MAYOR
Brian K. Grim

CITY ADMINISTRATOR
Jeff Rhodes

CITY SOLICITOR
Michael Scott Cohen

COUNCIL
Seth D. Bernard
David Caporale
Richard J. Rock" Cioni
Eugene T. Frazier

CITY CLERK
Marjorie A. Woodring

AGENDA

DATE: January 2, 2018

I. Pledge of Allegiance

II. Roll Call

III. Unfinished Business

(A) Ordinances

1. Ordinance *(2nd and 3rd readings)* - approving Zoning Text Amendment No. 1206 to amend the Use Regulations Table in Section 6.02 of the Zoning Ordinance to allow general restaurants and fast food restaurants without drive-thru service as permitted uses in the Residential-Office (R-O) Zone and allowing fast food restaurants with drive-thru services as conditional uses in the Residential-Office (R-O) Zone

IV. New Business

(A) Resolutions

1. Resolution granting the Western Maryland Scenic Railroad Development Corporation a property tax credit for the tax year 2017-2018

(B) Orders (Consent Agenda)

1. Order authorizing execution of an Agreement for Legal Services with Kaplan Kirsch Rockwell, LLC, Attorneys at Law, for the provision of advice and counsel with respect to issues that have arisen with CSX Transportation, to be effective retroactive to November 1, 2017
2. Order accepting the return of a 1950 Mack Fire Engine (VIN #85LS1481) from the Allegany Museum (originally donated January 5, 2010), re-declaring it as surplus equipment, and authorizing it for sale or trade-in
3. Order approving the award of $10,000 in Community Legacy-funded Central Business District Facade Improvement Program funds to the Center City Parking Garage Project for exterior work

V. Public Comments

All public comments are limited to 5 minutes per person

VI. Adjournment

Regular Council Agenda
January 2, 2018

Description

Ordinance *(2nd and 3rd readings)* - approving Zoning Text Amendment No. 1206 to amend the Use Regulations Table in Section 6.02 of the Zoning Ordinance to allow general restaurants and fast food restaurants without drive-thru service as permitted uses in the Residential-Office (R-O) Zone and allowing fast food restaurants with drive-thru services as conditional uses in the Residential-Office (R-O) Zone

Approval, Acceptance / Recommendation

The first reading of this Ordinance was approved on December 19, 2019.

☐ Budgeted

☐ 1st Reading
☑ 2nd Reading
☑ 3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, ENTITLED "AN ORDINANCE TO AMEND THE USE REGULATIONS TABLE IN SECTION 6.02 OF THE CITY OF CUMBERLAND ZONING ORDINANCE FOR THE PURPOSE OF ALLOWING GENERAL RESTAURANTS AND FAST FOOD RESTAURANTS WITHOUT DRIVE-THRU SERVICE AS PERMITTED USES IN THE RESIDENTIAL-OFFICE (R-O) ZONING DISTRICT AND ALLOWING FAST FOOD RESTAURANTS WITH DRIVE-THRU SERVICE AS CONDITIONAL USES IN SAID ZONING DISTRICT."

WHEREAS, Title 4, Subtitle 2 of the Land Use Article of the Annotated Code of Maryland grants the Mayor and City Council the power to enact a zoning ordinance, to amend it from time to time, and to provide for its administration and enforcement.

WHEREAS, the Mayor and City Council deem it necessary to amend the City of Cumberland Zoning Ordinance from time to time for the purpose of promoting the health, safety, morals, and/or general welfare of the City.

WHEREAS, in reviewing the use regulations applicable to the Residential-Office (R-O) Zoning District, City staff observed that restaurants are not permitted;

WHEREAS, Section 5.01.05 of the Zoning Ordinance provides that the purpose of the R-O District "is to provide areas appropriate for the harmonious mixing of residential and non-residential uses, and to provide for higher density residential development in a variety of housing types."

WHEREAS, staff proposed allowing restaurant uses in this district as they are appropriate uses in higher density residential areas which conveniently serve the needs of persons residing therein and are consistent with the other uses permitted therein;

WHEREAS, the City of Cumberland Municipal Planning and Zoning Commission held a public hearing on the subject matter of this ordinance on the 16th day of October, 2017, and determined that it should recommend that the Mayor and City Council pass an ordinance adopting the amendments to the City of Cumberland Zoning Ordinance which were proposed by staff.

WHEREAS, notice of the time and place of the hearing was published in the Cumberland Times-News, a newspaper of general circulation in the City of Cumberland, once each week for two successive weeks (on October 5, 2017 and October 12, 2017), the

first such notice having been published at least 14 days prior to the hearing, as required by Section 15.04.02 of the Zoning Ordinance.

WHEREAS, the Mayor and City Council held a public hearing regarding the subject matter of this Ordinance on December 5, 2017, having published notice of the time and place of the hearing together with a summary this Ordinance in the Cumberland Times-News, a newspaper of general circulation in the City of Cumberland, once each week for two successive weeks (on November 20, 2017 and November 27, 2017), the first such notice having been published at least 14 days prior to the hearing, as required by Section 4-203(b) of the Land Use Article of the Annotated Code of Maryland.

WHEREAS, consistent with the recommendation of the Municipal Planning and Zoning Commission, the Mayor and City Council have determined that they should approve the proposed amendments to the Zoning Ordinance.

NOW, THEREFORE:

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, that the Use Regulations Table set forth in Section 6.02 of the City of Cumberland Zoning Ordinance is hereby amended as follows[1]:

Key: P Permitted Use C Conditional Use P* Permitted only within cluster developments (pursuant to Section 9)											
USE DESCRIPTION	**R-E**	**R-S**	**R-U**	**R-O**	**B-L**	**B-H**	**B-CBD**	**B-C**	**I-G**	**G-C**	**G-I**

. . . .

Restaurants, Bars, Nightclubs											
Restaurants, general				**P**	P	P	P	P	P	P	P
Restaurants, fast food, with drive-thru service				**C**	C	P	C	P	P	P	P
Restaurants, fast-food, w/o drive-thru service				**P**	P	P	P	P	P	P	P

[1] Bold print text denotes language added to the Zoning Ordinance. All changes are highlighted.

SECTION 2: AND BE IT FURTHER ORDAINED, that this Ordinance shall take effect ten (10) days from the date of its passage.

Passed this _____ day of _____, 201__.

_____
Brian K. Grim, Mayor

ATTEST:

_____
Marjorie A. Woodring, City Clerk

Regular Council Agenda
January 2, 2018

Description

Resolution granting the Western Maryland Scenic Railroad Development Corporation a property tax credit for the tax year 2017-2018

Approval, Acceptance / Recommendation

☐ Budgeted

☐ 1st Reading
☐ 2nd Reading
☐ 3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

City of Cumberland

- Maryland -

RESOLUTION

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, GRANTING THE WESTERN MARYLAND SCENIC RAILROAD DEVELOPMENT CORPORATION, INC., A PROPERTY TAX CREDIT FOR THE TAX YEAR 2017-2018.

WHEREAS, the Mayor and City Council of Cumberland is, by State Law, granted the authority to impose taxes upon the assessed valuation of property situated within the City of Cumberland against the owners of such property; and

WHEREAS, Section 9-302 of the Tax-Property Article of the Annotated Code of Maryland provides that a municipal corporation in Allegany County may grant, by law, a property tax credit against certain property owners; and

WHEREAS, the Western Maryland Scenic Railroad Development Corporation, Inc., is such a property owner designated in Section 9-302(b)(4) of the Tax-Property Article of the Annotated Code of Maryland; and

WHEREAS, the Western Maryland Scenic Railroad Development Corporation, Inc. has, pursuant to Section 9-301(e)(1), applied for the property tax credit; and

WHEREAS, the Mayor and City Council of Cumberland desires to grant to the Western Maryland Scenic Railroad Development Corporation, Inc., a property tax credit against the municipal corporation property tax imposed on the Western Maryland Scenic Railroad Development Corporation, Inc. for the tax year 2017-2018.

NOW, THEREFORE, BE IT RESOLVED THAT, the Western Maryland Scenic Railroad Development Corporation, Inc., be and is hereby granted a property tax credit against any and all municipal corporation property tax imposed upon it by the City of Cumberland for tax year 2017-2018.

Given under our Hands and Seals this 2nd day of January, 2018, with the Corporate Seal of the City of Cumberland hereto attached, duly attested by the City Clerk.

Attest:

_____

Marjorie A. Woodring
City Clerk

Mayor and City Council
Of Cumberland

_____

Brian K. Grim
Mayor

Western Maryland Scenic Railroad Development Corporation
Office of the Executive Director
13 Canal Street, 4th Floor
Cumberland, Maryland 21502

December 15, 2017 RCVD

CLERK'S OFFICE

2017DEC20 PM4:02

Mayor Grim and Council
City Hall
57 North Liberty Street
Cumberland, Maryland 21502

Re: Western Maryland Scenic Railroad Development Corporation, Tax ID #D02128841

Dear Mayor Grim, Council, et al:

As granted to the Western Maryland Scenic Railroad in previous years, we are requesting a tax credit/abatement for the property taxes assessed to our organization for the Tax Year, July 1, 2017 – June 30, 2018. Please consider taking action on this abatement during your next public meeting.

If any additional information is required, or if you have any questions, please do not hesitate to contact me regarding this request for tax abatement/credit at 301.707.0017.

Thank you again for your support.
Sincerely,

John Garner,
WMSR Executive Director
Email – sco@wmsr.com

WMSR Mission Statement - A not for profit heritage railroad operation that is dedicated to the preservation, interpretation, restoration and operation of historic railroad equipment for future generations.

The Western Maryland Scenic Railroad is a 501 (c) (3) Corporation

Regular Council Agenda
January 2, 2018

Description

Order authorizing execution of an Agreement for Legal Services with Kaplan Kirsch Rockwell, LLC, Attorneys at Law, for the provision of advice and counsel with respect to issues that have arisen with CSX Transportation, to be effective retroactive to November 1, 2017

Approval, Acceptance / Recommendation

☐ Budgeted

☐ 1st Reading
☐ 2nd Reading
☐ 3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

- Order -

of the

Mayor and City Council of Cumberland

MARYLAND

ORDER NO. _____ **DATE:** __ January 2, 2018____

ORDERED, By the Mayor and City Council of Cumberland, Maryland

THAT, the Mayor be and is hereby authorized to execute an Agreement for Legal Services with Kaplan Kirsch Rockwell, LLP, Attorneys at Law, 1001 Connecticut Ave., NW, Suite 800, Washington, DC 20036 for the provision of advice and counsel with respect to issues that have arisen with CSX Transportation, Inc.; and

BE IT FURTHER ORDERED, that said Agreement shall be effective retroactive to November 1, 2017.

_____

Brian K. Grim, Mayor

KAPLAN KIRSCH ROCKWELL

December 20, 2017

City of Cumberland, MD
c/o Michael Scott Cohen, Esq.
213 Washington Street
Cumberland, MD 21502

Re: Agreement for Legal Services

Dear Mr. Cohen:

I am writing to confirm our prior discussions about our firm providing advice and counsel to the City of Cumberland (the "City") with respect to issues that have arisen with CSX Transportation, Inc. ("CSX"). The work we discussed could include (but is not limited to) advice to the City about the federal legal issues presented by the dispute over repair of the bridges over Washington, Fayette and Cumberland Streets and CSX's continued operation in the City.

1. *Client; Scope of Representation.* The City is our client. We will represent the City upon request in any consultations, negotiations, litigation (including federal regulatory agency proceedings) or other tasks as assigned that may arise, as requested, in connection with the dispute over the repair of the bridges and CSX's continued operation in the City (the "Matter").

2. *Staffing.* I will be the primary contact with the City for handling matters on the City's behalf, and will call upon my partners W. Eric Pilsk and Allison Fultz, as well as the firm's associates, for assistance as required. Please note that although we have a substantial roster of attorneys who have experience in these matters, we will follow the Firm's practice of staffing matters leanly but in a way that ensures that we have lawyers available who are familiar with the issues and status of a matter as it develops and can respond quickly to developments as they arise. To that end, I will be the primary counsel at the outset and will advise you if and when it becomes necessary to call upon other attorneys (either partners or associates) to work on the Matter.

3. *Fees and Expenses.* Our fees are based primarily on the time spent by attorneys and paralegals devoting time to the City matters. We will bill you at the following hourly rates for the attorneys listed in paragraph 2, above: Mr. Spitulnik - $525; Mr. Pilsk and Ms. Fultz - $495. In addition all associates who might be called upon to work on this matter will be billed at

the rate of $325. As explained previously, if necessary, we may call upon other lawyers at the Firm as well, and will advise you of their involvement and their billing rate at the time that they begin to work on the Matter. Time devoted by paralegals and law clerks is currently charged at the rate of $140 per hour. These billing rates will increase by 3% per year, beginning on January 1, 2019, and increasing again on January 1 by the same percentage each year thereafter.

We will charge for any expenses we incur in connection with the City matters in addition to the amount of our fees for legal services. Reimbursable expenses include but are not limited to charges for photocopying at $.10 per page for black and white copying and $.20 for color copying, and for messenger and delivery service, travel, computerized legal research, long-distance telephone and fax, court reporting services and administrative agency and/or court filing fees at their actual cost. If we need to retain other professionals (such as expert witnesses or local counsel), we will secure your permission first. Their fees and expenses will generally not be paid by us, but will be billed directly to you.

As you know, the fees and expenses relating to litigation are difficult to predict. Payment of the Firm's fees and expenses is in no way contingent on the ultimate outcome of any of the City matters to which we devote attention.

Each of our bills will include detailed information concerning time expended and services performed by the attorneys and paralegals whose work is included in the bill and any disbursements for which reimbursement is sought. It is the Firm's practice to send our clients a consolidated monthly invoice showing the amounts billed for particular matters during the period covered by the invoice. Unless a client requests otherwise, our invoice contains daily detail for each lawyer's work on the client's matter. We can, however, prepare that invoice in any format that meets your needs. We urge you to raise any questions regarding our invoices as soon as they arise so that we can resolve any problems promptly. We require that the City pay our fees promptly on a monthly basis. We consider any invoice more than 30 days old to be overdue.

4. *Representations as to Success*. Either at the commencement or during the course of our representation, we may express opinions or beliefs concerning the outcome of any aspect of our representation or various courses of action and the results that might be anticipated. While we will always endeavor to give you a candid and accurate assessment of the City's matters, any such statements will be an expression of our opinion based on information available to us at the time, and not a promise or guarantee.

5. *Conflicts*. As you know, the Firm represents many other companies, state and local governments (including transportation agencies) and individuals. It is possible that, during the time that we are working on the Matter, some of our present or future clients may have disputes or transactions with you. You acknowledge that our representation of the City does not prevent us from representing other clients adverse to the City as long as their disputes with the

City do not involve a matter on which we are working for the City or any confidential information received from the City in connection with any such matter.

6. *Terms of Representation.* The terms of this agreement for legal services in connection with the Matter are effective as of November 1, 2017. We reserve the right to withdraw from our representation if, among other things, you fail to honor the terms of the engagement letter, you fail to cooperate or follow our advice on a material matter, or any fact or circumstance (including any conflict of interest with another client) would, in our view, render our continuing representation unlawful or unethical. If we elect to withdraw, you will take all steps necessary to free us of any obligation to perform further, including the execution of any documents necessary to complete our withdrawal. No termination of our representation by the City or the Firm shall relieve the City of its obligations under the terms of our engagement to pay for costs or expenses paid or incurred on your behalf. In the unusual event that a court of competent jurisdiction refuses to permit us to withdraw upon termination, you would remain responsible for costs. In the event we are compelled to intervene in a pending lawsuit or initiate any proceeding in order to recover any amount due under the terms of our engagement, you agree to pay any and all attorneys' fees, court costs and/or other expenses incurred by us to recover such amounts due us pursuant to the terms of our engagement.

After our representation of the City in connection with any matter is concluded, changes may occur in the applicable laws or regulations that could have an impact upon the City's future rights and liabilities. While we would be happy to continue to represent the City, unless you specifically engage us to provide additional advice, we can assume no continuing obligation to advise you with respect to future legal developments in connection with the City's matters or otherwise.

7. *Entire Understanding.* This engagement letter constitutes our entire understanding and agreement with respect to the terms of our engagement and supersedes any prior understandings and agreements, written or oral. If any provision of our engagement letter is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect. Our engagement letter may only be amended in writing by the parties hereto.

If you are in agreement with the terms set forth in this letter, please sign the enclosed copy of this letter and return the signed copy to me. If you have any questions about these provisions, or if you would like to discuss possible modifications, please do not hesitate to call me. Once again, we are pleased to have this opportunity to work with you.

Sincerely,

Charles A. Spitulnik

Agreed and Accepted:

City of Cumberland, MD

By: _____ Date

Title: _____

Regular Council Agenda
January 2, 2018

Description

Order accepting the return of a 1950 Mack Fire Engine (VIN #85LS1481) from the Allegany Museum (originally donated January 5, 2010), re-declaring it as surplus equipment, and authorizing it for sale or trade-in

Approval, Acceptance / Recommendation

☐ Budgeted

☐ 1st Reading
☐ 2nd Reading
☐ 3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

- Order -

of the

Mayor and City Council of Cumberland

MARYLAND

ORDER NO. _____ **DATE:** __ January 2, 2018____

ORDERED, By the Mayor and City Council of Cumberland, Maryland

WHEREAS, on January 5, 2010 by way of Order No. 25,052 the Mayor and City Council declared a 1950 Mack Fire Engine to be surplus property and authorized its donation to the Western Maryland Station Center, Inc. (Allegany Museum); and

WHEREAS, the Western Maryland Station Center, Inc., (Allegany Museum) no longer has use for the Fire Engine and wishes to return said engine to the City; and

NOW, THEREFORE, BE IT ORDERED, that the Mayor and City Council does hereby accept the donation of the Fire Engine, and having determined that is of no further value to the City;

BE IT FURTHER ORDERED, that the following equipment be and is hereby declared surplus property and authorized for sale or trade-in:

- 1950 Mack Fire Engine, VIN #85LS1481

_____

Brian K. Grim, Mayor

Regular Council Agenda
January 2, 2018

Description

Order approving the award of $10,000 in Community Legacy-funded Central Business District Facade Improvement Program funds to the Center City Parking Garage Project for exterior work

Approval, Acceptance / Recommendation

☐ Budgeted

☐ 1st Reading
☐ 2nd Reading
☐ 3rd Reading

Value of Award (if applicable)

Source of Funding (if applicable)

- Order -

of the

Mayor and City Council of Cumberland

MARYLAND

ORDER NO. _____ **DATE:** __ January 2, 2018____

ORDERED, By the Mayor and City Council of Cumberland, Maryland

THAT, Ten Thousand Dollars ($10,000) in Community Legacy – funded Central Business District Façade Improvement Program funds be awarded to the Center City Parking Garage Project for exterior work.

_____

Brian K. Grim, Mayor

DEPARTMENT OF COMMUNITY DEVELOPMENT

TO: MAYOR AND CITY COUNCIL

FROM: KATHY MCKENNEY

SUBJECT: COMMUNITY LEGACY CENTRAL BUSINESS DISTRICT FAÇADE GRANT

CENTER CITY PARKING GARAGE – SOUTH GEORGE STREET

STAFF RECOMMENDATION

DATE: 12/26/17

CC: JEFF RHODES; MARGIE WOODRING

Following a staff recommendation to improve signage and usage in the Center City Parking Garage, a portion of the improvements can be undertaken using the Community Legacy-funded Central Business District Façade Improvement Program. Staff recommends that the maximum award of $10,000.00 be allocated toward these initial stages of the project. The following estimates have been received from the contractors listed for the exterior work:

- Fischer Signs – 4 new entrance/exit signs and 36" round perpendicular symbol - $2240.00
- Hoyman Painting – Pressure wash the exterior concrete structure - $3627.00
- Hoyman Painting – Replace stairwell lexan glass/install tempered glass - $4,599.00

Total $10,466.00

The remaining $466.00 will be paid by the Downtown Development Commission. An order to approve the allocation of the Community Legacy grant funding by the Mayor and City Council is needed.

Please let me know if I can provide additional information.

Estimate

FISCHER SIGNS
536 N. Centre St
Cumberland, MD 21502
301-759-3560

DATE	ESTIMATE #
12/6/2017	169

BILL TO
City Of Cumberland 57 N Liberty St Cumberland, MD 21502

DUE DATE	P.O. NUMBER
1/5/2018	

ITEM	DESCRIPTION	QTY	RATE	AMOUNT
Alum Sign	2ft x 10ft .040 Blue Aluminum SF Signs	4.0	185.0	740.00
Alum Sign	Fabricate 36" DF Circle Parking Sign per picture	1.0	1500.0	1,500.00
		Subtotal		2,240.00
		6% Tax		0.00
		Total		**2,240.00**

Hoyman Painting

A division of Glass Service of Cumberland, Inc.
813 LaFayette Ave.
Cumberland, MD 21502
Phone 301-777-7928 Fax 301-724-5912

TO: City of Cumberland
57 North Liberty Street
Cumberland, MD
Attention: Kathy McKenney

DATE: REVISED: December 12, 2017

PROJECT: George Street Parking Garage Improvements

DESCRIPTION OF WORK TO BE PERFORMED:

Exterior Pressure Washing

Furnish labor and material to pressure wash George St. and Union St. exterior façade only.

Lump Sum Price:
$3,627

Glass Replacement

At the exterior wall of the stairs, remove and dispose of 20 lites of ¼" glass approximately 49" X 85". Furnish and install ¼" clear tempered glass at all locations. Reseal the new units into the existing storefront framing.

Lump Sum Price:
$4,599

Exclusions/Clarifications:

1. We exclude supplying water for pressure washing. We also exclude any detergents or cleaning agents for power washing exterior.
2. We exclude any permits or sidewalk closure.
3. We have not made any accommodations for parking lift overnight which will be required for approximately one week.

Thank you for allowing us the opportunity to work with you. If you have any questions or I may be of further assistance, please advise.

ACCEPTED:

Firm/Owner: _____

By: _____

Title: _____

Date: _____

GLASS SERVICE OF CUMBERLAND, INC.

By: _____
Dustin Hankinson

Title: Estimator

Date:

This Proposal is subject to revision or withdrawal by GSC until communication of acceptance, and may be revised after communication of acceptance where an inadvertent error by GSC has occurred. This Proposal expires thirty (30) days after the date stated above, unless Glass Service of Cumberland expressly agrees to an extension.