

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

March 22, 2021

Those present at 6:15 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 (arrived at 8:06 p.m.)
District 6, Travis McDermott

Staff Members: City Manager Tom Coleman
City Secretary Renee Bensley
City Solicitor Paul Bilodeau
Chief Communications Officer Jayme Gravell
Chief Human Resources Officer Devan Hardin
Chief Purchasing and Personnel Officer Jeff Martindale
Finance Director David Del Grande
Accountant Jim Smith
Parks and Recreation Director Joseph Spadafino
Planning and Development Director Mary Ellen Gray
Parking Supervisor Courtney Mulvanity
Planner II Michael Fortner
Planner II Tom Fruehstorfer
Public Works and Water Resources Director Tim Filasky

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 the discussion of the content of documents, excluded from the definition of “public record” in §10002 of this title where such discussion may disclose the contents of such documents.

MOTION BY MR. HAMILTON, SECONDED BY MR. HORNING: THAT COUNCIL ENTER 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 THE DISCUSSION OF THE CONTENT OF DOCUMENTS, EXCLUDED FROM THE DEFINITION OF “PUBLIC RECORD” IN §10002 OF THIS TITLE WHERE SUCH DISCUSSION MAY DISCLOSE THE CONTENTS OF SUCH DOCUMENTS.

MOTION PASSED. VOTE 6 to 0.

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

3. **RETURN TO PUBLIC SESSION**

Council exited Executive Session at 7:00 p.m. Mr. Clifton announced that no further action was required.

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.

5. PRESENTATION OF STATE LEGISLATIVE TRIBUTES TO STU MARKHAM, JEN WALLACE AND CHRIS HAMILTON FOR SERVICE TO THE CITY OF NEWARK – SENATOR SOKOLA, REPRESENTATIVE BAUMBACH AND REPRESENTATIVE KOWALKO (10 MINUTES)

4:26

Mr. Clifton welcomed Senator Sokola, Representative Baumbach, and Representative Kowalko. Senator Sokola presented Mr. Markham with a State of Delaware Senate Tribute from Senators David P. Sokola, Bryan Townsend, Stephanie L. Hansen, John J. Walsh, III, and the Senate of the 151st General Assembly recognizing Mr. Markham’s fourteen years of distinguished service to the citizens of Newark for promoting civic, commercial, education, social, and quality of life interests in the community. Mr. Markham was instrumental in establishing the Curtis Mill Park and McKee’s Solar Park. Mr. Markham thanked Senator Sokola, Representative Baumbach, and Representative Kowalko for the tribute. He noted the challenges with positions in legislature and thanked the group for their support.

Representative Kowalko presented a tribute to Jennifer Wallace for her faithful service and advocacy for open government. He acknowledged her dedication to the community prior to becoming a Council member, reiterated his thanks for her service, and wished her well in future endeavors. Ms. Wallace appreciated the tribute and hoped her appointment to the Newark Planning Commission would be approved that evening as she intended to be involved in City issues as a resident through her actions on the Planning Commission.

Representative Baumbach expressed his appreciation for Chris Hamilton’s service on behalf of the City and the State. He credited Mr. Hamilton with comprehensive outreach and communication, transparency and open government, and passionate advocacy for the City. He thanked Mr. Hamilton for his service. Mr. Hamilton appreciated the recognition and thanked the group for representing the City on the State level.

Mr. Clifton credited the Council members for their passionate service and for having the best for the City in their hearts. He thanked Senator Sokola, Representative Baumbach and Representative Kowalko for honoring three elected officials instrumental in changing the face of Newark.

6. 1. ITEMS NOT ON PUBLISHED AGENDA

A. Elected Officials who represent City of Newark residents or utility customers (2 minutes): None

7. 1-B. UNIVERSITY

(1) Administration (5 minutes per speaker) (10 minutes):

14:14

Caitlin Olsen, UD Administration, shared that UD was working to hold commencement over a few days in May. She acknowledged that plans were subject to change but the intent for September was to fill the dorms once again and have a full fall sports schedule. UD expected to have 4,400 new students in the fall from over 33,000 applications. She was hopeful that the University would be back to 95% capacity and revealed that some of the classes would be online to make sure everyone was comfortable. She said that UD was working with the Department of Public Health (DPH) to host a vaccine event and credited the State and County for helping UD hold testing events. She thanked the Newark Police Department and acknowledged the last week was difficult.

Mr. Clifton opened the table to Council comments.

Mr. Hamilton thanked Ms. Olsen for being instrumental in helping improve the relations and communications with UD. He asked how many staff members received vaccinations and for an update on COVID cases. Ms. Olsen reported there were only four cases announced that day but noted the past weekend was the first time that educators were invited to the Dover vaccination event. She continued that some staff and professors lived outside of Delaware and confirmed the 65 and older group were receiving vaccinations. She did not think that Human Resources had a total but said that staff were getting the vaccine when possible. Ms. Olsen thanked Mr. Hamilton for his service. Mr. Hamilton thanked the University and students for safe behaviors.

Mr. Horning recognized the UD Police Department for its enforcement efforts on the Unruly Gathering Ordinance and recent assaults on students on Friday night. He understood that arrests were made on Sunday and acknowledged UDPD as a critical partner in the community. He asked how this year's application and acceptance rate compared to pre-COVID. Ms. Olsen confirmed that the numbers were up and acknowledged the difficulty for high school students to submit applications and letters of recommendation. She credited UD's Admissions Team on extending the application period, working with superintendents, ensuring that students had access to the application as needed, and extending the free application period. She continued that the number of received applications was actually closer to 34,000 and was nearly a record. She hoped the 4,400 students who accepted to come to campus would remain, which would put the University back to pre-COVID numbers and shared that the president was pleased with the results. She informed that UD students used the LiveSafe app to report incidents with neighbors and keep the community safe which interpreted as a testament to how badly students wanted to remain on campus.

Ms. Hughes wished Mr. Markham, Ms. Wallace, and Mr. Hamilton well. She asked Ms. Olsen if there was an uptick in students becoming involved in the election. Ms. Olsen had no information for the local election.

Mr. Clifton congratulated UDPD for reacting quickly and having the resources to make the arrests on the assaults.

8. 1-B-2. STUDENT BODY REPRESENTATIVE(S) (5 minutes) (2 minutes): None

9. 1-C. CITY MANAGER (10 minutes):

26:17

Mr. Coleman informed that UD's recent announcements for the fall were in line with the assumptions City staff used to prepare the 2021 budget recommendations for revenue. He continued that recent vaccine announcements were better than anticipated so staff was confident with the revenue assumptions used in the budget. He revealed the Governor announced an expansion of the vaccine program to increase eligibility to Delawareans aged 50+ at pharmacies, to 16 and over with high to moderate risk medical conditions, and caretakers deemed eligible by healthcare providers. He shared that the information was available on the State's website. On March 23, the State would open its COVID-19 vaccine waiting list to any Delawarean aged 50+ at <https://vaccinerequest.delaware.gov>. He informed that Newark's essential personnel were given the first dose of the vaccine on Friday at the event referenced by Ms. Olsen and thanked the State for opening vaccinations to essential government personnel. He revealed that the deadline for Delaware taxpayers to file 2021 State and Federal personal income tax returns was extended from April 15 to May 17. The Governor announced, in partnership with the Delaware State Housing Authority, that the Delaware Housing Assistance Program would be reopened. The Program provided financial assistance to renters affected by COVID-19 and the information was available on the State's website.

10. 1-D. COUNCIL MEMBERS (5 minutes):

28:32

Mr. Hamilton:

- Stated he did not want to make the comments about himself, but thought the City was in a good position and thanked Mr. Coleman and Mr. Del Grande for helping navigate the City's finances through the impacts of COVID. He was pleased to have worked with Mr. Clifton and noted that Ms. Creecy was already meeting constituents and getting informed. He was confident that District 4 would be well served by Ms. Creecy.

Dr. Bancroft:

- Thanked public safety staff for their efforts and encouraged everyone to protect themselves from the COVID variants as he thought it was important to view the efforts of citizens to help the community. He also thanked Ms. Olsen for representing UD.

Ms. Hughes:

- Thanked those who dealt with the pandemic in a responsible way and acknowledged the losses of lives and livelihoods over the last year. She also credited the students for following the rules and recognized City staff for making a seamless transition to remote work.

Mr. Horning:

- Congratulated Mr. Hamilton, Mr. Markham, and Ms. Wallace for their recognitions and thanked both the State Legislators for the tributes and Mr. Hamilton for his constant availability and critical voice.
- Credited Mr. Clifton and Mr. Coleman for securing vaccines for essential workers.
- Recognized Mr. Fortner for the public outreach in the Comprehensive Plan Review and thought residents had great questions during the Steering Committee meeting. He looked forward to the Steering Committee's accomplishments.

Mr. McDermott:

- Agreed with Mr. Horning's comments on the Steering Committee, commended Mr. Fortner for his efforts during the meetings and noted he appreciated the format and thought it was a success.

Mr. Clifton:

- Credited Mr. Coleman for securing vaccinations for employees and noted the staff roster was not overloaded with employees and any loss of staff support created a ripple effect. He reminded the public that staff was budgeted conservatively with employees and positions remained unfilled because of the loss of revenue during the pandemic and he was comfortable that employees and those around them would be protected and all Departments could continue service.
- Noted the recent District 2 power outage was quickly remedied.

11. 1-E. **PUBLIC COMMENT (5 minutes per speaker) (10 minutes):** None

12. 2. **APPROVAL OF CONSENT AGENDA: (1 minute)**

- A. Approval of Council Meeting Minutes – March 1, 2021
- B. Approval of Council Meeting Minutes – March 8, 2021
- C. Receipt of Alderman's Report – March 8, 2021
- D. Recommendation on a Change Order for Forest Lane Curb and Sidewalk Replacement for Contract No. 20-03 – Rodney Complex Park and Pond Construction
- E. Recommendation on a Change Order for Contract No. 20-10 Corrugated Metal Piping (CMP) Lining – 2020 and Budget Amendment
- F. ***First Reading – Bill 21-10 – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, To Establish a Diversity and Inclusion Commission – *Second Reading – April 26, 2021****
- G. ***First Reading – Bill 21-11 – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, To Change the Required Newspaper Notice for Planning Commission Agendas from 15 Days to 10 Days – *Second Reading – April 26, 2021****

41:05

Ms. Bensley read the consent agenda into the record.

MOTION BY MR. MCDERMOTT, SECONDED BY DR. BANCROFT: TO APPROVE THE CONSENT AGENDA AS PRESENTED.

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

Absent – Lawhorn.

13. 3. **APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS:**

- A. Appointment of Beth Chajes to the Vacant District 2 Position on the Conservation Advisory Commission for a Term to Expire March 15, 2023 (5 Minutes)

42:46

Ms. Hughes shared that Ms. Chajes was a 19-year resident of the City and a current member of the CAC. Ms. Chajes informed that she joined the CAC in October 2018 and Ms. Hughes thanked her for her service. Ms. Hughes read from Ms. Chajes' application:

“Throughout my career, I have seen myself as a translator of science, someone who communicates scientific research for the general public in an engage and understandable way and helps to create scientifically literate citizens capable of making sound decisions based on the best available information. However, when it came to key areas of environmental concern, I became convinced over the years that science, education, and personal action were not enough to address some of the biggest challenges we face. Public policy is critical, too, and informed concerned citizens must be involved in creating policy solutions that meet the “triple bottom line” of economic, social, and environmental sustainability. Working to help my own city make sound, sustainable policy decisions seems like an excellent way to apply my knowledge and skills and to follow that well-known advice to ‘think globally, act locally.’”

Ms. Hughes completely supported Ms. Chajes and considered the City fortunate to have Ms. Chajes as a member.

The Mayor opened the table to Council comment.

Mr. Horning thanked Ms. Chajes for her service and passion and found her to be a great asset to the CAC.

Mr. Clifton asked Ms. Bensley to address the unusual circumstance surrounding Ms. Chajes’ reappointment. Ms. Bensley explained that when staff broadened the application process for the Boards and Commissions, the CAC received interest from several applicants for at-large positions. She noted there was one vacancy at-large and one vacancy for District 2 but none of the applicants were from District 2. She continued that Ms. Chajes had been serving on the CAC as an at-large appointee and Mr. Clifton and Ms. Hughes decided to invite Ms. Chajes to serve in the District 2 capacity upon the renewal of her term. Doing so would allow Mr. Clifton to select another nominee from the at-large pool and the CAC would be closer to filling its vacancies.

Dr. Bancroft revealed he was a supporter of the Delaware Environmental Institute (DENIN) and appreciated Ms. Chajes’ efforts in the community.

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

MOTION BY MS. HUGHES, SECONDED BY MR. HAMILTON: THAT COUNCIL APPROVE THE APPOINTMENT OF BETH CHAJES TO THE VACANT DISTRICT 2 POSITION ON THE CONSERVATION ADVISORY COMMISSION FOR A TERM TO EXPIRE MARCH 15, 2023.

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

Absent – Lawhorn.

14. 3-B. APPOINTMENT OF ANDREW O’DONNELL TO THE DISTRICT 3 POSITION ON THE CONSERVATION ADVISORY COMMISSION FOR A THREE-YEAR TERM TO EXPIRE MARCH 15, 2024 (5 MINUTES)

52:17

Dr. Bancroft nominated Andrew O’Donnell to the District 3 position on the CAC and noted Mr. O’Donnell’s long military service and honorable work in the community. He found Mr. O’Donnell’s expertise in writing and electric as critical and were perfect to address carbon issues and the climate.

The Mayor opened the table to Council comments.

Mr. Horning thanked Mr. O’Donnell for his willingness to serve and complimented his established work record and passion. He noted Mr. O’Donnell had only lived in the City for three years but was already extremely active and engaged.

Mr. Clifton met Mr. O’Donnell when he first moved to the area and appreciated his extensive knowledge about electric vehicles.

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

MOTION BY DR. BANCROFT, SECONDED BY MR. MCDERMOTT: THAT COUNCIL APPROVE THE APPOINTMENT OF ANDREW O'DONNELL TO THE DISTRICT 3 POSITION ON THE CONSERVATION ADVISORY COMMISSION FOR A THREE-YEAR TERM TO EXPIRE MARCH 15, 2024.

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

Absent – Lawhorn.

15. 3-C. APPOINTMENT OF JENNIFER WALLACE TO THE AT-LARGE POSITION ON THE PLANNING COMMISSION FOR A TERM TO EXPIRE SEPTEMBER 15, 2022 (5 MINUTES)

56:16

Mr. Clifton nominated Ms. Wallace, District 3, to the at-large Planning Commission position. He commended Ms. Wallace's thoroughness and research and thought she would be able to immediately step into the role and perform well.

The Mayor opened the table to Council comments.

Mr. Hamilton thanked Ms. Wallace for her service and appreciated her efforts. He acknowledged that the role was critical given the Comprehensive Development Plan Review and even though the Commission was advisory, he was sure she would draw attention to the group's actions.

Mr. Horning reiterated Mr. Hamilton's comments and thanked Ms. Wallace for her service. He noted the Planning Commission was a critical component in City government.

Ms. Wallace thanked Council for the kind remarks and agreed the Planning Commission was an important factor in guiding the City into the future. She thought the Comprehensive Development Plan was an important undertaking and hoped to encourage more residents to become involved in the process.

MOTION BY MR. CLIFTON, SECONDED BY MR. HAMILTON: THAT COUNCIL APPROVE THE APPOINTMENT OF JENNIFER WALLACE TO THE AT-LARGE POSITION ON THE PLANNING COMMISSION FOR A TERM TO EXPIRE SEPTEMBER 15, 2022.

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

Absent – Lawhorn.

16. 4. ITEMS NOT FINISHED AT PREVIOUS MEETING: None

17. 5. SPECIAL DEPARTMENT REPORTS:

- A. General Assembly Update and Associated Requests for Council Direction – Lobbyist (20 Minutes)**

1:02:09

Rick Armitage reviewed the Delaware Economic and Financial Advisory Council report the lobbyists presented to Council the previous week and reported the State's revenue estimates for the current fiscal year increased by \$160 million and would increase by another \$148 million in 2022. The Transportation Trust Fund, which supported Municipal Street Aid and the Community Transportation Fund, decreased slightly over both years: \$7 million in the current fiscal year and \$5 million projected for fiscal year 2022. He explained the result was due to less driving so the toll revenue and the revenue associated with the Motor Fuel Tax were down.

Mr. Armitage revealed the lobbyists added four bills to the table. HB6 suspended the statute of limitations for one year to allow victims of sexual violence employed by any public entity to bring an action against their employer or perpetrator. HB113 allowed landlords to request emergency hearings if the tenants threatened in harming the property; the bill would allow for expedited hearings and could impact the City given the amount of rental housing. He admitted he did not have a recommendation from Council on whether the lobbyists should offer support, but he thought it was important to monitor. He revealed the bill was assigned to a Committee in the House that was not yet meeting but he would report to Council with any updates. He informed the minimum wage bill passed the Senate and moved to the House. He

explained that over the next four years, beginning in January 2022, the State's minimum wage would move to \$10.50. Over the next four years, the wages would increase on January 1st:

- 2023 - \$11.75
- 2024 - \$13.25
- 2025 - \$15.00

Mr. Armitage warned the largest impact to the City would be in Parks and Recreation which was staffed by part-time summer employees as lifeguards, camp employees, or grounds maintenance crews. He explained that the impact over time to the City's budget was not incredibly significant and there would be no real impact in the current fiscal year. There would be a \$35,000 impact next year but would grow almost \$240,000 over the following four years. He anticipated issues with some salary compression because there were current employees with commercial driver licenses who made \$15.00 an hour so, over time, senior staff would return to Council with the projected impact to the budget. He explained that most costs would be absorbed by increasing the fees associated with the summer camp and pool programming.

Mr. Armitage explained that SB39 changed Probation Before Judgement (PBJ) to allow one usage every five years with the rule that it could be used for multiple charges related to the same incident. The lobbyists would monitor the bill for the court. He informed that the recreational marijuana bill would be in Committee on Wednesday and the business community was trying to maintain the management of recreational use by employees, particularly on the job, and he anticipated the voting would be close.

The Mayor opened the table to Council discussion.

Mr. Horning asked what drove HB6 and Mr. Armitage replied the bill had not yet had a Committee hearing but suspected it could have stemmed from incidents in other parts of the country. Mr. Horning asked if staff projected the fiscal impact of \$250,000 for minimum wage. Mr. Coleman replied that staff provided the worst-case scenario analysis which assumed that all step progressions remained at the same differential and would increase at the same percentage. He did not think the scenario was likely and staff would probably compress the steps since the bottom would be considerably raised. He explained if the top tier was raised an equal amount then it would begin to interfere with some of the union positions. He continued that the pay rate setting was done through an analysis performed every four or five years where the Parks and Recreation Department reviewed wages paid in similar agencies and municipalities and updated the City's pay scale accordingly. He admitted the wages would be higher, but he did not have an exact amount and noted that if the bill passed, then all comparable agencies would experience the same effect and any increase in program fees would likely be reflected in other agencies. Mr. Spadafino added that the cost of the programs would rise to offset the salary increase but the City was fortunate to have a college community with competitive applicants. He pointed that the City also had a great fee assistance program in place, but the concern was that some customers would be priced out and staff wanted to make the programs available to everyone. Mr. Horning appreciated the effort and considered the Parks on Draft as a fund-raising split to help with fee assistance. He suggested that if the wage increase was not a tax increase and was comprised of increased fees then the fee assistance could be well-advertised.

Mr. Horning thought that PBJ was used for offenders with clean records as a learning experience and asked if it was becoming more flexible and Mr. Armitage replied that PBJ was used beyond Alderman's Court #40. He explained another dynamic influence on the bill was the ongoing cannabis decriminalization discussion regarding the socio-economic impact on minority communities with disproportionate sentencing, so the legislators were investigating how to remedy injustices. Mr. Horning assumed Mr. Bilodeau received the same information and acknowledged that the court had not heard civil jury trials during COVID, and the criminal cases were backlogged by 900 cases; he thought PBJ was a mechanism to thin out the case load. He asked for an update on the Redding Consortium and Mr. DeChene informed the most recent actions by the Consortium were the recommendations made for the programming cost to be included in either the Governor's Recommended Budget, which did not happen, so the Consortium moved to lobby the Joint Finance Committee (JFC) to include the money. There was no determination yet, but the Consortium was scheduled to hold a full meeting soon. He noted the Funding Workgroup was also the Redistricting Workgroup and would start on redistricting which would impact the Christina School District.

Ms. Hughes had no questions.

Dr. Bancroft wanted to monitor the revenue and redistricting. He admitted there could be disruption with a \$15 minimum wage, and he agreed with Mr. Coleman that the bottom of the pay scale would be compressed. He wanted to follow HB150 because it made sense and models from neighboring states suggested the revenue side was compelling.

Mr. Hamilton understood that all jobs would have the \$15 minimum wage, including part-time and seasonal jobs, and Mr. Armitage confirmed. Mr. Hamilton noted the pandemic crushed small businesses while helping large corporations and recalled previous discussions that emphasized small businesses would struggle with the wage increase. He asked if anyone reached out to the small business community for their opinions and to determine if they could absorb the impact. Mr. Armitage shared that 80% - 90% of the testimony came from the small business community on how difficult the wage increase would be to manage. He noted that employers currently paying \$12 or \$13 per hour had real costs closer to \$18, including salary and benefits, and the employers argued that the cost for some of the healthcare costs would be shifted to the State as the employee moved to Medicaid. He continued that the Federal Government's analysis was that while the standard of living would be improved for many people, more employers would look towards automation and other money-saving techniques. He reminded that a significant portion of the City's budget was employee costs and small businesses would look for ways to reduce their costs moving forward. He reiterated that small businesses testified the wage increase would present difficulties as they emerged from the pandemic, the restaurant community in particular. Mr. Coleman said he had not reached out to the local business community and reiterated that the \$15 minimum was phased in so there would be no change in 2021 and he repeated the stepped increases in the bill to emphasize there would be several years to prepare for the increase.

Mr. Lawhorn echoed previous comments and agreed that large businesses should have a higher minimum wage because he did not think that people should work full-time jobs that left them in poverty. Alternatively, he noted that it was extremely difficult to grow new businesses and it was common for owners and entrepreneurs to forego a salary for years. He was unsure if it made sense for seasonal and part-time employees to receive the higher minimum wage because the roles were not career jobs and hoped that the legislators were listening to and working with the small business community. He agreed there could be improvements to the minimum wage requirements but noted the situation was complex.

Mr. McDermott had no questions.

Mr. Clifton admitted he had mixed emotions on the minimum wage bill but thought it was an embarrassment that the Federal minimum wage had not been raised since 2008 or 2009. He agreed that action needed to be taken to catch up with the economy and believed the situation would work itself out.

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

Mr. Armitage referred to Dr. Bancroft's question on redistricting and revealed that two House seats could move south as far as Sussex County and one Senate seat would move have to move south, perhaps from Wilmington. He admitted it was hard to tell how the boundaries would be drawn because the State would not receive all of the census data until October at the earliest. Mr. Clifton agreed there would be a rush to complete reapportionment depending on when the data became available. Ms. Bensley said that the last update indicated the data file drop for redistricting from the Census Bureau would be on September 30th and would go to the State so City staff was unsure when it would filter down to the municipalities.

18. 5-B. RESOLUTION NO. 21-__ : A RESOLUTION AUTHORIZING THE APPLICATION OF THE CITY OF NEWARK FOR THE MEMBERS OF FRATERNAL ORDER OF POLICE LODGE #4 TO PARTICIPATE IN THE DELAWARE COUNTY AND MUNICIPAL POLICE/FIREFIGHTER PENSION PLAN (5 MINUTES)

1:31:17

Ms. Hardin presented the amended resolution for the application process. She reminded that on February 1, 2021, Council approved Resolution 21-A, which was sent to the State Pension Office for review and approval of the application. The Office requested that the City amend the resolution to include a start date of July 1, 2021 as the effective date of entering the pension plan. She updated the resolution and requested approval in order to complete the application process with the State Pension Office.

The Mayor opened the table to Council comments.

There were no questions and Mr. Horning thanked the FOP for good faith negotiation and Ms. Hardin for her work. Mr. Clifton agreed.

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

MOTION BY MR. MCDERMOTT, SECONDED BY MR. HORNING: THAT COUNCIL APPROVE THE AMENDED RESOLUTION TO ALLOW THE CITY TO COMPLETE THE APPLICATION PROCESS FOR THE

STATE PENSION OFFICE TO ESTABLISH THE DELAWARE COUNTY AND MUNICIPAL POLICE/FIREFIGHTER PENSION PLAN AS OUTLINED AND PROVIDED IN THE MEMO.

MOTION PASSED. VOTE: 7 to 0.

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

(RESOLUTION NO. 21-F)

19. 6. **FINANCIAL STATEMENT:** None

20. 7. **RECOMMENDATIONS ON CONTRACTS & BIDS OVER \$75,000:** None

21. 8. **ORDINANCES FOR SECOND READING & PUBLIC HEARING:**

A. **Bill 21-04** – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Creating a New RE (Single Family Detached Residential – Residential Estate) Zoning District (*See Items 8-B and 8-C*) (45 minutes total for items 8-A, 8-B and 8-C)

1:34:28

Mr. Clifton reminded the items 8A, 8B, and 8C would be discussed in unison and were the changes in the Zoning Code if Council choose to proceed with the later agenda items. He reiterated that the items would only reference the Zoning Code and not the specific project.

Ms. Bensley read the bills into the record.

MOTION BY MR. LAWHORN, SECONDED BY MR. HORNING: FOR SECOND READING AND PUBLIC HEARING FOR AGENDA ITEMS 8A, 8B, AND 8C.

Mr. Fortner presented a PowerPoint to illustrate the zoning amendments to Chapter 32, Chapter 5, and Chapter 13. He reminded that in 2019, the owner of the property at 751 Paper Mill Road approached the Planning and Development Department about annexing his family’s farm into the City while continuing its farming operation. The City’s Zoning Code did not permit farm uses in any of the zoning districts, so a new use was needed in order to complete the annexation as desired by the applicant. Mr. Fortner explained the request was not unusual and revealed that recent Zoning Code changes were allowing the Main Street Movies 5 to serve alcohol, to permit microbreweries in industrial and commercial zoning, and to permit commercial indoor recreation in the office and industrial zones. The Department determined that a farm use was compatible with low-density residential after considering other ordinances and coordinating with other Departments to develop a proposal modeled on State law. He displayed a map of properties that were potentially eligible under their current zoning and noted some of the parcels were occupied with other uses. He explained the hash-lined properties on the map were those surrounding the City that could be eligible for farm use because they were over ten acres and the properties highlighted green were already in the City and could be eligible.

Mr. Fortner explained the ordinance began with the Planning Commission in 2019 where staff developed a first option which included adding two low-density residential zoning districts and proposed adding Agriculture, Horticulture, and Forest Land Uses to Chapter 32-9. The Planning Commission recommended a change to move from Section A, a by-right use, to Section B, a use allowed by Special Use Permit approved by the Commission and Council. He reminded that any Special Use Permit for an agricultural zoning would first go to the Commission because it was over an acre.

Mr. Fortner shared the benefits of a farm use were that property owners would be permitted to annex into the City while maintaining agricultural use, it would encourage the preservation of natural environment and open space, property owners could take advantage of State, County, and proposed City farm tax exemptions, including rollback taxes if the property was developed. He reminded that Council voted the ordinance down over the concern of bait and switch where a developer could annex under the guise of a farm to receive the City’s lowest density zoning at the time (RH with ½ acre minimum lot size) and, once the farm was annexed, the developer could annex in with a by-right development of RH and receive a greater density in the City than with the County. Council expressed interest in exploring other options for the farmland zoning district and held a workshop on June 1, 2020, where staff developed another proposal called FAR (Farming, Agriculture, and Resource District), which was a new section in the Zoning Code that would have permitted the uses as by-right uses and would permit a variety of housing types from RH to RD. It would have also permitted, by Special Use Permit, farm uses with greater externality such as nurseries, petting zoos, and retail stores. There would have also been a two-year hold

on development with a 120-day notice to provide Council the opportunity to assess the details of the housing development.

At the workshop, Council found FAR to have the same benefits but believed it was too complicated surrounding the housing types and because there had to be other uses in the zoning district, not just farming. Mr. Fortner continued that properties currently in the City would have to downzone to the new zoning district in order to take advantage of FAR.

Mr. Fortner then presented the third option which included the creation of the RE zoning district within the existing Section 32-9 for Residential Estate with a one-acre minimum lot size. The option would also require the addition of agriculture as a Special Use Permit. Where the original ordinance cited State law, the Planning Commission recommended to add the definitions to Section 32-4, which were based on State definitions of the uses. RE would be adopted within the existing Section 32-9 with the minimum lot area of one acre and the other area requirements would change proportionately, including minimum setback, side yards, and rear yards as outlined in the report.

Mr. Fortner continued that agricultural uses would be allowed as a conditional use by a Special Use Permit under Section 32-9(b)(12). The properties would be required to be a minimum of ten acres, be permitted to subdivide with restrictions, and be subject to a two-year waiting period to subdivide if the designation was granted as a Special Use Permit. The third option provided the same benefits as the previous two but added three additional benefits. The first was the creation of a Residential Zoning District compatible with low density residential zoning in the County to use for annexations for agricultural uses. The RE zoning would prevent an owner to propose a residential development without Council's approval. The other additional benefits were that it allowed large properties currently in the City to take advantage of agricultural uses without having to "down zone" and continued to allow Council to regulate agricultural uses with a Special Use Permit.

Mr. Fortner revealed that two additional sections of City Code needed to be amended for the new zoning including Chapter 5, Animals, for a partial exemption for farm related uses. He noted the current code allowed for a limit of six farm animals where the property was four acres and properly fenced. Staff proposed amending Section 5-3 to allow properties of ten acres or more that received Council's Special Use Permit to have the number of animals specified in the permit. He continued that staff proposed to add language to Chapter 13, Partial Exemption for Agricultural and Farm Related Uses, to align the tax exemptions to match those allowed in unincorporated New Castle County. He summarized that staff created a new zoning district, RE one-acre lot size, which added agricultural, horticultural, and forest land as a Special Use Permit.

The Mayor opened the table to Council comment.

Mr. Horning referred to the packet item for 8A, Amendment 3, and asked for clarification on subdividing. Mr. Fortner explained that the owners were required to maintain ten acres for the primary lot but were allowed to develop the lot without street frontage. Mr. Horning referred to page 3, Amendment 9, "In RE district – up to two dwelling units per acre, with 10% of total site under review for site plan approval set aside for parkland/open space" and asked if the language meant if the owner received density bonus then they could build two dwelling units per acre. Mr. Fortner explained the scenario would fall under Site Plan Approval and was allowable because the owner would develop in a way that created open space and emphasized that the option was applicable in all zoning districts. He continued that the decision was discretionary and pended Council approval. Mr. Horning commended staff and the Planning Commission for crafting the Special Use Permit to allow Council to control the future use. He asked if the number and type of animals would be granted through the Special Use Permit application and Mr. Bilodeau confirmed the agricultural use would be by Special Use Permit and suggested keeping language in Section 5-3(b)(4)(b) that required animals to be properly fenced to be contained and make the requirement applicable to the agricultural use. Mr. Horning suggested adding language to ensure the animals were properly fenced.

Mr. Horning referred to a comment from the Finance Department on taxation for agenda item 8C regarding the rollback tax of five years or more if the farm was developed. He asked how "or more" would be determined and if the language was clearly stated in Code. Mr. Bilodeau said that he would need to investigate the language to provide an answer.

Ms. Hughes had no questions.

Dr. Bancroft found the hybrid option to be the most elegant and assumed there would be more discussion. He thought the tax proposal was fair and appreciated there could be no bait and switch. He

supported the streamlined zoning and thought the provision for the second house made sense. He appreciated that greenspace stewardship would be encouraged for Site Plan Approval. His constituents asked him to consider how setbacks should work and if there should be differences and he understood that when other farms got annexed, there was a provision that the farms needed to sell products but he did not see evidence of such a provision in the proposal. He suggested the provision be considered for future development. He appreciated staff's efforts and wanted the project to move forward in a sensible manner.

Mr. Hamilton acknowledged the effort that went into the project and wanted to see it through.

Mr. Lawhorn was comfortable with the content and thanked staff for the effort in determining how to keep green space while giving Council some control to prevent long-term changes to the property.

Mr. McDermott received questions from his constituents specifically regarding the eight qualifying properties within the City, four of which were schools, one was a church, and one was the country club, but none were likely to become farms. He noted that 151 Capitol Trail and 0 Gravenor Lane would likely not become farms given current development trends and his constituents wanted to know how the annexation would benefit the City as a whole as opposed to a specific entity. Mr. Fortner replied that the proposal allowed the City to annex farmland and encouraged locally grown produce. Mr. McDermott interjected that his constituents would ask who was sourcing food and from where the food would come. He claimed he was not opposed to the project and was simply posing the questions he would be asked and did not think that "local food would be sold" would suffice for an answer. Mr. Fortner emphasized that the use was not currently allowed in the City and would provide the opportunity for an owner to annex into the City. He continued that the property on Capitol Trail was currently open space but could be purchased with the intent to turn the property into a farm so the property would preserve open space and allow for a use other than developing dense housing. He continued that it would help preserve a greenbelt around the City and keep lower density in certain areas. Ms. Gray interjected that the proposal allowed the option of additional farm uses for the property and other potential properties that could annex in the future.

Mr. McDermott asked if it was possible receive clarification on the tax rollback and Mr. Del Grande replied that if the parcel sought a development plan, the City would have the right to see unbilled taxes for the previous five years. He explained farmland exemption only applied to the land of the parcel and the buildings on the land actually paid property tax so the City would seek to recover unbilled property taxes on the value of the land for the previous five years. Mr. McDermott asked if the exemption was for the farmable land, not the dwelling, and Mr. Del Grande confirmed. Ms. Gray asked Mr. Del Grande to clarify the property's current tax exemption through New Castle County and Mr. Del Grande confirmed the property currently had a farmland exemption through New Castle County. Mr. McDermott asked if the properties that could annex into the City were to develop, they would be for one acre lots within the County. Mr. Fortner referred to the map displayed earlier and reminded the properties were ten acres or more and were the only properties eligible for annexation. Mr. McDermott clarified that if the properties were not annexed and developed within the County, the zoning was currently one structure per acre and would be consistent with the proposed RE zoning. Mr. Fortner confirmed it would likely be the maximum but noted the properties all had different zonings and would not benefit to annex into the City under RE zoning. Mr. McDermott further clarified that the proposed RE zone was similar to the County's zone and Mr. Fortner confirmed at the least.

Mr. Clifton had no questions.

The Mayor opened the floor to public comment.

Ms. Bensley read a comment from Lauren Gouge, 795 Paper Mill Road, into the record:

"Dear Mayor and Council, my property shares a border with 751 Paper Mill Road, the property that is looking to be annexed into the City with the new RE Residential Estate zoning code. I understand that the RE zone allows for the development of large lot rental uses in environmentally sensitive areas. The property at 751 Paper Mill Road also shares a border with White Clay Creek State Park and is indeed in an environmentally sensitive area. The land is habitat to many types of woodland species. It is within the White Clay Creek Watershed and the ground and surface waters of the aquifer provide drinking water to a population of no more than 120,000, including residents of the City of Newark. The City of Newark's groundwater supply provides up to 1.8 million gallons per day from five wells in the watershed, according to the White Clay Creek State of the Watershed report, published in July 2008 and updated in January 2016. "Establishing natural resource protection through ordinances is critical to achieve a healthy watershed and water quality improvement." Every new house has an impact on the environment, some

of the impact is from new impervious surfaces which prevent rainwater from being absorbed into the earth. Some is from chemicals and pesticides, such as those used for lawncare. Even the construction of new, underground infrastructure such as new water/sewer lines effects the aquifer. I have read through the proposed changes to the ordinance and it all looks great except for one thing: Subsection C “except as provided in Subsection B above, for a period of two years after receiving designation, no owner or equitable owner of such lands shall be entitled to apply for subdivision approval.” Section 32-9(b)(12)(c), which is copied above, adds the caveat that the property shall be bound by the new zoning laws for only two years. I request that the timeframe before an owner or equitable owner of land in this type of zoning be restricted for fifteen years, not two. Since Mr. Walton only wants to add one residence for himself and has denied that he wants to further subdivide his land into smaller lots, and since this ordinance will affect an extremely limited number of property owners within the City of Newark and its planning zones, I think this is a reasonable request and it is entirely within the jurisdiction of City Council to implement. Our property at 795 Paper Mill has been recognized by the Delaware Nature Society as a certified wildlife habitat. One additional house in the neighborhood will not upset the balance that a small subdivision certainly would. Please change the designated waiting period for additional changes to a longer time. Thank you. Sincerely, Lauren Gouge.” Ms. Bensley added that Ms. Gouge also asked in the chat function for clarification on whether the Special Use Permit was a one-time permit or renewable every year. Mr. Bilodeau replied that the Special Use Permit was a one-time permit and did not require yearly application.

Ms. Bensley introduced MaryClare Matsumoto, District 6, who thanked Mr. McDermott for addressing some concerns. She did not see how the annexation would benefit the residents of the City and she was concerned about the future. She agreed with Ms. Gouge that she did not want to readdress the issue in two years and supported a longer stipulation to ensure that only one other home would be built on the property that bordered White Clay Creek State Park. She admitted she would be more willing to accept the proposal if some part of the farm would be put into a trust to go to the State but acknowledged the land was privately owned and the owners were within their rights.

Mr. Horning asked how a Special Use Permit could be revoked. Mr. Bilodeau confirmed Special Use Permits could be revoked if the owner did not comply with the rules and reminded that a restaurant could lose a Special Use Permit to serve alcohol. He believed “revoked” was the incorrect term and explained that Special Use Permits could be suspended for up to a year but expected that a Code provision would be necessary to add a revocation process. He reiterated that a Special Use Permit could be suspended for up to a year per Code. Mr. Horning referred to the suggestion on prolonging the development restriction to 15 or 30 years and recalled that Council could not legally forbid an owner from developing their land. Mr. Bilodeau verified that a longer restriction was invalid and was confident that a two- or three-year period would be valid and sustainable but could not guarantee that a longer period would be upheld in court. Ms. Gray referred to Ms. Gouge’s assumption that the entire restriction would lift in two years and corrected that the zoning restrictions and Special Use Permit requirements would remain in place after the two-year restriction lifted and the only change was the owner’s ability to return to City to seek to redevelop. Mr. Horning asked if the potential for development was for the two homes because of the provision of maintaining ten acres. Mr. Fortner confirmed that a property that was annexed as a FAR with ten acres would not have the ability to subdivide because it would have to maintain the ten acres so only properties of eleven acres, or more could subdivide for a house.

Ms. Bensley informed that Andrew Feldmann, 106 Waltmonte Lane, lived directly across from 751 Paper Mill Road and thought it was the most logical place for the City to expand.

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

Mr. Clifton reminded the votes were all simple voice votes and Ms. Bensley confirmed.

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: THAT COUNCIL ADOPT BILL 21-04 AS PRESENTED.

MOTION PASSED. VOTE: 6 to 1.

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

(ORDINANCE NO. 21-06)

- 22. 8-B. BILL 21-07 – AN ORDINANCE AMENDING CHAPTER 5, ANIMALS, CODE OF THE CITY OF NEWARK, DELAWARE, TO ALLOW A PARTIAL EXEMPTION FROM THE CHAPTER FOR**

AGRICULTURAL AND FARM RELATED USES FOR PROPERTIES COMPRISING TEN (10) OR MORE ACRES (SEE ITEMS 8-A AND 8-C)

2:25:32

(Secretary's Note: The public hearing for this item was held under item #21.)

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: THAT COUNCIL APPROVE BILL 21-07 AS PRESENTED.

Mr. Horning requested Mr. Bilodeau's assistance to draft an amendment. Mr. Bilodeau suggested to use the following language in Amendment 1: *Notwithstanding any provisions in this chapter to the contrary, properties of ten (10) acres or more that qualify for an agricultural, horticulture and forest land use with a council approved special use permit under Chapter 32, Section 32-78, shall be exempt from the requirements of Sections 5-3 and 5-4 of this Chapter, except the fencing requirements of subsection 5-3(b)(4)b but subject to all other requirements herein.*

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: TO AMEND BILL 21-07 AS ARTICULATED BY THE CITY SOLICITOR.

Mr. Hamilton requested discussion and asked why the amendment was necessary. Mr. Horning explained the amendment exempted Sections 5-3 and 5-4 and Section 5-3 addressed properly fencing in the animals. Mr. Horning wanted to retain the language because it could be interpreted that fencing was unnecessary. Mr. Hamilton appreciated the clarification and agreed with the amendment.

AMENDMENT MOTION PASSED. VOTE: 7 to 0.

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

MOTION PASSED AS AMENDED. VOTE: 6 to 1.

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

(ORDINANCE NO. 21-07)

- 23. 8-C. BILL 21-08 – AN ORDINANCE AMENDING CHAPTER 13, FINANCE, REVENUE AND TAXATION, CODE OF THE CITY OF NEWARK, DELAWARE, TO ALLOW A PARTIAL AGRICULTURAL AND FARM TAXATION AS PERMITTED IN NEW CASTLE COUNTY PURSUANT TO 9 DEL. C. §8328 ET SEQ. FOR AGRICULTURAL AND FARM RELATED USES FOR PROPERTIES COMPRISING TEN (10) OR MORE ACRES (SEE ITEMS 8-A AND 8-B)**
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2:30:08

(Secretary's Note: The public hearing for this item was held under item #21.)

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: THAT COUNCIL APPROVE BILL 21-08 AS PRESENTED.

MOTION PASSED. VOTE: 6 to 1.

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

(ORDINANCE NO. 21-08)

- 24. 8-D. BILL 21-05 – AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN BY CHANGING THE DESIGNATION OF PROPERTY LOCATED AT 751 PAPER MILL ROAD (SEE ITEMS 8-E, 9-A AND 9-B) (40 MINUTES TOTAL FOR ITEMS 8-D, 8-E, 9-A AND 9-B)**
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2:31:00

Mr. Clifton instructed that items 8-D, 8-E, 9-A and 9-B would be heard together.

Ms. Bensley read the items into the record.

MOTION BY MR. LAWHORN, SECONDED BY MR. HAMILTON: FOR SECOND READING AND PUBLIC HEARING OF BILLS 21-05, 21-06, AND FOR THE REQUESTS UNDER AGENDA ITEMS 9A AND 9B.

Ms. Gray explained the application was for an annexation, rezoning, and minor subdivision with a Special Use Permit for a 14.49 acres property at 751 Paper Mill Road. The applicant requested approval to create one additional one-acre building lot per residential structure. The existing zoning for the parcel was New Castle County S or suburban, and the existing uses were approved in a suburban zoning district. The proposed zoning district was RE, the newly created Residential Estate, and because the parcel requested annexation, a rezoning to RE was required. She confirmed the plan conformed to the Comprehensive Development Plan V (Comp Plan V) and was added in November 23, 2020 as part of Planning Area 7. If the annexation was approved, the parcel would be assigned to the land use designation of residential low density as designated by the Comp Plan V. The proposal included an agricultural use which required a Special Use Permit approval in the RE district and staff felt that the proposal met the requirements. She continued that the RE district allowed agricultural uses with the following conditions:

- Properties must have a minimum lot size of 10 acres;
- Properties shall be permitted to subdivide to allow no more than two interior lots lacking frontage and having shared driveways so long as the minimum of 10 acres was reserved for agricultural uses on a single lot having the required street frontage; and
- For a period of two years, after receiving designation, no owner or equitable owner of such lands shall be entitled to apply for subdivision approval.

Ms. Gray reiterated that the proposed subdivision was 14.49 acres and met the first two requirements listed. If approved, the applicant would be unable to apply for any further subdivision for at least two years. She continued that the proposed development met all requirements detailed in the Municipal Code. She revealed that following the Subdivision Advisory Committee's review of the proposal, the Planning and Development Department suggested the Planning Commission recommend approval of annexation, rezoning, and minor subdivision with the Subdivision Advisory Committee conditions, as described in the January 26, 2021 Planning and Development Department Report. At the February 2, 2021 meeting, the Planning Commission voted 5-0 to recommend that Council approve the annexation, rezoning, minor subdivision, and Special Use Permit with the revised plan dated July 12, 2019.

Mr. Clifton opened the table to questions from Council.

Mr. Horning noted that the property was 14.49 acres, understood ten acres had to be set aside for open space unless there was a Site Plan Approval under RE, and asked for the maximum number of homes that could subdivide on the one-acre size. Ms. Gray replied that in order to maintain the farm use, the owner would have to maintain ten acres so the residual properties would be considered for subdivision or if the farm use was no longer desirable, then the owner could return with a Site Plan Approval Project and proceed using the density bonus provisions in the Site Plan Approval for up to a 10% or up to 2 units per acre. Mr. Horning recalled the same response was given a few minutes prior to his asking again. He asked if the owners required a rezoning and could submit a subdivision application under RE for one-acre sized lots if they ceased farm use after two years. Ms. Gray replied the owner would return under RE for the one-acre utilizing the density bonus for Site Plan Approval.

Ms. Bensley informed if Council adopted the bill, there needed to be an amendment for Bill 21-06 to correct a typo of 13.49 acres to 14.49 acres.

Barrett Edwards of Hudson, Jones, Jaywork & Fisher, the applicant's attorney, presented an overview of the property that illustrated where the single unit subdivision would take place. He explained the one-acre lot would be on the western boundary and had a 225-foot setback from Paper Mill Road. He expressed gratitude that the RE zoning district and Special Use option passed because the family could continue utilizing the parcel as a horse farm with the addition of the one-unit dwelling. He explained that Special Exception or Approval typically highlighted how a new use would impact the area but the property in question would maintain its existing use. He continued that staff needed to ensure there would be no negative adverse effects on the health or safety of persons residing or working in the area and reminded the property would maintain its use and the applicants did not anticipate any negative impact as the use had been in place for decades. He explained the only exception was the addition of the single-unit dwelling so the farmland would be slightly reduced from the 14.49 acres to 13.49 acres and would be against the 225-foot setback from Paper Mill Road and would hardly be noticeable.

Mr. Edwards reiterated that the property had existed with its current use for many years and would not be detrimental to the public welfare or injurious to the property or improvements within a mile of the City as considered for a Special Use. He continued that the use would not change if it was annexed into the City and argued that there would be no impact in the area with respect to the annexation. He contended that the property would be consistent with the Comp Plan because the addition of one interior unit was appropriate infill development. He noted that the Comp Plan indicated that appropriate areas

for business and industrial development to encourage sustainable economic growth and the applicants believed that adding an existing farm was more beneficial than converting land into a farm.

Mr. Edwards emphasized that an immediate benefit to the City was the immediate generation of building permit fees and the long-term benefit was the increased tax base for the addition of the one-dwelling unit and the accompanying utility fees. He reminded that there would be no cost to the City to provide or maintain utilities or streets as they would be borne by the applicant. He added that by approving the proposal, the accompanying Special Use Permit would provide a greenbelt around the City and preserve open space and provide the City the opportunity to control what happened on the property versus what could happen under the County regulations. He noted that as part of the Milford Run subdivision, approximately 123 people signed a petition or submitted emails in support of both the Milford Run subdivision and the farm annexation. He thanked Council for their consideration of approving the annexation, rezoning, special use, and the minor subdivision.

The Mayor opened the table to Council comments.

Mr. McDermott thanked Mr. Edwards for the presentation and believed most of his constituents' questions had been answered. He asked if the farm was a horse farm and Mr. Edwards confirmed that there had been a number of different farm activities over the years, but confirmed it was currently a horse farm. Mr. McDermott reiterated that the tax exemption would be paid back up to five years if the property was ever developed or sold and Mr. Edwards confirmed the County currently had a rollback tax provision and if the property were annexed, it would be subject to a similar rollback tax provision.

Mr. Lawhorn thought that most questions had been answered and recalled discussion on how the City would benefit from the annexation. He stated that he had been a proponent of more dense development projects downtown and thought there were benefits of having less density outside of the City. He thought the property was an opportunity to maintain open space, with the accompanying stormwater and environmental benefits, as well as the limitation on increasing traffic. He noted the property would maintain its use and reminded that any property owner had rights to develop their property. He commended staff for doing everything possible to enable the land to remain a farm as requested by the applicant and reminded that the City was gaining tax and utility revenue without any real increase to service as well as maintaining open space. He repeated that the City would have control over the land through the set up of the Special Use Permit and zoning and noted that there were many issues with unwanted development in the County.

Mr. Hamilton asked for an estimate of the tax and utility revenue. Mr. Coleman said that staff assumed 300 gallons per day per unit for water and admitted it would not be a significant sales driver. Mr. Hamilton assumed the City was not getting much from the annexation and Mr. Coleman replied the revenue was equivalent to one or two houses depending on the connection. Mr. Hamilton did not want to overstate and was unsure what the new law would do to property taxes with the school districts and asked what school district the property fell under. Mr. Coleman believed the property would belong to the Christina School district. Mr. Hamilton noted the properties were usually annexed into the City for more dense development and would have appreciated a pledge beyond two years or a deed restriction for ten years. He trusted the applicants but was concerned that they could return in two years to request development. He refuted the idea that the City had control over the situation and noted the County often had less density than the City. Mr. Del Grande replied that the taxes would be \$1,382 for the parcel in its current state.

Dr. Bancroft thought the annexation made sense and appreciated the effort to align the project with the City's longer-range plans and future zoning.

Ms. Hughes thought the farm was lovely and well-maintained. She saw the annexation as a beneficial asset to the City and did not envision any downside.

Mr. Horning had technical question and asked to return after public comments.

Mr. Clifton asked Mr. Edwards what could be built at the property with the County's by-rights proposal. Mr. Edwards introduced the engineer for the applicant, Christopher Duke. Mr. Duke had technical difficulties and typed his response into the chat function. Mr. Clifton was familiar with the farm and its value and thought the proposal gave Council more control in considering future proposals than what it would have in the County. He trusted that the property would remain consistent for years to come and believed that if another project was proposed then the proposal would be a higher hurdle under the City's jurisdiction than it would ever be under the County. He revealed that some Council members lived in close proximity to the property and any decision would impact them directly. He argued that Council

members were not exempt from any impacts, positive or negative, and suggested that a larger body of 13 members remote to the property would not share the same concerns as this Council. He considered the property's protection and its continued use as a farm to be a win for the City.

Mr. Duke rejoined the meeting and explained that under the existing suburban zone in the County, there were several development options that the owners could pursue, with each having its own nuances regarding lot sizes, available permitted densities, and open space ratios as listed in Table 40.04.110 of the County Unified Development Code. He noted that several of the options would provide a higher density than the RE zoning and explained the County had a development option called the Open Space Subdivision Option 2 which would allow a maximum density of 1.25 dwelling units per acre which exceeded the RE zoning. He explained it was possible that development in the County could receive a higher density than the City's regulations. Mr. Clifton asked if the scenario would be a by-rights proposal and Mr. Edwards confirmed. Mr. Clifton revealed it would be difficult to deny the request.

The Mayor opened the floor to public comment.

Ms. Bensley stated that Lauren Gouge submitted a question through the chat function and wanted to know if there was any cost to the City for the installation of water and sewer infrastructure or if the expense was entirely on the developer. Mr. Clifton thought the question had been answered but called on Mr. Edwards. Mr. Edwards repeated that the applicant would pay for all costs to install utilities with no cost to the City. Mr. Bilodeau interjected that he reviewed the subdivision plans and asked if there were any objections to add the language to the subdivision plan. Mr. Edwards had no objections.

Ms. Bensley informed there were no other submitted public comments and the aforementioned petition submitted with the Milford Run development and Ms. Gouge's letter were the only statements on record.

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

Mr. Horning referred to Ms. Gouge's concerns about the aquifer and asked Mr. Coleman if the project would use City sewer and get off of the septic system; Mr. Coleman understood that was the intent. Mr. Horning assumed the second home would also use City sewer which was helpful in terms of the environment and asked Mr. Coleman how the water supply would be affected. Mr. Coleman replied that while the property was technically in the White Clay Watershed, it flowed to Middle Run and would connect to White Clay far south of the City's intake. He revealed the property was a little over a mile away from the City's wellhead protection areas and would not have an impact on the wellheads and shared that septic eliminations were seen as a positive for water quality because they reduced nitrates and other pollutants. Mr. Horning noted the current subdivision agreement under 9A and 9B on page 2, paragraph 8, stated the developer agreed to pay for all costs to electric service for infrastructure which would be subject to yearly CPI escalation from the date of approval from Council. He assumed that the language dealt with the maintenance of the infrastructure going forward. Mr. Edwards understood that the applicant would be responsible for the installation costs and asked for clarification on the question of maintenance. Mr. Horning repeated the section and asked if the commitment to pay was for the initial install or if the commitment was for ongoing maintenance subject to the yearly CPI. Mr. Edwards assumed the CPI adjustment was with respect to the installation costs and could increase depending on when they occurred. Mr. Coleman understood it was the initial estimate provided by the Electric Department. He explained that the Electric Department handled its infrastructure differently because the developer paid for installation of water and sewer using their own contractors and the City inspected and certified installation. For electric, staff usually performed most of the work or supplied the equipment because it needed to be fully compatible. Staff would quote the developer and put an escalator on the quote in case the project sat for several years so the City would not lose money. Mr. Horning thought the Subdivision Agreement needed to be clear because slide 16 of the applicant's presentation indicated the maintenance of the utilities would be the developer's responsibility and Mr. Edwards agreed.

Mr. Clifton reminded that Council was required to submit the three-prong test for or against approval.

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: THAT COUNCIL APPROVE BILL 21-05.

Mr. Bilodeau interjected that the three-prong test was for the Special Use Permit vote and agenda items 8D and 8E could be approved on the basis that it was not in conflict with the Comprehensive Plan or per the reasons stated in the Planning Department's report. Mr. Clifton asked if it would be done at the time of the vote and Mr. Bilodeau confirmed. Ms. Bensley reminded that Bill 21-05 needed to be amended to correct the typo for the size of the property from 13.49 to 14.49.

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: TO AMEND BILL 21-05 TO CHANGE THE DESIGNATION OF 13.49 ACRES TO READ 14.49 ACRES.

AMENDMENT MOTION PASSED. VOTE: 7 to 0.

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

Mr. Clifton called for the vote for Bill 21-05 as amended.

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: THAT COUNCIL APPROVE BILL 21-05 AS AMENDED.

Mr. Horning voted in favor of the bill for the reasons stated in the Planning and Development Department's report.

Ms. Hughes, Dr. Bancroft, Mr. Hamilton, Mr. Lawhorn, Mr. McDermott and Mr. Clifton voted in favor based on the reasons stated by Mr. Horning.

MOTION PASSED. VOTE: 7 to 0.

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

(ORDINANCE NO. 21-09)

25. 8-E. **BILL 21-06 – AN ORDINANCE ANNEXING AND ZONING TO RE (SINGLE FAMILY DETACHED RESIDENTIAL – RESIDENTIAL ESTATE) 14.49 ACRES LOCATED AT 751 PAPER MILL ROAD (SEE ITEMS 8-D, 9-A AND 9-B)**

3:15:06

MOTION BY MR. LAWHORN, SECONDED BY MR. HORNING: THAT COUNCIL APPROVE BILL 21-06.

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: TO AMEND BILL 21-06, SECTION 1, TO CHANGE 13.49 ACRES TO 14.49 ACRES AND TO MAKE THE SAME CHANGE TO SECTION 2.

AMENDMENT MOTION PASSED. VOTE: 7 to 0.

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

Mr. Horning voted in favor of the motion for the reasons stated in the Planning and Development Department's Report.

Ms. Hughes, Dr. Bancroft, Mr. Hamilton, Mr. Lawhorn, Mr. McDermott and Mr. Clifton voted in favor based on the reasons stated by Mr. Horning.

MOTION PASSED. VOTE: 7 to 0.

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

(ORDINANCE NO. 21-10)

26. 9. **RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING AND DEVELOPMENT DEPARTMENT:**
A. Request of Mary L. Walton 2016 Trust for the Minor Subdivision of 14.49 +/- Acres in Order to Create One Additional One-Acre Building Lot for a Residential Structure on the Parcel Located at 751 Paper Mill Road (***Agreement and Resolution Attached***) (***See Items 8-D, 8-E and 9-B***)

3:18:35

MOTION BY MR. LAWHORN, SECONDED BY MR. MCDERMOTT: TO APPROVE THE REQUEST OF MARY L. WALTON 2016 TRUST FOR THE MINOR SUBDIVISION OF 14.49 +/- ACRES IN ORDER TO CREATE ONE ADDITIONAL ONE-ACRE BUILDING LOT FOR A RESIDENTIAL STRUCTURE ON THE PARCEL LOCATED AT 751 PAPER MILL ROAD.

MOTION BY MR. HORNING, SECONDED BY MR. HAMILTON: TO AMEND THE SUBDIVISION AGREEMENT AND THE RESOLUTION TO INCLUDE LANGUAGE SATISFACTORY TO THE CITY SOLICITOR AND THE APPLICANT WITH REGARDS TO THE INSTALLATION AND MAINTENANCE OF THE UTILITIES.

Mr. Bilodeau agreed to include the general language on a temporary basis subject to the approval of the City Solicitor. He continued that the applicants agreed on record to pay for the utilities and maintenance costs. Ms. Bensley asked Mr. Horning to clarify that his motion applied to both the Subdivision Agreement and the Resolution.

AMENDMENT MOTION PASSED. VOTE: 7 to 0.

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

RESOLUTION MOTION PASSED AS AMENDED. VOTE: 7 to 0.

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

(RESOLUTION NO. 21-G)

27. 9-B. REQUEST OF MARY L. WALTON 2016 TRUST FOR A SPECIAL USE PERMIT FOR AGRICULTURAL USE AT THE PROPERTY LOCATED AT 751 PAPER MILL ROAD (SEE ITEMS 8-D, 8-E AND 9-A)

3:22:00

MOTION BY MR. LAWHORN, SECONDED BY MR. HORNING: TO APPROVE THE REQUEST OF MARY L. WALTON 2016 TRUST FOR A SPECIAL USE PERMIT FOR AGRICULTURAL USE AT THE PROPERTY LOCATED AT 751 PAPER MILL ROAD.

Mr. Horning asked if the type and number of animals was specified. Mr. Bilodeau replied it would not be specified but confirmed Council could impose conditions. He reminded the definition of animals that could be subject to the Special Use Permit were part of the ordinance passed earlier for the zoning. Mr. Horning thought the key would be that if the Special Use Permit were granted, the allowable use would be consistent with the current use.

Mr. Horning voted in favor of the Special Use Permit because it would not adversely affect the health or safety of person(s) residing or working within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware; be detrimental to the public welfare or injurious to property or improvements within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware; and be in conflict with the purposes of the Comprehensive Development Plan of the City.

Ms. Hughes, Dr. Bancroft, Mr. Hamilton, Mr. Lawhorn, Mr. McDermott and Mr. Clifton voted in favor based on the reasons stated by Mr. Horning.

MOTION PASSED. VOTE: 7 to 0.

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

28. 8-F. BILL 21-09 – AN ORDINANCE AMENDING CHAPTER 22, POLICE OFFENSES, CODE OF THE CITY OF NEWARK, DELAWARE TO EXTEND THE PROVISIONS OF EMERGENCY ORDINANCE NO. 21-01 (10 MINUTES)

3:26:30

MOTION BY MR. HORNING, SECONDED BY DR. BANCROFT: TO EXTEND THE MEETING PAST 10:00 P.M.

MOTION PASSED. VOTE: 5 to 2.

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

Ms. Bensley read the ordinance into the record.

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

Mr. Bilodeau described the ordinance as a housekeeping measure because the emergency ordinance's sunset provisions were tied to statistics that the State was using about the spread of COVID and the State had since changed the benchmarks. The amendment was to keep the City's benchmarks in line with the State's to monitor the spread of COVID.

The Mayor opened the table to Council comments.

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

Mr. Horning clarified that the ordinance was consistent with the best recommendations. Mr. Bilodeau confirmed that the City was using the same data that the State was using. Mr. Coleman interjected that the settings were those the City was following under an emergency ordinance. Mr. Horning wanted to ensure that the City was staying consistent with what would lift restrictions.

Mr. Clifton had no questions.

There was no public comment.

The Mayor returned the discussion to the table.

MOTION BY DR. BANCROFT, SECONDED BY MR. HORNING: THAT COUNCIL ADOPT BILL NO. 21-09 TO AMEND AND UPDATE THE SUNSET PROVISIONS PERTAINING TO NEWARK'S COVID-19 RELATED SOCIAL GATHERING RESTRICTIONS.

MOTION PASSED. VOTE: 7 to 0.

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

(ORDINANCE NO. 21-11)

29. Meeting adjourned at 10:31 p.m.

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

/ns