

CITY OF ANNAPOLIS
A SPECIAL MEETING OF THE CITY COUNCIL
Monday, January 28, 2013 6:00 p.m.

Call to Order

Mayor Cohen

Pledge of Allegiance

Mayor Cohen

Roll Call

City Clerk Watkins-Eldridge

BUSINESS AND MISCELLANEOUS

1. ***Proposed Closed Session - Pursuant to State Government Article § 10-508 (a) (7); to consult with counsel to obtain legal advice on a legal matters.***



City of Annapolis
Office of the City Clerk
93 Main Street, Suite 300
Annapolis, MD 21401-2535

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MEMORANDUM

TO: Annapolis City Council

FROM: Regina C. Watkins-Eldridge, MMC
City Clerk

RE: Closed Meeting

A closed session of the City Council has been proposed for **Monday, January 28, 2013 at 6:00 p.m.** in the City Council Chamber, 160 Duke of Gloucester Street, 2nd Floor, Annapolis, Maryland 21401 in accordance with Maryland State Government Article Sections § 10-508 (a)(7):

To consult with counsel to obtain legal advice on a legal matters.

Topic of Discussion:

Quarterly Update on Litigation

The Council will convene in open session and move pursuant to Maryland State Government Article, Sections: 10-508 (a) (7) to go into closed session as indicated above.

cc: City Manager
Public Information Officer
Press

**CITY OF ANNAPOLIS
SPECIAL MEETING OF THE CITY COUNCIL
January 28, 2013 7:00 p.m.**

Call to Order
Invocation
Pledge of Allegiance
Roll Call

Mayor Cohen
Alderman Kirby
Mayor Cohen
City Clerk Watkins-Eldridge

CITY COUNCIL CITATIONS

National Mentoring Month
Hank Heggins for his service to the City of Annapolis' Commission on Aging

Mayor Cohen
Mayor Cohen

PETITIONS, REPORTS AND COMMUNICATIONS

Reports by Committees
Comments by the General Public

A person appearing before the City Council with a petition, report or communication shall be limited to a presentation of not more than three minutes.

PUBLIC HEARING

O-43-12 **Lease of Public Parking to FRESHFARM Markets, Inc.** - For the purpose of authorizing a lease of municipal property located at 110 Compromise Street from May 2013 through November 2013 to FRESHFARM Markets, Inc.

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
12/17/12	1/28/13	1/4/13	03/17/13
Referred to	Referral Date	Meeting Date	Action Taken
Rules and City Gov't	12/17/12		
Economic Matters	12/17/12		

LEGISLATIVE ACTIONS

CHARTER AMENDMENTS – 2ND READER

CA-1-12 **Non-Partisan Elections** – For the purpose of amending the Charter of the City of Annapolis to provide for non-partisan elections for the offices of Mayor and Aldermen and Alderwomen; filling vacancies in these offices; and removing partisan consideration in the composition and membership of the Board of Supervisors of Elections.

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
9/24/12	10/22/12	10/13/12	12/21/12
Referred to	Referral Date	Meeting Date	Action Taken
Rules and City Gov't	9/24/12	11/13/12	Discussed; Unfavorable motion failed

CA-2-12 Municipal Elections Coinciding with State of Maryland Elections in 2018 and Onward – For the purpose of amending the Charter of the City of Annapolis to establish the dates of the primary and general elections to coincide with the State of Maryland in 2018 and extending the length of time in office for the incoming City Council in December 2013 an additional year to December 2018 in order to facilitate this transition period.

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
9/24/12	10/22/12	10/13/12	12/21/12
Referred to	Referral Date	Meeting Date	Action Taken
Rules and City Gov't	9/24/12	11/13/12	Discussed; Favorable motion failed

CA-3-12 City Finance Requirements – For the purpose of amending the Charter of the City of Annapolis to establish an unrestricted fund balance as part of the annual budget process, authorizing an Audit Committee; and setting a time line for the Finance Director to provide the Comprehensive Annual Financial Report to the City Council.

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
9/24/12	10/22/12	10/13/12	12/21/12
Referred to	Referral Date	Meeting Date	Action Taken
Rules and City Gov't	9/24/12	11/13/12	Favorable w/amd.

O-26-12 Revisions to the Zoning Map Amendment Process – For the purpose of amending Chapter 21.34 (Zoning Map Amendments) of the Annapolis City

Code by establishing new procedures for local zoning map amendments, sectional zoning map amendments, and comprehensive zoning map amendments.

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	180 Day Rule
7/23/12	11/26/12	9/14/12	1/21/13
Referred to	Referral Date	Meeting Date	Action Taken
Rules and City Gov't	7/23/12	1/8/13	Favorable w/ amd.
Planning Commission	7/23/12	10/4/12	Favorable

- O-44-12** **Lease of City Property: Boat Shows in Spring 2013** - For the purpose of authorizing a lease of certain municipal property located in the areas of Susan B. Campbell Park, Annapolis City Donner Parking Lot, Ego Alley Water Space, and other property and water locations as described in the lease to CRUISERS UNIVERSITY, INC., t/a Annapolis Spring Sailboat Show, for a certain period of time in April 2013, to conduct boat shows.

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
12/10/12	1/14/13	1/11/13	3/10/13
Referred to	Referral Date	Meeting Date	Action Taken
Economic Matters	12/10/12	1/16/13	Favorable w/ comments
Environmental Matters	12/10/12	1/17/13	Favorable

- R-2-13** **Support for Angela Wakhweya, M.D. to Continue Her Service as the Anne Arundel County Health Officer** – For the purpose of expressing the sense of the Annapolis City Council to support Angela Wakhweya, M.D. in continuing her service as the Anne Arundel County Health Officer.

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
1/14/13	N/A	1/20/13	4/14/13
Referred to	Referral Date	Meeting Date	Action Taken
Housing and Human Welfare	1/14/13	N/A	N/A

ORDINANCE and RESOLUTIONS – 1st READER

- O-3-13 Bulk Regulations for Governmental Uses in the C1-A Zoning District –** For the purpose of specifying that lot size and width requirements for existing buildings with a governmental use in the C1-A zoning district shall be determined through the special exception process, pursuant to Chapter 21.26 of the City of Annapolis Code.

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	180 Day Rule
1/28/13			7/26/13
Referred to	Referral Date	Meeting Date	Action Taken
Rules and City Gov't			
Planning Commission			

- R-4-13 Peggy Kimbo Way –** For the purpose of declaring that Maryland Avenue shall bear the honorary designation of “Peggy Kimbo Way” to celebrate the contributions of Ethelda “Peggy” Kimbo to the City of Annapolis.

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
1/24/13			4/26/13
Referred to	Referral Date	Meeting Date	Action Taken
Public Safety	1/24/13		

- R-5-13 Washington Resignation Park –** For the purpose of supporting the recommendation of the City Dock Advisory Committee that the Donner Parking Lot be transformed into a public park; that the park be named the Washington Resignation Park; and that a suitable likeness of George Washington be placed in the park with a plaque explaining the significance of Washington’s resignation to Congress of his commission as Commander in Chief of the armed forces.

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
1/28/13			4/26/13
Referred to	Referral Date	Meeting Date	Action Taken
Rules and City Gov't	1/28/13		

- R-6-13 Extension of Deadline for Submission of Proposed Union Agreements –**
For the purpose of postponing until Monday, March 11, 2013, the submission to the Mayor of proposed memoranda of understanding between employee organizations and the City.

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
1/28/13			4/26/13
Referred to	Referral Date	Meeting Date	Action Taken
Rules and City Gov't	1/28/13		
Finance	1/28/13		

BUSINESS and MISCELLANEOUS

1. City Council standing committee assignments (available Monday, January 28)
2. Appointments
3. Legislation proposed to be withdrawn:

- O-4-12 Expanding the Eligibility for Multiple-Day or Single-Day Parking Permits**
– For the purpose of expanding the eligibility for multiple-day or single-day parking permits to include those that render personal or child care to a resident in a special residential parking district.

Sponsors: Alderman Israel and Alderman Pfeiffer

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
2/13/12	3/12/12	2/21/12	5/14/12
Referred to	Referral Date	Meeting Date	Action Taken
Public Safety	2/13/12		
Transportation	2/13/12		
Transportation Board	3/19/12		
Parking Advisory Commission	3/19/12		

4. Receipt of the Council Compensation Commission's report

UPCOMING CITY COUNCIL EVENTS

Regular Meeting: Monday, February 11, 2013, 7:00 p.m. City Council Chambers
Work Session: Thursday, February 21, 2013, 1:30 – 4:30 p.m. City Council Chambers
Special Meeting: Monday, February 25, 2013, 7:00 p.m. City Council Chambers

Jessica Cowles
Legislative and Policy Analyst
City of Annapolis Office of Law
E) JCCowles@annapolis.gov
P) 410-263-1184
F) 410-268-3916

January 23, 2013

TO: The Capital Legal Notices: legalad@capgaz.com
FROM: Jessica Cowles, Legislative and Policy Analyst
RE: Notice of Public Hearing
PUBLISH: Please publish on: **Sunday, January 27, 2013 and Monday, January 28, 2013**

Please send bill and certificate of publication to the City of Annapolis Office of Law, 93 Main Street, 3rd Floor, Annapolis, MD 21401.

NOTICE OF ANNAPOLIS CITY COUNCIL PUBLIC HEARING

Notice is hereby given that the Annapolis City Council will hold a public hearing on Monday, January 28, 2013 at 7:00 p.m., in City Council Chambers, 160 Duke of Gloucester Street, Annapolis, for a public hearing on:

O-43-12 Lease of Public Parking to FRESHFARM Markets, Inc. - For the purpose of authorizing a lease of municipal property located at 110 Compromise Street from May 2013 through November 2013 to FRESHFARM Markets, Inc.

The above legislation on the City Council agenda for public hearing can be viewed on the City's website at: <http://www.annapolis.gov/Government/Departments/LawOffice/PendingLegis.aspx>

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**CITY COUNCIL OF THE
City of Annapolis**

Ordinance No. O-43-12

Introduced by: Mayor Cohen

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
12/17/12			03/10/13
Referred to	Referral Date	Meeting Date	Action Taken
Rules and City Gov't			
Economic Matters			

8
9 **An ORDINANCE** concerning

10 **Lease of Public Parking Lots to FRESHFARM Markets, Inc.**
11

12 **FOR** the purpose of authorizing a lease of municipal property located at 110 Compromise
13 Street from May 5, 2013 through November 24, 2013 to FRESHFARM Markets, Inc.

14
15 **WHEREAS,** FRESHFARM Markets, Inc. ("Lessee"), desires to lease certain municipal
16 property for the purpose of conducting an open-air farmers market; and
17

18 **WHEREAS,** the Annapolis City Council finds that a farmers market would be a desired public
19 mercantile use for City residents; and
20

21 **WHEREAS,** a lease setting forth terms of the rental has been prepared and is considered
22 satisfactory; and
23

24 **WHEREAS,** the Annapolis City Council finds that the lease of the property is authorized by
25 Section 7.28.010 of the Annapolis City Code; and
26

27 **WHEREAS,** the Annapolis City Council finds that the lease of the property for a farmers
28 market will better serve the public need for which the property was acquired; and
29

30 **WHEREAS,** Article III, Section 8 of the Charter of the City of Annapolis requires the passage
31 of an ordinance to authorize the leasing of City-owned property.
32

33 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY**
34 **COUNCIL** that the proposed Lease Agreement between the City of Annapolis and Lessee for
35 the rental of certain municipal property located at 110 Compromise Street, also known as the
36 Donner Lot and the Public Parking Lot between the Fleet Reserve and the site formerly known
37 as Fawcett Boat Supplies, from May 5, 2013 to November 24, 2013, a copy of which is attached

1 hereto and made a part hereof, is hereby approved, and the Mayor is authorized to execute the
2 Lease Agreement on behalf of the City of Annapolis.

3
4 **SECTION II: AND, BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
5 **ANNAPOLIS CITY COUNCIL** that pursuant to Section 6.04.210D3 of the City Code, the
6 Annapolis City Council hereby waives that portion of each monthly fee for permits and approvals
7 in excess of \$50.00 associated with Lessee’s use of City facilities and services in connection
8 with the use of the property, except as otherwise specified in the Lease Agreement.

9
10 **SECTION III: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
11 **ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its passage.

12
13
14
15 **ADOPTED** this _____ day of _____, _____.
16
17

ATTEST:

THE ANNAPOLIS CITY COUNCIL

BY

Regina C. Watkins-Eldridge, MMC, City Clerk

Joshua J. Cohen, Mayor

EXPLANATION

CAPITAL LETTERS indicate matter added to existing law.
[brackets] indicate matter stricken from existing law.
Underlining indicates amendments.

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19
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22

LEASE

Authorized by O-43-12

This Lease is made this ____ day of _____, 2013, by and between the City of Annapolis, a municipal corporation of the State of Maryland ("Lessor") and Freshfarm Markets, Inc., a Washington, D. C. non-profit corporation ("Lessee").

Whereas, the Lessee is a regionally recognized nonprofit organization building a vibrant local food movement in the greater metro DC area that supports the region's farmers; and

Whereas, the Lessee's mission is to connect city dwellers with farmers and their locally-grown food, to educate the public about food and farming issues and to provide economic opportunities for farmers; and

Whereas, the parties desire to enter into a lease for that purpose and to set forth their respective responsibilities; and

Whereas, the City is authorized to lease land pursuant to Article III, Section 8, of the City Charter to better serve the public need for which the land was acquired.

Now, therefore, in consideration of these premises and the mutual terms and conditions of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. Premises and Term

a. The Lessor leases to the Lessee, and the Lessee leases from the Lessor, for the purpose of holding the Annapolis City Dock Fresh Farm Market, that land known as the Donner Parking Lot and Public Parking Lot between the Fleet Reserve and property owned by Chandler, LLC, as shown in Exhibit A attached to this Agreement ("Premises"), each and every Sunday from May 5, 2013 through November 24, 2013, from 6 am to 2 pm, except September 29, 2013 and October 13, 2012, when the Lessee shall not have access to the Premises during the Sundays of the United States Sailboat and Power Boat Shows.

2. Rent

a. Rent shall be Fifty Dollars (\$50.00) per month.

b. Pursuant to City Code, Section 6.04.210.D.3., the Lessor hereby waives any additional rent, including but not limited to fees for traffic control services if any are provided, parking meters authorized for use by Lessee, inspections, permit applications and rental beyond that stated above, except as provided herein.

3. Use of Premises

1 a. The Premises may be used by the Lessee for activities authorized by the Lessee
2 and identified in this Lease.

3
4 b. This Lease in no way creates an obligation upon the Lessor to furnish any
5 services, materials or equipment for the Lessee's farmer's market, except as specifically
6 provided in this Lease.

7
8 4. Exhibitors

9
10 a. The Lessee shall provide to the Lessor, not later than May 1, 2013, a complete list
11 of all exhibitors, vendors displays, activities, festivities, and operations associated with this
12 Lease, which shall not be amended without the Lessor's written consent.

13
14 b. The Lessee shall use its best efforts to contract with Annapolis/Anne Arundel
15 County area farmers in all matters related to the farmers market.

16
17 5. Licenses/Taxes

18
19 a. Exhibitors or vendors who are permitted to sell any item at the farmers market
20 shall obtain and produce to the Lessor upon request all required non-City licenses and pay all
21 required Federal, State, County and City taxes and fees.

22
23 b. The Lessee shall satisfy any of the Lessor's licensing requirements for such
24 exhibitors or vendors.

25
26 6. Transportation & Parking Plan

27
28 a. The Lessee shall prepare and submit to the Lessor's Director of Transportation,
29 no later than May 1, 2013, a transportation plan with a parking element, which shall address
30 matters specified by the Director.

31
32 b. Except for public ways within the Premises, the plan shall not provide for the
33 closure of any street or restrict parking to those associated with the farmers market.

34
35 c. Upon receipt of the plan, the Director shall make copies available to relevant
36 agencies and to interested parties who have requested a copy and shall arrange for a meeting,
37 if determined to be necessary by the Director, with relevant agencies and representatives of
38 interested parties to review the plan.

39
40 d. The Director shall approve the plan before this Lease commences.

41
42 7. Pre-Market Inspection

43
44 a. Before the farmers market opens to the public, the Lessee's representative shall
45 meet with representatives of Lessor's Police Department, Fire Department, Emergency
46 Management, Harbormaster, Department of Central Services, Department of Neighborhood and
47 Environmental Programs and Department of Public Works to inspect the Premises and nearby
48 areas to determine compliance with the Lessor's requirements.

1
2
3 b. Written approval by all such representatives is required before the Lessee may
4 open the farmers market to the public.

5
6 c. The Lessor shall not unreasonably refuse permission to open the farmers market
7 unless a threat to health or safety has been identified by the Lessor to the Lessee.

8
9 d. Following the pre-market inspection, at all times during this Lease, the Lessee
10 shall promptly comply with all reasonable directives of the Lessor which the Lessor determines
11 in its sole discretion are necessary to bring the Lessee and activities on the Premises into
12 compliance with this Lease, the City Code, and the Lessor's public safety requirements.

13
14 8. Interior Construction.

15
16 a. The Lessee shall have the right to construct, install or erect upon the Premises
17 such seats, booths, tents, exhibits and any other apparatus or structure which the Lessee may
18 deem necessary or desirable for purposes related to this Lease.

19
20 b. The Lessee shall not enclose the Premises in such a manner as to limit entry onto
21 the Premises or any part thereof.

22
23 9. Permits

24
25 a. The Lessee shall obtain any and all zoning permits, licenses and authorizations
26 required to be obtained from the Lessor for the purpose of constructing or erecting temporary
27 structures on the Premises and for operating the farmers market.

28
29 b. All other Federal, State or County permits which may be required shall be the
30 responsibility of Lessee.

31
32 10. Alcohol

33
34 a. There shall be no beer, wine or liquor consumption or other open containers of
35 alcoholic beverages on the Premises.

36
37 11. Food Sales

38
39 a. The Lessee may offer traditional farmers market food, beverages and produce for
40 sale during hours of operation.

41
42 12. Music

43
44 a. The Lessee may play non-amplified music during the hours of operation.

45
46 13. Conduct of Operations

47
48 a. The Lessee shall conduct its operations in an orderly and commercially

1 reasonable manner so as not to annoy, disturb, whether by noise or otherwise, endanger or be
2 offensive to others.

3
4 b. The Lessee shall use and maintain the Premises in such manner so as to avoid
5 the creation of any nuisance from obnoxious odors, smoke, noxious gases, vapors, dust, noise
6 or otherwise, and shall not keep, store, display or use any explosives or explosive devices at the
7 Premises.

8
9 c. The Lessee shall maintain the Premises in a clean, orderly and safe condition so
10 as to avoid injury to persons and property.

11
12 d. If the Lessee fails to comply with the terms of this provision, the Lessor shall have
13 the authority to require the Lessee to immediately cease and desist all activities and operations
14 on the Premises and may immediately declare the Lessee in breach of this Lease and
15 immediately terminate this Lease without prior notice to the Lessee.

16
17 14. Trash and Recycling

18
19 a. The Lessee, at its sole expense, shall provide the number of trash and recycling
20 containers within the Premises as required by the Lessor's Director of Public Works in his sole
21 discretion during this Lease and shall provide for the prompt removal of these containers by
22 contractors approved by the Lessor.

23
24 b. The Lessor, if necessary, shall aid the Lessee in obtaining trash and recycling
25 containers.

26
27 15. Cleanliness

28
29 a. The Lessee, at its sole expense, shall be responsible for keeping the Premises
30 free of trash and shall place all in trash containers.

31
32 b. The Lessee shall at all times police the Premises for trash removal.

33
34 16. Security Services

35
36 a. The Lessee shall be solely responsible for security within the Premises during
37 hours of operation.

38
39 b. The Lessee shall establish a security liaison with the Lessor's Police Department
40 and coordinate all Premises security with the Lessor's Police Department according to it
41 requirements.

42
43 c. In addition to such other requirements as the Lessor's Police Department may
44 impose, the Lessee shall, at its sole expense, hire licensed professional security officers who
45 shall provide security within the Premises during hours of operation at such staffing levels as the
46 Lessor's Police department may, in its sole discretion, require.

1 d. The Lessee shall produce to the Lessor at any time the Lessor requests all
2 credentials of the security officers retained by the Lessee and may reject the hiring or retention
3 of any security officer for reasonable cause.
4

5 17. Fire Services
6

7 a. Following the erection of all booths and other structures at the Premises, but
8 before the farmers market opens to the public, the parties shall meet at the Premises to assure
9 compliance with the Lessor's Fire Department regulations and accessibility of fire lanes and
10 turning radius.
11

12 18. Utility Services
13

14 a. The Lessor shall make available to the Premises existing water and electricity
15 facilities.
16

17 b. The Lessee, at its own expense, shall install any temporary electrical equipment,
18 lines and devices required to provide power to the Premises, in compliance with the City Code
19 and the National Electric Code.
20

21 c. The Lessee shall not operate any such equipment, lines or devices until inspected
22 and approved by the Lessor's Department of Neighborhood and Environmental Programs.
23

24 19. Other Services
25

26 a. The parties, if necessary, shall coordinate other services in advance of the term of
27 this Agreement.
28

29 20. Removal of Lessee's Property
30

31 a. No later than 1 p.m. of every market day, the Lessee shall remove all of its
32 property from the Premises with the exception of such signs as approved by the Lessor's
33 Historic Preservation Commission.
34

35 b. If the Lessee fails to remove any of its property, either during or at the termination
36 of this Lease, the Lessor reserves the right to remove and store it at the Lessee's sole expense
37 or, as an alternative, to leave it at the Premises.
38

39 c. In either case, the Lessor shall charge the Lessee a per diem rental for storage of
40 its property at a rate generally charged by private storage companies in Anne Arundel County,
41 Maryland.
42

43 d. The Lessor shall bear no responsibility or liability for damage to or expense
44 incurred as a result of property left, removed or stored under the provisions of this paragraph.
45

46 e. The Lessee shall pay to the Lessor any expenses or charges under this paragraph
47 within 30 days after delivery of any bill by the Lessor to the Lessee.

1 f. If any property is not claimed by the Lessee within 60 days after the termination of
2 this Lease, the Lessor, in its sole discretion, may sell such property at private or public sale
3 under such terms as the Lessor may deem appropriate and apply such proceeds as it may
4 deem appropriate in its sole discretion.

5
6 21. Liens
7

8 a. The Lessee hereby consents to and the Lessor shall have a lien upon all goods,
9 personal property and fixtures of the Lessee located upon the Premises for any and all unpaid
10 rent or charges which arise under this Lease.

11
12 b. The Lessee hereby consents to and the Lessor shall have the power to impound
13 and retain possession of such goods, personal property and fixtures until all such rent and
14 charges due under this Lease have been paid, in full, to the satisfaction of the Lessor.

15
16 c. If such charges remain unpaid 30 days after the termination of the term of this
17 Lease, the Lessor shall have the power to sell such property at public auction and apply the
18 receipts from such auction to all such unpaid charges.

19
20 22. Quiet Enjoyment
21

22 a. As long as the Lessee is not in material breach of this Lease, the Lessee shall be
23 entitled to peacefully hold and quietly enjoy the Premises in a manner consistent with and
24 subject to this Lease without any disturbance or hindrance from the Lessor or from any other
25 person claiming through the Lessor, except that the Lessor or others claiming through the
26 Lessor may enter onto the Premises to effect necessary repairs to their own facilities for public
27 safety and City Code compliance reasons.

28
29 b. The Lessee shall cooperate with the Lessor to effect this access to the Premises.
30

31 23. Payment
32

33 a. The Lessee shall make all payments due under this Lease by check, payable to
34 the City of Annapolis, and deliver the payments to the Lessor's Director of Finance, 160 Duke of
35 Gloucester Street, Annapolis, Maryland, 21401.

36
37 b. In addition to all other amounts due pursuant to this Lease, the Lessee shall pay
38 the Lessor a monthly late fee of 1.5% (18% per annum) of any payment required that is more
39 than 60 days past due, until paid.
40

41 24. Remedies
42

43 a. Any and all duties, liabilities and/or obligations imposed upon or assumed by the
44 Lessee by this Lease shall be taken or construed as cumulative and not as a limitation or
45 restriction upon any or all of the other duties, liabilities, or obligations imposed upon or assumed
46 by Lessee under this Lease.

47 b. All remedies allowed by this Lease shall be construed to be cumulative and in
48 addition to any other remedies provided in law or equity.

1
2 c. The parties shall have the right to seek and obtain in any court of competent
3 jurisdiction an injunction, without the necessity of posting a bond, to restrain a violation by the
4 other party of any term of this Lease.

5
6 d. In no case shall a waiver by either party of the right to seek a remedy under this
7 paragraph constitute a waiver of any other or further such right.

8
9 25. Venue, Waiver of Jury Trial and Governing Law

10
11 a. Venue for all administrative and judicial proceedings which result from this Lease
12 shall be the courts of Anne Arundel County, Maryland.

13
14 b. The parties hereby expressly waive trial by jury in any such judicial proceeding.

15
16 c. The laws of the State of Maryland shall govern all matters relating to this
17 Agreement.

18
19 26. Authority to Lease.

20
21 a. If it is ever determined by a court of competent jurisdiction that the Lessor lacks
22 the authority to lease any portion or all of the Premises, the Lessor shall not be liable for any
23 losses or damages sustained by the Lessee as a result thereof.

24
25 27. Impossibility of Performance

26
27 a. If, for any reason, an unforeseen event not the act of the Lessor occurs, including
28 but not limited to flood, severe weather, fire, casualty, act of God, labor strike or other
29 unforeseen occurrence which renders use of the Premises impossible for any period of this
30 Lease, the Lessee shall have no right to any claim for damages against the Lessor, but the
31 Lessee shall not be liable for the payment of rent for the period that it cannot use the Premises.

32
33 28. Insurance

34
35 a. The Lessee shall, at its own expense, obtain and keep in full force and effect a
36 policy of comprehensive commercial general liability insurance for all loss, costs, damages and
37 expenses suffered by any person due to personal injury arising out of the activities permitted by
38 this Lease in the amount of One Million Dollars (\$1,000,000.00) per person and Three Million
39 Dollars (\$3,000,000.00) in the aggregate per occurrence, and One Million Dollars
40 (\$1,000,000.00) for damage to any property, including the Premises and property owned by
41 Lessor, due to or alleged to be due to (1) an act, omission or the negligence of the Lessee, its
42 officers, agents, employees contractors, patrons, guests or invitees, or (2) to the use of the
43 Premises or any part thereof by the Lessee, its officers, agents, employees, contractors,
44 patrons, guests or invitees.

45
46 b. The insurance policy shall specifically name the City of Annapolis, and in their
47 capacity as such, the Mayor, council members, department directors, and all other officers,
48 employees, contractors and agents of the City of Annapolis, as additional insureds.

1
2 c. The insurer shall be authorized to write the required insurance, approved by the
3 Insurance Commissioner of the State of Maryland, and subject to the reasonable approval of
4 Lessor's City Attorney.

5
6 d. The form and substance of the policy shall be subject to reasonable approval by
7 Lessor's City Attorney and shall be submitted to the City Attorney for such approval not later
8 than May 1, 2013.

9
10 e. The policy or the Certificate for the policy shall contain a statement that the insurer
11 shall not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or
12 otherwise, whether at the request of the Lessee or for any other reason, except after 30
13 calendar days advance written notice sent by the insurer to the City Attorney by certified mail,
14 postage prepaid, with return receipt requested.

15
16 f. If the policy is cancelled during the term of this Lease and the Lessee is unable to
17 obtain an equivalent policy, the Lessor may immediately declare Lessee in breach of this Lease
18 and immediately terminate this Lease without prior notice to Lessee.

19
20 29. Vendor Insurance

21
22 a. The Lessee shall provide documentation to the Lessor's City Attorney not later
23 than May 1, 2012, that each participating vendor at the farmers market is adequately covered to
24 the satisfaction of the City Attorney by general and product liability insurance.

25
26 b. All terms that apply in paragraph 17 shall apply in this paragraph.

27
28 c. For vendors added after May 1, 2013, the Lessee shall provide the same
29 documentation at least one full calendar week prior to the commencement date of the vendor's
30 participation in the farmers market and such vendors shall not be permitted to participate in the
31 farmers market until the City Attorney approves the policy.

32
33 30. Indemnification

34
35 a. The Lessee shall forever indemnify, defend and hold the Lessor, its Mayor, council
36 members, department directors, and all of its other officers, employees, contractors and agents
37 harmless from and against any and all claims, suits, actions, judgments, and liability for loss,
38 injury, damages and/or expenses suffered or alleged to have been suffered by any person or to
39 the Premises or to any property due to or alleged to be due to (1) an act, omission or the
40 negligence of the Lessee, its officers, agents, employees, contractors, patrons, guests or
41 invitees, or (2) the use of the Premises or any part thereof by the Lessee, its officers, agents,
42 employees, contractors, patrons, guests or invitees.

43
44 b. The Lessee shall reimburse the Lessor, within 30 days after demand for such
45 reimbursement, for any damage done to the Lessor's buildings, facilities, equipment or property
46 caused by the negligence of the Lessee, its officers, agents, employees, contractors, patrons,
47 guests or invitees during the Lessee's use and/or occupancy of the Premises or any part thereof
48 or to any other property.

1
2 c. Such indemnification does not limit any immunity to which the Lessor or its Mayor,
3 council members, department directors and all of its other officers employees, contractors and
4 agents, and includes all costs and expenses, including attorney's fees, whether or not related to
5 administrative or judicial litigation.
6

7 31. Immunities
8

9 a. The Lessor reserves any and all immunities, partial or total, statutory or common
10 law, in any proceeding related to this Lease, to the activities referred to in this Lease or to the
11 use of the Premises or any part thereof before, during or after the term of this Lease. Such
12 reservation of rights shall extend to any claim made by or through the Lessee and to any claim
13 made by or through any third party
14

15 32. Assignment
16

17 a. The Lessee shall not assign or transfer its interest in or its rights or obligations
18 pursuant to this Lease without the prior written consent of the Lessor.
19

20 33. Non Agent
21

22 a. The Lessee acknowledges it is an independent contracting party and not the
23 agent or employee of Lessor.
24

25 34. Compliance with All Laws
26

27 a. The Lessee shall comply with all laws, ordinances and statutes applicable to the
28 Premises, or any part thereof, and the use thereof, and to pay all taxes or charges imposed by
29 law in connection with Lessee's use and occupancy of the Premises.
30

31 35. Contact Persons
32

33 a. For purposes of coordinating inspections, providing notices and other matters set
34 forth under this Lease, except as otherwise provided, the parties designate the following contact
35 persons:
36

37 Lessor: Department of Neighborhood and
38 Environmental Programs
39 City of Annapolis
40 160 Duke of Gloucester Street
41 Annapolis, Maryland 21401
42 Phone No. 410-263-7946
43
44 Lessee: FRESHFARM Markets Inc
45 PO Box 15691
46 Washington, DC 20003
47 Attention; Ann Harvey Yonkers
48 Phone No. 202-362-8889

1
2 36. General Powers
3

4 a. Nothing herein shall be construed to preclude the Lessor from exercising its
5 general public safety powers as it deems appropriate to protect the public safety, interest and
6 welfare.
7

8 37. Termination for Breach or Violation
9

10 a. The Lessor shall be entitled to immediately terminate this Lease for any breach or
11 violation by the Lessee of this Lease.
12

13 38. Termination for Other Reasons
14

15 a. If the Lessor, in its sole discretion, determines that, for purposes and
16 conveniences related to the public interest of the City of Annapolis, it is necessary to terminate
17 this Lease before the end of its term, the Lessor shall provide 30 days written notice, by certified
18 mail, postage prepaid, to the Lessee to vacate, and shall be entitled to take possession and
19 control of the Premises immediately upon the 31st day after such notice.
20

21 b. The Lessee shall comply with all terms of this Lease that otherwise relate to its
22 vacating the Premises upon the expiration of the Lease.
23

24 c. The Lessor shall make reasonable attempts to relocate the Lessee's farmers
25 market to another location for the balance of the term of this Lease.
26

27 d. If Lessee does not accept any relocation offered by the Lessor with 7 days of the
28 date offered, this Lease shall terminate at such time.
29

30 39. Condition of Premises At End of Lease
31

32 a. At the end of this Lease, the Lessee, at its sole expense, shall return the Premises
33 to the same or superior condition than received, natural wear and tear excepted.
34

35 40. Time is of the Essence
36

37 a. Time is of the essence in the performance of this Lease.
38

39 b. Time for performance shall not be extended for any reason, except by mutual
40 agreement of the parties.
41

42 41. Modifications
43

44 a. The parties may, at any time, in writing, mutually modify only the following terms
45 of this Lease:
46
47

1 1. the location of the Premises to be leased, provided such modifications do not
2 result in an increase or enlargement of the area of the Premises;

3
4 2. the dates and hours during which the Premises will be used, provided such
5 modifications do not result in an increase or enlargement of the dates or times set forth in
6 paragraph 1a;

7
8 3. the Lessee's obligations with regard to security on the Premises and the
9 payment of fees for City inspections of the Premises.

10
11 b. Following a request by either party for modification, pursuant to Article III, Section
12 8 of the City Charter, the Lessor's Mayor may negotiate and agree to any modification which the
13 Lessee may propose without the necessity of an additional ordinance approving the
14 modification.

15
16 c. Any modification shall be set forth in writing executed by the parties, but shall not
17 take effect until the City Council has approved the modification.

18
19 42. Binding Effect

20
21 a. This Lease is binding upon the parties and their respective successors and
22 assigns.

23
24 43. Integration. This Lease constitutes the entire agreement between the parties
25 regarding its subject matter. There are no other terms or understandings, oral or written,
26 between the parties with respect thereto.

27
28 Witness the signatures and seals of the parties.

29
30 **Freshfarm Markets, Inc.**

31
32
33 _____ By: _____
34 Witness Ann Harvey Yonkers, (Seal)
35 Co- Executive Director
36

37 State of Maryland, County of Anne Arundel, to wit:

38
39 I hereby certify that on this ____ day of _____, 2013, before me, the subscriber,
40 a Notary Public in and for the State and County aforesaid, personally appeared Ann Harvey
41 Yonkers, known to me or satisfactorily proven to be the person who has signed this Agreement,
42 and she has signed this Agreement in my presence and acknowledged that she is co-Director of
43 Freshfarm Markets, Inc., and authorized to sign this Agreement on its behalf and to bind it
44 thereby, and that this Agreement is her free and voluntary act and the free and voluntary act of
45 Freshfarm Markets, Inc. made for the purposes set forth therein.

46
47 Witness my signature and Notary Seal.
48 _____

Notary Public
My Commission expires:

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Witness By: _____
Bernadine Prince, (Seal)
Co-Director

State of Maryland, County of Anne Arundel, to wit:

I hereby certify that on this ____ day of _____, 2013, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Bernadine Prince, known to me or satisfactorily proven to be the person who has signed this Agreement, and she has signed this Agreement in my presence and acknowledged that she is co-Director of Freshfarm Markets, Inc., and authorized to sign this Agreement on its behalf and to bind it thereby, and that this Agreement is her free and voluntary act and the free and voluntary act of Freshfarm Markets, Inc. made for the purposes set forth therein.

Witness my signature and Notary Seal.

Notary Public
My Commission expires:

ATTEST: City of Annapolis

Regina C. Watkins-Eldridge, MMC By: _____
City Clerk Joshua J. Cohen, Mayor (Seal)

State of Maryland, County of Anne Arundel, to wit:

I hereby certify that on this ____ day of _____, _____, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Joshua J. Cohen, known to me or satisfactorily proven to be the person who has signed this Agreement, and he has signed this Agreement in my presence and acknowledged that he is the Mayor of the City of Annapolis and authorized to sign this Agreement on its behalf and to bind it thereby, and that this Agreement is his free and voluntary act and the free and voluntary act of the City of Annapolis made for the purposes set forth therein.

Witness my signature and Notary Seal.

Notary Public

My Commission expires:

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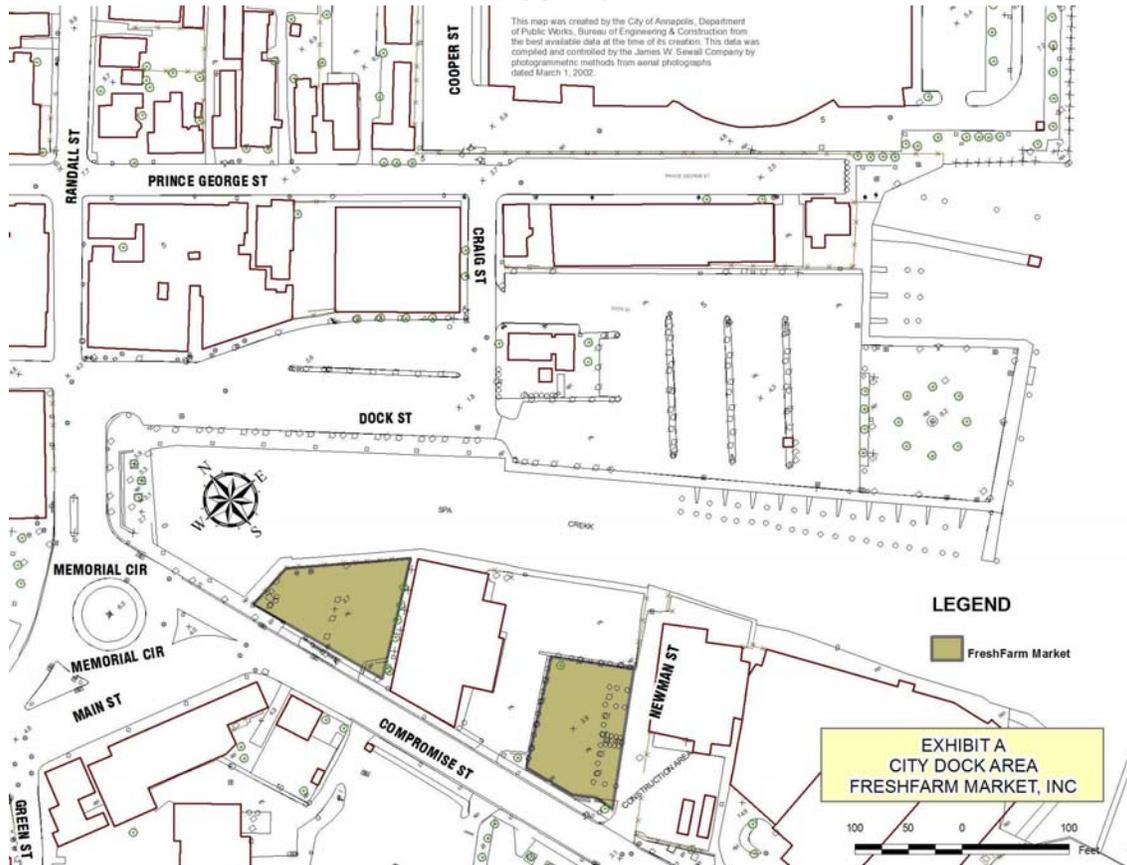
Approved for form and legal sufficiency:

Karen M. Hardwick, City Attorney

Date:

Lease of the Donner Lot to FRESHFARM Markets Inc.

Attachment A



Policy Report

Ordinance O-43-12

Lease of Public Parking Lots to FRESHFARM Markets, Inc.

O-43-12 authorizes a lease of municipal property located at 110 Compromise Street from May 5, 2013 through November 24, 2013 to FRESHFARM Markets, Inc. 110 Compromise Street is also known as the Donner Lot and the Public Parking Lot between the Fleet Reserve and the site formerly known at Fawcett Boat Supplies. FRESHFARM Markets, inc. desires to lease the property for the purpose of conducting an open-air farmers market.

Prepared by Carol Richardson, Legislative and Policy Analyst Office of Law, cdrichardson@annapolis.gov, 410-263-1184.

FISCAL IMPACT NOTE

Legislation No: O-43-12

First Reader Date: 12/17/12

Note Date: 1/4/13

Legislation Title: Lease of Public Parking Lots to FRESHFARM Markets, Inc.

Description: For the purpose authorizing a lease of municipal property located at 110 Compromise Street from May 5, 2013 through November 24, 2013, to FRESHFARM Markets, Inc.

Analysis of Fiscal Impact: This legislation requires that FRESHFARM Markets, Inc. (Lessee) pay \$50 a month for each month of the lease for a total of \$350.

There are about 50 metered parking spaces in the area of the lease. The hours of the lease are 6 a.m. to 2 p.m. and the parking meters are in operation from noon to 7:30 p.m. Assuming all the meters would be in operation for 2 hours on each day at \$1 per hour, the estimated lost revenue from parking meters would be \$100 per day or \$2,800 for the 28 Sundays.

The Lessee shall install any temporary electrical equipment, lines and devices required on the premises upon approval by the City. The Department of Neighborhoods and Environmental Programs reports that there will be no City inspections other than an initial checking of the electrical connection. The cost to the City is estimated at \$60 for the services of an inspector. Cleaning, trash removal and security services will be provided by the Lessee. City water and electricity will be available at no cost to the Lessee but are expected to be negligible.

The total estimated negative fiscal impact of \$2,510 is calculated as follows:

Rent	350.00
Lost parking meter revenue	-2,800.00
Electrical inspection cost	-60.00
	<hr/>
\$	-2,510.00

1 CITY COUNCIL OF THE
2 City of Annapolis

3 Charter Amendment No. CA-1-12

4 Introduced by: Alderman Pfeiffer at the Request of the Charter Revision Commission
5
6
7

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
9/24/12	10/22/12	10/13/22	12/21/12
Referred to	Referral Date	Meeting Date	Action Taken
Rules and City Gov't	9/24/12	11/13/12	No action taken.

8
9
10 **A CHARTER AMENDMENT** concerning

11 **Non-Partisan Elections**

12 **FOR** the purpose of amending the Charter of the City of Annapolis to provide for non-partisan
13 elections for the offices of Mayor and Aldermen and Alderwomen; filling vacancies in
14 these offices; and removing partisan consideration in the composition and membership
15 of the Board of Supervisors of Elections.

16 **BY** repealing and re-enacting with amendments the following portions of the City Charter:
17 Article II, Section 5
18 Article II, Section 6
19 Article II, Section 7
20

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

23
24 **Sec. 5. - Primary election dates; municipal election dates; term dates.**

25 Nomination for a mayor [and] SHALL BE MADE BY FILING WITH THE BOARD OF
26 SUPERVISORS OF ELECTION A CERTIFICATE EXECUTED BY NO FEWER THAT TWO-
27 HUNDRED FIFTY QUALIFIED VOTERS OF THE CITY, WITH NOT LESS THAN THIRTY
28 SIGNATURES BEING THOSE OF REGISTERED VOTERS FROM EACH OF THE CITY'S
29 WARDS. NOMINATION for one (1) alderman from each ward in the city shall be made by
30 [direct vote of the respective political parties at] FILING WITH THE BOARD OF SUPERVISORS
31 OF ELECTION A CERTIFICATE EXECUTED BY NO FEWER THAN FIFTY QUALIFIED
32 VOTERS THAT ARE RESIDENTS OF THAT WARD. ALL CITY ELECTIONS SHALL BE NON-
33 PARTISAN AND NO INDICATION OF PARTY AFFILIATION SHALL BE PLACED BESIDE THE
34 CANDIDATES' NAMES ON ANY BALLOT.
35

36 P[p]rimary elections [to] SHALL be held in the city for the several candidates for mayor and, in
37 each ward of the city, for the several candidates for aldermen, on the third Tuesday of

1 September in each year in which municipal elections in the city are to be held. Municipal
2 elections shall be held on the first Tuesday after the first Monday in November in every fourth
3 year, beginning with the year 1985. However, in the event an election will occur on the same
4 day as the public observance of a religious holiday, or in case of severe weather, the board of
5 supervisors of elections shall have the authority to reschedule the election to a day within one
6 week of the day prescribed by this section. The mayor and aldermen elected at each municipal
7 election shall qualify in the manner prescribed by Article II, Section 3 of this Charter, and shall
8 take office on the first Monday in December of the year in which they are elected and shall hold
9 office until the first Monday in December in the fourth year following, or until their successors
10 are elected and qualify.

11
12 **Sec. 6. - Board of supervisors of elections.**

13 (a) There is a board of supervisors of elections of the City of Annapolis, consisting of three (3)
14 residents in and voters of the city[, two (2) of whom shall always be selected from the leading
15 political parties of the state, one (1) from each of such parties. The third member may be
16 selected from either of the leading political parties of the state or from any other political party.]
17 The members shall be persons of approved integrity and capacity, and may not hold elective
18 office, nor be candidates for elective office during their terms of office. Members shall serve
19 without compensation.

20 (b) Members of the Board of Supervisors of Elections shall be appointed by the City Council
21 for a term that begins on the second Monday of March following the General City Election in the
22 preceding November and ends four years later on the second Monday in March. In the event of
23 a vacancy, the City Council shall immediately fill the vacancy only for the remainder of the four
24 year term. A member must be reappointed for a new term in order to serve beyond any four
25 year term. A chair of the Board of Supervisors of Elections shall be chosen annually by its
26 members.

27 [(c) Before appointing any supervisors of election, the city council shall request the city central
28 committees representing the two (2) leading political parties of the state in the city each to
29 designate at least four (4) eligible candidates for the position to be filled, by the second Monday
30 in March. If a city central committee fails to nominate the required number of candidates as
31 provided herein, the mayor shall submit a list of nominees to the city council in addition to the
32 central committee's list by the first Monday in April. The city council shall appoint the supervisors
33 by the second Monday in April.]

34
35 **Sec. 7. - Vacancies.**

36 (a) The following procedure for the filling of vacancies shall apply whenever a vacancy shall
37 occur with less than fifteen months remaining until the next general election at which members
38 of the city council shall be elected.

39 (1) In case of the death, resignation, refusal to serve, disqualification of the mayor or of any
40 alderman, or removal out of the city by the mayor, or out of the ward, by any alderman, the
41 mayor or acting mayor shall give written notice of the vacancy, within five (5) business
42 days, to the [chairman of the city central committee of the political party to which the
43 person vacating was registered with the board of supervisors of elections at the time of
44 election] ALDERMEN AND ALDERWOMEN.

45 (2) Not more than five (5) business days after being notified by the mayor or acting mayor,
46 the [central committee] ALDERMEN AND ALDERWOMEN shall announce the time and

1 place of a public hearing to be held for the purpose of selecting candidates to fill the
2 vacancy. [Such] THE announcement shall consist of, but not be limited to, a prominent
3 notice in a local daily newspaper. The hearing shall be held not less than ten (10) business
4 days, nor more than fifteen (15) business days, from the date the announcement first
5 appears in the newspaper.

6 (3) [Not less than five (5) business days before the hearing date, the central committee
7 shall announce the qualified candidates of its political affiliation to be considered at the
8 hearing. If any otherwise qualified person is not selected by the central committee, that]
9 ANY QUALIFIED person shall be considered at the hearing upon presentation of a petition,
10 in the case of a vacancy in the office of alderman, signed by at least fifty (50) registered
11 voters [of the appropriate political party] who live in the affected ward. If the vacancy is in
12 the office of mayor, the petition shall bear the signatures of at least two hundred fifty (250)
13 registered voters [of the appropriate political party], with not less than thirty (30) signatures
14 being those of registered voters from each of the city's wards.

15 (4) At the hearing, each qualified candidate shall have an opportunity to address the
16 [central committee] MAYOR AND ALDERMEN AND ALDERWOMEN. [After all candidates
17 have been heard, the central committee shall select one (1) candidate and the chairman of
18 the committee shall notify the mayor or acting mayor, in writing, of the choice, not more
19 than three (3) business days after the hearing.]

20 (5) At the next regularly scheduled meeting of the city council, or at a special session
21 convened before then by the mayor or acting mayor for the purpose of filling the vacancy,
22 THE MAYOR AND ALDERMEN AND ALDERWOMEN SHALL SELECT ONE OF THE
23 CANDIDATES TO FILL THE VACANCY AND the selected candidate shall be sworn in and
24 seated immediately.

25 [(6) If the person vacating office was not registered in a political party at the time of
26 election, the city council shall follow as closely as possible the candidate selection and
27 election procedure above prescribed for a central committee to follow, but without regard to
28 the political affiliation of any candidate.]

29 (b) The following procedure for the filling of vacancies shall apply whenever a vacancy shall
30 occur with fifteen months or more remaining until the next general election at which members of
31 the city council shall be elected.

32 (1) In case of the death, resignation, refusal to serve, disqualification of the mayor or of any
33 alderman, or removal out of the city by the mayor, or out of the ward by any alderman, the
34 mayor or acting mayor shall issue a proclamation directing that a special primary election
35 and a special general election be held to fill the vacancy. The mayor or acting mayor shall
36 issue this proclamation within five (5) days after the vacancy occurs.

37 (2) The proclamation shall specify the date for the special primary election and special
38 general election, provided that the special primary election shall be held on any weekday
39 other than a state or religious holiday which is at least twenty-three (23) days but no longer
40 than thirty (30) days from the date of the proclamation and that the special general election
41 shall be held on any weekday other than a state or religious holiday which is at least
42 twenty-one (21) days but not longer than thirty days from the date of the special primary
43 election.

44 (3) Except as otherwise specifically provided herein, and except where such construction

1 would be unreasonable, the provisions of this Charter and of Title 4 of the Code of the City
2 of Annapolis shall be applicable to the special elections provided for herein and the city
3 shall annually budget an amount for that purpose.

4 (4) Certificates of candidacy shall be filed with the office of the board of supervisors of
5 elections not later than 9:00 p.m. on the Monday which is three (3) weeks before the day
6 on which the special primary election is scheduled to be conducted. If the filing date occurs
7 on a legal holiday, the certificates shall be filed not later than 9:00 p.m. on the next regular
8 business day which is not a legal holiday.

9 (5) The candidate who has been declared elected by the board of supervisors of elections
10 shall be sworn in and seated at the next regular or special meeting of the city council
11 following the special general election.
12

13 **SECTION II: AND BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY**
14 **COUNCIL** that the date of adoption of this Resolution is _____, 2012, and the amendments of
15 the Charter of the City of Annapolis, hereby enacted shall become effective on _____, 2012,
16 unless a proper petition for referendum hereon shall be filed as permitted by law within 40 days
17 of adoption, provided a complete and exact copy of this Resolution shall be continuously posted
18 on the bulletin board in the City Hall until _____, 2012, and provided further that a copy of the
19 title of this Resolution shall be published in "The Capital", a newspaper of general circulation in
20 the City of Annapolis, or in any other newspaper of such general circulation, once in each of the
21 weeks on, _____, 2012, _____, 2012, _____, 2012, and _____, 2012.
22

23 **SECTION III: AND BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY**
24 **COUNCIL** that the Mayor is hereby specifically commanded to carry out the provisions of
25 Section II hereof, and, as evidence of such compliance, the Mayor shall cause to be maintained
26 appropriate certificates of publication of the newspaper or newspapers in which the title of the
27 Resolution shall have been published and if a favorable referendum is held on the Charter
28 change, shall declare the Charter change hereby enacted to be effective on _____, 2012, by
29 affixing his signature hereto in the space provided on the effective date of change.
30

31 **SECTION IV: AND BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY**
32 **COUNCIL** that as soon as the Charter Amendment hereby enacted shall become effective,
33 either as provided herein or following a referendum, the Mayor shall send to the Maryland
34 Department of Legislative Services a copy of this Resolution showing the number of Aldermen
35 and Alderwomen voting for and against it and a report on the votes cast for or against the
36 amendment hereby enacted at any referendum thereon and the date of such referendum.
37

38 The above Charter Amendment was enacted by the foregoing Resolution which was
39 passed at a Meeting of the Annapolis City Council on _____, 2012; _____ voting in the
40 affirmative, _____ voting in the negative, _____ abstaining and _____ absent and the said
41 Resolution becomes effective in accordance with law on the ___ day of _____ 2012.
42

43 **ADOPTED** this _____ day of _____, _____.
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ATTEST:

THE ANNAPOLIS CITY COUNCIL

BY

Regina C. Watkins-Eldridge, MMC, City Clerk

Joshua J. Cohen, Mayor

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EXPLANATION

CAPITAL LETTERS indicate matter added to existing law.

[brackets] indicate matter stricken from existing law.

Underlining indicates amendments.

1 **Policy Report**

2
3 **CA-1-12**

4
5 **Non-Partisan Elections**

6
7 The proposed charter amendment would render elections in the City of Annapolis as
8 non-partisan, meaning no affiliation with a political party. The proposed charter
9 amendment is based on the recent report from the 2011 Annapolis Charter Revision
10 Commission, although their report notes this, too, was a recommendation from the 1996
11 and 2002 Charter Revision Commissions:

12
13 “Political parties, which play a distinctive role nationally and in state governments,
14 and have grown exceedingly polarized, have very little, if any, relevance to the
15 management and governing of local municipalities like Annapolis. Most cities in
16 Maryland, excluding only Frederick, Baltimore and Annapolis, now have non-
17 partisan elections.”

18
19 The proposed charter amendment would remove political affiliation for nominations for
20 the office of Mayor and Aldermen and Alderwomen and for filling vacancies in these
21 offices. Additionally, the proposed charter amendment would remove partisan
22 considerations in the composition and membership of the Board of Supervisors of
23 Elections.

24
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28
29 Prepared by Jessica Cowles, Legislative and Policy Analyst, Office of Law at
30 JCCowles@annapolis.gov or (410) 263-1184.



City of Annapolis City Council
Standing Committee Referral Action Report

Date: 11/13/12

To: Jessica Cowles,
City of Annapolis Office of Law,
Legislative and Policy Analyst

The Rules and City Government Committee has reviewed CA-1-12 and
has taken the following action:

Favorable

Favorable with amendments

Unfavorable

No Action

Other

Comments:

Motion Failed

Roll Call Vote:

Ald. Israel, Chair NO

Ald. Hoyle YES

Ald. Arnett abstain

Meeting Date 11/13/12

Signature of Chair Richard Israel

FISCAL IMPACT NOTE

Legislation No: CA-1-12

First Reader Date: 9/24/12

Note Date: 10/13/12

Legislation Title: Non-Partisan Elections

Description: For the purpose of amending the Charter of the City of Annapolis to provide for non-partisan elections for the offices of Mayor and Aldermen and Alderwomen; filling vacancies in these offices; and removing partisan consideration in the composition and membership of the Board of Supervisors of Elections.

Analysis of Fiscal Impact: This legislation will produce no significant fiscal impact.

1 CITY COUNCIL OF THE
2 City of Annapolis

3 Charter Amendment No. CA-2-12

4 Introduced by: Alderman Pfeiffer at the Request of the Charter Revision Commission
5
6
7

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
9/24/12	10/22/12	10/13/12	12/21/12
Referred to	Referral Date	Meeting Date	Action Taken
Rules and City Gov't	9/24/12	11/13/12	No action taken.

8
9
10 **A CHARTER AMENDMENT** concerning

11 **Municipal Elections Coinciding with State of Maryland Elections in 2018 and Onward**

12 **FOR** the purpose of amending the Charter of the City of Annapolis to establish the dates of
13 the primary and general elections to coincide with the State of Maryland in 2018 and
14 extending the length of time in office for the incoming City Council in December 2013 an
15 additional year to December 2018 in order to facilitate this transition period.

16 **BY** repealing and re-enacting with amendments the following portions of the City Charter:
17 Article II, Section 2
18 Article II, Section 5
19

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

22 **Sec. 2. - General election dates.**

23 The citizens and residents of the City of Annapolis qualified to vote for members of the General
24 Assembly of Maryland, and otherwise qualified by the registration and election laws for such
25 cases made and provided, shall elect by ballot, every four (4) years, beginning in [1985] 2018,
26 on the first Tuesday after the first Monday in November OR AS MAY BE DETERMINED BY
27 THE STATE OF MARYLAND BOARD OF ELECTIONS, a mayor; and the qualified voters, in
28 each ward shall at the same time elect by ballot one (1) resident of the ward as alderman.
29

30 **Sec. 5. - Primary election dates; municipal election dates; term dates.**

31 Nomination for a mayor and for one (1) alderman from each ward in the city shall be made by
32 direct vote of the respective political parties at primary elections to be held in the city for the
33 several candidates for mayor and, in each ward of the city, for the several candidates for
34 aldermen, on the third Tuesday of September in each year in which municipal elections in the
35 city are to be held OR AS MAY BE DETERMINED BY THE STATE OF MARYLAND BOARD
36 OF ELECTIONS. Municipal elections shall be held on the first Tuesday after the first Monday in
37 November in every fourth year, beginning with the year [1985] 2018 OR AS MAY BE

1 DETERMINED BY THE STATE OF MARYLAND BOARD OF ELECTIONS. However, in the
2 event an election will occur on the same day as the public observance of a religious holiday, or
3 in case of severe weather, the board of supervisors of elections shall have the authority to
4 reschedule the election to a day within one week of the day prescribed by this section OR AS
5 MAY BE DETERMINED BY THE STATE OF MARYLAND BOARD OF ELECTIONS. The mayor
6 and aldermen elected at each municipal election shall qualify in the manner prescribed by
7 Article II, Section 3 of this Charter, and shall take office on the first Monday in December of the
8 year in which they are elected and shall hold office until the first Monday in December in the
9 fourth year following, or until their successors are elected and qualify. IN ORDER FOR
10 MUNICIPAL ELECTIONS TO COINCIDE WITH STATE OF MARYLAND ELECTIONS, THE
11 CITY COUNCIL TERM FOR THE CITY COUNCIL BEGINNING ON THE FIRST MONDAY OF
12 DECEMBER 2013 WILL EXTEND AN ADDITIONAL YEAR TO THE FIRST MONDAY OF
13 DECEMBER 2018.

14
15 **SECTION II: AND BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY**
16 **COUNCIL** that the date of adoption of this Resolution is _____, 2012, and the amendments of
17 the Charter of the City of Annapolis, hereby enacted shall become effective on _____, 2012,
18 unless a proper petition for referendum hereon shall be filed as permitted by law within 40 days
19 of adoption, provided a complete and exact copy of this Resolution shall be continuously posted
20 on the bulletin board in the City Hall until _____, 2012, and provided further that a copy of the
21 title of this Resolution shall be published in "The Capital", a newspaper of general circulation in
22 the City of Annapolis, or in any other newspaper of such general circulation, once in each of the
23 weeks on, _____, 2012, _____, 2012, _____, 2012, and _____, 2012.
24

25 **SECTION III: AND BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY**
26 **COUNCIL** that the Mayor is hereby specifically commanded to carry out the provisions of
27 Section II hereof, and, as evidence of such compliance, the Mayor shall cause to be maintained
28 appropriate certificates of publication of the newspaper or newspapers in which the title of the
29 Resolution shall have been published and if a favorable referendum is held on the Charter
30 change, shall declare the Charter change hereby enacted to be effective on _____, 2012, by
31 affixing his signature hereto in the space provided on the effective date of change.
32

33 **SECTION IV: AND BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY**
34 **COUNCIL** that as soon as the Charter Amendment hereby enacted shall become effective,
35 either as provided herein or following a referendum, the Mayor shall send to the Maryland
36 Department of Legislative Services a copy of this Resolution showing the number of Aldermen
37 and Alderwomen voting for and against it and a report on the votes cast for or against the
38 amendment hereby enacted at any referendum thereon and the date of such referendum.
39

40 The above Charter Amendment was enacted by the foregoing Resolution which was
41 passed at a Meeting of the Annapolis City Council on _____, 2012; _____ voting in the
42 affirmative, _____ voting in the negative, _____ abstaining and _____ absent and the said
43 Resolution becomes effective in accordance with law on the ___ day of _____ 2012.
44
45
46
47

48 **ADOPTED** this _____ day of _____, _____.
49
50

1

ATTEST:

THE ANNAPOLIS CITY COUNCIL

BY

Regina C. Watkins-Eldridge, MMC, City Clerk

Joshua J. Cohen, Mayor

2

3

4

EXPLANATION

5

CAPITAL LETTERS indicate matter added to existing law.

6

[brackets] indicate matter stricken from existing law.

7

Underlining indicates amendments.

1 **Policy Report**

2 **CA-2-12**

3 **Municipal Elections Coinciding with State of Maryland Elections in 2018**
4 **and Onward**

5
6
7
8 The proposed charter amendment would amend the Charter of the City of Annapolis to
9 establish the dates of the primary and general elections to coincide with the State of
10 Maryland in 2018 and extend the length of time in office for the incoming City Council in
11 December 2013 an additional year to December 2018 in order to facilitate this transition
12 period.

13 The proposed charter amendment is based on the recommendation of the 2011
14 Annapolis Charter Revision Commission that reported:

15 “City elections should be moved to coincide with state elections. There are two
16 primary reasons for doing this. First, it saves the City money to piggyback on the
17 state elections. Second, it will almost certainly improve voter turnout, which is
18 now embarrassingly low in City elections.”

19
20
21
22
23
24
25 Prepared by Jessica Cowles, Legislative and Policy Analyst, Office of Law at
26 JCCowles@annapolis.gov or (410) 263-1184.
27



City of Annapolis City Council
Standing Committee Referral Action Report

Date: 11/13/12

To: Jessica Cowles,
City of Annapolis Office of Law,
Legislative and Policy Analyst

The Rules and City Government Committee has reviewed CA-2-12 and
has taken the following action:

Favorable

Favorable with amendments

Unfavorable

No Action

Other

Comments:

Motion failed

Roll Call Vote:

Ald. Israel, Chair NO

Ald. Hoyle absent Ald. Arnett YES

Meeting Date 11/13/12

Signature of Chair Richard Gordon

FISCAL IMPACT NOTE

Legislation No: CA-2-12

First Reader Date: 9/24/12

Note Date: 10/13/12

Legislation Title: Municipal Elections Coinciding with State of Maryland Elections in 2018 and Onward

Description: For the purpose of amending the Charter of the City of Annapolis to establish the dates of the primary and general elections to coincide with the State of Maryland in 2018 and extending the length of time in office for the incoming City Council in December 2013 an additional year to December 2018 in order to facilitate this transition period.

Analysis of Fiscal Impact: This legislation will postpone the costs incurred to conduct an election to the following year. Combining State of Maryland and City of Annapolis elections will provide a convenience to voters.

1 **CITY COUNCIL OF THE**
2 **City of Annapolis**

3
4 **Charter Amendment No. CA-3-12**

5 **Introduced by: Alderman Pfeiffer at the Request of the Charter Revision Commission**
6
7

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
9/24/12	10/22/12	10/13/12	12/21/12
Referred to	Referral Date	Meeting Date	Action Taken
Rules and City Gov't	9/24/12	11/13/12	Favorable w/amd.

8
9
10 **A CHARTER AMENDMENT** concerning

11 **City Finance Requirements**

12 **FOR** the purpose of amending the Charter of the City of Annapolis to establish an unrestricted
13 fund balance as part of the annual budget process, authorizing an Audit Committee; and
14 setting a time line for the Finance Director to provide the Comprehensive Annual
15 Financial Report to the City Council.

16 **BY** adding to the following portions of the City Charter:
17 Article VII, Section 12
18

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

21 **ARTICLE VII FINANCES, SECTION 12 – REQUIREMENTS.**

22 A. AS PART OF THE ANNUAL BUDGET PROCESS, THE CITY COUNCIL SHALL
23 ESTABLISH AN UNRESTRICTED FUND BALANCE AT A RATE IN LINE WITH BEST
24 PRACTICES FOR MUNICIPAL CORPORATIONS WITH THE GOAL OF SECURING A TRIPLE
25 A BOND RATING FROM THE CREDIT RATING AGENCIES.

26 B. THE CITY COUNCIL SHALL AUTHORIZE THE ESTABLISHMENT OF AN AUDIT
27 COMMITTEE CONSISTING OF THE MAYOR, CITY MANAGER, ALDERMEN AND
28 ALDERWOMEN, FINANCE DIRECTOR AND CITY RESIDENT REPRESENTATIVE(S) WITH
29 RESPONSIBILITY FOR IMPLEMENTING INDUSTRY-WIDE BEST FINANCIAL
30 MANAGEMENT PRACTICES.

31 C. THE FINANCE DIRECTOR SHALL REPORT THE COMPREHENSIVE ANNUAL
32 FINANCIAL REPORT TO THE CITY COUNCIL BY JANUARY 31 OF EACH YEAR.

1 **SECTION II: AND BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY**
2 **COUNCIL** that the date of adoption of this Resolution is _____, 2012, and the amendments of
3 the Charter of the City of Annapolis, hereby enacted shall become effective on _____, 2012,
4 unless a proper petition for referendum hereon shall be filed as permitted by law within 40 days
5 of adoption, provided a complete and exact copy of this Resolution shall be continuously posted
6 on the bulletin board in the City Hall until _____, 2012, and provided further that a copy of the
7 title of this Resolution shall be published in "The Capital", a newspaper of general circulation in
8 the City of Annapolis, or in any other newspaper of such general circulation, once in each of the
9 weeks on, _____, 2012, _____, 2012, _____, 2012, and _____, 2012.

10
11 **SECTION III: AND BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY**
12 **COUNCIL** that the Mayor is hereby specifically commanded to carry out the provisions of
13 Section II hereof, and, as evidence of such compliance, the Mayor shall cause to be maintained
14 appropriate certificates of publication of the newspaper or newspapers in which the title of the
15 Resolution shall have been published and if a favorable referendum is held on the Charter
16 change, shall declare the Charter change hereby enacted to be effective on _____, 2012, by
17 affixing his signature hereto in the space provided on the effective date of change.

18
19 **SECTION IV: AND BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY**
20 **COUNCIL** that as soon as the Charter Amendment hereby enacted shall become effective,
21 either as provided herein or following a referendum, the Mayor shall send to the Maryland
22 Department of Legislative Services a copy of this Resolution showing the number of Aldermen
23 and Alderwomen voting for and against it and a report on the votes cast for or against the
24 amendment hereby enacted at any referendum thereon and the date of such referendum.

25
26 The above Charter Amendment was enacted by the foregoing Resolution which was
27 passed at a Meeting of the Annapolis City Council on _____, 2012; _____ voting in the
28 affirmative, _____ voting in the negative, _____ abstaining and _____ absent and the said
29 Resolution becomes effective in accordance with law on the __ day of _____ 2012.

30
31 **ADOPTED** this _____ day of _____, _____.

32
33
ATTEST:

THE ANNAPOLIS CITY COUNCIL

BY _____

Regina C. Watkins-Eldridge, MMC, City
Clerk

Joshua J. Cohen, Mayor

34
35
36 **EXPLANATION**

37 CAPITAL LETTERS indicate matter added to existing law.

38 [brackets] indicate matter stricken from existing law.

39 Underlining indicates amendments.

1 **Policy Report**

2
3 **CA-3-12**

4
5 **City Finance Requirements**

6
7 The proposed charter amendment would amend the Charter of the City of Annapolis to
8 establish an unrestricted fund balance as part of the annual budget process, authorize
9 the establishment of an Audit Committee, and set a time line of January 31 for the
10 Finance Director to provide the Comprehensive Annual Financial Report to the City
11 Council.

12
13 Prepared by Jessica Cowles, Legislative and Policy Analyst, Office of Law at
14 JCCowles@annapolis.gov or (410) 263-1184.



City of Annapolis City Council
Standing Committee Referral Action Report

Date: 11/13/12

To: Jessica Cowles,
City of Annapolis Office of Law,
Legislative and Policy Analyst

The Rules and City Government Committee has reviewed CA-3-12 and
has taken the following action:

Favorable

Favorable with amendments *attached*

Unfavorable

No Action

Other

Comments:

Roll Call Vote:

Ald. Israel, Chair yes

Ald. Hoyle yes

Ald. Arnett yes

Meeting Date 11/13/12

Signature of Chair *Richard Gould*

Rules Committee amendments to CA-3-12

On page one line 22 Strike “As part of the annual budget process,”

Add a new section “B. As a part of the annual Budget process the Mayor shall submit an unrestricted fund balance amount for consideration and approval by the City Council.”

On line 26 Change item B to C

On line 31 Change item C to D

FISCAL IMPACT NOTE

Legislation No: CA-3-12

First Reader Date: 9/24/12

Note Date: 10/13/12

Legislation Title: City Finance Requirements

Description: For the purpose of amending the Charter of the City of Annapolis to establish an unrestricted fund balance as part of the annual budget process, authorizing an Audit committee; and setting a time line for the Finance Director to provide the Comprehensive Annual Financial Report to the City Council.

Analysis of Fiscal Impact: This legislation has the potential to produce a positive fiscal impact if it helps secure a triple-A bond rating from the credit rating agencies, which can be expected to lower the cost of borrowing for the City.

1 CITY COUNCIL OF THE
2 City of Annapolis

3 Ordinance No. O-26-12

4 Introduced by: Mayor Cohen
5
6
7

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	180 Day Rule
7/23/12	11/26/12	9/14/12	1/21/13
Referred to	Referral Date	Meeting Date	Action Taken
Rules and City Gov't	7/23/12		
Planning Commission	7/23/12	10/4/12	Favorable

8
9 AN ORDINANCE concerning

10 Revisions to the Zoning Map Amendment Process

11 FOR the purpose of amending Chapter 21.34 (Zoning Map Amendments) of the Annapolis
12 City Code by establishing new procedures for local zoning map amendments, sectional
13 zoning map amendments, and comprehensive zoning map amendments.

14 BY repealing and re-enacting with amendments the following portions of the Code of the
15 City of Annapolis, 2011 Edition
16 Section 21.34.020
17 Section 21.34.030
18 Section 21.34.040
19

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

22 Chapter 21.34 - ZONING MAP AMENDMENTS
23

24 21.34.010 - Purpose and authority.

25 A. Purpose. For the purpose of promoting the public health, safety, morals and general welfare,
26 and conserving the value of property throughout the City, the City Council, from time to time, in
27 the manner set forth in this chapter may amend the district boundary lines; provided, that in all
28 amendatory ordinances adopted under the authority of this chapter, due allowance shall be
29 made for existing conditions, the conservation of property values, the direction of building
30 development to the best advantages of the entire City and the uses to which property is devoted
31 at the time of the adoption of the amendatory ordinance.
32

33 B. Authority. The City Council shall decide amendments under this chapter, which may be
34 proposed by the City Council, the Planning Commission, a property owner in the City or any
35 person who has a contractual interest which may become a freehold interest or an exclusive
36 possessory interest of property proposed to be rezoned.

1 **21.34.020 - Procedures.**

2 A. Application Procedures. AN APPLICATION MAY BE FILED FOR ANY OF THE
3 FOLLOWING TYPES OF AMENDMENTS TO THE ZONING MAP:

4 1. LOCAL ZONING MAP AMENDMENT. A LOCAL ZONING MAP AMENDMENT COVERING A
5 SINGLE TRACT OF LAND, ALL OR PORTIONS OF WHICH MAY BE PROPOSED TO BE
6 CLASSIFIED IN DIFFERENT ZONES. A LOCAL ZONING MAP AMENDMENT APPLICATION
7 MAY BE FILED BY ANY GOVERNMENTAL AGENCY OR BY A PERSON WITH A FINANCIAL,
8 CONTRACTUAL, OR PROPRIETARY INTEREST IN THE PROPERTY TO BE AFFECTED BY
9 THE PROPOSED AMENDMENT.

10
11 Any member of the City Council may introduce a LOCAL zoning map application before the City
12 Council that would then be referred to the Planning and Zoning Director to assist in the
13 development of a LOCAL zoning map amendment. All other applications for a LOCAL zoning
14 map amendment shall also be filed with the Planning and Zoning Director in accordance with
15 the requirements of Section 21.10.010 Common procedures for review of applications, including
16 the preapplication conference with the Director pursuant to Section 21.10.010(A).

17
18 2. SECTIONAL ZONING MAP AMENDMENT. A SECTIONAL ZONING MAP AMENDMENT
19 COVERING A SECTION OF THE CITY, ALL OR PORTIONS OF WHICH MAY BE PROPOSED
20 TO BE CLASSIFIED IN DIFFERENT ZONES. AN APPLICATION FOR A SECTIONAL
21 ZONING MAP AMENDMENT MAY BE FILED ONLY BY THE PLANNING COMMISSION UPON
22 COMPLETION OF A SECTOR OR AREA PLAN.

23
24 3. COMPREHENSIVE ZONING MAP AMENDMENT. A COMPREHENSIVE ZONING MAP
25 AMENDMENT COVERING THE ENTIRE CITY, ALL OR PORTIONS OF WHICH MAY BE
26 PROPOSED TO BE CLASSIFIED IN DIFFERENT ZONES. A COMPREHENSIVE ZONING
27 MAP AMENDMENT INCLUDES, BUT IS NOT LIMITED TO, TECHNICAL CORRECTIONS. AN
28 APPLICATION FOR A COMPREHENSIVE ZONING MAP AMENDMENT MAY BE FILED ONLY
29 BY THE PLANNING COMMISSION.

30
31 B. Review Procedures.

32 1. Complete Application Forwarded to Planning Commission. Upon determination of
33 completeness, the Planning and Zoning Director shall forward the application to the Planning
34 Commission, for its recommendation to the City Council.

35
36 2. Staff Review and Report. The Planning and Zoning Director may circulate the application to
37 other City departments deemed appropriate by the Director. The Planning and Zoning Director
38 will forward a report on the application for amendment to the Planning Commission and the City
39 Council.

40
41 3. Planning Commission Public Hearing. An application, when complete, shall be placed upon
42 the agenda of the Planning Commission for consideration at a public hearing. Notice of the
43 hearing shall be published in accordance with Sections 21.10.020(B) and 21.10.020(C)[, Notice
44 Requirements] FOR A LOCAL ZONING MAP AMENDMENT, AND IN ACCORDANCE WITH
45 SECTION 21.10.020(C)(1) FOR A SECTIONAL OR COMPREHENSIVE ZONING MAP
46 AMENDMENT. At the public hearing the Planning Commission may accept evidence and
47 testimony as it may judge to be relevant to the proper consideration of the case.

48
49 4. Findings and Recommendations. Within thirty days after the Planning Commission has
50 completed its review of the application, but in no case longer than ninety days after the date of
51 the first session of the public hearing held by the Commission, the Commission shall make

1 written findings of fact and shall submit the findings together with its recommendations to the
2 City Council. The City Council shall not act upon the application until it has received a written
3 report and recommendation from the Planning Commission on the proposed amendment.
4

5 5. City Council Action. After the Planning Commission has completed its review of the proposed
6 amendment, an ordinance shall be drafted by the Mayor and introduced at the City Council. It
7 shall be introduced on First Reader and referred to the appropriate Standing Committees of the
8 City Council.
9

10 6. City Council Public Hearing. The City Council shall hold a public hearing on the ordinance.
11 The hearing shall be advertised, conducted, and a record of the proceedings shall be preserved,
12 in the manner as the City Council, by rule, prescribes from time to time. Notice of the hearing
13 shall be in accordance with Section 21.10.020(C)[, Notice Requirements] FOR A LOCAL
14 ZONING MAP AMENDMENT AND IN ACCORDANCE WITH SECTION 21.10.020(C)(1) FOR A
15 SECTIONAL OR COMPREHENSIVE ZONING MAP AMENDMENT. Other appropriate notices
16 may be posted in a place or places as the City Council designates. At the hearing, the
17 recommendation of the Planning Commission and report from the Planning and Zoning Director
18 shall be placed in evidence. The Director of Planning and Zoning shall be available at the
19 hearing for examination by all interested persons.
20

21 7. Decision and Vote. Following the City Council public hearing and the Standing Committee
22 reports, the City Council shall vote on the ordinance.
23

24 8. Date of Decision. Whenever an application for an amendment has been properly filed, it shall
25 be acted upon by the City Council within six months from the date of application, and whenever
26 it has been denied by the City Council, the application shall not be renewed for one year after
27 the denial.
28

29
30 **21.34.030 - Application requirements.**

31 All zoning map applications shall be accompanied by plans and on any forms prescribed by the
32 Planning and Zoning Director, and shall at a minimum include the following:
33

34 A. A statement in writing by the applicant and adequate evidence describing how the proposed
35 map amendment conforms to the review criteria set forth in this chapter.
36

37 B. FOR A LOCAL ZONING MAP AMENDMENT, Applicants shall provide the names and
38 addresses of all persons having a financial or vested interest in the project and in the case of
39 firms, partnerships and corporations, the names and addresses of all principals of the firm,
40 partnership or corporation, who have a financial or vested interest in the project for which the
41 application is made.
42

43
44 **21.34.040 - Planning Commission review criteria and findings.**

45 The Planning Commission shall not recommend the adoption of a proposed zoning map
46 amendment unless it finds that the adoption of the amendment is in the public interest and is not
47 solely for the interest of the applicant. The Planning Commission may recommend the adoption
48 of an amendment changing the zoning classification of the property to a more restrictive district
49 than that requested by the applicant. The Planning Commission shall make findings based upon
50 the evidence presented to it in each specific case with respect to the following matters:
51

- 1 [A. Existing uses and zoning classification of properties within the general area of the property
- 2 that is the subject of the application.]
- 3 [B. The suitability of the property in question to the uses permitted under the existing zoning
- 4 classification compared to the uses permitted under the proposed zoning classification.]
- 5 [C. The trend of development in the general area, including any changes in zoning classification
- 6 of the subject property or other properties in the area and the compatibility with existing and
- 7 proposed development for the area.]
- 8 [D. Whether there has been a substantial change in the character of the neighborhood where
- 9 the property is located or that there was a mistake in the existing zoning classification.]
- 10 [E. The availability of public facilities, present and future transportation patterns.]
- 11 [F. The relationship of the proposed amendment to the City's Comprehensive Plan.]

- 12
- 13 A. POPULATION CHANGE;
- 14 B. THE AVAILABILITY OF PUBLIC FACILITIES;
- 15 C. PRESENT AND FUTURE TRANSPORTATION PATTERNS;
- 16 D. COMPATIBILITY WITH EXISTING AND PROPOSED DEVELOPMENT FOR THE AREA;
- 17 E. THE RELATIONSHIP OF THE PROPOSED AMENDMENT TO THE CITY'S
- 18 COMPREHENSIVE PLAN;
- 19 F. A SUBSTANTIAL AND UNANTICIPATED CHANGE IN THE CHARACTER OF THE
- 20 NEIGHBORHOOD WHERE THE PROPERTY IS LOCATED;
- 21 G. A MISTAKE IN THE EXISTING ZONING CLASSIFICATION.
- 22

23 **21.34.050 - City Council review criteria and findings.**

24 The City Council shall make findings of fact in each specific case including, but not limited to,

25 the criteria set forth above in Section 21.34.040.

26

27 **21.34.060 - Appeal.**

28 Any person aggrieved by a decision of the City Council pursuant to this chapter may appeal to

29 the circuit court of Anne Arundel County.

30

31 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**

32 **ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its passage.

33

34 **ADOPTED** this _____ day of _____, _____.

35

36

ATTEST:

THE ANNAPOLIS CITY COUNCIL

BY

Regina C. Watkins-Eldridge, MMC, City Clerk

Joshua J. Cohen, Mayor

37

38

39 **EXPLANATION**

40 CAPITAL LETTERS indicate matter added to existing law.

41 [brackets] indicate matter stricken from existing law.

42 Underlining indicates amendments.

1 **Policy Report**

2
3 **O-26-12**

4
5 **Revisions to the Zoning Map Amendment Process**

6
7 The proposed ordinance would amend Chapter 21.34 (Zoning Map Amendments) of the
8 Annapolis City Code by establishing new procedures for local zoning map amendments,
9 sectional zoning map amendments, and comprehensive zoning map amendments.

10
11 Title 21 currently has no explicit mechanism for a comprehensive or sector area
12 rezoning process. The proposed ordinance would authorize three types of zoning map
13 amendments: local zoning map amendments, sectional zoning map amendments, and
14 comprehensive zoning map amendments.

15
16 The local zoning map amendment would preserve the existing procedure for a zoning
17 change affecting a single tract of land. The sectional zoning map amendment would
18 apply to a portion of the City where rezoning was proposed following the completion of a
19 sector or area plan. An example would be an adopted neighborhood or corridor plan
20 that recommended either a different zoning district or a re-alignment of existing zoning
21 districts. The comprehensive zoning map amendment would be a proposed rezoning
22 affecting the entire city. Examples would be if multiple zoning districts were combined
23 into one zoning district or the use of Geographic Information Systems mapping
24 technology to provide a technical update to the zoning maps (i.e., property zoning would
25 not change, but the technological mechanism for physically displaying and storing the
26 zoning information would be updated).

27
28
29
30
31
32 Prepared by Sally Nash, Senior Comprehensive Planner, Planning and Zoning
33 Department at SNash@annapolis.gov or (410) 263-7961 and Jessica Cowles,
34 Legislative and Policy Analyst, Office of Law at JCCowles@annapolis.gov or (410) 263-
35 1184.



City of Annapolis City Council
Standing Committee Referral Action Report

Date: 1/7/13

To: Jessica Cowles,
City of Annapolis Office of Law,
Legislative and Policy Analyst

The Rules and City Government Committee has reviewed 0-26-12 and
has taken the following action:

Favorable

Favorable with amendments

Unfavorable

No Action

Other

Comments:

on page 2

*Line 21 Delete "only & planning
COMMISSION"*

*and replace with "the Director of
Planning & Zoning"*

on line 28 delete "only"

*on line 29 delete "Planning Commission"
and replace with "the director of
Planning & Zoning"*

Roll Call Vote:

Ald. Israel, Chair yes

Ald. Hoyle yes

Ald. Arnett yes

Meeting Date 1/7/13

Signature of Chair Richard Israel

Alderman Arnett's Amendment to O-26-12
Revisions to the Zoning Map Amendment Process

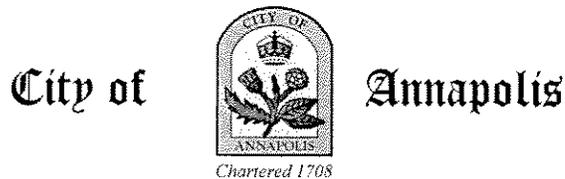
Amendment #1

Proposed amendment would comport language in the City Code to the State of Maryland's new Land Use article of the Annotated Code.

Page 4, Line 19 insert before "F":

ADDITIONALLY, THE PLANNING COMMISSION SHALL RECOMMEND THE ADOPTION OF AN AMENDMENT TO CHANGE THE ZONING CLASSIFICATION BASED ON A FINDING THAT THERE WAS:

A. [F.] A SUBSTANTIAL AND UNANTICIPATED CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD WHERE THE PROPERTY IS LOCATED; OR
B. [G.] A MISTAKE IN THE EXISTING ZONING CLASSIFICATION.



PLANNING COMMISSION

(410)263-7961

145 GORMAN STREET, 3RD FLOOR
ANNAPOLIS, MARYLAND 21401

October 4, 2012

To: Annapolis City Council

From: Planning Commission

Re: Findings for O-26-12: Revisions to the Zoning Map Amendment Process

SUMMARY

O-26-12 proposes changes to Chapter 21.34 (Zoning Map Amendments) of the Annapolis City Code that will establish three categories of map amendments. The three categories are: local zoning map amendments, sectional zoning map amendments, and comprehensive zoning map amendments.

STAFF RECOMMENDATION

At a regularly scheduled meeting on October 4, 2012, the Planning and Zoning staff presented their analysis and recommendations for approval of the legislation.

Staff reviewed the background of the proposed regulations and then provided an analysis. This information was forwarded to the Planning Commission for review in a report dated September 10, 2012.

Staff stated that under the current City Code, there is no explicit mechanism provided for a sectional or comprehensive rezoning process. What is currently provided is the process for a rezoning of a single tract of land that typically would be requested by the property owner based on a change in the character of the neighborhood or a previous mistake in the zoning classification. This type of map amendment is distinct from a sectional or comprehensive zoning map amendment because an application for a local map amendment does not necessarily follow a study, plan, or public process that has specifically recommended a zoning change.

The sectional zoning map amendment would apply to a portion of the City where rezoning was proposed following the completion of a sector or area plan. An example would be an adopted neighborhood or corridor plan that recommended either a different zoning district or a re-alignment of existing zoning districts. The comprehensive zoning map amendment would be a proposed rezoning affecting the entire city. Examples would be if multiple zoning districts were combined into one zoning district or the use of Geographic Information Systems (GIS) mapping technology to provide a technical update to the zoning maps (i.e., property zoning would not change, but the technological mechanism for physically displaying and storing the zoning information would be updated).

The proposed ordinance would maintain the process for introducing a local zoning map amendment—such amendment can be introduced by any governmental agency or any person with a proprietary interest in the property. A sectional zoning map amendment can be filed only by the Planning Commission upon completion of a sector or area plan. Likewise, a comprehensive zoning map amendment could only be filed by the Planning Commission.

Another difference between the local zoning map amendment and the proposed sectional and comprehensive zoning map amendments are the notification requirements. A local map amendment retains the requirements of City Code Sections 21.10.020(B) and 21.10.020(C), which are:

B. Notice to Abutting Property Owners. If the Zoning Code Division II provisions applicable to a specific type of application provide for notice to abutting property owners, unless specific notice procedures are otherwise provided for in another Zoning Code chapter, notice must be given as follows:

- 1. The applicant must send written notification to all parties with a financial or vested interest in the property that is the subject of the application and to property owners within two hundred feet of the property boundary. Notice of public hearings must be mailed not less than fifteen days prior to the date of hearing.*
- 2. Prior to any public meeting or public hearing on an application, the applicant must provide the Planning and Zoning Director with verification of mailing of written notification. An applicant must provide evidence that notices of the public hearing were mailed not less than fifteen days prior to the date of hearing.*
- 3. The notification must be posted at a designated central location for similar notices at the Department of Planning and Zoning.*

C. Notice of Formal Public Hearing. If notice of a formal public hearing is required, unless specific notice procedures are otherwise provided for in another Division II chapter of the Zoning Code, notice must be given as follows:

- 1. Notice of the application and any required public hearings at which the application will be considered shall be published in a newspaper of general circulation in the City no fewer than once each week for two successive weeks. The first notice of the hearing must be at least fifteen days before the hearing.*
- 2. Notice must be posted on the property that is the subject of an application by the applicant or the property owner, if not the same, at least fifteen days prior to any public hearing on the application and in a manner prescribed by the Planning and Zoning Director. Any sign posted on a property by an applicant must be removed by the applicant within seven days following the close of the public hearing. Failure to post shall be governed by (A)(4) above.*

Annapolis City Council

Findings: O-26-12

October 4, 2012

Page 3

The notice requirements for a sectional or comprehensive zoning map amendment are in accordance with Section 21.10.020(C)(1), which is notice published in a newspaper of general circulation no fewer than once each week for two successive weeks. Because these zoning map amendments can only be filed after an extensive public planning process, a posting on the properties concerned or written notification to all parties with a financial or vested interest in the property that is the subject of the application and to property owners within two hundred feet of the property boundary would be redundant with previous efforts.

The ordinance also proposes a change to the wording of the review criteria and findings that are required for a zoning map amendment. This change is proposed to update Title 21 to be in accordance with Maryland Annotated Code Article 66B – Land Use.

PUBLIC HEARING AND DELIBERATION

In accordance with the Annapolis City Code, a public hearing was held and the public was invited to comment on the proposed text amendment. No one spoke on the legislation.

At the close of the public hearing, the Planning Commission entered into deliberations. The Commission concurred with staff.

RECOMMENDATION

By a vote of 6-0, the Planning Commission voted to recommend approval of O-26-12.

Adopted October 4, 2012



Dr. Eleanor M. Harris, Chair

FISCAL IMPACT NOTE

Legislation No: O-26-12

First Reader Date: 7-23-12

Note Date: 9-14-12

Legislation Title: **Revisions to the Zoning Map Amendment Process**

Description: For the purpose amending Chapter 21.34 (Zoning Map Amendments) of the Annapolis City Code by establishing new procedures for local zoning map amendments, sectional zoning map amendments, and comprehensive zoning map amendments.

Analysis of Fiscal Impact:

This legislation produces no significant fiscal impact.

CITY COUNCIL OF THE
City of Annapolis
ORDINANCE NO. O-44-12

Introduced by: Mayor Cohen

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
12/10/12			03/10/13
Referred to	Referral Date	Meeting Date	Action Taken
Economic Matters	12/10/12		
Environmental Matters	12/10/12		

AN ORDINANCE concerning

Lease of City Property: Boat Shows in Spring 2013

FOR the purpose of authorizing a lease of certain municipal property located in the areas of Susan B. Campbell Park, Annapolis City Donner Parking Lot, Ego Alley Water Space, and Old City Recreation Center and other property and water locations as described in the lease to CRUISERS UNIVERSITY, INC., t/a Annapolis Spring Sailboat Show, in April 2013, to conduct boat shows.

WHEREAS, CRUISERS UNIVERSITY, INC., t/a Annapolis Spring Sailboat Show, desires to lease certain municipal property for the purpose of conducting boat shows; and

WHEREAS, the Annapolis City Council believes that these proposed boat shows would inure to the benefit of the City; and

WHEREAS, a lease setting forth details of the rental has been prepared and is considered satisfactory; and

WHEREAS, Article III, Section 8 of the Charter of the City of Annapolis requires the passage of an ordinance to authorize the lease.

NOW THEREFORE:

1 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY**
2 **COUNCIL** that the proposed lease between the City of Annapolis and CRUISERS
3 UNIVERSITY, INC., t/a Annapolis Spring Sailboat Show, for the rental of certain
4 municipal property in the area of Susan B. Campbell Park, Annapolis City Donner
5 Parking Lot, Ego Alley Water Space, and Old City Recreation Center and other property
6 and water locations from April 23, 2013 to April, 30, 2013 specifically described in the
7 lease, a copy of which is attached hereto and made a part hereof, more specifically
8 described in the attached lease, is hereby approved and the Mayor is hereby authorized
9 to execute the lease on behalf of the City of Annapolis.

10
11 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
12 **ANNAPOLIS CITY COUNCIL** that it is expressly found by the City Council that the
13 property to be leased will better serve the public need for which the property was
14 acquired by stimulating local interest in the boating industry, encouraging visitors and
15 residents of the City to visit the harbor and dock area, by generating tax revenues and
16 rental income to the City and otherwise providing economic benefits to the City.

17
18 **SECTION III: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
19 **ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its
20 passage.

21
22
23 **ADOPTED** this _____ day of _____, _____.

24
25 **ATTEST:** **THE ANNAPOLIS CITY COUNCIL**

26
27
28 **BY:** _____
29 Regina C. Watkins-Eldridge, MMC City Clerk Joshua C. Cohen, MAYOR

30
31
32 **EXPLANATION**
33 CAPITAL LETTERS indicate matter added to existing law.
34 [brackets] indicate matter stricken from existing law.
35 Underlining indicates amendments.

LEASE

Authorized by O-44-12

This Lease is made this _____ day of _____, 2012, by and between City of Annapolis, a municipal corporation of the State of Maryland ("Lessor"), and Cruisers University, Inc. trading as Annapolis Spring Sailboat Show ("Lessee").

Article I

Section 1.1. Premises and Term: Lessor hereby leases to Lessee, for the purpose of holding a boat show and related educational seminars, those parcels of land and of water (collectively "Premises") described and designated on the plat designated as Exhibit A attached to and made a part of this Lease, for the periods of time indicated, subject to the provisions and terms of this Lease.

a. Charter Dock Parcels 1 and 2 from Tuesday, April 23, 2013 at 5 PM through Tuesday, April 30, 2013 at 12 noon;

b. State Dock Parcel from Tuesday, April 23, 2013 at 5 PM through Tuesday, April 30, 2013 at 12 noon, shown in green on Exhibit A;

c. Ego Alley Parcel from Tuesday, April 23, 2013 at 4 PM through Monday, April 29, 2013 at 8 PM;

d. Susan Campbell Park Parcel and Dock Street Parking Parcels A, B and C from Wednesday, April 24, 2013 at 7 AM through Tuesday, April 30, 2013 at 5 PM;

e. Donner Parking Lot Parcel from Thursday, April 25, 2013 at 7 AM through Monday, April 29, 2013 at 5 PM;

The boardwalk around the Ego Alley and Susan Campbell Park Parcels shall remain open to the public at all times, except for brief periods during setup and breakdown of the event when required for public safety.

The Premises shall not be open to the public before 10 AM or after 6:30 PM on days and dates specified for the term of use herein.

Section 1.2. Changes to Premises: Lessee shall notify the City in writing no later than March 16, 2013 if it wishes to change the Premises area. The notice shall indicate with specificity the changes requested. Lessor shall respond to Lessee no later than March 23, 2013 whether it consents to the changes requested. Changes in the Premises area shall be within Lessor's sole discretion. Should costs be incurred by Lessor as a result of any change, those costs shall be paid by Lessee pursuant to Section 1.5 of this Lease.

Section 1.3. Use of Premises: Lessee is authorized to use existing and normal ingress to and egress from the Premises, existing and normal street and harbor lighting, and existing and normal police and fire protection. Any use of facilities and services beyond what is existing and normal shall be invoiced by the City as specified in Section 1.3 below.

Lessee shall not block access for emergency vehicles to the Susan Campbell Park Parcel or to the public walkway/boardwalk along the City Dock.

Lessee is authorized to construct, install, or erect booths, exhibits, chairs, tables, and tents in the Premises in connection with the boat show without permanently affecting the Premises. Lessee shall obtain all required temporary structures permits associated with this boat show.

Lessee, at its own expense, shall install all temporary electrical equipment, lines and devices required to provide power to the Premises in compliance with National Electric Code and subject to electrical inspection and all required permitting by the City.

Lessee is prohibited from selling food, alcoholic and non-alcoholic beverages on the Premises. Amplified music or other amplified sound is prohibited on the Premises.

Lessee shall submit to the City a diagram of its proposed use of the Premises at least thirty (30) days prior to the boat show and obtain final City approval of the diagram.

Section 1.4. Rent: Rent for the various parcels shall be as follows:

Charter Dock Parcel 1:	\$1,500.00
Charter Dock Parcel 2:	\$ 500.00
State Dock Parcel:	\$ 100.00
Ego Alley Parcel:	\$ 2,816.50
Susan B. Campbell Park Parcel	\$ 0.00
Dock Street Parcel A	\$ 2,000.00
Dock Street Parcel B	\$ 2,000.00
Dock Street Parcel C	\$ 2,000.00
Donner Parking Lot Parcel	\$ 1,254.00

Section 1.5. Costs and Expenses: Lessee shall pay all rent, costs and expenses incurred by the City as a result of Lessee's use of the Premises. Expenses may include, but are not limited to: utilities, parking and transportation, facilities and services, police services, fire services and other City services. Full cost shall be determined by the Director of Finance and invoiced post-event and shall be due and payable 30 days from date of invoice.

Section 1.6. Payment: Lessee shall make all payments due under this Lease by check, payable to the City of Annapolis. Lessee shall pay the City a monthly late fee of 1.5% (18% per annum) on any balance unpaid more than thirty (30) days past due.

Article II

Section 2.1. Number of Days: Lessee shall notify the City in writing no later than March 16, 2013 should it wishes to add dates and time of use of Premises. The notice shall indicate

changes in dates and times requested. Lessor shall respond to Lessee no later than March 23, 2013 whether it agrees. Changes in dates or times shall be within Lessor's sole discretion. Should costs be incurred by Lessor as a result of any change, those costs shall be paid by Lessee pursuant to Section 1.3 of this Lease.

Article III

Section 3.1. Pre-Show Meetings and Inspection: Prior to the opening of each boat show, representatives of Lessor's Department of Neighborhood and Environmental Programs, Police Department, Fire Department, Harbormaster, and Department of Public Works shall inspect the Premises and nearby areas with Lessee's representative to determine compliance with City requirements and for determination of the condition of the Premises. Written approval by representatives of these departments is required before Lessee may open either boat show. The opening of the boat show shall not be delayed by any department whose representative is not present for the pre-inspection. Lessor shall not refuse permission to open either boat show or any part of the show under this paragraph unless a threat to health or safety has been identified. Lessor shall make every effort to limit that part of the show not opened in the event of such threat and to allow Lessee to open the closed portion of the show as soon as the threat is abated to Lessor's satisfaction. All other federal, state or county permits which may be required shall be the responsibility of the Lessee.

Section 3.2. Transportation: The Lessee shall prepare and submit a written Transportation Plan with a Parking Element to Lessor's Director of Transportation. The Transportation Plan shall address matters specified by the Director and shall be submitted no later than April 1, 2013. Except for public ways within the Premises, the Transportation Plan shall not provide for the closure of any street or restrict parking to those associated with the boat shows. Moreover in publicizing the boat shows, Lessee shall direct all persons attending the event to park their vehicles at satellite lots and ride the shuttle to the site of the boat shows. Upon receipt of the Transportation Plan, the Director shall make copies available to relevant agencies and to interested parties who have requested a copy.

Article IV

Section 4.1. Insurance: Lessee, at its own expense, shall obtain and keep in full force and effect comprehensive commercial general liability insurance of no less than Two Million Dollars (\$2,000,000.00) combined single limit, bodily injury and property damage, and Eight Million Dollars (\$8,000,000.00) umbrella policy, which shall be effective during the entire period of time during which the Lessee shall use or occupy the Premises or any part of the Premises.

The insurance policy or policies shall specifically name the City of Annapolis, and in their capacity as such, the officers, agents and employees thereof, as additional insureds, and insure against any and all loss, costs, damages, and expenses suffered by any person or to any property, including property owned by Lessor, due to or alleged to be due to an act, omission or the negligence of Lessee, its officers, agents, employees, vendors, subtenants or contractors, directly or indirectly, in connection with the use of the Premises or any part of the Premises by Lessee, its officers, agents, employees, vendors, subtenants or contractors.

Lessee's insurer or insurers shall be authorized to write the required insurance, approved by the Insurance Commissioner of the State of Maryland, and subject to the approval of Lessor's City Attorney. The form and substance of the Lessee's insurance policy or policies shall also be subject to reasonable approval by Lessor's City Attorney, and shall be submitted to

the City Attorney for such approval not less than thirty (30) days prior to Lessee's occupancy of the Premises. The policy or policies of insurance shall then be secured by Lessee and filed with the City Attorney not less than fifteen (15) days prior to Lessee's occupancy of the Premises. No approval shall be unreasonably withheld.

The Certificate for each insurance policy shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, whether at the request of Lessee or for any other reason, except after thirty (30) calendar days advance written notice mailed by the insurer to Lessor's City Attorney, and that such notice shall be transmitted postage prepaid, return receipt requested.

The obligations of Lessee under this Article are part of but do not limit or satisfy Lessee's obligations under Article V.

Article V

Section 5.1. Indemnity: Lessee shall forever indemnify, defend and hold harmless Lessor, its officers, agents, and employees, from and against any and all claims, suits, actions, judgments, and liability for loss, injury, damages and/or expenses suffered or alleged to have been suffered during the lease term by any person or to any property due to or alleged to be due to an act, omission or the negligence of Lessee, its officers, agents, employees, vendors, subtenants or contractors, directly or indirectly, in connection with the use and occupancy of the Premises or any part of the Premises, by Lessee, its officers, agents, employees, vendors, subtenants or contractors.

Lessee shall reimburse Lessor, within thirty (30) days after demand for such reimbursement, for any damage done to Lessor's buildings, facilities, equipment or property caused by an act, omission or the negligence of Lessee, its officers, agents, employees, vendors, subtenants or contractors, during Lessee's use and occupancy of the Premises or any part of the Premises.

Article VI

Section 6.1. Security: Lessee shall contract with and pay, as independent contractors, security guards from an agency duly licensed by the State of Maryland, in numbers sufficient to maintain security, peace and order at the boat shows inside the Premises during the lease term.

Article VII

Section 7.1. Interior Construction: Lessee shall have the right to construct, install or erect seats, platforms, booths, tanks, scaffolding, rigging, floating piers, pilings, docks, catwalks, tents, exhibits, and any other apparatus or structure which Lessee may deem necessary or desirable for the purpose of presenting the boat shows. Lessee shall have the right to erect and construct a temporary fence so as to enclose the Premises in such a manner as to limit entry onto the Premises through controlled entrances. Such fence shall not contain barbed wire, razor wire or any similar materials.

Section 7.2. Exterior Construction: Lessee shall erect and construct temporary wooden sidewalks, wherever necessary to provide for pedestrian traffic, outside of the Premises where the existing sidewalks are enclosed in the Premises by a temporary fence described in Section

7.1. All temporary sidewalks shall be handicap accessible and illuminated during hours of darkness and maintained by Lessee in a safe and secure condition.

Section 7.3. ADA and Other Permits: Lessee hereby assumes exclusive responsibility for compliance with any and all applicable provisions of the Americans with Disabilities Act of 1990, as amended from time to time, at the Premises, during the entire time Lessee uses or occupies the Premises or any part of the Premises. Subject to the inspection provisions of Section 3.7 of this Lease and to standard public safety and health approvals, any and all permits, licenses or authorizations required to be obtained from the City by Lessee during the term of this Lease for the purpose of constructing or erecting the temporary structures described in Sections 7.1 and 7.2 of this Lease or for operating the boat shows, shall be deemed granted and issued upon the execution of this Lease by Lessor and Lessee. All other federal, state or county permits, which may be required, shall be the responsibility of the Lessee.

Article VIII

Section 8.1. Trash: Lessee, at its own expense, shall provide an adequate number of trash and recycling containers for its use within the boat show grounds during the entire use and occupancy period of the Premises, and shall provide for the prompt removal of all such containers, trash and refuse. Lessor, at its own expense, shall provide an adequate number of trash dumpsters outside the boat show grounds for the use of Lessee during the use and occupancy period and shall provide for the prompt removal of trash, refuse and recycling materials generated during the boat show.

Section 8.2. Cleanliness: Lessee shall be responsible for keeping the Premises free of debris, trash and refuse, which shall be placed in dumpsters or receptacles.

Section 8.3. Sanitation and Toilets: Lessee shall, at its own expense, provide adequate and sanitary toilet facilities throughout the Premises for use by the general public and others attending or participating in the boat shows, including sufficient ADA compliant sanitary toilet facilities.

Article IX

Section.9.1. Quiet Enjoyment: Lessor covenants with Lessee that at all times during the term of this Lease, Lessee shall peacefully hold and quietly enjoy the use and occupancy of the Premises without any disturbance or hindrance from Lessor or from any other person claiming through Lessor, except that Lessor or others claiming through Lessor may enter onto the Premises to effect necessary repairs to their own facilities as reasonably contemplated by the terms of this Lease, and to assure compliance with the terms of this Lease. Lessee shall cooperate with the Lessor to effect this access to the Premises.

Section 9.2. Trash and Public Safety Cooperation: The parties shall cooperate with each other and use their best efforts to ensure that there is prompt trash removal, public safety protection and adequate traffic control during the designated period of use and occupancy by Lessee of the Premises.

Article X

Section 10.1. Condition of Premises After Show: Following the lease term, Lessee, at Lessee's sole expense, shall return the Premises to Lessor in the same or superior condition than received, natural wear and tear excepted.

Section 10.2. Lessee's Equipment After Show: Prior to the expiration of the lease term, Lessee shall immediately remove all of its property, fixtures and chattels from the Premises. In the event that Lessee, its officers, agents, employees, vendors, subtenants or contractors, fail to remove any item of property, Lessor reserves the right to remove and store any such property after the expiration or termination of the lease term at Lessee's expense or as an alternative, to leave the property at the Premises. In either case, Lessor shall charge Lessee per diem rental for storage of such property. Lessor shall bear no responsibility or liability for damage to or expense incurred as a result of property left, removed or stored under the provisions of this Section. Lessee shall pay to Lessor any expenses or charges under this Section billed to Lessee by Lessor within thirty (30) days after delivery of any such bill by Lessor to Lessee.

Section 10.3. Post-Show Inspection: Within ten (10) days following the expiration of the lease term, Lessee shall accompany Lessor during a tour of the Premises to determine the condition of the Premises. Items corrected or repaired by Lessor, deemed by Lessor to be the responsibility of Lessee, shall be billed by Lessor and paid by Lessee within thirty (30) days after receipt of such bill.

Article XI

Section 11.1. Remedies: All duties, liabilities and/or obligations imposed upon or assumed by Lessee and Lessor by or under this Lease shall be taken or construed as cumulative and the mention of any specified duty, liability or obligation imposed upon or assumed by Lessee or Lessor under this Lease shall not be taken or construed as a limitation or restriction upon any or all of the other duties, liabilities, or obligations imposed upon or assumed by Lessee under this Lease. The remedies provided for in this Lease shall be construed to be cumulative and in addition to any other remedies provided in law or equity which Lessor or Lessee would have in any case. Lessor shall have the right to seek and obtain in any court of competent jurisdiction an injunction, without the necessity of posting a bond, to restrain a violation or alleged violation by Lessee of any term of this Lease, anything to the contrary notwithstanding. In no case shall a waiver by either party of the right to seek relief under this provision constitute a waiver of any other or further violation. The remedies provided in this Lease shall not be deemed exclusive of other remedies not specified.

Article XII

Section 12.1. Impossibility of Performance: If, for any reason, an unforeseen event not the act of Lessor occurs, including but not limited to fire, casualty, act of God, labor strike or other unforeseen occurrence which renders impossible the fulfillment of any rental period of this Lease, Lessee shall have no right to claim damages not right to claim against Lessor for damages, but Lessee shall not be liable for the payment of rent for said rental period. However, if such impossibility relates to not more than five percent (5%) of the rental period, Base Rent, if determined under Section 1.3(A)(ii) of this Lease, shall be prorated to account for the number of scheduled hours the Show is not open to the public.

Article XIII

Section 13.1. Payment: Lessee shall make all payments due under this Lease by check, payable to the City of Annapolis. In addition to all other amounts due pursuant to this Lease, Lessee shall pay Lessor a monthly late fee of 1.5% (18% per annum) of any payment more than sixty (60) days past due, until paid.

Article XIV

Section 14.1. Time is of the Essence: Time is of the essence in the performance of this Lease. The times and deadlines specified in this Lease shall not be extended for any reason, except as may be provided in this Lease, relating to the term of the Lease or the installation or removal of equipment, materials or displays from the Premises, without written consent of Lessor.

Article XV

Section 15.1. Assignment: Lessee shall not assign, transfer, or otherwise dispose of this Lease without the prior written consent of Lessor, but such consent shall not be unreasonably or arbitrarily withheld. The foregoing shall not prevent Lessee from subleasing portions of the Premises to boat show exhibitors, provided the portion of the Premises subleased to any exhibitor does not exceed twenty-five percent (25%) of the total area of the Premises.

Article XVI

Section 16.1. Independent Contractor: Lessee is an independent contractor and not the agent or employee of Lessor. Under no circumstances shall this Lease be considered to create an employee or agency relationship or a partnership or joint venture.

Article XVII

Section 17.1. Liens: Lessee hereby consents that Lessor shall have a lien upon all property of Lessee located from time to time upon the Premises for any and all unpaid charges which arise under this Lease. Lessee hereby consents to and Lessor shall have the power to impound and retain possession of such property until all such charges and late fees due under Article XIII have been paid, in full, to the satisfaction of Lessor. In the event such charges remain unpaid ten (10) days after the termination of this Lease, Lessor shall have the power to sell such property at public auction and apply the receipts from such auction to all such unpaid charges.

Article XVIII

Section 18.1. Compliance with all Laws: Lessee shall comply with all laws, ordinances, and statutes applicable to the Premises or any part of the Premises, and the use and occupancy thereof, and to pay all taxes or charges imposed by law in connection with Lessee's use and occupancy of the Premises. Lessee shall have a reasonable time to correct any violation.

Article XIX

Section 20.1. Immunities: Nothing in this Lease shall be interpreted or construed to waive, in whole or in part, or to otherwise diminish, Lessor's statutory, common law or other immunities in any action in tort, in contract or in any other form. The parties agree that if any duty assumed by Lessor under the terms of this Lease or any action taken by Lessor pursuant

to any such term is construed to waive, in whole or in part, any such immunity, then the immunity shall nevertheless be fully restored, and shall bind and protect the parties as a contractual undertaking.

Article XX

Section 21.1 Authority: This Lease is authorized by Ordinance O-44-12 adopted by the City Council of the City of Annapolis.

In Witness Whereof, the City of Annapolis, by and through its duly authorized agent, has caused this Lease to be executed on its behalf, and the Lessee, Cruiser University, Inc. trading as Annapolis Spring Sailboat Show and Cruiser University, Inc. trading as Annapolis Spring Sailboat Show, has duly executed this Lease on the date first written above.

Attest:

City of Annapolis

Regina C. Watkins-Eldridge, MMC
City Clerk

By: _____
Joshua J. Cohen, Mayor (Seal)

Annapolis Spring Sailboat Show

Cruisers University, Inc. trading as

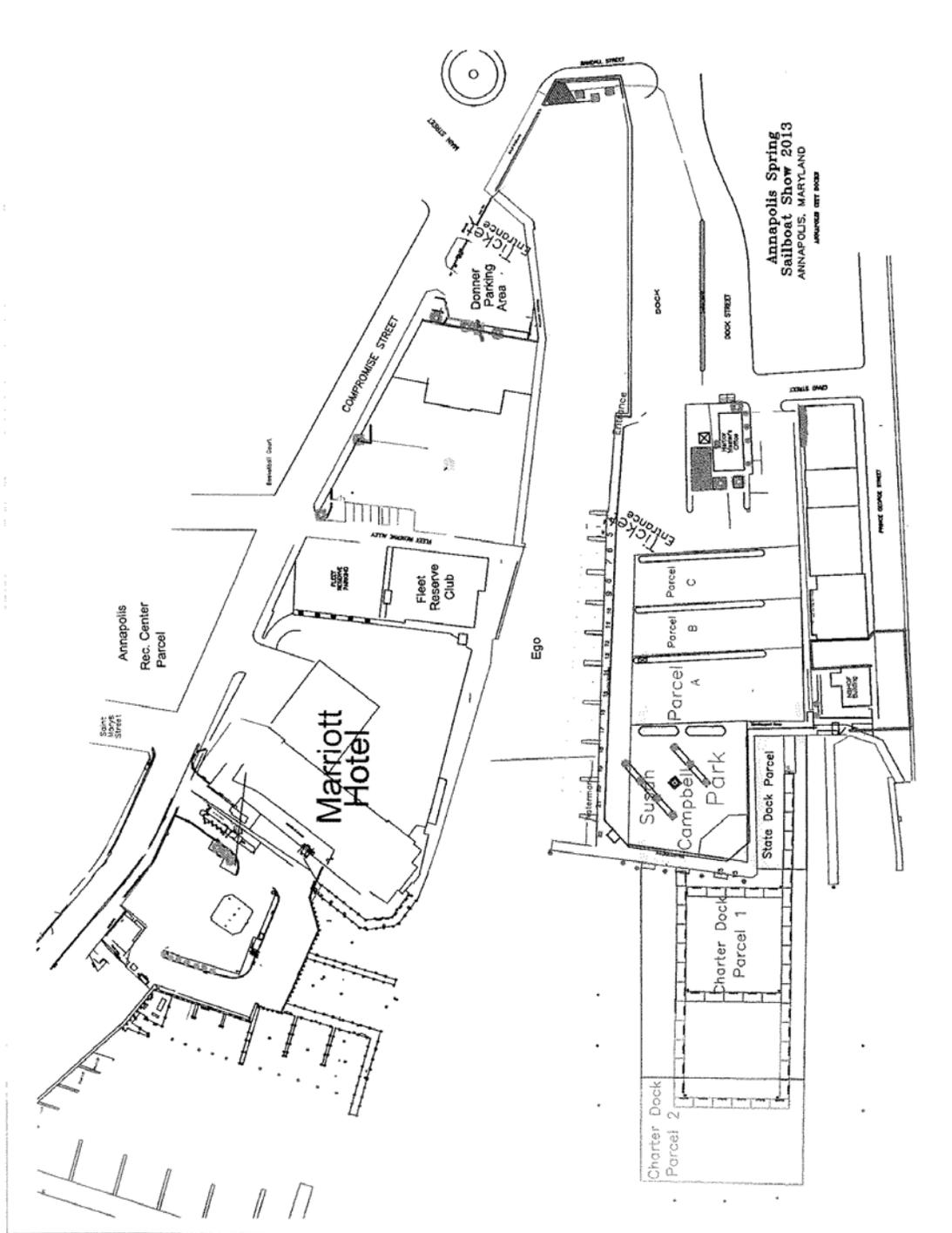
Witness

By: _____
C.E. Hartman, President (Seal)

Approved as to form and legal sufficiency:

Karen M. Hardwck, City Attorney

Exhibit A



Staff Paper

O-44-12 - Lease of City Property: Boat Shows in Spring 2013

Pursuant to Article II, Section 8 of the Annapolis City Charter, it is necessary for the City Council to enact an ordinance to authorize a lease of City property. Ordinance O-44-12 would authorize a lease of City property for Spring Boat Shows from April 23, 2013 to April 30, 2013. Areas of the City property to be leased are at Susan B. Campbell Park, Annapolis City Donner Parking Lot, Ego Alley Water Space, Charter Dock, Dock Street, and State Dock.

The lease would be executed between the City of Annapolis and CRUISERS UNIVERSITY, INC., t/a Annapolis Spring Sailboat Show. Under the terms of the lease, the rent for the various parcels shall be:

Charter Dock Parcel 1:	\$1,500.00
Charter Dock Parcel 2:	\$ 500.00
State Dock Parcel:	\$ 100.00
Ego Alley Parcel:	\$ 2,816.50
Susan B. Campbell Park Parcel	\$ 0.00
Dock Street Parcel A	\$ 2,000.00
Dock Street Parcel B	\$ 2,000.00
Dock Street Parcel C	\$ 2,000.00
Donner Parking Lot Parcel	\$ 1,254.00

The Lessee would be required to prepare and submit a transportation plan that includes a parking element to the City of Annapolis Department of Transportation.

Prepared by Carol Richardson, Legislative and Policy Analyst, City of Annapolis Office of Law, (410) 263-1184, cdrichardson@annapolis.gov.



City of Annapolis City Council
Standing Committee Referral Action Report

Date: Jan 16, 2013

To: Jessica Cowles,
City of Annapolis Office of Law,
Legislative and Policy Analyst

The Economic Matters Committee has reviewed 044-12 and has taken the following action:

Favorable*

Favorable with amendments

Unfavorable

No Action

Other

Comments:

Roll Call Vote:

Ald. Paone, Chair X yes Ald. Finlayson X yes Ald. Pfeiffer

* Subject to review of contradictions which appear in 044-12 & 044-12 as amended 7

Meeting Date 1/16/13 Signature of Chair Fredrick M. Paone



City of Annapolis City Council
Standing Committee Referral Action Report

Date: Jan 17, 2013

To: Jessica Cowles,
City of Annapolis Office of Law,
Legislative and Policy Analyst

The Environmental Matters Committee has reviewed 044-12 and has taken the following action:

Favorable

Favorable with amendments

Unfavorable

No Action

Other

Comments:

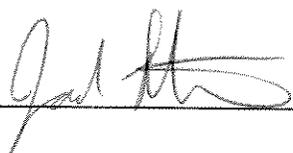
Roll Call Vote:

Ald. Paone

Ald. Littmann

Ald. Pfeiffer

Meeting Date Jan 17, 2013

Signature of Chair 

**Mayor Cohen's Proposed Amendments to O-44-12
Lease of City Property: Boat Shows in Spring 2013**

Amendment #1

Page 1, Line 14 and Page 2, Line 4
Strike "B."

Amendment #2

Substitute the lease attached to the first reader O-44-12 and replace with the following:
Note: new lease language is in **RED** and deletions are in ~~strikethrough~~.

LEASE

Authorized by O-44-12

This Lease is made this _____ day of _____, 2013, by and between City of Annapolis, a municipal corporation of the State of Maryland ("Lessor"), and Cruisers University, Inc. trading as Annapolis Spring Sailboat Show ("Lessee").

Article I

Section 1.1. Premises and Term: Lessor hereby leases to Lessee, for the purpose of holding a boat show and related educational seminars, those parcels of land and of water (collectively "Premises") described and designated on the plat designated as Exhibit A attached to and made a part of this Lease, for the periods of time indicated, subject to the provisions and terms of this Lease.

- a. Charter Dock Parcels 1 and 2 from Tuesday, April 23, 2013 at 5 PM through Tuesday, April 30, 2013 at 12 noon;
- b. State Dock Parcel from Tuesday, April 23, 2013 at 5 PM through Tuesday, April 30, 2013 at 12 noon, shown in green on Exhibit A;
- c. Ego Alley Parcel from Tuesday, April 23, 2013 at 4 PM through Monday, April 29, 2013 at 8 PM;
- d. Susan Campbell Park Parcel and Dock Street Parking Parcels A, B and C from Wednesday, April 24, 2013 at 7 AM through Tuesday, April 30, 2013 at 5 PM;
- e. Donner Parking Lot Parcel from Thursday, April 25, 2013 at 7 AM through Monday, April 29, 2013 at 5 PM;
- f. **Old Rec Center, First Floor, and Old Rec Center Parking Lot, 9 St. Mary's Street, from April 22, 2013 at 8:00 AM through May 1, 2013 at 6:00 PM.**

The boardwalk around the Ego Alley and Susan Campbell Park Parcels shall remain open to the public at all times, except for brief periods during setup and breakdown of the event when required for public safety.

The Premises shall not be open to the public before 10 AM or after 6:30 PM on days and dates specified for the term of use herein.

Section 1.2. Changes to Premises: Lessee shall notify the City in writing no later than March 16, 2013 if it wishes to change the Premises area. The notice shall indicate with specificity the changes requested. Lessor shall respond to Lessee no later than March 23, 2013 whether it consents to the changes requested. Changes in the Premises area shall be within Lessor's sole discretion. Should costs be incurred by Lessor as a result of any change, those costs shall be paid by Lessee pursuant to Section 1.5 of this Lease.

Section 1.3. Use of Premises: Lessee is authorized to use existing and normal ingress to and egress from the Premises, existing and normal street and harbor lighting, and existing and normal police and fire protection. Any use of facilities and services beyond what is existing and normal shall be invoiced by the City as specified in Section 1.3 below.

Use of the Old Rec Center and Old Rec Center Parking Lot shall be for administrative and educational seminar purposes only. Lessee may sell non-alcoholic beverages inside the Old Rec Center during hours of daily operation exclusively to seminar participants and others conducting administrative business inside the Old Rec Center.

Lessee shall not block access for emergency vehicles to the Susan Campbell Park Parcel or to the public walkway/boardwalk along the City Dock.

Lessee is authorized to construct, install, or erect booths, exhibits, chairs, tables, and tents in the Premises in connection with the boat show without permanently affecting the Premises. Lessee shall obtain all required temporary structures permits associated with this boat show.

Lessee, at its own expense, shall install all temporary electrical equipment, lines and devices required to provide power to the Premises in compliance with National Electric Code and subject to electrical inspection and all required permitting by the City.

Lessee is prohibited from selling food, alcoholic and non-alcoholic beverages on the Premises. Amplified music or other amplified sound is prohibited on the Premises.

Lessee shall submit to the City a diagram of its proposed use of the Premises at least thirty (30) days prior to the boat show and obtain final City approval of the diagram.

Section 1.5. Repair of Premises: Lessee shall be responsible for making repairs to the Old Rec Center which Lessor's Department of Neighborhood and Environmental Programs ("DNEP") determines are necessary to use the first floor of the structure for the purposes stated in this Lease. DNEP shall advise Lessee of each repair that shall be made.

Lessee shall not be required to spend more than \$13,175.00 for such repairs. Lessee shall make payment for such repairs directly to its contractor.

Lessee shall hire a licensed contractor in good standing with the State of Maryland to make such repairs. If the contractor hires subcontractors, all subcontractors shall be licensed and in good standing with the State of Maryland.

Lessee shall obtain all permits required by Lessee for such repairs. Lessee shall not be required to pay permit application fees.

Lessee shall ensure that its contractor is insured in amounts that are sufficient to protect the City and its interest in the Old Rec Center from damage to property and from injury to person occurring as a result of the acts or omissions of the contractor and any subcontractors, and that the contractor names the City of Annapolis, and in their capacity as such, the officers, agents and employees thereof, as insureds on its commercial general liability insurance policy. Lessee shall ensure that all subcontractors adhere to these same insurance requirements.

Lessee shall ensure that all contractors and subcontractors perform repairs in a satisfactory, workmanlike and professional manner.

Lessee shall ensure that no debris or trash resulting from repairs is left in the Old Rec Center.

Lessee shall ultimately be responsible for property damage or personal injury caused by the acts or omissions of its contractor and any subcontractors.

All repairs are subject to the final approval of DNEP.

Section 1.4. Rent: Rent for the various parcels constituting the premises shall be ~~as follows:~~ the difference between \$13,175.00 and the amount which Lessee actually spends on such repairs. Lessee shall document the difference to Lessor and pay the difference to Lessor as rent for the Premises within 15 days after the date Lessor gives final approval to such repairs.

Charter Dock Parcel 1:	\$1,500.00
Charter Dock Parcel 2:	\$ 500.00
State Dock Parcel:	\$ 100.00
Ego Alley Parcel:	\$ 2,816.50
Susan B. Campbell Park Parcel	\$ 0.00
Dock Street Parcel A	\$ 2,000.00
Dock Street Parcel B	\$ 2,000.00
Dock Street Parcel C	\$ 2,000.00
Donner Parking Lot Parcel	\$ 1,254.00

Section 1.5. Costs and Expenses: Lessee shall pay all ~~rent,~~ costs and expenses incurred by the City as a result of Lessee's use of the Premises. Expenses may include, but are not limited to: utilities, parking and transportation, facilities and services, police services, fire services and other City services. Full cost shall be determined by the Director of Finance and invoiced post-event and shall be due and payable 30 days from date of invoice.

Section 1.6. Payment: Lessee shall make all payments due under this Lease by check, payable to the City of Annapolis. Lessee shall pay the City a monthly late fee of 1.5% (18% per annum) on any balance unpaid more than thirty (30) days past due.

Article II

Section 2.1. Number of Days: Lessee shall notify the City in writing no later than March 16, 2013 should it wishes to add dates and time of use of Premises. The notice shall indicate changes in dates and times requested. Lessor shall respond to Lessee no later than March 23, 2013 whether it agrees. Changes in dates or times shall be within Lessor's sole discretion. Should costs be incurred by Lessor as a result of any change, those costs shall be paid by Lessee pursuant to Section 1.3 of this Lease.

Article III

Section 3.1. Pre-Show Meetings and Inspection: Prior to the opening of each boat show, representatives of Lessor's Department of Neighborhood and Environmental Programs, Police Department, Fire Department, Harbormaster, and Department of Public Works shall inspect the Premises and nearby areas with Lessee's representative to determine compliance with City requirements and for determination of the condition of the Premises. Written approval by representatives of these departments is required before Lessee may open either boat show. The opening of the boat show shall not be delayed by any department whose representative is not present for the pre-inspection. Lessor shall not refuse permission to open either boat show or any part of the show under this paragraph unless a threat to health or safety has been identified. Lessor shall make every effort to limit that part of the show not opened in the event of such threat and to allow Lessee to open the closed portion of the show as soon as the threat is abated to Lessor's satisfaction. All other federal, state or county permits which may be required shall be the responsibility of the Lessee.

Section 3.2. Transportation: The Lessee shall prepare and submit a written Transportation Plan with a Parking Element to Lessor's Director of Transportation. The Transportation Plan shall address matters specified by the Director and shall be submitted no later than April 1, 2013. Except for public ways within the Premises, the Transportation Plan shall not provide for the closure of any street or restrict parking to those associated with the boat shows. Moreover in publicizing the boat shows, Lessee shall direct all persons attending the event to park their vehicles at satellite lots and ride the shuttle to the site of the boat shows. Upon receipt of the Transportation Plan, the Director shall make copies available to relevant agencies and to interested parties who have requested a copy.

Article IV

Section 4.1. Insurance: Lessee, at its own expense, shall obtain and keep in full force and effect comprehensive commercial general liability insurance of no less than Two Million Dollars (\$2,000,000.00) combined single limit, bodily injury and property damage, and Eight Million Dollars (\$8,000,000.00) umbrella policy, which shall be effective during the entire period of time during which the Lessee shall use or occupy the Premises or any part of the Premises.

The insurance policy or policies shall specifically name the City of Annapolis, and in their capacity as such, the officers, agents and employees thereof, as additional insureds, and insure against any and all loss, costs, damages, and expenses suffered by any person or to any

property, including property owned by Lessor, due to or alleged to be due to an act, omission or the negligence of Lessee, its officers, agents, employees, vendors, subtenants or contractors, directly or indirectly, in connection with the use of the Premises or any part of the Premises by Lessee, its officers, agents, employees, vendors, subtenants or contractors.

Lessee's insurer or insurers shall be authorized to write the required insurance, approved by the Insurance Commissioner of the State of Maryland, and subject to the approval of Lessor's City Attorney. The form and substance of the Lessee's insurance policy or policies shall also be subject to reasonable approval by Lessor's City Attorney, and shall be submitted to the City Attorney for such approval not less than thirty (30) days prior to Lessee's occupancy of the Premises. The policy or policies of insurance shall then be secured by Lessee and filed with the City Attorney not less than fifteen (15) days prior to Lessee's occupancy of the Premises. No approval shall be unreasonably withheld.

The Certificate for each insurance policy shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, whether at the request of Lessee or for any other reason, except after thirty (30) calendar days advance written notice mailed by the insurer to Lessor's City Attorney, and that such notice shall be transmitted postage prepaid, return receipt requested.

The obligations of Lessee under this Article are part of but do not limit or satisfy Lessee's obligations under Article V.

Article V

Section 5.1. Indemnity: Lessee shall forever indemnify, defend and hold harmless Lessor, its officers, agents, and employees, from and against any and all claims, suits, actions, judgments, and liability for loss, injury, damages and/or expenses suffered or alleged to have been suffered during the lease term by any person or to any property due to or alleged to be due to an act, omission or the negligence of Lessee, its officers, agents, employees, vendors, subtenants or contractors, directly or indirectly, in connection with the use and occupancy of the Premises or any part of the Premises, by Lessee, its officers, agents, employees, vendors, subtenants or contractors.

Lessee shall reimburse Lessor, within thirty (30) days after demand for such reimbursement, for any damage done to Lessor's buildings, facilities, equipment or property caused by an act, omission or the negligence of Lessee, its officers, agents, employees, vendors, subtenants or contractors, during Lessee's use and occupancy of the Premises or any part of the Premises.

Article VI

Section 6.1. Security: Lessee shall contract with and pay, as independent contractors, security guards from an agency duly licensed by the State of Maryland, in numbers sufficient to maintain security, peace and order at the boat shows inside the Premises during the lease term.

Article VII

Section 7.1. Interior Construction: Lessee shall have the right to construct, install or erect seats, platforms, booths, tanks, scaffolding, rigging, floating piers, pilings, docks, catwalks, tents, exhibits, and any other apparatus or structure which Lessee may deem necessary or

desirable for the purpose of presenting the boat shows. Lessee shall have the right to erect and construct a temporary fence so as to enclose the Premises in such a manner as to limit entry onto the Premises through controlled entrances. Such fence shall not contain barbed wire, razor wire or any similar materials.

Section 7.2. Exterior Construction: Lessee shall erect and construct temporary wooden sidewalks, wherever necessary to provide for pedestrian traffic, outside of the Premises where the existing sidewalks are enclosed in the Premises by a temporary fence described in Section 7.1. All temporary sidewalks shall be handicap accessible and illuminated during hours of darkness and maintained by Lessee in a safe and secure condition.

Section 7.3. ADA and Other Permits: Lessee hereby assumes exclusive responsibility for compliance with any and all applicable provisions of the Americans with Disabilities Act of 1990, as amended from time to time, at the Premises, during the entire time Lessee uses or occupies the Premises or any part of the Premises. Subject to the inspection provisions of Section 3.7 of this Lease and to standard public safety and health approvals, any and all permits, licenses or authorizations required to be obtained from the City by Lessee during the term of this Lease for the purpose of constructing or erecting the temporary structures described in Sections 7.1 and 7.2 of this Lease or for operating the boat shows, shall be deemed granted and issued upon the execution of this Lease by Lessor and Lessee. All other federal, state or county permits, which may be required, shall be the responsibility of the Lessee.

Article VIII

Section 8.1. Trash: Lessee, at its own expense, shall provide an adequate number of trash and recycling containers for its use within the boat show grounds during the entire use and occupancy period of the Premises, and shall provide for the prompt removal of all such containers, trash and refuse. Lessor, at its own expense, shall provide an adequate number of trash dumpsters outside the boat show grounds for the use of Lessee during the use and occupancy period and shall provide for the prompt removal of trash, refuse and recycling materials generated during the boat show.

Section 8.2. Cleanliness: Lessee shall be responsible for keeping the Premises free of debris, trash and refuse, which shall be placed in dumpsters or receptacles.

Section 8.3. Sanitation and Toilets: Lessee shall, at its own expense, provide adequate and sanitary toilet facilities throughout the Premises for use by the general public and others attending or participating in the boat shows, including sufficient ADA compliant sanitary toilet facilities.

Article IX

Section.9.1. Quiet Enjoyment: Lessor covenants with Lessee that at all times during the term of this Lease, Lessee shall peacefully hold and quietly enjoy the use and occupancy of the Premises without any disturbance or hindrance from Lessor or from any other person claiming through Lessor, except that Lessor or others claiming through Lessor may enter onto the Premises to effect necessary repairs to their own facilities as reasonably contemplated by the terms of this Lease, and to assure compliance with the terms of this Lease. Lessee shall cooperate with the Lessor to effect this access to the Premises.

Section 9.2. Trash and Public Safety Cooperation: The parties shall cooperate with each other and use their best efforts to ensure that there is prompt trash removal, public safety protection and adequate traffic control during the designated period of use and occupancy by Lessee of the Premises.

Article X

Section 10.1. Condition of Premises After Show: Following the lease term, Lessee, at Lessee's sole expense, shall return the Premises to Lessor in the same or superior condition than received, natural wear and tear excepted.

Section 10.2. Lessee's Equipment After Show: Prior to the expiration of the lease term, Lessee shall immediately remove all of its property, fixtures and chattels from the Premises. In the event that Lessee, its officers, agents, employees, vendors, subtenants or contractors, fail to remove any item of property, Lessor reserves the right to remove and store any such property after the expiration or termination of the lease term at Lessee's expense or as an alternative, to leave the property at the Premises. In either case, Lessor shall charge Lessee per diem rental for storage of such property. Lessor shall bear no responsibility or liability for damage to or expense incurred as a result of property left, removed or stored under the provisions of this Section. Lessee shall pay to Lessor any expenses or charges under this Section billed to Lessee by Lessor within thirty (30) days after delivery of any such bill by Lessor to Lessee.

Section 10.3. Post-Show Inspection: Within ten (10) days following the expiration of the lease term, Lessee shall accompany Lessor during a tour of the Premises to determine the condition of the Premises. Items corrected or repaired by Lessor, deemed by Lessor to be the responsibility of Lessee, shall be billed by Lessor and paid by Lessee within thirty (30) days after receipt of such bill.

Article XI

Section 11.1. Remedies: All duties, liabilities and/or obligations imposed upon or assumed by Lessee and Lessor by or under this Lease shall be taken or construed as cumulative and the mention of any specified duty, liability or obligation imposed upon or assumed by Lessee or Lessor under this Lease shall not be taken or construed as a limitation or restriction upon any or all of the other duties, liabilities, or obligations imposed upon or assumed by Lessee under this Lease. The remedies provided for in this Lease shall be construed to be cumulative and in addition to any other remedies provided in law or equity which Lessor or Lessee would have in any case. Lessor shall have the right to seek and obtain in any court of competent jurisdiction an injunction, without the necessity of posting a bond, to restrain a violation or alleged violation by Lessee of any term of this Lease, anything to the contrary notwithstanding. In no case shall a waiver by either party of the right to seek relief under this provision constitute a waiver of any other or further violation. The remedies provided in this Lease shall not be deemed exclusive of other remedies not specified.

Article XII

Section 12.1. Impossibility of Performance: If, for any reason, an unforeseen event not the act of Lessor occurs, including but not limited to fire, casualty, act of God, labor strike or other unforeseen occurrence which renders impossible the fulfillment of any rental period of this Lease, Lessee shall have no right to claim damages not right to claim against Lessor for damages, but Lessee shall not be liable for the payment of rent for said rental period. However,

if such impossibility relates to not more than five percent (5%) of the rental period, Base Rent, if determined under Section 1.3(A)(ii) of this Lease, shall be prorated to account for the number of scheduled hours the Show is not open to the public.

Article XIII

Section 13.1. Payment: Lessee shall make all payments due under this Lease by check, payable to the City of Annapolis. In addition to all other amounts due pursuant to this Lease, Lessee shall pay Lessor a monthly late fee of 1.5% (18% per annum) of any payment more than sixty (60) days past due, until paid.

Article XIV

Section 14.1. Time is of the Essence: Time is of the essence in the performance of this Lease. The times and deadlines specified in this Lease shall not be extended for any reason, except as may be provided in this Lease, relating to the term of the Lease or the installation or removal of equipment, materials or displays from the Premises, without written consent of Lessor.

Article XV

Section 15.1. Assignment: Lessee shall not assign, transfer, or otherwise dispose of this Lease without the prior written consent of Lessor, but such consent shall not be unreasonably or arbitrarily withheld. The foregoing shall not prevent Lessee from subleasing portions of the Premises to boat show exhibitors, provided the portion of the Premises subleased to any exhibitor does not exceed twenty-five percent (25%) of the total area of the Premises.

Article XVI

Section 16.1. Independent Contractor: Lessee is an independent contractor and not the agent or employee of Lessor. Under no circumstances shall this Lease be considered to create an employee or agency relationship or a partnership or joint venture.

Article XVII

Section 17.1. Liens: Lessee hereby consents that Lessor shall have a lien upon all property of Lessee located from time to time upon the Premises for any and all unpaid charges which arise under this Lease. Lessee hereby consents to and Lessor shall have the power to impound and retain possession of such property until all such charges and late fees due under Article XIII have been paid, in full, to the satisfaction of Lessor. In the event such charges remain unpaid ten (10) days after the termination of this Lease, Lessor shall have the power to sell such property at public auction and apply the receipts from such auction to all such unpaid charges.

Article XVIII

Section 18.1. Compliance with all Laws: Lessee shall comply with all laws, ordinances, and statutes applicable to the Premises or any part of the Premises, and the use and occupancy thereof, and to pay all taxes or charges imposed by law in connection with Lessee's use and occupancy of the Premises. Lessee shall have a reasonable time to correct any violation.

Article XIX

Section 20.1. Immunities: Nothing in this Lease shall be interpreted or construed to waive, in whole or in part, or to otherwise diminish, Lessor's statutory, common law or other immunities in any action in tort, in contract or in any other form. The parties agree that if any duty assumed by Lessor under the terms of this Lease or any action taken by Lessor pursuant to any such term is construed to waive, in whole or in part, any such immunity, then the immunity shall nevertheless be fully restored, and shall bind and protect the parties as a contractual undertaking.

Article XX

Section 21.1 Authority: This Lease is authorized by Ordinance O-44-12 adopted by the City Council of the City of Annapolis.

In Witness Whereof, the City of Annapolis, by and through its duly authorized agent, has caused this Lease to be executed on its behalf, and the Lessee, Cruiser University, Inc. trading as Annapolis Spring Sailboat Show and Cruiser University, Inc. trading as Annapolis Spring Sailboat Show, has duly executed this Lease on the date first written above.

Attest: City of Annapolis

Regina C. Watkins-Eldridge, MMC
City Clerk

By: _____
Joshua J. Cohen, Mayor (Seal)

Annapolis Spring Sailboat Show

Cruisers University, Inc. trading as

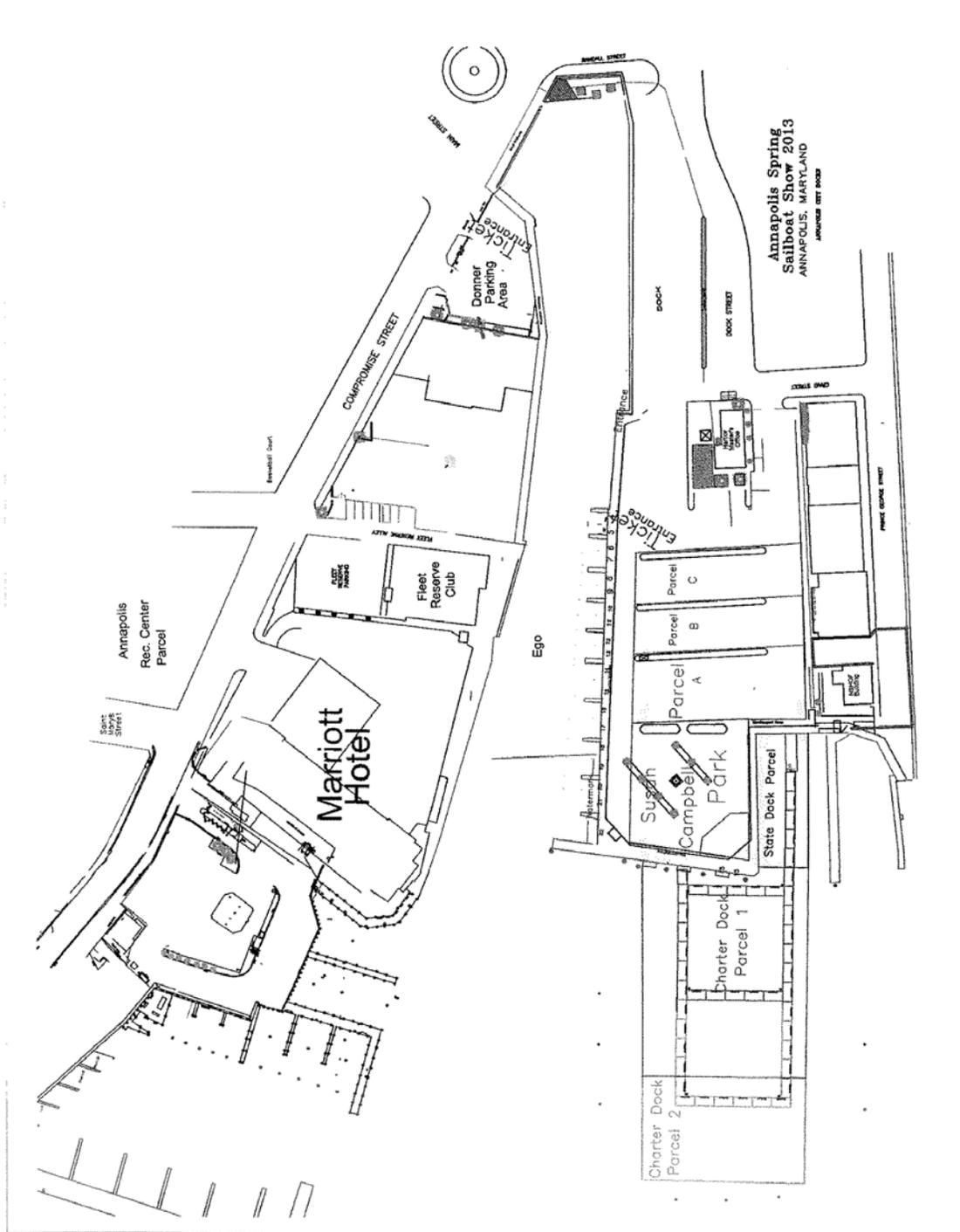
Witness

By: _____
C.E. Hartman, President (Seal)

Approved as to form and legal sufficiency:

Karen M. Hardwck, City Attorney

Exhibit A



**Alderman Littmann's Proposed Amendments to O-44-12
Lease of City Property: Boat Shows in Spring 2013**

Amendment #1

Page 6: amended as follows:

Article VIII

Section 8.1. Trash: Lessee, at its own expense, shall provide an adequate AND EQUAL number of trash and recycling containers for its use within the boat show grounds during the entire use and occupancy period of the Premises, and shall provide for the prompt removal of all such containers, trash and refuse. THE LESSEE SHALL COLLECT THE SAME RECYCLING MATERIALS THAT THE LESSOR COLLECTS IN ITS CURBSIDE RECYCLING SERVICE.

EXPLANATION

CAPITAL LETTERS indicate matter added to existing law.

[brackets] indicate matter stricken from existing law.

Underlining indicates amendments.

FISCAL IMPACT NOTE

Legislation No: O-44-12

First Reader Date: 12-10-12

Note Date: 1-11-13

Legislation Title: Lease of City Property: Boat Shows in Spring 2013

Description: For the purpose of authorizing a lease of certain municipal property located in the areas of Susan B. Campbell Park, Annapolis City Donner Parking Lot, Ego Alley Water Space, and Old City Recreation Center and other property and water locations as described in the lease to CRUISERS UNIVERSITY, INC., t/a Annapolis Spring Sailboat Show, in APRIL 2013, to conduct boat shows.

Analysis of Fiscal Impact:

This legislation describes and authorizes an attached lease with Lessee, CRUISERS UNIVERSITY, INC., that will allow for the rental of certain City property and water locations from April 23, 2013 to April 30, 2013. The lease is expected to stimulate the boating industry and encourage visitors to the area, thereby generating tax revenue, rental income, and economic benefit to the City.

The lease provides that the Lessee will pay rent totaling \$12,175.50 for use of the named parcels. Lessee will obtain all required permits which are priced to cover the cost of inspections. The City will be reimbursed for costs and services including utilities, parking and transportation, facilities and services, police services, and fire services. Permits and inspections, and costs of City services to be invoiced will have no fiscal impact.

The lease provides that the City, at its own expense, will provide an adequate number of dumpsters outside the boat show grounds for the use of the Lessee during the period and shall provide for the prompt removal of trash, refuse and recycling materials generated during the show. No estimate of the cost to the City is available at this time, however, the City's cost for refuse removal for the fall boat shows was \$12,348.30.

The City will experience lost parking meter revenue estimated at \$22,753 and lost docking revenue estimated at \$2,000 due to the areas to be leased.

The direct negative fiscal impact to the City is \$12,577.50 not including the cost of dumpsters outside the rented premises.

**CITY COUNCIL OF THE
City of Annapolis**

Resolution No. R-2-13

Introduced by: Alderman Kirby

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
1/14/13			4/14/13
Referred to	Referral Date	Meeting Date	Action Taken
Housing and Human Welfare	1/14/13		

A RESOLUTION concerning

Support for Angela Wakhweya, M.D. to Continue Her Service as the Anne Arundel County Health Officer

FOR the purpose of expressing the sense of the Annapolis City Council to support Angela Wakhweya, M.D. in continuing her service as the Anne Arundel County Health Officer.

WHEREAS, Dr. Wakhweya has served as Health Officer of Anne Arundel County since October 2011; and

WHEREAS, Dr. Wakhweya is the first African-American and first African-American woman to hold this position in the Anne Arundel County Department of Health's 81 year history; and

WHEREAS, as part of the State Health Improvement Process ("SHIP"), she helped form the Healthy Anne Arundel Coalition that fosters collaboration between public and private sector partners to implement actionable strategies to improve public health in Anne Arundel County; and

WHEREAS, Dr. Wakhweya has highlighted and reviewed evidence-based strategies to reduce health related disparities that exist in Anne Arundel County and has been at the forefront of the dialogue to improve disparities among African-Americans and Hispanics that have persisted for decades; and

WHEREAS, she has been instrumental in streamlining communication protocols related to emergency preparedness and response resulting in a steady improvement in response capability of the health department by learning from the response to the Derecho event and Super Storm Sandy and infectious disease outbreaks; and

WHEREAS, Dr. Wakhweya has met with City officials to discuss ways in which she can support the City of Annapolis and has visited the City of Annapolis Emergency

1 Command Center to assess ways in which coordination of City and County
2 assets can be deployed collaboratively to mitigate impact on City and County
3 residents prior, during and in the aftermath of emergencies; and
4

5 **WHEREAS,** Dr. Wakhweya previously served as Deputy Director at the Infectious Disease
6 and Environmental Health Administration (IDEHA), Maryland Department of
7 Health and Mental Hygiene in Baltimore, Maryland and worked in partnership
8 with a cross-section of leadership in managing the state's efforts to reduce the
9 transmission of infectious diseases, help impacted persons live longer,
10 healthier lives; and, protect individuals and communities during emergencies
11 and from environmental health hazards; and
12

13 **WHEREAS,** Dr. Wakhweya has a Doctor of Medicine degree from Makerere University
14 Medical School in Kampala, Uganda, and a Master of Science in Economics
15 jointly awarded by the London School of Economics and Political Science, and
16 the London School of Hygiene and Tropical Medicine, University of London;
17 and
18

19 **WHEREAS,** the Health-General Article of the State Code, § 3-302(f), provides that the
20 health officer for a county serves at the pleasure of the "governing body" of the
21 county and the Secretary of the Maryland Department of Health and Mental
22 Hygiene; and
23

24 **WHEREAS,** the Health-General Article of the State Code, § 3-302(g), further provides that
25 the health officer may only be removed from office by the Secretary with the
26 concurrence of the governing body; and
27

28 **WHEREAS,** the Anne Arundel Charter, § 1014, provides that any action to be taken by the
29 "governing body" of the County shall be taken by the County Executive and
30 referred to the County Council for confirmation; and
31

32 **WHEREAS,** Secretary Joshua M. Sharfstein, M.D., of the Maryland Department of Health
33 and Mental Hygiene seeks the removal of Anne Arundel County Health Officer
34 Angela M. Wakhweya, M.D., an action in which Anne Arundel County
35 Executive John R. Leopold concurs and for which County Executive Leopold
36 seeks confirmation by the County Council through Resolution No. 5-13; and
37

38 **WHEREAS,** the County Council of Anne Arundel County considered Resolution No. 5-13 on
39 January 7, 2013; and
40

41 **WHEREAS,** the County Council of Anne Arundel County is scheduled to continue its public
42 hearing and vote on Resolution No. 5-13 on January 22, 2013.
43
44

45 **NOW THEREFORE BE IT RESOLVED BY THE ANNAPOLIS CITY COUNCIL** that the
46 Annapolis City Council supports Angela Wakhweya, M.D. in continuing her service as the Anne
47 Arundel County Health Officer.
48
49

1 **AND, BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY COUNCIL** that a copy of this
2 Resolution be sent to Secretary Joshua M. Sharfstein, M.D., County Executive John R. Leopold,
3 and Angela M. Wakhweya, M.D.
4

5
6 **ADOPTED** this _____ day of _____, _____.
7

8
ATTEST:

THE ANNAPOLIS CITY COUNCIL

BY

Regina C. Watkins-Eldridge, MMC, City Clerk

Joshua J. Cohen, Mayor

9
10
11
12
13
14 **EXPLANATION**

15 CAPITAL LETTERS indicate matter added to existing law.

16 [brackets] indicate matter stricken from existing law.

17 Underlining indicates amendments.
18

Policy Report

R-2-13

Support for Angela Wakhweya, M.D. to Continue Her Service as the Anne Arundel County Health Officer

The proposed resolution would express the sense of the Annapolis City Council to support Angela Wakhweya, M.D. in continuing her service as the Anne Arundel County Health Officer.

Prepared by Jessica Cowles, Legislative and Policy Analyst in the City of Annapolis Office of Law at JCCowles@annapolis.gov or 410.263.1184.

**Mayor Cohen's Proposed Amendments to R-2-13
Support for Angela Wakhweya, M.D. to Continue Her Service as the Anne Arundel
County Health Officer**

Amendment #1

Page 1, Line 10:

Strike "Support" and insert "Appreciation"

Strike "to continue" and insert "for"

Amendment #2

Page 1, Line 12:

Strike "sense" and insert "appreciation"

Strike "to support" and insert "for"

Amendment #3

Page 1, Line 25:

Insert:

WHEREAS, Dr. Angela Wakhweya leads, and the County Department of Health manages, the Healthy Anne Arundel Coalition (HAAC) that was formed in December 2011. The HAAC established a Steering Committee, which included the City of Annapolis as a stakeholder and selected two health priorities: 1) Obesity Prevention and 2) Management of Substance Abuse and Mental Health as Co-Occurring Disorders; and

WHEREAS, the HAAC formulated an action plan with specific goals and strategies for health priorities and to effectively leverage new and existing resources to measurably improve the County's health. As Health Officer, Dr. Wakhweya has provided a high standard of excellence and professional leadership, creating opportunities for strong and collaborative partnerships as the Steering Committee members continue to work on this important health initiative.

Amendment #3

Page 2, Strike Lines 19-42: strike entirely.

Amendment #4

Page 2, line 19 insert "Whereas, Dr. Wakhweya, M.D. has collaboratively reached out to the City of Annapolis, inviting Human Services Officer Gail Smith to represent the city on the Healthy Anne Arundel Coalition Steering Committee, a broad-based partnership working to enhance awareness, prevention and healthier living."

Amendment #5

Page 2, Line 46:

Strike "supports Angela Wakhweya, M.D. in continuing her service as the Anne Arundel County Health Officer" and insert "hereby expresses its support for Angela Wakhweya, M.D. for her service to the City of Annapolis as the Anne Arundel County Health Officer"

Amendment #6

Page 3, Lines 1-3: strike entirely.

Amendments to R-2-13

Offered by Alderman Israel

Amendment No. 1

In line 42 on page 2 of the resolution strike the period and substitute a comma and the word "and".

Amendment No. 2

In line 43 on page 2 of the resolution insert the following:

Whereas, as the City of Annapolis no longer has its own health officer and the county health officer has jurisdiction throughout the county, including Annapolis, the City of Annapolis has an interest in who serves as county health officer, and

Amendment No. 3

In the line after line 43 on page 2 of the resolution insert the following:

Whereas, Dr. Wakhweya has not been told by State or County officials the reason for her dismissal or been given the opportunity to respond.

Amendment No.4

In the line before line 1 on page 3 of the resolution insert the following:

Now, therefore be it further resolved that it is fundamentally unfair for State and County officials to dismiss Dr. Wakhweya without giving her a reason and giving her the opportunity to respond.

FISCAL IMPACT NOTE

Legislation No: R-2-13

First Reader Date: 1/14/13

Note Date: 1/20/13

Legislation Title: Support for Angela Wakhweya, M.D. to Continue Her Service as the Anne Arundel County Health Officer

Description: For the purpose of expressing the sense of the Annapolis City Council to support Angela Wakhweya, M.D. in continuing her service as the Anne Arundel County Health Officer.

Analysis of Fiscal Impact: This legislation produces no fiscal impact.

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**CITY COUNCIL OF THE
City of Annapolis**

Ordinance No. O-3-13

Sponsor: Mayor Cohen

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	180 Day Rule
1/28/13			7/26/13
Referred to	Referral Date	Meeting Date	Action Taken
Rules and City Gov't			
Planning Commission			

8
9 **A ORDINANCE** concerning

10 **Bulk Regulations for Governmental Uses in the C1-A Zoning District**

11 **FOR** the purpose of specifying that lot size and width requirements for existing buildings with
12 a governmental use in the C1-A zoning district shall be determined through the special
13 exception process, pursuant to Chapter 21.26 of the City of Annapolis Code.

14 **BY** repealing and re-enacting with amendments the following portions of the Code of the
15 City of Annapolis, 2012 Edition
16 Section 21.50.130
17

18
19 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY**
20 **COUNCIL** that the Code of the City of Annapolis shall be amended to read as follows:

21
22 **CHAPTER 21.50 – BULK REGULATIONS TABLES**
23

24 **21.50.130 - Bulk Regulations Table C1-A District.**

25 **Important.** The notes at the end of the table are as much a part of the law as the table itself.
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Permitted uses, special exception uses, and uses subject to specific standards	Floor Area Ratio (maximum)	Density (maximum, expressed as minimum sq. ft. of lot area per dwelling unit)	Lot Dimensions (minimum) Area (sq. ft. or acres)	Lot Dimensions (minimum) Width (ft)	Yards (minimum) Front (ft)	Yards (minimum) Interior Side (ft)	Yards (minimum) Corner Side (ft)	Yards (minimum) Rear (ft)	Height (maximum, feet)
Bed and breakfast homes	2.0		3,600	25	1	2	3	30	4
Dwellings, single-family detached	2.0		3,600	25	1	2	3	30	4
Dwellings, two-family	2.0	1,800	3,600	25	1	2	3	30	4
Educational institutions	2.0		20,000	90	1	2	3	30	4
Governmental uses	2.0		10,000 ⁶	70 ⁶	1	2	3	30	4
Museums and art galleries	2.0		20,000	90	1	2	3	30	4
Religious institutions	2.0		10,000	70	1	2	3	30	4
Accessory Uses									
Accessory buildings	2.0		Per the principal use	Per the principal use	1	5 ⁵	3	2	4
Mooring slip					No requirement	No requirement	No requirement	No requirement	

- 1
2 Table Notes:
3 1. Front yards are not required, except in the case of an established front yard pursuant to
4 Chapter 21.38.
5 2. Side yards are not required, but where a side yard is provided it shall be not less than five
6 feet.
7 3. Corner side yards are not required, except in the case where there is an established front
8 yard in the remainder of the block. In those cases, the corner side yard shall be provided in
9 accordance with the established-front-yard regulations pursuant to Chapter 21.38.
10 4. In the historic district, special height measurement and limits requirements apply, see
11 Chapter 21.56.
12 5. Unless the entire accessory structure is located on the rear 25 percent of the lot, in which
13 case only two feet is required. See illustration at Section 21.60.100.
14 6. IN THE CASE OF EXISTING BUILDINGS, LOT SIZE AND WIDTH REQUIREMENTS
15 SHALL BE DETERMINED THROUGH THE SPECIAL EXCEPTION PROCESS, PURSUANT
16 TO CHAPTER 21.26.

Policy Report

Ordinance O-3-13

Bulk Regulations for Governmental Uses in the C1-A Zoning District

The proposed ordinance would specify that lot size and width requirements for existing buildings with a governmental use in the C1-A zoning district shall be determined through the special exception process, pursuant to Chapter 21.26 of the City of Annapolis Code.

Prepared by Jessica Cowles, Legislative and Policy Analyst in the City of Annapolis Office of Law at 410.263.1184 or JCCowles@annapolis.gov.

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**CITY COUNCIL OF THE
City of Annapolis**

Resolution No. R-4-13

Introduced by: Mayor Cohen, Alderman Pfeiffer and Alderwoman Finlayson

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
1/24/13			4/26/13
Referred to	Referral Date	Meeting Date	Action Taken
Public Safety	1/24/13		

8
9 **A RESOLUTION** concerning

10 **Peggy Kimbo Way**

11 **FOR** the purpose of declaring that Maryland Avenue shall bear the honorary designation of
12 "Peggy Kimbo Way" to celebrate the contributions of Ethelda "Peggy" Kimbo to the City
13 of Annapolis.

14
15 **WHEREAS,** Peggy Kimbo was a native Annapolitan, born on College Avenue near the U.S.
16 Naval Academy -- an institution she would help transform; and

17
18 **WHEREAS,** Peggy Kimbo was named by the U.S. Naval Academy's Class of 1958 as an
19 honorary member; and

20
21 **WHEREAS,** Peggy Kimbo worked on Maryland Avenue for over 50 years, touching the
22 hearts of many Annapolitans and visitors while serving as the Hostess for the
23 City; and

24
25 **WHEREAS,** Peggy Kimbo lived a life that made a difference to people from all walks of life,
26 not seeing color, wealth, or power but rather individuals deserving respect and
27 kindness; and

28
29 **WHEREAS,** Peggy Kimbo and the Kimbo family opened their home and hearts by
30 sponsoring African American Midshipmen for many years as the Academy
31 worked to become more fully integrated; and

32
33 **WHEREAS,** Peggy Kimbo served as the mom in Annapolis for these Midshipmen and
34 helped ease their transition to the U.S. Naval Academy and supported them in
35 the challenges they encountered by providing a refuge, encouragement and, if
36 necessary, tough love; and

1 **WHEREAS,** Peggy Kimbo was an anchor of Annapolis culture, who remembered its past,
2 forgave its injustices, and focused on a positive, unified future;
3

4 **WHEREAS,** the honorary designation of Maryland Avenue as “Peggy Kimbo Way” is a
5 fitting celebration of these accomplishments;
6

7 **WHEREAS,** the honorary designation does not conflict with any other City street names nor
8 Anne Arundel County street names in the Annapolis area.
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11 **NOW, THEREFORE, BE IT RESOLVED BY THE ANNAPOLIS CITY COUNCIL** that Maryland
12 Avenue shall be shall bear the honorary designation of “Peggy Kimbo Way” to celebrate the
13 contributions of Ethelda “Peggy” Kimbo to the City of Annapolis.
14

15 **AND BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY COUNCIL** that a copy of this
16 resolution shall be provided to the Kimbo family.
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19 **ADOPTED** this _____ day of _____, _____.
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ATTEST:

THE ANNAPOLIS CITY COUNCIL

BY

Regina C. Watkins-Eldridge, MMC, City Clerk

Joshua J. Cohen, Mayor

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27 **EXPLANATION**

28 CAPITAL LETTERS indicate matter added to existing law.

29 [brackets] indicate matter stricken from existing law.

30 Underlining indicates amendments.
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Policy Report

R-4-13

Peggy Kimbo Way

The proposed resolution would declare that Maryland Avenue shall bear the honorary designation of “Peggy Kimbo Way” to celebrate the contributions of Ethelda “Peggy” Kimbo to the City of Annapolis.

Prepared by Jessica Cowles, Legislative and Policy Analyst in the City of Annapolis Office of Law at JCCowles@annapolis.gov or 410.263.1184.

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**CITY COUNCIL OF THE
City of Annapolis**

Resolution No. R-5-13

Introduced by: Alderman Israel

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
1/28/13			4/26/13
Referred to	Referral Date	Meeting Date	Action Taken
Rules and City Gov't	1/28/13		
Historical Markers Commission	1/28/13		

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A RESOLUTION concerning

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Washington Resignation Park

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FOR the purpose of supporting the recommendation of the City Dock Advisory Committee that the Donner Parking Lot be transformed into a public park; that the park be named the Washington Resignation Park; and that a suitable likeness of George Washington be placed in the park with a plaque explaining the significance of Washington's resignation to Congress of his commission as Commander in Chief of the armed forces.

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WHEREAS, the greatest event to occur in the history of Annapolis was George Washington's resignation as Commander in Chief of the armed forces; and

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WHEREAS, Washington surrendered his commission as Commander in Chief of the armed forces to Congress in December 1783 when it was meeting in the State House; and

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WHEREAS, Washington's surrender of his commission to Congress established a fundamental principle of American government that the military is subordinate to the civilian government; and

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WHEREAS, it is ironic that Annapolis is known in the Nation and, indeed, the world as the site of the United States Naval Academy; and

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WHEREAS, vital as land forces and the Navy have been to defending the Nation, the surest protection of civil liberties of citizens is civilian control of the military.

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NOW THEREFORE BE IT RESOLVED BY THE ANNAPOLIS CITY COUNCIL that the City Council supports the recommendation of the City Dock Advisory Committee to transform the Donner Parking Lot into a public park.

1 **AND, BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY COUNCIL** that the park be
2 named the Washington Resignation Park in recognition of the significance of George
3 Washington resigning his military commission to the civilian Congress.
4

5 **AND, BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY COUNCIL** that a suitable
6 likeness of Washington be placed in the park with a plaque explaining the significance of his
7 resignation as military commander to Congress.
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9 **ADOPTED** this _____ day of _____, _____.
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ATTEST:

THE ANNAPOLIS CITY COUNCIL

BY

Regina C. Watkins-Eldridge, MMC, City Clerk

Joshua J. Cohen, Mayor

EXPLANATION

CAPITAL LETTERS indicate matter added to existing law.
[brackets] indicate matter stricken from existing law.
Underlining indicates amendments.

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Policy Report

R-5-13

Washington Resignation Park

The proposed resolution would support the recommendation of the City Dock Advisory Committee that the Donner Parking Lot be transformed into a public park. The proposed resolution would provide for the public park to be named the Washington Resignation Park in honor of George Washington's resignation of his military commission before Congress assembled at the State House. R-5-13 also states that a suitable likeness of George Washington be placed in the park with a plaque explaining the significance of his resignation to Congress of his commission as Commander in Chief of the armed forces.

Prepared by Jessica Cowles, Legislative and Policy Analyst in the City of Annapolis Office of Law at JCCowles@annapolis.gov or 410.263.1184.

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**CITY COUNCIL OF THE
City of Annapolis**

Resolution No. R-6-13

Introduced by: Mayor Cohen

LEGISLATIVE HISTORY			
<i>Legislative referrals are subject to City Council action at the time of introduction and are reflected in the City Council's adopted minutes</i>			
First Reading	Public Hearing	Fiscal Impact Note	90 Day Rule
1/28/13			4/26/13
Referred to	Referral Date	Meeting Date	Action Taken
Rules and City Gov't	1/28/13		
Finance	1/28/13		

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A RESOLUTION concerning

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Extension of Deadline for Submission of Proposed Union Agreements

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FOR the purpose of postponing until Monday, March 11, 2013, the submission to the Mayor of proposed memoranda of understanding between employee organizations and the City.

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WHEREAS, Section 3.32.060D of the Annapolis City Code directs submission of proposed memoranda of understanding of collective bargaining agreements to the Mayor by the first Monday in February (February 4, 2013) prior to the beginning of a fiscal year; and

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WHEREAS, continued good-faith negotiations render conformity to this directive improbable; and

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WHEREAS, the Maryland Court of Appeals has held that directive language enacted by a legislature may be read as permissive when binding upon the same body.

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NOW, THEREFORE, BE IT RESOLVED BY THE ANNAPOLIS CITY COUNCIL that the City Council waives the directive of Section 3.32.060D of the City Code and postpones the submission to the Mayor of any proposed union memoranda of understanding until Monday, March 11, 2013.

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ADOPTED this ____ day of _____, 2013.

ATTEST:

THE ANNAPOLIS CITY COUNCIL

BY

Regina C. Watkins-Eldridge, MMC, City Clerk

Joshua J. Cohen, Mayor

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EXPLANATION

CAPITAL LETTERS indicate matter added to existing law.
[brackets] indicate matter stricken from existing law.
Underlining indicates amendments.

Policy Report

R-6-13

Extension of Deadline for Submission of Proposed Union Agreements

The proposed resolution would postpone until Monday, March 11, 2013 the submission to the Mayor of proposed memoranda of understanding between employee organizations and the City.

Prepared by Jessica Cowles, Legislative and Policy Analyst in the City of Annapolis Office of Law at JCCowles@annapolis.gov or 410.263.1184.



Chartered 1708

Joshua J. Cohen, Mayor
City of Annapolis
160 Duke of Gloucester Street
Annapolis, Maryland 21401

January 14, 2013

To: Alderpersons, City Of Annapolis

From: Mayor Joshua J. Cohen

Re: Historic Markers Commission

I respectfully submit for your approval the appointment of Mr. Robert C. Clark to the Historic Markers Commission. Mr. Clark is a resident of Ward 1 and this appointment fills a vacancy on the Commission. His resume is attached.

Robert C. Clark
9 South Street
Annapolis, MD 21401
410-626-1600
rbrcclr34@gmail.com

Thank You.

JJC/hrr

Reviewed by: _____	<u>Economic Matters</u>
___ Favorable	___ Unfavorable
_____	_____
Committee Chair	Date

Robert C. Clark (Robert)

Residence: 9 South Street
Annapolis, MD 21401
(443) 716-5414 (Cell)
(410) 626-1600 (Home)
Email: rbrcclr34@gmail.com

Education: Juniata College, Huntington, PA, B.S., Economics
Wharton School of Business, Securities Industry Institute

Business: UBS Financial Services 3/1986-3/2010
-Managing Director, Washington D. C., Garden City, NY
-Director of Marketing, Weehawken, NJ
-Regional manager, Washington, D. C.

E.F. Hutton Group, Inc 6/1970-3/1986
-Branch manager, Hartford, CT

Affiliations: Thomas Jefferson's Poplar Forest, Board Member 2004-Present
Chairman, 2010-2012
Historic Annapolis, Inc., Board Member 2010 – Present
Long Island Philharmonic, Board Member 2001-2006
Locust Valley Library, NY, Board Member 2006
Rotary Club of Annapolis, Member 2010-Present
Acorn's Landing HOA, Board Member 2008-Present, President, 2008
Bayberry Hill HOA, President, 1993

Family: Spouse: Stephanie

Children: Heather
Allison

Other: Collector of early American copper coins, Collector of colonial era books and manuscripts, First Lieutenant in U.S. Army Airbourne, Eagle Scout

January 28, 2013

Mayor Josh Cohen and
The Annapolis City Council
City Hall
160 Duke of Gloucester Street
Annapolis, Maryland 21401

Dear Mayor Cohen and Aldermen:

Enclosed is the Report and Recommendations, with Exhibits, of the Council Compensation Commission. We appreciate the opportunity to serve our fellow residents, and trust that you will find our recommendations useful. If you have any questions or would like to hear from us in person, we would be pleased to attend a City Council meeting, work session, or other forum as you see fit.

Very truly yours,

Dale P. Kelberman
Chairman
Annapolis City Council Compensation Commission

Cc w/ encl: Karen M. Hardwick, Esq., City Attorney

**REPORT AND RECOMMENDATIONS OF THE
2012-2013 ANNAPOLIS CITY COUNCIL
COMPENSATION COMMISSION**

I. Introduction

Pursuant to the City Charter, Article II Section 4, on October 22, 2012 and November 26, 2012, the City Council appointed the undersigned as the members of the 2012-2013 City Council Compensation Commission. The members were sworn in by Mayor Cohen at the first meeting of the full Commission on November 27, 2012. The Commission was charged with the responsibility of making recommendations to the City Council on the compensation to be paid to the Mayor and the Aldermen, and to formulate an “executive pay plan” to govern the compensation of the City Manager, to take effect after the next City election.

II. Meetings of the Commission

The Commission held public meetings on the following dates: November 5, 2012, November 27, 2012, December 4, 2012, December 11, 2012, January 8, 2013 and January 15, 2012, either at City Hall or the Gorman Street location. In addition, on December 18, 2012, the Commission held a public hearing to solicit the views of the citizens of Annapolis on the issues.

III. Documents and Witnesses Interviewed

The Commission obtained a variety of documents from different sources as part of its information gathering process. The Commission had access to, among other materials: (1) the Report and related data from the previous Compensation Commissions that made compensation recommendations in 2005 and 2009; (2) comparative charts of the compensation of similar officer holders and City Managers in other parts of Maryland; (3) descriptive information regarding the duties and responsibilities of the respective officials, their salaries and benefits; (4) the 2006 Civil Service Board Hendricks Classification and Compensation Study; (5) Consumer Price information data; (6) the present contract of the City Manager; (7) salary data for the present City supervisors.

The Commission also interviewed a number of relevant parties during several of its meetings. We heard from the City Manager, the City Finance Director, the head of the City’s Human Resources Department, the Mayor, and three Aldermen: Ms. Finalyson, Ms. Hoyle and Mr. Paone (all the Aldermen were invited to meet with the Commission or submit their comments in writing).

IV. Compensation Recommendations and Justification

a. The Mayor

Recommendation: The Mayor's salary should remain at \$98,000 per year.

In 2009, our predecessor Commission recommended that the Mayor's compensation be increased to \$120,000 per year. The City Council reduced that amount, and fixed the Mayor's compensation at \$78,000, \$88,000 and \$98,000, for the years 2010, 2011 and 2012, respectively. In addition, the Mayor receives other benefits similar to those of other senior personnel in the City, such as health insurance and participation in the State Retirement program. Those benefits cost the City approximately \$30,000 per year.

According to information from the Maryland Municipal League, the Mayor's salary is the highest in the State for comparable size cities. In addition, since the last Commission made its recommendations, the City has created the position of City Manager, which has altered the day-to-day responsibilities of the Mayor. The Mayor remains a full-time position that requires a great commitment of time and energy, as the Mayor remains the CEO of the City, and the City Manager reports to the Mayor. While it is difficult to determine the extent of the change in the Mayor's duties, at the very least his duties have shifted with the advent of the City Manager position, so that the Mayor now has more time to devote to policy-making issues.

Over the last three years, the Mayor's compensation has increased an average of 12% per year, while the other City employees have had no pay increases or cost of living adjustments (although they have received step increases).

We believe the Mayor's present compensation and benefits are fair and reasonable, and should remain unchanged.¹ In addition, we believe that the current compensation package for the Mayor is sufficient such that qualified applicants for this important elected position would not be discouraged from seeking the office.

b. The Aldermen

Recommendation: The Aldermen's compensation should be increased to \$13,500 per year. The allocation of \$1500 each, presently set aside for education and training, should be expanded to permit the use of those funds for City Council expenses, such as cell phones, postage, correspondence, office supplies, and the like.

Article IV, Section 2, of the City Charter sets out the duties and responsibilities of the Aldermen, as follows:

- (a) The city council shall be the legislative body of the City of Annapolis vested with the power to enact laws. The city council shall have the authority to enact all laws necessary

¹ We considered, but ultimately rejected, including a cost-of-living increase commensurate with other City employees for the Mayor.

or convenient for the exercise of the powers granted to the City of Annapolis for the proper functioning of the government of the city and for enforcement of these laws. Except as otherwise provided by the city council, all laws adopted by the council shall take effect upon the date of adoption.

(b) The powers and duties of the city council include the power and duty to conduct oversight of the expenditure of public money and the delivery of municipal services.

(c) The city council shall sit as the planning and zoning authority of the city, except for those functions delegated to the board of appeals, the planning commission or to the planning and zoning director.

(d) The city council shall perform such other functions as specified in this Charter or by ordinance, or as conferred upon local governing bodies by the laws of the State of Maryland.

Article 2.16.190 of the City Code establishes the various City Council committees, and the duties of each.

There are at least two schools of thought on the compensation for Aldermen. On the one hand, there are those who believe that the Aldermen are essentially volunteers performing an important and valuable civic function, and any compensation they receive should be viewed as a stipend. On the other hand, there are those who say that, while the position is part-time, Aldermen spend more and more time at Council meetings, committee hearings and meetings, ceremonial duties, and responding to constituent contacts and their compensation should reflect the increased time commitment of these positions.

In 2009, the previous Compensation Commission recommended that each Alderman's compensation be increased to \$18,000 per year, with a \$1500 per year allotment for each for training and educational purposes. The City Council reduced that amount, so that the Aldermen now receive an annual salary of \$12,600 per year, and there is an allotment of \$1500 per year for education and training expenses. The Aldermen participate in the State Retirement Pension plan, but receive no other benefits.

As the City has grown and become more complex, the duties and time devoted by Aldermen has also increased, and thus a modest increase in compensation is warranted. While only two citizens appeared at the Commission's public hearing, it is worth noting that both of them recommended increasing the compensation of Aldermen.

However, the Commission has found that, in each of the last three years, roughly two-thirds of the funds set aside for training and educational expenses have not been used. At the same time, Aldermen have been required to use their own funds to pay for such expenses as office supplies to communicate with their constituents and others. Now that the Aldermen will each have space in the newly-renovated City Hall,² we believe the City should expand the use of the training and

² Section 2.16.215 of the City Code now provides that Aldermen shall have their own "dedicated office space" within City Hall.

education allotment to permit the Aldermen to use those funds for cell phones, postage, and other office expenses, to the same extent as other City agencies.

c. Executive Pay Plan for the City Manager

Article VI, Section 2B of the City Code provides:

(d) The compensation of the city manager **shall be fixed by the mayor according to the provisions of an executive pay plan formulated by the Council Compensation Commission and adopted by ordinance.** If the city manager is hired during an interim year, the mayor and council shall determine the compensation based upon the recommendations from the Finance Committee. (emphasis added).

The Commission found this language, and the Resolution creating our body, ambiguous, as we were unable to determine whether the executive pay plan we were asked to draft was designed to govern the compensation for the present City Manager. In reviewing the present City Manager's contract, it appeared that there was a conflict between our duties and his contract, and provisions of the City Code. Consequently, we sought legal advice from the City Attorney. See Exhibit A, Letter to City Attorney. Because the City Attorney believed that she might have a conflict of interest, or the appearance of such, in responding, she engaged outside counsel, Fred Sussman, Esq., a former City Attorney, to provide a response. Mr. Sussman's letter of advice is enclosed as Exhibit B. In essence, Mr. Sussman advised the Commission to objectively formulate an executive pay plan for the position of City Manager, without regard to the present City Manager's contract or other provisions of the City Code, and to leave it to the City Council to reconcile any inconsistent provisions. Based upon Mr. Sussman's advice, we considered the following issues and formulated the recommended executive pay plan accordingly.

The Commission believes that the executive pay plan (the "plan") for the City Manager should be designed to fairly compensate the City Manager for the duties and responsibilities of his position. The City Manager reports to the Mayor, and oversees each of the City department heads, a task that requires 24/7 oversight of a City of approximately 38,000 residents, a budget in excess of \$75 million, and more than 670 employees. The plan should also be competitive in the market for such executive positions, in order to attract qualified candidates with the requisite training and experience to apply for the position. To the extent possible, the plan should also insulate the City Manager from the vicissitudes of political changes, and provide incentives for improved performance on the job. The City Manager position should be included as other supervisory positions in the City Budget, without the necessity for entering into a contract with the City Manager. The Manager should be subject to removal to the same extent as other supervisory personnel, but with severance pay under certain conditions. With these general objectives in mind, the Commission recommends the following be included in the executive pay plan:

1. Base Salary with incremental increases based upon performance evaluations: The plan should include a base salary ranging from \$120,000 to \$180,000 per year, with incremental increases based upon annual performance reviews conducted by the Mayor.

The initial base salary should be fixed within the above range based upon the City Manager's education and employment experience. The annual performance review should be based upon criteria established in advance by the Mayor and City Council, in cooperation with the Director of Human Resources. The base salary and increments should be subject to cost of living increases every two years, based upon COLAs awarded to other City supervisory personnel during the two year period. The City Manager's compensation should be subject to reduction to the same extent as other supervisory City employees, including reductions based upon furloughs or similar actions.

3. **Benefits:** The City Manager should be entitled to receive the same benefits as other City supervisory personnel, such as inclusion in the City's health care and retirement plans, in which the City and the employee contribute in the same proportion as other City supervisory employees. Because of the City Manager's general duties and responsibilities, the City should provide the Manager with a City vehicle, or additional compensation to reimburse him for the use of a vehicle.
4. **Severance pay:** The Commission believes that severance pay should be a part of the pay plan in order to provide the Manager with a sense of stability and confidence, and at the same time, provide the City with the opportunity to remove the Manager for poor performance or other nonpolitical reasons without too great a penalty. The pay plan should provide for three (3) months' severance pay of salary only for a City Manager who has been removed from his position without cause and no severance if the removal is for cause. Grounds for removal that constitute "cause" shall be established by the Mayor and City Council in writing as part of the pay plan. Removal for cause shall be mandatory for the conviction of any felony, and should be within the discretion of the City Council for any other violation of law or other misconduct.
5. **Other provisions:** The Commission recommends that any other components of the City Manager's compensation plan, including termination, be adopted and applied to the City Manager according to the provisions of the City Code, to the same extent as those provisions apply to other supervisory personnel.

V. Other Issues Considered

The Commission strongly urges the City Council, the Mayor, and the City Attorney to carefully review Mr. Sussman's letter of advice to the Commission, attached as Exhibit B. Mr. Sussman has identified a number of legal issues regarding the position of City Manager, such as conflicts between the City Charter, the Code and the present City Manager's contract, that should be addressed by the City to eliminate ambiguity and inconsistency.

The Commission wishes to express its appreciation to Hilary Raftovich for staffing our Commission and providing her valuable assistance during the course of performing our duties.

Respectfully submitted,

NICK BERRY

FRANK B. BRADLEY

AMY BURDICK

FAYE CURRIE

CANDACE DONOHO

RICHARD HILLMAN

DALE P. KELBERMAN, CHAIRMAN

Date: January 28, 2013

**Dale P. Kelberman
68 Southgate Avenue
Annapolis, MD 21401
443-482-2993
kelberman@verizon.net**

December 7, 2012

By Hand Delivery

Karen Hardwick, Esq.
City Attorney
Office of Law
93 Main Street
Annapolis, Maryland 21401

Dear Ms. Hardwick:

As the Chairman of the Annapolis City Council Compensation Commission, I am writing on behalf of our Commission to seek your legal advice regarding an issue that has arisen in the course of our deliberations, specifically with respect to the recommendations for compensation to the City Manager. As you know, our Commission's task is to recommend to the City Council the compensation to be paid to the Mayor and City Council representatives commencing after the next general election. City Code, Article II, Section 4.

In addition, according to Article VI, Section 2B of the City Code, we have a role in setting the compensation for the City Manager. That section provides:

(d) The compensation of the city manager **shall be fixed by the mayor according to the provisions of an executive pay plan formulated by the Council Compensation Commission and adopted by ordinance.** If the city manager is hired during an interim year, the mayor and council shall determine the compensation based upon the recommendations from the Finance Committee. (emphasis added).

In the course of gathering information for the purpose of making our recommendations, we have obtained a copy of the existing contract between the City and the present City Manager (the "contract"). That contract is dated December 22, 2010, and sets forth the compensation and duties of the City Manager, in addition to other important provisions. The contract, however, has no termination date, and thus appears to continue in existence indefinitely (although there is a *procedure* for termination spelled out in the contract.)

In addition to setting the present salary and benefits for the City Manager, the contract also has two other provisions that relate to the City Manager's compensation. Section 5 A provides: "Employer [the City] agrees to increase said base salary and/or benefits of employee in such amounts and to such extent as the Employer may determine that it is desirable to do so on the basis of an **annual salary review** of said employee made at the same time and in the same manner as similar consideration is given other employees generally." (emphasis added.) Section 6 A of the contract states that "The Mayor shall review and evaluate the performance of Employee annually . . . "

Section 18 of the contract, labeled "No reduction of Benefits," provides: "Employer shall not at any time during the term of this agreement reduce the salary, compensation, medical benefits or other financial benefits of Employee, except to the degree of such a reduction across the board for all employees of the Employer."

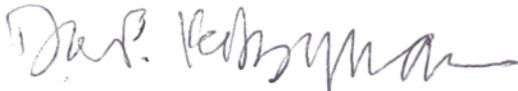
Thus, according to the contract, it appears that the City Manager's compensation may only be increased based upon an annual performance evaluation by the Mayor, and his compensation may not be decreased at all during the existence of the contract, which is indefinite in duration. Nothing in the contract makes reference to the executive pay plan we are required to formulate for the purpose of governing the City manager's salary. Conversely, if we are to avoid breaching the terms of the existing (and indefinite) contract,

our executive pay plan must conform, at the least, to the terms of the contract, thereby restricting our discretion.¹

The terms of the contract appear to be inconsistent with the Code provision requiring the City Manager's compensation to be set based upon an executive pay plan established by our Commission. Even though the City Manager was hired during an interim year, because his contract has an indefinite term with fixed procedures for increases and no decreases, we fail to see how any executive pay plan we formulate will ever have a bearing on the City Manager's compensation.

We would therefore appreciate your advice on how we should proceed with regard to any recommendations for the City Manager's compensation, and the executive pay plan we are charged with formulating. Our report and recommendations to the City Council are due by late January, 2013, so we would appreciate your advice at your earliest opportunity. Thank you for your consideration, and should you need any additional information from our Commission, please do not hesitate to contact me.

Very truly yours,



Dale P. Kelberman
Chairman
Annapolis City Council Compensation Commission

Cc: Michael D. Mallinoff, City Manager

¹ For example, any executive pay plan we formulate must include: (1) a provision that prohibits any reduction in compensation and benefits; and (2) an annual salary review by the Mayor (and *not* the City Council), in order to comport with the current City Manager's contract.

January 15, 2013

HAND DELIVERED
Dale P. Kelberman, Chair
Annapolis City Council Compensation Commission
Annapolis City Hall
160 Duke of Gloucester Street
Annapolis, MD 21401

Re: Recommendation for Compensation for City Manager

Dear Mr. Kelberman:

On December 7, 2012, you delivered a letter to the Annapolis City Attorney on behalf of the Annapolis City Council Compensation Commission ("Commission"). Your letter sought advice from the City Attorney regarding what the Commission perceived may be inconsistencies between the Annapolis City Code and Charter, the current City Manager's Employment Agreement ("Agreement"), and the Commission's charge to make recommendations for an executive pay plan for the position of City Manager. The City Attorney engaged me to respond to the Commission's inquiries because she perceived that she may have a conflict of interest in giving this advice to the Commission.

The Commission was formed by City Council Resolution No. R-38-12 Amended that was adopted on October 8, 2012.¹ This Resolution directed the Commission to make specific recommendations "on the salaries, fringe benefits, and allowable expenses, for the Mayor, eight City Council members, and City

¹ The Council Compensation Commission is provided for in Article II, Section 4, of the City Charter. This Section establishes a process for a commission appointed by the City Council at least one year before any general municipal election to recommend compensation to be paid to the Mayor and members of the Council in the next term of office. Section 4 does not refer to the commission making a recommendation for compensation for a City Manager. That additional duty is included in Article VI, Section 2B, of the City Charter. Section 2B does not refer to a City Manager's term of office.

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Manager that would be effective on December 2, 2013.” As I understand the Commission’s request for guidance, the Commission is concerned that its recommendation of an “executive pay plan”² for the City Manager may be inconsistent with existing provisions of law, and that implementation of the Commission’s recommendations may cause the City to breach the City Manager’s Agreement.

In summary, I believe that while various provisions of the Charter, Code and Agreement may not be entirely consistent, they generally can be harmonized. Furthermore, to the extent that any part of the Agreement is unconstitutional, invalid or unenforceable, the remainder of the Agreement remains in place. Finally, the Commission’s responsibility is to make a recommendation regarding compensation for the position of City Manager.³ The City Council will be responsible to receive and act upon the Commission’s recommendation. Action by the City Council to adopt an executive pay plan for the City Manager must be adopted by ordinance. Thereafter, the Mayor will be responsible to implement the City Council’s legislative determinations in accordance with law.⁴ I explain.

² As discussed later in this letter, the City Charter provides for the Council Compensation Commission to establish an “executive pay plan” to fix the compensation of the City Manager. The Charter does not define “executive pay plan.” The absence of a definition or description of an “executive pay plan” leaves to the reasonable discretion of the Commission to determine what components of compensation should be included in the plan. Resolution R-38-12 Amended which created your Commission directs the Commission to make recommendations regarding salary, fringe benefits and allowable expenses. While this may reflect the City Council’s conception of what should be included in an executive pay plan, I believe that the Commission has further latitude to include other items, if any, that the Commission determines reasonably may be related to a comprehensive package of compensation for a City Manager.

³ Even though Resolution No. R-38-12 Amended speaks in terms of salaries, fringe benefits and allowable expenses, a reasonable construction of the City Council’s intent in enacting this Resolution was to ask the Commission to prepare and present to the Council an executive pay plan for the City Manager as contemplated by Article VI, Section 2B, of the City Charter.

⁴ Article V, Section 2, of the City Charter charges the Mayor with the duty of seeing “that the actions of the city council are duly and faithfully executed....”

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Scope of Review and Assumptions

As part of the preparation of this letter of advice I have reviewed numerous provisions of the City Charter and City Code relating to the creation of the position of City Manager, the inclusion of the position of City Manager in the City's exempt service, terms and conditions of employment of members of the City's exempt service, minutes of meetings of the City Council and City Council's Finance Committee related to the hiring of the current City Manager, the Agreement, and other matters I deemed relevant.

For purposes of this advice I make three key assumptions – (i) that the Agreement is a lawful act of the City (subject to excising any specific provisions that may be unconstitutional, invalid or unenforceable); (ii) that the position of City Manager is not a “public officer” within the meaning of Article III, Section 35, of the Maryland Constitution (“...nor may the salary or compensation of any public officer be increased or diminished during his term of office except those whose full term of office is fixed by law in excess of 4 years”); and (iii) that the Charter Amendment that created the position of City Manager is a lawful and valid enactment.

Relevant Statutory Context

Your inquiries must be evaluated in the context of provisions of the Annapolis City Charter and Code that apply to the position of City Manager and the City Manager's compensation.

The position of City Manager was established by Charter Amendment CA-03-10, adopted on April 26, 2010, effective on June 15, 2010. This Charter Amendment amended Article VI, Section 2B, of the Charter to eliminate the position of City Administrator and to create a new position of City Manager within a modified structure of the City government.^{5,6} Section 2B(d) as amended by this

⁵ The position of City Administrator was established pursuant to Charter Amendment CA-4-96 Amended/Reconsidered adopted February 10, 1997, effective April 1, 1997.

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Charter Amendment established the process for setting the initial compensation for a City Manager that exists today:

The compensation of the city manager shall be fixed by the mayor according to the provisions of an executive pay plan formulated by the Council Compensation Commission and adopted by ordinance. If the city manager is hired during an interim year, the mayor and council shall determine the compensation based upon the recommendations from the Finance Committee.

The City Code contains additional provisions relating to the compensation of a City Manager. The City Manager is a member of the City's exempt service. City Code, § 3.08.010.3.⁷ Section 3.08.030 provides methods of determining salaries for members of the exempt service. Section 3.08.030.A.1. assigns all members of the exempt service, except for the City Manager, to a salary pay grade in the City's pay plan. However, with respect to the City Manager, Section 3.08.030.A.2. states that "[t]he salary of the City Manager shall be proposed and

⁶ The title to this Charter Amendment states that the purpose of the Charter Amendment is for "clarifying" the role of the City Manager, "enhancing" certain supervisory powers of the City Manager", and "providing" that the Mayor must approve the dismissal of the City Manager. The title to this Charter Amendment does not state that its purpose was to create the position of City Manager. Nevertheless, the City Clerk advised me that there was no prior Charter Amendment that created the position of City Manager.

⁷ The identification of the City Manager as a member of the exempt service was accomplished by Ordinance O-10-12 Amended, adopted June 4, 2012, effective from the date of its passage. The term "City Administrator" was changed to "City Manager." A corresponding provision in Article VIII, Section 2, of the Charter has not yet been amended to reflect the change from City Administrator to City Manager. However, the City Manager is a member of the exempt service by the catch-all provision in Section 2(9) that includes in the exempt service "[a]ll exempt service positions as established from time to time in Chapter 3.08 of the Annapolis City Code.

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approved by the Council at the time of the City Manager's confirmation hearing."⁸ Section 3.08.030.B.1., provides for salary increases for members of the exempt service. Section 3.08.030.B.1. applies to all exempt positions except for certain expressly named positions, none of which is the City Manager. Section 3.08.030.B.1. provides "B. Salary raises: 1. Shall be justified by either satisfactory or above satisfactory performance reviews by the Mayor and shall be entirely at the Mayor's discretion..."

In addition to addressing salaries, other provisions of Chapter 3.08 of the City Code address employment benefits for members of the exempt service. Each of these employment benefits applies to the City Manager as a member of the exempt service.⁹ As discussed later in this letter, the benefits afforded to the City Manager in Chapter 3.08 are not entirely consistent with the benefits provided to the City Manager in the Agreement.

Section 3.08.020 provides that members of the exempt service "are entitled to each employment benefit that is provided to employees in the civil service, except as provided in this chapter." Section 3.08.040 addresses annual, sick and personal leave for members of the exempt service, including annual leave after one or more continuous years of service with the City and sick leave on the basis of "reasonable need." Department directors (but not the City Manager) are not

⁸ My review of minutes of meetings of the City Council and its Finance Committee reflect that the process set forth in Article VI, Section 2B, of the Charter, and Section 3.08.030.A.2. generally were followed.

⁹ As the Commission has noted, there are inconsistencies between and among various legislative enactments, and between legislative enactments and the current City Manager's Agreement. As part of the Commission's report to the City Council, the Commission may want to consider recommending that the City Council review and eliminate these various inconsistencies, including enacting such further charter amendments and ordinances as may be necessary. The Commission also may want to consider whether the compensation of the City Manager, including salary and benefits, should be addressed in an employment agreement between the City and the Manager, rather than treating the Manager as a member of the exempt service for purposes of salary and benefit provisions on the City Code.

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entitled to personal leave to which civil service employees may be entitled. By virtue of Section 3.08.020 members of the exempt service are entitled to all other leave to which civil service employees are entitled.

Finally, Section 3.08.050 provides for severance pay under limited circumstances for members of the exempt service. Section 3.08.050 does not provide severance pay when employees in the exempt service, including the City Manager, are terminated for non-disciplinary reasons. Rather, an entitlement to severance pay in the amount of 1/8th of the employee's annual salary is payable when the exempt service employee has been terminated for disciplinary reasons.

Current City Manager's Employment Agreement

The provisions of the Agreement relevant to this analysis are as follows:

1. The City Manager is employed for an indefinite term, subject to termination by either party upon 45 days notice, subject to immediate termination by the City upon the City Manager's conviction of certain crimes, and further subject to termination by the City for certain disability or illness related reasons when the City Manager has remained off from work more than 4 weeks after using all of the City Manager's accrued sick leave.

2. The City Manager will receive severance benefits upon termination of employment by the City, except where termination is for conviction of certain crimes. The severance benefit is a lump sum payment equal to 180 days salary, plus health and life insurance continuation at City expense.¹⁰

3. The City Manager will be paid a salary in the amount of \$138,310 per year, except that for purpose of the City's contribution to State Retirement System

¹⁰ Note that under City Code Sections 3.08.050 and 3.16.140 exempt employees, including the City Manager, are entitled to severance pay in amount of 1/8th of salary if they are removed for disciplinary reasons.

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the salary will be deemed to be \$145,225.50, the rate of pay prior to the furlough based wage reduction in the City's FY 2011 budget. The City Manager also is entitled to salary or benefit increases in such amounts and to such extent as the City deems desirable on basis of an annual salary review in the same manner as similar consideration is given to other employees generally.

4. The City Manager is required to work a minimum of 35 hours per week.

5. The City Manager is entitled to 4 weeks annual leave per year, credited to his account at the time of employment as City Manager and thereafter at each anniversary date.¹¹

6. The City Manager is entitled to other leave, including sick leave, to the same extent as other employees in the exempt service.

7. The City Manager is entitled to disability, health and life insurance benefits on the same basis as provided for other full-time exempt employees.

8. Subject to availability of funds in the budget, the City will pay professional dues and subscriptions for the City Manager.

9. The City agrees to budget and pay for travel and expenses for the City Manager's professional development.

10. The City Manager has use, at the city's expense, of a City-provided vehicle in connection with performance of his duties.

11. The City Manager will be provided with a parking pass to park in the City's parking garage.

¹¹ Note that under City Code Section 3.08.040 an employee is not entitled to 4 weeks of annual leave until completing seven years of continuous service.

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12. The City will provide the City Manager use of a City computer and appropriate software.

13. The City will reimburse the City Manager for non-personal and job-related expenses in accordance with City rules, regulations and policies.

14. The City Manager is not entitled to any benefits, rights or privileges of City civil service employment except as specifically provided in the Agreement.

15. The City may not reduce the City Manager's salary, compensation, medical benefits or other financial benefits, except to the degree of such a reduction across the board for all employees.¹²

16. The Agreement contains a severability clause which says that if any part or provision of the Agreement is unconstitutional, invalid or unenforceable, the unconstitutionality, invalidity or unenforceability does not affect other provisions of the Agreement, which shall remain in full force and effect.

Discussion

The Commission is one of three cogs in the City's governing structure for setting and implementing compensation for a City Manager. The Commission performs an advisory function to the City Council. The Commission's charge by Resolution R-38-12 Amended is to provide a recommendation to the City Council "on the salaries, fringe benefits, and allowable expenses, for the Mayor, eight City Council members, and City Manager that would be effective on December 2, 2013." While this effective date is required by the Maryland Constitution and City Charter for compensation for the Mayor and members of the City Council, there is

¹² This provision is ambiguous to the extent that it is not clear as to whether the "no reduction" clause means that only the salary and benefits specified in the Agreement may not be reduced below those levels, or whether it proscribes a reduction of any enhanced salary or benefits that may be provided in future years.

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no similar proscription against altering the compensation of the City Manager before or after that date.¹³

Notwithstanding the reference in Resolution R-38-12 Amended to the salary, fringe benefits and allowable expenses for the City Manager being effective on December 2, 2013, the Resolution still must be read in the context of the City Charter and Code provisions that address the compensation of the City Manager and members of the exempt service. So that the Commission's recommendations regarding an executive pay plan may be effective for any compensation review of the current City Manager that the Mayor may make before December 2, 2013, or may be applicable to any new City Manager should a vacancy arise before that date, the Commission may want to consider recommending that any ordinance that the City Council adopts to approve an executive pay plan for the City Manager expressly provide that, from and after the effective date of the ordinance, the approved pay plan be used in making any compensation decisions for the current or any successor City Manager.

The Commission should not feel constrained in its deliberations and recommendations by existing provisions for salary, fringe benefits and expenses contained in the City Code for members of the City's exempt service or in the City

¹³ December 2, 2013, is the date on which the newly elected Mayor and members of the City Council will take office. According to Article II, Section 4, of the City Charter, recommendations of the Commission regarding Mayoral and Council member compensation take effect only for the next succeeding term of office, and that the salaries specified when the Mayor and members of the City Council take office may not be changed during the period for which they were elected. This is consistent with the prohibition in Article III, Section 35, of the Maryland Constitution which prohibits the salary or compensation of any public officer from being increased or diminished during his or her term of office except those whose full term of office is fixed by law in excess of 4 years. The absence of a similar proscription for the effective date of a change in compensation for the City Manager is based upon the assumption noted on page 3 of this letter – that the City Manager is not a “public officer”. If the City Manager is a public officer there could be no change in his compensation because he holds the position for an indefinite term. The City Manager does not hold a four year term coterminous with that of the Mayor and members of the City Council.

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Manager's Agreement. The Commission is expected to use its independent judgment in determining what the Commission believes are reasonable terms of an executive pay plan for the City Manager. In exercising that judgment the Commission may, and should, take into account the current salary, benefits and expenses, as they reflect the considered judgment of the Mayor and City Council when the City Manager was hired approximately two years ago. As discussed below, it will be the responsibility of the Mayor and City Council to address and reconcile differences between the Commission's recommendations, the City Code and the Agreement.

Once the Commission submits its recommendations, its task is completed. The City Council then must act by ordinance if it is to approve an executive pay plan for the position of City Manager. If this executive pay plan alters provisions relating to salary and benefits for the City Manager as a member of the exempt service as set forth in the City Code, the City Council likely would need to amend those provisions of the Code to the extent that they are inconsistent with the adopted executive pay plan.

After the City Council approves this executive pay plan the Mayor will be responsible to implement it consistent with law. To the extent that the current City Manager is employed under the Agreement, the Mayor will need to consider the provisions of the Agreement during the implementation of the pay plan. Part of this implementation may necessitate a legal review to determine whether certain provisions of the adopted executive pay plan may be implemented for the current City Manager in light of the Agreement.

If the terms of the executive pay plan are consistent with the Agreement the Mayor presumably would implement the pay plan according to its terms in order to carry out law as established by ordinance of the City Council. Several options do exist for the Mayor to address inconsistencies between the Agreement and the adopted executive pay plan - (i) determine that certain provisions of the Agreement are unconstitutional, invalid or unenforceable and implement provisions of the plan notwithstanding the Agreement, (ii) enter into an amendment to the Agreement

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with the City Manager to reflect the provisions of the new executive pay plan, or (iii) terminate the employment of the City Manager if the City Manager does not accept the provisions of the executive pay plan.

With respect to salary, Section 3.08.030.B.1. provides for salary increases for members of the exempt service, including a City Manager, at the Mayor's discretion based upon performance reviews. This is not inconsistent with the current City Manager's Agreement, which provides for salary increases based upon performance review by the Mayor. If the Commission recommends a salary or salary range for the City Manager position that is less than the salary contained in the City Manager's Agreement, the Mayor will need to consider the validity and enforceability of the "no reduction in compensation" clause in the Agreement. If the Mayor determines that the "no reduction in compensation" clause is valid and enforceable, the provisions of the executive pay plan relating to salary would apply to a succeeding City Manager. If the approved salary, or salary range, for the position of City Manager exceeds the salary in the current Agreement, the Mayor may use that salary as guidance when determining a salary increase for the current City Manager based upon performance review.

As the Commission concludes its deliberations I remind the Commission that Sections 3.08.020 and 3.08.050 of the City Code address for all members of the exempt service several elements discussed on pages 5-6 of this letter that the Commission may consider to be part of an executive pay plan. As examples, these Sections address severance pay, leave and all other benefits afforded to employees in the City's civil service, except as expressly restricted by Chapter 3.08.

The Commission should consider recommending to the City Council that, in conjunction with the Council's adoption of an executive pay plan for the City Manager, the Council should carefully review and amend those existing provisions of the City Code that may be inconsistent with the adopted executive pay plan. Additionally, it is commonplace in local government for city and town managers and administrators to be employed under employment agreements. The Commission should consider whether it may be more desirable to have all issues

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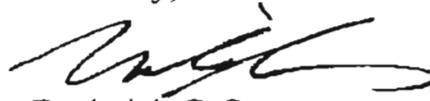
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relating to the City Manager's compensation addressed in an employment agreement rather than in a patchwork of an agreement and provisions of the City Code. It is this patchwork that has led to the ambiguity, lack of clarity and inconsistencies that currently are presented. Placing the terms of the City Manager's employment in an agreement or the City Code, but not both, should eliminate opportunities for inconsistencies between the two. Finally, the Commission's work has revealed that the City Charter and Code provisions relating to establishment and alteration of salary and other compensation for a City Manager are ambiguous and lack clarity. The Commission should consider recommending a further review and revision of Charter and Code provisions relating to City Manager compensation to resolve these ambiguities and lack of clarity.

I trust that this letter provides the Commission with the guidance it is seeking. Please let me know if the Commission has any questions or would like me to clarify or elaborate upon the advice that I have given in this letter.

Sincerely,



Frederick C. Sussman

FCS:tbm
17523.01