

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

June 14, 2021

Those present at 6:00 p.m.:

Presiding: Mayor Jerry Clifton
District 2, Sharon Hughes (arrived at 6:17 p.m.)
District 3, Jay Bancroft
District 4, Dwendolyn Creecy
District 5, Jason Lawhorn
District 6, Travis McDermott

Absent: District 1 Councilperson

Staff Members: City Manager Tom Coleman
City Secretary Renee Bensley
City Solicitor Paul Bilodeau
Chief Communications Officer Jayme Gravell
Chief Purchasing and Personnel Officer Jeff Martindale
Finance Director David Del Grande
IT Infrastructure Manager James Reazor
Parks and Recreation Director Joe Spadafino
Planning and Development Director Mary Ellen Gray
Parking Manager Marvin Howard
Parking Supervisor Courtney Mulvanity
Planner II Michael Fortner
Planner II Tom Fruehstorfer
Public Works and Water Resources Deputy Director Ethan Robinson

1. Mr. Clifton called the meeting to order at 6:00 p.m.
2. **EXECUTIVE SESSION**
 - A. Executive Session pursuant to 29 *Del. C.* §10004 (b) (2) for the purposes of preliminary discussions on site acquisitions for any publicly funded capital improvements.
 - B. Executive Session pursuant to 29 *Del. C.* §10004 (b) (4) and (6) for the purposes of strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to pending or potential litigation, but only when an open meeting would have an adverse effect on the litigation position of the public body and discussion of the content of documents, excluded from the definition of “public record” in § 10002 of this title where such discussion may disclose the contents of such documents.

MOTION BY MR. MCDERMOTT, SECONDED BY MR. LAWHORN: THAT COUNCIL ENTER INTO EXECUTIVE SESSION.

MOTION PASSED. VOTE 5 to 0.

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

3. **RETURN TO PUBLIC SESSION**
 - A. Potential vote regarding direction to the City Manager.

Council exited Executive Session at 7:00 p.m.

MOTION BY MR. LAWHORN, SECONDED BY MR. MCDERMOTT: TO DIRECT THE CITY MANAGER TO ENTER INTO NEGOTIATIONS FOR A POTENTIAL REAL ESTATE PURCHASE USING THE GUIDELINES AS DISCUSSED IN EXECUTIVE SESSION.

MOTION PASSED. VOTE 6 to 0.

Aye – McDermott, Lawhorn, Creecy, Bancroft, Hughes, Clifton.
Nay – 0.

4. SILENT MEDITATION & PLEDGE OF ALLEGIANCE

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

MOTION BY MR. MCDERMOTT, SECONDED BY DR. BANCROFT: TO ADD TO THE APPROVAL OF THE CONSENT AGENDA ITEM 2N, RECOMMENDATION TO AMEND THE 2021-2025 CAPITAL IMPROVEMENT PROGRAM AND WAIVE THE BID PROCESS IN ACCORDANCE WITH THE CODE OF THE CITY OF NEWARK FOR THE PURCHASE OF COUNCIL CHAMBER AUDIO VIDEO UPGRADES TO ALLOW HYBRID IN-PERSON AND VIRTUAL MEETINGS.

MOTION PASSED. VOTE 6 to 0.

Aye – Hughes, Bancroft, Creecy, Lawhorn, McDermott, Clifton.
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):

7:02

Caitlin Olsen, UD Administration, thanked staff for assisting UD with the remaining weeks of the semester, especially the Public Works team, who helped with *UDon't Need It* and the Newark Police for assisting with all of the large events in town. She revealed that the University was short color guard for a few of the ceremonies and Mr. Clifton helped to get the events covered. She wished all a great summer.

Mr. Clifton appreciated the thanks and informed that day was the 246th birthday of the U.S. Army.

There were no questions from Council.

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

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

8:40

Mr. Coleman informed Council that staff was investigating Treasury guidance for ARPA funds and results were a little tighter than initially anticipated. Staff wanted to ensure full understanding before returning to Council for discussion.

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

9:05

Mr. McDermott:

- Asked if the incentives for new businesses on Main Street would be impacted by the ARPA funding. Mr. Coleman confirmed and explained that ARPA funding could only be used to reimburse businesses for money lost due to COVID and could not be used for economic development. He stated that

there was a potential opportunity to use some of the funding the City was giving itself for revenue replacement for that purpose, but staff was still trying to determine what was considered acceptable use.

Mr. Lawhorn:

- Was interested in what was allowed with the ARPA funds.

Dr. Bancroft:

- Hoped that residents were staying up on the COVID vaccine.
- Was pleased that the 100% Renewable Energy Credits was moving forward and urged residents to do their part in reducing fossil fuels.
- Thanked staff for investigating ARPA funding.

Mr. Coleman revealed that over 1,300 people enrolled in the 100% Renewable Plan already.

Ms. Hughes:

- Was pleased with the enrollment turnout.

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

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

- A. Approval of Council Meeting Minutes – May 17, 2021
- B. Approval of Council Meeting Minutes – May 24, 2021
- C. Approval of Council Special Meeting Minutes – June 1, 2021
- D. Receipt of Planning Commission Minutes – May 4, 2021
- E. Approval of Polling Place for July 20, 2021 District 1 Special Election
- F. Cancellation of the July 19, 2021 and July 26, 2021 Council Meetings Due to the District 1 Special Election
- G. Resignation of Robyn O’Halloran from the Conservation Advisory Commission
- H. Approval of Recommendation to Waive the Bid Process in Accordance with the Code of the City of Newark for the Purchase of Harris NorthStar’s Automation Platform and ARPA Budget Amendment
- I. Authorization to Spend Funds on College Park Service Road Maintenance
- J. Approval of 2021 American Rescue Plan Act Budget Amendment (ARPA) #1
- K. ***First Reading – Bill 21-16 – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Increasing the Purchasing Thresholds for Council Approval – *Second Reading – June 28, 2021****
- L. ***First Reading – Bill 21-17 – An Ordinance Amending Chapter 13, Finance, Revenue and Taxation, Code of the City of Newark, Delaware, By Increasing the Fees for Lien Certificates – *Second Reading – June 28, 2021****
- M. ***First Reading – Bill 21-18 – An Ordinance Amending the Comprehensive Development Plan by Changing the Designation of Property Located at 1501 Casho Mill Road – *Second Reading – July 12, 2021****
- N. Recommendation to Amend the 2021-2025 Capital Improvement Program and Waive the Bid Process in Accordance with the Code of the City of Newark for the Purchase of Council Chamber Audio Video Upgrades to Allow Hybrid In-Person and Virtual Meetings

14:24

Ms. Bensley read the consent agenda into the record.

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

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

12. 3. **APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS:** None

13. 4. **ITEMS NOT FINISHED AT PREVIOUS MEETING:**

- A. Vote to Reopen the Public Hearing for the Development Application for 141, 143, and 145 East Main Street and 19 Haines Street (***See 4-B and 4-C***) (80 minutes for items 4-A, 4-B and 4-C combined)

17:00

MOTION BY MS. CREECY, SECONDED BY MR. LAWHORN: TO REOPEN THE PUBLIC HEARING FOR THE DEVELOPMENT APPLICATION FOR 141, 143, AND 145 EAST MAIN STREET AND 19 HAINES STREET.

Mr. Clifton noted that based on his years on Council, he believed there was confusion amongst Councilmembers about the criteria for consideration when voting for Site Plan Review. He believed that Council owed it to the citizens and to the applicant, to ensure that the proper criteria was considered on the vote.

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

- 14. 4-B. REQUEST OF NEWARK MAIN STREET ACQUISITION CO. LLC FOR THE MAJOR SUBDIVISION WITH SITE PLAN APPROVAL OF 1.520 ACRES IN ORDER TO DEMOLISH THE EXISTING STRUCTURE AT 19 HAINES STREET AND CONSTRUCT A SIX-STORY MIXED USE BUILDING INCLUDING 17,540 SQUARE FEET OF OFFICE/RETAIL SPACE ON THE FIRST FLOOR AND 80 APARTMENT UNITS ON THE UPPER FLOORS AT THE PROPERTY LOCATED AT 141, 143 AND 145 EAST MAIN STREET AND 19 HAINES STREET (AGREEMENT AND RESOLUTION ATTACHED) (SEE 4-A AND 4-C)**
-

20:01

Mr. Clifton introduced the petitioners, Ms. Scott and Mr. Scali, and reiterated that the discussion was Council's opportunity ask any pertinent questions regarding the plan.

The Mayor opened the table to Council comment.

Mr. McDermott had no additional questions because his questions were answered at the original meeting.

Mr. Lawhorn had no additional questions. He referred to the discussion during the previous review which considered how the economics of project would impact rental prices within the City. He reminded that he presented information over the last three years regarding the supply and demand issue in the City and described how the demand for student housing was high and lacked supply which caused a significant increase in the cost of homeownership, apartment ownership, and rentals in the City. He stated that any addition to the supply played a positive impact towards reducing the student housing creep into residential neighborhoods and turning privately-owned homes into rentals. If the City could fulfil the supply for the demand, the cost of living in the City, if not in the downtown, then on the outskirts and other areas, would be reduced. Mr. Clifton spoke with Mr. Coleman who discovered four houses on Cleveland Avenue that were listed above \$500,000 and one was \$570,000.

Ms. Creecy previously offered a comment regarding the economic impact on low-economic students who wanted to attend UD and who took pride in being Newark residents living close to the University. She was pleased to discover that there was legislation under consideration that would assist students in finding housing through the Kory Thompson Student Fund. She was pleased that her constituents were being heard and she was in agreeance with the fact that there would be added parking and other amenities for the businesses that were located on Main Street.

Dr. Bancroft thanked staff and the Planning Commission for their efforts and admitted the projects were complex with many aspects to consider. He labeled himself "a green, environmental guy", and was not aware of the rental price analysis to which Mr. Lawhorn referred. He investigated and did not discover high rental prices but noted that the retail market for purchasing land was currently in high demand. He cautioned against making great extrapolations but understood Mr. Lawhorn's points regarding the need for student housing.

Ms. Hughes stated that housing became the City's problem to solve when UD got rid of its dormitories. She considered the situation to be a mess that detracted from houses and from Main Street. She noted that Main Street was full of apartments and restaurants and was displeased but would vote yes. She wanted the developers to know that there were too many apartments and thought the amount could be scaled down. She considered the request to be reasonable.

Mr. Clifton stated that he would remain steadfast with his previous standing and understood there were numerous conversations on the various aspects of the project and emphasized that the size of the building was allowable under Code. He shared that patrons of the downtown area consistently commented on parking, or the lack thereof, and noted the project allowed for over 100 parking spaces for visitors to use when frequenting businesses and restaurants. He argued that the project provided a benefit to the City and reminded that parking waivers were frequently discussed, and he believed that if the City was not the recipient of the spaces, the project would have an abundance of parking. He reiterated that the community was benefitting from the project and shared that he met with a couple who resided in Nottingham Green where there was a large student population on one of the streets. He explained that situation was problematic because student lifestyles might not be the same as residents' and resulted in many Police calls. He joined the Police with visiting several houses for loud music complaints and agreed it was part of the college experience but was divergent to what full time residents considered a peaceful neighborhood. He emphasized that the only counteraction was to build newer, nicer, safer apartments to draw students out of the local communities. He referred to the situation at East Park and said that he did not want the same to happen to Nottingham Green, Oaklands, Fairfield, or any other community.

Dr. Bancroft asked if a tie vote would pass and Mr. Clifton replied that a passing vote must be a majority.

Mr. Bilodeau interjected that the vote was to be based upon the distinctiveness and excellence of the site, arrangement, and design of the building. He clarified that the applicant was seeking area variances of front and side setbacks and a 5% density bonus and emphasized that the applicant was not seeking any use variations. He reiterated that Council could consider the following criteria for Site Plan Review: how the project treated common open space, unique treatment of parking facilities, outstanding architectural design, association with the natural environment including landscaping, relationship to neighborhood and community, and energy conservation. He repeated that the criteria needed to be taken into consideration for the vote on Site Plan Approval for the three area variations that the applicant was requesting.

Dr. Bancroft asked for the applicant to review the energy conservation measures of the project.

Alan Hill, Hillcrest Associates, repeated that the applicant would comply with the latest adopted City Code, the amendment to the 2018 International Energy Code, which required a certain amount of points for each aspect of the building. He clarified that the Energy Conservation required that a minimum of 24 points be derived from the building envelope, exterior projections, exterior shades, thermal bridging, and various technical aspects through mechanical and electrical systems. He reiterated that the Conservation and Energy Code adopted by the City was stricter than the previous LEED Requirements. He claimed that the building would be the most energy efficient building in Newark.

Ms. Hughes did not have any questions.

MOTION BY MR. MCDERMOTT, SECONDED BY MR. LAWHORN: THAT COUNCIL APPROVE THE REQUEST OF NEWARK MAIN STREET ACQUISITION CO. LLC FOR THE MAJOR SUBDIVISION WITH SITE PLAN APPROVAL OF 1.520 ACRES IN ORDER TO DEMOLISH THE EXISTING STRUCTURE AT 19 HAINES STREET AND CONSTRUCT A SIX-STORY MIXED USE BUILDING INCLUDING 17,540 SQUARE FEET OF OFFICE/RETAIL SPACE ON THE FIRST FLOOR AND 80 APARTMENT UNITS ON THE UPPER FLOORS AT THE PROPERTY LOCATED AT 141, 143 AND 145 EAST MAIN STREET AND 19 HAINES STREET.

MOTION BY MR. LAWHORN, SECONDED BY MS. CREECY: TO AMEND THE SUBDIVISION AGREEMENT REFERENCE FROM A 52 PARKING SPACE WAIVER TO A 36 SPACE WAIVER.

AMENDMENT MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

Mr. McDermott believed that the Site Plan had distinctiveness and excellence of site arrangement and design because it included a truly unique treatment of the parking facilities, specifically the parking garage. He continued that the project had an outstanding architectural design based upon the design of the parking garage. For those reasons, Mr. McDermott would vote yes.

Mr. Lawhorn would also vote yes for the reasons stated by Mr. McDermott.

Ms. Creecy voted yes in agreeance with the association of the natural environment, grass and tree placement, planning and design, in compliance with City planning, and the legislation of 204.

Dr. Bancroft stated that he had an issue with the amount of open space and hoped that something distinctive was built. He appreciated the applicant's effort and anticipated relationship problems with the neighbor due to issues with open space. He appreciated the energy conservation measures but would vote no.

Ms. Hughes voted yes for the reasons stated by Ms. Creecy.

Mr. Clifton voted yes for the reasons stated by Mr. McDermott.

MOTION PASSED. VOTE: 5 to 1.

Aye – McDermott, Lawhorn, Creecy, Hughes, Clifton.

Nay – Bancroft.

(RESOLUTION NO. 21-K)

15. 4-C. REQUEST OF NEWARK MAIN STREET ACQUISITION CO. LLC FOR A SPECIAL USE PERMIT FOR 80 APARTMENT UNITS IN THE BB DISTRICT AT THE PROPERTY LOCATED AT 141, 143 AND 145 EAST MAIN STREET AND 19 HAINES STREET (SEE 4-A AND 4-B)

41:15

MOTION BY MR. LAWHORN, SECONDED BY MS. CREECY: THAT CITY COUNCIL APPROVE THE REQUEST OF NEWARK MAIN STREET ACQUISITION CO. LLC FOR A SPECIAL USE PERMIT FOR 80 APARTMENT UNITS IN THE BB DISTRICT AT THE PROPERTY LOCATED AT 141, 143 AND 145 EAST MAIN STREET AND 19 HAINES STREET.

Mr. McDermott voted yes to approve the special use permit as it did not affect adversely the health or safety of persons 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; was not 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. Lawhorn and Ms. Creecy voted yes to approve the special use permit for the reasons stated by Mr. McDermott.

Dr. Bancroft believed the project would adversely affect traffic and would cause potential health effects. He hoped that the applicant would install chargers, but claimed there was no significant green space, so he felt the project conflicted with the Comp Plan. He agreed with the Planner's report and deferred to the professionals. He voted no.

Ms. Hughes, and Mr. Clifton voted yes to approve the special use permit for the reasons stated by Mr. McDermott.

MOTION PASSED. VOTE: 5 to 1.

Aye – Clifton, Hughes, Creecy, Lawhorn, McDermott.

Nay – Bancroft.

Mr. Clifton thanked Ms. Scott and Mr. Hill and wished the applicant luck with the project.

Mr. Clifton informed that he spoke with the City Manager and City Secretary regarding issues with recent development projects. He referred to Mr. Lawhorn's comments on the broader conversation regarding the BB and RA zoning districts and requested discussion for a potential moratorium on building in the BB and RA zoning districts. He asked Ms. Bensley for the date of the discussion and Ms. Bensley confirmed that staff was looking to schedule the initial discussion for the June 28th Council meeting. Mr. Clifton confirmed that the discussion would be on the June 28th agenda if there were no objections from Council. Mr. Lawhorn clarified that the request was for discussion and Mr. Clifton confirmed.

16. 5. SPECIAL DEPARTMENT REPORTS:

- A.** Election of Deputy Mayor for the Remainder of the 2021-2022 Council Year (10 minutes)

45:55

MOTION BY MS. CREECY, SECONDED BY MS. HUGHES: TO ELECT COUNCILMAN MCDERMOTT TO THE POSITION OF DEPUTY MAYOR FOR THE REMAINDER OF THE 2021-2022 COUNCIL YEAR.

Ms. Creecy nominated Mr. McDermott as Deputy Mayor. She stated that since she began her time on Council, she found Mr. McDermott to be calm under pressure as well as a clear thinker. She found his serving and training as a Police Officer to be a great benefit and appreciated his even consideration of matters.

Dr. Bancroft requested discussion and put himself forward for Deputy Mayor. Dr. Bancroft felt that he possessed a smooth demeanor, calm disposition, and broader experience in different cities that could offer perspective on City matters. He promised to investigate and keep things moving in City Council. He claimed not to have a problem with Mr. McDermott's nomination.

MOTION PASSED. VOTE: 4 to 1.

Aye – Clifton, Hughes, Creecy, McDermott.

Nay – Bancroft.

Absent – Lawhorn.

17. 5-B. GENERAL ASSEMBLY UPDATE AND ASSOCIATED REQUESTS FOR COUNCIL DIRECTION – LOBBYIST (20 MINUTES)

49:26

Rick Armitage, Armitage DeChene & Associates, informed that a variety of bills had been introduced in Dover the previous week and officials opened the building to allow 25 public members to enter the gallery in each chamber. He reported that seven people entered the Senate Chamber and only two entered the House Chamber to watch proceedings. He continued that Committee hearings were held virtually, and it was still unclear whether officials would open the building to the public again before finishing the session. He informed there was a Delaware Economic and Financial Advisory Council (DEFAC) meeting scheduled for Friday and there were rumors that there would still be money to be found. He noted that the Bond Committee would begin working the following week on Tuesday, Wednesday, and Thursday in the mornings in collaboration with the League.

The lobbyists requested an increase in Municipal Street Aid (MSA) funding from \$7 to \$10 million rather than the current \$6 million suggested by the Governor and were also working with a number of legislators, Department of Natural Resources and Environmental Control (DNREC), the Controller General's Office, and the Office of Management and Budget in changing the epilogue language that would require the City to repay the \$3.4 million appropriated nearly 20 years ago to help purchase the land for the Newark Reservoir. He confirmed that they viewed sample language that day which removed the requirement and was shared with the City's administration as well as with the legislators that affected by the language change. He considered the change a good measure for the City but admitted it was not yet finalized and ensured that the lobbyists would work diligently for its fruition.

Mr. Armitage informed that the lobbyists had conversations for PILOT with the chairs of the Joint Finance Committee (JFC) but there was no date set yet for when the JFC would write the grant-in-aid bill. He shared that the reception by the two chairs to at least appropriate a \$400,000 grant-in-lieu of being included in the PILOT legislation would likely come together for the City. The lobbyists would update with any information. He informed that over the last week, he forwarded 22 different bills of varying initiatives to City staff to discern if they would be of any significant impact to the City. He noted that two major introductions changed some of the FOIA regulations and he received feedback from Ms. Bensley and Mr. Bilodeau. The lobbyists met with the Attorney General's Office and clarified the reasoning behind the wording and would not seek to oppose or request any amendments.

Mr. Armitage continued that HB244 was introduced and he requested Council approval to allow the lobbyists to work with the bill's sponsor to craft an amendment. He explained that the General Assembly investigated the impacts of many of Delaware's existing laws and noted that a person who did not pay their court fines could lose their driver's license. As such, the long-term impact was that the person then had nearly no chance of paying their court fines because they would likely lose their job after losing their transportation. The State was considering various ways to ensure that court fines would be paid without setting defendants up to fail if they lost their license. He received feedback from the City Solicitor and the two Aldermen with the hope to speak the to sponsor. He revealed the bill was in Committee the next day and had been introduced the previous week. He thought it was possible that the bill could move completely through the Legislature before everything was finished. He asked Council that if it truly appeared that a defendant would not have the financial resources to pay fines, the Aldermen had been

offering community service. He also wanted to work with the sponsor so that if a particular defendant with three different strikes did not pay their fines, they would then have their license suspended because it was the only leverage the City's Aldermen had to ensure that fines would be paid. Mr. Bilodeau interjected and confirmed that the suspension of driving privileges was the only leverage that the Court had to ensure fine payment, otherwise, they would remain ignored and unpaid. He explained that the Court issued a capias for arrest for the first missed payment and the defendant lost driving privileges. The Aldermen suggested a compromise of allowing three capiases for failure to pay fines before suspension of driving privileges. Mr. Armitage requested Council direction.

The Mayor opened the table to Council comment.

Dr. Bancroft agreed with amending HB244 to subvert suspending driving privileges so that livelihoods and the ability to pay fines were unimpacted. He supported community service in-lieu-of as a noble way to sidestep the payment issues although he preferred to develop public transport. He added that he wanted Council to consider broadband infrastructure. Mr. Armitage interjected that the lobbyists anticipated a significant statewide investment in broadband with the extra \$1.4 billion after first smoothing the State's budget. He would inform Council of the Bond Committee's actions towards broadband development. Dr. Bancroft asked for an update on HB150, Legalizing Marijuana. Mr. Armitage confirmed the bill was on the previous week's agenda but had been pulled after receiving ten amendments. He did not believe the bill had enough support to pass given the number of amendments. He added that other controversial topics were the minimum wage bill and the training wage bill, and it was difficult to anticipate how they would be sorted out by voting.

Ms. Creecy appreciated that the lobbyists were working towards ways to better the lives of residents and supported three strikes as a way to offer struggling individuals the chance regain their footing. She was disappointed in the lack of support for HB150 because cannabis assisted people with diabetes and cancer and shared that it helped members of her family stay alive longer. She hoped that the bill would return.

Mr. Lawhorn had no comments.

Mr. McDermott asked for clarification on if the three strikes were three strikes per citation or throughout the person's history. Mr. Armitage understood that the three strikes were for the one specific event where the defendant did not pay fines related to the incident. Mr. McDermott asked if it was possible that a person could have three different violations, and not pay for two and still be able to drive on City streets even though they violated the law on three separate occasions and failed on their obligation. Mr. Armitage confirmed that the lobbyists would propose that a person would receive three chances to pay their fines for each individual incident before the Court would suspend their license. Mr. McDermott asked if the original bill suggested that a defendant would never lose their license and Mr. Armitage confirmed. Mr. McDermott supported the amendment.

Mr. Clifton supported the amendment and asked the City Manager to follow up with any concerns.

Mr. Coleman explained that staff wanted to follow up with Senator Poore about the bond bill request for the Reservoir Solar Project. Mr. Armitage confirmed the bill was on the list and deferred to Mr. DeChene. Mr. DeChene spoke briefly with Senator Poore who seemed amenable to support the bill as she received feedback from the City and some of the project stakeholders. He would follow up with the Senator. Mr. Armitage added that the Clean Water Act was likely moving forward and noted that there was enough funding for it to progress, as well as the Community Solar bill, which continued to exempt Newark from some of the restrictions that were put into place for other entities.

There were no further questions. Mr. Armitage thanked Council.

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

- 18. 6. **FINANCIAL STATEMENT:** None
- 19. 7. **RECOMMENDATIONS ON CONTRACTS & BIDS OVER \$75,000:** None
- 20. 8. **ORDINANCES FOR SECOND READING & PUBLIC HEARING:**
 - A. **BILL 21-02** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Removing Council Meeting Overtime Exemptions For

the City Secretary and Planning and Development Director (15 Minutes)
(Postponed From the February 8, 2021 Council Meeting By Request of Council)

1:06:30

Ms. Bensley read the ordinance into the record.

MOTION BY MR. MCDERMOTT, SECONDED BY MS. CREECY: FOR SECOND READING AND PUBLIC HEARING.

Mr. Coleman reminded that that ordinance was originally presented in February and postponed. The ordinance, as proposed, would eliminate the Deputy City Manager position reference because it no longer existed, and proposed to eliminate the exemption for the City Secretary and the Planning and Development Director. He explained that the City Secretary, Planning and Development Director, and City Manager were the only positions that were not compensated for hours at Council meetings. He noted that he was not at the City when the prior ordinances were entered in Code and assumed that at the time, the City Secretary and Planning and Development Director were the staff positions that primarily attended Council meetings. He noted that over the last ten years, meeting attendance changed considerably. He stated that the Finance Director regularly attended every meeting and many other positions regularly attended Council meetings and received compensation. He revealed that he was not compensated because he was a contracted, salaried employee. Staff proposed to bring the positions in line with the other management positions that received overtime or comp time for time spent at Council meetings and added that when the rule was written, staff likely spent considerably less time in Council meetings than now as they were now more frequent and lasted longer. He informed that there was a fiscal impact, as indicated in the memo, and stated that the City Secretary would be eligible for an additional six hours of overtime or comp time per month, assuming two three-hour meetings, and the Planning and Development Director would be eligible for an additional eight hours of overtime or comp time per month, assuming two three-hour Council meetings and one two-hour Planning Commission meeting. He continued that the dollar fiscal amount assumed that the time would be taken as overtime but realistically, some would be used as comp time or flexed throughout the week, assuming that the staff member had time that could be flexed during the same pay period.

The Mayor opened the table to Council comments.

Mr. McDermott had no questions.

Mr. Lawhorn was unavailable.

Ms. Creecy had no questions.

Dr. Bancroft asked how strong the incentive was for staff who regularly attended Council meetings to amend their schedules to come in late on Monday or leave early on Friday or use comp time. He supported overtime if the employee was busy. Mr. Coleman replied that Dr. Bancroft's suggestion was the City's current practice and confirmed that staff was encouraged to use flex time whenever possible during the week. He explained that the more recent issue was that there was not enough time for employees to flex and most were already working overtime, not including Council meetings. He confirmed that it was occasionally possible to flex the time and it was easier with some positions than others but the City Secretary, the Planning Director, Public Works Director, and the Finance Director were already putting in more hours throughout the week and it was not realistic to use flex time. Dr. Bancroft thought the ordinance was fair and sensible.

Ms. Hughes was unable to comment.

Mr. Clifton referred to Ms. Bensley and Ms. Gray and asked Mr. Bilodeau how he viewed the situation from the lens of unequal treatment under law when other directors received overtime for attending the meetings. Mr. Bilodeau was unaware of any legitimate reason why the City Secretary and Planning Director were treated differently than other department heads. He believed that they should be treated the same and he revealed that he would not want to defend any litigation challenging unequal treatment; he did not see a legitimate reason for treating the positions differently. He noted that the meeting started with six Councilmembers and the ordinance required four positive votes to pass. Mr. Clifton thanked Mr. Bilodeau for the clarification.

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

Dr. Bancroft assumed that the original intent to preclude the positions from overtime was not based on gender and supported the measure.

Mr. Clifton agreed that the previous meetings were likely shorter, and the Council dynamic was different.

MOTION BY MS. CREECY, SECONDED BY DR. BANCROFT: THAT CITY COUNCIL ADOPT BILL 21-02 AS PRESENTED.

MOTION PASSED. VOTE: 5 to 0.

Aye – McDermott, Creecy, Bancroft, Hughes, Clifton.

Nay – 0.

Absent – Lawhorn.

(ORDINANCE NO. 21-17)

21. 8-B. BILL 21-15 – AN ORDINANCE AMENDING CHAPTER 32, ZONING, CODE OF THE CITY OF NEWARK, DELAWARE, TO REVISE BUILDING SETBACK LINES IN THE BB (CENTRAL BUSINESS DISTRICT) ZONING DISTRICT (15 MINUTES)

1:16:30

Ms. Bensley read the ordinance into the record.

MOTION BY DR. BANCROFT, SECONDED BY MR. MCDERMOTT: FOR SECOND READING AND PUBLIC HEARING.

Ms. Gray presented the proposed amendment to Chapter 32, Section 32-18(b)(5), to revise building setback lines in the BB zoning district. She explained that the Zoning Code in the BB zoning district stated “Except as specified in Article XVI, Section 32-56.2(d)(1), (2) no setback is required for all structures for three stories or 35 feet in height or less. A 20-foot setback shall be required for all buildings above three stories or 35 feet in height, subject to the provisions Article XXV.” Since Ms. Gray joined the City as Planning Director, the Planning staff interpreted the 20-foot setback requirement as referring only to the portion of the building above 35 feet in height, and not to any portion at or below 35 feet in height. The interpretation allowed a wedding cake effect for buildings whereby the first three stories had no setback and usually aligned with adjacent buildings, and all additional stories were stepped back 20 feet. The interpretation was applied to the first plan approved for the Green Mansion by Council on March 25, 2019, as well as the recommended approval for 141 East Main Street presented to the Planning Commission in December 2020. As the result of a challenge to the interpretation, Planning staff initiated a review of the section with the City Solicitor and, while recognizing the ambiguity of the Code based on the definitions of “setback” and “building” in Section 32-4, Mr. Bilodeau concluded that the 20 foot setback applied to the entire structure of the building, not just portions over three stories or 35 feet in height.

Ms. Gray continued that staff was concerned that the effect of the revised interpretation could encourage a massing effect of tall buildings along the streetscape and recommended revising the BB Code to allow for the option of creating a “wedding cake” effect on the streetscape. The proposed change also incorporated the average setback requirement in Section 32-65.2(d)(1)(b), which currently only applied to buildings less than 35 feet or three stories. Planning staff proposed to revise the section to clarify that portions of the building with height below 35 feet and/or three stories should have a 0 foot setback or the average setback of existing buildings within 200 feet of the side lot lines and within the same block front and zoning district (whichever was greater) and portions of buildings above 35 feet and/or three stories should have a 20 foot setback requirement. She stated that the Planning and Development Department suggested that the Planning Commission recommend approval of the proposed amendment, and the Planning Commission voted 5-2 to recommend approval at the April 6, 2021 meeting. Upon reviewing the proposed language, Mr. Coleman suggested that the revised language be clarified from the Planning Commission language and was reflected in the proposed Bill 21-15 as written by the City Solicitor.

The Mayor opened the table to Council comment.

Mr. McDermott had no questions.

Ms. Creecy asked if the setback was already in place, amended, and the proposed ordinance would add permanence to the planning development. Mr. Clifton asked if she was referencing 141 [East Main Street] and Ms. Creecy confirmed. Ms. Gray replied that the current language indicated that all structures that exceeded three stories required a 20-foot setback and the developers at 141 [East Main Street] requested and received a variance from the requirement.

Mr. Lawhorn had no questions.

Dr. Bancroft asked if the proposed ordinance would allow for development closer to the street or to match the next building. He was confused on the difference and asked that if a building was within 200 feet and was granted in at 10 feet, the new development could build up to that point under 35 feet. Mr. Coleman replied that the setback for buildings three stories or lower in BB was 0 feet so, using the 141 [East Main Street] project as an example, the existing Starbucks building was closer than the proposed setback. He explained that when the developers proposed making the building taller, existing regulations required that the front part of Starbucks and Duck Donuts be demolished and moved back because the entire building would have had a 25-foot setback versus the closer setback tied to the original shorter height. He explained that the ordinance proposed that all of the buildings would be consistently setback from the street and, if a building was taller, the taller portion that exceeded three stories would be set back 25 feet for the wedding cake effect. He continued that current Code indicated that as soon as the building exceeded three stories, the entire building must be set back 25 feet which disincentivized the wedding cake setback. Instead of having a lower building with consistent setback down the road frontage, there could be a sawtooth pattern, a desirable design principle in urban environments which generally called for consistent setbacks at street level for the pedestrian interface with buildings. Dr. Bancroft appreciated the wedding cake effect and thought it would be nice to push new large developments off of the street even more. Ms. Gray thanked Mr. Coleman for his summary and illustration.

Ms. Hughes asked if the proposal was for three stories and Ms. Gray confirmed that the ordinance was for buildings that exceed three stories. Ms. Hughes asked Ms. Gray to repeat the proposal and she did so. Mr. Coleman clarified that the proposed language for buildings three stories or lower was the same as it was now with the difference that under the current language, when the building exceeded 35 feet then the whole building was setback, inclusive of the first three floors. He referred to 141 again and explained that as soon as Starbucks was four stories tall, the first 15 feet of the building had to be demolished because the first floor could no longer be close to the street and the whole building was pushed back. The result would be a sheer-faced building 20 feet back instead of a wedding cake building that was closer for the first floors but and stepped back for the higher floors. Ms. Hughes asked if the rule was for all buildings and Ms. Gray confirmed all buildings for the front setback and repeated Mr. Coleman's statement regarding current setback language. Mr. Coleman added that the ordinance was specific to the BB zoning district.

Mr. Lawhorn explained that the distinction was important for Code because the BB district was essentially Main Street and the City frequently discussed wanting a certain atmosphere that was more quaint or smaller in height while also having the desire and need for more downtown density. He noted that it was necessary to balance the supply and demand curve and Committee and Subcommittee data indicated that residents wanted the density in the downtown. He felt that one tool to maintain Main Street's "small town feel" was to have the three stories upfront and then use the setback for height and density for the appearance of a smaller town feel while still allowing the City to develop up. He noted that Kate's Place was a good example because, as one drove down Main Street, the building looked to be two or three stories tall while it was actually much higher with the setback. He reiterated that the building gave the illusion of small town but met some of the City's goals with density and improving the supply and demand curve which would hopefully reduce the cost of home and apartment ownership in the City.

Ms. Creecy thanked Mr. Lawhorn for the clarification.

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

MOTION BY MR. MCDERMOTT, SECONDED BY MR. LAWHORN: THAT CITY COUNCIL APPROVE THE PROPOSED AMENDMENT TO CHAPTER 32-18(D)(5) AND SECTION 32-56.2(D)(1)(B) AS DESCRIBED IN BILL 21-05.

MOTION PASSED. VOTE: 5 TO 0.

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

Nay – 0.

Absent – Hughes.

(ORDINANCE NO. 21-18)

Mr. Clifton shared that he would not be in attendance of the Council meeting on June 21st but would be back for the meeting on the 28th.

22. 9. RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING AND DEVELOPMENT DEPARTMENT: None
23. Meeting adjourned at 8:33 p.m.

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

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