

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**MARCH 28, 2022**

Those present at 6:31 p.m.:

Presiding: Mayor Jerry Clifton  
District 1, John Suchanec  
District 3, Jay Bancroft  
District 4, Dwendolyn Creecy  
District 5, Jason Lawhorn  
Deputy Mayor, District 6, Travis McDermott

Absent: District 2, Corinth Ford

Staff Members: City Manager Tom Coleman  
City Secretary Tara Schiano  
City Solicitor Paul Bilodeau  
Deputy Planning Director Renee Bensley  
Finance Director David Del Grande  
Deputy City Secretary Nichol Scheld  
Planner I Josh Solge  
Planner II Tom Fruehstorfer  
Deputy Chief of Police Kevin Feeney  
Chief Purchasing & Personnel Officer Jeff Martindale  
Director of Public Works and Water Resources Tim Filasky  
Chief Human Resources Officer Devan Hardin  
Clerk of the Court Terri Conover  
Planner II Michael Fortner

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1. Mr. Clifton called the meeting to order at 6:31 p.m.

2. **EXECUTIVE SESSION**

A. Executive Session pursuant to 29 *Del. C.* §10004 (b) (4) and (6) for the purpose of strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to pending or potential litigation, but only when an open meeting would have an adverse effect on the litigation position of the public body and 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. LAWHORN, SECONDED BY MS. CREECY: THAT COUNCIL ENTER EXECUTIVE SESSION PURSUANT TO 29 *DEL. C.* §10004 (B) (4) AND (6) FOR THE PURPOSE OF STRATEGY SESSIONS, INCLUDING THOSE INVOLVING LEGAL ADVICE OR OPINION FROM AN ATTORNEY-AT-LAW, WITH RESPECT TO PENDING OR POTENTIAL LITIGATION, BUT ONLY WHEN AN OPEN MEETING WOULD HAVE AN ADVERSE EFFECT ON THE LITIGATION POSITION OF THE PUBLIC BODY AND DISCUSSION OF THE CONTENT OF DOCUMENTS, EXCLUDED FROM THE DEFINITION OF “PUBLIC RECORD” IN § 10002 OF THIS TITLE WHERE SUCH DISCUSSION MAY DISCLOSE THE CONTENTS OF SUCH DOCUMENTS.

MOTION PASSED. VOTE 5 TO 0.

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

Nay – 0.

Absent – Ford, Bancroft.

3. **RETURN TO PUBLIC SESSION**

Council exited Executive Session at 7:14 p.m. No further action was taken.

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

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

Mr. Clifton explained the procedures for the hybrid Microsoft Teams Meeting 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 to offer their comments. If a Councilmember had additional comments to add later, they should signal the Chair to be recognized again after all members had the opportunity to speak. If members of the public wanted to offer comment and were attending in person, they should sign the sign-in sheet near the entrance to the Council Chamber to be called on to speak at the appropriate time. Members of the public attending virtually should use the hand-raising function in Microsoft Teams to signal the meeting organizer that they would like to speak or message the meeting organizer through the chat function with name, address or district, and the agenda item on which they would like to comment. He stated that all lines would be muted until individuals were called to speak, at that point, the speakers’ microphone would be enabled, and they would need to unmute themselves in order to comment. He emphasized that public comments were limited to five minutes per person and all speakers were required to identify themselves prior to speaking. Comments in Microsoft Teams chat would not be considered part of the public record for the meeting unless they were read into the record as part of the public comment. He asked that all attendees keep cameras off until called on 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):

**4:38**

Caitlin Olsen, UD Administration, reported that students were on spring break and would return the following week. She confirmed that UD staff would investigate current COVID positivity numbers and reevaluate COVID restrictions on campus. She revealed that UD had not totally lifted its indoor mask mandate and she would report any changes after the spring break numbers were reviewed. She informed that commencement was scheduled at 9 am on Saturday, May 28<sup>th</sup> at Delaware Stadium and the college-based convocation ceremonies would start on Thursday, May 26<sup>th</sup>, and would last through Saturday; she already alerted Newark Police. She noted that UD would host high school graduations again and asked that she be contacted to connect people with the proper staff in athletics.

Ms. Olsen thanked Mr. Clifton for shepherding the City through the last few years and for partnering with the University. She appreciated his efforts on behalf of the City and University. She hoped that he would enjoy his time off.

Ms. Creecy asked for more details on the mask mandate. Ms. Olsen explained that no masks were required outdoors if students could separate, and UD used to require vaccinations or testing for visitors on campus. She did not think that teachers were required to wear masks at the podium as long as they were distanced; staff preferred that people wore masks if they were close together.

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

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

**7:36**

Mr. Coleman thanked UD for changing their mask policy which allowed them to allow the City to host the Memorial Day Parade on the Green on May 15<sup>th</sup> and the 4<sup>th</sup> of July Fireworks at the Athletic Complex. He asked Council give direction on whether the City should offer free parking on Saturday, April 16<sup>th</sup>, between Good Friday and Easter. He noted that the City did not provide free parking last year but admitted the parking numbers were down. He continued that in a normal year, on a normal Saturday when students were in session, the City made around \$5,500 on Saturdays.

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

**8:50**

**Dr. Bancroft:**

- Had no opinion on free parking
- Appreciated staff’s efforts on the Charrette

**Ms. Creecy:**

- Supported free parking on April 16<sup>th</sup> to boost business

**Mr. Lawhorn:**

- Agreed it was sensible to provide free parking over Easter weekend and would not argue if the majority of Council was in favor
- Thanked Mr. Clifton for his two decades of service to the City and for providing assistance during Mr. Lawhorn's first days on Council. He wished Mr. Clifton well in all of his future endeavors.
- Suggested that the agenda be adjusted, and Council hear items 8C and 9A after the Consent Agenda to allow community members the opportunity to leave earlier. Mr. Clifton confirmed that the request had been customary for Council to move agenda items forward if the bulk of the public attendance was present for a particular topic.

MOTION BY MR. LAWHORN, SECONDED BY MR. MCDERMOTT: THAT COUNCIL MOVE AGENDA ITEMS 8C AND 9A TO DIRECTLY FOLLOW THE CONSENT AGENDA.

MOTION PASSED. VOTE 6 TO 0.

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

Nay – 0.

Absent – Ford.

**Mr. McDermott:**

- Supported free parking
- Thanked Mr. Clifton for being a mentor and doubted he would have served on Council were it not for Mr. Clifton's leadership and encouragement. He also thanked Mr. Clifton for his 22 years of service to the City.

**Mr. Suchanec:**

- Supported free parking and thought it would be less confusing for the public over the weekend
- Described his experiences with Mr. Clifton as useful and favorable.

Ms. Creecy interjected and noted how her relationship with Mr. Clifton had grown. She appreciated that he looked past her race and encouraged her to run for Council.

Mr. Clifton admitted the moment was bittersweet and other than his family and children, his service to the residents of the City had been his greatest honor. He explained that he served 22 years from 1997 because he had taken a three-year hiatus for an eye surgery and one of his deciding factors to not seek reelection was the fact that the City was in excellent hands with Mr. Coleman, Ms. Bensley, and Ms. Schiano, and all of Council. He admitted that there had been disagreements but that it was usual among any family. He emphasized that the public needed to understand the selfless service that every person sitting at the dais gave to the City. He revealed that Council's paystubs were based on a 40-hour work week and his salary came out to \$3.30 an hour. He said that he was amazed at the amount of work that current and previous Council had poured into their duties and revealed that the Councilmembers devoted their heart and souls into making Newark a better place. He was even more gratified by the fact that Council succeeded and even if he did not agree with a vote, he understood that Council voted with their hearts and minds for the right reasons; there had never been any subversive, behind-the-scenes issues, the question had always been if the decisions were the best for the City. He considered himself blessed to have worked with each and every person and with previous Council. He labeled the Department Directors, managers, and staff as incredible for always showing up, especially throughout the difficult pandemic and said the City did not skip a beat because of the leadership provided by Council, Mr. Coleman, and the directors. He believed Newark fared better than any town in the State.

Mr. Clifton participated in a walk-out ceremony for a retired officer earlier in the day and said it was impossible to serve in the Police Department, military, or in public service without incredibly supportive family. He said, "I can't say enough good things about my wife. She stuck through this and has always been encouraging to me, she's always backed me on what I wanted to do, and she knows that even when I was waffling back and forth... I kind of got the message one Sunday afternoon that I should do this, and I'll leave it at that. But she's always been there, my kids have always been there for me, and in support of it all. I don't know what the next adventure is going to be, I'm sure there'll probably be one, hopefully I have a few more years to pursue some other goals and so forth, and I hope to do that. Rest assured that the City, our employees, and our Councilmembers, particularly the people that have allowed

me to do this - the citizens of Newark - will always be in my heart forever. I thank you for every moment of it, thank you very much.”

**Dr. Bancroft:**

- Shared that he participated in a water tour over the weekend and reported that the City would be able to filter chemicals from the water supply as a superfund site.
- Thanked Mr. Clifton and noted the respect that others had for him.

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

**21:32**

Dave Vispi, Senior Mechanic, thanked Mayor Clifton for his service and shared that he and Mr. Clifton went back to the 1970's when they both started in the automotive industry and began their service to the City around the same time. He explained that Fleet Operations performed most of its work behind the scenes and credited Mr. Clifton's constant support of the maintenance garage and quick recognition of the shop staff's hard work. He thanked Mr. Clifton for his support and service. He said that Mr. Clifton would be missed.

Dr. Helga Huntley, District 1, wanted to offer comment on item 2D of the Consent Agenda. She stated that she had also submitted written comments requesting that the item be pulled from the Consent Agenda. She explained that 2D was the Efficiency Smart Program, to which Newark subscribed through its relationship with Delaware Municipal Electric Corporation (DEMEC). She wanted the item to be pulled in order to allow a full conversation on City Council that would take into consideration the recommendation made by the Conservation Advisory Commission (CAC) to opt for the high-performance version of the program. She explained that she represented District 1 on the CAC and the group discussed the program during two meetings and met with two representatives: one from DEMEC and one who ran the Efficiency Smart Program. She continued that the representatives thoroughly convinced the CAC that the program had been very successful in the past; Newark participated in the program's basic option and had surpassed its targets for energy savings which were then reflected in monetary savings. She explained that the CAC was convinced to opt for the higher savings, both in terms of energy and money, even though an upfront monetary investment was required, because measures needed to be taken towards energy efficiency and savings: climate change was a serious issue that needed to be addressed quickly and saving energy was an easy way to tackle the City's contributions to climate change. She continued that the guaranteed performance of the high-performance option resulted in savings that far exceeded the initial investment and had a return on investment (ROI) of two years. After two years, the City would have saved more money through the program than it invested upfront. She reminded that the program was in line with Goal 3.2 in the Sustainability Plan and the CAC hoped that Council would take all of the factors into consideration and hold a discussion. She thanked Council for the opportunity to speak.

Chris Locke, District 1, stated that George Washington once said, "Every post is honorable in which a person can serve his country." Mr. Locke was present that evening to thank Mr. Clifton for his service to the City and Country as a National Guardsman, Councilmember, and Mayor. He believed that spending 22 years on the dais was a testament of Mr. Clifton's fortitude. He admitted that he and Mr. Clifton had not always agreed on everything and had spirited discussions in the past but pointed that they could always speak honestly to one another knowing that their friendship and mutual respect was paramount. He would always be indebted to Mr. Clifton for providing personal guidance for Sean's House; he greatly appreciated all that Mr. Clifton did for the Locke family. He considered the City to be better off due to Mr. Clifton's service. He thanked the Mayor on behalf of the City.

Dr. John Morgan, District 1, first met Mr. Clifton in 1997 at a restaurant and began discussing various issues. He appreciated that even though Mr. Clifton's district was on the opposite side of town as his own, Mr. Clifton took interest in issues across the whole City. He credited Mr. Clifton for doing a great job of representing the City as a whole.

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

- A.** Approval of Council Meeting Minutes – March 7, 2022
- B.** Approval of Council Meeting Minutes – March 14, 2022
- C.** Receipt of Alderman's Report – March 7, 2022
- D.** Renewal of the Efficiency Smart Program through March 31, 2025

**28:17**

MOTION BY MR. SUCHANEC, SECONDED BY DR. BANCROFT: THAT COUNCIL REMOVED ITEM 2D FROM THE CONSENT AGENDA TO ALLOW FOR A SEPARATE CONVERSATION.

MOTION PASSED. VOTE 6 TO 0.

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

Mr. Clifton asked Mr. Bilodeau if Council should vote on the balance of the Consent Agenda before proceeding. Mr. Bilodeau confirmed.

Ms. Schiano read the consent agenda into the record.

MOTION BY MR. MCDERMOTT, SECONDED BY MS. CREECY: TO APPROVE THE CONSENT AGENDA AS AMENDED.

Mr. Suchanec noted an editorial change in the minutes where 600 residents took two trees. He maintained that 60 residents took two trees.

*(Secretary's note: Review of the recording showed that Mr. Suchanec did say "600". Staff made the necessary edit before publishing the minutes.)*

MOTION PASSED. VOTE: 6 to 0.

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

Mr. Clifton opened the discussion for 2D, and Mr. Bilodeau suggested that Mr. Del Grande first present staff's memo. Mr. Del Grande revealed that the City began the Efficiency Smart program three years prior and the City's rate for the program was paid through its wholesale rate to DEMEC. He admitted that ongoing participation would not change anything for the City, but staff was not seeking to upgrade to the higher-level contract because although there would be savings, the savings would not necessarily come directly back to the City. Rather, the savings would go back to DEMEC to be allocated to the DEMEC memberships based on wholesale rate billing. He continued that the DEMEC Board of Directors proposed to move to a time of use (TOU) rate from which the City would benefit. Once the City built the TOU rates into its own rates, there would be a 1:1 relationship using the enhanced package versus the basic package. He revealed that the program would cost the City an additional \$600,000 over three years and staff felt that based on the way that City customers were billed and the way that DEMEC billed the City that the savings would not be realized by the City in the way that staff preferred until TOU rates were set up by DEMEC and then by the City.

Ms. Creecy asked if Mr. Del Grande was stating that if the City went with the enhanced program, then the City would not benefit directly and whatever savings incurred would return to DEMEC. Mr. Del Grande clarified that all DEMEC members paid for a basic level of service and if the members opted for anything higher than the basic plan, the municipality was responsible for paying the differential itself. He confirmed that the savings generated from the program would not be directly realized by the City until DEMEC changed its billing policy with its members. Mr. Coleman explained that the basic package allowed the City to save kilowatt hours which was what City customers were billed on and what the City was billed on by DEMEC. The enhanced package was geared towards the demand side which was the peak number of kilowatts needed at any given time; the goal was to lower the peak demand. He continued that wholesale electric purchases were far more complicated than the retail side and the City paid a multitude of components including capacity and transmission, which were based on peak demand and were the two costs that were most increasing until the recent hike in gas prices. He pointed that the enhanced package would save DEMEC money at the wholesale level on capacity and transmission charges which were not billed to the City and wrapped into the wholesale rate. DEMEC took the average of the total capacity and transmission for the year, divided it by the kilowatt hours projected for sale, and distributed the number amongst the members. He explained that if Newark lowered its capacity charges, it lowered all of the bills in DEMEC, not just Newark. The enhanced program was based on municipality participation so if the City was the only participant, it would only receive a third of the savings generated because the savings would be distributed among all members.

Ms. Creecy asked what the City was currently saving. Mr. Coleman replied that the basic program was 1:1 and the City saved kilowatt hours so the wholesale bill decreased which decreased everything proportionally. If the City moved to TOU rates, its bill from DEMEC would be for demand and kilowatt hours. At that time, if the City reduced its rates, it would be a 1:1 reduction in its wholesale bill. Mr. Del Grande interjected that the City was about 40% of all DEMEC membership so the City would only receive

a 40% return over the next three years on \$600,000 until DEMEC changed its billing to allow the City to receive full credit. Mr. Coleman noted that if the request had been received a few years ago when wholesale rates were trending down then he would be less concerned, but the City was facing relatively steep increases at the wholesale rate. He reminded that the Rate Stabilization Adjustment (RSA) had been reduced to nearly nothing and estimated that the City's rate had effectively increased 8% from last year to this year in the reduction of the amount that the City was giving back. Staff had no reason to believe that the amount would significantly change and would likely continue to trend up for the rest of the year into next year. He emphasized that the City was in an increasing rate environment for the foreseeable future until renewables or something else changed. He was hesitant to add more on top of unknowns, the war in Ukraine, and other factors that could cause rates to spike more. He reiterated that if the wholesale rate structure was different, then he would be fully onboard, but noted that staff would proceed at Council's request.

Mr. Clifton asked Mr. Bilodeau if Council had the ability to pass a decision that evening because the item had been advertised on the Consent Agenda or if it had to come back to Council. Mr. Bilodeau explained if the discussion had been for the first reading of an ordinance that had been pulled off, it could not be discussed that evening but because the item was not a first reading, Council had the ability to hold discussions and consider the item that evening. Mr. Coleman interjected that the contract had actually been extended by Efficiency Smart through the end of April and Council could discuss the proposal on the April 25<sup>th</sup> agenda and have a more in-depth presentation.

Mr. Suchanec asked if any DEMEC member participated in high-performance program. Mr. Coleman did not believe so but pointed that each DEMEC member joined at different times. Mr. Suchanec noted if the members were participants, then the City would receive a share of their savings. Mr. Coleman confirmed. Mr. Del Grande repeated that if every member joined, then all members would benefit. Mr. Suchanec continued that everything Mr. Coleman and Mr. Del Grande said was predicated on the TOU rate and asked if it would be done unilaterally or if it was a DEMEC exercise. Mr. Coleman replied that it required DEMEC and there were two levels of TOU rates: the first was at the wholesale level to the City and the second was at the retail level. As part of the City's ongoing rate study, staff would recommend moving to that for retail customers but, in order to do so, staff needed it happen at the wholesale level or there would be the same problem with the retail customers. Mr. Suchanec understood that the TOU rate was a prerequisite for obtaining the 1:1 benefit, and Mr. Coleman confirmed.

Dr. Bancroft had no questions.

Mr. McDermott asked who initially presented and Mr. Del Grande replied that Efficiency Smart had and was the contractor. Mr. McDermott continued that Efficiency Smart indicated that over ten years, the City's avoided costs were \$3,332,000 and 60% of that per year was \$199,000, but Efficiency Smart only guaranteed 70%. He noted that the City really only received \$139,000 per year so it would take five years for the City to recoup its costs. Mr. Del Grande confirmed and continued that the City would take a fraction. Mr. McDermott asked if the City would receive 60 cents on the dollar and Mr. Coleman replied 40 cents. Mr. McDermott did not see a need to push the vote off to another agenda if a decision could be made that evening. He asked where the City would get the \$632,000 to participate in the higher-performance option. Mr. Del Grande revealed the money would come from the RSA. Mr. Coleman continued that the money would come from the RSA in the first year and could be built into the rate in 2023. Mr. McDermott noted that Efficiency Smart guaranteed 70% of the goal over 10 years which broke down to \$130,000 a year based on their guarantee and would take the City over 5 years to get back. He noted if the City waited, it could be adjusted to work for the City and the taxpayers as a whole. Mr. Del Grande confirmed and added that the incentive would help customers.

Mr. Lawhorn asked for how long it would take to get the TOU rates. Mr. Coleman believed the wholesale rates would be available before the contract was up again for renewal and admitted the shift was rather large because DEMEC had always been a flat rate that was fixed at the beginning of the year and remained unless the markets were unpredictable and lead to a mid-year adjustment. He continued that Newark traditionally had a good power factor so its peak, compared to its average, was not disparate because the students left in the summer, so the summer peak was lower than other towns. As such, the City did not benefit from the flat rate because it was not rewarded for its better power factor, lower capacity, and transmissions costs roughly estimated at \$750,000 a year. Mr. Lawhorn asked if two or three years were possible. Mr. Coleman explained that he was only one vote and everything depended on the board. His goal was to have the rates in place for 2024. Mr. Lawhorn agreed that the discussion did not need to be postponed and he was comfortable voting that evening.

Mr. Suchanec asked if the City would have an uplift if the rate use was active in three years in terms of ROI. Mr. Coleman explained that if the projects were done now, the City would be situated to be

in a better place in two years when the rates went into effect. He clarified that the lost time would be between now and when the wholesale rate structure went into place. Mr. Suchanec reiterated that the discussion was for 1/3 of \$632,000 every year. Mr. Coleman confirmed and explained that the wholesale billings were \$35 million a year. Mr. Suchanec was prepared to vote.

Ms. Creecy stated that she was not prepared.

The Mayor opened the floor to public comment.

Dr. Helga Huntley, District 1, viewed the issue from a longer-term perspective but admitted that she was unaware that the City had to share its saving with the rest of DEMEC. She noted that the ROI was five years and emphasized that hardly any of the other projects in which the City invested had an ROI of less than five years. She considered five years to be an acceptable amount of time for a return but believed the more important part of the situation was that if the City showed leadership and adopted the high-performance program, than perhaps other cities would follow suit. She emphasized that it was necessary to save energy so even if the program did not pay for itself, it was still an investment for the future and the environment. She reiterated her support for the high-performance option and believed the City was in a position to take advantage of Efficiency Smart programs.

Cherie McCoy, District 6, worked for Delmarva Power for 37 years in billing and TOI metering. She believed that more time would be advantageous for the residents to understand for what they were paying. She revealed that she was retired and did not benefit personally from her comment. She had extensive experience in understanding the complexity of explaining electric charges. Since she was a homeowner and received a City bill for electric, she did not spend much time reviewing the calculations because they were not as transient as Delmarva Power. She emphasized that as a resident, Council would have to explain the decision and she was not convinced that Council currently had the cohesiveness to promote the program, especially if charges would increase.

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

Mr. Del Grande revealed that the funds were currently not available in the budget so staff would have to return to Council with a budget amendment for \$200,000. Mr. Suchanec asked if the budget amendment was a prerequisite for entering the higher option and Mr. Coleman clarified that the City could not enter into the contract until then. He explained that if Council did not approve the subsequent budget amendment, the City could not enter into the contract.

MOTION BY MR. SUCHANEC: THAT CITY COUNCIL ENTER INTO A CONTRACT FOR THE HIGH-PERFORMANCE PACKAGE OF THE EFFICIENCY SMART PROGRAM WITH DEMEC FOR THREE YEARS BEGINNING ON APRIL 1, 2022.

MOTION FAILED FOR LACK OF A SECOND.

MOTION BY MR. MCDERMOTT, SECONDED BY MR. LAWHORN: THAT THE CITY OF NEWARK RENEW THE BASIC PERFORMANCE CONTRACT FOR THE EFFICIENCY SMART PROGRAM THROUGH DEMEC FOR THREE YEARS BEGINNING APRIL 1, 2022.

MOTION PASSED. VOTE: 4 to 2.

Aye – Suchanec, Bancroft, Lawhorn, McDermott.

Nay – Clifton, Creecy.

Absent – Ford.

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

13. 4. **ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

14. 8-C. **BILL 22-07 – AN ORDINANCE AMENDING CHAPTER 32, ZONING, CODE OF THE CITY OF NEWARK, DELAWARE, BY ALLOWING MICROBREWERIES AND CRAFT DISTILLERIES IN THE BB ZONE BY SPECIAL USE PERMIT (45 MINUTES)**

55:08

Ms. Schiano read the ordinance into the record.

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

Josh Solge, Planner I, presented the amendment for Chapter 32 of the Zoning Code to allow for microbreweries and craft distilleries in the central business district (BB) as a conditional use with a special use permit approved by City Council. He informed that in 2017, Council approved an amendment to the Zoning Code to allow microbreweries and craft distilleries in the general business (BC), general industrial (MI), and manufacturing office research (MOR) zoning districts as a conditional use for the special use permit as approved by Council. The amendment included a volume limit on production in the BC district but not in the MI or MOR districts. He then displayed a map where the light blue areas were proposed to allow microbreweries and craft distilleries and noted that staff proposed to carry over the volume limit on beer and spirits from the BC district. He reminded that brewing was a historical business in Delaware, dating to its founding as a colony in the 1600s, and prohibition and industry consolidation in the 20<sup>th</sup> century led to the industry nearly going extinct in the State. He informed that more recently, Delaware had been a launch pad of the resurging craft brewing industry, including Newark's own Iron Hill Brewery and the nearby Midnight Oil Brewery and Twisted Irons Brewery. He informed that Delaware ranked 21<sup>st</sup> in the nation in craft brewing per capita, 7<sup>th</sup> in economic impact per capita with the industry generating \$430 million in economic impact annually and was 2<sup>nd</sup> in craft beer produced per capita. He emphasized that craft brewing was a tourist attraction and economic engine in the State and was experiencing continuous growth. He informed that tap rooms accounted for a significant piece of the growth in microbreweries over the past five years and continued that many small towns and cities witnessed the establishment of craft distilleries, which fit the small-town appeal and provided attractive destinations for residents and visitors.

Mr. Solge revealed that in 2016, Planning and Development issued two reports proposing amendments to the zoning Code which the Planning Commission revised and approved. Council passed the amendments as Bill 17-02 which allowed for and regulated microbreweries and craft distilleries in Newark. Because of the rigor in the crafting of the ordinance, staff proposed one amendment to the zoning Code to add microbreweries and craft distilleries use to the of the conditional uses in the BB zoning district. In February 2022, the Planning Commission considered the amendment and opted to split the recommendation: the Planning Commission voted in favor of recommending microbreweries as a special use in BB and voted against recommending craft distilleries as a special use, citing concerns about fire hazard and sanitary waste volumes downtown. He noted that staff comments could be found on pages 3 and 4 of the Planning Department's report. He explained that the BB district, in addition to BC, MI, and MOR, was an area where a microbrewery or craft distillery may be an appropriate use with Council review for a special use permit. He continued that as stated in Exhibit A of the Planning Department's report outlining the criteria and procedure for a Council-granted special use permit, the special use process would enable the City to closely evaluate the appropriateness of the uses on a case-by-case basis and noted that Section 32-56.4(f)(b) stated that special use permits, as they related to the sale of alcoholic beverages, may be revoked at any time by a majority vote of City Council. He revealed that the Department believed that the requirements set forth by State regulators, combined with the special use permit point system and the revocation option, should adequately address concerns for adverse impact.

Mr. Solge explained that the Department of Public Works and Water Resources indicated that sanitary sewer waste volumes could be addressed during the application and special use permit process, and also that the City's Fire Protection Specialist indicated that there were Code provisions in place that would apply to the safe operation of a craft distillery. The Planning Department recommended to add microbrewery and craft distillery to the list of conditional uses in the BB zoning district, but the Planning Commission's recommendation was to add microbrewery and not craft distillery to the list of conditional uses in the BB zoning district.

The Mayor opened the table to Council comments.

Mr. McDermott noted that the Planning Commission did not support craft distilleries because of fire concerns and Mr. Solge confirmed. Mr. McDermott asked if there was a difference in the processes for making beer and spirits. Mr. Solge confirmed and explained that the concentration of ethanol was much higher in spirits than in beer. Mr. McDermott had no questions and supported the measure; he noted that Council had control over the process through the special use permit process. He took no issue with adding the language as it did not give free rein to businesses to begin brewing large quantities of beer or items with high levels of ethanol.

Mr. Lawhorn was pleased that the issue was before Council and thought it was a good opportunity for the City. He had no problems with craft distilleries and believed that Council had flexibility to consider each project individually through the special use permit process. He noted that if there was an unsafe condition, then Council could consider the condition as part of the specific project. He supported the microbrewery and the craft distillery and pointed that there were examples of successful craft distilleries

in Delaware. He wanted the City's Code to allow the use and utilize the special use permit as a gate to further review each individual project. He had no questions given the extensive previous discussions.

Mr. Suchanec asked if any business interested in pursuing the use would have to come before Council to obtain a special use permit and Mr. Solge confirmed. Mr. Suchanec asked if there would be a basis to approve a brewery and deny a distillery at the time of request if it was in Code and the zone was correct. Mr. Solge replied that the request would undergo a full departmental review, including Public Works. Mr. Suchanec asked if Council would have a legitimate reason to deny a distillery. Mr. Bilodeau interjected that Council reviewed each application on an individual basis and applied the criteria for special use permits so if an application was found to have a poor safety record, then the criteria to deny would be present if Council felt there could be harm done to the City, its people, or property. He reiterated that Council would investigate each application and determine if the applicant warranted a special use permit. Mr. Suchanec asked if Council was determining whether there was a public need for the product and continued that Council was going to allow the function to occur in the zone. Mr. Bilodeau explained that the first vote was to allow the function to occur in the BB zone because it was already allowable in other zones through the City. Mr. Suchanec asked if breweries and distilleries were both allowed, and Mr. Bilodeau confirmed.

Ms. Creecy stated that all of her questions had been answered.

Dr. Bancroft thought there was a difference between distilleries and breweries, but he was comfortable that Council could deal with them in the special use process. He supported passing both.

Mr. Clifton had no issues with the request and had participated in earlier conversations before Wooden Wheels relocated. He viewed the request in the same light as Parks on Draft and recalled a comment from a friend that if Council did not make Newark an interesting place for 25–45-year-olds to buy a house and live, then the property values would have no values. He thought the application was another step towards making the business community more appealing to a broader range of people. He was enthusiastic about the idea. He reiterated that if an applicant wanted to have a distillery, the request would still undergo the Planning Department review and special use permit process. If there was a safety issue, then the Planning Commission would likely deny the request. He thought the system worked well and he was in support.

The Mayor opened the floor to public comment.

Cherie McCoy, District 6, received the notification of the application and said that she had nothing against business or entrepreneurship and admitted she was confused about the process that evening. She lived next to the Shoppes at Louviers and informed Council that she had a history with the property.

Mr. Clifton asked Ms. Schiano to pause the timer and explained to Ms. McCoy that she received the letter because it was required by law to inform those in the surrounding area that the applicant was applying for a special use permit. He explained that the ordinance had to be changed to allow for the use which, as stated by the Solicitor, was a two-step process. The first was the vote to enter the use into the Code and the second vote was separate to determine if the applicant would receive a special use permit. He clarified that a special use permit was a process that required Council approval to do allow certain uses, such as in-home daycares. He emphasized that what Council granted, Council could also remove so if the use proved a burden on the community, the special use permit could be revoked.

Ms. McCoy continued that she came before Council under the assumption that the applicant was ready to proceed with the use. She explained that she lived next to the shopping center because previous Council allowed the center to be built next to her bedroom. She noted that any time there was a change that would increase traffic or noise, she received a letter from the City where she had to come before Council and speak on behalf of herself and neighbors. She appreciated the presentation regarding the global effect and desire to have a microbrewery and thought it was sensible from a business perspective, on Main Street, in industrial parks, and where there were commercial zones. She revealed that she did not have enough information available to determine if the noise level would be increased from what she was already experiencing because a Dunkin' Donuts was not supposed to be next to her bedroom, but it was. As a result, Dunkin' Donuts received deliveries at 3 am, employees began arriving at 5 am, and customers began arriving at 6 am. She stated that she had sent complaints to Mr. McDermott that customers left their cars running at 6 am with music on blast and asked Council how much more the residents were supposed to take. She invested in a property with an executive home and argued that the zone was not commercial. She maintained that the center was supposed to be located further down and she was left with no alternatives because the plan called for one type of development, but the City turned it into something else. She revealed that her issues with the property dated back 20 years and she credited

Mr. Markham for being instrumental in getting things changed. She was shocked at the audacity that Council believed that she would continue for another 20 years attempting to fend off decisions that were being made in the shopping center. She labeled the situation a debacle and noted that Council wanted to approve a microbrewery with unknown consequences. She reiterated that she was a homeowner and claimed that her investment was perhaps worth less because of Council's decision.

Mr. Clifton informed Ms. McCoy that her allotted time was over.

Ms. Creecy asked where Ms. McCoy lived and she replied that she lived at the Woods at Louviers, across from the Bank of America and WL Gore.

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

MOTION BY MR. LAWHORN, SECONDED BY MR. MCDERMOTT: THAT COUNCIL ADOPT BILL 22-07 AS PRESENTED.

MOTION PASSED. VOTE: 5 to 1.

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

Nay – Suchanec.

Absent – Ford.

**(ORDINANCE NO. 22-06)**

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

- A.** Request of David Ferguson on behalf of Wooden Wheels for a Special Use Permit to Operate a Microbrewery with a Tasting Room and Open-Air Seating at Wooden Wheels Service and Repair at 208 Louviers Drive (30 minutes)

**1:20:34**

Mr. Fruehstorfer informed that the Planning and Development Department received a special use permit application for a microbrewery and tasting room with open-air seating for Wooden Wheels Service and Repair at 208 Louviers Drive. He explained that the applicant desired to expand their use of their existing bike service and repair business in the Shoppes at Louviers to include brewing and serving beer which was an allowable use in the BB zone as per the recent vote. He noted that the report included a site plan showing that Wooden Wheels was located in the middle of the back portion of the Shoppes at Louviers overlooking the park and revealed that the closest residential property was 260 feet. He continued that the report also included the proposed floor plan for the inside tasting area and the open-air seating in the rear. The request was for a table for six people, lower table for four people to accommodate ADA regulations, and a few tables and chairs in the back, and was a very small application.

Mr. Fruehstorfer explained that there were several sections of Code that regulated microbreweries and alcoholic beverage services, including some special requirements, all of which the proposal met. He revealed that the requirements for open-air seating included a stipulation that Council may require fencing but noted that the area was an elevated balcony with a railing, so staff felt the additional fencing was unnecessary. He shared that Code also required reviews of the application by the Police and Building Departments and that all of the City's operations departments reviewed the application and only identified a few ADA and fire code issues, which were resolved. He reminded that Code stipulated that Council may issue a special use permit if it did not adversely affect health and safety, was not detrimental to the public welfare or injurious to property and did not conflict with the Comprehensive Plan. He continued that because the proposed use did not conflict with the land use guidelines in the Comprehensive Development Plan V, because the proposed use was compatible with the zoning code special use permit criteria, and because the relevant City departments had no objection to the proposal, the Planning and Development Department recommended that City Council approve the special use permit for a microbrewery and taproom with open-air seating at Wooden Wheels Service and Repair at 208 Louviers Drive.

Mr. Fruehstorfer pointed to the photographs included in the report and noted the applicant already had the bars set up inside and was permitted to serve alcohol but not sell it. He revealed that the business had been serving alcohol since its last location when a few friends opted to drinking beers after work or bike rides. He emphasized that the location could be considered a nano-sized producer. He introduced the representatives of Wooden Wheels: David Ferguson, Robert Downward, and the brewer, Scott Partridge.

The Mayor opened the table to Council comment.

Mr. McDermott shared that he had been to the location and understood Ms. McCoy's concerns and many goings on in the shopping center; he completely sympathized and empathized with her because he lived in the proximity as well. He explained that the applicant's establishment was on the opposite side of the shopping center which backed up to the water retention pond and wooded area. Mr. Fruehstorfer confirmed that it was directly behind the water pond. Mr. McDermott noted the establishment was not on the Woods of Louviers side. Mr. Fruehstorfer confirmed and reiterated that the shop was 260 feet away from the back property line; there were two houses that extended around the loop behind the shopping center. Mr. McDermott asked how much space was provided on the back deck. Mr. Fruehstorfer said there would be perhaps three tables with two chairs each and informed that Code did not allow music. Mr. McDermott noted that the shopping center currently had a restaurant and bar with Skipjack's that also had a large outdoor seating area. Mr. Fruehstorfer confirmed that it was on the northside.

Mr. McDermott believed that most of the neighborhood complaints about the shopping center were regarding the Dunkin' Donuts and the trash removal in early morning hours. As a response to customers leaving their cars running, the City installed anti-idling signs. He spoke to Mr. Coleman and learned that the owners of the shopping center were supposed to replace the trees and he did witness that three small trees had been planted between the barrier between the Shoppes and the Woods. While he understood the concerns, he did not believe the application would affect the neighborhood at all. He understood the overall frustration because of the shopping center and said that he was invited to visit Wooden Wheels after the process began and learned that the bar area was extremely small, but he had not seen the outside balcony or porch. Mr. Fruehstorfer noted that pictures were included, and the outdoor section was the space behind the business. Mr. McDermott did not think the location would affect any residents in the area based upon the nature of the design and the requested size.

Mr. Lawhorn also understood the concerns and the frustration of owning a home in the area prior to the shopping center's existence. He acknowledged that there were multiple restaurants that served alcohol in the shopping center, and he was pleased to learn that Wooden Wheels was further away from the residential areas. He became familiar with Wooden Wheels when it was first located in the Fairfield Shopping Center for several years; he credited the applicants for being extremely responsible business owners and informed that he purchased his children's bikes from the store. He continued that Wooden Wheels would host post-ride events for bike riders and he was sorry that they relocated out of his district but was pleased that they remained in the City. He credited Wooden Wheels for helping to promote a bikeable community and acknowledged their attempt to create an experience that was more than a retail purchase and was a community place to enjoy friends, biking, and athleticism. He considered Wooden Wheels to be an asset to the community and emphasized that the scale of the business was smaller than the restaurants in the Shoppes. He repeated that he understood the concerns about the shopping center, and he would support suggestions to remedy the Dunkin' Donuts situation. He felt that the use was appropriate, and he was not concerned with increased traffic because the applicants were already involved in similar acts; the application would simply add another feature.

Mr. McDermott asked for the store's operating hours and the applicant replied opening was at 10 am and closing was at 6 pm. Mr. Fruehstorfer added that the Code limited operation from 10 am to 10 pm so the store would never be open past 10 pm. Mr. Bilodeau reminded that Council could impose conditions if the hours were an issue.

Dr. Bancroft agreed with Mr. Lawhorn and thought the plan was reasonable. He thanked the applicant for their efforts.

Ms. Creecy also understood Ms. McCoy's grievances and confessed that she had her share of issues as a homeowner and resident on Madison Drive. After reviewing a map of the Shoppes, she discovered that the store was a distance from Ms. McCoy's home and doubted that there would be much of an effect. She had no problems voting no if there would be any sort of detriment and asked that Wooden Wheels keep up their efforts and adhere to the regulations.

Mr. Suchanec asked if Wooden Wheels would have to return to Council if they chose to continue solely as a brewery and not a brewery/bike shop. Mr. Fruehstorfer reiterated that Council could impose conditions on size and Mr. Bilodeau confirmed and added that reasonable conditions could be added for operating hours as a microbrewery. Mr. Suchanec asked if Wooden Wheels would have to return to Council to renew their special use permit if they relocated. Mr. Fruehstorfer explained that the permit was written for 208 Louviers drive so any relocation would require the applicant to come before Council once more, and Mr. Bilodeau confirmed. Mr. Suchanec noted that applicant only had rights to the balcony directly behind the property. Mr. Fruehstorfer explained that COVID allowed for some expansion and Mr.

Coleman clarified that if there was expansion to an adjacent property, the City required approval from the adjacent property owner in the public right of way; he was uncertain how the rule applied to private property. Mr. Fruehstorfer added that the submitted floor plan showed three tables in the back so any more would not be approved. Mr. Suchanec thought the balcony served as a walkway and should stay open for traffic. Mr. Fruehstorfer noted that even with tables and chairs, the required three-foot pathway would still be provided; the balcony was only for the use of the owners and was not a way to enter the shops. He informed that the backdoor also had to remain unlocked.

Mr. Clifton noted that even with the special use permit, the applicant still required ABC approval and Mr. Fruehstorfer confirmed. Mr. Clifton continued that the State still had control and it was not a matter of Council allowing the use. He reminded Mr. Coleman that they had worked together on an issue regarding trash pick-up on Main Street before 7 am which was a Code violation. Mr. Coleman revealed that staff identified a shortcoming in Code that needed to be addressed because the rule did not apply to commercial districts. He noted that if the City requested, the companies usually complied, but reiterated that staff needed to address the issue. Mr. Clifton thanked Mr. Coleman and continued that he could not imagine the applicant would be open until 10 pm; he considered it self-policing and had no problems with the request.

The Mayor opened the floor to public comment.

Dr. John Morgan, District 1, admitted he did not live near the location and shared that he was sensitive to noise. He informed that trees did little to reduce noise and a thick forest might reduce decibel levels by three, but an acoustic fence was more effective at noise reduction. From the testimony, he felt that there should be some restrictions on the hours with the special use permit. He surmised that if the official closing time was 10 pm, it would not be unusual for some people to spend an additional 30 minutes finishing their drinks so he suggested that 8 or 9 o'clock would be reasonable. He also suggested the special use permit include conditions for delivery hours. He admitted that Mr. McDermott was more familiar with the issues than himself and deferred to the Councilman's judgement for reasonable conditions.

Stu Markham, District 6, noted that the landscaping at the property tended not to survive as well and thought there might have been three iterations of tree replacements. He reminded that Dunkin' Donuts used to make their own donuts on site but changed to delivery which added to some of the noise. He pointed that there was also creeping with the trash dumpster locations because they had migrated closer to Ms. McCoy's house and the hours seemed to get earlier. He suggested that should the bank building become available, or the property was developed on the County, then Dunkin' Donuts might be moved to a more appropriate location which could also allow for a drive thru. Mr. Coleman interjected that the Construction Improvement Plans (CIP) for the Woods at Louviers were in for review in 1998 and the Shoppes at Louviers were in 2001 which meant it had been approved by Council by 2001.

Mr. McDermott asked the applicant, Robert Downward of Wooden Wheels to step forward. Mr. McDermott asked what time limits would work for the shop and if they ever stayed open past 7 pm. Mr. Downward said that 8 pm would be welcome in case there were meetings but 9 pm was preferable. He explained that he also served as the president of the Trail Spinners, a local mountain bike club, and he held meetings at the store on the first Tuesday of the month which typically ran to 8:30 or 9 o'clock. Mr. McDermott pointed that the special use permit allowed the applicant to brew their own beer, and nothing prohibited them from serving alcohol at any time. Mr. Coleman added that was the case if the applicant wanted to charge. Mr. McDermott explained that if the applicant stopped charging at 8 pm, nothing prohibited anyone from continuing to drink until 9 pm. Mr. Downward confirmed and revealed that there would be no canning so no large trucks would come to pick up product. Mr. McDermott asked when Wooden Wheels received deliveries for the bike shop and Mr. Downward replied that UPS shipments came around 1 pm. Mr. McDermott continued that the shipping that would accompany a small brewing operation would be items from Amazon or UPS and there would be no large semi-trucks delivering barrels of wheat and barley. Mr. Downward confirmed. Mr. McDermott reiterated that the operation used all standard UPS shipping and was a one pot brewing operation. Mr. Downward confirmed.

Mr. Lawhorn noted that other projects indicated specific locations for dumpsters and developers were required to build enclosures. He assumed none existed because of the complaint over creeping. Mr. Coleman last visited the site in the fall and informed there was a dumpster enclosure that was directly behind Ms. McCoy's home. When he visited, there were cars parked in the enclosure and the dumpsters were at the back of the building which he assumed was an agreement that had been worked out. He assumed if the dumpsters were moved back, they would be in the enclosure. Mr. Lawhorn noted that it was preferable that dumpsters were not in the originally designed location and Mr. Coleman confirmed. Mr. Lawhorn thought it would be worthwhile to discuss moving the dumpster enclosures. Mr. McDermott

revealed that the dumpsters for Wooden Wheels were on the opposite side of the shopping center and had nothing to do with the dumpsters in question. Mr. Lawhorn understood and wanted to make the point that Council had the control to direct where dumpsters should be located. He admitted that he saw no value in having any restrictions for time because there were restaurants in the Shoppes and the deliveries would be when restaurants got deliveries. He hesitated to make the situation more complicated by adding restrictions that would not provide value.

Mr. Clifton agreed and credited Dr. Morgan with his suggestion for the fence but said it would be a great idea if the Shoppes were just being built. He would not put restrictions on the applicant that were not applicable to the rest of the shopping center because of a possible overreach.

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

MOTION BY MR. MCDERMOTT, SECONDED BY MR. LAWHORN: THAT CITY COUNCIL APPROVE THE SPECIAL USE PERMIT FOR A MICROBREWERY AND TAPROOM WITH OPEN AIR SEATING AT WOODEN WHEELS SERVICE AND REPAIR AT 208 LOUVIERS DRIVE.

MOTION PASSED. VOTE: 5 to 1.

Mr. McDermott voted yes because the proposed use did not affect adversely the health or safety of person or 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, based upon the size and the hours of the proposed establishment and the use; would not be 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 because the use of the establishment was consistent with the other uses currently taking place within the shopping center; and would not be in conflict with the purposes of the Comprehensive Development Plan of the City for the reasons outlined in the Planning and Development Department's report.

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

Dr. Bancroft voted yes for the reasons stated by Mr. McDermott.

Ms. Creecy voted yes for the reasons stated by Mr. McDermott.

Mr. Suchanec voted no because he believed that noise adversely affected health and safety and the wrong mix of commercial adjacent to residential could affect property values.

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

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

Nay – Suchanec.

Absent – Ford.

**16. 5. SPECIAL DEPARTMENT REPORTS:**

- A.** Discussion and Direction to Staff Regarding City Boards and Commissions Applications – City Secretary (30 minutes)

**1:52:52**

Ms. Schiano reminded that the topic was previously discussed in October after concerns were raised regarding the amount of personal information that was required to be posted and whether it was a detriment. After discussion, Council voted 4-1 to amend the agenda packet posting policy so that boards and commissions applications were not required to be posted online. Since the vote, additional questions and concerns were raised by Council and detailed in Ms. Schiano's March 23<sup>rd</sup> memo. In response to the questions and concerns, staff contacted municipalities via the Delaware Municipal Clerks Association to solicit their procedures which were also detailed on the March 23<sup>rd</sup> memo. She revealed that most municipalities chose not to publish personal information, but the city of Milford posted personal information after the member was approved to clearly reflect to the constituency that each ward (district) was accurately reflected. She continued that taking previous and recent information into account, staff remained committed to the action taken by Council in October 2021, however, after some Councilmembers expressed interest in reconsideration, staff recommended eliminating the resume and biography requirement for nominees as the existing application provided essentially the same information. Council could then direct staff to post a redacted version of the application as part of the Council packet. To enable communication with the public, staff further recommended creating a separate email for each board and commission to be made public. Staff would then monitor the individual email

account and forward to the proper committee members so as to eliminate the possibility of inappropriate or harassing emails and to also discourage the use of private emails which were a FOIA concern. She noted there were also suggestions to permit applicants the opportunity to designate what information to share but argued that there was a concern of consistency surrounding the process and that by creating a situation where a person was permitted to pick and choose what information was publicly available, additional challenges would be created for the applicant and staff to make sure only the proper information was shared. Secondly, when prospective applicants chose not to publicly share their information, they might feel pressured or targeted and at a disadvantage during the approval process and penalized as an applicant to serve on a volunteer committee. Following Council discussion that evening, whatever the will of Council, she would still encourage that Council include that each board and committee have their own designated email address to allow contact from the public in the motion.

The Mayor opened the table to Council comment.

Ms. Creecy reminded that during Council's last discussion on the topic, she revealed that she had been and was still a target for harassing emails, through her employment, phone calls, and racism. She believed the precautionary steps taken by staff would better protect Council who lived and worked in the area. She agreed with the emailing process and also thought that having the City's email domain was more official and provided a level of prestige.

Mr. Suchanec was confused on what Council was voting. Mr. Clifton explained that Council was voting on the agreement which did not have to be the recommended motion. Mr. Suchanec found issues with all of the presented suggestions, and he was unsatisfied. He suggested more time to allow for FOIA requests which would derive when Council would vote on the appointment. He felt the process was out of synch and that the application requested too much information because the only important factors were who the applicants were, where they lived, how long they resided in the City, skillsets, and qualifications. He did not think home addresses and cellphone numbers were necessary to include. He reiterated that he was unhappy with all of the suggestions. Mr. Clifton asked Mr. Suchanec for his solution. Mr. Suchanec chose to reserve his recommendation until further Council comments.

Dr. Bancroft agreed with Mr. Suchanec and supported a single email to each of the boards. He did not think it was important to post an applicant's resume. He sympathized with Dr. Morgan with the FOIA process and thought people wanting more transparency would be satisfied if staff could redact the personal information and put the form questions online.

Mr. Lawhorn appreciated Council's measures in an attempt to protect people from harassment and thought that if someone was going to serve on a committee, then the public should have some information to judge whether the applicant should be on the committee. He thought that names, districts, reasons for wanting to serve, and qualifications were sufficient. He agreed with providing boards and committees with City email addresses to avoid publishing personal contact information. He emphasized that Council had the ability to ask more questions during the hearing process and reiterated his request for general information for an applicant. He wanted the process to be simple and streamlined because the positions were volunteer, and it was difficult enough to fill vacancies. He wanted to protect people from harassment.

Mr. McDermott agreed with Mr. Suchanec and Mr. Lawhorn. He explained that the issue stemmed from a person being harassed at their place of employment. He thought it was possible that Council went too far, and the decision could be walked back by letting the volunteers know that the information they were going to supply would be public. He did not think it was necessary to provide the name of an employer and the applicants could tailor the information. He suggested that Council inform the applicants that the information provided would be part of the public record so they could determine their own comfortability and Council could still be provided with experiences and qualifications without specifics. He wanted to find a middle ground with a shorter application and brief questions on qualifications.

Mr. Clifton thought the suggestions were great and asked Mr. Bilodeau and Mr. Coleman if there were any roadblocks to providing applicants with a temporary City email address during the approval process that would then become permanent should the applicant be approved. Mr. Coleman noted that the City had a limited number of addresses, and he was unsure how quickly they could be turned on and off to reuse the allocation. He expected that as long as it was limited to just those who would go onto an agenda, there was likely no issue. Mr. Del Grande confirmed that staff could create email accounts with any type of name option. Mr. Suchanec and Ms. Creecy asked if the emails could be turned on and off and Mr. Del Grande confirmed. Mr. Clifton noted that if a person was being harassed by email, then there was a whole department that could handle the situation. He believed there should be a vetting system and pointed that the Councilmember for the district would know the address. He wanted further vetting

through the City Secretary's Office to verify that an applicant lived within the district. He agreed with Mr. McDermott that it was more important to determine what qualified a person for a position, and not current or past employers. He emphasized the need to trust applicants that if there was a potential conflict of interest then the Councilmember would control the situation. He believed that a compromise was possible and that posting an applicant's qualifications, desire to serve, length of residency, and City-provided email on an agenda should satisfy most concerns that the public could have direct contact. At that point, he did not see a need that anyone would have to file a FOIA complaint and thought the process was slow and reflected poorly upon the City. He did not think the process was the correct one to disseminate the information to the public.

The Mayor opened the floor to public comment.

Dr. John Morgan, District 1, clarified that his issue was not one of FOIA complaints; he had never filed a FOIA complaint, he made FOIA requests. He agreed with Mr. Clifton that the FOIA request process introduced unnecessary delay. He quoted a response from Renee Bensley per the minutes from the June 26, 2017 Council meeting when the issue was discussed:

She understands there are concerns regarding the timeline with FOIA, but noted she is the FOIA Coordinator for the City and that if a document that she has is requested, it is released the day that they ask for it. While she understood concerns regarding the 15-day timeline in law, in practice this is not what would happen with this.

Dr. Morgan pointed that the scenario did happen earlier in the year where his FOIA request was fulfilled 15 working days later, counting the Presidents Day holiday as a working day. He argued that Council may not need to know a person's employer to determine someone's qualifications, but it was necessary to avoid conflicts of interest. He noted that twice in the last several years, potential nominees to various boards or commissions had been rejected by Council because the nominee was an employee of the University of Delaware, which could well be appropriate and was a reason he never volunteered for the Planning Commission or Board of Adjustment because he knew he would be placing himself in an awkward situation even as a tenured employee. He said, "If I had to make judgements, and even involved the University of Delaware's own property, if there's a property development in like a big apartment complex, it's going to hire, be housing mainly UD students. That's a significant indirect financial benefit to the University and I should recuse myself and better, I should just never put myself in such a position."

Dr. Morgan continued that Council should at least ask for the current employer and assumed that most professional people had a LinkedIn page. He thought the application form should have an option for including a LinkedIn page link. He pointed that nearly every UD faculty member and many staff had their own webpage indicating their work and education history and the applications should include a link for that as well. He fully agreed that there was no need to publish a personal phone number or email address. He acquiesced that a home address was not necessary as a matter of public record if there was any potential for harassment and he would settle for knowing the street. He hoped that Council could come to a resolution that evening and held up a phone book as his proof that there was no shortage of Newark residents who were willing to put their personal information out in public; Council just needed to determine who they were and ask if they were willing to serve on a board or commission.

Mr. Clifton shared that he had not seen a telephone book in years and shared that he was able to track a committee member down online. He asked if committee members would be required to update their resumes if they changed jobs and the City required employer information as part of the process. He believed the process would become time-consuming and convoluted for staff.

Mr. Suchanec was unsure how to formulate the suggestions but felt that there was a consensus that the application itself was a problem because it was similar to a job application with too much information; the base subject was whether the applicant had experience and interest. He recalled the first two pages read like a job application and the last two pages were yes or no questions on conflicts of interests. He thought that there could be four or five key questions that would help Council determine whether an applicant should be considered and believed the experience portion could be expressed as a summary. After the information was posted online, Council could investigate candidates further. He thought that there should be a special City Secretary email address for all application information so once someone expressed interest in an applicant, the City Secretary could forward it to the person who could then respond, if they preferred, with additional information. He thought Dr. Morgan was making the argument that there was no perfect process and pointed that process was person-dependent and the person was not there when he needed the information. He did not think the process should depend on a person claiming to deliver the information in one day because the process was fifteen days, and a fifteen-day response time should be expected. He maintained that Council should not have a vote on the

applicant prior to the fifteen-day deadline so that the public could obtain information via the FOIA process. He doubted FOIA would be necessary if the application was done correctly to provide enough information for Council and the public to feel comfortable and, if there were any red flags, the Council could further investigate.

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

Mr. Coleman thought it would easiest for staff to present a draft application at a future Council meeting. Ms. Schiano agreed and would create a draft application with the consensus items: name, district, why an applicant wanted to serve, and how an applicant believed they were qualified. She was unclear on the direction for a temporary email. Mr. Clifton explained that he used the term “temporary City email” until a person was approved; if an applicant was rejected, the email would return to the City. He continued that if a person was approved, they could have the option of using their own email or keeping the City email. Ms. Schiano asked for direction giving each commission an email. Mr. Clifton thought the issue was a broader picture. He recommended eliminating the FOIA request issue with the information and sked if an ordinance was necessary because Council could provide direction to staff as it had in October. Mr. Bilodeau confirmed.

Mr. Suchanec suggested that staff review the current application and the questions regarding conflicts of interest. Mr. McDermott asked that the applications include a disclaimer that the information would be made public and further suggested that Council not entertain any appointments inside of 15 days from the application. Ms. Schiano added that the 15 days was a magic number and explained that if a member of the public became aware that an applicant wanted to serve on a board or commission, and they submitted a FOIA request immediately, the 15-day count would start. If a member of the public did not learn of the application until the 14<sup>th</sup> day and the applicant was scheduled on an agenda the next day, the 15-day process would start over. Mr. McDermott understood and considered it a gap fix if an applicant was waiting. Ms. Schiano informed that no applicants were waiting but she wanted Council to be aware of the possibility of the 15-day issue. Mr. McDermott clarified that he was not concerned about FOIA if staff was able to update the application and noted it was not an issue because there were no applicants waiting for appointments. Mr. Clifton spoke to Mayor-elect Markham and explained that he did not want to make any Mayoral appointments and would leave them open for Mr. Markham. He asked Ms. Schiano if she had enough direction to change the process and she confirmed that staff would work through a draft application. He asked if the request needed to return for final approval if Council agreed that evening. Mr. Bilodeau confirmed that if Council gave direction to the City Secretary to revise the application as discussed then there should be no issue.

MOTION BY MR. MCDERMOTT, SECONDED BY MR. LAWHORN: THAT THE CITY SECRETARY CREATE AN APPLICATION AS DIRECTED.

MOTION PASSED. VOTE: 6 to 0.

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

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

18. 7. **RECOMMENDATIONS ON CONTRACTS & BIDS OVER CONSENT AGENDA LIMIT:**

A. Recommendation on RFP 22-01 – Police Officer Recruiting Services (15 minutes)

**2:27:33**

DC Feeney presented the recommendation to award RFP 22-01, Police Officer Recruiting and Advertising, to Epic Recruiting of Scottsdale, Arizona. He introduced Sam Blonder, CEO and co-founder of Epic. He explained that the recruitment of a qualified and diverse applicant pool had proven to be difficult for police agencies across the country in recent years for a multitude of reasons. The Newark Police Department (NPD) experienced a dramatic decrease in police officer applications and often competed with other Delaware agencies to attract officer candidates. In 2017, NPD had 49 applicants take the police entrance exam and the number decreased during each subsequent hiring process and by January 2022, only ten NPD applicants took the exam. Staff recently took steps to improve and simplify the hiring process including switching testing vendors which resulted in a greater number of candidates across all demographics passing the exam. He explained that NPD now administered the structured oral interview on the same day as testing for candidates traveling more than 100 miles to Newark. He informed NPD moved to a continual online application process to allow candidates to apply anytime, not just during a specific application period. He admitted that the process lacked an aggressive digital media recruiting

campaign designed to attract a diverse applicant pool and an NPD recruitment website that would be separate from the City's website.

DC Feeney continued that Epic recruiting had over 17 years of experience in police agency-specific recruitment services and Epic staff would work with NPD to utilize a four-step approach. First, Epic would conduct research with internal and external stakeholders to identify the Department's brand and recruitment needs. Second, Epic would create content via onsite photo and video shoots. Third, Epic would develop a recruiting website to showcase NPD's brand while tracking and retargeting visitors. Lastly, Epic would conduct an online recruiting campaign targeting a diverse pool of candidates. For reference, several of Epic clients were included in the memo provided to Council. He revealed that with four current vacancies, another four officers retiring by the end of the year, and at least two officers with applications submitted to other agencies, NPD needed to increase its candidate pool to hire diverse, well-qualified officers. He admitted that Epic was the only vendor that submitted a proposal within the specified timeline on the RFP and requested that Council award RFP 22-01 to Epic Recruiting for the development and implementation of a 12-month recruiting and advertising campaign and to approve the transfer of no more than \$150,000 from the US Department of Justice Federal Equitable Sharing Program to fund it.

The Mayor opened the table to Council comment.

Mr. Suchanec claimed that he was sensitive to the problem and tried to support every effort to solve it. He had suggested various solutions but admitted that he did not feel qualified to judge the company, its product, or its service. He pointed that all of the references were on the west coast, and he was unsure how Epic could accomplish what they claimed when they had to get their personnel to Newark. He was also unsure how Epic could perform its services at the suggested cost and reiterated that he felt unqualified to approve the RFP. He reviewed the RFP three times but thought the presentation lacked any explanation on how Epic would proceed.

DC Feeney interjected that Epic did come to the east coast and was currently working with Fairfax County, Virginia, and had a contract with Norfolk, Virginia. Mr. Blonder confirmed that Epic had contracts with Norfolk and Fairfax, and Asheville, NC, and was in the contract signing stage with Michigan DPS. He acknowledged that Epic began as a Bay-area company but began building clientele on the east coast over the last year. He emphasized that Epic performed best practices so location was not an issue because the items would have the same effect regardless of location.

Mr. Suchanec asked if the references had been checked and DC Feeney confirmed. Mr. Suchanec asked if staff was satisfied that Epic produced results and that applications increased. DC Feeney confirmed that he had a specific conversation with a California agency that reported a dramatic increase pre-COVID, and the captain of the agency was preparing to return to their Council to seek additional funding to continue Epic's efforts; the agency was overly impressed with the results. Mr. Suchanec asked if the agency directly credited Epic with the results and DC Feeney confirmed.

Ms. Creecy understood staffing issues and thought a recruiting company was better able to network for quality candidates. Through her review of the information, she was confident that Epic performed a sweep of the candidates. She asked if the contract was for 12 months. DC Feeney explained that the contract was for two years but there were three different phases indicated in the fee breakdown: the development of the brand, the creation of the website, and digital advertising for the year. Epic would host the website and provide content on the website for two years. He added that if the City opted out after two years, NPD would own all of the photography, video, and the website. Ms. Creecy asked if NPD could use everything for advertisement without any copyright infringement and DC Feeney confirmed. Ms. Creecy asked if staff had used all resources to try to gain recruitment. DC Feeney admitted that staff was limited with resources and staffing had been a challenge for some time because NPD had to reallocate its main recruiter to patrol to fill gaps and the Administration Lieutenant was advertising via the web and Instagram; Epic specialized in best practices and NPD wanted to focus on increasing diversity. Ms. Creecy supported whatever measures NPD requested to help the situation.

Dr. Bancroft asked if the funding would disappear since it did not come directly from City coffers. DC Feeney clarified that the funding source would be the Asset Seizure Fund which were funds seized as assets of Federal investigations and transferred to the City. Mr. Coleman added that the fund had limitations for uses. DC Feeney confirmed that the funds had to be used for direct police department benefits. Dr. Bancroft noted there was only one bidder so he would listen carefully to Mr. McDermott and Mr. Coleman on whether the City should cast a wider net. He thought it was a reasonable plan if NPD was satisfied.

Mr. McDermott informed that he had been in charge of police recruitment for three years and had also headed special projects in technology and partnerships. He witnessed many police departments thrown money away with companies that sold computer software programs, scheduling software, et cetera. He did not want the same situation to happen at the City, whether the funds came from the Federal Government or Asset Forfeiture. He did not want to waste money and assumed staff had done its due diligence with Epic so he would rely on DC Feeney. He admitted that he had never heard of Epic but that did not disqualify them. He noted that Epic would host YouTube ads and Google analytics; he asked if the \$150,000 was paying for the YouTube ads and Google analytics because all of the companies had different fees. Mr. Blonder confirmed that most of the cost was for services that the City would own forever: developing the department brand, photography, videography, and production. He reiterated that NPD could use the content through social media and the recruiting website was a tangible item that NPD would own from the first day. He noted the smallest portion of \$50,000 was the advertising for the 12-month online recruiting campaign. He informed that the 12 months would run from the moment the website and content were approved so the City would receive more than a year of work from Epic because it took months to develop the content, create the branding, and build the website; Epic would also perform marketing on behalf of NPD for 12 months based on the contract.

Mr. McDermott asked if the \$150,000 included the advertisements on different platforms. DC Feeney explained that there was a fixed fee for the three stages: the first was for photography and videography, the second was the hosting and development for the website, and up to \$50,000 was the specific advertising budget. After the first year and moving forward, NPD could revise the advertising budget based on need and he explained that the language was "up to" \$150,000 because there were a la carte choices. Mr. McDermott asked who would dictate the advertisement portion and DC Feeney explained the conversation would be between Epic's digital marketing coordinator and NPD. He continued that NPD would share its needs and Epic would use east coast analytics to develop a personalized program because Epic would retarget its efforts towards interested parties.

Mr. McDermott noted there was value in recruiting certified officers and asked if there was a plan incorporated into the process to target certified officers in other locations through geofencing. He explained that he had targeted recruiting efforts towards departments that experienced a bad press event where officers might prefer to relocate. He asked if Epic was tuned into the situation to draw certified officers to the City. DC Feeney confirmed that the suggestion was part of NPD's plan and would be part of the communications. Mr. Blonder confirmed that Epic would take all facets into consideration when pursuing laterals and new applicants in an all-encompassing approach and would provide monthly reporting. He confessed that no campaign was perfect out of the gate so Epic would review the data at the end of the month to tailor the efforts and would also consider efforts where the budget would provide the best return on investment. Mr. McDermott asked if there was an opt-out to release the NPD from the contract. Mr. Blonder explained that NPD would be locked into creating the brand, content, and website, because they were tangible deliverables that Epic was hired to produce. He offered to breakdown the 12-month online campaign fee into monthly expenditures so NPD could choose to go month-to-month. He asked that the 12-month campaign not be viewed as an all-or-nothing month-to-month because there could be a situation where Epic spent some funding to gear up for a hiring window set by NPD but then held off until needed again. Mr. McDermott asked how long Phase I would take and Mr. Blonder said it typically took three months from the signed contract to campaign launch.

Mr. Lawhorn reiterated it would take three months to build content and asked for a more detailed timeline. Mr. Blonder repeated that it took 8 to 12 weeks from signing the contract to launching the campaign and Epic would hold a discovery day where its leadership team came out to meet with NPD's leadership team to brainstorm about NPD's selling points. Epic would interview officers and employees, depending on NPD's goals, and use the audio to help develop the brand and present a creative brief which would include color palette, logo, fonts, call to action, and tag lines. Epic would then return for three days to film and photograph all of the content. During the 8 to 12 weeks, Epic staff would develop the website and launch the campaign when all was finalized. Mr. Lawhorn appreciated how the process was formatted and noted there was some representation that Epic was successful in other places. He thought the process was focused and believed the City took measures to make policing more attractive. He supported building the brand because there were specific points to serving on the NPD and pointed that police officers across the Country had taken a hit because fewer people were interested in becoming officers. He thought the approach was reasonable and he was supportive.

DC Feeney considered that the statistical reporting from advertising and campaign would be key. He could supply Council with stats back to 2016 that proved application numbers were abysmal. He hoped the amount could increase to 30 applicants for a written test instead of 10; when he tested 25 years ago, there were almost 400 applicants. He emphasized the need to increase the applicant pool to hire the most qualified individuals. Mr. Lawhorn shared that his employer's marketing department was extremely

successful and used tactics similar to Epic. DC Feeney expressed staff's desire to perform the work in-house but admitted that NPD had a staff shortage; the Administration Lieutenant managed NPD's Facebook and Instagram. Mr. Lawhorn agreed that hiring a consultant was more cost effective than to build the capability within NPD.

Ms. Creecy wanted to ensure that DC Feeney and fellow officers got credit for the changes in the department if Epic was awarded the contract. DC Feeney was confident that Epic's services would lead to more applications. He recalled conversations with NPD regarding larger departments and agreed there were likely disgruntled officers based on the environment created by the governing body. He noted that while the military had recruiters on the street, real recruiting was done by the agencies hired by each branch of the service. He saw great value in specialized companies with proven track records and was sure Epic would be successful.

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

MOTION BY MS. CREECY, SECONDED BY MR. LAWHORN: THAT COUNCIL AWARD RFP 22-01 TO EPIC RECRUITING TO DEVELOP AND IMPLEMENT A 12-MONTH RECRUITING AND ADVERTISING CAMPAIGN AND APPROVE THE TRANSFER OF \$150,000 FROM THE UNITED STATES DEPARTMENT OF JUSTICE FEDERAL EQUITABLE SHARING PROGRAM TO FUND THIS AWARD.

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

Absent – Ford.

Mr. Clifton noted the time was 10:10 pm and Council needed a motion to extend the meeting.

MOTION BY MR. LAWHORN, SECONDED BY MS. CREECY: THAT COUNCIL EXTEND THE COUNCIL MEETING.

MOTION PASSED. VOTE: 5 to 1.

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

Nay – McDermott.

Absent – Ford.

**19. 7-B. RECOMMENDATION ON CONTRACT 22-04 – WATER MAIN RESTORATION – 2022 (15 MINUTES)**

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**2:58:38**

Mr. Filasky presented the recommendation to award Contract 22-04, Water Main Replacement, Capital Project W9308, a continuing project that was started in 1993. Since he was hired, there had been ongoing discussions regarding the need to replace the City's aging infrastructure, including water, which had 100 miles of underground water main at approximately \$1.8 million per mile and rising. Since the passing of the 2018 Capital Referendum, staff had been aggressively pursuing the worst pipes, including the one subject to the contract. He explained that there was roughly 5,800 linear feet of pipe or 1.1 mile which meant that staff was almost on track with the contract.

Mr. Filasky continued that contractors and suppliers were under intense pressure with materials and labor and although staff intended to complete the entire contract, it was possible that the scope needed adjustment as the project progressed because the contractor could only guarantee material prices for short periods of time. He confirmed the pipe was in stock and the contractor complete most of the project if the contract moved along appropriately. He informed that there were two areas in District 3 on Elkton Service Road and Chrysler Avenue, one in District 1 on Route 1 for out-of-town customers, and one along East Park Place. He reported that once the water main went in on East Park Place and was completed over the summer, the road would be repaved from Academy.

The Mayor opened the table to Council comment.

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

Mr. Suchanec asked if effected residents would be notified, and Mr. Filasky confirmed they would be notified for the construction and then the service disruption when everything was tied in.

Ms. Creecy asked if staff would be using CIPP lining and Mr. Filasky explained that CIPP was separate and for sanitary sewer, mostly. The project would be a full replacement where the pipe would be left in the ground, a new pipe would be installed, and then tied in.

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

MOTION BY MR. LAWHORN, SECONDED BY MR. MCDERMOTT: THAT COUNCIL AWARD CONTRACT NO. 22-04 – WATER MAIN REPLACEMENT, TO BRANDYWINE CONSTRUCTION COMPANY, INC. OF NEW CASTLE, DE, UP TO THE BUDGETED AMOUNT OF \$2,026,276.00.

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

Absent – Ford.

Mr. Filasky thanked Mayor Clifton for his service.

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

- A. Bill 22-05 – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Updating the Duties of Alderman’s Court Security Officers (10 minutes)**

**3:03:11**

Ms. Schiano read the ordinance into the record.

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

Ms. Hardin thanked Mayor Clifton for his service and expressed her joy in working with him over the years but knew that he would turn up again somewhere. She presented Bill 22-05 which updated the duties of the Alderman’s Court Security Officers which staff termed the Bailiffs. She reminded that staff hired two part-time bailiffs to keep order in the court but, during the pandemic, the bailiffs were assigned to the front lobby. The move was well received by the public and employees, so during budget season, staff decided to add a third bailiff who then learned that the duties had not been updated and suggested a Code amendment to update the additional duties. She explained that the day after first reading, the Fraternal Order of Police President reached out to staff and the City Solicitor questioning the powers of the bailiff as read in the original proposal that stated that the bailiffs would have the ability to enforce the Code of the City of Newark which overlapped into NPD duties. She informed that bailiffs did not have arresting powers, so staff removed one word from the amendment. She consulted with Terri Conover, Clerk of the Court, who also agreed to the upfront clarification before the position was posted and the amendment was finalized.

The Mayor opened the table to Council comment.

Mr. Suchanec, Ms. Creecy, and Dr. Bancroft had no questions.

Mr. McDermott asked what language was removed. Ms. Hardin explained that some information was added but the amendment removed “and Code” so the language was “Enforce City of Newark policies”.

Mr. Lawhorn and Mr. Clifton had no questions.

The Mayor opened the floor to public comment.

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

MOTION BY MR. LAWHORN, SECONDED BY MR. MCDERMOTT: THAT COUNCIL ADOPT AMEND BILL 22-05 TO INCORPORATE THE RECOMMENDED REVISION AS OUTLINED THE STAFF MEMO DATED FEBRUARY 18, 2022.

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

Absent – Ford.

MOTION BY MR. LAWHORN, SECONDED BY MR. MCDERMOTT: THAT COUNCIL APPROVE BILL 22-05 AS AMENDED.

MOTION PASSED. VOTE: 6 to 0.

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

Nay – 0.

Absent – Ford.

**(ORDINANCE NO. 22-08)**

**21. 8-B. BILL 22-06 – AN ORDINANCE AMENDING THE COMPREHENSIVE DEVELOPMENT PLAN BY ADDING THE REVITALIZATION OF GEORGE REED PUBLIC HOUSING TO CHAPTER 5, HOUSING AND COMMUNITY DEVELOPMENT (15 MINUTES)**

**3:09:12**

Ms. Schiano read the ordinance into the record.

Mr. Fortner thanked Mayor Clifton for his years of service and wished him well. Mr. Fortner presented the text amendment for the Comprehensive Development Plan V which would add a new section to Chapter 5, Housing and Community Development, for revitalization of the Newark Housing Authority’s (NHA) George Reed Village. He revealed that the amendment was necessary to support the NHA and its development partner, Leon Weiner & Associates, to apply to the Delaware State Housing Authority’s (DSHA) Federal Low Income Housing Tax Credit, and a description of the tax credit was included in Council’s packet.

Mr. Fortner continued that the low-income housing tax credit was a primary Federal tool for funding construction and rehabilitation of affordable housing projects in the Country. He informed that Victoria Mews Apartments provided affordable housing in Newark and were assisted with the low-income tax credit. He explained that the text amendment did not approve the development; the project would go through the normal subdivision process with staff, Planning Commission, and Council review. He clarified that the text amendment was to support the concept for the Newark Housing Authority’s application to the DSHA to take advantage of the Federal program. He continued that the text was developed as part of the Comprehensive Development Plan’s five-year review underway by the Planning Commission but because the review and DSHA’s application process were on different timelines, the language needed to be added to the Comp Plan’s text immediately so that the criteria for the low-income tax credits could be met with the April application.

Mr. Fortner reminded that the Planning Commission and Council had focused on addressing affordable housing in Newark and much of the analysis from the Rental Housing Needs Assessment and Rental Housing Workgroup identified that student housing placed pressure on local rental markets resulting in increased rents that priced many low- and modest-income families out of the Newark market. The NHA also competed in the rental market, so the Planning and Development considered the revitalization and expansion to avoidable housing at the George Reed Village to be an important opportunity for Newark. He introduced Sean Kelly, Weiner & Associates, to give a brief presentation.

Mr. Kelly explained summarized the process was a major scoring criteria for the competitive application for the tax credits which was why the request was so urgent. He thanked Council for the audience and the Planning Department for understanding the need for the urgent request to enhance the competitive nature of the application for tax credits which would be submitted to the DSHA on April 29<sup>th</sup>.

The Mayor opened the table to Council comment.

Dr. Bancroft appreciated the work and had no questions.

Ms. Creecy asked if the tax credit would go towards construction. Mr. Fortner understood it would go towards construction and related issues. Ms. Creecy did not understand. Mr. Kelly confirmed and explained that Weiner & Associates would apply to the DSHA for a Federal credit. He informed that each State was allocated tax credits in order to specifically further affordable housing development and the credit allowed the applicants to raise equity similar to a traditional apartment financing structure to bring more resources to the deal and keep rents lower. He described the credit as a mechanism that made up the vast majority of the financing structure for an affordable housing deal. Ms. Creecy reiterated that the tax credit would be received which would help the tenant because the rent would be lower because they

were getting subsidies from the taxes. Mr. Fortner clarified that the funds helped the applicants construct the project and, as part of the agreement for getting the funds, the units had to be kept below market-rate rent and be made available for low- and moderate-income families and individuals. The deal was for funds to assist with the construction rather than a direct subsidy to the recipient. Ms. Creecy asked why they need the taxes and the HUD funding for the tenants, she wanted to know why there was not enough money available. Mr. Fortner deferred to Mr. Kelly and Ms. Creecy rejected the offer.

Mr. Suchanec agreed that the project was worth doing and affordable housing was an essential element of the City's vision. He asked whether the credit would apply to providing services or partial housing for homeless people as opposed to affordable housing. He continued that he was lobbying for services on Main Street for homeless residents that would provide more than just a hygiene station. Mr. Fortner repeated that the project was for the NHA and referred to Mr. Kelly for specifics on the project. He suggested the project could help homeless people get out of the situation but there was currently a waiting list to get into the NHA. He continued that the project created more affordable units and offered a mechanism towards housing.

Mr. McDermott, Mr. Lawhorn, and Mr. Clifton had no questions.

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 22-06 AS PRESENTED.

MOTION PASSED. VOTE: 5 to 0.

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

Nay – 0.

Absent – Creecy, Ford.

**(ORDINANCE NO. 22-09)**

**22. 8-D. BILL 22-08 – AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, BY INCREASING THE COMPENSATION OF THE MAYOR AND COUNCIL MEMBERS (15 MINUTES)**

**3:20:00**

Ms. Schiano read the ordinance into the record.

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

Mr. Suchanec thought he had made it known that he wanted to make an amendment to the ordinance before it was approved. Ms. Schiano asked Mr. Bilodeau if the amendment would happen after the discussion and Mr. Bilodeau confirmed that the discussion would be first and then Councilmembers could make an amendment. Mr. Suchanec believed the amounts in the recommendation were too high and the metrics would be hard to justify with the residents. He agreed that increases were appropriate because they had not changed since 2004 but did not want to make a major change that evening because it had taken 18 years between considerations for increases. He suggested to first make a reasonable adjustment and assumed that if Council had applied consumer price index increases annually since 2004, Council would have gotten to an increase that seemed reasonable. He added that Council should not wait another 17 or 18 years to adjust salaries and there should be price index adjustments that were automatically applied on an annual basis based on certain metrics; he intended to make a recommendation later on to accommodate both of those points. He repeated that the amount was too high, and he doubted Council could sell or feel comfortable selling it. He thought that increases were reasonable and supported a mechanical process that did not require Council intervention every year to keep salaries adjusted to normal rates.

Dr. Bancroft thought the proposal was reasonable and noted that the raises would not go into effect during current Council's terms so upcoming Council would have the chance to rationalize with voters prior to the raise. He thought the raise would bring Council into the ballpark of inflation and the amount of extra work and time that members put in the modern era.

Mr. McDermott had no further comments because he had made all of his comments during the original discussion.

Mr. Lawhorn explained that he had put much thought into the language and agreed with how it was written. He compared Newark Council's salary to New Castle County and shared that the County made four times more than what the raise would be and their commitment in terms of time was not more, if at all, significant than the City's. He reiterated that the increase was reasonable and explained that it was not just the length of time between increases, but the commitment of current Council was more intense than previous Council. He continued that there were a large number of uncontested elections, part of which was through Councilmembers leaving, and he doubted anyone would join or stay solely because of the money but it was helpful because Councilmembers in fact lost money by serving. He emphasized that he did not serve for the money but admitted that he lost money through his service, which he accepted to a degree. He admitted that when he considered whether he wanted to run again, compensation was a factor. He thought that people in similar situations, with young children or who were facing college expenses, considered finances when deciding commitments. He informed that residents had approached him with the shock of how little Council was compensated. He meant to forward messages to the rest of Council but shared that he put the proposal in his newsletter and did not receive any negative responses and about five positive responses. Through his conversations, he felt that residents were supportive and encouraged the increase. He considered Mr. Suchanec's recommendation about using a price index and agreed it would remove the politics, but he was concerned because County Code indicated their Council was paid \$44,000 but the budget indicated they were paid \$57,000 because the price index kept rising. If the salaries were managed as a price index, it could work well but his concern was that there would be a price index that would explode with future raises in ten or fifteen years. He reiterated his preference for the current language but was not opposed to discussions about a price index factor in the future.

Mr. Clifton shared that when he started in the Federal civil service system in 2003, he made double his starting salary when he retired in 2010.

Mr. Clifton apologized to Ms. Creecy because he had not seen her return. Ms. Creecy asked Mr. Clifton to continue because she agreed with Mr. Lawhorn.

Mr. Clifton shared that his contacts in the automotive industry had the same experience where the rate of travel was not unusual. He admitted there was not one factor but thought that Council needed to take certain factors off of the table and salary was one. He could not imagine what it was like for young families and trying to get younger residents to serve on Council; he credited those with younger children for their efforts and service because he understood the difficulties. He admitted that if he had not received a pay increase in three years at his employment, he would have sought another job because an individual should market themselves. He thought the work that Council had done made them marketable to the residents who trusted members to serve a second term. He emphasized that trust was paramount.

Ms. Creecy repeated that she agreed with Mr. Lawhorn and shared that she invested much of herself in the position. She doubted that many people realized how much paperwork and reading went into service above and beyond taking care of two disabled persons. She shared that she had five children, three adopted and two biological, and two also had disabilities but she still chose to pursue a seat on Council. She believed that Council deserved an increase given all of the effort and late-night meetings.

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

MOTION BY MR. LAWHORN, SECONDED BY MR. MCDERMOTT: THAT COUNCIL ADOPT BILL 22-08 AS PRESENTED.

Mr. Suchanec asked if he would be able to make an amendment. Mr. Clifton confirmed. Mr. Bilodeau explained that there was a motion on the table that had been seconded so it was appropriate to offer an amendment. Mr. Suchanec believed a 51% increase was acceptable and did not believe any number that Council agreed on would convince residents to want to run for office. He maintained the office was service and compensation was not an appealing factor. He added that he did not think a direct comparison to City Council and County Council salaries was appropriate because he understood that Newark Councilmembers represented 3,000 or 4,000 residents while County Councilmembers were responsible for 45,000 people on average and were required to serve on two committees. He pointed that the jobs were different, so the compensation was different.

MOTION BY MR. SUCHANEC: THAT COUNCIL AMEND BILL 22-08 BY CHANGING \$15,600 TO \$10,600 FOR COUNCILMEMBERS AND BY CHANGING \$18,700 TO \$12,500 FOR MAYOR; AND TO ADD THE FOLLOWING LANGUAGE AS A NEW PARAGRAPH TO THE END OF SECTION 2.1: THE SALARY OF THE POSITIONS OF MAYOR AND COUNCIL MEMBERS SHALL BE ADJUSTED UPWARD BEGINNING WITH THE FISCAL YEAR COMMENCING JANUARY 1, 2023, AND IN AN AMOUNT EQUAL

TO THE PERCENTAGE INCREASE, IF ANY, IF THE COST OF LIVING OF THE NEW CASTLE COUNTY STANDARD METROPOLITAN STATISTICAL AREA (SMSA) FOR THE PREVIOUS 12-MONTH PERIOD WAS PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR AS OF AUGUST OF THE IMMEDIATELY PREVIOUS FISCAL YEAR, THEREFORE, IF THE INDEX RAISES, THE SALARIES RAISE, IF THE INDEX DROPS, THERE WOULD BE NO CHANGE; COUNCIL WOULD NOT BE REQUIRED TO TAKE ANY ACTION TO MAKE THIS HAPPEN.

MOTION FAILED FOR LACK OF SECOND.

MOTION PASSED. VOTE: 5 to 1.

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

Nay – Suchanec.

Absent – Ford.

**(ORDINANCE NO. 22-07)**

**23. Meeting adjourned at 10:51 p.m.**

Tara Schiano  
Director of Legislative Services  
City Secretary

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