

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

March 16, 2020

Those present at 7:00 p.m.:

Presiding:	Mayor Jerry Clifton District 1, James Horning District 3, Jen Wallace District 4, Chris Hamilton Deputy Mayor Stu Markham, District 6
Absent:	District 2, Sharon Hughes District 5, Jason Lawhorn
Staff Members:	City Manager Tom Coleman City Secretary Renee Bensley City Solicitor Paul Bilodeau Finance Director David Del Grande

1. Mr. Clifton called the meeting to order at 7:00 p.m.

2. **SILENT MEDITATION & PLEDGE OF ALLEGIANCE**

Mr. Clifton asked for a moment of silence and the Pledge of Allegiance.

Mr. Clifton informed the Livestream viewers that public comment would be accepted on agenda items via commenting on the Livestream feed. He explained that commenters needed to include their name, district and/or address for the record. Comments on the agenda items would be read into the record at the appropriate time and would close at the end of item 2B, the Budget Amendment for Workers Compensation Program. He asked that comments be respectful and concise and that viewers make sure they were commenting on agenda items. He noted that questions could or could not be answered.

Mr. Coleman interjected that there were Livestream issues. Mr. Markham asked if it was possible to change the agenda while waiting for the Livestream and Ms. Bensley answered that it was best to wait in order to comply with the Governor's order.

The meeting resumed at approximately 7:25 p.m.

Mr. Clifton repeated his earlier direction to live viewers.

MOTION BY MR. MARKHAM, SECONDED BY MR. HORNING: TO REMOVE FROM THE AGENDA EXECUTIVE SESSION A, THE UNICITY UPGRADES PRESENTATION, ITEM 2D IN THE GREEN BUILDING WORK GROUP RECOMMENDATIONS, AND 3-A-1 BE CHANGED TO EMERGENCY ORDINANCE 20-01, AN EMERGENCY ORDINANCE CONCERNING COVID-19 PRECAUTIONARY MEASURES, AND TO ADD 3-A-2, LIMITING CITY COUNCIL BUSINESS TO ESSENTIAL BUSINESS TO EITHER HAVE A DISCUSSION OR PASS AN ORDINANCE.

MOTION PASSED. VOTE 5 TO 0.

Aye – Clifton, Hamilton, Horning, Markham, Wallace.

Nay – 0.

Absent – Hughes, Lawhorn.

3. 1. **FINANCIAL STATEMENT: (Ending December 31, 2019) (15 minutes)**

6:25

Mr. Del Grande presented the December Financial Report for Council's acceptance. He reported that the 2019 Operational Spending reflected a positive variance of \$3.9 million with \$2.6 million coming from utilities. The remaining \$1.3 million came directly from governmental activity. When compared to 2018, the City's total operating expenses increased by \$400,000 to \$82.4 million or just ½ of a percent. He

continued that the City incurred \$2.7 million in debt service spending for 2019 and another \$10 million in capital spending, all within the approved budget. He stated that other positive balances achieved on the expenditure budget helped offset the 2019 revenue shortfall.

Mr. Del Grande reported the 2019 overall revenue reflected a \$2.1 million negative variance when compared to the budget. When compared to 2018 activity, overall revenue for 2019 was \$1.7 million less than 2018 which was \$92 million versus \$90.3 million. Overall, the City fell 2.3% short of its total Revenue Budget primarily because electric sales fell 2.9% under expectation which totaled \$3.5 million shortfall. He continued that water sales fell 5.4% under expectation and staff did not revise revenue expectations to reflect the postponement of the 4.5% rate increase originally included in the 2019 budget. He stated that water sales were close to budget projection and fulfilled \$110,000 of the shortfall due to sales underperforming estimates. He reported that sewer revenue fell short by \$269,000 due to not updating revenue expectations to reflect the 3.8% sewer rate increase that staff built in to the 2019 budget. The total sewer sales for 2019 slightly exceeded budgetary projections.

Mr. Del Grande stated Real Estate Transfer Tax (RTT) exceeded the Revenue Budget by \$1.1 million and nine commercial transactions accounted for \$1.4 million of the \$2.6 million received in 2019. Additionally, the \$400,000 PILOT the City received from the State helped close the 2019 gap as it was not a budgeted item. Overall, 2019 expenditures and revenues netted to a positive \$1.8 million variance and the cash balance at the end of the year was \$40.6 million which included \$23.4 million in the City's long-term cash account and \$17.8 million in operating cash. The electric regulatory liability carried a credit balance of \$3.6 million, managed through the 2020 Rate Stabilization Adjustment (RSA) approved by Council last week.

Mr. Markham, Ms. Wallace, and Mr. Hamilton did not have questions for 2019 but did have questions for 2020. Ms. Bensley reminded Council that part of the executive order was for speakers to identify themselves before speaking for Livestream viewers.

Mr. Markham suspected the 2020 budget was too optimistic given the current state of the world and noted that staff usually waited until August to address concerns. He wanted to plan immediately for a downturn in utility accounts. He asked what steps could be taken for loss of revenue with COVID-19 regarding utilities and parking. He believed it was possible for everything but taxes to go down. He believed UD utilities would decrease but residential would increase a bit. He asked if the RSA fund could be used to deal with shortfall in 2020. He asked how the National State of Emergencies would affect the City financially and if any of the funds from the State of Emergencies could be used to help City businesses. He noted that between the construction on Main Street and the coronavirus, Main Street businesses were in a difficult position. He wanted staff to get information from the Small Business Administration to business owners. Mr. Coleman interjected that the contact he spoke to would be sending out unemployment benefit information to The Newark Partnership who would forward it on to members. Mr. Markham noted that the City did not typically interfere with businesses but believed the fallout would be devastating and would affect the City. He recalled that the City had previously provided funding to Catholic Charities to aid residents in crisis with utility bills and asked if the option was still available. Mr. Del Grande answered that staff budgeted \$30,000 in 2020 for the program. Mr. Markham asked if the information could be put on the City website and Facebook and Mr. Coleman replied yes.

Mr. Markham asked if the City's obligation in retirement and OPEB would get worse in terms of funding for the next year and if the City would need to contribute more funding if investments were way down. Mr. Coleman anticipated a significant negative impact on the pension funds and revealed that the Ofunds were at January 2019 levels. He noted while they were down, they were only down by one year of growth. He stated that the financial advisor and the actuary recommended that the City lower the discount rate to 5.5% from 6.5% as soon as possible. Mr. Coleman noted the decrease would have a significant impact on the amount of money that the City was advised to contribute through the actuarially-derived contribution rate. He stated that staff did not yet have the number and alerted that it would drive up the costs of the unfunded pension liabilities. He explained that when the discounted rate was reduced, it reduced the funded percentage and the City would have to contribute more. Mr. Markham warned future Council that the next budget process would be challenging, and Council would have to find a way to maintain costs without losing momentum.

Ms. Wallace believed Mr. Markham addressed most of her concerns and requested that Council be given guidance on projects that could be reprioritized as employees began to work remotely or fell ill. Mr. Coleman answered that many planned projects would not move forward due to staff bandwidth issues. He continued that the South Wellfield had a long demolition phase ahead of construction and staff was reaching out to the contractor to make sure demolition did not start before the contractor was

confident that materials were onsite to sidestep supply issues. He stated that all projects would be similarly examined.

Mr. Horning asked what the City planned in stopping utility disconnects and offering short term relief to customers. Mr. Coleman revealed staff was no longer processing disconnects and were not processing late fees or penalties for payment because of economic impact and because staff was not accepting walk-ins at the window. He advised residents to contact Payments & Utility Billing and speak to staff about payment arrangements. Mr. Horning asked if the City offered payment plans and Mr. Coleman confirmed.

Mr. Hamilton noted many projects were related to grants with timelines and asked if staff reached out to the State. Mr. Coleman answered that the Emerson Bridge was good through the end of 2021 and he would check into the rest of the projects but could not recall any that were imminent. He indicated that staff was comfortable with moving forward with Rodney and would speak with partners. Mr. Hamilton noted that the City would lose revenue but would also have less expenses.

Ms. Wallace asked what the City would do regarding parking in the interest of helping downtown businesses. She thought Council should discuss whether direction should be given to staff to allow free parking on the street for a certain amount of time to enable businesses to do curbside delivery and to open the lots to allow for free parking for employees. Mr. Coleman recommended that Council consider Ms. Wallace's suggestions and remarked that the City already had parking staff shortages and the lack of revenue could not justify manning the booths. He wanted to open the lots to help businesses impacted by the recent State order.

Mr. Clifton believed it was the appropriate time to have the discussion. Mr. Markham thought that if businesses were open for curbside, it made sense to open the lots up given the City was not going to break even. He wondered if staff could impose a timeframe and suggested it end when the Governor called off the State of Emergency. Mr. Coleman believed it was a reasonable time frame.

Mr. Hamilton thought it was a great suggestion and asked how far the City was involved with the \$5,000 per month parking lot at the former Simon Eye. Mr. Coleman answered that the City had more than covered costs as of Friday and imagined it would return to the same once the emergency order was lifted and revealed the City would still break even despite a few months of no revenue. Mr. Hamilton believed allowing short term parking was the least staff could do to help residents and businesses.

Mr. Horning agreed with Ms. Wallace and Mr. Hamilton and thought it would encourage visitors to come get takeout from Newark businesses.

Mr. Clifton concurred with the suggestion and asked Ms. Bensley if there was public comment on the agenda item. She responded that no public comment was submitted for the agenda item but noted a related comment to parking for the emergency ordinance. Ms. Bensley read Sasha Aber's comments into the record on behalf of Home Grown Café:

"As you all know, I have been a resident of Newark for over 40 years, I'm a homeowner within the city limits, and have owned a business downtown since 1998.

I am asking Council to follow the Governor's guidelines in allowing restaurants to take and fill orders for takeout and delivery. This is a detrimental step in the vitality of Main Street and the businesses there, including mine.

Restaurants uphold the strictest of sanitary practices. Our managers are ServSafe trained on food safety, and we follow DE Health and social services guidelines. It has always been our job to uphold incredibly high standards, and we will continue to do so. Going forward, only limited staff (managers only) will be allowed in the kitchen. All deliveries will be dropped outside the back door, as delivery drivers will not be allowed in the kitchen either. We have updated policies and feel confident moving forward in a safe manner.

As you know, construction has already affected downtown business. I am asking for three different items in regards to the construction and parking. One, I would love to see space in front of each restaurant allowed for customers to do curbside pickup. Secondly, please increase the timing for free parking to 15 minutes so patrons can pick up take out. Third, if DelDOT could work throughout the night and complete construction in a faster manner, working through the night, which I know needs a noise variation, but Council could grant that, it would definitely help Main Street bounce back from this when things settle down.

I appreciate everything the members of council and the mayor do for City. I hope that you will all vote to support your City of Newark businesses and help keep these businesses in service.”

Mr. Clifton concurred with Ms. Aber’s points and asked if there was a motion to give direction to the City Manager.

MOTION BY MS. WALLACE, SECONDED BY MR. MARKHAM: THAT COUNCIL DIRECT THE CITY MANAGER TO LIFT THE PAID PARKING IN THE CITY LOTS AND ALLOW A 15 MINUTE FREE-PARKING GRACE PERIOD FOR THE METERS THAT WILL REVERT TO CURRENT RATES WHEN THE GOVERNOR LIFTS THE STATE OF EMERGENCY.

MOTION PASSED. VOTE 5 TO 0.

Aye – Clifton, Hamilton, Horning, Markham, Wallace.

Nay – 0.

Absent – Lawhorn, Hughes.

Ms. Bensley asked if it was necessary to return with a follow-up emergency ordinance at the next Council meeting to codify the changes since the rates were in code and Mr. Bilodeau confirmed. Ms. Bensley said it would be added to the agenda. Mr. Markham suggested it could be done immediately since it was an emergency ordinance. Mr. Coleman asked Mr. Bilodeau if an emergency ordinance would automatically sunset after 60 days and Mr. Bilodeau confirmed. Mr. Coleman suggested making emergency ordinances simple and to allow the City Manager the ability to adjust the rates and the lots. Mr. Bilodeau added that any emergency ordinance that passed needed to be five votes which meant a unanimous vote that evening.

Mr. Hamilton asked if the ordinance needed to be changed or if Council could direct staff to not enforce the current ones. Mr. Clifton deferred to the City Solicitor who believed the Charter allowed emergency ordinances proposed from the floor. Mr. Markham explained that he proposed an emergency ordinance because, otherwise, there would be seven days of no action.

MOTION BY MR. MARKHAM, SECONDED BY MS. WALLACE: TO PROPOSE AN EMERGENCY ORDINANCE THAT THE CITY SUSPEND PARKING RATES AS CURRENTLY IN CODE, GIVING THE CITY MANAGER THE AUTHORITY TO REINSTATE OR CHANGED THEM WITHIN THE SIXTY-DAY TIME PERIOD.

There were no comments or questions from Council.

MOTION PASSED. VOTE 5 TO 0.

Aye – Clifton, Hamilton, Horning, Markham, Wallace.

Nay – 0.

Absent – Lawhorn, Hughes.

MOTION BY MR. MARKHAM, SECONDED BY MS. WALLACE: TO ACCEPT THE FINANCIAL REPORT.

MOTION PASSED. VOTE 5 TO 0.

Aye – Clifton, Hamilton, Horning, Markham, Wallace.

Nay – 0.

Absent – Lawhorn, Hughes.

4. 2. SPECIAL DEPARTMENTAL REPORTS:

A. 2020 Insurance Renewals - Finance Director (30 minutes)

32:40

Mr. Del Grande reported that existing coverage for all insurance lines expired on April 1, 2020, and the insurance brokers at Willis Tower Watson (WTW) conducted a marketing on the City’s lines of insurance. WTW sought alternate proposals for coverage but found most declined to bid on the insurance coverage because of exposure, terms, or non-competitive pricing from the current providers. As a result, the overall renewal program returned with an annual premium rate of \$737,109, an increase of \$73,313 or 11.2%. WTW assured staff that the premiums were consistent with their other clients. Mr. Del Grande reminded that the City only opted to buy in with companies with ratings of A or better. He noted that staff wanted to add additional coverage to the existing cyber policy to provide the City with more protection

from cyber-attacks. The additional coverage would permit voluntary shutdowns, provide coverage for bricking, cover vendor breaches, protect from system failures and protect against misrepresented money or security transfers. He informed that the policy enhancement would cover losses up to \$3 million with bricking at \$250,000 less \$50,000 deductible. The waiting period would also be reduced from ten to eight hours after an incident and the total cost of the enhancement was an additional \$4,370, bringing the cyber renewal to \$18,322.

Mr. Del Grande informed that WTW brokerage fees remained unchanged at \$64,575 along with the SISCO Third-Party Administrator fee of \$1,000. He explained that the \$1,000 was the annual flat fee for handling claims under the liability package. He continued that SISCO charged an administration fee of \$1,000 for each claim reported. In total, the insurance coverage costs would increase by 10.8% or \$77,687 if the enhanced cyber policy was approved. He noted that the recommended renewal premiums exceeded the 2020 Approved Operating Budget limit by \$43,054 but staff was confident it could be covered in the existing 2020 Approved Operating Budget without amendment.

The Mayor opened the table to questions.

Mr. Horning recused himself from the discussion and vote because his current legal practice included the legal defense of claims from Chubb Insurance and he vacated the dais to wait in the lobby.

Mr. Markham agreed with the cyber-attack insurance and commented that staff should include it in the 2021 budget.

Ms. Wallace thanked staff for including the additional cyber policy and agreed with Mr. Markham on its necessity.

Mr. Clifton asked Ms. Bensley if there was public comment and she replied there was not. The Mayor moved the discussion back to the table.

MOTION BY MS. WALLACE, SECONDED BY MR. MARKHAM: THAT COUNCIL AUTHORIZE STAFF TO BUY INSURANCE COVERAGE FOR THE UPCOMING POLICY YEAR PER THE RECOMMENDED LEVELS AND CARRIERS REPORTED ABOVE.

MOTION PASSED. VOTE 4 TO 0.

Aye – Clifton, Hamilton, Markham, Wallace.

Nay – 0.

Absent – Lawhorn, Hughes.

Abstain – Horning.

5. 2-B. FY2019 BUDGET AMENDMENT FOR 2019 DFIT ANNUAL PREMIUM – FINANCE DIRECTOR (15 MINUTES)

38:14

Mr. Del Grande informed that the City opted into the State of Delaware's Workers Compensation Program on May 13, 2019 and became participants of DeLea Founders Insurance Trust (DFIT). He explained that DFIT provided the insurance premium estimate based on historical payroll data, available claims history, and a comprehensive safety audit of operations by their risk control consultant. The first premium was May 14 through August 31, 2019 to match the DFIT fiscal year. He reported that DFIT's consultant performed a payroll audit to capture any changes that may have occurred since the initial audit. The estimate for May 14 through August 31, 2019 was \$255,101 and the audit revealed the quote fell short by \$33,218 and the revised expense was \$288,319. He explained the City had an additional \$13,180 set aside in anticipation of an adjustment so fell short by \$20,038. He continued that the true-up process was performed annually and stated it might be necessary to amend the 2020 Annual Operating Budget in 2021. He anticipated the annual premium would be more normalized once the City established a history with DFIT. He stated that funds were available in reserves for all impacted expenses and emphasized it was a 2019 budget amendment.

The Mayor opened the discussion to comments from the table.

Mr. Horning thanked Mr. Del Grande for the presentation and thought the variance was reasonable.

Mr. Markham suggested increasing the 2021 Budget amount and adding a technical fudge factor as it seemed the numbers could change.

Ms. Wallace recalled discussion around the amount decreasing if the Workers Compensation was not used. Mr. Coleman confirmed and explained that the City had been self-insured and it was impossible to separate the regular health claims from the Workers Comp claims so, as the claims were refined going forward, the amount would decrease. He revealed that as the Workers Comp claims were pulled from the health insurance, the health insurance rates should go down. Mr. Del Grande added that the City's rate with DFIT was based upon payroll and not claim activity. Staff provided payroll information to DFIT who then classified Workers Comp based on the work classification and the numbers staff budgeted were based on the premium given by DFIT. He explained the fiscal year ended in August so every member of DFIT was audited and informed Council it would return annually, and staff would put a fudge factor into the budget. Staff anticipated positive outcomes from historical reporting in three years.

There was no public comment.

Mr. Del Grande wanted to add "2019 Budget Amendment" to the recommendation.

MOTION BY MR. MARKHAM, SECONDED BY MR. HAMILTON: THAT COUNCIL MAKE A 2019 BUDGET AMENDMENT TO HAVE COUNCIL APPROVE THE TRANSFER OF \$20,038 FROM THE CITY'S RESERVE ACCOUNTS TO FUND THE DFIT PREMIUM DUE FOR THE PERIOD MAY 14, 2019 THROUGH AUGUST 31, 2019.

MOTION PASSED. VOTE 5 TO 0.

Aye – Clifton, Hamilton, Horning, Markham, Wallace.

Nay – 0.

Absent – Lawhorn, Hughes.

7. 2-C. FY2020 BUDGET AMENDMENT FOR CIP PROJECT K2001 PARKS SIGNAGE REPLACEMENT – PARKS AND RECREATION DIRECTOR (5 MINUTES)

45:14

Mr. Del Grande revealed that the Parks and Recreation Department was replacing the park signage throughout the City because the existing signage was almost 30 years old and was faded, weathered, and deteriorated. He explained that the signs would be replaced in all 36 Newark parks over a two-year period beginning in 2020 and would cost an estimated \$72,000. He stated that the City applied for and received \$32,000 funding from the State of Delaware Division of Parks and Recreation to cover Phase I of the initial replacement project which included replacing signs in the more visible and heavily used parks. The current funding involved grant funding of \$72,000 to be split between 2021 and 2022, as approved in the 2020-2024 Capital Improvement Program. Staff requested the project be advanced by one year as the funding was not expected to be available until 2021. Since the grant was for \$32,000 and not \$36,000, staff reduced the amount of the Capital Project to account for the difference in order to not encumber City funds. The revised amount of the Capital Project was recommended to be reduced from \$72,000 to \$68,000. He reiterated that the City received the funding a year early from the State and wanted to move forward with the park signage replacement.

The Mayor opened the table to comment.

Mr. Hamilton thanked the State for the grant money and thought it was useful.

Mr. Horning reiterated Mr. Hamilton's comments and clarified that the funding could be adjusted in 2021 if necessary and Mr. Del Grande confirmed.

Ms. Bensley said there was no public comment.

MOTION BY MS. WALLACE, SECONDED BY MR. HAMILTON: THAT COUNCIL AMEND THE BUDGET TO APPROPRIATE FUNDS FROM THE STATE OF DELAWARE DIVISION OF PARKS AND RECREATION'S GRANT AND MOVE FORWARD ON PHASE ONE OF THE PROJECT IN 2020. IN ADDITION, I MOVE THAT COUNCIL AMEND THE 2020-2024 CIP BY ADDING \$32,000 IN GRAND FUNDING IN 2020 AND REMOVING THE FUNDING OF \$36,000 IN 2022. FUNDING IN 2021 WILL REMAIN UNCHANGED AT \$36,000.

MOTION PASSED. VOTE 5 TO 0.

Aye – Clifton, Hamilton, Horning, Markham, Wallace.

Nay – 0.

Absent – Hughes, Lawhorn.

8. 3. **ITEMS SUBMITTED FOR PUBLISHED AGENDA:**

A. **Council:**

1. Emergency Ordinance 20-01 – An Emergency Ordinance Concerning COVID-19 Precautionary Measures

49:34

Ms. Bensley read the Ordinance into the record by title.

MOTION BY MR. MARKHAM, SECONDED BY MS. WALLACE: FOR PUBLIC HEARING.

Mr. Clifton thanked Mr. Bilodeau for collaborating with Mr. Coleman and Ms. Bensley to create the emergency ordinance and wanted Council to approve the ordinance. He felt this was important for Council to discuss and approve even though the Governor had issued a State of Emergency. He acknowledged the steps some states had taken in mobilizing and alerting the National Guard and revealed that he spoke with the upper leadership of the National Guard. He explained that the National Guard was a supplementary, reserve organization that works with the Delaware Emergency Management Agency (DEMA) and augmented all state agencies on request. He stated that as of that moment, there was no mobilization of the National Guard in Delaware and wanted to clarify its role. He opened the discussion to Mr. Markham.

Ms. Bensley interjected that since the topic was published late on the website, some viewers were not aware there was a link to the ordinance in the agenda. Mr. Clifton asked that she read the entire ordinance into the record.

Ms. Bensley read the text of Emergency Ordinance 20-01, An Emergency Ordinance Concerning COVID-19 Precautionary Measures into the record.

Mr. Clifton thanked staff and the Delaware Attorney General's office and recognized Dr. Karyl Rattay, from the State Department of Health, who confirmed her endorsement of the policy.

Mr. Markham admitted that he had first believed the virus to be another version of the flu and, upon learning the recent facts, wanted to take extra precautions. He was glad the Governor stepped in because Council would have passed the ordinance with no real support and noted that the City's charter called for Health and Safety. He believed the current guidance called for ten people instead of fifty and wanted to have a conversation about the threshold.

Mr. Hamilton was pleased with the Governor's actions and believed the number should be reduced to ten to follow the CDC.

Mr. Horning wanted to understand the foundation for the number of people and Ms. Wallace interjected that speakers at the White House press conference indicated limiting groups of people made a difference in flattening the curve to allow medical staff to better respond to the crisis. Mr. Horning was in favor of changing the quantity to ten.

Ms. Wallace supported the change to ten and wanted the public to know that she was taking the issue seriously. She explained her history with organizing protests and stated it was in the best interest of public health to limit contact at this time. She informed that the ordinance would be repealed after 60 days and was not meant to be a permanent change. She expected future Council to reassess should the crisis last longer and reiterated it was meant to sunset and not be a permanent change to citizens' rights.

Mr. Clifton agreed with Mr. Horning and Ms. Wallace's comments and stated that he took Constitutional and civil rights seriously as a service member. He asked Ms. Bensley if there was public comment and she confirmed.

Mr. Coleman asked Mr. Bilodeau if the ordinance clarified giving power to police to enforce private gatherings and Mr. Bilodeau confirmed that Police had the ability to enforce private gatherings. Mr. Bilodeau noted that the Governor's proclamation addressed public gatherings. Mr. Coleman revealed the CDC's website reflected comments from the press conference and asked if the ordinance should have language reflecting the CDC's recommendations. Mr. Bilodeau thought it could be difficult for the average citizen to follow and thought Council should adopt an amendment to the emergency ordinance if there was a significant change in the recommendation from the CDC.

Ms. Bensley repeated the earlier comments from Sasha Aber of Home Grown. Ms. Bensley then read the following comments into the record:

Eugene Dunigan [email]: Possible proposal: temporary/permanent halt for all door to door soliciting (do not want potential virus spreaders touching doorknobs, or leaving literature, which might spread the virus).

Michele "Shelby" Durnin, Skipjack Dining [email]: Hello, I am reaching out to voice my concern that Council will vote to close or limit restaurants. Both my husband and I work in the restaurant business in the city limits. We are very concerned that we will have no income for two weeks or more. We are already changing our routines since our 10- and 12-year-olds are home from school. We are diligent about cleaning and sanitizing both public areas as well as in server and food preparation areas. Please, since the Council meeting is closed to the public I implore you to represent those of us who, although understand trying to stop the spread of coronavirus, would be crushed financially. Please use caution as those concerned can continue to practice social distancing. We are trying to keep space between the tables with people while trying to survive in a new reality. Thank you for keeping us in mind while considering the next actions.

Ms. Bensley stated that Ms. Durnin's comments were sent Sunday, prior to the Governor's recommendations.

Ms. Bensley then read comments from the live feed into the record:

Rep. Baumbach: I would add a comma in Amendment #3, after "patios" and before "is permitted"

John Morgan: In Amendment 2 "disbursal" should be "dispersal".

Joseph DeMarco: What actions should off campus UD students take whether that is to remain near campus or go home? As well as part time student employees.

Mr. Clifton noted that Council could not direct off-campus students to stay or leave and thought it was good advice to limit social contacts and practice social distancing. He asked Mr. Bilodeau if the amendment had to be 5-0 and Mr. Bilodeau confirmed.

Mr. Clifton asked Council for additional comments or questions. Mr. Horning revealed he spoke to Representative Baumbach and contacts at AECOM to try to expedite the completion of construction on Main Street. He thanked Chris Locke for the suggestion and Ms. Aber for her thoughts and said Council would know more in the next few weeks. He believed the Governor's updated State of Emergency of closing the restaurants and bars overrode Council. Mr. Horning asked for exceptions for weddings and funerals.

Mr. Clifton noted there were no provisions in State law for weddings and funeral exceptions and Mr. Bilodeau explained that Governor's proclamation addressed public, social gatherings that he interpreted to mean something arranged by the government for a public meeting. He continued that it did not prohibit private social gatherings and he wanted the City's ordinance to address private parties. He noted the ordinance could exclude wedding and funerals but wondered where to draw the line and stated that many churches were not holding services. Mr. Clifton understood that even if the City did not address the State's number of fifty, private events could exceed that number and Mr. Bilodeau agreed. Mr. Clifton was hesitant to provide exceptions for private events. Mr. Markham stated that the virus would not care if the gathering was for a funeral and Mr. Clifton agreed. Mr. Clifton referred to a conversation with a restaurant owner who indicated it was possible to keep space between tables but would still exceed the limit of fifty people and Mr. Clifton told the owner the issue was the aggregate number of gathered people and not the size of the venue.

Ms. Wallace interjected that she agreed with Mr. Markham and did not think carveouts were appropriate. She wanted the City to enact the ordinance to specifically discourage students from having parties and to allow the police to address issues on private property that would otherwise be legal gatherings. She remarked that the foremost concern was for the health and safety of the residents.

Mr. Markham floated the idea of a waiver for discussion. Mr. Clifton did not want staff to be put in such a predicament. Mr. Hamilton agreed with Mr. Markham's sentiments that the virus was indiscriminate and likened gatherings to Russian roulette. He noted he was not in favor of big government but saw this measure as a short-term necessity.

Mr. Hamilton asked if the City already had anti-solicitation rules. Ms. Bensley answered that the City issued solicitation permits and anyone going door to door in the City should have one and believed it

was possible for Council to temporarily suspend the permits. Mr. Hamilton asked if it was an ordinance or direction to staff and Ms. Bensley replied it would be an ordinance since Code allowed for them. She noted that the permits had a monetary value and suggested staff extend the validity of the permit to account for the suspension or prorate a refund. Mr. Hamilton asked how many permits were active and Ms. Bensley explained that the Planning Department granted them. Mr. Markham noted there were carveouts for the permits for political campaigning and remarked that the Democratic Caucus asked their members not canvas door to door. Ms. Bensley also noted the religious carveout. Ms. Wallace interjected that Council could direct staff to request that people voluntarily stop going door to door and Ms. Bensley commented that people typically sought permits for spring and summer and suggested a moratorium be considered on permit issuance. Mr. Bilodeau acknowledged that Ms. Bensley's suggestion was within the purview of Council as part of the emergency ordinance and believed the days suspended could be added to the end of the permit. Mr. Clifton asked if it could be added as Item 4 of the Emergency Ordinance and Mr. Bilodeau confirmed it could be an amendment.

Mr. Horning asked if direction was necessary for non-essential businesses and noted that movie theaters and gyms were not technically social gathering. Mr. Bilodeau noted that Ohio closed restaurants and believed any step take to limit social contact was justifiable and supportable. He suggested waiting to see what the Governor chose to do and suggested the City recommend not going to the gym. Mr. Horning asked if Council had to allow three days' notice to add restrictions to the ordinance and Mr. Bilodeau believed that more stringent measures could be addressed on the 23rd. Mr. Horning stated he was in favor of suspending the solicitation permits as Amendment 4 and offering a refund for payment during the period of suspension. He asked if the Ordinance would be lifted when the State of Emergency lifted, and Mr. Bilodeau explained that Council could sunset the ordinance after sixty days or when the Governor lifted the emergency.

Ms. Bensley informed Council that she and Mr. Bilodeau discussed the meetings cancelled after the 23rd due to the election and wanted to put the ordinance on for first reading at the next Council meeting to address any potential extensions. The second reading would be on April 27th. Mr. Clifton asked if she was recommending Council review the ordinance as a regular procedure on April 27. Ms. Bensley explained that the Charter called for an emergency ordinance to be repealed on the 61st day unless it was adopted by Council as a regular ordinance with first and second reading and informed that Council could reevaluate on April 27th to decide whether to extend the period without interruption. Mr. Clifton did not want residents to see it as a permanent action because of the wording. Ms. Bensley asked Mr. Bilodeau if it was possible to have the same emergency ordinance multiple times and he explained the Charter called for sunsetting 61 days unless a regular ordinance was adopted to take its place. He said if Council decided to have it in place for more than 61 days, Council should plan on addressing regular ordinances in the pipeline to be considered at an open meeting with first and second readings.

Mr. Coleman suggested including language in the permanent ordinance to sunset when the State of Emergency was lifted. He added that a moratorium should be put on solicitation permit licenses and charitable solicitation licenses. Ms. Bensley noted there was nothing stopping staff from removing the second reading from the April 27th agenda if the State of Emergency was lifted sooner. It was meant to ensure that with the anticipated pauses in Council meetings, that the timing was available, if needed, to extend the ordinance.

Mr. Clifton commented it was a safeguard to assure the continuity going forward if it became a worst-case scenario and Ms. Bensley confirmed.

There were no additional comments and the Mayor called for any amendments to Emergency Ordinance 20-01.

MOTION BY MR. MARKHAM, SECONDED BY MR. HAMILTON: TO CHANGE AMENDMENT 1, CHANGING THE FIFTY (50) ATTENDEES TO TEN (10) AND CHANGING AMENDMENT 2, CHANGE THE WORD FIFTY TO TEN OR MORE PERSONS.

Mr. Bilodeau asked if there was also an amendment about the solicitations and Mr. Hamilton asked if they needed to be addressed on at a time. Mr. Markham said he was willing to make the amendment. Ms. Bensley explained the point of order called to address the amendment on the floor.

MOTION PASSED. VOTE 5 TO 0.

Aye – Clifton, Hamilton, Horning, Markham, Wallace.

Nay – 0.

Absent – Hughes, Lawhorn.

MOTION BY MR. HORNING, SECONDED BY MS. WALLACE: TO MOVE THAT IN THE BE IT FURTHER ORDAINED PARAGRAPH, IN EMERGENCY ORDINANCE 20-01, AMENDMENTS 1 AND 2 SHALL BE ENFORCED BY LAW ENFORCEMENT OFFICERS OF THE CITY OF NEWARK, AMENDMENT 3 SHALL BE ENFORCED BY CITY OF NEWARK CODE ENFORCEMENT OFFICIALS, AND THAT THIS ORDINANCE WILL SUNSET AFTER 60 DAYS OR SHALL BE OF NO EFFECT IF THE GOVERNMENT LIFTS THE STATE OF EMERGENCY IN EFFECT AS OF MARCH 16, 2020.

MOTION PASSED. VOTE 5 TO 0.

Aye – Clifton, Hamilton, Horning, Markham, Wallace.

Nay – 0.

Absent – Hughes, Lawhorn.

Mr. Clifton asked if there were further amendments.

MOTION BY MR. HORNING, SECONDED BY MR. HAMILTON: TO ADD AMENDMENT 4, EFFECTIVE IMMEDIATELY ALL SOLICITATION PERMITS ARE SUSPENDED, INCLUDING CHARITABLE SOLICITATIONS. A REFUND FOR THE PERMIT PAYMENT FOR THE PERIOD OF SUSPENSIONS SHALL BE GIVEN.

Mr. Markham asked if the motion was meant to be door-to-door solicitation

Mr. Clifton asked Mr. Horning if he wanted to remove the motion and restate it. Mr. Horning confirmed and asked Ms. Bensley if the solicitation permits applied to telemarketing. Ms. Bensley confirmed that solicitation permits only applied to businesses soliciting from door-to-door and would not apply to political solicitation or religious solicitation and explained that charitable solicitations did not cover examples such as Girl Scouts selling cookies. She noted the solicitation permits were very limited. Mr. Markham remarked that the amendment did not need “door-to-door” as it was implied and other solicitation for charity should be addressed. Ms. Wallace asked staff how problematic or burdensome the refund process would be. Mr. Coleman admitted he was concerned and indicated staff could not address the issue until it was lifted but indicated a refund was preferable to an extension. He could not comment on how burdensome the process would be. Ms. Wallace asked how much permit fees cost, and Ms. Bensley replied they were \$500 per year. Mr. Hamilton asked for the approximate number of permits in question. Mr. Coleman replied the charitable solicitation permits were free and Ms. Bensley read Ms. Gray’s reply that the Planning had not issued any since the department took over the permit process. Ms. Wallace stated her experience was that solicitors did not always use permits. Mr. Coleman stated a one-day license was \$50, one month was \$250, and annual was \$500 and suggested to put out guidance to report any solicitors. Mr. Clifton believe people were unaware that permits were required. Mr. Clifton asked Mr. Horning if he wanted the original motion to stand and Mr. Horning confirmed.

MOTION PASSED. VOTE 5 TO 0.

Aye – Clifton, Hamilton, Horning, Markham, Wallace.

Nay – 0.

Absent – Hughes, Lawhorn.

MOTION BY MR. MARKHAM, SECONDED BY MR. HAMILTON: THAT COUNCIL APPROVE EMERGENCY ORDINANCE 20-01 WITH AMENDMENTS 1 THROUGH 4 AND THE CHANGE TO THE NUMBER OF DAYS.

Mr. Horning asked if any additional comments from the Livestream had to be incorporated and Ms. Bensley stated the typos pointed out on Livestream would be corrected.

MOTION PASSED. VOTE 5 TO 0.

Aye – Clifton, Hamilton, Horning, Markham, Wallace.

Nay – 0.

Absent – Hughes, Lawhorn.

Mr. Markham asked if the DeIDOT work required direction from Council to extend the noise ordinance for overnight. Mr. Coleman stated he did have the power do it but would never turn down direction from Council. Mr. Markham wanted to get construction on Main Street done as quickly as possible.

MOTION BY MR. MARKHAM, SECONDED BY MS. WALLACE: THAT COUNCIL GIVE DIRECTION TO THE CITY MANAGER TO SUSPEND THE NOISE ORDINANCE FOR MAIN STREET TO ALLOW OVERNIGHT CONSTRUCTION ON MAIN STREET AND TO SUSPEND THE CURRENT SPECIAL PERMIT.

MOTION PASSED. VOTE 5 TO 0.

Aye – Clifton, Hamilton, Horning, Markham, Wallace.

Nay – 0.

Absent – Hughes, Lawhorn.

9. 3-A-2. LIMITING CITY COUNCIL BUSINESS TO ESSENTIAL BUSINESS

1:51:09

Mr. Markham proposed that Council business be limited to essentials as not all residents could comment or participate online. He suggested suspending development projects and wanted an emergency ordinance limiting Council business to the essentials and to allow the City Manager, City Secretary, and City Solicitor to determine what would be considered essential.

Mr. Clifton wanted to set consistent and accurate lawful parameters to what would be considered critical business versus what was not critical business. He was concerned with the legal ramifications since a Planning Commission meeting had been canceled and wanted to know what an expedient timeframe was to move a project forward. He was concerned about a second wave of financial impact for the City.

Ms. Bensley explained the format of the meeting was not how staff intended to move forward in the long-term and was the best solution given the timeframe of the Executive Order and the meeting. She said staff planned to have a more interactive meeting solution with the public and IT was working with vendors and Council members were testing software. She explained the software solution would allow people to follow and speak at the meeting. She echoed Mr. Clifton's concerns that the City had several projects in the near term that had undergone extensive public advertising. She stated that revised public mailing provided cover letters explaining the project, why the residents were getting a letter, and detailing ways they could contribute input to the project via email and mail to submit comments in addition to appearing at the meeting. She believed there was adequate opportunity for public input but admitted it was not perfect. She noted the Planning Commission and the Board of Election were the only two boards that would continue meeting during the order. She remarked that although the Planning Commission was an advisory board, it would still have an agenda and consider projects as presented. She encouraged residents to continue reviewing the materials for projects on the City's website and submitting comments via email or mail. She stated it was her full intention to continue read comments into the record because residents were unable to personally read them. She hoped Council would consider her comments before moving forward.

Ms. Bensley was reminded by Ms. Gray that Code indicated Council would consider the application at a public hearing in a reasonable amount of time. She did not think postponing indefinitely until the situation was resolved would meet the criteria.

Mr. Markham remarked that the next Council meeting would be through a new, untested process, and proposed to postpone the land-use items for March 23 until the first meeting in April to allow staff to test the system and get resident comments. He stressed that he wanted to have one successful trial run and then wanted the land-use to be addressed in another meeting. Mr. Coleman stated that IT would attend the next meeting and pointed that staff was already scheduling into the end of June and already had a backlog. Mr. Markham indicated he wanted to buy some time to get comfortable with the new process because the future was uncertain. He reiterated that he wanted to push March 23 to the April 27 meeting.

Ms. Bensley asked if Council agreed to lifting the restriction on the time limit for the April 27 meeting to accommodate Mr. Markham's suggestion. Ms. Wallace believed the agenda was full. Ms. Bensley explained that the April 6, 13, and 20 meetings were canceled, as was the May 25 meeting because of the Memorial Day holiday and stated that the scheduled was backed up. She said the two items that would be on the March 23 agenda were adding Planning Area 7 to the Comprehensive Plan and the project for 118, 126, and 130 New London Road which was a Comprehensive Plan Amendment and Minor Subdivision with Site Plan Approval. The April 27 agenda had the Comprehensive Plan Amendment Annexation and Major Subdivision for the Milford Run Subdivision which was dependent on the Planning Area 7 recommendation so if those items were pushed to April 27, the Milford Run would have to be pushed to a further meeting, at least until June because of the canceled May 25 meeting. She reminded Council that both items for March 23rd were originally scheduled for the January Planning Commission

meeting which was canceled because of advertising issues. It was then moved to February Planning Commission, which delayed the Council hearing to March. Now it would potentially be bumped to April.

Mr. Clifton asked if it was possible to have a full-blown dry run of the new meeting technology to discern any issues. Ms. Bensley replied that staff was meeting to discuss the next steps and wanted to have a dry run by the end of the week with Council and staff working from home to ensure that participants could log on and to test the various systems. Staff wanted to make sure microphones worked and that administrators could mute when necessary to create a seamless stream for public comment and Council discussion. She stressed that she did not discount Mr. Markham's concerns that technology was not perfect, but staff was doing the best it could with what it had. Ms. Wallace added that she had used the software at a previous position and noted technology could fail regardless of testing. She also stated the device microphones had more feedback.

Mr. Bilodeau suggested tabling discussion if the software crashed during the meeting and Mr. Clifton admitted there would not be option if the public was unable to provide input. Mr. Hamilton noted that glitches could happen any time and if Council delayed until April and then had a glitch, the delay would be greater. He suggested staying on schedule.

Mr. Horning appreciated public input but admitted he was concerned with development projects. He noted that Delaware was in a Judicial State of Emergency for the next thirty days and the rights to a speedy trial were on hold, so a development project timeline could be evaluated. He did know where staff could get guidance but wanted to better understand how it could be pushed out.

Ms. Wallace was not opposed to delaying development projects due to lack of public input but wanted to put more thought towards the effort. She wanted to keep the project on next week's agenda and then ask direction from the City Solicitor, City Manager, and City Secretary about what could be rescheduled if necessary.

Mr. Clifton admitted things were rapidly changing noted all members of Council respected the public's right to participate. He wanted to keep the agenda as scheduled but pay attention to where things stood in the months to come. Mr. Hamilton recalled discussion about the City offering high-speed internet and Ms. Bensley pointed that not everyone would access the internet if it was available. Mr. Markham hoped the technology worked for the next meeting. Ms. Bensley urged Council to have constituents submit comments about projects to staff through email or mail to the City Secretary's office at 220 South Main Street, Newark, Delaware, 19711, or fax at 302-366-7067, so they could be read into the record.

Mr. Clifton wanted to use every tool possible to alert the public on the ways to participate and suggested an ad in the Post to inform residents or to use the payment box to allow for comment drop-off. Mr. Coleman agreed that the drop box was a good choice. Mr. Horning informed that information was being published on Channel 22 for residents without internet and Mr. Coleman intended to upload recorded Council meetings to the channel to play twice a day for a week until the next meeting took place. Mr. Clifton asked what it would take to show the feed live on Channel 22 and Mr. Coleman replied that the server would need to be moved from Comcast to the municipal building and was part of a project that had not yet taken place. Mr. Clifton asked if it was budgeted and Mr. Coleman believed it was and explained that it could be expedited with direction from Council, but staff was dealing with critical issues and it would be prioritized.

Ms. Bensley announced that the City decided to mail absentee ballot affidavits to every registered voter in District 3 and 5 for the April 14 election. She indicated the City was not going to enact a complete vote-by-mail but encouraged voters to vote by absentee ballots if they were concerned about polling places. She continued there were roughly 6,000 letters to send out and staff hoped to have them mailed out by the beginning of the next week and informed residents that they did not need to request a ballot specifically. Ms. Wallace suggested a special feature in the Post to inform residents how the City was handling the election. Mr. Hamilton asked when the ballots needed to be mailed for the election and Ms. Bensley explained the two-step process. Staff first mailed the affidavit to voters' homes with a cover letter explaining the process and stated the deadline was Friday, April 3, so staff could have enough time to mail the ballot to receive the vote before the election. She said the absentee ballot needed to be in hand by 5pm on April 14 in order to be counted. She said residents could either mail the ballot back to the office or drop the votes in the payment box in the lobby.

Mr. Clifton asked about disinfecting and Ms. Bensley replied that after discussion with the Department of Elections, staff secured enough sanitization material to sanitize the voting machines between voters. She anticipated less traffic at the polling places because of the absentee ballots and planned to work with polling places to sanitize the rooms the day before and day after the election. She

said that the poll workers and voter safety were extremely important and would be following the Department of Elections recommendations on spacing.

Mr. Clifton revealed he spoke to Acting Chief Niland from the fire company and confirmed the City was still able to use Station 7 for the election.

10. Meeting adjourned at 9:53 p.m.

Renee K. Bensley, CMC
Director of Legislative Services
City Secretary

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