

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

August 24, 2020

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
District 6, Travis McDermott

Staff Members: City Manager Tom Coleman
City Secretary Renee Bensley
City Solicitor Paul Bilodeau
Assistant to the Manager Jeff Martindale
Chief Communications Officer Jayme Gravell
Chief Human Resources Officer Devan Hardin
Electric Director Bhadresh Patel
Finance Director David Del Grande
Deputy Finance Director Jill Hollander
NPD Chief Paul Tiernan
Parks and Recreation Director Joe Spadafino
Planning and Development Director Mary Ellen Gray

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) 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.

MOTION BY MR. HORNING, SECONDED BY MR. HAMILTON: THAT COUNCIL ENTER EXECUTIVE SESSION PURSUANT TO 29 DEL. C. §10004 (B) (4) 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.

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Lawhorn.

3. **RETURN TO PUBLIC SESSION**

Council exited Executive Session at 7:00 p.m. and no further action was necessary.

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

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

MOTION BY MR. HAMILTON, SECONDED BY MR. HORNING: TO ADD TO THE AGENDA EMERGENCY BILL NO. 20-06 – AN EMERGENCY ORDINANCE CONCERNING COVID-19 PRECAUTIONARY MEASURES.

MOTION PASSED. VOTE: 7 to 0.

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

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. 1. ITEMS NOT ON PUBLISHED AGENDA

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

6. 1-B. UNIVERSITY

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

4:53

Caitlin Olsen, UD Administration, informed UD would host a COVID testing event on STAR Campus on Friday, August 28, 2020. She informed the first two hours were reserved for the UD community to ensure all were tested so classes could resume on September 1st, but the rest of the event was for the public who could register online through the Department of Health. She stated it was also move-in weekend and would be smaller than previous years when UD had 7,400 students in the dorms. She noted that many students chose to stay home and anticipated under 1,400 moving into the dorms. She explained students would do a drive-through check-in and would have a ticket on their dashboards. They would then drive into the field house to receive IDs and keys and proceed to their living areas where they would drop and go. She explained parents would unload the car, the students would remain with their belongings, and the cars would park elsewhere. She noted all check-ins were by appointments of 30-minute increments. She credited Residence Life & Housing for their agility and planning. She pointed to the agenda amendment and said UD staff would plan on the immediate communication of Council's decision on gatherings and promised to keep up with enforcement.

The Mayor opened the table to discussion from Council.

Mr. Hamilton asked if the tents set up at the Field House was a practice run or if students were joining campus now. Ms. Olsen replied that UD was welcoming Resident Life and some volunteers to help with the move and anticipated most students would arrive to campus over the weekend. Mr. Hamilton thanked UD for their proactivity and for supporting Council in all measures and was pleased with the partnership.

Mr. Lawhorn asked if 1,400 students were moving into the dorms and Ms. Olsen confirmed but admitted it changed by the hour and was less than anticipated which meant students could be safely spaced. Mr. Lawhorn recalled the number was over 3,000 and Ms. Olsen confirmed 3,000 were initial estimates. Mr. Lawhorn asked for an update on the freshman class and Ms. Olsen stated that half of the students in dorms were first year, but many decided to work from home. Mr. Lawhorn asked for an update with testing once classes began. Ms. Olsen reiterated the Friday STAR Campus testing and noted UD would step away from the State to allow for the State to test K-12 students and handle any flu season issues. She revealed UD had the capacity for self-testing and planned to perform on-campus screening as surveillance testing. They hoped to administer 1,000 tests per week to be processed on campus by OWL Lab. She continued that any presumed positive cases or individuals who were exposed or showing symptoms would be tested with the approved Department of Public Health test by Student Health (students) or their primary care physicians (faculty or staff). She stated UD would publish the number of tests performed weekly and would be in constant contact with FEMA. She promised to keep Council informed and expected to hold outdoor testing weather permitting. Mr. Lawhorn asked how pre-arrival testing was moving. Ms. Olsen replied that Dr. Dowling, Director of UD Student Health Services, was pleased with the incoming reports and claimed that students understood campus life was a privilege and required negative tests prior to visit. Students were asked to bring 7 to 14 facemasks as an extra requirement and UD wanted to make masks the campus norm.

Dr. Bancroft asked Ms. Olsen if UD had comments on the suggested attendee limitations being considered in the emergency ordinance. Ms. Olsen did not have a suggestion for the outside space but understood the Chiefs were working together to determine patrols and informed UD could change as Council required and would forward any communication to students.

Mr. McDermott had no questions.

Ms. Hughes thanked Ms. Olsen for her efforts and noted the testing site was at STAR Campus on August 28th but the test results would not back until September 1st. Ms. Olsen corrected the results should be available before September 1st and should be submitted to UD so students were cleared to start classes on September 1st. Ms. Hughes asked if the results were same or next day and Ms. Olsen confirmed they were usually available within 24-48 hours. Ms. Hughes asked if the students would self-isolate in the interim and Ms. Olsen confirmed and shared that anyone with prior testing was expected to quarantine as well. Ms. Hughes asked if Ms. Olsen meant students who tested before coming to campus would self-quarantine before classes and Ms. Olsen confirmed. Ms. Hughes asked for the total number of students and Ms. Olsen repeated 1,400 students would be in the dorms and she would check the number of total enrollments. Ms. Hughes thought the smaller number meant cases would be easier to track. Ms. Olsen confirmed and believed students would take more online classes in winter because UD was offering six extra credits for free.

Mr. Horning asked if Ms. Olsen was going to check the number of students housed off-campus and Ms. Olsen confirmed and would determine a strategy. She acknowledged the issue and thought it was possible to provide Council with an estimate although not immediately. She thought it would help with planning and wanted UD's admission statistics to coincide with the City's information. She did not want the information to be misconstrued in how the campus grew. Mr. Horning asked if Ms. Olsen knew what the off-campus number was in an off year and Ms. Olsen did not. She noted UD usually hosted 18,000 undergrads, with 7,400 in the dorms, and the rest were in various places but not necessarily Newark. She repeated she would investigate the total. Mr. Horning spoke with landlords and believed the off-campus market was well-occupied. He was enthusiastic about showcasing how a health and sciences college worked with the City. He noted the information forwarded to students on helping protect the community and asked for off-campus quarantining guidelines. Ms. Olsen revealed UD would request students to first quarantine at home or in their local residence or within UD-designated quarantine areas. She noted students would be provided with food and mental health services and were requested to bring a Go-Bag with all class materials and clothing necessary for quarantine. She added nurses would check temperatures twice a day and religious services would be provided, and professors were asked to be able to quickly adapt to online learning if a student was quarantined. She would inform Council if the quarantine spaces were overwhelmed. Mr. Horning was pleased UD was considering students' mental health and asked if online-students living off-campus would be required to test. Ms. Olsen explained those students would be considered citizens and UD would encourage them to follow State guidelines and recommendations. She noted citizen-students would have access to necessary services.

Mr. Clifton thanked Ms. Olsen and commended the UD team for their efforts in attempting to alleviate fear in the community.

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

29:47

Keri Edwards, UD Student Body Representative, shared that the student body was concerned that the ordinance could become an invasion of privacy and wanted to make sure Police did not have the authority to enter a home to determine if there were illegal activities. She stressed students were taking the situation seriously and wanted to resume in-person classes as soon as possible. She asked that Council trust students more because they were at the University for an education and not just to socialize. She pointed that students living off-campus were paying to do so and were not paying to be spied on by the Police. She wanted Council to recall that there were only a few occasions in the spring where Police involvement was needed.

Mr. Clifton welcomed Ms. Edwards back and noted various Councilmembers agreed to address the SGA and offered to join any virtual meetings. He stated the Police never had the right to enter a home without a warrant and assured Ms. Edwards the ordinance did not usurp those rights.

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

33:40

Mr. Coleman informed Council that staff moved the Public Works budget presentation from September 8th to September 21st and moved Police and Finance from September 21st to September 8th to allow staff to collect more utility revenue information from July and August. He noted that the meeting

on September 21st would cover Electric and Public Works. He explained that following the negative vote on Planning Area 7, various Council approached staff about bringing back a pared down version of the Planning Area to address concerns on the size of the originally proposed planning area. He reminded there was a development plan and farmette annexation associated with the planning area that could not proceed until the decision was finalized. By shrinking the planning area down to include only the development plan and the farmette, any failure of the revised planning area would not be due to unrelated issues to the accompanying development plans. He explained that the process for rehearing the planning area would begin with the Planning Commission, a separate public hearing, and then come before Council for a total of three public hearings on the planning area. Staff did not want to devote time to the planning area because the last action was voted down by Council without receiving direction as to whether pursuing a smaller scale area was desired.

Mr. Clifton thought it appropriate to give staff direction and opened the table to discussion from Council.

Mr. Hamilton agreed there were too many factors in the original planning area and supported presenting the revised plan to Council.

Mr. McDermott admitted he was not part of the original negative vote and did not know what changed to make the revised plan a viable option but supported its reintroduction.

Dr. Bancroft and Ms. Hughes supported reintroduction.

Mr. Horning supported reintroduction and requested details to prove the plan's long-term benefit to the City in terms of cost and maintenance of infrastructure.

Mr. Lawhorn and Mr. Clifton supported reintroduction.

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

38:20

Mr. Hamilton:

- Thanked UD and staff for presenting balanced information
- Appreciated the expertise in the presentations

Dr. Bancroft:

- Appreciated UD's efforts to work with students

Ms. Hughes:

- Agreed with Mr. Hamilton's comments
- Noted the virus impacted all ages
- Wanted to be proactive

Mr. Horning:

- Reiterated the comments on partnering with UD
- Commended Ms. Olsen's attention to detail
- Noted the Governor's Executive Order 44 and shared funding for storm damage from Isaias was available through community organizations via a bid submission process
- Would inform on the process once he knew more

Mr. Clifton:

- Agreed with Mr. Horning on storm aid for residents

10. 1-E. PUBLIC COMMENT (5 minutes per speaker) (5 minutes):

43:22

Ms. Bensley read a comment from Lee Mikles, Grain Craft Bar and Kitchen, into the record:

"Grain Craft Bar and Kitchen is pleased to announce that our hosting of Parks on Draft at Handloff Park earlier this month raised \$650 for Parks and Recreation. The people at Parks & Rec were a great help in setting up the event and making sure things went smoothly. The park was perfect for an outdoor socially distanced event with live music. Thank you for the opportunity to help with such an event."

Mr. Clifton thanked Grain for their support.

Sasha Abrams, Home Grown Café, thanked UD for their forward thinking and understood that students were returning. She noted that students and locals were all part of the community and stated that all the restaurants would continue to work very hard to follow the State guidelines. She encouraged the general public and students to research the industry specific guidelines to learn about the extensive safeguards in place. She appreciated UD's partnership with the City to ensure the community was safe.

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

11. 2. **APPROVAL OF CONSENT AGENDA: (1 minute)**
- A. Approval of Council Organizational Meeting Minutes – August 6, 2020
 - B. Approval of Council Special Meeting Minutes – August 6, 2020
 - C. Approval of Council Meeting Minutes – August 10, 2020
 - D. Receipt of Alderman's Report – August 7, 2020
 - E. Approval of Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the Purchase of Stratuspeer SecureWorks Annual Maintenance
 - F. Approval of Recommendation to Award Contract No. 20-08 – Purchase of One 35kV Outdoor Vacuum Substation Circuit Breaker
 - G. ***First Reading – Bill 20-24*** – An Ordinance Amending Chapter 7, Building, and Chapter 32, Zoning, Code of the City of Newark, Delaware, By Updating Green Building Code Requirements – ***Second Reading – September 14, 2020***
 - H. ***First Reading – Bill 20-25*** – An Ordinance Amending the Amended Pension Plan for Employees of the City of Newark, Delaware, By Modifying the Benefits Received by Fraternal Order of Police Employees to More Closely Match Those of The State's County and Municipal Police and Firefighter's Pension Plan – ***Second Reading – September 14, 2020***
 - I. ***First Reading – Bill 20-26*** – An Ordinance Amending Chapter 20A, Noise, Chapter 22, Police Offenses, and Chapter 32, Zoning, Code of the City of Newark, Delaware to Extend the Provisions of Emergency Ordinance No. 20-05 – ***Second Reading – September 28, 2020***

45:31

Ms. Bensley read the consent agenda into the record.

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

MOTION PASSED. VOTE: 7 to 0.

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

Nay – 0.

12. 3. **APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS:** None
13. 4. **ITEMS NOT FINISHED AT PREVIOUS MEETING:** None
14. 5. **SPECIAL DEPARTMENT REPORTS:**
- A. FY2019 Comprehensive Annual Financial Report Presentation – Finance Director/CliftonLarsonAllen (45 minutes)

47:33

Mr. Del Grande introduced Deputy Finance Director Jill Hollander, Alex Lobeck, Manager of CliftonLarsonAllen, and Bill Early, Principal of CliftonLarsonAllen. The team submitted the 2019 Comprehensive Annual Financial Report, published to comply with provisions of Section 807 of the City Charter and intended to provide financial data to the tax and utility payers, bond holders, Federal and State agencies, and the financial community at large. The financial statements were audited by CliftonLarsonAllen, LLP, an independent firm of certified public accountants. CLA issued an unmodified opinion, the preferred outcome of an independent audit, for the City's Financial Statements ending in 2019. He thanked Ms. Hollander for leading the team in the preparation of the financial statements and for the accounting staff's day-to-day efforts.

Mr. Early reiterated Mr. Del Grande's appraisal of Ms. Hollander and the finance team and noted CLA also met with Mr. Coleman, Mr. Clifton and members of Council during the audit. He noted the process started on-site in January and moved online in March. The final product was issued and submitted by June 30th to the Governor's Finance Officers Association (GFOA). He noted the City was historically a recipient of the GFOA's Certificate of Excellence Award and anticipated the award again for that year.

Mr. Early stated the report was completed with the partnership of Alex Lobeck, CLA Manager, Phil DelBello, IT Manager, and staff level associates from CLA's government services team. He explained the presentation format for the evening and stated that Council was considered "governance" for the financial statements.

Ms. Lobeck noted the audit was completed by an integrated team of IT auditors and government auditors using a risk-based approach, including risk assessment standard requirements. She noted CLA frequently communicated with management throughout the audit and incorporated with use of data analytics and repeated the auditors issued an unmodified opinion of the audit, the highest possible level of an opinion. She continued that CLA issued a report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards and noted no material weaknesses or deficiencies. She reported the City reached the threshold \$750,000 for 2019 Federal Expenditures and required a special audit as a result. She shared that CLA was in the process of completing the special audit which would be issued no later than September 30th, the deadline of issuance for the City. The major program tested for the single audit was the Clean Water State Revolving Fund.

Mr. Early explained CLA summarized the results of the audits for the City by addressing each of the required communications and issued a letter to Council. He continued that CLA audited under GAAS (Generally Accepted Auditing Standards) and explained the financial statements were management's responsibility. The audit was performed for the purpose of forming an opinion as to whether the financial statements were prepared in accordance with GAAP (Generally Accepted Accounting Principles). He shared there were no significant issues discussed with management prior to the retention and noted CLA met with Mr. Del Grande and Ms. Hollander at the beginning of the audit process to consider City issues, changes in accounting principles, or technical accounting questions or concerns that may affect the audit. CLA was informed there were no consultations on the application of GAAP and GASS. He noted management was responsible for the selection of qualitative aspects of accounting practices and stated there were no new accounting standards implemented in the current year. He continued that the Governmental Accounting Standards Board extended some standards for up to one year due to COVID.

Mr. Early informed that management was required to create judgements as preparation of the financial statements and included:

- Depreciation of capital assets
- Pension liability assumptions
- Other post-employment benefit (OPEB) liability assumptions
- Liability for self-insurance claims
- Allowance for doubtful accounts

Mr. Early explained that CLA considered each estimate and judgements, analyzed factors prepared by management or outside specialists (OPEB and pension liabilities determined by an actuary), and tested them to determine compliance with standards and best practices. CLA reported no unusual items. He continued there were no particularly sensitive financial statement disclosures and CLA did not encounter difficulties in performing the audit even though it was the first audit performed virtually. He stated CLA was on-site for the preliminary stages but all work after March was conducted virtually and noted the team was still able to complete the audit in the required timeframe and did not require an extension. He revealed management did not identify, and CLA did not notify of, any financial statement misstatements detected as a result of audit procedures and CLA did not pass on any audit adjustments. CLA obtained a letter of representation from management which claimed all information was accurate and there were no disagreements with management or financial accounting and reporting matters, auditing or procedures, or other matters. CLA issued a separate management letter which addressed collateralization of bank accounts and verified that they were completed as required by law. He noted that GASB (Government Accounting Standard Boards) caused a delay and explained GASB 87 was a significant new standard regarding leases and was scheduled for implementation for the December 31, 2020 statements but was pushed to December 31, 2021.

The Mayor opened the table to discussion from Council.

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

Mr. McDermott asked for clarification on Exhibit C and Ms. Lobeck replied that CLA issued a management letter comment related to the under-collateralization of accounts. She continued that the City held collateral against its bank accounts which should be 100% of the balance over the FDIC limits of \$250,000. She revealed that the City was slightly under the collateralization threshold at year end and had

since corrected the issue. Mr. Early added that it fluctuated daily depending on collateral and the balances and explained it was under on June 30th.

Mr. Horning thanked CLA for the presentation and finance team for their efforts and said the results were important in maintaining public trust. He thanked them for using an updated picture of Main Street depicting the finished construction.

Mr. Clifton asked for clarification on leases and liabilities for leases. Mr. Early replied it was anywhere the City leased property or equipment and noted it did not apply to daily leasing for the rental of a pavilion but rather operating and capital leases. He explained there was currently a revenue line and an expense line on the income statement, but the City was now required to include the liability for the lease receivable or the lease payable to show the long-term debt owed or long-term receivable. He confirmed CLA would be verifying the line item throughout the year with Mr. Del Grande and Ms. Hollander. Mr. Clifton commended Mr. Del Grande, Ms. Hollander, and the finance team and believed they had received the [GOFA] award since 2008. He thanked them for protecting the residents of the City.

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

MOTION BY MR. HAMILTON, SECONDED BY MR. LAWHORN: TO APPROVE THE AUDIT REPORT.

MOTION PASSED. VOTE: 7 to 0.

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

Nay – 0.

15. 5-B. RESOLUTION NO. 20-__ : A RESOLUTION IN SUPPORT OF THE OUTDOOR RECREATION PARKS AND TRAILS (ORPT) GRANT APPLICATION ON BEHALF OF THE CITY OF NEWARK TO FUND THE DESIGN, FABRICATION AND INSTALLATION OF NEW PARK SIGNAGE (10 MINUTES)

1:04:53

Mr. Spadafino explained Parks and Recreation was applying for funding through the DNREC ORPT grant program to replace and update all park signage and noted the grant would assist in funding the design, fabrication, and installation of the new signage. He stated the resolution for the ORPT grant would serve as Parks and Rec's intent to request \$35,000 from the Grant fund and abide by all the program requirements. He revealed the grant required a 50% match and the Department currently had \$32,000 in grant funding awarded for the project that would count towards the matching contribution.

The Mayor opened the table to discussion from Council.

Mr. Lawhorn, Dr. Bancroft and Mr. Clifton had no questions.

Mr. Horning asked if the matching contribution would be matched with another grant and Mr. Spadafino confirmed the Department had \$32,000 in grant funding for the project through another DNREC program. Mr. Horning revisited comments made during the last budget hearing and agreed it was time to replace the signage and noted the expense would almost be exclusively covered by grants.

Mr. McDermott asked if it was possible to use a DNREC grant to match funds for a separate DNREC grant and Mr. Spadafino confirmed and revealed the grant was from the State Bond Bill Funding and was a different grant funding source monitored by DNREC.

Ms. Hughes asked for which signs the grants would be used and Mr. Spadafino replied several signs would be replaced and the estimates included carved signs and vinyl graphic signs. The bid would be submitted for carved and digital vinyl graphic signs to compare prices, which also included installation.

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

MOTION BY MR. LAWHORN, SECONDED BY MR. HORNING: TO PASS THE RESOLUTION IN SUPPORT OF THE OUTDOOR RECREATION PARKS AND TRAILS (ORPT) GRANT APPLICATION ON BEHALF OF THE CITY OF NEWARK TO FUND THE DESIGN, FABRICATION AND INSTALLATION OF NEW PARK SIGNAGE.

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.
Absent – Hamilton.

16. 5-C. DISCUSSION AND DIRECTION TO STAFF REGARDING THE PROPOSED DIVERSITY COMMITTEE (45 MINUTES)

1:10:43

Mr. Clifton proposed to create a Diversity Commission comprised of various community stakeholders with varying statuses. He pointed to the success of similar committees in Wilmington and New Castle County and believed the County met every three months. If the proposal passed, he supported having district representatives or representation by status. He noted the County detailed the committee's authority and charges and admitted it was broad-based but was on-task with considering inequities within the communities outlined in the ordinance. He hoped for Council and community support and believed it was an extremely important initiative that he had promoted since he was elected Mayor. He thanked Mr. Coleman and Ms. Bensley for their assistance and welcomed comments.

The Mayor opened the table to comments from Council.

Mr. Horning appreciated the introduction and agreed each district should be represented and that stakeholders like the Newark Housing Authority and the NAACP should also be represented. He did not personally have experience with forming a diversity committee and admitted his lack of perspective as a white male. He attended a diversity meeting at WL Gore and believed the consultant, Michael Broom, was effective in presenting issues and causing awareness. He thought Mr. Clifton's proposal was a good starting point and thought some of the Wilmington provisions were more race-oriented than the City was considering because Newark wanted to expand beyond race. He appreciated the example of the committee serving as the soundboard and confidential advocate for a minority resident with concerns of discrimination. He was unsure whether the committee should be ad hoc or permanent but leaned towards a standing committee to encourage minorities to come forward with concerns.

Mr. McDermott agreed with previous comments and appreciated a blending of districts and different community groups. He asked if the committee would serve as an outlet for residents to voice concerns or if it was Mr. Clifton's intention to have the committee review ongoing policies within the City and Mr. Clifton confirmed. Mr. McDermott appreciated policies would be reviewed for risks and ease of access for minority groups to the City's programs. He had a discussion with Mr. Spadafino and concluded the financial assistance process was difficult to navigate to join some of the City's recreational programs and he hoped the committee could examine how to get more residents involved in the programs. He supported the formation of the committee.

Ms. Hughes supported the committee and thought it was over-due and would benefit the City in understanding social issues.

Mr. Lawhorn supported the idea and thought it should be a permanent committee. He believed the committee needed a mission and direction. He supported representatives from each district and thought it was reasonable to include other groups to offer broader input. He suggested the group consider and analyze best practices to identify and improve diversity in the work force, support minority small businesses in networking, connect non-profit organizations with the community to advertise opportunities, and address issues not typically presented to Council. He reiterated the need for the committee to have a mission and wanted it to be held accountable for cost and staff time. He wanted the committee to be as resident- and community-centric as possible to limit staff time.

Dr. Bancroft reiterated previous comments and supported the committee.

Mr. Hamilton understood the committee was going to be before Council prior to COVID and was pleased it was back on the docket. He agreed with previous suggestions and opted for a permanent committee.

Ms. Bensley informed the County's Diversity Commission met monthly on the second Monday of each month.

Mr. Horning stressed the importance of inclusion and pointed that the committee was not about window-dressing, rather promoting a culture to allow diversity to thrive. He requested to change the name to the Diversity and Inclusion Committee.

Mr. Clifton agreed it should be a permanent committee and supported changing the name. He shared that he took a class on routine consensus at the National League of Cities Convention that indicated

including more participants was necessary if a group could not reach an agreement. He thought the committee was a good example of an invitation for more participation. He supported an at-large and district committee but also liked including members by status.

Mr. Clifton introduced Dick Gaskins and asked Mr. Gaskins to describe his skillsets. Mr. Gaskins retired from American Express as a corporate vice president for diversity and retired from Wyatt Pharmaceuticals as the corporate executive for diversity. He had over 35 years of dealing with diversity and inclusion. He acknowledged his experience was corporate level but shared that Superintendent Dan Chilton requested his help to educate teachers on how their own cultural backgrounds influenced communication and how to determine areas of conflict in comparing different backgrounds. He informed Mr. Chilton it was a three-year process and offered his services for no-charge as a Newark resident of District 1. He revealed it took four years, organized in stages, to help individuals understand their own backgrounds and to be comfortable with themselves before he taught them how to modify their communication styles. He took note of what the City was considering by forming the committee:

- Civil rights complaints
- Policies
- City Management Practices
- Non-profits
- Outreach in community engagement
- Systemic racism
- Communication skills

Mr. Gaskins reiterated his corporate experience and his project with Mr. Chilton and added that New York asked that he helped manage Diversity 100, the top 100 companies, to discern how those companies could garner more outreach internally as related to inclusion. He discovered that when a committee was formed, it was necessary to define the charter as best as possible so volunteers would understand the intention of the committee and what was involved. He stressed the importance of creating the charter before soliciting for volunteers.

Mr. Clifton thanked Mr. Gaskins for his experience and willingness to help the City. He hoped the Council and public recognized the skillsets Mr. Gaskins offered.

The Mayor opened the table to comments from Council and staff.

Chief Tiernan stated there were two parts of the Diversity Task Force within the Police Department with one as increasing the diversity within the City and the Department. He explained the Police were in full support and admitting keeping minority officers in the force was difficult. He noted a female officer resigned to take a Federal Agency position, an African American officer left for a position with a different law enforcement agency, and another officer of Filipino ethnicity went to the State Police. He admitted the City could not compete with the pay and benefits offered by larger agencies and wanted to participate in ways to increase diversity and hire more officers. He referred a comment from former Council that requested Chief Tiernan address forming a sub-task force with the proposed committee to consider Police rules and procedures and asked if it was still a consideration. Mr. Clifton reviewed the County structure and did not anticipate the need for a sub-task force within the City because the charter would allow for the committee to pursue its own intent. Chief Tiernan reiterated his suggestion that Police participate and offered to answer any questions.

Ms. Bensley cautioned Council when considering the makeup of the committee because too many members made it difficult to meet quorum, defined as 50% plus one member. She understood the need to have a broad spectrum of membership but reiterated the difficulty in meeting with larger numbers. Mr. Coleman understood the desire for broad representation from each district and suggested each Councilmember be allowed an at-large nomination. He noted the committee could then have liaisons from other organizations that would not count towards quorum but could still offer insight and support.

The Mayor opened the floor to public comment.

Ms. Bensley read a comment from Jen Wallace, District 3, into the record:

“Good evening Mayor and Council, thank you for including this item on the agenda. I’d like to voice my support for this initiative and offer some suggestions and feedback.

1. I'd like to recommend the committee be named the Diversity, Equity and Inclusion committee.
2. The committee should be charged with reviewing the city's code and its policies and procedures with the goal of creating a more diverse, equitable, and inclusive workplace and community with regards to age, disability, ethnicity/national origin, gender, gender identity, race, religion, sexual orientation and other attributes as the committee recommends.
3. The committee should be added to code as a standing advisory committee. There is value in adding a standing committee that issues recommendations to council on a wide array of issues impacting diversity, equity and inclusion--much like the Conservation Advisory Committee as a standing committee makes recommendations to council on issues surrounding conservation.
4. Makeup of the committee: ideally the committee would be composed of Newark residents who have an interest in and experience with issues of diversity and inclusion. I'm not sure that representation from each district is as important as demonstrated experience and interest with issues of diversity, equity and inclusion.
5. Since this committee may make recommendations around staffing policies, the Administrative department should be charged with providing staff support to the committee.
6. I think the committee should have the power to implement its own task forces or working groups to delve deeper into issues and to invite others outside of the standing committee to participate, e.g. a working group working on LGBTQ issues might want to invite experts from area LGBTQ organizations to offer insight and feedback."

Ms. Bensley introduced William Anderson, President of Fraternal Order of Police, Lodge 4. Corporal Anderson echoed Chief Tiernan's comments. He explained the Union did not hold a role in hiring officers or determining who joined the department but was supportive of ways to improve diversity and was eager to assist in whatever role necessary. Mr. Clifton thanked Corporal Anderson and Chief Tiernan and was pleased to hear from Ms. Wallace.

Savannah Sipes, UD Graduate Student Government, appreciated the discussion on diversity and noted it would be a focus point for the GSG for the immediate future. She shared that the GSG would be pleased to be a part of the committee to offer suggestions and work with the City.

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

Mr. Lawhorn agreed with Mr. Coleman's proposal that base committee members should be by district and agreed to allow the Councilmembers to nominate from outside of their districts. He also agreed other members could be included in the committee but not count towards the quorum to increase flexibility for meetings.

Mr. Horning agreed with Mr. Lawhorn.

Mr. Clifton agreed having a hybrid committee would benefit the City. He thanked Mr. Gaskins for his support. He asked Ms. Bensley if it was possible to have the committee by the end of the year and Ms. Bensley deferred to Mr. Coleman. Mr. Coleman wanted to speak to the staff involved before setting a target date because it was not unrealistic, but City staff was heavily tasked with the budget. Mr. Clifton asked Mr. Coleman if he received necessary direction and Mr. Coleman confirmed.

17. 6. **FINANCIAL STATEMENT:** None

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

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

- A. **Bill 20-23** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Deleting and Retitling Positions and Adjusting Pay Grades (15 minutes)

1:47:46

Ms. Bensley read the ordinance into the record.

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

Ms. Hardin presented an amendment to Municipal Code, Section 2-92.3, Management Assignments to Yearly Plan, Professional and Technical Employees, by deleting two existing positions, adding a new position, and adjusting the salary of two existing management employees. If approved, staff believed that the Administration Department would become more efficient, task completion would be expedited, a better sense of community would be created, and the City would save money in the short- and long-term. She stated the goal was to merge aspects of the Assistant to the City Manager position with the currently vacant Human Capital Manager position. Jeff Martindale had been serving as Acting Human Capital Manager, in addition to serving as Assistant to the City Manager, since March and excelled in his duties. Ms. Hardin pointed that the combination of the positions was sensible and practical given Mr. Martindale's ability to handle both roles with no issues. Combining the two positions into a new position of Chief Personnel and Purchasing Officer would enable the employee to continue the purchasing, projects, and facility-specific duties, while also completing the benefits-related responsibilities of a Human Capital Manager. She shared the remainder of the responsibilities held by the Assistant to the City Manager would be distributed to the Chief Communications Officer, currently held by Jayme Gravell. The specific responsibilities included oversight of the mailroom functions and its staff and liaising to multiple City-wide committees including the Health and Wellness Committee, the Safety Committee, and the Professional Development Committee. She continued that Ms. Gravell assumed the responsibilities in June and proved capable of performing the additional tasks.

Ms. Hardin stated the proposal included setting the salary grades for the newly created Chief Purchasing and Personnel Officer and Chief Communications Officer at pay grade 23 to better reflect the additional responsibility and staff supervision of the new or modified positions. Both Mr. Martindale and Ms. Gravell's positions were currently set at pay grade 18. Staff acknowledged that the budget challenges the City faced could cause questions but argued resetting the salaries for the new and modified positions would not equal the annual salary and benefits package associated with the three positions currently outlined in City Code. She revealed the City would save in excess of \$300,000 over five years. She concluded that the Management team was well-prepared and more than willing to permanently accept the new responsibilities. Given the employees' commitment to the City, Ms. Hardin was confident that the proposal would make a positive impact on the team and the City.

The Mayor opened the table to discussion from Council.

Mr. Horning thanked Ms. Hardin for the presentation and agreed the proposal made sense because additional full-time employees carried large expenses and he thought the City's Management team did a great job dealing with COVID, cost concerns, and attempting to consolidate and cut costs while maintaining City services. He wanted good employees to be rewarded and understood the roles were in public service but wanted to be competitive with other municipalities and the private sector to a certain extent. He asked Ms. Hardin how the City compared externally, and she explained the Administrative team and Human Resources Department were fairly small compared to Dover and other surrounding municipalities. She continued that the team proved their ability to retain employees and noted the team was able to handle internal customers and employees while being down one full-time position. She admitted it was slower because of COVID but she was confident the team could maintain the workload. Mr. Horning asked if the City was incurring costs with the current employees regarding PTO or accrued vacation. Ms. Hardin replied that she, Mr. Martindale, and Ms. Gravell were all fairly new employees (5 years, under 2 years, and almost 1 year, respectively) and did not have large amounts of available vacation time but said it was possible to reach the threshold if they remained for a time. Mr. Horning asked if the new salary plan proposal assumed the 2% cost of living adjustment and asked if the regular step progression included merit review and Ms. Hardin confirmed. Mr. Horning did not want to offend the employees and noted he was asking questions as due diligence in his Council duties. He thanked Ms. Hardin and planned to support the proposal.

Ms. Hughes asked when the pay grades would go into effect and Ms. Hardin answered if Council approved the proposal that evening, she intended for them go into effect as of that day. Ms. Hughes asked if the added duties required overtime because she thought the workload was a lot for one position and said she understood the City was saving in the elimination of one position. Ms. Hardin reiterated that her old position would be eliminated, and Mr. Martindale adopted the responsibilities of that position in March and some of his current duties would transfer to Ms. Gravell. She noted staff was currently adhering to the proposed workload and were confident that extra overtime would not be necessary. She was revealed the team worked well together under Mr. Coleman and felt capable of continuing. Ms. Hughes asked if Ms. Hardin was working overtime and Ms. Hardin replied she was not and tried not to. She admitted she worked overtime at the beginning of COVID and explained she was promoted to the position in the middle of February and COVID hit in early March. She trained under Mark Farrall in February and acquired some overtime at the start of COVID but then Mr. Martindale took on some of her

responsibilities as the Human Capital Manager and the group settled into a balance. Ms. Hughes was in support of the ordinance.

Dr. Bancroft agreed with previous Council comments and thought it was a reasonable plan to save funds.

Mr. Hamilton was enthusiastic about the savings and thanked those involved for helping to eliminate a position.

Mr. Lawhorn asked if the HCM replacement was absorbed into Mr. Martindale's role and Ms. Hardin confirmed and stated staff would also eliminate the Assistant to the City Manager position from Code and create a hybrid position. She pointed that two titles would be lost but only one full-time position would be eliminated. Mr. Lawhorn asked if the employee count would drop by one and Ms. Hardin confirmed. Mr. Lawhorn asked if the part-time HR Generalist would assist with some roles and Ms. Hardin confirmed. She admitted staff was unsure if the position would remain because the team wanted to see how well the office functioned without filling the role and noted a \$100,000 savings over five years if staff deemed the role unnecessary. She also noted the elimination of the intern position funded each year through the ICMA Fellow and reiterated staff would fill the part-time position if needed. Mr. Lawhorn referred to Mr. Horning's question about comparable positions and said the City was in a good position.

Mr. McDermott echoed previous comments on the amount of work performed by staff and was impressed. He asked if pay grade 23 was an internal decision and if they had performed a workload analysis and if it was done on an annual basis. Ms. Hardin replied that the team considered similar management positions in the City with similar workloads or similar subordinates and confirmed all were within the pay range.

Mr. Clifton asked if the personnel and purchasing positions were higher than grade 23 in 2017 and Ms. Hardin confirmed and revealed the previous Purchasing and Special Projects position was at pay grade 26. She noted that Mr. Martindale currently performed the tasks for that role. Mr. Clifton believed it was logical that the pay for the positions was reduced and combined and was pleased with the \$300,000 savings over the next five years.

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

MOTION BY MR. MCDERMOTT, SECONDED BY MR. LAWHORN: THAT COUNCIL ADOPT BILL 20-23 AS PRESENTED.

MOTION PASSED. VOTE: 7 to 0.

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

(ORDINANCE NO. 20-18)

20. 8-B. EMERGENCY BILL NO. 20-06 – AN EMERGENCY ORDINANCE CONCERNING COVID-19 PRECAUTIONARY MEASURES

2:05:30

Ms. Bensley read the ordinance into the record.

MOTION BY MR. HAMILTON, SECONDED BY MR. HORNING: FOR PUBLIC HEARING.

Mr. Bilodeau stated that at the last Council meeting, Council directed the City Solicitor and Mr. Martindale to create an ordinance regarding putting restrictions on indoor and outdoor social gatherings at private residences. He noted Council also gave direction for civil violations for hosting a prohibited social gathering with a criminal offense issued at the third violation. He explained there was a regular ordinance that would be before Council on September 28th, following first and second readings. As such, an emergency ordinance was created to discuss the possible prohibitions against the indoor and outdoor social gatherings. He pointed it was within Council's purview to create emergency ordinances when needed and explained the ordinance required a positive vote from five of the seven Councilmembers to pass and would only be active for 61 days, until a permanent order was passed, or the State of Emergency ended. He continued that the as-drafted ordinance:

- Prohibited social gatherings greater than 10 attendees indoor and 25 outdoor (10/25) at private residences

- Allowed the City Manager or designee to grant permits for larger social gatherings
- Exempted children 14 and younger from the guest count
- Charged first offender hosts and attendees with \$500 civil assessment and 20 hours of community service (like the Unruly Premises Ordinance)
- Charged second offenses \$1,000 civil assessment and 32 hours of community service
- Charged third and subsequent offenses as an unclassified criminal misdemeanor with a \$1,500 fine but no jail time

Mr. Bilodeau explained that Council directed the City Solicitor and Mr. Martindale to prepare the ordinance because there were numerous COVID outbreaks throughout the nation in college communities that did not have social restrictions in place. He continued that Council could not only restrict the social gatherings of students and the ordinance must include the entire population. He reiterated that under the City Charter, any emergency ordinance could be brought up at any time during a State of Emergency. He informed that Council could change the wording of the ordinance that evening.

Mr. Clifton thanked Mr. Bilodeau for the assessment and repeated that there was no jail time associated with the ordinance. Mr. Bilodeau confirmed and stressed that when the permanent ordinance was considered on September 28th, Council could amend the attendee numbers if necessary.

The Mayor opened the table to questions from Council.

Mr. Hamilton appreciated work that went into drafting the ordinance and admitted there was an issue with students, faculty, and staff returning to college towns. He pointed that Newark was the first to have an outbreak and was proud that Council immediately enacted a 10-person limit on social gatherings in March. He acknowledged the limitation was difficult but necessary and noted the residents, businesses, and social clubs had all adapted. He was challenged that people were going to enter the town from all country and various parts of the world with potential hotspots and a large part of the demographic proved hesitant to follow directions and simple requests. He supported being proactive versus reactive and pointed that the elderly and minorities in his district were members of groups that had been hit hard by the virus. He stressed that the situation was a challenge, but his goal was to protect his constituents and Newark residents. He was concerned with the ordinance because there was support for a limit of 40 people, but the proposal was for 10/25, and he knew of student rental homes where it was possible to link parties and have 75 attendees. He pointed to Chief Tiernan's points that it was difficult for officers to count 75 people when everyone was moving around and noted the "underground fraternity" that had three houses close to each other where it was possible to have 100 people. He wanted the ordinance to be enforceable and recalled Chief Tiernan's concerns over officer safety and the ease of controlling smaller crowds. He acknowledged the positive relationships with the Police and community and noted UD-affiliates could come from places without positive relationships and could potentially be threatened by Police presence. He repeated his desire for smaller groups so Police could quickly determine issues. He hoped the number would be smaller for the safety of the community and that Council chose to listen to experts. He cautioned against 25 because houses could combine parties. He noted that the City, UD, and Police all supported smaller numbers. He asked that residents hold off on hosting parties for one month and pointed that if the virus did not spread, the restrictions could be lifted. He reiterated his support for a lower number and stated Police, staff, UD, and concerned residents all supported lower numbers.

Dr. Bancroft was torn on the issues and did not want to be reactive. He asked for the number of cases in the community. He believed UD had a plan and assumed UD wanted latitude from the City. He also recognized the issues in other colleges towns and those surrounding private property and civil liberties. He wanted to give people a chance to comply with the mask mandate and social distancing and believed the ordinance could control the issue. He suggested the ordinance go into effect whenever the Department of Health Services announced there were more than 100 cases a day and believed it should be used as a snapback. He was concerned about invasion of personal freedoms and wanted a better path for when it was enacted because if there were no cases, it was a shame to limit peoples' ability to socialize. He understood the fear was around the students but believed there should be an aspect about treating them as adults and communicating there would be a burdensome drastic ordinance if there was an outbreak. He spoke to constituents who mainly supported the ordinance but there were a few who were vocal about the infringement of civil liberties.

Ms. Hughes spent time considering the issue and referred to the news where universities had catastrophic results when students returned to campus and had "super-spreader" parties. She did not see

how UD could be unique in avoiding the same challenges. She wanted attention to be focused on the virus because it had ravaged the country and the US had the highest number of cases. She thought this week was the first time in over a month where there were less than 1,000 deaths per day from the virus and noted there was a long road ahead. She admitted the City took many precautions and were committed to social distancing, mask mandates, and limited gatherings and credited those actions with the small number of infections. She cautioned the small numbers could be gone in a matter of days and it applied to everyone, not just students. She pointed that the concern was not about civil liberties but rather peoples' lives and the point of wearing masks was to protect others. She stated it was possible to get through the pandemic by wearing masks, adhering to social distancing, and repeated handwashing and did not feel hosting 40 people for an outdoor event was a safe situation. She referred to Mr. Hamilton's comments that people were coming to Newark from all over the country with their own expectations and plans. She understood that students wanted to socialize but the pandemic was more important. She stressed the virus killed all ages, not just older people, and cautioned against those who wanted to expand because the reported numbers were low. She reiterated Mr. Hamilton's comments that once the numbers shot up, it could not be undone. She pointed that everyone made sacrifices and were suffering because of the pandemic and did not see how keeping to small gatherings could be considered a difficulty or anti-civil liberties. She claimed the ordinance was about saving lives and the numbers were low because of the City's actions. She thought it was possible to manage and contain the virus while partnering with UD and the Newark Police. She wanted residents to understand that the virus was not the flu and was killing many people. She indicated that survivors of the virus had lingering effects including damaged lungs and reiterated the request to keep gatherings small was not a huge imposition.

Mr. Lawhorn supported a gathering limitation to help the Police and claimed to have data that indicated gathering limitations were ineffective. He agreed it gave Police the ability to identify large gatherings and break them up. He reiterated Delaware's low numbers and said he received feedback suggesting Newark adhere to the State's levels and from some residents who did not think the City should take any action. He believed it was valuable to give Police a tool in order to break up inappropriate gatherings. He believed Mr. Hamilton's point of combined parties was valid and thought it was important to point out that the Governor ordered social distancing and masks for people not residing in the same household. He asked if it was possible to use the Governor's restrictions as a reason to breakup outdoor gatherings. Chief Tiernan confirmed it was possible to disperse the party without taking any enforcement action. Mr. Lawhorn thought it was an important distinction for all gatherings and stressed masks were the most effective ways of stopping the spread. He noted UD required students to bring 15 masks and wear them on campus. He agreed with UD's approach of treating students like adults and understood some students and residents would act responsibly. He thought Council should change the 14 and under exemption to 17 and under because he understood that most parents were home and kids were not having parties. He contended that the residents he spoke to were having responsible gatherings and wanted children to be exempt if the indoor number was lower than 20. He acknowledged UD's actions, including testing prior to arrival, and thought if UD encouraged testing, there would be more data and wanted UD to share the results. He noted the City had been operating for three months with little league baseball, open pools and clubs, and resident-hosted barbeques. He supported a gathering restriction but thought 10 was too strict and wanted the number increased and reiterated his desire to have the exemption for 17 and under. He shared feedback claiming the fines were extremely excessive. He asked if Police would issue 20 \$500 fines if they broke up a party with 20 attendants. Mr. Bilodeau replied if all 20 were cited, first offenders would be subjected to a \$500 fine and community service. Mr. Lawhorn thought the fines were excessive but agreed that only fining the homeowner did not give attendees any accountability and repeated the first offense was a harsh punishment. He agreed Police should have a tool to break up parties and repeated the fines and criminal offense were too strict. He asked if there was a separate ordinance for nuisance violations for repeat offenders to replace the fine structure. Mr. Bilodeau replied there was a nuisance violation for repeat violations of convictions for underage drinking at residences but the problem was the ordinance required convictions as opposed to a probation before judgement (PBJ) plea within a year and it was difficult to get enough convictions to get to the nuisance level which was why Council created the Unruly Premises Ordinance. He understood if the ordinance passed and a student had a super-spreader party, UD could expel or suspend the student for the remainder of the semester. Mr. Lawhorn believed UD should hold to the rule regardless and did not want to see super-parties. He repeated the ordinance was aggressive and thought the City was reverting to actions when the outbreak first began and acted in fear. He stated that everything the City did over the last three months worked. He wondered if the City would shut down again over a spike in cases. He thought the ordinance sent a message but pointed to other towns where gathering ordinances had failed.

He did not think the City was at a point where Council needed to send a message and claimed he spoke from many people who felt it was too aggressive. He supported an ordinance with 17 and under, 15 attendees indoor, no criminal fine, and an overall reduction in fines.

Mr. Horning remained open to public comments and acknowledged the divide on the issue in District 1. He pointed that the City's finances and local businesses relied on UD having a successful semester with no outbreaks. He was concerned UD could opt to go entirely online and send students residing on campus home. He claimed he was not a proponent of big government but understood the necessity coming out hard and in the best interest of the City. He thought it was important to review on September 28th but did not think it was necessary to have a permanent ordinance for a temporary problem. He asked Mr. Bilodeau if there would be first and second reading to put the ordinance in code and if the emergency ordinance was a temporary measure. Mr. Bilodeau confirmed that emergency ordinances only lasted 61 days by rule so if Council passed a bill that evening, it would expire in two months unless Council put a permanent ordinance in place. He noted the intention was to have a temporary order in place and have something in place, so the temporary ordinance did not expire on its own terms. Mr. Horning appreciated the built-in review period and hoped it was a temporary response to a temporary problem and the City could resume normal activities soon. He hoped to have good data from UD, Newark Police, and DPH within 30 days indicating the number of cases and how well quarantine worked to contain the spread. He thought word would spread quickly to limit student gatherings because the ordinance was so forceful. He wanted to discuss adding exemptions for holidays at the September 28th meeting so fulltime residents could have family without applying for permits. He suggested raising the limit from 10 to 12 and spoke with Lauren Jardell, Government Relations from Tulane University, who set their limit for on-campus for students at 15 because their housing styles were for 8 to 10 students. They explained the number helped to keep gatherings limited but allowed for some guests. He proposed moving the limit from 10 to 12 because there were several six-bedroom apartments within the City and moving the age limit to 16 because there were 53 17-year old students registered to live on campus. He was not concerned with high school students having parties because parents were home and it was not a population with community spread. He reiterated that students were welcome to the City, but the City did not welcome carelessness or recklessness. He asked students to reach out to City officials with any concerns and wanted students to use the opportunity to have better numbers than Penn State or Notre Dame. He supported moving the limitations to 12 people for indoor and outdoor for the sake of Officer safety and believed hosting 12 17-year-olds and above with an unlimited number of children as a trial period was a good starting point. He wanted to reassess after thirty days.

Mr. McDermott continued to support the 15/25 ratio and raising the age to 16-years-old. He noted that individuals could not be jailed for the offense and asked Mr. Bilodeau if was possible to be jailed as a condition of bail if fines went unpaid. Mr. Bilodeau confirmed that a capias warrant could be issued for not appearing in court or paying fines, in both criminal and civil court. Mr. McDermott wanted the public to understand that it was possible to be jailed for failing to meet court obligations and did not want to misconstrue the result for the original charge. He supported the ordinance because there was a permit process to allow residents to host larger gatherings but asked Mr. Bilodeau if Council could change aspects of the permit. He was concerned that the process was cumbersome because residents had to submit schematics of their homes, the table layout, visitor records, and visitor contact numbers in case someone tested positive. He understood the necessity but thought posting the diagram on the door for visitors was excessive. He took issue with page six where residents waived their constitutional rights to allow police to visit their homes before and during the event to check for compliance. He did not think residents should be asked to sign away their rights when they were already limited and asked Mr. Bilodeau if the language could be removed from the permit. Mr. Bilodeau confirmed he could work with staff to make the permit process less onerous and noted it was not part of the ordinance but was suggestion for the permit process. Mr. Coleman interjected that staff purposely added aspects to the ordinance to start conversation and did not intend for the language to be part of the final permit. Mr. McDermott did not want to minimize the pandemic and revealed that he had been diagnosed with the virus and had elderly parents and small children but followed mitigation and quarantine to stop the spread. He understood concerns but wanted to balance concerns with the current number of positive cases. He agreed with Mr. Lawhorn on 15/25 for age 16-years and older.

Mr. Clifton asked Chief Tiernan to address any comments. Chief Tiernan agreed there were valuable points and reiterated his belief that it was not the Police Department's place to decide the numbers and would enforce whatever Council decided but a smaller number made it easier for Police to enforce. He stated the Police would work closely with UD and pointed that many students lived off campus so if they were expelled, they would still be living on Cleveland Avenue or Chapel Street. He stressed the importance of informing the students that the City and UD would be enforcing the ordinance and that fines were heavy. He hoped heavy fines would be more of a deterrent than those for underage drinking.

He believed most residents and students would comply and suspected 20% of students would not adhere to the ordinance but cautioned that 20% of 20,000 was excessive.

Mr. Clifton reverted to comments made by Mr. Hamilton and Ms. Hughes. He understood that 99% survived the virus but did not want anyone to die needlessly and had difficulty proclaiming 1% of the residents did not matter because of an individual's perceived rights. He noted that during the Second World War, stores limited the number of patrons in businesses and pointed that food and rubber were rationed, cars ceased production, and residents could not access brass, yet the Country managed successfully for three and a half years. He stated the actions were a shared sacrifice because it was the right thing to do. He refuted claims that individuals had the right to not wear a mask and pointed that those individuals did not have the right to infect other people. He thought it was inconceivable that anyone would suggest high-risk citizens stay home so others did not have to wear masks. He pointed that staff and the City manager called for smaller numbers and refuted claims that the virus was not worse than the flu. He revealed that COVID claimed the lives of over 170,000 people nationally while the average flu season claimed 32,000 and it was mind-numbing how anyone could make the parallel with scientific data. He indicated the 250-person-limit set by the State was irrelevant because the City's limit was 150 and had been for years. He deferred to the Alderman and Deputy Alderman for fines and asked Mr. Bilodeau if the fines were mandatory or at judicial discretion. Mr. Bilodeau replied the fines were as written but staff could amend the language to "up to" or "between \$100 and \$500 for the first offense" and "\$100 and \$1000 for the second offense". Mr. Clifton revealed a surefire way of not paying excessive fines was to simply not violate the laws. He believed third and fourth offenders were intentionally ignoring laws proposed by Council. He stressed that these were not normal times and agreed that Newark had fared well but thought the infusion of a new population from hot spots brought their own set of rules. He spoke of comments online that misinterpreted the ordinance would shut down restaurants and repeated it was for residential communities.

The Mayor opened the floor to public comment.

Ms. Bensley read a comment from Dr. Laura Lessard, District 3, into the record.

"I am a resident of Old Newark (District 3) and a trained epidemiologist. I strongly support the Council's proposed ordinance regarding private gatherings. There are three reasons for my support: the experience of other similar towns, the importance of clear expectations and the effectiveness of this policy.

First, college towns like ours across the country have already experienced the results of bringing students back to campus without clear expectations and consequences: 366 cases of COVID-19 at Notre Dame were connected primarily to off-campus gatherings; 175 cases in Ames, Iowa - home of Iowa State University, and 130 cases at the University of North Carolina. While UD has set specific rules for students living on campus, their influence is limited when it comes to students living off-campus in our community. The City must provide complimentary rules both for students and the broader community.

Second: The proposed ordinance provides clear and specific expectations for behavior within our city. These expectations are a crucial part of COVID mitigation as they tell residents exactly what types of behavior are likely to lead to increased transmission. Research shows that generic guidelines (e.g. "Be Safe") are not effective at changing behavior but specific, actionable guidelines (e.g. "do not gather indoors in groups larger than 10") are effective.

Lastly: This ordinance works. In the spring, when a similar ordinance was in place, there were few violations and community spread was limited. That suggests that the ordinance can successfully deter large gatherings.

If this ordinance is not passed, and clusters of COVID emerge, we will inevitably be faced with more business closures, more COVID cases and unfortunately more deaths. The business community and those living in our community who are older or immunocompromised cannot afford to take a step back. I implore Council to continue their strong leadership on COVID-19 and pass this Ordinance tonight."

Ms. Bensley then read a comment from Jen Wallace, District 3, into the record.

"I'd like to offer my support for item 8B - An Emergency Ordinance Concerning COVID-19 Precautionary Measures and ask that you consider lowering the outdoor gathering limit. Myself,

and other Newarkers either fall in the higher risk category for COVID-19 or live with family who do and see the benefits of responding conservatively to this virus. As public officials, your first duty to residents is to appropriately respond to issues of public health and safety. It is possible that some will say that further limiting the number for outdoor gathering is overly cautious, but I think that's the best possible outcome. The worst is that Newark becomes a virus hotspot in our state.

Please consider reducing the number for outdoor gatherings in the name of protecting residents and visitors to our community as well as doing your part to quell the worst consequences of the virus. Thank you for your thoughtful consideration."

Ms. Bensley then read a comment from John Morgan, District 1, into the record:

"About 50 UD freshmen living in dorms are only 17 years old, and there must be others who will be living off-campus. The 17-year-olds should be covered by this ordinance. Several years ago, there was a huge party of teenagers on the street on which I live which was hosted by the teenage daughter of a homeowner while the mother, a single parent, was working at night. It was broken up by a large number of Newark Police. High school students or high school dropouts are just as capable of holding large, out of control parties as undergraduates. Thank you very much."

Ms. Bensley read a comment from Marge Hadden, District 4, into the record.

"Data shows spikes from bars and similar gatherings are the problem and we all know what we need to do. I have twelve grandkids, not counting adults, will I have to pay a fine at Thanksgiving?"

Mr. Clifton informed public commenters were limited to five minutes and asked if they agreed with previous speakers, to go on record as saying such.

Todd Ruckle, District 2, repeated his oath of office, "I do solemnly swear and affirm that I will support the Constitution of the United States and the Constitution of the State of Delaware, and I will faithfully discharge the duties of Councilmember of the best of my ability." He acknowledged Council was trying to prevent mass gatherings, but the side effect was a violation of homeowner property rights. He claimed he would stand up for homeowners and said that the Government had no rights to come through the front door at any time unless someone was in grave danger with rape or violent activity taking place or something to not allow them to get a warrant. He spoke to attorneys, judges, lawyers, and law enforcement who confirmed they could not enter a residence. He wondered if homeowners had to be instructed to not let Police in. He argued that students were not a protected class and Council should pursue the mass gathering of students because Council could not make a law that would hurt the homeowner. He asked if Council was going to fine minors \$500 because they were in a home that required gatherings. He claimed Council had to limit student gatherings and stated if homeowners had gatherings in a home and grandparents came over, it was their own choice and he supported mask mandates. He claimed he had a reader to take temperatures of his guests before they entered homes. He wanted the same precautions but said Council could not limit rights. He repeated that Council took an oath to uphold the Constitution and needed to be protected in spite of the greater good. He stated everyone was ethically bound to protect the Constitution of the United States of America and to the State of Delaware. He said Council had to consider if they had the right to violate the fourth amendment and informed they did not. He asked that Council rework the ordinance to create something for the mass gatherings and not break the law.

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

Mr. Clifton informed Council they were free to make more comments but anticipated requests for amendments.

Dr. Bancroft agreed Council wanted to be appropriately responsive to the disease and estimated there were 50 Newark residents and 1,000 cases listed on the New Castle site and informed the natural death rate was a few thousand people for comparison. He agreed preventative measures were necessary and understood children under 14 would be worse super-spreaders, defined as one especially contagious human being. He had issue that the ordinance should apply to churches but not to businesses and other

non-profits but understood the need to balance essential services. He believed exempting religious services would encourage people to work around the system. He wanted to focus on social distancing and asked about fines for non-compliance with masks. He preferred an automatic enactment and suggested if DPH announced more than 100 cases in a day until September 28th. He wanted to carefully consider exceptions for people with children and large homes because the ordinance created a built-in bias for families versus the student body. He had no opinion about the number of allowable attendants and thought it was an enforcement issue. He wanted to make permitting easy and understood concern about Police entering homes to check for basement parties.

Mr. Clifton interjected that he asked the City's attorneys to address Constitutional issues and Max Walton explained in *South Bay United Pentecostal Church v. Newsom* on May 29, 2020, the decision to grant an injunction failed with a 4-5 vote. Mr. Walton continued that there were orders placed on numerical restrictions on public gatherings to address the health crisis and the State guidelines current limit of attendance to places of worship was 25% and/or a maximum capacity of 100 attendees. He reiterated the 5-4 vote and quoted Justice Roberts' concurring opinion, "The precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement. Our Constitution principally entrusts the safety and health of the people to the politically accountable officials of the States to guard and protect. When those officials undertake to act in areas fraught with medical and scientific uncertainties, their latitude must be especially broad. Where those broad limits are not exceeded, they should not be subject to second-guessing by an unelected Federal judiciary which lacks the background, competence and expertise to assess public health and is not accountable to the people. The notion that is indisputably clear that the Government's limitations are unconstitutional seems quite improbable." Mr. Walton continued that the opinion was already cited by 60 cases and had only been decided on May 29th.

Mr. Clifton thanked Mr. Walton and understood it was a common issue and noted it was not as clear cut as people expected.

The Mayor opened the table to discussion or amendments to the proposed ordinance.

Mr. Hamilton suggested the proposed ordinance be amended from 10/25 to 15. Mr. Clifton asked if Mr. Hamilton was suggesting 15 for indoor or outdoor and Mr. Hamilton supported 15 attendants per property.

MOTION BY MR. HAMILTON, SECONDED BY MR. HORNING: TO AMEND THE PROPOSED ORDINANCE TO A LIMIT OF 15 PERSONS FOR INDOOR OR OUTDOOR.

Mr. Bilodeau explained Council only needed four Councilmembers to adopt an amendment as opposed to five, which was required to pass the final ordinance.

Mr. Lawhorn asked if it was necessary to make a motion on the ordinance before amending it and Mr. Clifton clarified that any amendments came before voting on the ordinance and Mr. Bilodeau confirmed. Mr. Lawhorn appreciated increasing the indoor limit to 15 and understood the point of simplicity but stressed Council should encourage outdoor gatherings because data suggested it was more difficult to spread the virus outdoors.

MOTION FAILED. VOTE: 2 to 5.

Aye – Clifton, Hamilton.

Nay – Bancroft, Horning, Hughes, Lawhorn, McDermott.

MOTION BY MR. LAWHORN, SECONDED BY MR. MCDERMOTT: TO AMEND THE PROPOSED ORDINANCE FROM PERSONS AGED 14 TO PERSONS AGED 16.

Dr. Bancroft asked why Council would amend the ages and Mr. Lawhorn replied that feedback from a large portion of the community was that family units wanted to participate in gatherings together and the assumption was if a family unit was infected, it was infected, and by increasing the age from 14 to 16, residents would have more flexibility while focusing on the most concerning demographic. Dr. Bancroft understood but suggested 17-year-olds would invite younger friends. Mr. Clifton agreed with

Mr. Lawhorn that if a family member was infected, there was a chance that the rest of the family could be infected.

Ms. Hughes suggested 10/20 and Mr. Clifton noted the motion was for the age limitation.

MOTION PASSED. VOTE: 4 to 3.

Aye – Clifton, Horning, Lawhorn, McDermott.

Nay – Bancroft, Hamilton, Hughes.

MOTION BY MS. HUGHES, SECONDED BY MR. HORNING: TO AMEND THE PROPOSED ORDINANCE TO LIMIT GUESTS TO 10 INDOOR, 20 OUTDOOR OR A 20 MAXIMUM ON THE PROPERTY.

MOTION FAILED. VOTE: 3 to 4.

Aye – Bancroft, Clifton, Hughes.

Nay – Hamilton, Horning, Lawhorn, McDermott.

MOTION BY MR. LAWHORN, SECONDED BY MR. MCDERMOTT: TO AMEND THE PROPOSED ORDINANCE TO LIMIT GUESTS FROM 10 INDOOR TO 15 INDOOR.

MOTION FAILED. VOTE: 3 to 4.

Aye – Horning, Lawhorn, McDermott.

Nay – Bancroft, Clifton, Hamilton, Hughes.

MOTION BY MR. LAWHORN, SECONDED BY DR. BANCROFT: TO AMEND THE PROPOSED ORDINANCE TO ADD DISCRETION FOR JUDGES TO DETERMINE FINES: FIRST OFFENSE RANGE \$100-\$500 WITH 0-20 HOURS OF COMMUNITY SERVICE, SECOND OFFENSE RANGE \$500-\$1000 WITH 20-32 HOURS OF COMMUNITY SERVICE, THIRD OFFENSE RANGE \$1000-\$1500.

MOTION PASSED. VOTE: 5 to 2.

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

Nay – Hamilton, Hughes.

MOTION BY MR. LAWHORN, SECONDED BY MR. HORNING: TO AMEND THE PROPOSED ORDINANCE TO REMOVE CRIMINAL PENALTY FOR THE THIRD OFFENSE.

MOTION FAILED. VOTE: 2 to 5.

Aye – Lawhorn, McDermott.

Nay – Bancroft, Clifton, Hamilton, Horning, Hughes.

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: TO AMEND THE PROPOSED ORDINANCE TO CHANGE THE INDOOR GATHERING LIMIT FROM 10 PEOPLE TO 12 PEOPLE.

MOTION FAILED. VOTE: 3 to 4.

Aye – Horning, Lawhorn, McDermott.

Nay – Bancroft, Clifton, Hamilton, Hughes.

MOTION BY MS. HUGHES, SECONDED BY MR. HAMILTON: TO AMEND THE PROPOSED ORDINANCE TO 10 PEOPLE INDOOR AND 15 OUTDOOR WITH A MAXIMUM OF 25 ON PROPERTY.

Mr. Hamilton asked if it was a total of 25 people and Mr. Clifton replied the ordinance was written so that Council deferred to the maximum outside number for maximum on property. Mr. Bilodeau confirmed and clarified the total was 25.

Mr. Lawhorn thought the language added confusion and preferred a solid number with the outdoor serving as the maximum to avoid confusion.

MOTION PASSED. VOTE: 4 to 3.

Aye – Bancroft, Hamilton, Hughes, Clifton.

Nay – Horning, Lawhorn, McDermott.

MOTION BY DR. BANCROFT, SECONDED BY MR. HORNING: TO AMEND THE PROPOSED ORDINANCE TO ENACT AUTOMATICALLY WHEN CASES REACHED 100 PER DAY PER DEPARTMENT OF PUBLIC HEALTH DATA.

Ms. Bensley asked for clarification and asked Dr. Bancroft if his intent was that the ordinance would go into effect upon the limit of 100 cases per day being hit or for it to only be enforced on days where there were 100 cases. Dr. Bancroft replied it would go into effect and stay in effect until September 28th. Ms. Bensley asked if his intent was that 100 cases per day would trigger the ordinance going into effect and remain in effect until either the emergency ordinance sunset or Council passed an additional ordinance. Dr. Bancroft confirmed. Mr. Bilodeau asked Dr. Bancroft if the 100 were cases in Newark or State-wide and Dr. Bancroft replied the data was available for State-wide.

Mr. Hamilton asked if Dr. Bancroft wanted to wait until the situation worsened and thought it was a horrific point. He stressed the need to be proactive instead of reactive and would not support the amendment.

Mr. Coleman pointed that the State's My Healthy Community website listed current infections, new hospital admissions by zip code, and current hospitalizations by zip code. He revealed that on August 23rd, there were three new cases in 19711.

Mr. Clifton questioned what mechanism would be used to alert students that the threshold had been crossed and the ordinance was in effect. Dr. Bancroft asked how students were currently informed and wondered why they could not be effectively informed given the levels of communication regarding COVID.

MOTION FAILED. VOTE: 1 to 6.

Aye – Bancroft.

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

Mr. Horning asked if the numbers were 10 indoor and 15 outdoor and Ms. Bensley informed that review of the current adopted amendments indicated the age of exemption was changed from 14 to 16, the discretion for the judge to determine the fine by providing a range of \$100-\$500 for first offense and 0-20 hours of community service, \$500-\$1000 for second offense with 20-32 hours of community service, and \$1000-\$1500 for third offense. The third amendment changed the outdoor limit from 25 to 15 and so the current limits were 10 indoors and 15 outdoors. Mr. Horning asked Council could amend the revised ordinance if it failed. Ms. Bensley explained Council could make a motion to reconsider but the person who made the motion had to be from the prevailing side.

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: TO APPROVE THE EMERGENCY ORDINANCE AS AMENDED.

Mr. Lawhorn supported a gathering ordinance but could not with a 10/15 limit.

MOTION FAILED. VOTE: 3 to 4.

Aye – Clifton, Hamilton, Hughes.

Nay – Bancroft, Horning, Lawhorn, McDermott.

Absent – 0.

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: FOR RECONSIDERATION.

Mr. Clifton pointed to Ms. Bensley's adequate directions and Mr. Horning asked if Council would vote on the reconsideration and then discuss amendments. Mr. Clifton confirmed.

MOTION PASSED. VOTE: 6 to 1.

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

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: TO AMEND THE PROPOSED ORDINANCE GATHERING LIMITS TO 12 INDOOR, 20 OUTDOOR WITH A 20 MAXIMUM ON PROPERTY, INCLUDING THE AGE EXEMPTION FROM 14 TO 16 AND THE FINE RESTRUCTURE.

Mr. Lawhorn believed Mr. Horning's amendment was a reasonable compromise and would support the motion. Ms. Hughes asked for clarification on property and Mr. Clifton replied 12 inside, 20 outside, or 20 total on property. Mr. Clifton agreed it was a good compromise and recognized how important it was to have a codified decision that evening. Mr. Hamilton interjected that he could not believe the discussion was about 40 to 60 people. Mr. Clifton retorted the amendment was for 12 indoor and 20 outdoor or a maximum of 20 on property. Mr. Hamilton responded that he had properties that backed up to each other and three properties could end up with 60 people. He understood that a family could want to have a gathering, but the discussion was giving up gatherings for a month or two. He stressed that the Governor's ruling was for the whole State and pointed that densely populated communities in Newark were different than farmland. He stated Council was there to protect residents and not to have them party. He repeated areas of the City had houses where individuals could congregate and suggested that bigger houses and bigger families get over it for a month or two. He reiterated his point that the issue was life and death, but he would not support the decision. He was stunned that the motion was to allow for larger gatherings.

Mr. Clifton believed his previous comments made his stance clear and reiterated it was necessary to codify an ordinance that evening. He agreed with Mr. Hamilton but not having a decision that evening was also problematic.

Dr. Bancroft interjected that he agreed with having strict rules but also thought it was necessary to follow data. He thought it was inappropriate to treat college students like children and reiterated his desire to include church religious services and wanted an amendment based on data using the case count rates.

Mr. Clifton repeated the amended had a first and second for 12 indoor, 20 outdoor and a 20 maximum on property.

MOTION PASSED. VOTE: 4 to 3.

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

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: TO APPROVE THE PROPOSED ORDINANCE AS AMENDED.

MOTION PASSED. VOTE: 5 to 2.

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

(EMERGENCY ORDINANCE NO. 20-06)

21. MOTION BY MR. LAWHORN, SECONDED BY MR. HORNING: THAT COUNCIL CONTINUE THE MEETING PAST THE 11 O'CLOCK DEADLINE TO HEAR THE FINAL AGENDA ITEM.

MOTION PASSED. VOTE: 7 to 0.

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

22. 9. **RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING AND DEVELOPMENT DEPARTMENT:**

- A. Request of Alpha Sigma Phi for a Special Use Permit for a Fraternity and/or Sorority at the Property Located at 19 Amstel Avenue (40 minutes)

4:10:53

Ms. Gray explained the application was to grant a special use permit to the Alpha Sigma Phi Fraternity (ASP) to operate and reside at the property at 19 Amstel Avenue. The property was zoned RM, multi-family dwelling garden apartments, and the City's Zoning Code required Council approval for a special use permit for the Alpha Sigma Phi to operate and reside at the former Kappa Alpha Fraternity (KA). She continued that the property was the residence of KA for several decades and operated as a pre-existing, non-conforming use since it existed on the location prior to the City changed zoning to exclude fraternities. In 2019, UD suspended KA for four years through May 31, 2023, and under the terms of the suspension, the organization was no longer recognized or sanctioned by UD as a fraternity. Under the City's Zoning Code, the non-conforming use for the property expired and was not permitted to resume.

Ms. Gray continued that on June 22, 2020, Council voted 7-0 to change the zoning at 19 Amstel to RM and voted 6-1 to adopt language to allow fraternities and sororities in the RM and RA zoning districts pending approval for a special use permit from Council. She explained that the special use permit was issued with conditions listed under Section 32-11(b)(14) and was provided to Council in the August 17, 2020 Planning and Development Report. She revealed the ASP application could meet all the requirements of the ordinance articulated in the August 17th report and staff recommended approval of the special use permit for ASP to operate and reside at 19 Amstel Avenue with the conditions listed under Department Comments and noted the special use permit did not conflict with the purposes of the Comprehensive Development Plan V.

Mark Adcock, Kappa Alpha Education Foundation (KAEF), invited Nick Miller, Alpha Sigma Phi, to the meeting and stated several groups were interested in the property, but ASP exceeded qualifications.

The Mayor opened the table to discussion from Council.

Mr. Horning asked what steps were taken by ASP to coordinate and work with UD for quarantining if there was a positive COVID case in the fraternity house. Mr. Miller revealed ASP submitted a plan to UD to address all areas of concern including cleaning, quarantining, isolating, and gatherings and was utilized at all 43 ASP-managed properties. He admitted the plan needed to be specially adjusted to meet the requirements of each state and university. He explained he oversaw all the properties and had a Property Manager who developed a plan for the CLVEN Delaware property. He revealed the residents had separate rooms and space for quarantining or isolating, if necessary, but residents who tested positive would be asked to leave the property if possible and/or utilize UD space. Mr. Horning agreed with the measures and asked if there were 21 rooms in the home and Mr. Adcock replied if the occupancy was 21, it would be reduced to 16 to allow each member their own room. Mr. Horning believed gatherings at the home would be limited given the maximum property occupancy of 20. Mr. Miller agreed and reiterated the plans changed and the Property Manager was a coach to the ASP who was responsible for knowing all the local, state, and university guidelines to hold residents accountable. Mr. Horning asked if a faculty liaison would inspect and mentor the residents and Mr. Miller replied ASP had an on-site undergraduate house manager who was compensated for the role. ASP also had a contracted chapter advisor who was paid to be the main adult advisor to the chapter. Mr. Adcock interjected that he and Dr. Hastings volunteered to work in parallel with ASP's team to ensure a smooth transition and stated he would attend the Fire Marshal inspections. Mr. Horning noted having a community resident observing the home was advantageous to the City and pointed that a condition of the KAEF lease indicated the lease would terminate if ASP lost the use of the special use permit. Mr. Horning claimed Council showed open-mindedness for allowing fraternity or sororities to establish themselves, hoped ASP would not disappoint, and cautioned that the City would not be tolerant if problems arose.

Mr. McDermott agreed with Mr. Horning.

Ms. Hughes asked if the students were tested prior to arrival and Mr. Miller said the students were recommended to test before moving into the property. Ms. Hughes asked if the students were recommended and not required to test and Mr. Miller confirmed. Ms. Hughes asked if there was a reason behind the option and Mr. Adcock thought if students who returned to campus and resided in private apartments were required to test then so was ASP. Ms. Hughes hoped that ASP would require students to test and Mr. Miller said the plan could be amended to require testing and he would follow up with his property manager. Ms. Hughes agreed with Mr. Horning's comments.

Mr. Lawhorn agreed with Mr. Horning's comments and explained the creation of the special use permit to allow the use was a unique action but pointed that the home was historic and located in an area that could not serve as anything but the listed use. He explained the home was isolated by UD properties and was not a concern for residents. He believed the partnering with UD was a mechanism for the City to partner with the Greek Life organizations and was pleased to create a use to save a historic home. He thought there were enough controls in place to prevent unruly behavior.

Mr. Hamilton appreciated the measures put into place and agreed with Mr. Horning's comments. He explained the home was in his district and many constituents were concerned so the fraternity had an opportunity to prove itself. He welcomed ASP and hoped for the best outcome.

Dr. Bancroft agreed with previous Council comments.

Mr. Clifton agreed that the plan was reasonable and planned to welcome ASP to the community if the special use permit passed.

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

Mr. Clifton reminded Council that the vote was on a special use permit and required an individual vote stating reasons.

Mr. Horning interjected and asked if it was appropriate to add conditions. Mr. Clifton confirmed. Mr. Horning pointed to page 3 of the Departmental Report and suggested if ASP fraternity vacated the premises at 19 Amstel Avenue for any reason, and the property management company of CLVEN wished to lease to a different fraternity or sorority at 19 Amstel, the fraternity or sorority must apply for a new special use permit, furthermore, if the Alpha Sigma Phi Fraternity wishes to relocate or expand to a different property, the Alpha Sigma Phi Fraternity must apply for a new special use permit. Mr. Horning asked if the suggestion was acceptable to the applicant and Mr. Miller confirmed. Mr. Adcock thought the second half was relevant but understood CLVEN was Alpha Sigma Phi. Mr. Miller replied that CLVEN National House Corporation was Alpha Sigma Phi's national house corporation and was solely committed to the ASP entity. Mr. Horning asked if there was an issue with the conditions as read and Mr. Adcock confirmed. Mr. Bilodeau asked Mr. Horning if he wanted to add a condition that required all residents to get tested and Mr. Horning confirmed. Mr. Horning asked the applicants if they were willing to undergo UD's testing protocol for on-campus students if the Governor's State of Emergency Order lasted. Mr. Miller confirmed that ASP was willing to add the condition to the Property COVID Plan.

Mr. Clifton asked Mr. Horning to restate the amendment.

Mr. Horning repeated as a condition of the special use permit, that if Alpha Sigma Phi Fraternity vacates the premises at 19 Amstel Avenue for any reason, and the property management company of CLVEN wished to lease to a different fraternity or sorority at 19 Amstel, the fraternity or sorority must apply for a new special use permit, furthermore, if the Alpha Sigma Phi Fraternity wishes to relocate or expand to a different property, the Alpha Sigma Phi Fraternity must apply for a new special use permit.

Ms. Bensley told Mr. Horning the amendment he read into the record was already in the Departmental Conditions in the Planning and Development Report and he needed a motion to approve the special use permit with the conditions in the August 17th Planning and Development Report. She informed him additional language for COVID tested needed to be added. Mr. Clifton asked Mr. Horning if he withdrew his motion and Mr. Horning confirmed.

MOTION BY MR. HORNING, SECONDED BY MR. LAWHORN: THAT COUNCIL AMEND THE SPECIAL USE PERMIT TO INCLUDE A CONDITION THAT THE APPLICANT FOLLOW THE UNIVERSITY OF DELAWARE COVID TESTING PROTOCOL FOR ON-CAMPUS HOUSING OF STUDENTS.

MOTION PASSED. VOTE: 7 to 0.

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

MOTION BY MR. HORNING, SECONDED BY MR. HAMILTON: THAT COUNCIL APPROVE THE SPECIAL USE PERMIT FOR THE ALPHA SIGMA PHI FRATERNITY TO OPERATE AND RESIDE AT 19 AMSTEL AVENUE, WITH THE CONDITIONS UNDER DEPARTMENT COMMENTS IN THE AUGUST 17, 2020, MEMO FOR THE REASONS THAT IT DOES 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; WOULD NOT 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 WAS NOT IN CONFLICT WITH THE PURPOSES OF THE COMPREHENSIVE DEVELOPMENT PLAN OF THE CITY.

Mr. Hamilton supported the motion because it was not injurious to any properties around the property and for the reasons included in the Planning Department's Report.

Mr. Horning, Ms. Hughes, and Dr. Bancroft supported the application for the reasons stated by Mr. Hamilton.

Mr. Lawhorn supported the motion for the reasons stated by Mr. Hamilton and because the proposed special use permit would not conflict with the purposes of the Comprehensive Development Plan V.

Mr. McDermott and Mr. Clifton supported the motion for the reasons stated by Mr. Hamilton.

MOTION PASSED. VOTE: 7 to 0.

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

Mr. Clifton reminded that Deputy Mayor Horning would run the next Council meeting on August 31, 2020.

23. Meeting adjourned at 11:55 p.m.

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

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