

CITY OF NEWARK
DELAWARE

SPECIAL COUNCIL MEETING MINUTES

August 6, 2020

Those present at 6:32 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

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1. Mr. Clifton called the meeting to order at 6:32 p.m.
 2. The Mayor requested a motion to remove item A from the agenda.

Mr. Horning requested discussion and asked that staff explain the item for the public. Mr. Coleman stated that staff received more information on the grant and determined the original intent was to cover the cost of the extra Police Officer hired earlier that year as the second School Resource Officer (SRO) at Newark High School. The grant application would have required the City to hire a third SRO and staff did not think it was appropriate to accept the grant given the City's financial situation and because the agreement with the district was only for two SROs.

MOTION BY MR. HAMILTON, SECONDED BY MR. LAWSON: TO REMOVE ITEM A FROM THE AGENDA.

MOTION PASSED. VOTE: 7 to 0.

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

3. **B. Emergency Bill No. 20-05** – An Emergency Ordinance Extending the Provisions of Emergency Ordinance No. 20-03 Concerning COVID-19 Precautionary Measures Relating to Food and Drink Establishments Within the City of Newark

1:50

Ms. Bensley read the bill into the record.

MOTION BY MR. LAWSON, SECONDED BY MR. HORNING: THAT THIS BE OPENED FOR PUBLIC HEARING.

Mr. Clifton explained the ordinance was a continuation of Council's efforts on Main Street and the Dining Out Nights to give the City Manager the ability to approve seating and adjacent properties.

The Mayor opened the table to discussion from Council.

Mr. Horning understood the ordinance was consistent with Governor Carney's allowance as part of reopening the economy and was enacted in accordance with the Governor's desires, with changes made to City Code to accommodate said requests. He claimed he polled his constituents and shared the only concerns were with managing noise levels and respecting quiet hours as per code. He pointed that Sasha Aber, from Home Grown, used a tape measure to ensure proper distancing between tables during the last event and he stressed that residents and patrons needed to understand local businesses were conducting the events safely. He supported enforcement for establishments breaking the restrictions and not following guidelines. He

supported the ordinance and wanted to move forward in a safe fashion to protect residents. He believed the data presented by Representative Baumbach supported moving forward and wondered if Council could discuss encouraging mask usage on Main Street at the next Council meeting. He thought that there was general support for businesses to be allowed to adapt during COVID in order to survive.

Ms. Hughes was concerned with non-compliance and noted City officials were not ensuring establishments were following the guidelines. She supported the ordinance. Mr. Coleman interjected that the City created a permitting process for outdoor seating so when a restaurant applied, they were required to submit a drawing of the table layout highlighting the separation distances and stated that restaurants serving alcohol were required to have a cordoned area encompassing the sale area. He continued that the drawing was distributed to the City departments for comments, which conveyed to the applicants. Staff then finalized a layout and approved the permit. He stressed that a City inspector then went to the location to confirm the plans were enacted. He informed that the plans were generally followed but noted staff had to repeatedly visit one location to measure for ADA access. He admitted the layout had to be amended but the restaurateur agreed with the changes and anticipated compliance by the next evening. Mr. Coleman reiterated that staff checked to confirm restaurants complied. Ms. Hughes assumed Mr. Coleman was confident that the locations could be trusted, and he confirmed and stated that staff investigated all complaints. Ms. Hughes said she had constituents who bitterly complained about the lack of masks on Main Street. Mr. Bilodeau interjected and asked Mr. Coleman how many businesses currently had permits and Mr. Coleman answered eleven.

Mr. Bancroft had no questions or comments.

Mr. Hamilton asked Mr. Coleman if staff checked during the evening hours and Mr. Coleman replied no. Mr. Hamilton asked how staff could make ensure enforcement. Mr. Coleman replied that regular patrols could be arranged at Council's desire and Mr. Hamilton supported the patrol. He asked how it could be added to the ordinance and how it could be enforced. Ms. Bensley replied that the ordinance allowed the City Manager the ability consider, grant, deny or revoke applications for non-compliance. Mr. Coleman confirmed and reiterated that the permit explicitly stated that staff could revoke and believed the City was able to fine under the existing patio ordinance. Mr. Hamilton supported the ordinance if there was enforcement. Mr. Hamilton asked if noise control was generated by complaints. Mr. Coleman replied that staff had not set a finite decibel limit and acknowledged there were a few complaints after the first Main Street event. He personally informed the owner of the complaint and shared with Council that there had been no outdoor music complaints since. Mr. Hamilton suggested the patrol staff be supplied with a decibel meter to gauge noise and asked if outdoor music ended at 9:00 p.m. and Mr. Coleman confirmed.

Mr. Lawhorn reiterated previous comments and shared that the community enjoyed the outdoor seating and the program was bringing visitors to the City and helped generate revenue. He agreed that restaurants should follow the plans and suggested that staff should always consider ways to improve. He shared that some restaurants found the language ambiguous and wanted Council to clarify language to remove any opportunity for confusion. He wanted to address the issues within the City when possible and request the Governor to do so where appropriate. He also pointed that Alcoholic Beverage Control (ABC) was also patrolling for enforcement and believed the State was committed to ramp up the efforts. He was interested in collecting data to help businesses struggling with the guidelines to ensure the safety of residents and visitors. He supported the ordinance.

Mr. Hamilton asked which regulations were ambiguous and Mr. Lawhorn replied there was language around bar service which used unclear terms but noted he did not have the information immediately available. Mr. Bilodeau pointed there was a more permanent version of the ordinance in the pipeline to be presented to Council which had been considered by the Planning Commission at its last meeting. Mr. Coleman noted the Governor's team wrote the requirements at the State level and suggested having Damian DeStefano and his group meet with the Newark Restaurant Association to review requirements and provide background. Mr. Lawson supported the suggestion to define best practices to benefit local businesses.

Mr. McDermott supported the initiative and asked if Code Enforcement would be responsible and Mr. Coleman confirmed. Mr. McDermott asked if staff would incur overtime expenses if Code was working night shift. Mr. Coleman stated nightshift or weekends would be considered overtime. Mr. McDermott asked how many citizen-generated complaints the City received about COVID violations. Mr. Coleman was not aware of any formal complaints outside of ADA concerns around outdoor seating areas and needed to speak to his team to determine there were complaints about indoor seating.

Mr. Hamilton interjected and asked if complaints should be forwarded to Mr. Coleman and if the public should complain to the Newark Post and the City with observations. Mr. Coleman recommended that observed complaints be forwarded to City so staff could act on said complaint and determine possible

patterns. He explained that if the public did not inform City staff and staff could not observe the behavior, the City could not confirm occurrences. He noted that the Governor expressed his desire to penalize non-compliant businesses and Mr. Coleman believed the Governor would welcome confirmation on businesses not following guidelines. Mr. Hamilton claimed constituents complained about specific restaurants and asked if the City should set up a complaint contact and Mr. Coleman confirmed. Ms. Hughes commented that the situation would be more complicated with the return of students. Mr. Clifton reminded Council that the only item on the table was whether the City would continue with the outdoor dining and the ability to use adjacent properties, everything else was conversation. Mr. Hamilton respected Mr. Clifton's point but wanted to preemptively set up a system so residents felt safe about reporting violations and asked if the ordinance was 60 days. Mr. Bilodeau confirmed it was an emergency ordinance and would sunset in 61 days unless a permanent ordinance was put in place. Ms. Bensley explained the Planning Commission considered the ordinance at their meeting on Tuesday night, and would be before Council for first reading on August 24th and second reading on September 28th. Mr. Hamilton asked if it was prudent for Council to enact a 30-day ordinance instead of 60-day to address concerns about the returning population. Ms. Bensley deferred to the City Solicitor and explained Council was able to enact a second emergency ordinance on the topic because, when the original ordinance was passed, timing did not allow for a permanent ordinance to be adopted within 60 days when considering the election and the required presentation to the Planning Commission. She assumed that it would be a violation to enact a third emergency ordinance when staff was already working on a permanent ordinance. Mr. Bilodeau confirmed that staff presented the second emergency ordinance because there was no opportunity to pass a permanent ordinance and suggested keeping to the timeline. He noted it was possible to vote down the permanent ordinance and informed that Council could choose to repeal the emergency order if it was determined to be ineffective.

Mr. Clifton supported the reporting aspect and stressed that he was passionate about the topic. He acknowledged minor mishaps had occurred and admitted it was a learning process. He received a text from a business owner who claimed his turnout from the evening was 20% higher than any other Wednesday during a normal summer. Mr. Clifton agreed that the ordinance should remain at 60-days because, if the permanent ordinance did not materialize, he did not want the restaurants to have a gap in service. He appreciated Fire Marshal Dave Tynan's efforts in working with restaurants to determine the nuances in installing propane heaters in outdoor areas and anticipated direction on which heaters would be appropriate for the various seating areas.

The Mayor opened the floor to public comment.

Ms. Bensley had a public comment but first clarified that Council was voting on the substitute ordinance emailed to them on Tuesday. She noted it was the ordinance with six amendments, not four.

Ms. Bensley read comments from Sasha Aber, Home Grown Café, into the record:

"Dear Mayor Clifton and Council Members.

I am writing to thank you for being proactive with this emergency session and bringing EMERGENCY ORDINANCE NO. 20-0_ to the table. As a resident of Newark for over 40 years, and a business owner in Newark for over 22 years, I value our town. Showing council initiative to help businesses during any time, but especially restaurants during this pandemic, when the hospitality industry has been hit so hard, is appreciated and shows how you also value and are committed to helping City of Newark businesses and your community survive together.

Following the trend of national, state, and local recommendations to increase outdoor seating, gives our residents that do not feel comfortable dining indoors added options to still dine out. We also appreciate the Delaware Alcohol and Beverage Commissioner's support with allowing alcohol to be served in these expanded dining areas.

Since 2000, Home Grown has provided an inclusive environment. We work hard to provide our guests with food for a variety of dietary needs in a space they feel comfortable and safe in. Today, we continue to do just that. We are following extensive state and board of health regulations provided specifically to the hospitality industry during these times.

We understand that everyone has different comfort levels. There may be some folks that are not ready to enjoy takeout yet but still want to support our local restaurants - feel free to purchase a gift card for a friend or family member. Contactless delivery and pickup is available. Socially distanced seating is offered in our dining room. We also have outdoor seating on our deck and are hopeful to expand our outdoor offerings later this month. Fall is the perfect season to dine out. Due to state regulations with guest spacing, we are only able to utilize a small portion of our deck for guests.

Further expansion of our outdoor seating will be an asset to our business and our community. Our sales have decreased well over 50% since the middle of March, and additional deck seating will not make us profitable. However, it will lessen our losses. We are determined to make it through to the other side and be of service to you and our community for at least another 20 years, hopefully, longer.

I thank you for helping to play a role in not only allowing us extra seating but providing some hope that by being creative and working outside the box, we can all get through this.

Thank you for your commitment to Newark.

Wishing you all health and happiness,

Sasha Aber, Owner, Home Grown Café”

Ms. Bensley then read a comment from Ryan German, Caffè Gelato, into the record:

“Dear Mayor and Council.

Outdoor dining allows a safer dining experience for Newark residents. Expanded outdoor dining allows additional safe dining. Newark residents like the expanded outdoor dining. Please vote to approve the expanded outdoor dining areas. Please also vote to approve additional Alfresco dining nights. We have had 3 so far, all went well. There is only one more scheduled so far -- next Wednesday August 12. Please approve more Alfresco nights and please re-approve the expanded outdoor dining congruent with Governor Carney's order.

Sincerely, Ryan”

MOTION BY MR. LAWHORN, SECONDED BY MR. BANCROFT: THAT COUNCIL APPROVE EMERGENCY ORDINANCE 20-05 AS PRESENTED.

MOTION PASSED. VOTE: 7 to 0.

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

Nay – 0.

Abstain – 0.

Mr. Hamilton requested commitment to enforcement and Mr. Clifton confirmed staff was committed. Mr. Coleman said he would also schedule a meeting with Damian DeStefano with the Small Business Administration, or whomever Mr. DeStefano deemed appropriate to work with the restaurant owners, to craft a ‘Report a Concern’ system with the City’s Communication staff. Mr. Horning asked that Council be forwarded the data from the reporting system. Mr. Hamilton asked that the reporting be made public so residents could decide which venues were safe.

Mr. Lawhorn asked if the action could be reimbursed with CARES Funds and Mr. Coleman suspected the enforcement would be covered. Mr. Lawhorn agreed that information should be made public but wanted the reporting to be centered around the actions that enforcement took so establishments were not unfairly and purposefully targeted and stressed that restaurants be informed of the oversights so they could improve operations. Mr. Coleman explained that investigatory items were exempt under FOIA, so outcomes were public but not complaints. Ms. Bensley said she would have to read the exact language because she thought the exemption was for investigatory files and would work with Mr. Bilodeau for an exact determination. Mr. Coleman agreed that restaurants should be protected from trolling.

7. ADJOURNMENT OF SPECIAL MEETING OF THE CITY COUNCIL

Meeting adjourned at 7:13 p.m.

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

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