

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

March 1, 2021

Those present at 7:00 p.m.:

Presiding:	Mayor Jerry Clifton Deputy Mayor, James Horning, District 1 District 2, Sharon Hughes District 3, Jay Bancroft District 4, Chris Hamilton District 5, Jason Lawhorn District 6, Travis McDermott
Staff Members:	City Manager Tom Coleman City Secretary Renee Bensley City Solicitor Paul Bilodeau Chief Communications Officer Jayme Gravell Chief Purchasing and Personnel Officer Jeff Martindale Finance Director David Del Grande Planning and Development Director Mary Ellen Gray Property Maintenance Inspector II Ryan Straub Property Maintenance Inspector II Justin Murray Public Works and Water Resources Director Tim Filasky Public Works and Water Resources Deputy Director Ethan Robinson

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 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.

3. 1. **FINANCIAL STATEMENT:** None.

4. 2. **RECOMMENDATIONS ON CONTRACTS & BIDS OVER \$75,000:**

A. Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the Purchase of a Dump Truck (10 minutes)

4:14

Mr. Filasky presented a recommendation to purchase a replacement for Vehicle 550, a frontline snow, ice, and construction vehicles in the Streets Department. He emphasized that by the time staff got the new truck, the vehicle it was replacing would be 17 years old. Normally, staff tried to replace vehicles every ten years, but staff took great care with #550. He informed that PWWR took steps to comply with the Finance Department's wishes and the replacement vehicle came in nearly \$20,000 underbudget. He explained that the vendors held their 2020 pricing and the Water Department purchased the exact same vehicle in 2020.

The Mayor opened the table to discussion from Council.

Mr. Horning appreciated Mr. Filasky's presentation and thanked Jason Winterling and the Maintenance Crew for keeping the truck running so well for so long. He was pleased with the savings.

Ms. Hughes noted she had technical difficulties during the presentation and asked if the bid received was the best price. Mr. Filasky clarified that staff purchased a similar vehicle in 2020 and the vendor held the price for the same truck but a year newer model. Ms. Hughes asked if the new vehicle was a replacement and Mr. Filasky confirmed and informed that staff would keep the old truck until they were confident that the new truck was in good working order. Ms. Hughes asked for the age of the original truck and Mr. Filasky replied 17 years. Ms. Hughes asked when the new truck was expected, and Mr. Filasky assumed eight to ten months but repeated the City would keep the old truck until the new one was functional and safe. Ms. Hughes asked how long the vehicles were typically kept in service and Mr. Filasky repeated staff preferred 10 years, but 17 years was pushing the limit. He continued that staff considered the budget and were investigating better financing options. He informed that leasing worked better for smaller vehicles, but the larger trucks were used for labor intensive work and were not typically readily available for quick turn arounds. Ms. Hughes asked if the truck was already budgeted in Capital Management and Mr. Filasky confirmed.

Dr. Bancroft, Mr. Hamilton, Mr. Lawhorn, and Mr. McDermott had no questions.

Mr. Clifton understood that the shop mechanics went so far as to replace the dump body on the chassis in order to get every mile possible out of the vehicle. He asked if there was a trade-in value on the Beltway contract and Mr. Filasky replied that Beltway preferred not to deal with trade-ins, so staff typically kept the vehicles as long as possible and then sold them on Municibid.com, used them for parts, or scrapped them. He admitted a 17-year old truck did not hold a lot of value. Mr. Clifton suggested the old truck be kept through the next winter season as a back-up and Mr. Filasky confirmed staff intended to do so pending performance for the rest of the year.

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

Mr. Horning interjected that even though the move was to waive the local bid process, staff submitted the bid through Sourcewell where the City had purchasing power and received 25 bids.

MOTION BY MR. HORNING, SECONDED BY MR. HAMILTON: THAT COUNCIL WAIVE THE BID PROCESS IN ACCORDANCE WITH THE CODE OF THE CITY OF NEWARK FOR THE PURCHASE OF A DUMP TRUCK FROM THE SOURCEWELL COMPETITIVELY BID CONTRACT NO. 060920-NVS FROM BELTWAY COMPANIES IN THE AMOUNT OF \$175,964.52.

MOTION PASSED. VOTE: 7 to 0.

Aye – Horning, Hughes, Bancroft, Hamilton, Lawhorn, McDermott, Clifton.
Nay – 0.

5. 3. SPECIAL DEPARTMENTAL REPORTS:

- A.** General Assembly Update and Associated Requests for Council Direction – Lobbyist (30 minutes)

13:46

Rick Armitage, Armitage DeChene & Associates, informed that the Delaware General Assembly had been in recess for the past six weeks while Joint Finance Committee (JFC) and the Bond Committee held hearings with agencies. He reported no surprises during the presentations and noted the General Assembly would return next Tuesday for the remainder of March. He forwarded Council an updated copy of the table of bills and issues that the lobbyists were monitoring and supporting. He stated the Governor signed two bills in which the City had interest: The New Castle County Local Service Credit Bill and the Renewable Portfolio Standards Legislation. He added that Delaware Economic and Financial Advisory Council (DEFAC) would meet again on March 15th and the lobbyists did not anticipate many changes in revenue.

The Mayor opened the table to Council comments.

Mr. McDermott had no questions.

Mr. Lawhorn received feedback from Bike Delaware and BikeNewark about HB36, The Delaware Yield Bill. He shared that the organizations requested that the City support the bill and explained it was a

traffic law change to increase visibility of bicyclists and reduce exposure to accidents in intersections by allowing them to maintain some forward momentum approaching two-lane intersections. He asked if other Councilmembers were interested in supporting HB36. Mr. Clifton apologized to Mr. Lawhorn because he intended for Mr. Coleman to speak about a bill and solicit Council feedback.

Mr. Coleman emailed Council earlier in the day about a proposed task force for a House Concurrent Resolution establishing the Annexation Task Force to review and propose revisions to the Delaware Code related to the annexation of parcels by municipalities. He continued that Representative Baumbach and Senator Sokola sponsored the Task Force to consider making changes to State Code that would modify how municipalities were able to annex properties into their borders. He informed there were a number of items listed in the resolution for the Task Force to consider but Mr. Coleman was interested in any requirement that would change the process so that the City would have to request permission for annexation. He believed Wilmington was required to ask permission for annexing properties from the County. He believed the public notice requirements in addressing landlocked County parcels within municipal boundaries was a worthwhile concern, but he had reservations about making wholesale changes to significant parts of the existing rules. He was also concerned about the Task Force representation because although it seemed balanced, the intent was for the Delaware League of Local Governments (DLLG) to nominate two municipal managers from each of the three Counties who would then be appointed by the County Administrator or County Executive for each County. He did not understand why the County Executive or County Administrator should have any say in which municipal managers served on the Task Force. He recommended taking a position against the requirement. He admitted the email came at the end of the day and he was advised by Carl Luft, DLLG, that the City should provide feedback as quickly as possible.

Mr. Clifton offered to let Mr. Lawhorn finish his comments and then would offer Mr. McDermott the opportunity to offer a comment.

Mr. Lawhorn thought HB36 was a reasonable bill that improved bicycle safety. He referred to Mr. Coleman's comments and shared that he attended a workshop conducted by the County Council at the George Wilson Center last year and he had reservations about the proposals. He noted one proposal suggested that the County zoning law be maintained for five years after the annexation occurred. He felt that County Council was specifically towards Newark interests so he agreed that the City should have representation on the Team or Committee. He agreed with concerns of the County Executive nominating the Committee members and supported opposing the decision and reiterated his reservations about the Task Force's goals. He asked if the City could expect more clarity on PILOT after the JFC met. Mr. Armitage replied that it was still unclear and explained the JFC appropriation received over the past few was from the Grant-in-Aid Bill and the JFC had not yet begun to address drafting the bill. He continued that last year, the JFC passed the Grant-in-Aid Bill exactly as it had been in the prior year and emphasized there were many new members on the JFC, but the lobbyists felt there was enough legacy in leadership to convince them that it was appropriate to continue with the \$400,000 in appropriations. He forwarded a link of HB36 to Council for review.

Mr. McDermott opposed the County Executive appointing members to the Committee.

Mr. Hamilton preferred to support Mr. Coleman regarding the County Executive and shared that he also attended the workshop at the George Wilson Center. He did not agree with Mr. Coleman on annexation because he understood where the County was coming from and did not think changing zoning immediately upon annexation allowed residents the opportunity to consider the situation. He noted the property next to the annexations would remain County land unless the property was completely encircled by the City. He repeated that he understood the County Council's stance because if the City elected to annex land to the detriment of the neighbors, the neighbors would not have a say in the situation. He preferred that there be cooperation between the City and the County because City residents would be upset if the roles were reversed so he supported a transition period.

Dr. Bancroft supported HB36 and thought it was sensible. He agreed that annexation should be monitored but supported Mr. Coleman's efforts to consider the City's interests. He supported whatever Mr. Coleman decided was a reasonable plan because he considered Mr. Coleman to be the City's watchdog. He hoped the lobbyists could continue to monitor the block grant and noted the request was usually accommodated. He assumed a bill for assessment would include revenue neutral as property values were reassessed and asked that the lobbyists forward any concerns.

Ms. Hughes had no comment.

Mr. Horning agreed with the concerns regarding annexation but agreed with Mr. Hamilton that the City could be more cooperative in working with the legislators and the County. He supported Mr. Coleman on pushing back against the County making the decisions but understood the concern of County neighbors having trepidation about City annexations. He also noted annexation was between the City and the property owner. He reiterated that he wanted to push back and disseminate decision-making in terms of the Task Force's equitability. He supported the law's intent with HB36 and respected BikeNewark for its input in the legislation and bike safety but the thought the upcoming District 1 comment would introduce other perspectives. He believed bike safety education through the University was key.

Mr. Clifton noted that the City never conducted hostile annexations and only performed annexations when requested by property owners. As a result, he felt the City created islands including Otts Chapel Road, Elkton Road, and Towne Court. He admitted each circumstance had detailed histories and suggested the difficulty of the Nonantum Mills development was that it was surrounded by the City, so County Police had to go through the City to address any issues. He believed a hallmark of the City's government was that it was a home rule government and shared that former County Executive Tom Gordon complimented the City on its governmental foresight. Mr. Clifton credited the City with its transparency, advertising, and the fact that actions were by request. He supported Mr. Coleman's position and believed that the City still needed to engage in the conversation.

Mr. Clifton wanted an update on SB50 and HB105 for Police laptops and Police body cameras. He asked if funds were available for the City to replace or purchase new equIPMCent and if the City would receive reimbursement for prior purchases. Mr. Armitage said it was too soon to answer but the structure of the epilogue language around the appropriation indicated a three-year planning process which would include the Controller General's office, the Budget office, and Homeland Security. He assumed Homeland Security would engage the Police Chiefs. He spoke to Chief Tiernan and believed Departments that had already purchased cameras would request that the State for shared costs for future storage. He added that the total cost was not yet known for Departments who had not acted, and the lifespan of the body cameras was also unknown. He continued that the laptops and cars had appropriations that had been in bond bills for years, but he did not know what share was for Newark or how far it went in replacing the mobile terminal in each Police vehicle. Mr. Coleman added that the City generally purchased the body cameras with grant funding but starting in 2021, there would be a recurring annual fee of \$98,000: \$59,000 for storage and licensing for the cameras and \$39,000 for licensing of the mobile vehicle recording equIPMCent.

Mr. Clifton requested an update on increased funding for Unicity to increase bus routes and operating times. He recalled his meeting with Ms. Gray, Mr. Coleman, and Secretary Cohen that floated a plan for a DelDOT rideshare program. He understood the plan was moving forward later in the year and requested an update. He believed the concept could change the dynamics of neighbors being able to enjoy downtown and local Newark areas. He assumed if the AirBNB's in the City would be taxed then the lodging tax would follow. He read some abysmal Airbnb reviews and added that the properties were flying beneath the radar from a tax perspective and from the oversight protection offered with a licensed hotel. He commented on the Statewide property tax reassessment and believed that it had to be revenue neutral for one year. He then explained that if property values increased threefold then the offset would be to reduce the cent value by 2/3. He explained that if a resident was paying 93 cents per 100 and the property went up three times the value, the offset was the reduction in the cent value. He reiterated his support for Mr. Coleman's initiatives.

Mr. Lawhorn recalled that one of the major ongoing costs for the bodycams was data storage and suggested that the lobbyists seek funding assistance.

Mr. Armitage recalled that AirBNB's were prohibited by ordinance, so the question was one of enforcement. He reiterated that Council directed to support HB36 as drafted and added that no one particularly favored the idea that appointments were to be made by the County Executive. He continued that Council also wanted to try to amend the five-year zoning hold and said that he received feedback from DLLG with other municipalities that were also concerned with how the bill was drafted. He assured Council there would be conversations with Representative Baumbach and the House attorneys who drafted the bill to address concerns. He admitted the issues surrounding the reassessment were still uncertain and asked Mr. DeChene to offer his insight.

Mr. DeChene confirmed the first year of the reassessment would be revenue neutral and he understood there were limitations on how much, in any given year after, that rates could rise. He thought the cap was 15% so there would never be a situation where a property would double in tax rates. He noted there were laws in place for limiting how much and how quickly taxes could be raised over any given time. He reiterated the first year was revenue neutral and thought it would be interesting to see

how the County performed initial calculations. Mr. Clifton wanted to make the point clear because he heard and read many variations. He continued with his hypothetical example of dropping 93 cents per 100 down to 31 cents per 100 and explained that 1 cent addition on 93% was just over 1% tax increase where 1 cent on 31 cents was a 3% tax increase. He emphasized that deviations mattered.

The Mayor opened the floor to public comment.

Ms. Bensley read a comment from Robert McBride, Chairman of BikeNewark, into the record:

“Mayor Clifton and City Council,

BikeNewark urges you to submit a letter of support for HB36 on behalf of the City of Newark to state Rep. Larry Mitchell (lead sponsor) and our area’s legislators, Sen. David Sokola (lead sponsor), Rep. Paul Baumbach, and Rep. Ed Osienski. This legislation would make the “Delaware Yield”—a portion of 2017’s Bicycle Friendly Delaware Act (BFDA)—permanent. The sunset clause in the original legislation was included to allow the state to assess the law’s impact on road safety.

The Delaware State Police has aggregated bicycle crash data for 30 months before and for 30 months after the BFDA was signed into law by Governor Carney. They show that the number of bicycle crashes resulting in injuries of all types have decreased 11% between the two time periods. Moreover, such crashes at stop sign–controlled intersections have decreased by 23%. This is strong evidence that the “Delaware Yield” is making these intersections safer for bicyclists.

HB36 is especially important to the Newark community because of the high level of bicycle ridership among residents and University of Delaware faculty, staff, and students, who use bikes for commuting, exercise, recreation, and general transportation. More and more people in our area are discovering the bicycle as a wonderful alternative to the motor vehicle. We are sure that, like BikeNewark, you will want to maintain the safety gains made, thanks to the BFDA, and improve on them going forward. Passage of this bill is critical to achieve that goal. We thank you for your past support of Newark’s bicycling community and for considering our request to send a letter in support of HB36 to state legislators.”

Ms. Bensley then read a comment from Mel Cords, District 1, into the record:

“Good day all, to be clear, while there may be reduced accidents around this bicycle yield issue, it is not the case that there are no accidents. As a driver in Newark who, due to disability, cannot participate in this bicycle friendly environment and must utilize a vehicle, I would question:

Whereby a bicycle chose to yield where a car had the right to go without stop or yield, and an accident occurs: can the driver of the vehicle sue for damages? charge the bicyclist with a traffic violation? are bicyclists required to carry insurance to address traffic damages/injuries as a result of careless application of this “freedom” only applied to those on bicycles? Please be aware there are many, many stops that are not four-way and if the car has no stop sign, yet hits a bicyclist who takes this “exception” that only applies to them, and causes an accident the vehicle drivers deals with all the fallout and monetary damages. So, in fact, you are creating a “special class of citizen”.

By this writ: "This bill would make permanent the 'Delaware Yield' rule that allows bicycles to treat stop signs like yield signs if there are no vehicles at the intersection. The data show that this has reduced injury crashes at intersections in Delaware. As a cyclist myself, it makes riding around town much more pleasant not having to come to a full stop at low volume intersections in neighborhoods for example."

I only see bicycles being supported to treat the roads as a complete right of way in every aspect and drivers left with all the risks, costs, and legal expense. The City of Newark has a purposeful intention to remove all drivers who have to drive, due to disability or age or distance & time constraints, from participating in the town they live in. The reduction of parking, congested streets NOT BEING REMEDIATED TO KEEP CARS MOVING, only consideration to townies on bikes, and intentions to disenfranchise older and car dependent residents from the local landscape. The City of Newark is building up Main Street just to rename it University Avenue and give it to UD. And now you want the residents to leave town if they can’t physically ride a bike. This is a purposeful attempt to disenfranchise the residents with disabilities to have proper representation and participation in their own community. Maybe it is great fun for the 5% of the community that uses it, but the rest of the city is left driving anywhere else but the businesses in town for dinner, shopping, and errands, or getting takeout anywhere but Newark.

Just saying, this entire effort taking over Newark has set ADA back 40 years. The City of Newark should never consider this “freedom” from not having to honor and abide by the same laws as anyone

else on the road. Wait til the students come back and think they don't have to abide by traffic laws on their bikes. The timing on this is ridiculous. Just an opinion not likely valued as it is not UD Housing friendly."

Ms. Bensley then read a comment from Helga Huntley, District 1, into the record:

"Dear Mayor and members of City Council:

Councilman Horning recently made his constituents aware that City Council will be discussing whether to lobby for the passage of HB 36 tonight. I urge you to do so.

I am aware that BikeNewark has shared with you the crash statistics from the state police that show a significant decrease in crashes involving bicycles that result in injuries following the passage of the "Delaware Yield" that allows people on bikes to yield instead of fully stopping at stop signs. I would like to add that these findings in Delaware are consistent with similar safety improvements that were noted by studies in other places (see the summary on p. 4 of this DePaul study: <https://las.depaul.edu/centers-and-institutes/chaddick-institute-for-metropolitan-development/research-and-publications/Documents/PoliciesForPedaling-120816-FNL.pdf>). Since Delaware became the second state, after Idaho, to allow bicyclists to yield at stop signs, more and more jurisdictions across the US have adopted similar laws, because their benefits are so clear.

Of course, correlation does not prove causation: Why do we think that the "Delaware Yield" can take credit for the reduction in crash injuries? Intersections are dangerous for bicyclists. The "Delaware Yield" helps them in multiple ways:

1. They spend less time at the intersections, as they do not have to stop and start.
2. They become more visible to drivers, as they can maintain some momentum.
3. They can clear the intersection when it is safest to do so. (And they have the most at stake to avoid crashes.)

The City of Newark has adopted goals of sustainability that include being friendly to alternative modes of transportation. Retaining this important existing safety measure will help the City in its efforts to encourage more biking. Therefore, I respectfully request that you direct the city's lobbyist tonight to lobby for passage of HB 36."

Barbara Ward, District 3, asked if a bicyclist at a stop sign had the right of way at all times and did not have to stop. Mr. Clifton replied that there were nuances and deferred to Mr. Coleman. Mr. Coleman understood that the Delaware Yield for Bikes only applied when cyclists were alone at an intersection so any cyclist who approached an intersection with an automobile would be required to stop. The only time a cyclist could roll through a sign was when no one else was at an intersection. He informed the rule had been in place for the last three years and repeated that drivers did not need to yield to cyclist unless they would have traditionally yielded to them before. Ms. Ward thanked Mr. Coleman for the clarification.

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

Mr. Clifton asked the lobbyists if the directions were clear and Mr. Armitage confirmed. Mr. Armitage said that he would follow up with Mr. Coleman and reach out to Nicole Majeski, the new Cabinet Secretary, to solicit updates for the DelDOT rideshare. He noted the project was on hold because of COVID. Mr. Clifton thanked the lobbyists.

6. 3-B. **RESOLUTION NO. 21-__ : A RESOLUTION APPROVING ISSUANCE OF UP TO \$2,600,000 PRINCIPAL AMOUNT GENERAL OBLIGATION BOND (PHASE II SANITARY SEWER SYSTEM STUDY AND REHABILITATION PROJECT), SERIES 2021C-WPCRF TO THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, THE DELAWARE WATER POLLUTION CONTROL REVOLVING FUND, AS REGISTERED OWNER, TO FINANCE CERTAIN WASTEWATER PROJECTS OF THE CITY OF NEWARK, AS APPROVED BY THE ELECTORS; SETTING FORTH THE FORM AND DETAILS OF THE BOND; DETERMINING THAT THE BOND WILL BE SOLD BY PRIVATE SALE AND AUTHORIZING EXECUTION OF A FINANCING AGREEMENT; PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE CITY; AND AUTHORIZING OTHER NECESSARY ACTION (10 MINUTES)**

54:41

Ms. Bensley read the resolution into the record.

Mr. Filasky explained the resolution was the final step to secure funding for a future sanitary sewer study and repairs. He continued the resolution was the last 2/3 of the sewer loan from the 2018 referendum and staff contemplated \$3.9 million for study and repairs and closed on \$1.3 million already. He revealed the loan was 2% and shared that staff was already under construction for the first \$1.3 million associated with the project. He explained that staff would first repair collapses and other areas that were imminent to cause backups. He continued that most of the funding from the bond would go towards an additional closed-circuit television study of the sanitary sewer system and then likely towards lining the pipes to add an extra 50 to 60 years of expected lifespan. He reminded that the lines were unlike water lines, so staff did not typically dig up and replace the sanitary sewer lines, they installed a liner instead. He informed there were no debt payments on the loan in 2021 and staff would look to complete the project in mid to late 2022, when the interest charges would begin.

Dr. Bancroft assumed the action was the process that the City went through with DNREC to ensure the public had clean water.

Mr. Horning asked about Exhibit A with regards to the penalty to the extent that for whatever reason the City had not drawn down the principal amount. He thought it spoke to some delays in the project that, at their discretion, the Department could issue a 1% penalty. He wanted to keep communication open in case the City needed to argue its case and make sure it was being treated fairly. He wanted to avoid a penalty. He appreciated the presentation and understood it was included in the multi-year CIP Budget. Mr. Filasky confirmed and informed that staff was aware of the timeline where staff needed to pull the money to get reimbursement. He noted that DNREC had been generous in the past and if City staff was actively working toward a reimbursement in good faith, the penalty was waived.

Mr. Hamilton, Mr. Lawhorn, Mr. McDermott, and Ms. Hughes had no questions.

Mr. Clifton asked if adding the lining eventually decreased the inside diameter of the pipe to restrict the flow or if the lining was so thin that it did not affect the flow. Mr. Filasky confirmed the lining was thin but admitted it did reduce the inside diameter. He explained that the lining sealed the pipe and said that most of the City's sewer lines were made out of jointed terra cotta clay pipes that allowed seepage. He explained that although the lining reduced the inside diameter, it also sealed the pipes which stopped ground water infiltration so lining the pipes technically increased capacity even though the total capacity was reduced. Mr. Clifton asked if the lining also sealed the common entrance for roots and Mr. Filasky confirmed and explained the City had a yearly root contract. He explained staff treated the roots as long as possible and then added the lining, so the roots were no longer an issue.

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

MOTION BY MR. MCDERMOTT, SECONDED BY MR. HAMILTON: THAT COUNCIL ADOPT A RESOLUTION APPROVING ISSUANCE OF UP TO \$2,600,000 PRINCIPAL AMOUNT GENERAL OBLIGATION BOND (PHASE II SANITARY SEWER SYSTEM STUDY AND REHABILITATION PROJECT), SERIES 2021C-WPCRF TO THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, THE DELAWARE WATER POLLUTION CONTROL REVOLVING FUND, AS REGISTERED OWNER, TO FINANCE CERTAIN WASTEWATER PROJECTS OF THE CITY OF NEWARK, AS APPROVED BY THE ELECTORS; SETTING FORTH THE FORM AND DETAILS OF THE BOND; DETERMINING THAT THE BOND WILL BE SOLD BY PRIVATE SALE AND AUTHORIZING EXECUTION OF A FINANCING AGREEMENT; PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE CITY; AND AUTHORIZING OTHER NECESSARY ACTION.

MOTION PASSED. VOTE: 7 to 0.

Aye – McDermott, Lawhorn, Hamilton, Bancroft, Hughes, Horning, Clifton.
Nay – 0.

(RESOLUTION NO. 21-C)

7. 3-C. 2021-2025 CAPITAL IMPROVEMENT PROGRAM BUDGET AMENDMENT FOR PROJECT H1503 – NEWARK TRANSPORTATION IMPLEMENTATION PROGRAM – PUBLIC WORKS AND WATER RESOURCES DIRECTOR (10 MINUTES)

1:05:17

Mr. Filasky explained the agenda item was to discuss where to include awarded funding from the Cycling Infrastructure Innovation Grant from the Delaware Bicycle Council in the budget. He forwarded the application to Council months ago and shared that the City was awarded the funding in early January. He continued that the project was for Wyoming Road from east campus and the redevelopment of College

Square which already had a large amount of bike traffic. PWWR staff met with BikeNewark, Parks and Recreation Director Joe Spadafino, and Deputy Director Paula Martinson-Ennis, to discuss innovative treatment to make the roadway safer for users. The grant would fund a study of the corridor so staff could make recommendations to Council in future budget years. He reiterated the grant did not require a City match but would use staff time to monitor the consultant and hold meetings to consider ideas. He informed there would be updates and a final findings and recommendations report from the consultant.

The Mayor opened the table to questions from Council.

Mr. Horning appreciated staff effort because the grant went directly towards improving the quality of life for residents without financial impact. He wanted to recognize the Delaware Bicycle Council, BikeNewark, Delaware Greenways, WILMAPCO, and UD for their letters of support in the initiative to help the City obtain the funding. Mr. Filasky echoed the thanks for support.

Ms. Hughes had no questions.

Dr. Bancroft was pleased to see great things happen for the community as cost effective measures.

Mr. Hamilton had no questions.

Mr. Lawhorn echoed the appreciation to everyone involved.

Mr. McDermott asked when the study would take place and Mr. Filasky replied that staff would solicit bids and it anticipated to begin late spring/early summer and end after a few months. He expected to have recommendations by the fall. Mr. McDermott was concerned that College Square would not be finished so the study would be inaccurate. Mr. Filasky replied that staff knew the development make up and the number of residents. He explained the study was not to determine how many people would use the corridor, rather it was to accommodate those who already used it and to increase the number of users after making improvements for safety and convenience.

Mr. Clifton noted that the HAWK signal for the Pomeroy Trail worked well and increased the awareness of those crossing in the area. He looked forward to advancements for bicyclists and safety.

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

MOTION BY MR. MCDERMOTT, SECONDED BY MR. HORNING: THAT COUNCIL AMEND THE APPROVED CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECT DETAIL 2021-2025 - PROJECT H1503 – NEWARK TRANSPORTATION PLAN IMPLEMENTATION TO ADD A \$15,000 GRANT FROM THE DELAWARE BICYCLE COUNCIL.

MOTION PASSED. VOTE: 7 to 0.

Aye – McDermott, Lawhorn, Hamilton, Bancroft, Hughes, Horning, Clifton.

Nay – 0.

8. 3-D. DISCUSSION AND DIRECTION TO STAFF REGARDING POTENTIAL UPDATES TO THE NUISANCE PROPERTIES ORDINANCE – CITY MANAGER/CITY SOLICITOR (60 MINUTES)

1:14:24

Mr. Bilodeau said he was asked by Mr. Hamilton and Mr. McDermott to bring forth a nuisance ordinance or proposed language based upon Elsmere’s nuisance ordinance to improve City’s process on dealing with nuisance properties and the violations of property maintenance codes. He wanted a conversation to discover ways to improve the City’s nuisance ordinance. He informed there was a committee with City staff and the Landlord Association that was working to improve Chapter 17 with regard to the property maintenance code.

Mr. Bilodeau reiterated the ordinance was modeled after Elsmere’s recent legislation and defined public nuisance as “when one failed to maintain or failed to obey a condition which violated City or State code and endangered the safety, health, and welfare of the public”. A repeat public nuisance was defined as “two of the same violations within a 12-month period or three non-related property maintenance violations within a year”. He continued that an owner or renter would be in violation if they maintained or allowed a public nuisance or repeat public nuisances. He revealed there were enhanced penalties in the ordinance for second and third violations and it was possible for proceedings to commence to revoke a rental permit if the property remained non-compliant. He added that for completely non-compliant

properties, there was a process to either seek a temporary receiver to bring the property into compliance and also allowed for condemnation and/or demolition of unsafe or abandoned structures. He realized the ordinance encompassed many aspects and there was some duplication with current Code and reiterated the purpose for the presentation was to initiate conversation. He revealed there were properties within the City that refused to comply with laws and noted that Code Enforcement staff were available for questioning.

The Mayor opened the table to Council comments.

Mr. Hamilton explained that one of his first votes on Council was for inspections of houses, but he was contacted by landlords who indicated there were alternative measures. He voted against the ordinance to allow inspections and he expressed his regret for having done so. He repeatedly requested to have the ordinance return because he realized the City was failing the neighborhoods. He noted there were many good landlords and property owners but there were areas of the City that were taken over by people who did not care for their properties. He contacted the staff at Elsmere to request their ordinance and to learn how the ordinance was progressing in the town. He discovered that the landlords were pleased that the ordinance gave them more influence with tenants. He emphasized the need for action to assist homeowners who were negatively impacted and implied that some landlords purposely neglected properties to decrease home values. He believed properties were not maintained because of behavioral and home maintenance issues and wanted to use Elsmere's ordinance as starting point for Council's discussion.

Mr. Lawhorn thought the ordinance made sense conceptually for problem properties and asked for top nuisance concerns in the City. Ryan Straub, Property Maintenance Inspector II, replied that Code Enforcement received daily concerns regarding litter and hoarding issues, unkept lawns in student rentals over summer, unregistered vehicles, and indoor furniture kept on the exterior of the property. Staff noted an increase in interior furniture placed outside to the point that beer pong tables were being kept on front lawns. He admitted there were a few vacant properties in the City and agreed that a nuisance ordinance would help the owners either sell the property or keep up with the maintenance. Mr. Lawhorn asked why the current system did not work. Mr. Straub explained that there was compliance with the current instant citation program, but the issue was turnover because every year saw a new set of tenants with the same issues. He continued that lawn maintenance was a problem every year and said that for grass citations, staff posted notices at the properties and also sent a copy of the citation to the owners. The hope was that the tenants would be instantly notified, and the landlords would be notified through first class mail but the issue often was that leases began in June and the tenants did not occupy the property for months so they were unaware of the violations unless the landlords reached out. He explained that staff would often return and cite the property once more or have a contractor cut the lawn. He confirmed there was a working system in place but there were properties that were consistently cited \$100 and triggered no action. Staff was hopeful that the ordinance would provide stiffer fines.

Mr. Lawhorn asked if there was any data available for repeat offenders. Mr. Straub replied that landlords and tenants typically replied and reached out about compliance. He continued that repeat offenders were not a large percentage but did make the City look bad. The ordinance would help staff to work with landlords to get the properties into compliance. He reiterated the ordinance was not only for rental properties but also for residential homes. Mr. Bilodeau asked if staff cited the property owner or landlord who then passed along the bill to the tenants. Mr. Straub confirmed the violations were sent by first class mail to property owners and the property was posted to make occupying tenants aware of Code violations and the need for compliance within whatever dates were specified on the citation or notice of violation.

Mr. Clifton interjected and asked Mr. Straub if the action applied to any property, including commercial, and Mr. Straub confirmed. Mr. Clifton understood that one commercial property had daily calls for Police service and agreed that some rental houses were a blight on the community, but the issue transcended rental properties and neglectful individual owners.

Mr. Lawhorn wanted to support making sure staff had the right tools to enforce appropriate behavior and thought it was important to define the issues and focus on implementing tools to fix frequent problems. He thought it was important to have feedback from multiple entities including the Newark Landlord Association and impacted properties. He supported having discussions with the proper input to focus on clear issues. He wanted to limit the scope to the problems, so that discussions did not drain resources. He asked if made sense to feed the effort in with current actions and Mr. Coleman explained the review of the Property Maintenance Code had not yet begun. Mr. Coleman assumed the Code would be reviewed in the fall at the earliest and explained he had not had time to meet with Director Gray and her team to grasp the full project but noted it included updating to the newer version of the International

Property Maintenance Code (IPMC). He would defer to Ms. Gray and the Code Enforcement team. Mr. Lawhorn wanted to be smart about how the City was managing resources and to avoid doing the same work twice. Ms. Gray informed that staff had begun the revision process on the Property Maintenance Code prior to COVID and the Rental Housing Workgroup. The process was put on hold to allow the Rental Housing Workgroup to provide recommendations since many considered the Property Maintenance Code. She confirmed that staff was regrouping and had recently ordered the 2021 books to revise to the 2021 IPMC. Mr. Lawhorn repeated his concern on resources, especially given the Planning Department's current workload.

Mr. Straub interjected that the staff was working with the Rental Housing Workgroup to pinpoint the top nuisance concerns and to send educational information to residents on the City's rules and ordinances. Staff was also working on a Good Neighbor Program with UD that would be sent to students to explain how Codes and Ordinances could result in fines or issues with UD. Mr. Lawhorn recalled previous conversations on University-related issues and wanted the City's website to have a section to welcome and proactively educate new residents. He believed the website could be a tool to assist landlords and homeowners. Mr. Straub recalled conversations with Mr. Clifton on working with UD to develop an app for students and he hoped to revisit the topic.

Mr. McDermott became involved with the initiative after his election to Council and discovered there were two residences in District 6 that had ongoing issues with property maintenance including tall grass, abandoned vehicles, and rubbish. He revealed his predecessor had also had issues with the properties and emphasized that although they were rental properties, they were not rented by students. As he began the process, he learned through City Code and Code Enforcement of a provision within Code that allowed the City to revoke a rental permit from an unresponsive landlord. He noted that one of the nuisance property landlords in District 6 lived abroad and after the home was vacated, it fell into disrepair and the City had no recourse. He explained that the process to revoke a rental license in the extreme cases of an absentee or neglectful landlord was subjective because Code stated that the City could revoke the permit with only one violation. He then discovered that the City had never revoked a rental permit but was not surprised because Code indicated one infraction of an unkept yard could trigger a revocation and the City was obviously not going to act on one infraction. He wanted to understand the revocation process and explained that when staff felt that a situation was bad enough, the owner and the tenants met with City staff in order to determine a solution.

Mr. McDermott wanted the Code to be more definitive and hypothesized that a first violation could go to the tenant and the landlord would receive a copy. The second violation in the timeframe would trigger a meeting. For a third violation, the landlord would be required to file for possession of the rental property and, if the landlord did not file, the City would seek to revoke the rental permit. He wanted a definitive timeline to provide more consistency and want it directed at top level offenders and asked that it be added to the ordinance. He ran into an issue with abandoned vehicles on private property and he learned that unless the vehicle could be seen from the street, Code Enforcement could not go onto the property to check vehicle registration. Mr. Straub confirmed that staff had right of entry to the front door and from the street so if staff could walk to the front door to post a notice and saw that the vehicle was unregistered, they could verify the information. But if the vehicle was backed in or had a cover, then staff had no right to cite the violation. Mr. McDermott shared that State Code for abandoned vehicles on private property had a provision that allowed for the Police or County Code Enforcement to enter the property to check for registration. He emphasized that he was not speaking about vehicles that were behind fences or in garages but if there was an unimpeded avenue to the vehicle, State Code allowed the provision. He thought the City could easily adopt the provision since it was already in State Code and asked that it be included in the ordinance. He noted the Elsmere ordinance also addressed commercial establishments with frequent issues such as shootings, drug dealing, and sexual assaults which drained City resources. He thought the copy of the ordinance gave the City the ability to deal with egregious offenses and extreme quality of life issues and he understood similar provisions existed in the County where the County was able to file and receive authority over properties to rectify repeated problems. He supported giving the City a direct path to follow for consistency without being burdensome on resources. He wanted to address owner-occupied dwellings through step increases with fines for repeat offenders.

Mr. Horning echoed previous comments and commended Mr. Straub for his efforts in District 1. He emphasized that the ordinance was to provide stronger actions against repeat offenders, and he supported giving staff more tools to address negligent landowners. He wanted to include landlords in the discussion because he thought their knowledge would be helpful in creating a better product. He reviewed the ordinance and would defer to the City Solicitor for legal perspective to ensure City was on firm standing because some of the ordinance was aggressive but recalled that the City once took over a home on Rockmoss Avenue in Cherry Hill. He thought the Property Maintenance Task Force could achieve the desired result, but he also wanted to give Code Enforcement additional tools to be able to make a more

heavy-handed approach. He had an increasing concern for the public perception of repeated crimes in commercial establishments but was unsure what to do about lawless clientele creeping into the City's outskirts. He assumed the situation could be helped by going after repeat offenders and seeking input from the Police Department.

Dr. Bancroft supported accelerating actions against repeat offenders. He considered the City Manager, Committees, and Boards to be the sources of good ideas. He appreciated Mr. Straub's expertise and comments and wanted to consider whether fines were the proper channel and wanted to recoup costs for emergency services. He wanted to be sensitive to poverty driven issues and wanted the ordinance adjustments to be clear, so the logic was obvious. He wanted to consider balance in fines versus the public interest of whether staff were targeting poverty or student problems and if it was worth trying to discriminate among them, so the City was more effective with its efforts. He felt that Council should consider the outlying areas of the City where people are living in addition to downtown for hosting al fresco events to include a broader community. He also suggested some shaming of scofflaws to assist with gaining compliance. He supported the ideas and the discussion.

Ms. Hughes was unavailable.

Mr. Clifton wanted to be clear about the "deteriorate to demolish" mentality and understood there were cases where landlords purchased houses in order to build something new. He stressed that it was not always the case of an owner allowing a home to deteriorate and often owners came to the City's rescue by offering to build nicer and newer buildings. He wanted to enforce the idea that the ordinance was unilateral and would affect owner occupants, not just the student rental or rental population. He thanked Mr. McDermott for clarifying a different way of approaching abandoned vehicles and thought the City would have probable cause to examine a vehicle if there were obvious signs that it was non-operational. He wanted to examine how the State and County handled the issue. He agreed there needed to be clear standards for violations, expectations, and actions, and noted that other municipalities had the same type of ordinance in effect which made legal muster within those jurisdictions. He thanked Mr. Straub for reminding about the smartphone application and recalled multiple discussions of endorsing rental properties that passed Code requirements on the City's website. He believed red flags would be raised on why rental properties were not inspected. He noted that the City Manager had a lot of authority in the process and he wanted property owners to have a right to public hearing so he wanted to discern what levels or issues would trigger a Council hearing. He emphasized that the arguments against nuisance properties were that they were eyesores and a drain on law enforcement but were also about making sure people were safe within the community.

The Mayor opened the floor to public comment.

Ms. Bensley read a comment from Jonathan Daigle, 182 Madison Drive, into the record:

"To Whom it May Concern,

I would like to make a couple of points about the proposed property ordinance:

1. It is not legal to hold me responsible for the actions of my tenants. If they rob a bank, am I somehow an accessory to the crime?

2. The ordinance is in clear violation of the Fair Housing Act and the Delaware Landlord - Tenant Code. This ordinance, if passed, has a 100% chance of drawing an expensive lawsuit to the City. Ordinances like these have been struck down just about everywhere they have been passed, and rightfully so.

3. I get it - we all want nice, clean, quiet, crime free neighborhoods. However, I'm just a landlord. I have not been deputized. I am not a constable. I'm not a judge for the Court of Common Pleas. I have no authority to levy fine or evict problem tenants - that authority is granted only to Law Enforcement and the Court of Common Pleas. I cannot sit on the doorstep with a shotgun barring my tenants entry. They (and I) have legal rights and are required to see the inside of a court room. If the tenant is doing something I don't like or is illegal, the only course of action I have is to call the Police. That's it! When I try to evict, with the laws of the State of Delaware, the duration of the court process and the tenor of the Judges, it might be 6-8 months before I can get rid of them, if I can get them out at all. So how would I prevent further violations in the interim? Thank you."

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

Mr. Clifton asked Mr. Coleman and Mr. Bilodeau if they had clarity on Council's expectation. Mr. Bilodeau confirmed and believed that most of Council wanted staff to work with the Committee and landlords to return to Council with an effective solution to deal with the problems. Mr. Coleman requested clarification on the IPMC and thought it best to meet with Code Enforcement prior to drafting the ordinance in order to decide what to include in the IPMC update versus what the City needed to separate from it. He admitted he did not know enough about IPMC to immediately decide if it made more sense to do stand alone or integrate it. He was concerned that if IPMC was fully integrated, there could be a delay given the Planning Department's workload. He wanted to meet with the team to create a strategy and prepare a memo for Council outlining the best path forward. Mr. Clifton agreed and understood that International Building Code, IPMC, and Building Officials Code Administrators International (BOCA) were regularly updated. He wanted to have something before Council before the routine updates. Mr. Coleman believed staff last attempted to update the IPMC Code in 2012 so the project would be intensive. He supported acting in both the short and long term. Mr. Clifton shared that one level of BOCA or IPMC was not updated because there was conflict with a new sprinkler ordinance.

Mr. Hamilton was challenged with how long the update would take but understood it was complicated. He referred to Mr. Daigle's comments and emphasized that if a person was attempting to comply then he did not think the City would levy fines against the landlord. He suggested including clauses to protect landlords making good faith efforts to enforce the City's ordinances. He shared that the Old Newark Civic Association met with UD, Police, and other organizations to discuss creating the Good Neighbor Program for students. He emphasized the issues were not only about students and landlords and there were efforts to inform residents about the ordinances. He shared that the group discussed having fraternities help shovel snow to be better neighbors and thought a holistic approach was suitable. He noted that students would raise funds for international efforts, but the group suggested focusing efforts on neighbors. He hoped that a community could be built through feel-good efforts, but he wanted an ordinance to provide an outline. He reiterated that the intent was to target problem properties where landlords purposely avoided staff. He was pleased with the conversation and wanted to involve landlords because he received feedback that they were also frustrated with the process's slow pace. He noted he had been on Council for four years and no one had addressed the issues despite multiple requests. He wanted the issue to be prioritized. Mr. Clifton agreed and suggested that new Council discuss prioritization in May. He wanted to be proactive and move forward regardless of national standards. He reiterated that the City had both nuisance residential and commercial nuisance properties.

7. 4. **ITEMS SUBMITTED FOR PUBLISHED AGENDA:**
 - A. Council Members: None
8. 4-B. **OTHERS:** None
9. Meeting adjourned at 9:22 p.m.

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

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