

REGULAR MEETING  
BOROUGH COUNCIL  
MALVERN BOROUGH  
1 East First Avenue  
Malvern, PA 19355

April 3, 2018  
7:30 P.M.

PRESIDING: Jamie S. Grossman, President

INVOCATION: David B. Burton, Mayor

PLEDGE OF ALLEGIANCE TO THE FLAG

1. ROLL CALL: Council President Grossman  
Council Vice-President Uzman  
Council Member Finkbiner  
Council Member Laney  
Council Member Meisel  
Council Member Raynor  
Council Member Sinquett  
Mayor Burton

Ari Christakis, Esq., Borough Solicitor, stated Borough Council met in executive session, prior to tonight's meeting to discuss a personnel matter.

Ari Christakis, Esq., Borough Solicitor, stated the Tuesday, March 20, 2018 meeting of Borough Council was canceled due to inclement weather.

2. RECORDING OF MEETING:

Council President Grossman asked in accordance with Resolution No. 714 if any member of the audience was recording the meeting.

No member of the audience identified themselves as recording the meeting.

3. APPROVAL OF MINUTES:

A motion was made by Council Vice-President Uzman, seconded by Council Member Sinquett, and carried by a vote of 7-0, to approve the minutes of the meeting held on Tuesday, February 20, 2018 and Tuesday, March 6, 2018 as submitted.

4. APPROVAL OF REPORTS:

A motion was made by Council Vice-President Uzman, seconded by Council Member Laney, and carried by a vote of 7-0, to approve the Treasurer's Report, the Committee Reports for Finance & Administration, Public Safety, Public Works and the Chief of Police Report, the Code Enforcement Department Reports (Building Inspector's Report, Housing and Property Maintenance Report, and Zoning Report), the Superintendent of Public Works Report, and the Manager's Report for the month of February 2018 as submitted.

5. BOROUGH COUNCIL COMMITTEE REPORTS:

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### a. Financial & Administration

Council Vice-President Uzman stated Finance & Administration Committee met on March 12, 2018. The topics before the Committee included discussion on proposed policies related to the use of social media, email, and teleconferencing by members of Borough Council, discussion on amendments to the Borough's meeting Code of Conduct, discussion on encroachment enforcement related to the Randolph Woods Nature Preserve, review of a draft Municipal Code Violation Complainant Form, review of the draft Community Project Application, discussion potential requests for proposal for an additional 457 plan option, and a review of a proposal for Cyber Risk Security Insurance.

### b. Public Safety

Council Member Meisel stated the Public Safety Committee has not met since the February 20, 2018 meeting of Borough Council. A conference call was held with the Borough's Traffic Engineer on February 15, 2018 to discuss recommendations on pedestrian improvements on East King Street near Eastside Flats prior to the completion of the traffic study. This is due to the increased pedestrian activity that has been witnessed since the completion of Eastside Flats. The next meeting of the Public Safety Committee is scheduled for April 17, 2018.

### c. Public Works

Council Member Sinquett stated the Public Works Committee met on February 27, 2018 and on March 27, 2018. At the February 27, 2018 meeting, the Committee discussed the Ruthland Avenue Pump Station/Force Main Project, repairs to the steps from Burke Park to King Street, and the upcoming PECO gas main project on Paoli Pike.

At their meeting on March 27, 2018, the Committee reviewed the proposals received for land planning services, reviewed the criteria for connections into the Borough's sanitary sewer system, reviewed the Borough's trash and recycling bid specifications in preparation from the upcoming bid, discussed the pre-bid meeting for the HVAC project in Borough Hall, and sub-base concerns on King St. between Crest Ave. and Sugartown Rd.

## 6. APPOINTMENT AND SWEARING IN OF FULL-TIME POLICE OFFICER – SIAN KEATING:

A motion was made by Council Member Raynor, seconded by Council Member Laney, and carried by a vote of 7-0, to appoint Sian Keating as a full-time officer with the Malvern Police Department, effective April 6, 2018.

Mayor Burton administered the Oath of Office for Officer Keating.

## 7. PROPOSED RESOLUTION NO. 762, REQUEST FOR WAIVER FROM LAND DEVELOPMENT – MALVERN PREPARATORY SCHOOL (418 SOUTH WARREN AVENUE):

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In attendance for Malvern Preparatory School were Ted Caniglia, Chief Finance Officer, Jim Bannon, Professional Engineer, and Gina Gerber, Esq.

Council President Grossman asked how long the proposed temporary classroom trailers will be used. Gina Gerber, Esq. stated Malvern Preparatory School is requesting a fifteen (15) month allowance; however, the School is planning to remove the trailers after twelve (12) months.

Council Member Laney asked if the temporary classroom trailers will have bathrooms. Gina Gerber, Esq. stated the temporary trailers will not have bathrooms, only sinks. Students will be directed to use the bathrooms located in the adjacent buildings.

Council Member Finkbiner asked if the temporary trailers will be located in the same location as the trailers that were approved in a 2015 Land Development Project. Gina Gerber, Esq. stated the locations of the previously granted trailers are different and were granted to remain for a period of five (5) years.

A motion was made by Council Vice-President Uzman, seconded by Council Member Siquett, and carried by a vote of 7-0, to approve, subject to conditions, a waiver of the requirements of the Malvern Borough Subdivision and Land Development Ordinance based on the plan entitled "Waiver of Land Development Plan – Malvern Preparatory School Steam and Middle School" prepared by Nave Newell, dated January 31, 2018, signed and sealed by Gregory C. Newell, P.E., registered professional engineer for the installation of six (6) temporary classroom trailers on the property of Malvern Preparatory School located in the Borough of Malvern, Chester County, Pennsylvania in the I1 – Institutional zoning district.

8. PUBLIC HEARING – INTER-MUNICIPAL LIQUOR LICENSE TRANSFER APPLICATION (HEARTH OF MALVERN, LLC D/B/A BRICK & BREW):

Council President Grossman announced that Borough Council will now open a Public Hearing to consider a request for an inter-municipal liquor license transfer for Hearth of Malvern, LLC d/b/a Brick & Brew, regarding the property at 400 East King Street. The Notice of Public Hearing was published in the March 27, 2018 edition of the Daily Local News as required.

Vice-President Uzman recused himself from the Public Hearing, stating that his company has done business with Eli Kahn, property owner of 400 East King Street.

Council President Grossman turned the Public Hearing over to Ari Christakis, Esq., Borough Solicitor.

Borough Solicitor Christakis entered the following exhibits into the Public Hearing:

Exhibit B-1: "*Application for an Inter-Municipal Liquor License Transfer for Hearth of Malvern, LLC., d/b/a Brick & Brew,*" as submitted by Brian D. Gondek, Esquire, dated, February 21, 2018

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Exhibit B-2: Affidavit of Publication for Public Hearing for the application for an Inter-Municipal Liquor License Transfer

TO OBTAIN A COPY OF THE OFFICIAL TRANSCRIPT AS PREPARED BY THE COUNTY COURT REPORTER, PLEASE CONTACT BOROUGH ADMINISTRATION.

At the conclusion of the Public Hearing, Borough Solicitor Christakis turned the meeting over to Council President Grossman.

9. PROPOSED RESOLUTION NO. 763 – APPROVING THE APPLICATION FOR AN INTER-MUNICIPAL LIQUOR LICENSE TRANSFER AT THE PREMISES KNOWN AS 400 E. KING STREET, MALVERN, PA 19355:

A motion was made by Council Member Siquett, seconded by Council Member Laney, and carried by a vote of 6-0, Council Vice-President Uzman abstained due to having done work with Eli Kahn, the property owner, to adopt Resolution No. 763, approving the transfer of restaurant liquor license # R-5142 into the Borough of Malvern from New Garden Township.

10. PUBLIC HEARING – ORDINANCE NO. 2018 – 1 – HOME RULE CHARTER AMENDMENT (SECTION 903 – OPERATING BUDGET):

Council President Grossman announced that Borough Council will now open a Public Hearing to consider an ordinance to initiate the amendment process of the Borough's Home Rule Charter pertaining to section 903 (advertising requirements of the Borough's operating budget). The amendment must be approved by the electors of the Borough via referendum. The Notice of Public Hearing was published in the March 27, 2018 edition of the Daily Local News as required.

Frank Ortner, 144 Griffith Avenue, asked if Borough Administration will continue to send budget announcements through Constant Contact and post on the Borough's website. Council President Grossman stated the website and email announcements will continue.

There being no further public comment, Council President Grossman closed the Public Hearing.

11. PROPOSED ORDINANCE NO. 2018 – 1 – INITIATING THE AMENDMENT OF SECTION 903 OF THE BOROUGH'S HOME RULE CHARTER PERTAINING TO THE ADVERTISING REQUIREMENTS OF THE ANNUAL OPERATING BUDGET:

A motion was made by Council Vice-President Uzman, seconded by Council Member Siquett, and carried by a vote of 7-0, to adopt Ordinance No. 2018 – 1, initiating the process of amending section 903 of Malvern Borough's Home Rule Charter pertaining to the advertising requirements of the annual operating budget.

12. UNFINISHED BUSINESS:

- a. Home Rule Charter Ad Hoc Committee

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i. Discussion – Proposed Ordinance to initiate amending Section 211 of the Home Rule Charter regarding absences of Borough Council Members.

Borough Manager Bashore summarized a proposed ordinance to amend section 211 of the Home Rule Charter. The proposed ordinance would initiate the amendment of section 211 in order to update the provisions in the Home Rule Charter where a Council member forfeits their office due to absences. Section 211(A)(4) currently states that a Council member currently forfeits their office if they fail to attend three (3) consecutive Regular Meetings of Council or 40% of all scheduled meetings in a 12 month period. Prior to April 2016, Borough Council held two (2) meetings per month, with the first being advertised as a work session. In April 2016, Council adjusted its schedule to make all meetings Regular Meetings. The original practice resulted in a Council member needing to miss three (3) months' worth of meetings; the adjustment reduced this window to six (6) weeks.

Borough Manager Bashore stated the proposed ordinance would amend section 211(A)(4) in order to outline that a member of Council would forfeit their office if they failed to attend three (3) consecutive months' worth of Regular Meetings, while maintaining the current 40% provision over 12 months. The proposed ordinance intends to maintain the original character of this provision, while amending the section to reflect the meeting adjustments made by Council in 2016. The Home Rule Charter Ad Hoc Committee reviewed the draft ordinance at their meeting on March 19, 2018 and it was recommended that the draft ordinance be forwarded to Borough Council. This ordinance has not been advertised and would need to be authorized for advertisement by Borough Council prior to adoption.

Borough Council discussion focused on what would be an acceptable number of absences, how to handle canceled meetings and how they may count towards absences, whether absences should be calculated as a percentage or as a number, and what current State and Malvern Borough Regulations state regarding absences.

Cathy Raymond, 6 Karen Drive, said she did not agree with the proposed amended section that penalizes a Borough Council Member for a meeting that is canceled.

Sid Baglini, 203 Channing Avenue, suggested having the amendment set the allowable missed meetings to an equivalent of three (3) months, regardless of whether it is consecutive meetings or a percentage of time.

Borough Council tabled further discussion. Council President Grossman directed the Home Rule Charter Ad Hoc Committee to review and clarify the language of the proposed ordinance.

ii. Discussion – Proposed Ordinance to initiate amending Section 214 of the Home Rule Charter regarding Borough Council Members participating in Regular Meetings by telecommunication devices.

Borough Manager Bashore stated before Borough Council this evening is a

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proposed ordinance to amend section 214 of the Home Rule Charter. The proposed ordinance would initiate the amendment of section 214 in order to add sub-section 214(F) in order to allow for provisions for remote participation at meetings by telecommunication devices. The language

proposed would establish the framework to allow for this participation opportunity. This matter has been discussed at the Finance & Administration and it was determined that an evaluation of the cost to upgrade the existing Audio/Video system to allow for teleconferencing is necessary.

Council Member Finkbiner stated she supports telecommunication devices for participation by Borough Council Members in Regular Meetings, but she is concerned with the financial implications. She would like Borough Administration to obtain quotes to determine how much of a financial impact telecommunication could pose.

Council Member Laney asked if the public would be able to participate in Regular Meetings with the use of telecommunication devices. Borough Solicitor Christakis said the logistics would prohibit remote participation, and the purpose of public participation is for them to be present and speak before Borough Council.

Dave Knies, 114 Warrington Way, asked if a Borough Council Member, participating remotely, would be able to cast a vote. Borough Solicitor Christakis stated that Borough Council Member's vote would count as a matter of record.

Council President Grossman said she supports the use of telecommunication devices, however, she would like remote participation to count toward meeting attendance, but limit the number of times a Council Member may remotely participate in a calendar year.

A motion was made by Council Member Laney, seconded by Council Vice-President Uzman, and carried by a vote of 6-1, Council President Grossman voted against, to authorize the Borough Manager to advertise prior to adoption, an Ordinance to amend the Home Rule Charter, Section 214 regarding participation by telecommunication device of Borough Council Members for consideration in the Primary Election.

### 13. NEW BUSINESS:

a. Proposed License Agreement between the Borough of Malvern and Growing Roots Partners, LLC (Malvern Farmers Market).

Borough Manager Bashore stated before Borough Council is a proposed license agreement between the Borough and Growing Roots Partners, LLC for the use of Burke Park for the weekly Malvern Farmers Market. The Malvern Farmers Market has operated in Burke Park successfully for the past few years; however, there is no agreement on file outlining the terms for this use on Borough property. Please note that several of the items outlined in the proposed agreement are currently occurring and the proposed agreement will memorialize the relationship

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between the Borough and Growing Roots Partners, LLC. The Finance & Administration Committee reviewed this agreement prior to it being presented to Borough Council. In addition, the agreement was reviewed with Lisa O'Neill from Growing Roots Partners, LLC and she was in agreement with the proposed terms and conditions.

A motion was made by Council Vice-President Uzman, seconded by Council Member Sinquett, and carried by a vote of 7-0, to authorize the Borough Manager to enter into an agreement on behalf of the Borough of Malvern with Lisa O'Neill, owner of Growing Roots Partners, LLC. for the Malvern Farmers Market to be held in Burke Park.

### b. Zoning Hearing Board

Borough Manager Bashore stated that the application for 324/328 East King Street, owned by Renehan Realty, LLC., who was seeking a variance from section 220-2501.D.9.E., requiring aisles within parking lots separating rows of parking spaces to be 24 ft. wide was continued. The hearing on this application was held on February 26, 2018. During the hearing, numerous questions were raised on this application including the number of spaces being created, lighting of the parking lot, buffering requirements, and how the spaces would be assigned to the uses on the property. Due to the volume of information that was outstanding, the hearing was postponed so the applicant may revise and resubmit an application and plans in greater detail. The Applicant anticipates returning before the Zoning Hearing Board in May of 2018.

## 14. PUBLIC FORUM:

Council President Grossman informed all present that Public Forum is the time to offer comments on any item not on the agenda and to bring any issues/concerns before Council.

a. Phil Mellusi, 343 Old Lincoln Highway, read aloud a letter addressed to Borough Council requesting the Borough's assistance in managing the utilities in the private road, located off of Old Lincoln Highway. Mr. Mellusi provided a copy of the letter to be included in the record and attached to the meeting minutes.

b. Sam Guglielmi, 331 Old Lincoln Highway, requested for the Borough to send a letter to Aqua verifying that the private drive is defined as a 'Road.'

Borough Solicitor Christakis said he has reached out to Aqua representatives more than once, and has not received a response as to what criteria Aqua is using to determine whether it may meet the requirements for Aqua to install a water main. Once he receives the criteria, he will prepare a letter, on behalf of the Borough, that will confirm that the Borough has no objection to the installation of a water main along the private road.

c. John Buckley, 165 Church Street, said he tripped on the sidewalk in front of 16 Monument Avenue and that it should be checked by the Borough's Building Codes Official. Council President Grossman encouraged Mr. Buckley to make a formal complaint through Borough Administration and the matter will be addressed.

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Mr. Buckley stated he continues to find dog feces on his property and he is tired of cleaning up after the dog owners. Council President Grossman requested Borough Manager Bashore to add a reminder in the next newsletter.

d. Lynne Frederick, 227 East Broad Street, said this year's Memorial Parade marks its 150th consecutive year and requested that Borough Council consider encouraging Borough volunteers that service on the various boards/committees/commissions participate in the parade.

Borough Council was in agreement to have Borough Manager Bashore send an invitation to Borough volunteers to participate in the parade for their service and time.

15. ADJOURNMENT:

All business having been discussed, a motion was made by Council Vice-President Uzman, seconded by Council Member Meisel, and carried by a vote of 7-0, to adjourn the meeting at 10:15 p.m.

Respectfully submitted,

Neil G. Lovekin  
Assistant Secretary