

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**June 22, 2020**

Those present at 6:15 p.m.:

Presiding:	Mayor Jerry Clifton District 1, James Horning District 2, Sharon Hughes District 3, Jen Wallace District 4, Chris Hamilton District 5, Jason Lawhorn Deputy Mayor Stu Markham, District 6
Staff Members:	City Manager Tom Coleman City Secretary Renee Bensley City Solicitor Paul Bilodeau Assistant to the Manager Jeff Martindale Chief Communications Officer Jayme Gravell Finance Director David Del Grande Parks and Recreation Director Joe Spadafino Planning and Development Director Mary Ellen Gray Planner II Michael Fortner Planner II Tom Fruehstorfer Public Works and Water Resources Director Tim Filasky

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1. Mr. Clifton called the meeting to order at 6:15 p.m.
  2. **EXECUTIVE SESSION**
    - A. EXECUTIVE SESSION PURSUANT TO 29 DEL. C. §10004 (B) (4) AND (6) FOR THE PURPOSE OF STRATEGY SESSIONS, INCLUDING THOSE INVOLVING LEGAL ADVICE OR OPINION FROM AN ATTORNEY-AT-LAW, WITH RESPECT TO PENDING OR POTENTIAL LITIGATION, BUT ONLY WHEN AN OPEN MEETING WOULD HAVE AN ADVERSE EFFECT ON THE LITIGATION POSITION OF THE PUBLIC BODY AND DISCUSSION OF THE CONTENT OF DOCUMENTS, EXCLUDED FROM THE DEFINITION OF "PUBLIC RECORD" IN 29 DEL. C. §10002 WHERE SUCH DISCUSSION MAY DISCLOSE THE CONTENTS OF SUCH DOCUMENTS.  
  
MOTION BY MR. HAMILTON, SECONDED BY MR. LAWHORN: THAT COUNCIL ENTER EXECUTIVE SESSION PURSUANT 29 DEL. C. §10004 (B) (4) AND (6) FOR THE PURPOSE OF STRATEGY SESSIONS  
  
MOTION PASSED. VOTE 7 TO 0.  
  
Aye – Clifton, Hamilton, Horning, Hughes, Lawhorn, Markham, Wallace.  
Nay – 0.  
Absent – 0.
  3. **RETURN TO PUBLIC SESSION**

Council exited Executive Session at 7:00 p.m. The Mayor stated no action was necessary.
  4. **SILENT MEDITATION & PLEDGE OF ALLEGIANCE**

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

Mr. Clifton explained the procedures for the GoToMeeting Platform. He stated that at the beginning of each item, he would call on the related staff member to present and, once the presentation was complete, he would call on each Councilmember in order of district number to offer their comments. If a Councilmember had additional comments to add later, they should signal Ms. Bensley through the GoToMeeting chat function. Members of the public wishing to comment should also signal Ms. Bensley through the chat function with their name, district or address, and the agenda item on which they would like to comment. He noted that for participants logged in by phone, names would only appear as Caller

One, Caller Two, et cetera, so it was imperative that the participants inform Council of their identities. He stated that all lines would be muted until individuals were called to speak. All speakers were required to identify themselves prior to speaking and, in compliance with the executive order on teleconference meetings by Governor Carney, votes would be taken by roll call. He continued that it may be necessary to adjust the guidelines if any issues arose during the meeting. He reminded that all lines should be muted until called upon to speak.

MOTION BY MR. MARKHAM, SECONDED BY MR. LAWHORN: THAT COUNCIL REMOVE AGENDA ITEMS 3A AND 3B FROM THE AGENDA.

MOTION PASSED. VOTE 7 TO 0.

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

Nay – 0.

Absent – 0.

5. 1. **ITEMS NOT ON PUBLISHED AGENDA**
  - A. Elected Officials who represent City of Newark residents or utility customers (2 minutes): None
6. 1-B. **UNIVERSITY**
  - (1) Administration (5 minutes per speaker) (10 minutes):

**5:22**

Caitlin Olsen, UD Administration, shared that UD was holding to the move-in date of August 28 with classes resuming after that weekend. She noted that move-out was done in a less congested manner than move-in and said she would speak to Parking and the Police Department to relay the timeline in order to help plan for traffic. She noted that the internal committees were still meeting to discuss planning and believed the academic year would be hybrid because of concerns around class sizes but hoped that UD could return to a robust face-to-face model. Ms. Olsen hoped the President would be able to announce the decision and share details of how the University planned to proceed. She stressed that City staff needed to understand the University would need to adjust throughout the process and referred to the exemplary communication between UD and the City during the spring move-out. She asked that Council reach out to her with concerns from residents so UD could share as much information online as possible.

Ms. Olsen shared that the Governor had a Resurgence Task Force and admitted there would be positive cases. She pointed to the Clemson athletes who tested positive and shared that UD would work with the Task Force to safeguard public health. She explained that some athletes were on campus as a pilot and were moving in pods to help contain spread. She noted the pilot helped UD staff to determine supply levels with masks and sanitizers.

Ms. Olsen stated that she and Mr. Coleman would provide a Newark Partnership update the following evening. She shared that the Board of Trustees would also meet the next day and suggested viewing on UDLive versus Zoom and said the information was available on the UDaily article.

Mr. Horning thanked Ms. Olsen for the communication. He asked if there would be limitations on freshman bringing vehicles to campus. Ms. Olsen said she would check with Jenny Sparks, UD's Parking Director, and reply to Council.

Ms. Wallace was pleased to learn that UD was considering actions to take for positive cases and asked that Council be updated for plans should another quarantine take place. She referred to Mr. Horning's question about vehicles and thought it was wise to limit cars on campus as much as possible to make contact tracing easier.

Mr. Hamilton referred to past conversations with Alan Brangman about partnering with the City to create a Community Center at Dickey Park so it would be walkable for lower-income residents. He revealed there was little interest and UD was focused on STAR Campus. He noted that the City paid to temporarily have the Police Force on Main Street and commented that there were people contemplating a multi-million dollar firing range and continued that there were discussions on spending multiple millions on upgrading City buildings for solar power. He appreciated the efforts but was confused about why the City did not have money for residents who were at risk. He was bothered by the discussion to annex Planning Area 7 which was supported by staff, the Planning Commission and members of Council who were in favor of annexing land to build larger single-family homes.

Ms. Wallace interrupted and explained to Mr. Hamilton that Council was directing questions to the University. Mr. Hamilton admitted he lost track of the meeting and Mr. Clifton directed him to continue if it pertained to the University.

Mr. Hamilton noted the progress with UD and City relationships and believed that UD was attempting to incorporate more Delaware students and increase diversity. He hoped to partner with UD to build a community center and wanted to utilize UD's Public Policy Institute and Health Services to the City's benefit. He thought UD would be interested in creating a community center to hold offices for various schools that could work within the community. He thought the center would be an opportunity for UD to have a footprint in underserved parts of the City and provide opportunity for students to advertise services to gain real life experiences. He added the City recently began a Police Athletic League and thought a center would serve to mend relationships between Police and the community. He also pointed that the City contributed \$100,000 per year to The Newark Partnership, which had a community organizational aspect. He wondered why it was not possible to work together to create something better with resources.

Mr. Hamilton suggested that Ms. Olsen meet with Councilmembers. He admitted leadership changed and noted that John Long replaced Alan Brangman. He suggested she work with the Provost to find out how to better serve the community and thought the schools would look to benefit as a joint effort to help the municipality.

Ms. Olsen replied that several of her coworkers were adamant about community involvement and suggested that the Dean of Education, Gary Henry, believed in student and community partnership. She shared that the last provost declared that the brick wall surrounding campus was not inviting and believed UD wanted to create a space where outside groups felt welcome to hold meetings. She admitted it was not an immediate project with the pandemic but agreed with the sentiment.

Mr. Lawhorn supported Mr. Hamilton's points and added that the specific goal of the Newark Police Athletic league was a long-term commitment to actively fundraise for the City. He thought the PAL was a good venue to work with UD.

Mr. Markham asked if athletics would continue as planned in the fall and Ms. Olsen replied it was not confirmed because the Division, the NCAA, and the University all had different ideas and plans. She revealed that students got an extra year of play and explained it was difficult to decide if UD should postpone or cut off the season mid-way. She explained the first pod of athletes were Delawareans because the University wanted local athletes to determine how well UD was prepared. She explained the Athletic Director, Christine Rawak, was a former athlete and a mother who would not base her decision on funding or revenue but would choose based on the health and safety of her student-athletes. Ms. Olsen stressed that UD wanted the City to thrive but also wanted to have safety plans in place. Mr. Markham asked the plans for the band and Ms. Olsen said she would report back.

7. **1-B-2. STUDENT BODY REPRESENTATIVE(S) (5 minutes) (2 minutes): None**

8. **1-C. CITY MANAGER (10 minutes):**

**27:21**

Mr. Coleman reiterated Ms. Olsen's statement that he would be speaking at The Newark Partnership Community Conversation on the City's response to COVID-19. He shared that the Welcome Back Main Street Event was scheduled for Thursday with ten restaurants signed on to expand into the street. He noted that the DeIDOT Secretary would be in attendance, but the Governor was unable to attend. He thanked staff for quickly organizing the event and shared that staff issued noise waivers for Klondike Kate's and Iron Hill for unamplified acoustic music only and explained staff was tracking costs to estimate what it would take to hold a similar event in the future.

Mr. Coleman continued noting that when staff canceled the July 4<sup>th</sup> Fireworks, they began working on a drive-in movie night concept. Mr. Spadafino and Ms. Ennis estimated the event would cost between \$2,000 and \$2,500 and would be held on STAR Campus. He asked Council if there would be support for the project. He explained the initial thought process was to charge per vehicle but once in, viewers would not be required to remain in their cars and because of that, the number of participants would be limited. He suggested that the City could hold more drive-in events throughout the summer if the first was a success and shared that Parks was creating online community events, such as house decorating. He asked Council if there was support for an outdoor movie night.

Mr. Coleman asked to have a discussion with Council to allow management to accrue additional comp time to avoid overtime costs. He explained that management was capped at accruing 150 hours of

comp time and that any time exceeding the 150 hours was charged as straight-time overtime. He said that management typically matched CWA's practices, but CWA contracts increased to 200 hours while management remained at 150 hours. He explained the decision was with the City Manager but stated there had been controversy in the past regarding the comp time cap and wanted Council's support before making the change. He also requested that management be allowed to carry forward additional vacation time into 2021 because it was unlikely that many managers would be capable of taking off this year. He noted the issue already came up with AFSCME and FOP and said that FOP was prohibited from taking vacations during the earlier response and AFSCME requested flexibility for vacation carry-over as part of the trading for the State of Emergency pay premium. He shared that management's request fell in line with the requests from AFSCME, FOP, and CWA.

Mr. Clifton asked for the breakdown of the movie night cost. Mr. Coleman replied it was \$3,000 for renting the screen, sound system, and the movie license for Frozen 2. He shared that staff was seeking potential sponsorships and said the south STAR Campus lot could accommodate 50 cars at \$20 a car which reduced the sponsorship amount to \$2,000.

**9. 1-D. COUNCIL MEMBERS (5 minutes):**

**33:00**

**Mr. Horning:**

Mr. Horning referred to Mr. Hamilton's previous comments and supported the community center idea. He thought would be a good opportunity for student clinical experience. He asked Mr. Coleman if the event would be revenue neutral or operate at a loss. Mr. Coleman anticipated a loss without sponsorship support but noted it would likely sell out so the loss would be no more than \$2,000. Mr. Horning thanked staff and Police for their efforts and thought the vacation carryover request was fair. He asked if Mr. Coleman wanted to staff to get credit for comp time. Mr. Coleman explained there was currently a cap of 150 hours for management to have at one time. He continued that the number of hours staff could accrue in one year was unlimited, but staff could not exceed a concurrent amount of 150 hours. He pointed that the Police Command Staff worked for over two weeks straight with the protests, so they were accruing time they were unable to use. He noted that overtime took over once the cap was met. Mr. Horning asked what Mr. Coleman was asking. Mr. Coleman repeated he wanted to increase the cap from 150 to 200 hours to avoid overtime costs. Mr. Horning asked if it would be consistent with the AFSCME request and Mr. Coleman repeated that management was generally in line with CWA. Mr. Horning supported the cap raise because he did not want to penalize employees.

**Ms. Hughes:**

Ms. Hughes said that Mr. Horning addressed one of her questions and asked if the proposed movie night was for 50 cars at \$20 each. Mr. Coleman confirmed. Ms. Hughes asked if it was \$800 and Mr. Coleman corrected that it totaled \$1,000. Ms. Hughes asked what time the movie would start. Mr. Spadafino said it was start at 9pm. Ms. Hughes noted Frozen 2 was an older movie and thought 9pm was too late for younger children. Ms. Hughes suggested a different movie at an earlier time. Mr. Spadafino explained that viewers could not see the movie if the sun was up and said he would consider her suggestion on movie choice.

**Ms. Wallace:**

Ms. Wallace had no issue with Mr. Coleman's request about comp time and wanted to know what AFSCME's contract stated. She wanted to curb overtime costs and acknowledged that staff was working hard to keep the City running. She commended Parks and Recreation for their ideas on community involvement and had no issue with the choice of movie. She felt that it was a good family activity and suggested doing a poll before committing to a movie to gauge interest.

Ms. Wallace apologized to Mr. Hamilton for interrupting his earlier comments because she thought he had lost his place in the agenda. She then said she believed the only way to dismantle systematic racism was to face it head-on. She referred to the lack of diversity on the Boards and Commissions and believed the City had to do more to combat racism than to add diversity. She was thankful for the Boards and Commissions Review Committee and the City Secretary for coming forward with changes. She thanked the recent Rental Committee for their work in addressing the inequities that existed in the rental housing market but thought more should be done. She suggested moving forward with creating a Diversion, Inclusion, and Equity Committee to be made up of stakeholders and residents to review City Code, policies, procedures, and practices in the Police Department and throughout the City. She wanted stake holders to address racism, LGBTQ+ issues, trans rights, and disabled rights, within the City's current practices. She also wanted to create a task force of stakeholders and residents to review

how the City policed the community. She pointed that the Police made up 50% of the budget and thought the public should have more of a say in what services the Police enforced. She noted that parking had been removed from Police responsibilities and was now handled by another department. She thought it was possible that other functions could be handled by different City factions and suggested staff investigate solutions enacted by the Downtown Visions Program in Wilmington. She believed the task force should have broad representation from the community and include factions from the ACLU, NAACP, and faith-based organizations. She wanted Council to consider who else should be involved and stressed that residents should have a larger say in the budgeting.

**Mr. Hamilton:**

Mr. Hamilton supported the movie night and agreed that management comp time should be raised to 200 hours for the remainder of the year and 2021. He hoped to have the hours under control in the future and did not know if the 200 hours was a permanent decision. He noted that UD typically notified the City when they cleaned their water mains, but staff had failed to notify residents. He reminded it was an annual event and wanted to notify the community when it happened. He referred to the discussion on annexing land to create single-family homes and pointed that the homes were not cost-effective. He wanted to consider ways to balance the inequity. He did not want City center residents subsidizing residents on the outskirts. He indicated that UD's decision to cut beds put pressure on City rental pricing and believed it was difficult for developers to get financial backing for lower- and moderate-income housing. He pointed that generational wealth was passed down through home ownership and noted that the City had single-family homes downtown, but the behaviors of younger residents made it difficult to reside in those neighborhoods. He was concerned that the practice of rental owners buying in the area was a way to extract wealth and did not allow for family residents. He suggested challenging financial institutions to create opportunities for community home ownership.

**Mr. Lawhorn:**

Mr. Lawhorn supported the movies and encouraged more of the same programs and expected it to be sold out. He commended Parks on their work. He supported Mr. Coleman's proposal for raising comp time short term and wanted to reengage the conversation of management pay structure.

Mr. Coleman reported that FOP had a cap of 176 hours, AFSCME 200, and CWA was 225. He explained the CWA was the most similar labor group to management. He requested to match CWA's hours and was comfortable with Council's prerogative to add a term limit.

**Mr. Markham:**

Mr. Markham asked if Mr. Coleman suggested limiting when comp time could be used, and Mr. Coleman confirmed. Mr. Markham recalled previous discussions on comp time and suggested limiting how much employees could use at once. He supported the idea but pointed that it was an on-the-books liability. Mr. Markham asked if there was a list of participants for the meeting on Thursday night and told Mr. Coleman he could forward the response. Mr. Markham supported the movie night but was concerned with social distancing and hoped there was a plan in place.

Mr. Markham wanted future Council to consider ways to reduce initial infrastructure costs for new subdivisions and new residents. He noted that curbing was expensive to install and replace and was not in single-family subdivisions. He suggested staff review infrastructure requirements to determine where the City could cut costs. He suspected they were in Code and needed to be addressed as such. Mr. Coleman agreed and thought City Code could be revised to decrease upfront and incurring maintenance costs. He suggested the road widths could be narrowed and parking could be addressed with roadside swales and other substitutions. Mr. Coleman replied to Mr. Markham's earlier question that participants for Thursday were Iron Hill, Arena's, Caffe Gelato, Taverna, Home Grown, Klondike Kate's, Santa Fe, Pachamama, Grotto's, Water is Life Kenya, The Newark Arts Alliance, and The Newark Partnership.

Mr. Markham asked if the infrastructure topic should be addressed at another time with Council and Mr. Clifton replied that the meeting was assumed to be three hours long and was already an hour gone but was at the pleasure of Council. Mr. Markham said he could address it immediately or put it on another agenda and explained it was to direct staff to review the infrastructure requirements to determine if any cost savings and changes could be made to Code. Mr. Clifton's opinion was that a future agenda was more appropriate because it gave staff the opportunity to review and determine available options to create a fact-based document so Council could have an intelligent discussion. Mr. Markham suggested it could be addressed on July 6<sup>th</sup>. Ms. Bensley replied if it could not work on July 6<sup>th</sup>, then it could be addressed on July 13<sup>th</sup>.

**Mr. Clifton:**

Mr. Clifton agreed with the movie night and supported Mr. Coleman's plan for comp time. He pointed it was the Director and City Manager's prerogative to allow or deny the use of vacation or comp time based on the needs of the City. He appreciated Ms. Wallace's comments and explained he put the Diversity Committee on hold because he wanted the start-up to be in-person versus virtual. He shared that Freeman Williams expressed ideas for community conversation and agreed that the Committee should begin when meetings could be in-person. Mr. Clifton pointed that the discussion on how Council selected candidates for Boards and Commissions would be on the next agenda. He acknowledged it was a suggestion from the Boards and Committees Review Commission, but Council never acted and hoped the process could be started shortly. He reiterated that the Governor could not take part in the event on Thursday, but DelDOT Secretary Cohen would be in attendance. He continued that there would be a food giveaway from a local church on Saturday from 2-4pm at Dickey Park that had been postponed from the previous weekend due to inclement weather.

Mr. Clifton explained a petitioner would be presenting that evening and stated that Ms. Bensley received the PowerPoint at 5:23pm that afternoon. He expressed his irritation on last minute submittals and pointed that Council packets were distributed seven days in advance. He wondered whether a simple direction from Council to the City Manager and City Secretary to direct appropriate staff to cease late submissions would be enough and said that he would speak the City Solicitor to determine a solution. Mr. Markham agreed with Mr. Clifton and did not know if it was possible to adjust rules and procedures to indicate late submittals would not be considered or would be postponed. Mr. Clifton agreed and noted that Mr. Bilodeau had rejoined the meeting and asked him what steps were necessary. Mr. Bilodeau suggested posting a rule on agendas to indicate that late submittals would not be considered. He pointed to the various discussions regarding the issue and thought having an established rule was a remedy. Mr. Clifton asked if would fall under the provision of Council agreeing to a direction to direct the City Manager and City Secretary to enforce the rule. Mr. Bilodeau confirmed. Ms. Bensley revealed that Council's Rules of Procedure would be addressed at the August 6<sup>th</sup> Organizational Meeting and she believed it was appropriate to include the topic in the discussions. Mr. Clifton and Mr. Bilodeau agreed with Ms. Bensley's suggestion.

**10. 1-E. PUBLIC COMMENT (5 minutes per speaker) (10 minutes): None**

**1:19:31**

Ms. Bensley read a comment from Jay Bancroft, 715 Art Lane:

"As a candidate for the 3rd district, I wanted to voice my support for Lt. Andrew Rubin's posting of June 9th. The public is keenly sensitive to police misconduct, and these questions are answered with accessible, common sense language.

I look forward to working for our city's continued efforts to improve community policing. Trust is hard won but critical for our community and its emergency responders.

I also have been comparing two documents by the Wilmington Police and Delaware NAACP, from December 1, 2017 and May 31, 2020, respectively. There is considerable overlap in the Police Use of Force document and NAACP Response to Recent Police Killings. I hope to work with city officials to promptly enact statutes that can demonstrate good faith. Thanks, I appreciate the opportunity to contribute."

Ms. Bensley introduced Dr. Helga Huntley. Dr. Huntley, District 1, pointed to the continuing protests about ongoing systemic racism and discrimination. She urged Council to begin having difficult conversations about how entrenched actions and customs of City Council might perpetuate the problems. She asked each Councilperson to consider how to move the community forward to become more equitable and inclusive. She commended Ms. Wallace, Mr. Lawhorn, and Mr. Hamilton for publicly recognizing the need for local changes and initiating discussions on possible solutions. She referred to the canceled appointments to the Planning Commission and Board of Adjustment and publicly stated that she had no objection to the appointments of either nomination. She continued that her comments pertained to the process by which they were selected and stressed that the two entities had the greatest legal powers of all the City's Boards and Commissions. She repeated the findings of the Boards and Commissions Review Committee of 2015 - 2017 that recognized the need for better access to positions to include a broader range of community candidates and instituting an application process. She thought more advertising would create a more diverse applicant pool and acknowledged Mr. Horning's efforts in that regard. Dr. Huntley noted the City's process was difficult for residents not well known in political circles. She continued that if the nominees for the Planning Commission and Board of Adjustment were

chosen prior to advertising the opening and prior to the official openings existing, then it left no pretense for any effort to consider new people for positions of influence and power. She thought it was hypocritical that Mayor Clifton announced he would not consider outside applicants for the Planning Commission during the same meeting where he requested that Ms. Bensley discuss proposals for attracting more applicants. She noted that unless applications were duly considered and qualifications assessed, the exercise was meaningless as was the commitment to diversity.

Dr. Huntley admitted she was not aware of discussion content prior to the June 15<sup>th</sup> Council meeting where the Deputy City Solicitor was replaced in her view because Ms. George chose to open her own legal firm and the old firm required that she resign her post. Dr. Huntley assumed that Council decided Ms. George was ineligible for the Deputy City Solicitor role because she opted to be entrepreneurial. Dr. Huntley asked if it was a job prerequisite to belong to a firm with an established relationship with Council. She noted if it was historical practice to choose both from the same firm without considering a single-proprietor firm, then Council should question whether it was a practice that unintentionally excluded diverse candidates. She pointed to the lack of discussion around why the Deputy City Solicitor needed to be replaced and revealed that Ms. George's self-defense was relegated to public comment. Dr. Huntley stated that Ms. George's offer to reduce rates was unacknowledged. She believed if Council was serious about diversity, equity and inclusion, then members had to cease reliance on existing relationships to fill vacancies. She suggested Council begin with objective criteria to judge applicants and noted the body would have to step out of its comfort zone and consider how implicit bias shaped decisions. She thanked Council for considering her comments and in helping making Newark a welcoming and inclusive community.

Ms. Bensley introduced Sam van Horne, District 6. Mr. van Horne noted the importance of funding community development programs with diverted funding from Police. He asked why it was common practice to invest in Police at the expense of social services, housing, and education. He reported that the City's 2020 Operating Budget was \$96.7 million and noted that the pension program was only open to police officers and not other City staff. He said the 2020 Overall Budget for Police was \$15.8 million, a 7% increase from 2019, while the Community Development Budget was less than \$250,000 and had declined from 2019 by 0.2%, and by 4% from 2018 to 2019. He asked if the City was more interested in policing citizens versus supporting community development and why more money was not invested in youth and senior programs, healthcare, and housing. He revealed that Police Department budgets increased nationally over the last 40 years and pointed that Police were called to deal with issues related to societal problems that could be alleviated with proactive support through job provision, job training, youth initiatives, access to healthcare, and senior citizen support. He revealed that other communities were examining budgets to reallocate more resources to community and support programs and suggested Newark follow suit. He thought more could be done than passing referendums to support education and wanted to examine budget priorities for 2021 and to divert police funding towards resources to uplift all members of the community. He shared that the 2018 Annual Activity Report revealed that 40,000 of the 50,000 service calls were miscellaneous and not for responses to violent crimes. He believed that with investment, other agencies could work with residents to provide support without placing minority residents at risk of disparate outcomes due to police contact. He stressed that it was imperative to act during the pandemic because of the medical and economical stress on Delaware residents. He wanted to assist children with adjusting to the new normal and enhance flexible childcare services through the recreation program and improving public transit for social distancing. He believed the 2021 Budget should show that community development was a priority for the City. He wondered if the development of a community was solely the increased allocation of resources to the Police Department or if investments in healthcare, youth and senior services, parks and recreation, housing, and other community services could be included.

There were no further comments and the Mayor returned the discussion to the table.

11. 2. **APPROVAL OF CONSENT AGENDA: (1 minute)**
  - A. Approval of Council Meeting Minutes – June 1, 2020
  - B. Approval of Council Meeting Minutes – June 8, 2020
  - C. Receipt of Alderman's Report – June 7, 2020

**1:29:28**

Ms. Bensley read the consent agenda into the record.

MOTION BY MR. MARKHAM, SECONDED BY MR. HORNING: TO APPROVE THE CONSENT AGENDA AS PRESENTED.

MOTION PASSED. VOTE: 7 to 0.

Aye – Clifton, Hamilton, Horning, Hughes, Lawhorn, Markham, Wallace.  
Nay – 0.  
Absent – 0.

12. 4. **ITEMS NOT FINISHED AT PREVIOUS MEETING:** None
13. 5. **SPECIAL DEPARTMENT REPORTS:** None
14. 6. **RECOMMENDATIONS ON CONTRACTS & BIDS OVER \$75,000:**
  - A. Recommendation to Award Contract No. 20-03 – Rodney Complex – Park and Stormwater Facilities (20 minutes)

**1:30:30**

Mr. Filasky presented the final contract for the Rodney Dormitory Property. He stated that the environmental concerns had been remediated, the buildings were dismantled, and the pond began to take shape after excess soil was removed from the site. The project team, including consultant JMT, the Parks and Recreation Department, University of Delaware, and the Public Works and Water Resources Department prepared a final design that was in line with the residents' vote during the 2018 Capital Referendum. He acknowledged JMT's cost control measures in presenting the plan and contract and stated that budget remained within the overall project budget for the expected debt level of less than \$9 million. He revealed the selected contractor, Kent Construction Company, worked with the City to finetune the bid to create a plan that was underbudget and on target with resident requests for the City's newest park. He hoped to reveal the park's name in a ground-breaking ceremony later in the summer.

The Mayor opened the table to discussion from Council.

Mr. Horning thanked Mr. Filasky for the presentation and asked if the increased costs were because the contractor was busy. Mr. Filasky confirmed and believed the contractor specifically bid the project to guarantee work for his crew through the balance of the year. Mr. Filasky continued that each contractor bid uniquely and stressed that staff was not concerned with the low bid because it was in line or higher than the engineer's estimate and he was confident the contract did not underbid. Mr. Horning asked for the definition of value engineering and Mr. Filasky replied that value engineering was a way to determine if it was possible to achieve the intent of the design in a more cost-effective manner. He continued that a value engineer was used prior to the final product and to reassess contractor bids.

Ms. Hughes asked if the contractor was awarded the bid because it was the lowest. Mr. Filasky replied it was the lowest responsible bid and noted staff verified work history. Ms. Hughes asked if it was the same project where the contractor had to return and charge more. Mr. Filasky replied that the return was due to unforeseen issues during demolition, but the current project was for concrete and landscaping and was a more certain job scope. He felt there would be minimal change orders if staff stuck to the plan. Ms. Hughes asked if the change orders underwent scrutiny and Mr. Filasky explained that the City's Purchasing Manual allowed for the City Manager to approve certain amounts of change orders based on the contract value and anything over that amount required Council's approval. Mr. Filasky continued that small change orders were normal and revealed that he would remove an item before adding additional funds but admitted some incidents required a change order and staff would move forward if they were justified costs. Ms. Hughes explained that an experienced contractor would know where to expect change orders and asked what the City Manager could approved before it was brought before Council. Mr. Coleman replied for a contract that size, he was able to approve a change order up to \$30,000 per Code.

Ms. Wallace thanked Mr. Filasky for the supplemental documents.

Mr. Hamilton asked if the amphitheater area, covered stage overlook decking, and stone beach were the objects being removed and Mr. Filasky confirmed. Mr. Hamilton asked if they could be added in the future and Mr. Filasky confirmed but admitted they would be more costly in the future because the site would not be an open field. Mr. Filasky explained the amphitheater area would remain, but the stage area and pavilion were removed from the plan. He noted it would be an easy addition although not cheap. He continued that the overlook remained but would not have decking and explained the stone beach would be difficult because staff opted for groundcover. Mr. Hamilton appreciated the efforts.

Mr. Lawhorn, Mr. Markham, and Mr. Clifton had no comments.

There was no public comment and the Mayor returned the discussion to the table.

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: THAT COUNCIL AWARD CONTRACT 20-03, RODNEY COMPLEX PARK AND STORM WATER FACILITY TO KENT CONSTRUCTION, INC. OF SMYRNA, DELAWARE, IN THE AMOUNT OF \$3,778,928.

MOTION PASSED. VOTE 7 TO 0.

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

Nay – 0.

Absent – 0.

**15. 7. ORDINANCES FOR SECOND READING & PUBLIC HEARING:**

- A. Bill 20-18** – An Ordinance Amending the Zoning Map of the City of Newark, Delaware, By Rezoning from RS (One-family Detached Residential) to RM (Multi-family Dwellings – Garden Apartments) 0.56 Acres Located at 19 Amstel Avenue (60 minutes)

**1:44:50**

Ms. Bensley read the bill into the record.

MOTION BY MR. MARKHAM, SECONDED BY MR. LAWHORN: FOR SECOND READING AND PUBLIC HEARING.

MOTION PASSED. VOTE 7 TO 0.

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

Nay – 0.

Absent – 0.

Ms. Gray explained the proposal was to rezone 19 Amstel Avenue from RS, single-family residential, to RM, multi-family residential, as requested by Council on February 24, 2020. She continued that at the same meeting, Council designated the property as residential high-density, so the zoning and land use designation needed to be consistent with Comp Plan V, under State law, section 702(c).

Ms. Gray explained there were five zoning districts consistent with the future land use designation of residential high-density in Comp Plan V:

- RM (multi- family- garden apartments)
- RA (multi-family – high-rise apartments)
- RR (Row or town houses)
- AC districts (Adult Communities)
- STC districts (Science and Technology Campus)

The Planning and Development Department suggested the property be rezoned to RM because the lot was 0.56 acres and was surrounded University campus, UD-owned single-family dwellings converted into offices and a sorority house, and because the RM zoning district allowed boarding houses. Ms. Gray stated that on May 5, 2020 the Planning Commission recommended approval of rezoning the property from RS to RM to be consistent with the Comprehensive Development Plan V future land use designation of residential high density with a vote of 6-0 with Bob Stozek abstaining. She noted that Max Walton, Special Counsel, was present and he and Mr. Bilodeau were available for questioning.

Mr. Clifton introduced Richard Abbott, counsel for the property owner, and Mark Adcock, who was associated with the KA house but not the national organization. Mr. Abbott stated he had an oral presentation and Mr. Clifton advised that his earlier comments were of general frustration and not intended to dissuade Mr. Abbott from presenting during his fifteen-minute allotment. Mr. Abbott believed Mr. Clifton’s comments were intended for another party as he had submitted his letters the week before. He understood Mr. Clifton’s frustrations and apologized if Kappa Alpha Education was involved. He stated that most of the presentation was not new information and he did not want to belabor the points.

Mr. Abbott reminded that the applicants were before Council on February 24, 2020, to present the proposal to modify the designation in the Comp Plan. He understood that Bill 20-18 was intended to comply with Section 702(c) of Title 22 of the Delaware Code, and wanted Council to understand it was also valid when the property was designated as University. He continued that the applicants believed the current zoning was validly UN and had not been legally changed since Ordinance 78-30 was approved by Mayor and Council in fall of 1978. He stated there was no legitimate modification of the zoning and viewed

the zoning change as a down-zoning from UN to RM. He stressed that the applicants did not believe it was not necessary to modify the Comp Plan at the February meeting and the same held true for UN zoning.

Mr. Abbott repeated the history of the house and stated the property had been used as the Kappa Alpha Fraternity Chapter House at UD for 72 years. He noted that for decades, the property received legal, valid rental permits for up to 21 occupants, and he assumed the property had rental permits since the City started the requirement. He explained the UN zoning permitted the fraternity house by-right and the RM zoning did not permit fraternity or sorority house use by-right. He claimed RM was a downzoning and pointed to the lack of planning principles stated in support of the modification in the Comp Plan during the discussion in February and felt the same held true for the proposed downzoning.

Mr. Abbott stressed that he was an advocate and indicated that everything done by the applicants was to create a record in case the special use permit fell through. He referred to the procedure as a place marker and reiterated that the applicants did not believe the property should be zoned RM and should remain UN.

Mr. Clifton offered the floor to Mr. Adcock. Mr. Adcock stated he was the president of the Kappa Alpha Education Foundation (KAEF) and believed that RM was more appropriate than RS. He stressed that KAEF was interested in working with the City to create a special use permit system to be overseen by the City in conjunction with the KA National Organization. He revealed that the organization was sensitive to the decoupling of the UD judicial system from the house's property rights and did not believe the University was forthright in motives for suspending the fraternity's charter. He believed that UD brought forth the suspension to force the fraternity to sell the property and noted the suspension was subsequently dropped. He thanked Council for working with KAEF and stated the applicants were optimistic for a positive conclusion.

The Mayor opened the table to discussion from Council and asked that Councilmembers specify to whom they were directing questions.

Mr. Horning thanked everyone for the presentation and comments. He asked Ms. Gray if a special use permit was allowed in a UN zoning and Ms. Gray said it was not because the use was not allowed. Mr. Horning stated that since the special use permit was not allowable under UN zoning then he understood that the special use permit would be a way to allow continued use of the house as a fraternity for KA in the future and saw the rezoning as the only legal way to accommodate the request. He continued that Mr. Adcock expressed a desire to proceed with the path and felt the RM zoning met the applicants' need.

There were no additional questions from Council or public comment and the Mayor returned the discussion to the table.

MOTION BY MR. MARKHAM, SECONDED BY MR. HAMILTON: THAT COUNCIL APPROVE BILL 20-18, AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF NEWARK, DELAWARE, BY REZONING FROM RS (ONE-FAMILY DETACHED RESIDENTIAL) TO RM (MULTI-FAMILY DWELLINGS – GARDEN APARTMENTS) 0.56 ACRES LOCATED AT 19 AMSTEL AVENUE.

Mr. Clifton instructed it was an individual vote within the parameters of State Code.

Mr. Horning voted in favor of the rezoning because it was consistent with the Comprehensive Plan and continued that on the State Code factors, it was designed to lessen congestion in the streets by concentrating residents closer to the center of campus and a special use permit as an RM zoning, a secure safety from fire, panic, and other dangers by having the inspection of the fire systems twice a year and promoted the health, safety, and general welfare of the community by having better control should Council proceed with the special use permit for the use of Greek Organizations on campus.

Ms. Hughes voted to pass the motion based on the overall health, safety, and welfare of the City of Newark.

Ms. Wallace supported the zoning change for reasons stated in the Planning Department's memo.

Mr. Hamilton supported the zoning change for the reasons mentioned by Mr. Horning and the recommendations in the Planning Commission memo.

Mr. Lawhorn supported the motion for the reasons stated by Mr. Horning and added that the zoning was made with reasonable consideration as to the character of the district and particular suitability for use as it allowed for maintaining a historical property desired by the residents of the City, and the

rezoning was made with the view for conserving the value of buildings and encouraging the most appropriate use of land through the municipality as the rezoning allowed for maintaining the historical building while also providing housing for students while a lack of student housing has been identified as a significant issue for the City.

Mr. Markham supported the rezoning based on the reasons stated by Mr. Horning and Mr. Lawhorn, and the Planning Department report.

Mr. Clifton supported the rezoning based on the reasons stated by Mr. Horning and Mr. Lawhorn.

MOTION PASSED. VOTE 7 TO 0.

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

Nay – 0.

Absent – 0.

**(ORDINANCE NO. 20-13)**

**16. 7-B. BILL 20-19 – AN ORDINANCE AMENDING CHAPTER 32, ZONING, CODE OF THE CITY OF NEWARK, DELAWARE, BY ADDING A FRATERNITY AND SORORITY CLASSIFICATION AS A NEW SPECIAL USE PERMIT IN THE RM AND RA ZONING CATEGORIES (60 MINUTES)**

**2:05:00**

Ms. Bensley read the bill into the record.

MOTION BY MR. HAMILTON, SECONDED BY MR. LAWHORN: FOR SECOND READING AND PUBLIC HEARING.

MOTION PASSED. VOTE 7 TO 0.

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

Nay – 0.

Absent – 0.

Ms. Gray explained the proposed Code amendment Chapter 32 was requested by Council on February 24, 2020 to allow fraternities and sororities as a conditional use via a Council-granted special use permit in the RM and RA zoning districts and that the Planning and Development Department and City Solicitor crafted the proposed zoning code ordinance.

Ms. Gray noted that fraternities and sororities were removed from the zoning code by Council on September 23, 2002 and reminded that, prior to the decision, fraternities and sororities were permitted in RM and RA and did not require special use permits. Per the September 23, 2002 decision, fraternities and sororities were excluded from all sections of the zoning code and existing fraternities in privately-owned, residentially zoned districts became legally nonconforming so that if a fraternity or sorority was suspended, the non-conforming use for the property expired and was not permitted to resume.

Ms. Gray explained the methodology for the proposed ordinance included amending the RM and RA sections of the Code by adding fraternity and sorority as a special use. She pointed that the main tenants of the special use included:

- Utilized the definition of fraternity and sorority provided in definitions section of Chapter 32.
- Special use permit may be suspended or permanently revoked at any time by a majority of Council
- In addition to factors considered when reviewing an application, reports from Police, Code Enforcement, Delaware Alcoholic Beverage and Control Commission (DATE), and UD standing could also be taken into account
- Mandatory five votes if the property was adjacent to a church, library, non-UD school, nursing home, or hospital
- Written report by the Planning

On May 5, 2020 the Planning Commission recommended approval of the proposed amendments and revisions with a vote of 6-0 and indicated the revisions were incorporated into the version before Council that evening.

Mr. Clifton deferred to Mr. Abbott, counsel to KAEF, who thanked Council for their decision. He was pleased at the open-mindedness of Council and the City. He hoped for perfect legislation and stressed that it was critical for his clients to disengage or decouple from UD recognition. He explained that the seminal issue was whether a fraternity was chartered by a national Greek organization and noted that nationally chartered organizations were subjected to discipline, suspensions, and revocation of charters, which, if a charter were revoked, the fraternity would not be allowed to continue operations. He informed there were national full-time staff employees to track chapters and record oversights, reports, and goals. He noted that every national organization had yearly enclave which provided an opportunity for chapters to meet and consider accomplishments. He stressed that there were requirements for Greek organizations and admitted that UD sponsored the Inter-Fraternity Council (IFC) to impose restrictions and guidance but the national organization was stricter. He believed that 32-4(a)(46), the definition of fraternity and sorority, should govern the special use permit process. He explained that the issue was that the definition only recognized fraternities deemed so by the University of Delaware and did not include language about national organizations. He suggested the definition of fraternity should be modified to state either a charter from a national organization or recognition from UD. He wanted the language to ensure that UD would not have a conflict of interest with Bill 20-18 and to side-step any nefarious objectives and goals. He acknowledged that language in Bill 20-19 contained provisions regarding revocations and suspensions but pointed that allowing UD to determine the validity of fraternal chapters voided the special use permit. He wanted the language amended so UD did not hold ultimate power. He referred to Mr. Hastings' description of UD's discipline system and how draconian suspensions were the norm. He repeated his request that Council consider the slight modification to the definition of fraternity in Code Section 32-4(a)(46).

Mr. Abbott continued that the applications wanted Council to consider that Bill 20-19 was more of a special user permit than a special use permit. He noted that the special use zoning provision was applicable to the land because RM zoning was for 19 Amstel Avenue and did not apply to KAEF, the chapter or tenant residing in the house. The applicants submitted that the special use permit should run with the land and not the specific user. He admitted there were comments to the fact that alcohol permits were given to applicants or business owners and argued it was within the purview of the City's local option powers to regulate the use, consumption, distribution and sale of alcohol. He rejected the common comparison of the fraternity to Animal House. He noted an advantage of a special user permit was that subsequent tenants would not be held liable for the actions of prior tenant and asked that applicants received equal treatment for special use permits. He shared that the general special use permits provisions were in Section 32-78 in City Code where it stated that Mayor and Council could suspend a special use permit for up to a year and also provided for certain criteria on granting the special use permit to fraternity and sorority special use permit applicants. He believed the ordinance proposed to authorize the suspension without a real cap on the time period or outright revocation. He asked that Council consider why Greek organizations should be treated differently than other use permit applicants and recipients and shared that bars could only be suspended for one year for major infractions. He once again requested that KAEF not be wed to UD recognition and suggested that the most appraisers would find the highest use of the house as an assemblage to UD and was worth 3x-5x as much to UD than to any other potential buyer. He repeated that UD could force a sale under the current Code provision and asked that Council accept the language amendment.

Mr. Clifton recognized Steve Hastings who reiterated Mr. Adcock's position on the relationship with UD. He stated he had been the faculty advisor for KA since 2004 and believed KA was mistreated by the UD judicial system on more than one occasion. He noted that the 2012 legislation meant that the house could no longer be used for a fraternity if a suspension lasted longer than one year and believed that UD would benefit if the property could no longer serve as a fraternity house. As a citizen, he did not think it was fair that the City would allow a secondary organization to dictate land use in the City. He pointed that the national organization was very supportive of the chapter and its return to UD to reoccupy the house and referred to the low number of Police calls and Code violations for the property since 2004. He repeated that the Code should be revised so the definition of a fraternity did not require UD sanction.

The Mayor opened the table to discussion from Council.

Mr. Horning appreciated the comments and asked Ms. Olsen for comments from UD before he cast his vote. He asked Mr. Walton and Mr. Bilodeau if the revocation or suspension period would be limited to a year as provided by other areas of City Code. Mr. Walton believed 32-78(a)(3) required applicants to wait 365 days after revocation or suspension before reapplying and Mr. Horning asked if it applied to any special use permit. Mr. Walton confirmed. Mr. Horning believed if a special use permit ran with the land then it was possible that KAEF would not be allowed to use the house for a year versus the scenarios if a special use permit ran with an occupant than the house could be used for another fraternity should KA have a suspension. Mr. Horning asked Mr. Walton if the City's position was that the special use

permit ran with the occupant and not the land and Mr. Walton confirmed. Mr. Horning agreed that the current language of the ordinance could lead to the end of the fraternity and supported decoupling so that the controlled land use was in the hands of City residents. He did not view the move as a slight to UD and its judicial process because residents' concerns did not always align with UD's concerns. He explained that one of the causes of the suspension occurred at hotel outside of Newark and did not think it was a concern of City residents. He supported decoupling and suggested adding language to define a fraternity or sorority house as dwelling units used exclusively by a society of either male or female university or college students having a Greek letter name or other designation, and sharing common or professional interests and with the appropriate approval and/or sanction from the University of Delaware, or a sponsoring national fraternal organization to operate as a fraternity or a sorority.

Mr. Horning pointed to Police concerns in the Planning Department's memos that indicated an issue with underground fraternal organizations and thought that the special use permit could help identify and legitimize underground organizations and gave the City additional control as far as building safety. He noted that Mr. Adcock and Mr. Hastings frequently visited the property and helped mentor KA members. He contacted District 1 neighbors of the Lambda Chi Alpha house and Alpha Xi Delta house and reported no concerns from residents or complaints from his time on Council. He noted that the organizations were involved in the community and recognized their efforts through UD. He understood that KA could not host parties at the house and believed that liability concerns had changed, and chapters attempted to have more oversight. He wanted to have a process with a quantitative points system like the alcohol violations and wanted it to be transparent and to considered UD's input but allowed the organizations to operate.

Ms. Hughes asked how the fraternity was tethered to UD and Mr. Hastings replied that all fraternities, sororities, and sports clubs were considered Registered Student Organizations (RSO) and had a set of rules by which to abide. He continued that UD also had a Code of Conduct that specified rules for student groups which KAEF found to be one-sided and to which they objected. He suspected, with evidence, that the unfair treatment from UD was a ruse to force KAEF to sell the house. Ms. Hughes asked why KAEF thought UD wanted them to sell the house. He replied that the house was the only private property within blocks of UD and referred to UD's purchase of properties as an indication of historical practice. Ms. Hughes asked if UD approached KAEF to purchase the home and Mr. Hastings replied they approached KAEF several years ago. Ms. Hughes asked if the Code of Conduct was the biggest concern going forward based on KAEF's suspicions and Mr. Hastings confirmed. He added that after KA's most recent suspension, KAEF offered to agree to any penalty to avoid the one-year suspension which led to the loss of the legacy clause. He believed any reasonable organization would have accepted KAEF's list of sanctions which included expelling every member of the chapter who participated in the Ocean City event. He shared that UD did not feel the expulsions were severe enough. Ms. Hughes asked if KAEF's association with UD was strained and he replied it was biased and did not feel that KA was treated the same as other fraternities that did not have properties at stake. Ms. Hughes was concerned that the decision could make the relationship between KA and UD more contentious. Mr. Hastings agreed and stated the KA National's perspective was that KA's intent was to reapply when the suspension was over to be reinstated at UD as a chapter. He stressed that KA did not want to bypass rules but did not think it was fair that the property's use was determined by an arbitrary Code of Conduct system. Ms. Hughes asked if the Code of Conduct was universal and Mr. Hastings confirmed that all students accepted UD's conduct code upon admittance. Ms. Hughes expected that if KA did not go with UD, then the Code of Conduct would not apply, and Mr. Hastings confirmed. Mr. Adcock clarified that it would apply to the students but not the fraternity, he explained KAEF's primary goal was to help the fraternity members transition through college with mentorship and staying within UD's good graces was secondary. Mr. Abbott suggested that Ms. Hughes was asking what the national organization would do and he understood that the national organization had severe penalties including expulsions and revocations of charters and provided oversight and institutional discipline so the chapter would be controlled. Ms. Hughes asked if the restrictions of the national chapter were on par with UD's Code of Conduct. Mr. Hastings confirmed that the judgment system differed, and the penalties were unfairly given with KA always receiving the stricter penalties. He repeated that KAEF suspected that UD wanted the property. Mr. Abbott observed that there was not a level playing field in the sanctions of the Code of Conduct and explained that two students caught drinking would be reprimanded with counseling while two fraternity members doing the same would result in the fraternity receiving a semester or yearlong suspension.

Ms. Wallace thought the discussion had gotten into the weeds and thought Council should focus efforts on legislating whether the addition of a special use permit process for fraternities and sororities was a need in the City. She believed it was not a need and suggested residents felt the same. She had a problem with legislating for specific cases and pointed that the problem was created by the fraternity members who were aware of the possible implications of their actions. She reiterated her hesitancy to legislate to solve issues for specific property owners and shared that she also had an issue with creating a special permitting process for an issue most residents did not support. She cautioned that opening the

process to RM and RA zoned properties could result in more applications for fraternities and sororities and repeated her suspicions that most residents would disapprove.

Mr. Hamilton had no questions or comments.

Mr. Lawhorn felt that decoupling was specific to the City's concerns and he wanted Council and the City to have control over zoning and the decision-making process. He admitted it filled the need of the applicant but thought it was good policy for the City to decouple the zoning rules and laws from UD. He had no idea if UD had ill intentions and stated it was not relevant to his decision. He reiterated that it was Council's part to create laws and legislation that gave the City control over land use and zoning. He supported Mr. Horning's proposed language and said it gave Council the ability to issue special use permits based on presented evidence while ensuring that UD did not have direct influence on the process. He understood the point of the discussion on the revocation versus the suspension and he believed Council preferred to revoke. He believed the provision to reapply in 365 days gave the same ability that a one-year suspension could give because it also allowed for reapplication but there were cases where Councilmembers went on record indicating the suspension impacted the decision-making process because if the ability to revoke was included, then Council had more power to change the process for all special use permits. He believed that Council was moving towards total revocation with the ability to reapply in the future. He saw both points of argument for the special use to be for the tenant or landowner and believed any disturbance would end with Council discussing the suspension of a special use permit. He believed a responsible landowner would impose restrictions on tenants for Police or Code issues and admitted he saw value in giving the special use to the land while recognizing most special use permits were granted to tenants. He referred to Mr. Hamilton's concerns with Police calls and Ms. Wallace's concerns about implementing policy for single issues and replied that it was a creative solution for one issue and believed it could apply to others. He acknowledged Police concerns about underground fraternities and doubted the Bill would offer a pathway to become a chartered fraternity. He shared that residents were confused by the Bill as they assumed fraternity and sorority houses would pop up and noted that this was not the intent of the Bill. Alternatively, he stated that if a situation arose with a registered and chartered Greek organization, it was easier for staff to work that group than an underground group. He indicated the Police Athletic League Board had seats on the board to engage Greek organizations with the City and shared that when Council passed the Unruly Gathering Ordinance, students pointed out that working with Greek organizations was a way to reach thousands of students. He reiterated his belief that the proposed bill was a creative solution to a complicated issue.

Mr. Walton interrupted and stated that UD did not control zoning. He read from the Delaware Supreme Court Schweizer case that "the establishment of residential zones and the permitted and prohibited uses in those districts, including prohibiting a fraternity or sorority use in an off-campus residential district, is the pertinent legislative action." He continued that in the Schweizer case, the University decided that PIKE violated the University's rules on the conduct of fraternities and the appropriate sanction for any violation and its decision to suspend PIKE was neither a legislative or zoning decision, rather a quasi-judicial act within the power entrusted to the University by State law. Although the University's decision may have had zoning consequences, those collateral effects did not transform the University's quasi-judicial decision into an exercise of the City's legislative function. He repeated the University did not control the City's zoning decisions and nothing should be stated to the contrary.

Mr. Markham thought decoupling was a positive action but thought the special use permit should run with the party and not the land.

Mr. Clifton supported the decoupling and acknowledged the concern of fraternities exploding in the RM zoning but explained that the property was unique because the owner was petitioning to keep the property as a fraternity where other areas in the RM zone were generally multiple units owned by one entity. He pointed that additional fraternities would have to go through the City process and have the buy-in of the property owner as well. He stressed the proposal solved the unique issue of the property and doubted it would open the flood gates for other opportunities.

There were no public comments and the Mayor returned the discussion to the table.

Mr. Horning interjected that KA had a lawsuit against the City which he though highlighted the issue KA had with City law. He viewed the situation as an opportunity to consider whether it best served the current conditions in the City and its relationship with the Greek organizations. He asked the petitioners if there were lingering concerns when considering Council comments towards the 365-day reapplication period, the special use permit running with the occupant of the land, and Council's favor of decoupling, and asked if those options would resolve the issues in the lawsuit. Mr. Abbott remarked that the decisions alleviated some concerns and shared that the lawsuit depended on the special use permit.

Mr. Horning asked if his proposed language addressed the decoupling concern. Mr. Abbott preferred the use of the term “charter” but thought Mr. Horning’s attempt was satisfactory. Mr. Adcock seconded Mr. Abbott’s comment. Mr. Hastings also agreed.

MOTION BY MR. HORNING: TO AMEND BILL 20-19 TO INSERT LANGUAGE WITH REGARDS TO THE DEFINITION AS: FRATERNITY AND/OR SORORITY HOUSES DEFINED FOR PURPOSES OF THIS SECTION AS DWELLING UNITS USED EXCLUSIVELY FOR A SOCIETY OF EITHER MALE OR FEMALE UNIVERSITY OR COLLEGE STUDENTS IN A GREEK OR OTHER DESIGNATION, AND SHARING COMMON OR PROFESSIONAL INTERESTS, AND WITH THE APPROPRIATE APPROVAL AND/OR SANCTION FROM THE UNIVERSITY OF DELAWARE OR A SPONSORING NATIONAL FRATERNAL ORGANIZATION, TO OPERATE AS A FRATERNITY OR SORORITY.

Mr. Walton interjected that the motion would apply to amendments of 32-11 and 32-12 because the language would appear twice. Mr. Horning added language that this amendment would apply to 32-11 and 32-12.

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: TO AMEND BILL 20-19 TO INSERT LANGUAGE WITH REGARDS TO THE DEFINITION AS: FRATERNITY AND/OR SORORITY HOUSES DEFINED FOR PURPOSES OF THIS SECTION AS DWELLING UNITS USED EXCLUSIVELY FOR A SOCIETY OF EITHER MALE OR FEMALE UNIVERSITY OR COLLEGE STUDENTS IN A GREEK OR OTHER DESIGNATION, AND SHARING COMMON OR PROFESSIONAL INTERESTS, AND WITH THE APPROPRIATE APPROVAL AND/OR SANCTION FROM THE UNIVERSITY OF DELAWARE OR A SPONSORING NATIONAL FRATERNAL ORGANIZATION, TO OPERATE AS A FRATERNITY OR SORORITY, AND WOULD APPY TO 32-11 AND 32-12.

MOTION PASSED. VOTE 6 TO 1.

Aye – Clifton, Hamilton, Horning, Hughes, Lawhorn, Markham.

Nay – Wallace.

Absent – 0.

MOTION BY MR. LAWHORN, SECONDED BY MR. HORNING: THAT COUNCIL APPROVE BILL 20-19 WITH AMENDMENTS.

MOTION PASSED. VOTE 6 TO 1.

Aye – Clifton, Hamilton, Horning, Hughes, Lawhorn, Markham.

Nay – Wallace.

Absent – 0.

**(ORDINANCE NO. 20-14)**

17. 7-C. **BILL 20-20 – AN ORDINANCE AMENDING CHAPTER 7, BUILDING; CHAPTER 21, PEDDLERS, VENDORS AND SOLICITORS; AND CHAPTER 23, PARADES AND PUBLIC ASSEMBLIES; CODE OF THE CITY OF NEWARK, DELAWARE, BY REPEALING THE PROVISIONS OF ORDINANCE NO. 20-09 (10 MINUTES)**

**3:14:34**

Ms. Bensley read the bill into the record.

MOTION BY MR. MR. MARKHAM, SECONDED BY MR. LAWHORN: FOR SECOND READING AND PUBLIC HEARING FOR BILL 20-20.

Mr. Coleman explained the bill revoked Newark’s local ordinance that restricted the gathering sizes to ten persons and limited restaurants, taverns, and bars to providing food and beverage service for takeout. He stated the emergency ordinance would have expired after 61 days so Council passed a local ordinance that rolled back automatically with the Governor’s orders. He shared that the actions created confusion because there was language in the local ordinance that was not included in the Governor’s original ordinance to roll back. Staff wanted to repeal the local ordinance and rely on the Governor’s ordinance.

There were no questions from Council or public comments.

MOTION BY MR. MARKHAM, SECONDED BY MR. HORNING: THAT COUNCIL APPROVE BILL 20-20.

MOTION PASSED. VOTE 7 TO 0.

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

Nay – 0.

Absent – 0.

**(ORDINANCE NO. 20-15)**

18. 8. **RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING AND DEVELOPMENT DEPARTMENT:** None

19. Meeting adjourned at 10:19 p.m.

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

/ns