF NEW ONES, THE HISTORIC DISTRICT’S HEIGHT REGULATIONS SHOULD BE MODIFIED TO BEGIN HEIGHT MEASUREMENT AT GRADE OR AT THE FLOOD PROTECTION ELEVATION, WHICHEVER IS GREATER, WHEN APPLICABLE COMMISSION REVIEW CRITERIA ARE MET AND COULD ALLOW A SMALL VARIANCE TOLERANCE**”

~~FOR HAZARD MITIGATION WITHIN THE FLOODPLAIN.~~ AS NOW, THE HISTORIC PRESERVATION COMMISSION SHOULD RETAIN THE AUTHORITY TO JUDGE THE HEIGHT AND BULK OF INDIVIDUAL PROPOSALS ON A PROJECT-BY-PROJECT BASIS IN A FASHION CONSISTENT WITH THE HISTORIC DISTRICT ORDINANCE AND THE HISTORIC PRESERVATION COMMISSION'S DESIGN GUIDELINES." Seconded. CARRIED on voice vote.

- Alderman Arnett moved the Historic Preservation Commission amendment to amend R-49-12 as follows:

On page 28, A. The HPC recommends insertion of the following sentence in paragraph two: **Already underway is development of a Hazard Mitigation Plan to protect historic resources within the 100-year flood plain.** Seconded. CARRIED on voice vote.

- Alderman Littmann moved to amend of the October 14, 2013: Annotated Draft of the City Dock Master Plan as follows:

In the 3rd paragraph, 1st line of page 12, of the October 14, 2013: Annotated Draft strike "45-55 and insert "50-55 Feet". Seconded. CARRIED on voice vote.

- Alderman Budge moved to amend the October 14, 2013: Annotated Draft of the City Dock Master plan as follows:

On page 16, add the following text "It is the intention of this Plan that a promenade could extend around City Dock. The Plan recognizes that in the vicinity of the Fleet Reserve Club, Marriott Hotel and Yacht Basin existing ownership and development could preclude a publicly-owned promenade with the principal public elements as described in the Plan. Nevertheless, as properties redevelop the City should seek a continuous walkway through dedication or easement, of a width sufficient to promote public safety while not impinging on the redevelopment of affected properties. Seconded DEFEATED on voice vote.

- Alderman Budge moved to amend R-49-12 as follows:

On page 2, of the resolution, in line 17, after the words "that the" strike "Draft"
On page 2, of the resolution, in line 18, after the word Resolution strike " , is also available online at [http://www.annapolis.gov/Government/Departments/PlanZone/CityDockPlan/master plan. asp](http://www.annapolis.gov/Government/Departments/PlanZone/CityDockPlan/masterplan.aspx)," Seconded. CARRIED on voice vote.

The main motion amended A ROLL CALL vote was taken:

YEAS: Mayor Cohen, Aldermen Littmann, Kirby, Pfeiffer, Arnett, Budge, Alderwomen Hoyle, Finlayson

NAYS: Alderman Paone

CARRIED: 8/1

- Alderman Pfeiffer moved to consider new business items beyond 11:00 p.m. Seconded. CARRIED on voice vote.

O-51-11Amd. Use and Redevelopment of Property in C2 Zoning Districts – For the purpose of adding certain provisions governing use and redevelopment of property located in a C2 Zoning District.

- Alderman Littmann moved to postpone O-51-11 amended indefinitely. Seconded. CARRIED on voice vote.

O-52-11Amd. Rezoning Parcels [1244] 1247 and 1255, Grid 20, Tax Map 52A – For the purpose of rezoning parcels [1244] 1247 and 1255, Grid 20, Tax Map 52A to C2, “Conservation Business” Zoning District.

- Alderman Littmann moved to postpone O-52-11 amended indefinitely. Seconded. CARRIED on voice vote.

O-19-13 Capacity of Schools in the Development Review Process – For the purpose of adding current and projected school capacity of Annapolis Feeder System schools geographically located within the City of Annapolis to the list of development review criteria and findings; and specifying duties of the Director of Planning and Zoning regarding school capacity.

Planning and Zoning Director Arason gave a brief presentation and answered questions from Council.

Lara L. Fritz, 200 Westgate Circle, #102, Annapolis, Maryland 21401 representing the AEDC was present and answered questions from Council.

Charles Delavan, 170 Jennifer Road, Suite 240, Annapolis, Maryland 21401 representing Blumenthal, Delavan & Williams P.A. was present and answered questions from Council.

Philip Daley, 200 Westgate Cir #500, Annapolis, Maryland 21401 representing Hyatt & Weber, P.A. was present and answered questions from Council.

- Alderman Arnett moved to adopt O-19-13 on second reader. Seconded.
- Alderman Littmann moved to amend O-19-13 as follows:

Amendment #1

Page 1, line 12

Page 3, line 12

Page 4, line 13

Page 5, line 8

Strike “geographically located within” and insert “that serve the residents of”.

Seconded. CARRIED on voice vote.

- Alderman Littmann moved to amend O-19-13 as follows:

Amendment #3

Page 2, in Lines 10-12, amend the language as follows:

WHEREAS, it is in the best interest of the City of Annapolis to consider all available data regarding the impacts of a proposed development on school capacity before the City approves a proposed development, and the Council expressly recognizes that the review of school capacity is a complicated matter made more complex by the fact that, while the City collects development impact fees for schools from residential developers within the City of Annapolis in the amount set by Anne Arundel County and while the City remits such fees to Anne Arundel County in accordance with the requirements of the Maryland State Code, the City of Annapolis does not presently have the authority to control, direct, or influence how Anne Arundel County expends those fees, or how the County manages its public schools, or how the County funds public school construction, or how the County permits residential developments within the County which impact public schools within the jurisdictional limits of the City of Annapolis; and

WHEREAS, given the complexity of public school funding, school districting, and the allocation of school capacity by Anne Arundel County and its Board of Education, it is neither the intent of the Annapolis City Council nor the effect of this Ordinance for the provisions adopted herein to function as an automatic stop on residential development within the City of Annapolis, or to stop any particular residential project from moving forward in the City's administrative processes.

Effect of Amendment #3: The amendment would clarify the City Council's intent and the applicability of the law.

Rationale of Amendment #3: The amendment expresses the informational intent of the Ordinance, clarifies that it is not intended to be an automatic development moratorium, though it could justify stopping a development, and expresses the Council's effort to bring into focus the complicated but important matter of bi-jurisdictional school funding and capacity issues. Seconded. CARRIED on voice vote.

- Alderwoman Finlayson moved to amend Alderman Littmann's amendment # 3 to O-19-13 as follows:

Amendment #1

On Page 2, in Lines 10-12, amend the language as follows:

WHEREAS, it is in the best interest of the City of Annapolis to ~~consider~~ review all available data regarding the impacts of a proposed development on school capacity before the City approves a proposed development, and the Council expressly recognizes that the review of school capacity is a complicated matter made more complex by the fact that, while the City collects development impact fees for schools from residential developers within the City of Annapolis in the amount set by Anne Arundel County and while the City remits such fees to Anne Arundel County in accordance with the requirements of the Maryland State Code, the City of Annapolis does not presently have the authority to control, direct, or influence how Anne Arundel County expends those fees, or how the County manages its public schools, or how the County funds public school construction, or how the County permits residential developments within the County which impact public schools within the jurisdictional limits of the City of Annapolis; and

WHEREAS, given the complexity of public school funding, school districting, and the allocation of school capacity by Anne Arundel County and its Board of Education, it is neither the intent of the Annapolis City Council nor the effect of this Ordinance for the provisions adopted herein to function as a moratorium on residential development within the City of Annapolis, or to stop any particular residential project from moving forward in the City's administrative processes.

Effect of Amendment #1: The amendment would clarify the City Council's intent and the applicability of the law.

Rationale of Amendment #1: The amendment expresses the informational intent of the Ordinance, clarifies that it is not intended to be a *de facto* development moratorium, and expresses the Council's effort to bring into focus the complicated but important matter of bi-jurisdictional school funding and capacity issues. Seconded. DEFEATED on voice vote.

A Roll Call vote was taken:

YEAS: Alderwomen Hoyle, Finlayson

NAYS: Mayor Cohen, Aldermen Littmann, Kirby, Pfeiffer, Arnett, Budge, Paone

DEFEATED: 2/7

- Alderman Littmann moved to amend O-19-13 as follows:

Amendment #4

On page 4, in lines 6-7: strike “The proposed design” and insert

“UNLESS A DESIGN IS SUBJECT TO REVIEW AS A PLANNED DEVELOPMENT UNDER SECTION 21.24.090, THE PROPOSED SITE DESIGN MUST PROVIDE CONSIDERATION OF:” Seconded. CARRIED on voice vote.

- Alderwoman Hoyle moved to postpone indefinitely O-19-13 on second reading. Seconded. DEFEATED on voice vote.

A ROLL CALL vote was taken:

YEAS: Alderman Kirby, Alderwomen Hoyle, Finlayson

NAYS: Mayor Cohen, Aldermen Littmann, Pfeiffer, Arnett, Budge, Paone

DEFEATED: 3/6

- Alderman Littmann moved to amend O-19-13 as follows:

Amendment #2

Page 4, Line 20, and Page 5, Line 15, Insert (as compared to initial version):

If the City projects that a proposed residential development would either (1) impact a school that already exceeds its State-Rated Capacity in the current Anne Arundel County Educational Facilities Master Plan (“CAPACITY”) or (2) cause the school to exceed its [State-Rated] Capacity WHEN THE DEVELOPMENT IS COMPLETE, then the developer may satisfy the requirements in Section 21.22.080 I. by [reaching agreement with the impacted governmental and educational organizations] INCLUDING AS A STIPULATION TO PROCEED WITH THE DEVELOPMENT, A REQUIREMENT to fund improvements that [result in total school enrollment as less than or equal to its current State-Rated Capacity] INCREASE CLASSROOM SIZE BY THE LESSER OF (1) TO THE EXTENT NECESSARY TO ACCOMMODATE THE PROSPECTIVE NUMBER OF CHILDREN FROM THE PROPOSED DEVELOPMENT OR (2) TO THE EXTENT NECESSARY TO RESULT IN TOTAL SCHOOL ENROLLMENT AS LESS THAN OR EQUAL TO ITS CURRENT STATE-RATED CAPACITY.

Page 4, Line 20, Insert (clean version):

If the City projects that a proposed residential development would either (1) impact a school that already exceeds its State-Rated Capacity in the current Anne Arundel County Educational Facilities Master Plan (“Capacity”) or (2) cause the school to exceed its Capacity when the development is complete, then the developer may satisfy the requirements of Section 21.22.080 I. by including, as a stipulation to proceed with the development, a requirement to fund improvements that increase classroom size by the lesser of (1) to the extent necessary to accommodate the prospective number of children from the proposed development or (2) to the extent necessary to result in total school enrollment as less than or equal to its current state-rated capacity.

On page 5, Line 15: Same as paragraph above, but refer to Section 21.24.090, rather than 21.22.080. Seconded. Without objection, Aldermen Littman withdrew Amendment #2.

Effect of Amendment #2: The amendment would empower the developer to satisfy requirements of this law by building school capacity for the students added by its development.

Rationale of Amendment #2: This provision gives the developer some measure of control over the school capacity issue. It is a lenient provision in that it does not require the developer to address over-capacity beyond the enrollment increase from its own development, and it does not require the developer to provide for increased common areas, such as cafeteria space.

- Alderwoman Finlayson moved to amended as follows:

Amendment #3

On Page 4, delete Lines 6-19, and replace the deleted text with a new City Code Section 21.62.075 as follows:

Chapter 21.62 – Site Design Standards

21.62.075 SCHOOL CAPACITY.

AN APPLICANT SEEKING APPROVAL OF A DEVELOPMENT CONTAINING NON-AGE RESTRICTED DWELLING UNITS SHALL PROVIDE TO THE DEPARTMENT OF PLANNING AND ZONING THE FOLLOWING INFORMATION:

1. HOW MANY SCHOOL-AGED CHILDREN ARE EXPECTED TO LIVE IN ~~A~~THE PROPOSED DEVELOPMENT BASED ON THE SCHOOL PUPIL GENERATION FACTORS YIELD PER UNIT CONTAINED IN THE ANNE ARUNDEL COUNTY EDUCATIONAL FACILITIES MASTER PLAN;
2. WHICH, AND TO WHAT DEGREE, ANNAPOLIS FEEDER SCHOOLS GEOGRAPHICALLY LOCATED WITHIN THE CITY OF ANNAPOLIS WOULD BE IMPACTED; AND
3. THE CURRENT AND PROJECTED CAPACITY OF THOSE IMPACTED SCHOOLS TO ACCOMMODATE THE EXPECTED NUMBER OF SCHOOL AGED CHILDREN AT PRESENT AND THE FORESEEABLE FUTURE BASED ON THE ANNE ARUNDEL COUNTY EDUCATIONAL FACILITIES MASTER PLAN. Seconded. CARRIED on voice vote.

Effect of Amendment #3: The amendment would make no modifications to 21.22.080, “Review criteria and findings” for site design plan review applications. Instead, a requirement to provide school capacity information would be codified in a new Section within Chapter 21.62, “Site Design Standards.”

Rationale of Amendment #3: The vague “consideration” criterion that would have created problems and produced confusion is removed. The amended framework would require that school capacity information be provided by site design plan review applicants and, per 21.22.080 A., that such information must be deemed sufficient and reviewed by the Department of Planning and Zoning in its evaluation of site design plan review applications.

- Alderman Paone moved to amend Alderwoman Finlayson’s amendment # 3, Chapter 21.62 – Site Design Standards Sec. 21.62.075 SCHOOL CAPACITY #2 AS FOLLOWS:

AFTER THE WORD “ANNAPOLIS” STRIKE “WOULD BE IMPACTED”.
Seconded. CARRIED on voice vote.

- Mayor Cohen moved to amend O-19-13 as follows:

On page 4, strike “lines 6 though 19

On page 5, strike “lines 3 through 14. Seconded. CARRIED on voice vote.

The main motion as amended CARRIED on voice vote.

- Alderman Littmann moved to adopt O-19-13 amended on third reading. Seconded.

A ROLL CALL vote was taken:

YEAS: Mayor Cohen, Aldermen Littmann, Pfeiffer, Budge, Paone, Alderwomen Hoyle, Finlayson

NAYS: Aldermen Kirby, Arnett,

CARRIED: 7/2

- O-35-13 Issuance of Bonds and Bond Anticipation Notes – For the purpose of authorizing and empowering the City of Annapolis (the “City”) to issue and sell, upon its full faith and credit, (i) general obligation bonds in the aggregate principal amount not to exceed \$11,500,000, pursuant to Sections 31 through 39, inclusive, of Article 23A of the Annotated Code of Maryland (2011 Replacement Volume and 2012 Supplement), as amended, and Article VII, Section 11 of the Charter of the City, as amended (the “Charter”), and (ii) general obligation bond anticipation notes in anticipation of the issuance of such bonds in the maximum aggregate principal amount equal to the maximum aggregate principal amount of such bonds pursuant to Section 12 of Article 31 of the Annotated Code of Maryland (2010 Replacement Volume and 2012 Supplement), as amended, and Article VII, Section 11 of the Charter; prescribing the form and tenor of said bonds and notes; determining the method of sale of said bonds and notes and other matters relating to the issuance and sale thereof; providing for the disbursement of the proceeds of said bonds and notes; covenanting to levy and collect all taxes necessary to provide for the payment of the principal of and interest on said bonds and notes; and generally providing for and determining various matters relating to the issuance, sale and delivery of all said bonds and notes.**

Finance Director Miller gave a brief presentation and answered questions from Council.

Paul Shelton, Esq., 401 E. Pratt Street, Suite 2315, Baltimore, Maryland 21202 representing McKennon Shelton & Henn LLP, was present and answered questions from Council.

- Alderman Arnett moved to adopt O-35-13 on second reading. Seconded.

The Finance and Economic Matters Committee and the Financial Advisory Commission reported favorably on O-35-13.

- Alderman Arnett moved to amend O-35-13 as follows:

Amendment #1

Page 1 (two instances), Page 9 and Page 13:

Strike “31 through 39, inclusive, of Article 23A” and “2011 Replacement Volume and 2012 Supplement” and “as amended” and “12 of Article 31 of the Annotated Code of Maryland (2010 Replacement Volume and 2012 Supplement), as amended”

Insert “19-301 through 19-301 of the Local Government Article” and “(the “Local Government Article”)” and “19-212(A) of the Local Government Article”

Amendment #2

Page 12, Line 1: Strike “7” and insert “8”

Amendment #3

Page 25 and Page 26

Strike “10 and 11 of Article 31 of the Annotated Code of Maryland (2010 Replacement Volume and 2012 Supplement)” and “12 of Article 31 of the Annotated Code of Maryland (2010 Replacement Volume and 2012 Supplement), as amended”

Insert “19-205 and 19-206 of the Local Government Article” and “19-212(A) of the Local Government Article” Seconded. CARRIED on voice vote.

- Alderman moved to amend O-35-13 as Follows:

1. On page 12, line 7, after “determines” insert “, after consultation with the City Council Finance Committee,”
2. On page 25, line 26, after “or” insert “, after consultation with the City Council Finance Committee,”

These amendments would require the Mayor to consult with the Finance Committee before deciding to sell bonds or bond anticipation notes at private sale. This would provide a measure of City Council oversight if there is a deviation from the authorization to sell at a publicly advertised sale. Seconded. CARRIED on voice vote.

The main motion as amended CARRIED on voice vote.

- Alderman Arnett moved to adopt O-35-13 amended on third reading. Seconded.

A ROLL CALL vote was taken:

YEAS: Mayor Cohen, Aldermen Kirby, Pfeiffer, Arnett, Budge,
Alderwomen Hoyle, Finlayson
NAYS: Alderman Littmann, Paone
CARRIED: 7/2

O-47-11 Fence Permits - For the purpose of amending the Code of the City of Annapolis with respect to the issuance of fence permits.

Planning and Zoning Director Arason gave a brief presentation and answered questions from Council.

- Alderman Arnett moved to adopt O-47-11 on second reading. Seconded.
- Alderman Arnett moved to amend O-47-11 as follows:

Office of Law Working Draft for Second Reader

Editorial note: the purpose of this working draft is to show 1) the current Code in effect that O-40-11 (Fence Permits) modified and was adopted at the same Council meeting where O-47-11 was introduced and 2) the recommended amendments since introduction.

Ordinance No. O-47-11

EXPLANATION:

Gray highlighting indicates text proposed to be added to law as it existed at time ordinance was drafted.

~~Strikeout indicates text proposed to be deleted.~~

Yellow highlighting indicates text of current Code as revised by O-40-11 adopted by Council action on the same date this ordinance was introduced.
Underlining indicates amendments proposed by the Planning Commission.
Blue highlighting indicates needed technical amendments.
Purple highlighting indicates amendments proposed by the Planning Commission.

AN ORDINANCE concerning

Fence Permits

FOR the purpose of amending the Code of the City of Annapolis with respect to the issuance of fence permits.

BY repealing and re-enacting with amendments the following portions of the Code of the City of Annapolis, 2011 ~~2012~~ Edition:

- 17.34.010
- 17.34.020
- 21.18.030
- 21.60.070
- 21.60.080
- 21.60.090
- 21.72.010

BY adding the following portions to the Code of the City of Annapolis, 2012 Edition:

- 21.60.065
- 21.60.075

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the Code of Annapolis shall be amended to read as follows:

Chapter 17.34 – FENCE ~~CODE PERMITS~~

17.34.010 - ~~Fences, hedges or walls~~ Fences and walls.

A. Permit Required.

1. No new fence, or wall ~~or hedge~~ shall be erected, placed, or maintained ~~or grown~~ and no existing fence, or wall ~~or hedge~~ shall be altered or replaced until a permit is obtained from the City Department of Neighborhood and Environmental Programs. The nonrefundable application fee and permit fee shall be in accordance with Section 17.12.056. The permit shall not be issued until the drawings application and supporting documentation have been reviewed by the appropriate City departments and approved by the Director or his or her designee.

~~2. In approving or disapproving the drawings, consideration shall be given to the type of materials to be used, whether or not the fence, wall or hedge unduly obstructs light and air from neighboring properties or public ways, and whether or not the fence, wall or hedge unduly will obstruct visibility upon public streets. Materials used for fences, walls or hedges in residential zoning districts shall be in keeping with the character of the neighborhood and purpose for which the fence, wall or hedge was intended. Except in connection with penal and correctional institutions and public utility and service uses, no fence, wall or hedge shall consist, in whole or in part, of barbed wire or similar materials designed or customarily utilized to inflict injury upon persons or animals.~~

2. At a minimum, the permit application shall be accompanied by a scaled drawing showing the proposed location and dimensions of the fence or wall on the subject lot, and its relationship to the property lines, public right-of-ways, easements, utilities, existing structures, existing trees, and steep topography. The permit application shall also include construction drawings, pictures or diagrams sufficient to illustrate the overall design and materials to be used for the proposed fence or wall. The Director may require the applicant to provide additional information as deemed necessary by the City in order to review the proposed fence or wall for conformity with the City Code.

3. A fence, wall, or hedge erected, placed, maintained or grown in or abutting residential and maritime zoning districts is subject to the following height limitations: (a) six feet along a front yard lot line or in a front yard; (b) six feet along side yard lot lines or in a side yard, between the front yard lot line and façade plane of the principal structure; and (c) except as limited by (b), six feet along the side yard and rear yard lot lines and in side and rear yards.

3.5. Work shall commence within thirty days from the date of the issuance of the permit and be completed in one hundred twenty days after issuance, unless extended by the Director of Neighborhood and Environmental Programs, or the permit will be revoked.

4. A fence, wall, or hedge may be installed up to, but not over the property line. It is the responsibility of the applicant to assure that the proposed fence or wall will not be installed on property of others. All property line disputes are between abutting property owners, not the City.

B. Administrative Review.

1. A fence, wall, or hedge of four six feet or less measured from the adjoining finished grade will be approved routinely unless an inspection of the property indicates that a fence, wall, or hedge of this height unduly would obstruct light and air from nearby and adjoining properties or public ways, or unduly obstruct visibility upon public streets.

2. A proposed fence, wall, or hedge of more than four six feet requires notification to the neighbors prior to any approval. Only the abutting Property owners and occupants within 200 feet of the property of the proposed fence or wall shall be notified in accordance with Section 21.10.020(B) of the Zoning Code. This includes the owners of vacant land, rental units and vacant buildings. The property owners and occupants shall be notified by mail or hand delivery of the proposal and given ten calendar days to respond. It is the responsibility of the applicant or his authorized agent to notify the abutting owners. Failure to respond indicates no objection to the proposal.

3. A new fence, wall, or hedge, and gates and all existing fences, walls, hedges and gates to be altered located in the historic district as defined in Title 21 of the City Code require the review and approval of the Historic Preservation Commission.

4. Unless approved otherwise, all fences or walls shall not be located in landscape buffers, conservation easements, over utility easements, across walkway easements or on public rights of way.

5. A fence, wall, or hedge shall not be located at least three feet away from a fire hydrant.

6. A fence, wall, or hedge shall not alter or impede the natural flow of stormwater, nor divert the water onto the property of others.

7. A fence, wall, or hedge shall not unduly obstruct the view of tidal waterways from nearby residential properties.

8. All fences, hedges and walls shall be maintained in good condition at all times. All fences and walls shall be neatly finished and repaired, including all parts and supports.

9. No fence or wall may be constructed in a manner or location which will interfere with natural surface water run-off or which will result in a negative impact to any adjacent property by natural surface run-off. All fences and walls must be constructed in a manner that is in harmony with City drainage requirements and standards and in compliance with any approved drainage plans on file with the City for the property upon which the fence or wall is constructed.

10. It shall be unlawful for any person to place or to allow to be placed on land they own a fence, a hedge or a wall which creates an unsafe or dangerous obstruction or condition.

B. Restrictions.

1. In addition to the provisions of this Section, fences and walls shall be required to comply with the standards and requirements outlined in Section 21.60.070 of the Zoning Code.

2. No new fence or wall shall be erected, placed, or maintained and no existing fence or wall shall be altered or replaced so as to encroach upon a public right-of-way or easement area, without written approval from the Director of Public Works or his or her designee. When any part of a permitted fence or wall is installed within a public easement area, the City or any agent of the City permitted to use the easement area shall be held harmless by the owner of the property upon which the permitted fence or wall is located for any and all claims for damage to the fence or wall that might occur when work is performed in the public easement area, and shall not be held responsible or liable for the reinstallation of any fence or wall removed from the public easement.

3. The area three feet in radius around fire hydrants, fire hose connections and utility boxes shall be kept free of any fences or walls that could impede use of the hydrant, hose connection or utility box.

4. Fences and walls shall be installed so as not to disturb or damage existing trees equal to or greater than five inches diameter at breast height, unless otherwise approved by the City.

5. Fences and walls shall not alter or impede the natural flow of stormwater, nor divert the water onto the property of others.

6. Fences and walls shall be assembled in accordance with the manufacturer's requirements and be constructed of wood, masonry, stone, wire, metal, plastic, or any other manufactured material or combination of materials normally used for fences and walls, and that has been manufactured for the purpose of fence or wall construction. The bottom of fence posts and wall foundations shall be set at least 30" below finished grade.

7. Fences and walls shall be maintained in accordance with the City's property maintenance code.

17.34.020 - Appeals

A. A person aggrieved by a determination or an order from of the dDirector or the dDirector's designee made pursuant to this chapter, other than the issuance of a municipal citation, may appeal to the Building Board of Appeals within fifteen calendar days of the date of the determination or order. The notice of petition for appeal shall be in writing stating the grounds for appeal and shall be filed with the Department of Neighborhood and Environmental Programs along with a nonrefundable fee in an amount established by the City Council. Any right to appeal shall be waived if not timely filed.

B. Fifteen days' notice of the hearing also shall be given to persons or entities owning property within two hundred feet of the location of the proposed fence,

~~wall or hedge~~ fence or wall that is the subject of the appeal. Notice shall be by first-class mail, and to the general public by a notice published in a newspaper of general circulation in the City. All required notices shall be at the appellant's expense.

- C. The Building Board of Appeals shall consider the appeal based upon the information and documentation provided to the Department of Neighborhood and Environmental Programs at the time of the determination or order from which the appeal is ~~taking~~ taken. If the ~~b~~Board finds that the determination or order was in error or contrary to the provisions of this ~~e~~Code or other applicable law, the ~~b~~Board may reverse or modify the determination or order. The decision of the ~~b~~Board on all appeals shall be in writing and shall contain the factual findings of the ~~b~~Board and the reasons for the decision.
- D. A person aggrieved by a decision of the Building Board of Appeals made pursuant to this section may appeal that decision to the ~~e~~Circuit ~~e~~Court for Anne Arundel County pursuant to Maryland Rule Title 7, Chapter 200 ~~or its successor,~~ as may be amended from time to time. For purposes of this subsection, a person shall not be considered aggrieved by a decision of the ~~b~~Board unless the person has appeared as a party at the hearing before the ~~b~~Board. An appeal under this section shall be taken within thirty days of the date of the decision appealed and shall be the exclusive remedy of the aggrieved party from that decision.

17.34.030 - Violations.

A person who violates this chapter is guilty of a municipal infraction and is subject to a fine of one hundred dollars for any single, initial violation and a fine of two hundred dollars for each repeat or continuing violation.

Chapter 21.18 – ADMINISTRATIVE ADJUSTMENTS

21.18.030 - Permitted administrative adjustments.

- A. Administrative adjustments from the regulations of this Zoning Code may be granted by the Planning and Zoning Director only in accordance with the criteria established in this Chapter, and may be granted only for the following:
1. Setbacks. To permit any yard or setback of up to twenty percent less than a yard or a setback required by the applicable regulations.
 2. Parking. To increase by not more than twenty percent the maximum distance that required parking spaces are permitted to be located from the use served.
 3. Lot Coverage. To increase by not more than twenty percent the lot coverage restrictions, except that administrative adjustments of lot coverage restrictions shall not be permitted in the Critical Area Overlay District.
 4. Signs. To adjust the limitations for signs in the specific instances set forth in [Section 21.70.110](#).
 5. Fences and Walls. To permit certain fences and walls an additional height allowance of up to four feet above the standard maximum height limit specified in Section 21.60.070.
 5. 6. Specific Zoning District Provisions. The zoning district provisions applicable to specific zoning districts, as provided in Division III, may authorize other permitted administrative adjustments. In [Chapter 21.54](#), Critical Area Overlay, these adjustments are referred to as administrative variances.

- B. The Director of Planning and Zoning may not approve administrative adjustments in the R1, Single-Family Residence District when the minimum lot width and area requirements for the affected property are not met.

Chapter 21.60 – SUPPLEMENTAL USE AND DEVELOPMENT STANDARDS

21.60.065 - Plantings.

- A. All plantings shall be installed and maintained in accordance with the applicable provisions of Sections 21.62.030, 21.62.040 and 21.62.050.
- B. Unless as otherwise may be required for planting mitigation or screening purposes by a condition of approval for a development application, plantings installed in the form of a boundary hedge, in-lieu-of or together with a fence or wall, shall be pruned or maintained so as not to exceed the height limits for fences and walls as outlined in Section 21.60.070.
- C. In the event that the requirements of this section conflict with those in Chapter 21.54, Critical Area Overlay, the Critical Area requirements shall prevail.

21.60.070 - ~~Fences, walls, and plantings.~~ **Fences and walls.**

A fence, wall or hedge may be erected, placed, maintained or grown pursuant to a permit issued in accordance with Section 17.34.010 of the Annapolis City Code.

A. For the purposes of this Section, the following definitions shall apply:

1. “Fence” means a fence, wall or hedge.

2. “Approved grade” means the elevation of the ground, or any paving or sidewalk built upon it, which has been established on the basis of an engineered grading and drainage plan for the property that has been reviewed and approved by the city for the property. When no engineered grading and drainage plan is on file with the city, an established historic grade may be accepted in lieu of the engineered plan, based on general information available, including, when appropriate, a site inspection of the property by the city before the fence, hedge or wall is constructed. In making a determination regarding historic grade, the city may, when deemed necessary, require submission of current surveyed elevations of the property and other nearby properties; or may require that an engineered grading and drainage plan be submitted by the owner or occupant of the property.

3. “Fence section” means a portion or panel of fence construction, normally consisting of pickets, planks or metal fabric attached to horizontal rails, and which is attached or constructed, in more or less regular sequential intervals, to supporting vertical posts. In determining what constitutes a fence section, the normal guideline shall be sequential sections of fence which are eight feet in length.

4. “Hedge” means several plants planted in a sequence or pattern so that the branches and stems of adjacent plants grow together in a manner that results in a meshing or intertwining of stems and branches with little or no passable space left between the plants, thus effectively forming a barrier or enclosure.

5. “Top of fence/top of wall” means the uppermost point on the edge or surface of a fence or wall, but not including support posts or architectural features as described in section 18.48.070(A)(1)(d).

6. “Top of hedge” means the highest point on the uppermost branches or stems of a hedge above which only leaves or needles naturally grow.

~~B. A fence, wall or hedge may be erected, placed, maintained or grown pursuant to a permit issued in accordance with Section 17.34.010 of the Annapolis City Code. It is the purpose of the provisions of this section to establish requirements for the height, location, and materials of fences, hedges or walls. Fences shall be required to comply with the following standards and requirements:~~

~~1. The height of a fence, or any combination of fences, is measured from the grade of the public right of way or easement. In the case where there is a change in grade, at no point along the length of the fence, or any combination thereof, shall the height exceed the limits established in this Chapter.~~

~~2. The maximum height of a fence shall not include the support posts or ornamental features included in the construction, provided that (a) the overall construction of such posts and ornamental features does not exceed the limitations describing a limited solid material fence as set forth in Section 21.60.070(A)(3), and (b) no posts or ornamental features extend more than one foot above the top of the fence.~~

~~3. All fences which have a ratio of solid material to open space of not more than one to four shall be considered limited solid material fences, and walls.~~

~~4. All fences which have a ratio of solid material to open space of more than one to four shall be considered solid material fences, and walls.~~

~~5. All fences must be located within the boundary lines of the property owned by the person or persons who construct and maintain them.~~

~~6. No barbed wire or other sharp pointed fences shall be installed on any property, except around storage yards in the I1 zoning district upon a specific finding by the Planning and Zoning Department that such a fence is necessary to protect property or goods.~~

~~C. The maximum height of all fences shall be eight feet, except as hereafter provided:~~

~~1. Fences around tennis, squash racquet, squash tennis or badminton courts and publicly owned recreation areas may exceed eight feet in height, provided, that the same are limited solid material fences, and walls.~~

~~2. Limited solid material fences located in a front yard, or a yard adjacent to a public right of way shall have a maximum height of four feet unless they meet the set back requirement(s) for the principal structure.~~

~~3. Solid material fences located in a front yard or a yard adjacent to a public right of way shall have a maximum height of forty two inches unless the same meet the front setback requirement of the zone in which it is located.~~

~~4. Other fences may not exceed eight feet in height.~~

~~D. — A sight visibility triangle is established in Section 21.72.010. Where a public right of way or easement dedicated for public access terminates at a waterway, a view cone shall be provided. See Section 21.72.010 for definition and calculation of the view cone.~~

~~1. No fences, walls, or hedges with a height greater than forty eight inches are allowed in a view cone, except:~~

~~a. — Fences and walls (including their component parts, such as handrails and guards) that do not exceed six feet in height and are transparent above forty eight inches. A fence, wall, hand rail, or guard is considered transparent if its opacity is twenty percent or less. The percentage of opacity is measured by dividing the square footage of the opaque portion of the subject structure by the square footage of the entire structure, and multiplying the result by one hundred.~~

b. Trees maintained with a single clear trunk with all branches and pendulous branches removed to a height of seven feet above the ground plane. Trees shall not be planted closer than fifteen feet apart so as not to form a visual barrier.

2. All plantings, exclusive of trees referenced in subsection (D)(1)(b) of this section, located in a view cone must be pruned or maintained to a height of forty eight inches or less.

E. — Other considerations

1. When a fence is to be constructed that otherwise meets the requirements of this section, but impedes an established view shed or a view of a waterway from adjoining public or private properties, the Planning Department may require modifications to the materials or the ratio of solid fencing to voids.

2. In approving or disapproving the drawings, consideration shall be given to the type of materials to be used, and whether or not the fence, wall or hedge unduly will obstruct visibility from public streets. Materials used for fences, walls or hedges in residential zoning districts shall be in keeping with the character and purpose for which the fence, wall or hedge was intended. Except in connection with penal and correctional institutions and public utility and service uses, no fence, wall or hedge shall consist, in whole or in part, of barbed wire or similar materials designed or customarily utilized to inflict injury upon persons or animals.

3. If located in the historic district as defined in this Title, all proposed new fences, walls and gates and all proposed alterations to existing fences, walls and gates require the review and approval of the Historic Preservation Commission.

Fences and walls as defined by this Title may be erected, placed, maintained, altered or replaced pursuant to a permit issued in accordance with Section 17.34.010 of the Annapolis City Code. The following additional standards apply:

A. If located within the historic district as defined in this Title, all proposed new fences and walls, and all proposed alterations to existing fences and walls, require the review and approval of the Historic Preservation Commission. The Historic Preservation Commission has the authority to grant a waiver or exemption, if necessary, in order to comply with the Historic Preservation Commission Design Guidelines and the Secretary of the Interior's Standards for Rehabilitation.

B. Fences and walls may be installed up to, but not over the property line. It is the responsibility of the property owner to assure that the proposed fence or wall is not installed on property of others. All property line disputes are between abutting property owners, and they shall not seek or have any remedy against the City.

C. Within required bufferyards adjacent to public streets, to the extent practical in order to achieve proper screening, fences and walls shall be located towards the interior edge of the landscape buffer, rather than at the edge of the public right-of-way.

D. Except as permitted by this Title, fences and walls shall not obstruct view cones or sight visibility triangles.

E. Fences and walls shall not be located to unduly obstruct light and air from neighboring properties or public ways.

F. The overall design and materials used for fences and walls shall be in keeping with the character and purpose for which the fence or wall is intended, and shall be compatible with other similar structures in the neighborhood.

G. All fences and walls shall be installed with the finished side facing out, so that posts and lateral supports are not on the side of the fence or wall which faces an

adjacent property or public right-of-way, unless such supporting members are exposed on both sides due to the specific design of the fence or wall.

H. Except in connection with penal and correctional institutions and public utility and service uses, no fence or wall shall consist, in whole or in part, of barbed wire or similar materials designed or customarily utilized to inflict injury upon persons or animals.

I. Standard Maximum Height.

1. In all zoning districts, the maximum height of fences and walls enclosing outdoor tennis courts, baseball backstops, and other fences and walls normally provided with recreation facilities, shall be twelve feet or the minimum height required to protect public safety, whichever is greater.

2. In all non-residential zoning districts, except for the maritime districts, the maximum height of a fence or wall shall be eight feet, unless the fence or wall is located along a public street, in which case the maximum height of the fence or wall shall not exceed six feet.

3. In all residential and maritime zoning districts, the maximum height of a fence or wall shall be six feet, unless the fence or wall is located along a public street, in which case the maximum height of the fence or wall shall not exceed four feet.

4. Fences and walls shall not be considered as being located along a public street if they otherwise meet the same minimum front and corner-side yard setbacks that would be required for the principal structure on the subject property in the zoning district in which the fence or wall is located.

J. Allowance for Additional Height.

1. Up to two additional feet of height is allowed for decorative gates which do not exceed twenty-five feet in width for vehicular gates, or eight feet in width for pedestrian gates.

2. In accordance with the procedures for Administrative Adjustments set forth in Chapter 21.18, the Planning and Zoning Director may permit certain fences and walls an additional height allowance of up to four feet above the standard maximum height limit established by this section.

3. In addition to the review criteria in Section 21.18.040, the Director of Planning and Zoning shall make additional written findings based on the following:

a. The subject fence or wall will be compatible with other similar structures in the neighborhood and is required to mitigate impacts from adjacent land uses, the subject property's proximity to public right-of-ways, or safety concerns.

b. Within the intent and purpose of this Zoning Code, the proposed additional fence or wall height, if granted, is the minimum adjustment necessary to afford relief.

K. Notwithstanding the height limitations in this section, temporary fences and walls, incidental to construction on or development of the premises on which the temporary fences and walls are located, shall be permitted during the time construction or development is actively underway.

L. Lawfully existing fences and walls that do not conform to the bulk or other development or design standards for the district in which the fence or wall is located may be continued, if properly repaired and maintained as provided in

Chapter 21.68, Nonconforming Uses and Structures. Nonconforming fences and walls which are structurally altered, relocated, or replaced shall comply immediately with all provisions of this Title.

21.60.075 Sight Visibility Triangle.

In all districts, a sight visibility triangle, as defined in Section 21.72.010, shall be provided at all intersections, including alleys and driveways, and shall be kept free of obstructions to vision between the height of two and one-half feet and twelve feet above the street. If, in the opinion of the Director of Planning and Zoning with the concurrence of the Director of Public Works, this requirement may be altered if such alteration will not result in a potential traffic hazard. Where intersections occur on roadways under the jurisdiction of the State of Maryland or Anne Arundel County, the sight visibility triangle required by the State or County may be substituted in-lieu-of the requirements above.

21.60.080 - View cones.

- A. Where a public right-of-way or easement dedicated for public access terminates at a waterway, a view cone shall be provided. See Division VI for definition and calculation of the view cone.
- B. Fences, Walls, and Plantings in View Cones.
 - 1. No fences, walls, or plantings with a height greater than ~~forty-eight inches~~ four feet are allowed in a view cone, except:
 - a. Fences and walls (including their component parts, such as handrails and guards) that do not exceed six feet in height and are ~~transparent~~ open above ~~forty-eight inches~~ four feet. A fence, wall, hand-rail, or guard is considered ~~transparent~~ open if its opacity is ~~twenty~~ fifty percent or less. The percentage of opacity is measured by dividing the square footage of the opaque portion of the subject structure by the square footage of the entire structure, and multiplying the result by one hundred.
 - b. Trees maintained with a single ~~clear~~ trunk with all branches and pendulous branches removed to a height of seven feet above the ground plane. Trees shall not be planted closer than fifteen feet apart so as not to form a visual barrier.
 - 2. All plantings, exclusive of trees referenced in subsection (B)(1)(b) of this section, located in a view cone must be pruned or maintained to a height of ~~forty-eight inches~~ four feet or less.
 - 3. ~~The height of a fence, wall or planting or any combination of these is measured from the grade of the public right of way or easement. In the case where there is a change in grade, at no point along the length of the fence, wall or planting or any combination thereof shall the height exceed the limits established in subsections (B)(1)(a) and (B)(1)(b) of this section.~~

21.60.090 - Objects in required yards.

The following are not obstructions when located in the required yards:

- A. All Yards.
 - 1. Open terraces, porches, and decks not over four feet above the average level of the adjoining ground, but not including a permanent roof-over terrace or porch. Handrails and guardrails around terraces, porches, and decks within a view cone shall be ~~transparent~~ open, pursuant to Section 21.60.080,

2. Awnings and canopies,
 3. Steps four feet or less above grade which are necessary for access to a permitted building or for access to a zoning lot from a street or alley,
 4. Grade-level walks and driveways,
 5. Chimneys projecting two feet or less into a yard,
 6. Recreational and laundry-drying equipment,
 7. Arbors and trellises,
 8. Flagpoles, and
 9. ~~Fences, walls and plantings for which required permits have been issued in accordance with Chapter 17.34 of the City Code, except as prohibited under Section 21.60.080.~~ Fences, walls and plantings, except as prohibited under Sections 21.60.075 and 21.60.080.
- B. Front Yards.
1. One-story bay windows projecting three feet or less into a yard,
 2. Overhanging eaves and gutters projecting three feet or less into the yard,
 3. Fuel, air and water pumps in conjunction with motor vehicle service stations; provided, that they are set back at least fifteen feet from the front lot line, and
 4. Canopies in conjunction with motor vehicle service stations subject to the site design plan review requirements of Chapter 21.22
- C. Rear Yards.
1. Balconies,
 2. One-story bay windows projecting three feet or less into the yard, and
 3. Overhanging eaves and gutters projecting three feet or less into the yard;
- D. Side Yards.
1. Overhanging eaves and gutters projecting eighteen inches or less into the yard, and
 2. Fuel, air and water pumps in conjunction with automobile service stations; provided, that they are set back at least fifteen feet from the side lot line.

Chapter 21.72 – TERMS AND DEFINITIONS

21.72.010 - Terms.

D. List of definitions.

“Fences and walls” means an artificially constructed exterior barrier of wood, masonry, stone, wire, metal, plastic, or any other manufactured material or combination of materials, for which the primary purpose is to mark boundaries, control access, or to screen views. For the purpose of this Title, the term “fences and walls” does not include retaining walls.

“Fences and walls height” means the vertical distance, measured to the nearest integral foot, from the elevation at grade directly below the structure to the top of the structure, not including supporting posts. If the fence or wall has been elevated through the use of a retaining wall, the creation of a berm or another method for the primary purpose of increasing the overall height of the fence or wall, then the fence or wall height shall be measured from the ground elevation prior to the grade modification.

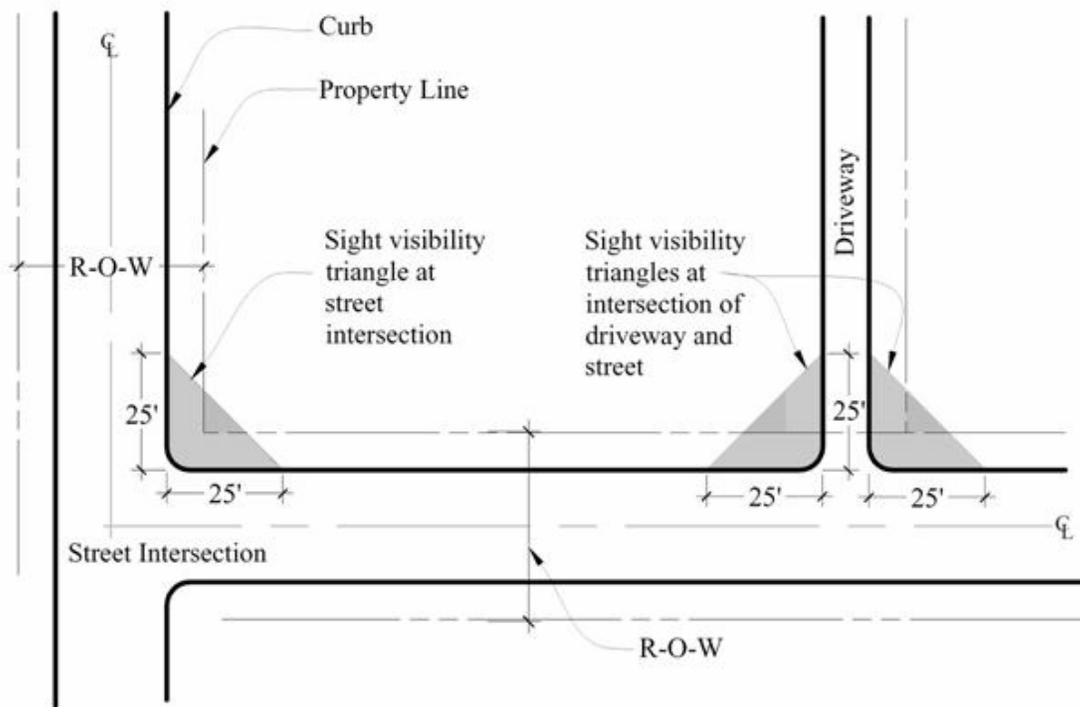
“Hedge, boundary” means a linear row of closely planted shrubs or low-growing trees put in place to accomplish the same effect as a fence or wall.

“Height.”

- a. For buildings, see building height.
- b. For fences and walls, see fences and walls height.
- ~~b. c.~~ For signs, see Section 21.70.050(B).

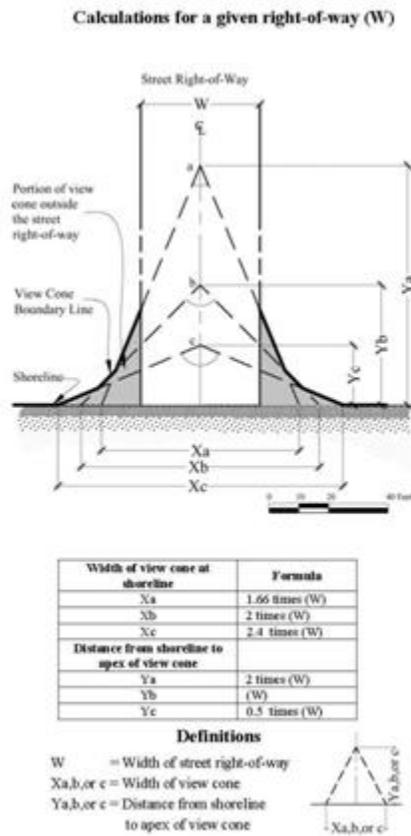
Sight Visibility Triangle. See illustration. "Sight visibility triangle" means a triangular space provided across all property corners created by either the intersection of two streets or the intersection of a driveway and a street. The sight visibility triangle is determined by drawing a diagonal line across the corner of the lot measured from two points drawn twenty-five feet back from the street or driveway intersections with a street.

Sight Visibility Triangle. See illustration. "Sight visibility triangle" means a triangular area intended to remain free of visual obstructions to prevent potential traffic hazards across all property corners formed by two intersecting streets or the intersection of an alley and a street or the intersection of a driveway and a street. The sight visibility triangle is determined by drawing a diagonal line across the corner of the lot between two points each measured twenty-five feet back from the vertex of the extended curblines of the intersecting streets, alleys or driveways.



"View cone" means a space defined by ~~two~~ a series of projected lines from the centerline of a street right-of-way that is to be kept free of obstructions so as to preserve a distant view.

See illustration for calculation of view cone:

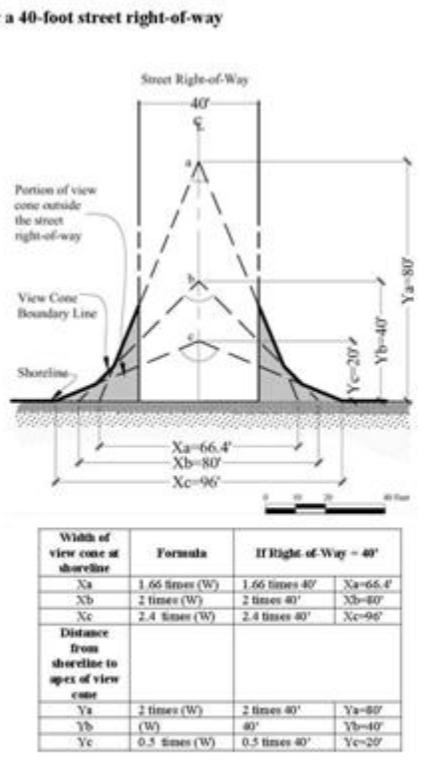


Example Calculations for a 40-foot street right-of-way

The view cone boundary is defined by the outer edges of three triangular view cones, which are labeled 'a', 'b', and 'c' in the diagram. The boundaries are drawn in plan (top down) view. The cones widen progressively approaching the water's edge (as the observer's view widens). The depths and widths of view cones 'a', 'b', and 'c' are calculated relative to the width of the adjacent street right-of-way.

Steps:

- Determine width of street right-of-way (W).
- Using graph paper, draw to scale the street right-of-way, marking the shoreline and the street centerline (CL).
- Calculate the width (Xa) of view cone 'a' at the shoreline using the formula in the table. Draw a line on the graph paper showing this width, with the line centered on the street right-of-way centerline at the shoreline.
- Calculate the depth (Ya) of view cone 'a' from the shoreline using the formula in the table. Mark this depth on the graph paper on the street centerline (point 'a' in the diagram).
- Draw view cone 'a' by connecting the outer points of Xa (step 3) with point 'a' (step 4) to form a triangle.
- Calculate and draw view cones 'b' and 'c' using the formulae in the table for Xb, Yb, Xc and Yc.
- The view cone boundary may now be drawn along the line that runs along the outermost extent from the street right-of-way of the three view cones (see heavy bold line in the diagram). The area within the view cone boundary, the shaded area in the diagram) is subject to Section 21.60.080.



SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that this Ordinance shall take effect from the date of its passage.

ADOPTED this _____ day of _____, _____.

ATTEST:

THE ANNAPOLIS CITY COUNCIL

BY

Regina C. Watkins-Eldridge, MMC, City Clerk

Joshua J. Cohen, Mayor

Seconded. CARRIED on voice vote.

- Alderwoman Finlayson moved Economic Matters Amendment as follows:

Amendment #1

Where it appears in the ordinance, strike the four-foot height restriction and insert a six foot height restriction. Seconded. DEFEATED on voice vote.

- Mayor Cohen moved to amend O-47-11 as follows:

I. Standard Maximum Height.

- ~~In all zoning districts, the maximum height of fences and walls enclosing outdoor tennis courts, baseball backstops, and other fences and walls normally provided with recreation facilities, shall be twelve feet or the minimum height required to protect public safety, whichever is greater.~~
- ~~In all non residential zoning districts, except for the maritime districts, the maximum height of a fence or wall shall be eight feet, unless the fence or wall is located along a public street, in which case the maximum height of the fence or wall shall not exceed six feet.~~
1. ~~In all residential and maritime zoning districts~~ on properties within the R2-NC, R3-NC and R3-NC2 Residential Neighborhood Conservation Districts, the maximum height of a fence or wall shall be six feet, unless the fence or wall is

located along a public street, in which case the maximum height of the fence or wall shall not exceed four feet.

2. The height limits in subsection (I) (1) of this section shall also apply to properties within the WME and WMM Maritime Districts as well as the OCD Overlay District, only when a fence or wall is located along a lot line or public street that is contiguous with an adjacent property in the R2-NC District.

4. 3. Fences and walls shall not be considered as being located along a public street if they otherwise meet the same minimum front and corner-side yard setbacks that would be required for the principal structure on the subject property in the zoning district in which the fence or wall is located. Seconded. CARRIED on voice vote. A ROLL CALL vote was taken:

YEAS: Mayor Cohen, Aldermen Kirby, Paone, Alderwomen Hoyle, Finlayson

NAYS: Aldermen Littmann, Pfeiffer, Arnett, Budge

CARRIED: 5/4

The main motion as amended CARRIED on voice vote.

- Alderman Arnett moved to adopt O-47-11 amended on third reading. Seconded.

A ROLL CALL vote was taken:

YEAS: Mayor Cohen, Aldermen Littmann, Pfeiffer, Arnett, Budge, Paone, Alderwomen Hoyle

NAYS: Aldermen Kirby, Alderwoman Finlayson

CARRIED: 7/2

O-30-11 Deleting the Contiguous Lots Section of 21.40.020 – R1 Single Family Residence District – For the purpose of amending Section 21.40.020 – R1 Single Family Residence District to delete Section D related to contiguous lots.

- Alderman Arnett moved to adopt O-30-13 on second reading. Seconded.
- Alderman Arnett moved to amend O-30-13 as follows:

To delete strikethrough in Section 21.40.020 D.1.-add “except lot width”
Section 21.40.02 D.2.-delete references to lot width Seconded. CARRIED on voice vote.

The main motion as amended CARRIED on voice vote.

- Alderman Paone moved to adopt O-30-13 amended on third reading. Seconded.

A ROLL CALL vote was taken:

YEAS: Mayor Cohen, Aldermen Littmann, Kirby, Pfeiffer, Arnett, Budge, Paone, Alderwomen Hoyle, Finlayson

NAYS:

CARRIED: 9/0

O-28-13 New Land Use Article References in the City Code – For the purpose of updating the references to the former Article 66B of the Annotated Code of Maryland to the new title of “Land Use Article.”

- Alderman Pfeiffer moved to adopt O-28-13 on second reading. Seconded.

The main motion CARRIED on voice vote.

- Alderman Pfeiffer moved to adopt O-28-13 on third reading. Seconded.

A ROLL CALL vote was taken:

YEAS: Mayor Cohen, Aldermen Littmann, Kirby, Pfeiffer, Arnett, Budge, Paone, Alderwomen Hoyle, Finlayson

NAYS:

CARRIED: 9/0

O-34-13 Historic Preservation Tax Credit – For the purpose of revising the provisions governing the historic preservation tax credit in the City of Annapolis.

Chief of Historic Preservation Craig gave a brief presentation and answered questions from Council.

- Alderman Budge moved to adopt O-34-13 on second reading. Seconded.

- Alderman Paone moved to amend O-34-13 as follows:

Page 4, line 14: strike “submission” and insert to “PRELIMINARY CERTIFICATION.”

Page 4, Line 14: strike “application.”

Amendment #2

Page 3, Lines 20-30: substitute for the following:

C. TAX CREDIT DEFINED. THE TAX CREDIT SHALL BE IN AN AMOUNT EQUAL TO:

1. TEN PERCENT OF THE PROPERTY OWNER'S EXPENSES FOR QUALIFIED PRESERVATION, RESTORATION AND/OR REHABILITATION ON RESIDENTIAL PROPERTIES;
 2. TWENTY-FIVE PERCENT OF QUALIFIED PRESERVATION, RESTORATION AND/OR REHABILITATION ON INCOME-PRODUCING PROPERTIES TO INCLUDE LIFE/SAFETY AND HAZARD MITIGATION;
 3. RESIDENTIAL PROPERTIES MAY QUALIFY FOR A TWENTY-FIVE PERCENT TAX CREDIT ON QUALIFIED INTERIOR IMPROVEMENTS REQUIRED FOR LIFE/SAFETY OR HAZARD MITIGATION;
 4. TWENTY-FIVE PERCENT TAX CREDIT FOR QUALIFIED EXTERIOR RESTORATION WORK WHEN THERE IS REPLACEMENT OF A NONHISTORIC FEATURE OR MATERIAL WITH A HISTORICALLY APPROPRIATE FEATURE OR MATERIAL ON BOTH RESIDENTIAL AND INCOME PRODUCING PROPERTIES
- Seconded. CARRIED on voice vote.

- Alderman Budge moved TO amend O-34-13 as follows:

The Historic Preservation Commission supports the ordinance as drafted with one amendment. Incorporate the following proposed language at Page 4, Line 39: “C. The Director of Finance may not approve a tax credit that exceeds \$50,000 for any certificate of approval.” Seconded. CARRIED on voice vote.

The main motion as amended CARRIED on voice vote.

- Alderman Paone moved to adopt O-34-13 amended on third reading. Seconded.

A ROLL CALL vote was taken:

YEAS: Mayor Cohen, Aldermen Littmann, Kirby, Pfeiffer, Arnett, Budge, Paone, Alderwomen Hoyle, Finlayson

NAYS:

CARRIED: 9/0

O-32-13 Plumbing Permit Fees – Capital Facilities – For the purpose of authorizing applicants for a special exception or other development proposal, subject to the following group of plumbing permit fees (a connection charge, a capital facility charge, a capital facility assessment charge, and an installation charge), to be eligible for the fees levied at the time of such application rather than the fees at the time the permit may be issued; and making such provisions retroactive to July 1, 2011.

DNEP Director Broadbent gave a brief presentation and answered questions from Council.

- Alderman Budge moved to adopt O-32-13 on second reading. Seconded.

The Economic Matters and Finance Committees reported favorably on O-32-13.

The main motion CARRIED on voice vote.

- Alderman Arnett moved to adopt O-32-13 on third reading. Seconded.

A ROLL CALL vote was taken:

YEAS: Mayor Cohen, Aldermen Littmann, Kirby, Pfeiffer, Arnett, Budge, Paone, Alderwomen Hoyle, Finlayson

NAYS:

CARRIED: 9/0

O-33-13 Wastewater Conveyance and Treatment (Sewer Service) Contract with the Federal Government – For the purpose of approving a new 10-year wastewater conveyance and treatment (sewer service) contract (Contract) with the Federal Government to adjust the rate as provided; and all matters related to said wastewater conveyance and treatment.

Public Works Director Jarrell gave a brief presentation and answered questions from Council.

- Alderman Pfeiffer moved to adopt O-33-13 on second reading. Seconded.
- Alderman Littmann moved to amend O-33-13 as follows:

On page 1, in Box #3, change date from “June 2012” and insert “1 July 2011”.
Seconded. CARRIED on voice vote.

The main motion CARRIED on voice vote.

- Alderman Pfeiffer moved to adopt O-33-13 on third reading. Seconded.

A ROLL CALL vote was taken:

YEAS: Mayor Cohen, Aldermen Littmann, Kirby, Pfeiffer, Arnett, Budge, Paone, Alderwomen Hoyle, Finlayson

NAYS:

CARRIED: 9/0

R-35-13 Re-Activating the State Commission on the Capital City – For the purpose of expressing the sense of the Annapolis City Council to ask the Governor of the State of Maryland to re-activate the State Commission on the Capital City to regularly connect key stakeholders in order to “study possible ways to preserve and improve Annapolis as the capital of the State,” (State Government Article, §9-406).

- Alderman Arentt moved to adopt R-35-13 on second reading. Seconded.
- Alderman Pfeiffer moved to amend R-35-13 as follows:

Amendment #1

Page 2, Line 4: after “State” insert: “QUALITY AND CAPACITY OF EDUCATIONAL FACILITIES”. Seconded. CARRIED on voice vote.

- Alderman Littmann requested his name be added as sponsor to R-35-13.

A ROLL CALL vote was taken:

YEAS: Mayor Cohen, Aldermen Littmann, Kirby, Pfeiffer, Arnett, Budge, Paone, Alderwomen Hoyle, Finlayson

NAYS:

CARRIED: 9/0

Upon motion duly made, seconded and adopted, the meeting was adjourned at 3:12 a.m.

Regina C. Watkins-Eldridge, MMC
City Clerk