

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

January 11, 2016

Those present at 6:15 p.m.:

Presiding: Mayor Polly Sierer
District 1, Mark Morehead
District 2, Todd Ruckle
District 3, Rob Gifford
District 4, Margrit Hadden
District 5, Luke Chapman
District 6, A. Stuart Markham

Staff Members: City Manager Carol Houck
City Secretary Renee Bensley
Deputy City Manager Andrew Haines
City Solicitor Bruce Herron
Communications Manager Kelly Bachman
Community Affairs Officer Ricky Nietubicz
Finance Director Lou Vitola
IT Director Joshua Brechbuehl
Parks & Recreation Director Charlie Emerson

EXECUTIVE SESSION

A. Executive Session pursuant to 29 *Del. C.* §10004 (b)(9) for the purpose of the discussion of personnel matters in which the names, competency and abilities of individual employees are discussed.

Council entered into Executive Session at 6:15 p.m. and returned to the table at 7:05 p.m. Ms. Sierer advised that Council concluded its Executive Session.

1. The regular Council meeting began at 7:00 p.m. with a moment of silent meditation and the Pledge of Allegiance. Ms. Sierer requested that everyone keep Alice Liechty in their thoughts and prayers. She was a long time member of the Board of Elections for the City of Newark, and she passed away on Sunday.

2. MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM TO REMOVE ITEM 11D, APPROVAL OF 12-14-15 COUNCIL MEETING MINUTES, FROM THE AGENDA.

MOTION PASSED UNANIMOUSLY VOTE: 7 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

3. 1. **PUBLIC PRESENTATIONS**

A. **Resolution 16-__**: Retirement of Charlie Emerson, Director of Parks and Recreation

02:37

Council unanimously endorsed the resolution recognizing Mr. Emerson for serving the citizens of Newark for over 35 years in the Parks and Recreation Department.

(RESOLUTION NO. 16-A)

4. 2. **ITEMS NOT ON PUBLISHED AGENDA**

A. Public

08:06

Rosario Anthony Grifo, West Chestnut Hill Road, District 3, and his neighbor Michael Strunk, also of West Chestnut Hill Road voiced their concerns about a rental property in the neighborhood where they noticed various issues with traffic, possible accidents and several other items. There was no advance notification of a change in the property, but they believed it was becoming some type of halfway house. They and other neighbors were worried about property values, their families and children and were looking to the City for guidance. Mr. Gifford and City staff were aware of this and were trying to obtain further information and would then reach out to the residents.

John Morgan, District 1, agreed the issue just raised was an important one and that it would be good to know the process for having something like a halfway house in a residential neighborhood and be aware of the state law.

Regarding bicycles on Main Street, and in particular the sidewalks on Main Street where riding bikes was illegal. Several times in the past four to five weeks, a bicycle was ridden on the sidewalk on Main Street coming very close to him with essentially no warning. He also observed many times bikes being ridden at night with no lights on public sidewalks as well as on University campus walkways. He thought that was very dangerous. He suggested that some consideration be given if the City of Newark was going to partner with the University and a private company on some sort of rent-a-bike project, whether bike racks on Main Street were a good place to put them, because it was illegal to ride on the sidewalk on Main Street. There was a bike lane on Main Street, but was the same as the lane used by traffic. The University said they were looking at the issue of safety on campus walkways with bikes being ridden on them, and he hoped that the City Police Department would coordinate with the University to try to come up with a coherent set of regulations which would apply to the downtown area.

Donna Means, District 5, was ejected from the meeting by the Chair for refusing to be seated when requested to do so three times after making personal attacks and disrupting the meeting.

Stephen Hacker, Windy Hills, addressed issues regarding the intersection at Cleveland, Woodlawn, and Rt. 72 where there was recently some reorganization of the lanes and the lights. There were two issues with that intersection that he hoped could be rectified: (1) Coming from Woodlawn to Rt. 72, there was only approximately a six second light. If there was a school bus or three to four cars, only two cars would be able to get through or the school bus. It did not need a full 30 second light like the other directions, but six seconds was far too short for that light. (2) There was a yield sign at that particular intersection for traffic coming on Cleveland wanting to get onto 72. Now there was no yield after stop sign, there was no yield sign, there was nothing. Traffic coming on Cleveland approaching 72 would quite often move very quickly to the intersection, making a right hand turn onto the street, and then quite often the vehicles want to make the immediate left onto Main Street to head out to Interstate 95. He felt there should be some kind of sign letting drivers know that they need to make a stop on the red light, and they need to yield at that intersection. He was almost broadsided half a dozen times in the last 4 or 5 months. He stressed that it was a hazardous intersection. Ms. Sierer said the City could assist with Mr. Hacker's concerns although this was a DeIDOT project.

5. 2-B. ELECTED OFFICIALS WHO REPRESENT CITY OF NEWARK RESIDENTS OR UTILITY CUSTOMERS

21:24

State Representative Paul Baumbach commented on Bill 15-32 which related to safety and climate. It related to rights when one person's rights may impair another person's rights. It related to matters of degree – when was a restriction a reasonable limitation of a right and when was it an unreasonable elimination of a right. Most importantly, the issue of Bill 15-32 focused on common sense.

Delaware law permitted residents to openly carry firearms in most circumstances. There were reasonable limitations. He thought Bill 15-32 involved a reasonable limitation. Open carry was not required for safety. Newark's Municipal building was attached to the building housing the Newark Police Department. There were fewer places with faster response time by law enforcement than the Newark Municipal building. In a November

1st article in the Wilmington News Journal, Bob McGrath, a spokesman for the gun rights group Delaware Open Carry, noted that when requested, he covered up his open carry firearm out of respect and as a courtesy. Mr. McGrath noted that he had a Delaware issued permit to carry a concealed deadly weapon.

Bill 15-32 had no impact on those who went through the lengthy process to obtain such permits or chose to carry concealed firearms in the building. The difference was that concealed carry firearms did not serve to intimidate others. It did not serve to introduce an unnecessary stress to a public meeting which could limit debate and attendance at Council meetings. It did not threaten the atmosphere of resident interactions with City employees working in the building. The open carry of firearms was prohibited in Legislative Hall in Dover. Representative Baumbach was pleased that Newark was considering using the same common sense step here in the halls of city government. He saw Bill 15-32 as a common sense step to improve the climate in city buildings. He hoped that Council agreed.

State Senator Bryan Townsend spoke on behalf of Bill 15-32. He could not imagine what it would have been like to grapple with the very real issue of firearm safety and the meaning of the Second Amendment in his first year in the State Senate after the tragedy at Sandy Hook if there had been firearms displayed in the State Legislature. He was proud to have co-sponsored the legislation that allowed municipalities in Delaware to make that decision for themselves. He thought there were reasonable discussions about the scope of the Second Amendment, but there were two things he would say that were not reasonable. One was the absolute epidemic of gun violence we faced in the United States. The other was the sometimes intentional, sometimes unintentional misunderstanding of the Second Amendment and how it was not only the words in the text of the Constitution itself, but also all the case law and jurisprudence in the U.S. Supreme Court over the many years.

In regards to the epidemic, there was so much the government had to do and so much the public had to do to reach a much more productive conversation about the role of firearms and all the deaths they lead to. Often in the debate, people miss the real policy issues to grapple with because of the rhetoric that was flung around. As a State Senator, he could not imagine the idea that in the process of having that debate and dialogue, that you would do so with firearms being openly displayed in the halls of government.

He understood why those who supported such a position supported it, but he did not think it was the better part of our nature to have the Second Amendment be part of a discussion right there to see it alongside those who were grappling with these issues. At the very least he was very glad that the General Assembly saw to it that local governments could make that choice for themselves. He stood in support of the City if Council decided to pass the ordinance this evening.

- 6. **2-C. UNIVERSITY**
(1) Administration - None
- 7. **2-C-2. STUDENT BODY REPRESENTATIVE**: None
- 8. **2-D. LOBBYIST**: None
- 9. **2-E. CITY MANAGER**

27:04

Ms. Houck wished Mr. Emerson a wonderful, well-deserved retirement and looked forward to working more closely with Mr. Spadafino and thought he would serve the City well.

Staff was taking concerns from citizens since the Cleveland Avenue changes were made and passing them to DeIDOT. Hopefully additional improvements will be made.

Ms. Houck would look into and provide more information on the concern about what she knew to be as of today, a group home, not a halfway house.

10. 2-F. COUNCIL MEMBERS

27:56

Mr. Gifford

- Wished everyone a prosperous New Year.

Mr. Chapman

- Wished everyone a Happy New Year. It was nice to have a full room and bolstered as much participation as possible.
- He was sorry to hear that Mr. Gifford decided not to run for another term as his participation on the dais was very productive.

Ms. Hadden

- Was sorry that Mr. Emerson was retiring. He contributed a lot to the City. She knew that Mr. Spadafino would do a fine job
- Hoped everyone had a healthy and prosperous New Year.
- Attended a Preston's Playground fundraising event and encouraged citizens to support this worthwhile cause to build a special playground for children and individuals with physical disabilities who cannot exercise in the same playgrounds as other people.

Mr. Markham

- Recognized former State Senator Liane Sorenson who did a lot of good things for Newark during her term.
- Recognized former Newark Police Department Officer Tracy Simpson who passed away recently and asked everyone to keep her family in their prayers.

Mr. Morehead

- Welcomed everyone to the meeting – it was always nice to have a full room. Part of the discussion of the law about open carry in this room was to encourage folks to come. That was one of the arguments being made.
- Thanked Mr. Emerson for his service over the years. He brought a tremendous amount of grant money to the department. They worked together on the skate spots. Mr. Emerson had tremendous enthusiasm for the recreation part of the department and making sure that residents had opportunities to do whatever it was that interested them. Mr. Morehead wished him the best going forward in his life.
- Thanked Mr. Gifford for everything he had done for the City – he was a fine example of coming prepared to a meeting, and his departure would be a tremendous loss.

Mr. Ruckle

- Attended the retirement of Mr. Emerson who loved Newark, was very passionate about his work and did so much for the City. Mr. Ruckle thanked Mr. Emerson on behalf of his family and District 2.
- Meetings for District 2 were held the first Friday of every month from 9:00 to 10:00 a.m. at the Newark Senior Center along with State Representative Ed Osienski and Councilwoman Lisa Diller.
- Noted there was a GoFundMe account for former Newark Police Officer Tracy Simpson who passed away recently.
- A new referendum would be forthcoming from the Christina School District.

Ms. Sierer

- Wished a happy New Year to all, and she looked forward to a productive 2016. She would continue to leverage her leadership skills, her diverse experience and solid relationships to assist the City in reaching its full potential.
- Received a letter from the Delaware State Housing Authority. This was great news. Newark would be getting some Habitat for Humanity funding through their grant request that would offer rehabilitation to 10 homes in the College Park, Cherry Hill Manor, and George Read Village neighborhoods. Habitat for Humanity had not had the opportunity or focused on the City since a home was rehabbed a couple of decades ago on Corbit Street. This was a tremendous opportunity for some of Newark's neighborhoods.
- Read the following letter she received from Shawn M. Garwin, Regional Administrator of the United States Environmental Protection Agency.

"I am writing to thank your Public Works and Water Resources Director Tom Coleman for taking me on a tour of the Newark Reservoir. During the tour, Tom's knowledge of this facility's operation was remarkable. He demonstrated how the Newark Reservoir serves a dual purpose, providing water as well as being a valuable public recreation space to be enjoyed by the community. I appreciate his time and professionalism. As the US EPA continues to work to make visible differences in communities across the nation, facilities like the Newark Reservoir remind us how public infrastructure projects and the professionals like Tom Coleman who manage them, can improve a community's overall quality of life. I commend the City of Newark on the Newark Reservoir and your tremendous staff."

11. 3. **ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

12. 4. **APPOINTMENT TO BOARDS, COMMITTEES AND COMMISSIONS:**

A. Appointment of Jason Kramer to the Vacant District 6 Position on the Conservation Advisory Commission to Expire March 15, 2019

35:24

Mr. Markham noted that Mr. Kramer had experience in solar, had interest in conservation and would be a good appointment to the board. Mr. Kramer was present at the meeting if there were any questions.

There were no questions from Council or the public.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT JASON KRAMER BE APPOINTED TO THE CONSERVATION ADVISORY COMMISSION TO THE VACANT DISTRICT 6 POSITION TO EXPIRE MARCH 15, 2019.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

13. 5. **SPECIAL DEPARTMENTAL REPORTS:**

A. Special Reports from Manager & Staff:

1. Request for an Amendment to the 2016 Operating Budget to Add a \$68,200 Subvention for Aetna Hose Hook & Ladder to the General Fund Expenses – Finance Director

36:59

Mr. Vitola reported that during and after the first part of the year, concerns were heard about the level of Aetna funding, including an appeal from Chief Schall. Staff had a plan to increase the subvention using a variable component of the water bill, although that was not supported on December 14th. The approved 2016 budget included the Aetna subvention in the water fund, so Council was requested to amend the 2016 budget to restore the subvention in the general fund in the amount of \$68,200. The recommended amount matched the request of Chief Schaal, and would be supported by the 2016 general fund surplus, reverting back to how this was done for at least the last 10 years. Mr. Vitola was sure some sort of subvention was provided prior to that time but included only the last decade on the report.

John Morgan, District 1, asked if this continued the City's past practice. Mr. Vitola replied that it did.

MOTION BY MR. MOREHEAD, SECONDED BY MR. RUCKLE: TO AMEND THE 2016 OPERATING BUDGET TO INCLUDE THE AMOUNT OF \$68,200 FROM THE GENERAL FUND SURPLUS AS THE SUBVENTION TO AETNA HOSE, HOOK, AND LADDER COMPANY.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

14. 6. **RECOMMENDATIONS ON CONTRACTS & BIDS:**

- A. Recommendation to Waive the Bid Requirement for a Three (3) Year Period for the Purchase of Computer Related Equipment and Consulting Services from Dell Marketing, L.P. in Accordance with State of Delaware Contract No. GSS15133 – Computer Equipment, Peripherals & Related Services

39:17

Mr. Brechbuehl proposed that Council waive the bid requirement for computers, servers, network and storage devices, and technology consulting services for a period of three years with Dell Marketing LP in accordance with the State of Delaware contract, GSS15133, for computer equipment and related services. In the past Mr. Brechbuehl requested Council approval for different technologies for improving the camera systems throughout the City, the server and networking infrastructure, some applications that go along to monitor that infrastructure and computers to replace the outdated computer system used on a daily basis by staff members. In the past they were always Dell and currently were a full Dell shop, making the IT Department's work easier from the perspective of being able to rely on one team and getting problems resolved as quickly as possible. In addition, when looking at interoperability between the systems, it was important to have consistency.

IT would always bring technology purchases greater than \$25,000 before Council for approval, but streamlining the bidder process would be a big advantage in speeding up project delivery.

Mr. Markham asked if the Delaware contract was sole source using Dell. Mr. Brechbuehl replied there were other choices including Hewitt Packard.

Mr. Markham asked what the City's experience was since having Dell in terms of reliability of equipment and responsiveness. Mr. Brechbuehl said with the new Dell infrastructure put in 2 years ago, there were some issues related to network compatibility. After making only one phone call, Dell was actually able to pull different groups into that conversation. It was an all-nighter. At the end of the night, they ended up taking ownership of the problem and resolved the issue. He said if multiple companies had been involved, it would have been a week long process.

Ms. Hadden was curious as to why Mr. Brechbuehl was putting a three year time frame on this. Mr. Brechbuehl said it was the number they chose because staff thought it would be the length of time to be able to do this and then bring it back to Council in three years. This was not contingent on anything the State was doing. This was staff's idea, staff's plan, staff's way of saving a lot of time in moving through some of these quotes and bid processes. Ms. Hadden asked if the State quoted out on any particular time frame. Mr. Brechbuehl did not know but would find out and relay this information.

Ms. Houck reported if there was an entity within the state that had a need, they might do a contract at any time. These types of contracts had some long life to them because all of the schools and municipalities were making big investments. She did not think they could be hammered down into any specific length of time.

Mr. Morehead asked Mr. Brechbuehl if he was talking about a contract with a three year term. Mr. Brechbuehl was not talking about any contracts with Dell. This was simply the recommendation to have Council waive bid on future purchases from Dell, assuming they also approve the purchase itself. Staff would bring it before Council to approve, it just helped from having to spend months through the bidding process to end up selecting a bidder that was going to most likely be single source anyway.

Mr. Morehead had no problem with the concept of single source when it made sense. It was unclear to him that Code allowed for a term of sole source. It allowed for extended time of a single contract, but was specifically for a particular purchase or contract. Mr. Brechbuehl was not sure he could speak to it other than that. Mr. Morehead's feeling was this could not be done by Code. He was willing to evaluate every single time and had no issues with sole source because he understood that well. He understood the concern of interoperability, etc. He did not believe this could be done.

Ms. Houck added that she and Mr. Herron discussed this as well. She felt 6A was basically a commitment to Dell, then knowing that anything purchased under \$25,000 did not go to Council anyway. So those items were basically null and void but then anything over \$25,000 would be reviewed by Council with the understanding that the City made a commitment to purchasing Dell. The next recommendation solidified that commitment, and staff was going to go ahead and bring before Council right now an opportunity to vote on some Dell purchases from State of Delaware contracts that were already let.

Mr. Morehead had no problem with Ms. Houck's first comment and third comment. It was the second comment, the three year blanket Dell always and forever, regardless, that he had a problem with, and he was not sure the law allowed that.

Mr. Herron thought the last sentence in the recommendation was the important one. It stated that purchases of \$25,000 or more would always be brought before Council for approval. He thought in one sense, 6A did not really have meaning, because everything that was \$25,000 or more had to come before Council for approval in order to waive the bidding. Mr. Morehead was looking at Code Section 2-23 (c) and (d) and noted that (c) allowed for single source and (d) specifically for a particular purchase or contract. If there was a contract that lasted three years, that made perfect sense. He did not think the law allowed this.

Mr. Herron said it comes back to each particular purchase had to be approved by Council. Mr. Morehead said sure, but it was already sole sourced at that point. Mr. Herron noted that tonight there were specific contracts before Council. Mr. Morehead said he was perfectly happy with them. Mr. Herron thought the safest thing to do was for Council to consider those at this point. Mr. Morehead asked if Council could discuss 6B and not 6A. Mr. Brechbuehl said yes.

Regarding 6A, Mr. Gifford said just understanding that this might be in the spirit of what would be brought to Council over the next three years. Council would just waive it each time, which was fine. He asked if the City bid things out in the past that have shown that Dell had done the best in terms of cost, or was it always just the service. They seemed to be very good at what they do, and he had good Dell experiences himself.

Mr. Brechbuehl said with Dell being direct, and now owned by Michael Dell, being a private company, staff did find that they were able to beat prices from other competitors by just a hair, but the compatibility of those products ended up outweighing the cost savings anyway. Mr. Brechbuehl said staff always did comparisons against other products, but they did not go through a thorough engineering bill document every time. Mr. Gifford noted a lot of these could be easily benchmarked.

Ms. Houck suggested that Council reject item 6A and have staff bring this section back on an annual basis.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: TO WAIVE THE BID REQUIREMENT AND AMEND STAFF'S RECOMMENDATION OF 6A TO A ONE YEAR PERIOD.

The Chair opened the discussion to the public.

Helga Huntley, District 1, said it was her experience being involved in IT purchases at UD, including a range of desktops, laptops, servers, storage devices, that generally it was a good idea to price it out amongst various companies, and in particular, recently they set up a large data server and found that Dell did offer the best product for the main skeleton but that the discs were much cheaper and equally reliable in purchase from third parties. They were able to save a lot of money from grants by not going with just Dell. She would expect that the City would be able to find similar savings by not giving a contract to Dell for everything IT related that they wanted to purchase. She recommended against even a one year contract of all IT purchases going to Dell and would recommend instead to ask IT staff to do the pricing with other companies as well.

Question on the Motion was called.

MOTION PASSED. VOTE: 6 to 1.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – Gifford.

15. 6-B. RECOMMENDATION TO PURCHASE COMPUTER EQUIPMENT FROM DELL MARKETING, L.P. RELATED TO 2016 IT CIP APPROVED BUDGET

53:07

Mr. Brechbuehl was requesting a single source recommendation. As part of the 2016 CIP budget, multiple IT infrastructure improvements were included to replace aging server infrastructure with a 2016 expiring warranty, as well as additional performance for improving the Harris-NorthStar utility billing software and associated Customer Connect.

A second data center location was being built out to provide offsite data storage and backup, as well as providing a level of disaster resiliency. In addition, the Electric, Parks and Recreation and Public Works and Water Resources departments identified the need for ruggedized tablets which would give field crews the ability to view the electric distribution system, manage work orders in the field, and collect GIS data for water meter installations. IT 1601 was for a virtual host server replacement in the total of \$67,000. IT 1602 was the Harris Utility Environment upgrade for \$73,000. IT 1606, Disaster Recovery and Planning, for \$56,000. The projects totaled \$196,000.

The cost for the Dell equipment for this project totaled \$181,000, and included three servers, four year mission critical support, 10 GbE fiber, plenty of disc storage, and new networking equipment to support that speed. Additional consulting implementation costs which would be paid separately to those companies, were for Harris-NorthStar software re-installation (a consulting service) at a total of \$8,000, as well as miscellaneous equipment required for implementation. Mr. Brechbuehl assumed Council was not approving that additional portion tonight but wanted to make sure he explained this thoroughly enough so Council did not see a gap in the funding here.

Also included was IT1607 for the ruggedized tablets for Electric, Public Works and Parks worth a total of \$32,000. Funding of \$228,000 was available in all five of those CIP projects. It was recommended that Council approve the aforementioned equipment purchases from Dell Marketing in the amount totaling \$213,000.

There were no public comments.

Mr. Markham noted it said this was contingent on the three year waive the bid requirement. He clarified the one year was sufficient to do this project.

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: TO APPROVE THE RECOMMENDATION TO PURCHASE COMPUTER EQUIPMENT FROM DELL MARKETING RELATED TO THE 2016 IT/CIP APPROVED BUDGET.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

16. 7. FINANCIAL STATEMENT: None

17. 8. ORDINANCES FOR SECOND READING & PUBLIC HEARING

A. Bill 15-32 – An Ordinance Amending Chapter 31, Weapons, Code of the City of Newark, Delaware By Regulating the Possession of Firearms, Ammunition, Components of Firearms and Explosives in Municipal Buildings and Police Stations

56:28

Ms. Bensley read Bill 15-32 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 15-32.

Ms. Sierer requested that this bill be placed on the agenda pursuant to the recent bill passed by the General Assembly. She read a letter addressed to herself and Council from the State legislators:

"Dear Mayor Sierer and Members of Newark City Council,

"We write to you as the State legislators who represent the City of Newark in the General Assembly. We share the privilege of representing the same city residents as you, and we want to offer our support of your proposed ordinance, restricting possession of firearms in municipal buildings. When the General Assembly passed House Bills 192 and 201 last summer, we wanted to extend the local municipal and county governments the ability to determine for themselves whether they wanted to pass ordinances regulating the open carry of firearms and ammunition inside municipal buildings. Rather than being a top-down decision made by State government and imposed on counties, cities, and towns, we believe that locally elected officials should make these decisions regarding their government buildings, respecting the wishes of the residents they serve.

Since then, several municipal and county governments have enacted measures similar to the one Newark City Council is considering. We understand the concerns that city officials, residents, and gun owners have expressed, and we believe that the proposed ordinance, which is scheduled for a vote on January 11 Council Meeting, follows the spirit of the law we enacted last year. We support the ordinance and encourage Council to enact the proposal. Anecdotally, firearms already are prohibited inside State government buildings, including Legislative Hall, State courthouses, and Federal buildings.

If we can be of any further assistance in the ordinance passage, please let us know."

(Secretary's Note: Letter was signed by State Representatives Paul Baumbach, John Kowalko and Ed Osienski, and State Senators Bethany Hall-Long, Karen Peterson, David Sokola and Bryan Townsend.)

Mr. Gifford pointed out that one issue he had with the bill was the definition of municipal buildings. He had a question about leased buildings versus owned buildings and who had the right to indicate to people using the building whether there was a restriction on firearms – was it the owner or those who leased the building. Mr. Herron said it would be up to the City to make that direction if there was a City meeting on the property. Mr. Gifford brought up the City's parking office which was a leased facility.

According to Mr. Herron, the General Assembly said that was alright, when the City was meeting or occupying such a building, the City would have a right to do that.

Mr. Gifford would like this to apply just to government-owned buildings, so he was going to try a motion with just government-owned buildings but including all the rest of the wording in that definition of municipal building, to amend that, because he did not want it to open up to leased buildings and to non-City-owned buildings.

Mr. Chapman said he was thinking of that concern as well, and not just formal leases, but scenarios where due to large crowd expectations meetings were held at area churches or schools. If it was being held at a school, then it was already covered in another way there, but his thought process was there would be an expectation to include in any formal agreements or documentation notice of this. If any other entity or organization chose not to lease or loan the City meeting space due to this, then it was like any other line item in an agreement for such an arrangement. Due to that, he felt like it was included and was okay. He asked if the parking office was excluded. Mr. Gifford said it would be included because it was a City office.

Mr. Gifford saw this as three categories – buildings owned by the City, buildings leased by the City and spaces used for ad hoc meetings (for example, the DNP Design Committee meeting at Panera Bread). He had an issue with showing up at a private building and having these laws imposed upon them. Ms. Sierer said her understanding

was those buildings would not be included because they were private buildings. Mr. Gifford said they were included by the original terms of the document before Council. In his discussions with Mr. Herron, there was an alternate suggestion to exclude the non-owned City buildings, but he still had questions about leased City buildings.

Mr. Ruckle stated that the terms had to be negotiated upfront by the City in their agreement to use a building. Without it, that building would not be used. Mr. Gifford said the City did not have an agreement for the committee meetings but rather just showed up to the building.

Mr. Markham said private buildings could specify either way they wished to have it, either prohibiting guns or allowing guns. Unless the City negotiated it, it could not be overridden. Typically a church would say, "No guns." The City would have to abide by their rules.

Ms. Hadden asked whether Mr. Gifford's concern was that this might create a hardship for private-owned locations. Mr. Gifford thought this might create a conflict by imposing a potential rule that the owner may not know about and may not agree with. He thought there was enough space to have almost all meetings at a City-owned property, and in the event of a much larger meeting, there could be an agreement with that facility.

Ms. Hadden said that would be part of the contract, and as part of this discussion, what she visualized were the public meetings held by the City with very large groups. Mr. Gifford was envisioning the meetings held at private establishments, usually restaurants on Main Street. He did not want to impose this upon private building owners, so he thought this should only be structured around City owned and potentially City-leased buildings because that could be in an agreement, but not in a non-City-owned building.

Ms. Sierer asked Mr. Herron for his thoughts on committee meetings held at restaurants. Mr. Herron previously responded to Mr. Gifford's concern and copied Council on this subject. If Council was concerned about this particular aspect of the law, he proposed a possible amendment. The only difference was inserting the words City-owned or leased, and he thought Mr. Gifford's concern was possibly on the leased. Mr. Gifford said in other states, it was the property owner that had the right to say yes or no to anyone carrying weapons onto that property.

Mr. Gifford did not want this law to apply to something by accident because it specifically allowed concealed carry, and he thought a private property owner could request that no weapons be brought in. Mr. Chapman said in the event of a small meeting at a public space, in the absence of an ownership or formal lease scenario, this may now not apply. Mr. Morehead thought this was a valid concern, specifically for the DNP meeting, where it was a formal City meeting subject to the rules and laws of FOIA. These meetings were held in a private building leased typically by a third party. In the paragraph about the definition of municipal building, any non-City-owned had to come out. Mr. Gifford added the wording suggested that.

Ms. Sierer said in the past 12 months most of the meetings were moved to the municipal building. The only meeting held at a restaurant was the Design Committee meeting, and the City was moving towards holding all meetings at the municipal building.

Mr. Morehead asked Mr. Herron where the definitions for firearms, ammunition, components of firearms or explosives were defined in City Code. Mr. Herron said the language in this bill originated in the General Assembly. Those would be defined as they were defined in State Code. Mr. Morehead noted that in State Code, Title 11, 222, ammunition, components, and explosives were not there, and he was concerned about a loose end. Mr. Herron believed there was a definition of explosives in State Code but thought he was correct about ammunition. Mr. Morehead asked why it would defer to the State definition. Mr. Herron reported the language in the bill was identical to the language in the State Code adopted by the General Assembly. They upheld municipalities, and Council may enact an ordinance with this language, and they specified this language in a State bill. Mr. Morehead said City Code used Webster's if there was a disagreement, and did not use State Code automatically.

Mr. Herron said while Newark's Code did not say that, a Court would say that it was interpreting a municipal ordinance, and it was looking to define language used in the ordinance, and the General Assembly used the same language and told a municipality you could enact this bill using this language. The Court would look to State Code.

The Chair opened the floor to public comment.

John Wessells, District 2, agreed the City should follow the State guidelines.

Anne Green, District 6, believed it made sense not to have weapons in a municipal building.

Matt Binder, University Courtyard Apartments, spoke in favor of Bill 15-32 which he felt was common sense.

Jerry Holt, District 5, was an owner of firearms but supported Bill 15-32. He suggested looking at Delaware's Environmental Health Safety regulations which he believed contained definitions that would fit this for safety reasons.

Dennis Greenhouse, District 6, former Delaware State auditor, former New Castle County Executive and former Deputy Director at the Office for Victims of Crime at the United States Department of Justice in Washington. Mr. Greenhouse supported the Constitution of the State of Delaware and the United States. He supported the fact that law abiding citizens could own guns and supported this bill. The opponents of this bill stated they needed to carry firearms to a Newark City Council meeting for safety reasons. They failed to mention there were police officers here and that the Police Department was located in this building. They also failed to mention that under (e)(6) of this bill, people with concealed carry permits were exempt from this bill and could use their firearms in defense of themselves and others.

The other argument was that this violated Second Amendment rights. If the opponents of this bill had to go to Christiana Care for medical services or had to visit someone there, they would leave their guns home and they would not say their Second Amendment rights were violated. If they were asked to serve on a jury, they would leave their guns home because they could not bring guns into a courthouse. He supported what Newark was doing and hoped Council would vote yes on this bill.

Karen Barker, District 3, was in favor of the bill.

Liane Sorenson, Chair of the Delaware Coalition against Gun Violence Education Fund, and retired State legislator, favored prohibiting openly carried guns in Newark's municipal buildings. She felt the presence of these guns in the Council Chamber created a disruptive and intimidating atmosphere. She was grateful that guns were prohibited during her time with the State Legislature.

John Morgan, District 1, did not think it was a good idea to carry sidearms when talking about important issues before Council because audience members might focus their attention to the sidearm than on what was being said, thus making the speaker less effective. He thought if the bill was to be passed, there should be specific exemptions which would include members of the U.S. military on active service, Reserves, and National Guard, and honorably discharged veterans of the U.S. military.

Miranda Wilson, District 4, said that the times she came to Council meetings and noticed people with open carry, she felt an immediate sense of anxiety and fear. From her perspective, guns did not belong in the spaces created for discussion, for debate, and for the very difficult and vital work of democracy. She was in favor of this bill and hoped Council passed it.

Jeff Lawrence, District 3, posed a question at the last meeting, and it came down to how this bill would be enforced if it passed. He did not get an answer at that time and was told he would have to wait for it to be discussed at the second reading. He asked how would this be enforced and more specifically since this bill would allow people with

concealed carry permits to bring their firearms concealed into the building, what would separate such a person from someone illegally hiding a weapon on their person and bringing it in. He stressed the need to have the mechanism to enforce the bill if passed, so it was not a meaningless bill to make some people feel good, but actually had something behind it. Ms. Sierer replied that was not addressed in this bill. Mr. Chapman added at this point, it would be handled the same way it is right now with knowing legally and illegally who was carrying a firearm. Ms. Hadden said the bill was against open carry. If someone chose to hide a gun and take a chance, Mr. Chapman was correct. That would be enforced the same as it is now, but the difference was, the Police Department would see someone open carrying and check it out. Mr. Lawrence reiterated nothing would be done to stop somebody from sneaking a firearm into the building. Ms. Sierer explained that was not the purpose of this bill. This bill was for open carry, not concealed carry. Mr. Lawrence said he heard a lot of concerns from people who supported this bill and if it was passed, he hoped their concerns were alleviated.

Helga Huntley, District 1, said the debate about the proposed ban on openly carried firearms in municipal buildings was phrased by some as a Second Amendment issue. Yet, similar bans in government buildings were in effect for years, and found to be constitutional by the Supreme Court. She felt this was a First Amendment issue, and that this law was not an attempt to infringe on someone's right to keep and bear arms, but rather a necessary measure to ensure the free exchange of ideas and opinions. Government works best when different opinions were brought to the table and considered, and this inevitably leads to heated discussions at times, discussions where guns and other weapons have no place. When someone openly carried a gun to a Council meeting, it conveyed the message, "I have a weapon, and I'm willing to use it," that is inherently threatening to those disagreeing with the carrier, and thus unfairly skews the dialogue. She counted herself among those who find the presence of weapons carried by those who were not law enforcement officers a threat, and the openly carried guns a form of intimidation. She disagreed that exemptions should be made for certain groups of people. Those with a concealed carry permit must have at least some minimal training on how to use their weapons and how to avoid accidents. More importantly if the weapon was not displayed, it did not become an implicit threat. In response to Mr. Gifford's point that the law was too broadly written because it included places where Newark City government meets but were not necessarily owned by the City. She believed that free discussion was more important than the freedom to meet in any particular private establishment. Finding a safe place for a meeting was at most a burden placed on the City or its committees, and not on any private establishment – it would be a matter of finding out before calling a meeting whether the location qualified under these rules. Ms. Huntley urged Council to approve this bill to ensure continuing open and civil dialogue.

Gloria Knapp, north 896, was not intimidated by open carry and thought it would be a mistake to follow the state or federal government's regulations on Bill 15-32.

Howard Smith, District 4 and Design Committee member, asked for clarification about the City-owned or leased spaces portion of the bill. Ms. Sierer said it read, "For the purpose of this section, municipal buildings are defined as any building where the City meets in an official capacity, or any building containing the offices of elected officials and public employees." Mr. Gifford's recommendation was to insert "city-owned or leased buildings." Mr. Gifford added that the second sentence was the bigger issue. It said, "The definition of municipal building includes any non-city owned or leased building," so the re-worked language would only be the one sentence suggested by Mr. Herron. With the changes proposed, the committees could still meet in the public spaces but would not have to follow the rule. Mr. Smith felt this was heading in the right direction.

Jean White, District 1, opposed making all City committees, including the Design Committee, have to meet in the municipal building. She felt one of the particular benefits of holding meeting at different locations on Main Street was that many of the issues being considered might be next door or down the street, and it was easy to get out and look at particular items being discussed. She agreed that non-city owned buildings should be taken out of this bill and possibly even leased buildings.

Larry Laber, District 6, felt the bill would take away the right of self-protection by taking guns out of honest people's hands.

Jonathan Kirch, Hopkins Estates, urged Council to pass the bill. He felt comfortable that the police could address any threats to the Council Chamber, or other issues that might come up.

Phillip Dingus, non-resident and a member of Delaware Open Carry, objected to Bill 15-32 as he felt it prohibited those who were unable to obtain a concealed carry license from defending themselves in the municipal building. This would also require them to either leave their firearm unattended in a vehicle or leave it at home, which left them unprotected to and from the meeting.

The Chair returned the discussion to the table.

Mr. Ruckle was flooded with phone calls from his district to support this bill tonight. He noted the issue was raised about citizens having difficulty obtaining a concealed carry permit and felt the City should support their cause to get that. Based on the opinion of the City Solicitor, he now saw that this issue was constitutional.

Mr. Gifford's concern was that the bill did not actually improve safety at all. Anyone in the municipal building could still conceal a weapon if they chose to do harm. Because of that, he did not like this particular bill. He felt uncomfortable taking away someone's ability to protect themselves. Unless the City goes further to control who is bringing weapons into the building with either metal detectors or some sort of wand procedure, he did not think this bill was acceptable.

Ms. Hadden was raised in a home with guns. She was raised to treat a gun with respect and also consider whether or not it was appropriate in a given situation to have a gun. As a Council member, there were times she was intimidated, but did not show it. The Council Chamber was a place for people to come and be part of their legislative process and they should not feel intimidated to do so. It was the City's duty to give them the opportunity to come and state their opinions and to feel safe. Ms. Hadden had no constituents reach out to her who was in favor of this bill.

Mr. Morehead stated that Council members take an oath of office to defend the Constitution. He studied the information that the Supreme Court decided on this. The Justices themselves split on this decision. When the Supreme Court was trying to decide whether something was constitutional when it involved conflicting and competing rights, they looked to which rights, to how much of an imposition it would be and whether it was the most tightly-defined imposition it could be. The City was talking about taking away the rights of some people to protect themselves. He thought that created a responsibility for the City to positively disarm people coming into the building, such that the folks whose rights to defend themselves was taken away could rest assured that they do not need to, with a gun. That was their legal right everywhere else. He did not see that one could be done and not the other. Mr. Morehead spoke to as many people as possible in District 1 about this issue. He also spoke to members of the Newark Police Department, and they were split similarly to the Supreme Court. Some told him that they were comfortable with people open carrying in the room because they believed it was a deterrent to someone coming into the room and hiding a gun. His constituents in District 1 overwhelmingly wanted no open carry and no concealed carry as well. The City was not allowed to ban concealed carry under State law. If Council voted to pass Bill 15-32, Mr. Morehead felt it created a responsibility to include a way to protect everyone and not just some people.

Ms. Hadden asked if Council could direct Mr. Herron to read into the record his memorandum from January 4th regarding possession of firearms in municipal buildings

Mr. Herron believed there would need to be a motion made by Council to take that out of the realm of attorney/client privilege. If that motion passed, then he would share it.

MOTION BY MS. HADDEN, SECONDED BY MR. MOREHEAD: THAT THE CITY SOLICITOR'S MEMO OF JANUARY 4, 2016 REGARDING BILL NUMBER 15-32

REGULATING THE POSSESSION OF FIREARMS IN MUNICIPAL BUILDINGS
BE BROUGHT FORWARD AND READ INTO THE RECORD.

Mr. Morehead asked if Ms. Hadden was doing that because of his statement that the Supreme Court split. Ms. Hadden said no, she would like this legal opinion to go into the record.

MOTION PASSED. VOTE: 6 to 1.

Aye – Gifford, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – Chapman.

Mr. Herron read his memo into the record as follows:

“Council has requested that I report regarding the legality of Bill No. 15-32, which would prohibit, with certain enumerated exceptions, the presence of firearms in municipal buildings. For the reasons set forth below, it is my conclusion that the proposed ordinance is legal and that a reviewing Court would reject challenges based on either the Second Amendment to the United States Constitution or Article 1, Section 20 of the Delaware Constitution.

The Second Amendment

In District of Columbia v. Heller, 554 U.S. 570 (U.S. 2008), the United States Supreme Court held for the first time that the Second Amendment – “A well-regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms shall not be infringed” – established an individual right for U.S. citizens to possess firearms. The Court struck down a general ban on all handguns in the District, noting that at its core the Second Amendment protects “the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” Id. at 635.

However, the Court in Heller held that the right secured by the Second Amendment is not unlimited. “The right is not a right to keep and carry any weapon whatsoever and for whatever purpose.” Id. at 626. Most significantly for the present analysis, the Court stated that “[n]othing in this opinion should be taken to cast doubt on long-standing prohibitions forbidding the carrying of firearms in sensitive places such as schools and government buildings.” Id. (Emphasis added)

Federal Courts since Heller have recognized that the Second Amendment cannot be used to invalidate firearm bans in government buildings. In U.S. v. Dorosan, 350 Fed. Appx. (5th Cir. 2009), the Fifth Circuit Court of Appeals rejected the defendant’s argument that his conviction for bringing a handgun onto property owned by the United States Post Office violated his Second Amendment rights. The Court ruled that the United States Government had the legal authority to restrict guns on its own property, noting that the law in Heller was struck down because it generally prohibited the possession of handguns anywhere in the city. Id. at 875. The Court also cited what it termed the “place of regular government business” exception set forth in Heller, holding that laws which forbid the carrying of firearms in government buildings do not run afoul of the Second Amendment.

Delaware Constitution – Article 1, Section 20

The Delaware Supreme Court recently ruled that Article 1, Section 20 of the Delaware Constitution – “A person has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use” – provides a right to keep and bear arms independent of the United States Constitution 2nd Amendment. Doe v. WHA, 88 A.3d 654 (Del. Supr. 2014). The right to bear arms under the Delaware Constitution, though fundamental, is not absolute. Id. at 667.

The Court in Doe held that a public housing agency could not prohibit its residents, household members and guests from carrying weapons in a common area. The Court reasoned that the common area restrictions severely burdened the right to possess a firearm by functionally disallowing armed self-defense in areas that residents, their family and guests occupy as part of their living space.

An individual's interest in the right to keep and bear arms under the Delaware Constitution is strongest when the weapon is in one's home or business and is being used for security. Id. at 667. The Court viewed the common areas as effectively part of a residence, and drew a distinction between the government as landlord and the government as "proprietor or employer." Id. at 668. In the latter case, more regulations or restrictions are permissible.

Like the U.S. Supreme Court in its analysis of the Second Amendment in Heller, the Delaware Supreme Court appeared to embrace a "government building exception" to the rights afforded by Article 1, Section 20. The Court stated that:

Unlike a state office building, courthouse, school, college or university, the services provided by the WHA in common areas are not the services typically provided to the public on government property. They are limited to supplying housing...some regulation of possessory firearms on WHA property could pass intermediate scrutiny, for example, prohibiting possession in offices where state employees work and state business is being done.

Id. at 668.

Conclusion

Reasonable restrictions on the possession or display of firearms in government buildings where government services are provided to the public and where government business is being done, like those set forth in Bill No. 15-32 and explicitly permitted by the General Assembly, do not violate the rights guaranteed by the Second Amendment to the United States Constitution or the rights granted to citizens of Delaware under Article 1, Section 20 of the Delaware Constitution."

Ms. Hadden said her reason for asking this to go into the record was, to her, this was a reasonable restriction on the display of a firearm. The Council Chamber should be a place where people could come and not feel intimidated and deal with their government.

Mr. Ruckle asked if the City was permitted to question everyone who comes into the building to show if they had a concealed weapon permit. Ms. Sierer said no, this bill was for open carry only and did not include concealed carry. That would be a different discussion.

Mr. Markham said several residents came out of a meeting and told him that they were intimidated and talked down to. They would not come back to Council to bring any issue while members of the public were open carrying. He also had volunteers saying they would not stay at a meeting if they found someone open carrying in the room. There was strong support from the people he heard from in his district with one exception, but he thought the constitutional issues were at a state level. Newark's charter, came from the state, and they would dictate to the City what could and could not be done under the Charter. If there were issues with law that the City passed, based on state law, it had to go back to the state. One thing that stuck in his mind was that a constitutional lawyer who interpreted the constitution came to him and said, "I have 75 guns, and guns have no place in a municipal building."

AMENDMENT BY MR. GIFFORD, SECONDED BY MS. HADDEN: IN AMENDMENT 1 CHANGE SECTION (B) TO READ, "FOR PURPOSES OF THIS SECTION, 'MUNICIPAL BUILDINGS' ARE DEFINED AS ANY CITY-OWNED OR LEASED BUILDING(S) WHERE THE CITY MEETS IN ITS OFFICIAL CAPACITY OR CONTAINS THE OFFICES OF ELECTED OFFICIALS AND OF PUBLIC EMPLOYEES ACTIVELY ENGAGED IN PERFORMING GOVERNMENTAL BUSINESS, BUT EXCLUDES ANY PARKING FACILITY."

Mr. Gifford said he changed three words from Mr. Herron's suggestion because it sounded like it talked about city owned and leased buildings and then it said or any

building containing, which sounded like a separate clause to him. He removed “any building containing” and put contains instead.

For clarification, Ms. Bensley was asked to re-read the Amendment: With this amendment, Section (b), Municipal building defined would read, “For purposes of this section, ‘municipal buildings’ are defined as any city owned or leased building where the city meets in its official capacity or contains the offices of elected officials and of public employees actively engaged in performing governmental business, but excludes any parking facility.”

Mr. Markham asked if the rest of the amendment was to strike the second sentence or would that remain. Mr. Gifford said that was how the entire section read.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: TO APPROVE BILL NUMBER 15-32, AMENDING CHAPTER 31, WEAPONS, CODE OF THE CITY OF NEWARK, DELAWARE, BY REGULATING THE POSSESSION OF FIREARMS, AMMUNITION, COMPONENTS OF FIREARMS, AND EXPLOSIVES IN MUNICIPAL BUILDINGS AND POLICE STATIONS AS AMENDED.

MOTION PASSED. VOTE: 6 to 1.

Aye – Chapman, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – Gifford.

(ORDINANCE NO. 16-01)

18. 8-B. BILL 15-36 – AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, ARTICLE XVIII, CODE OF THE CITY OF NEWARK, DELAWARE, BY REQUIRING PHOTOGRAPHS OF A TOWED VEHICLE TO BE MADE AVAILABLE AT THE PLACE AND TIME OF REDEMPTION OF THE VEHICLE

02:24:54

Ms. Bensley read Bill 15-36 by title only.

Mr. Herron report this proposed amendment to the towing ordinance would require that photographs taken of the vehicle before towing be made available at the place and time of redemption. It was drafted at the request of Mr. Markham.

Mr. Markham said a few years ago he became aware of somebody having their car towed and it was damaged in the lot. There was no proof of the car's condition before and after, so the original idea behind taking the pictures was both to protect the towing company and the individual, to show the condition of the car before it was towed. Plus, the towing company could show the violation at that point in time. He knew they had been taking the pictures, but also knew that somebody went to redeem their vehicle, asked for their pictures and were told they were not here right now but would be back in a little bit. He felt that the pictures should be with the car. No one should have to wait until the next day to see the condition of the car as it was towed, in case there were any kind of issues.

Mr. Gifford clarified that the vehicle was damaged by the towing company or in their lot. There was no way to prove it without before and after pictures. This was just an adjustment to make sure the pictures were available when the person came to pay their fine and get their car.

Mr. Morehead asked what was to keep the towing company from saying redemption was now tomorrow, they were not saying it was redemption at the customer's convenience. Mr. Herron understood that concern. He was trying to formulate in his mind

how to change it. To address Mr. Morehead's issue, Mr. Chapman did not believe that a person could be prevented from redeeming their car from a tow company if they met all criteria to do so.

Ms. Houck said staff did contacted the City's two towing firms. They were not necessarily opposed to it, because they were already accustomed to taking the pictures, it was just a matter of whether or not the truck comes in, drops off the car, and then goes out for another one and did not download the pictures yet. These were very cooperative companies that have been with the City for years and were city-initiated tows. The understanding was that they would attempt to do that, but there may be circumstances where they could not and someone would have to wait for the pictures. She did not think there was any attempt to be malicious in this instance.

Mr. Gifford suggested just changing the duration instead of the place and time of redemption, just say within 24 hours, one day, or whatever.

To address Mr. Morehead's concern, Mr. Herron suggested changing Section 20-127.1 (h), last sentence "at the place and time of redemption" to "when the person claims the vehicle."

Mr. Markham thought Mr. Herron solved the problem with the redemption. Anybody could say come back in 24 hours, but to him the towing companies were so lucrative they could either afford a second camera or multiple memory cards. It did not take much to plug something into somewhere else. He did not think this was a hardship, but for the person who had damage to their car and wanted to see the pictures, that was a hardship.

There was no public comment.

AMENDMENT BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: TO CHANGE AMENDMENT 1, SECTION 20-127.1 (H), BY DELETING THE PHRASE IN THE LAST SENTENCE "AT THE PLACE AND TIME OF REDEMPTION" TO "WHEN THE PERSON CLAIMS THE VEHICLE."

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

MOTION BY MR. MARKHAM, SECONDED BY MR. RUCKLE: TO APPROVE BILL NO. 15-36, AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLES, ARTICLE XVIII, CODE OF THE CITY OF NEWARK, DELAWARE, BY REQUIRING PHOTOGRAPHS OF A TOWED VEHICLE TO BE MADE AVAILABLE AT THE PLACE AND TIME OF REDEMPTION OF THE VEHICLE, AS AMENDED

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

(ORDINANCE NO. 16-02)

- 19. 8-C. BILL 15-37 – AN ORDINANCE AMENDING CHAPTER 22, POLICE OFFENSES, CODE OF THE CITY OF NEWARK, DELAWARE, BY INCREASING THE AMOUNT OF TIME INDIVIDUALS MAY CLAIM FOUND PROPERTY FROM SIX MONTHS TO ONE YEAR**

02:38:08

Ms. Bensley read Bill 15-37 by title only.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 15-37.

Mr. Herron reported this was proposed by the Police Department, but as he understood it, the State Code provided for the return of found money to the finder after one year if the rightful owner did not claim the money. The City's Code just stated that if found money was not claimed within six months, it was paid to the general fund. This change brought Newark's Code into compliance with State Code and Police Department thought it was a good idea to encourage people to turn in found money if they knew that there was a chance they could eventually get the money.

Mr. Gifford questioned what Section (b) referred to from after to paying into the general fund and asked if it was a separate section. It had discussion about storage and towing charges. Mr. Herron said that had nothing to do with money. This amendment was solely money and nothing to do with found property. Mr. Gifford asked if that was different then if someone found property and turned it into the City. Mr. Herron said there were different rules and this did not apply to that.

Mr. Gifford asked what the current rules were around that, whether it was returned or not. The bottom section was about money and the top section was about property that was then put into the general fund of the City. He wondered if that was ever returned to the finder. Ms. Houck reported the property was sold at auction and there was a retention schedule for how long different things were kept.

Mr. Gifford was confused that if the City sells it and then that was now in cash, whether that was returned to the finder. Mr. Morehead said no.

Mr. Markham asked if money was defined just as legal tender. Mr. Herron's interpretation would be cash.

There was no public comment.

MOTION BY MR. MARKHAM, SECONDED BY MR. GIFFORD: THAT BILL 15-37 AMENDING CHAPTER 22, POLICE OFFENSES, CODE OF THE CITY OF NEWARK, DELAWARE, BY INCREASING THE AMOUNT OF TIME INDIVIDUALS MAY CLAIM FOUND PROPERTY FROM SIX MONTHS TO ONE YEAR.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

(ORDINANCE NO. 16-03)

20. 8-D. BILL 15-38 – AN ORDINANCE AMENDING CHAPTER 10, ELECTIONS, CODE OF THE CITY OF NEWARK, DELAWARE, BY CLARIFYING THE PROCEDURE FOR APPOINTMENT TO THE ELECTION BOARD

1. Boards & Commissions Review Committee Recommendations Regarding the Election Board – City Secretary

02:43:05

Ms. Bensley read Bill 15-38 by title only.

MOTION BY MS. HADDEN, SECONDED BY MR. MOREHEAD: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL 15-38.

Ms. Bensley reported that the Boards and Commissions Review Committee was reviewing and offering recommendations for the various committees of the City. At their October 27, 2015 meeting, they reviewed the Election Board with the final report to Council being approved unanimously at its November 24th meeting. The Election Board received an overall positive review from the Boards and Commissions Review Committee, and the Committee issued three general recommendations overall.

Those recommendations were:

(1) To create a training manual for board members and poll workers. As part of the background material provided to the committee by staff, it was noted with recent transitions within the board membership that a training manual for both new board members and Election Day poll workers would be a useful resource. The committee agreed and included this as part of its recommendation to Council. The City Secretary's office, in conjunction with former Election Board member Alice Liechty, had been working on the draft manual and anticipated it being completed prior to the next election per the board's recommendation.

(2) Clarification was needed for Section 10-1 in the City Code. Members of the committee felt that the nomination appointment procedure for the board members should be clarified in City Code. That Code amendment, Bill 15-38, was submitted for first reading on December 14th, and was on the agenda tonight.

While the nomination procedure outlined was identical to the procedure used, the approval procedure would be changed. Currently, as with all other agenda items with the exception of ordinances, board nominees were able to be approved by a majority of Council members present at a meeting. This Code amendment as written would change that to a majority of Council, making the requirement four votes, regardless of how many members were present.

If Council wished to simply codify the existing practice, the word "present" could simply be added to the end of the amendment within Bill 15-38.

(3) To review the compensation of the Election Board. Members of the committee felt that the existing compensation of the Election Board of \$75 per day, an hourly compensation for clerical work at a rate set by the board, which is currently \$12 per hour, warranted review to determine if the compensation should be increased. At the request of the committee, Ms. Bensley surveyed other municipalities in Delaware via the Delaware Municipal Clerks Association and contacted larger municipalities and found the compensation rates that were presented in the attached memo.

As shown, there was no consistent pattern for compensation for election board members in other municipalities, ranging from \$0 to \$250 per election cycle. One potential benchmark that had been raised was the compensation for machine operators and poll workers in the Newark City election, as it was unlikely that an experienced machine operator or poll worker would want to make the transition to election board member if the compensation were less. For the 2015 election, the board set the Election Day compensation at \$155 for machine operators and \$135 for poll workers. At the Board of Election meeting this past Wednesday, they increased that to \$160 and \$140 respectively.

Another potential benchmark would be to use the current \$12 per hour clerical rate to establish a per diem of \$180 for the 15-hour Election Day for board members. With the discussion of compensation, it should be noted that it was relayed by several board members, and it was reiterated at their meeting on Wednesday night, that their service on the Election Board was not due to the compensation offered but due to their desire to serve the Newark community and perform their civic duty. It was unlikely that a change in their compensation would be enough to attract additional board members who do not hold similar sentiments. Any change to the board's compensation for their election day work would require an amendment to Section 10-7, salary of members of the Election Board and per diem allowance.

If Council would like to amend the Election Day compensation for the board, they should direct staff to prepare an ordinance doing such with the chosen amount for first reading at a future Council meeting. As mentioned previously, the rate for clerical work was set by the Election Board, not Council, as outlined in Section 10-4 (c) of City Code.

The staff recommendation regarding these three recommendations were as follows: Recommendation 1 was no Council action was needed, as this recommendation was administrative in nature and already underway. Recommendation 2 would be approval of Bill 15-38 with the word "present" added to the end of Amendment 1 in order

to preserve the current practice of permitting board members appointed by the majority of Council members present. Recommendation 3 would be that staff request direction from Council in the amount that they would like the members of boards to be paid on Election Day in order to prepare any necessary enabling ordinance accordingly.

Ms. Sierer clarified the committee was looking for direction on recommendations 2 and 3, and then also direction on Bill 15-38. She recommended that Council discuss recommendations 2 and 3 first, and then take a look at the bill.

Mr. Morehead would be introducing an amendment to Bill 15-38 to add the word "present" according to recommendation 2. Hopefully Council would see the sense in that recommendation because it brought this board into a similar situation with all the rest of the boards approved with the majority of Council present.

AMENDMENT BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: TO AMEND BILL 15-38 AS PRESENTED TO ADD THE WORDS "MEMBERS PRESENT" AT THE END OF THE SENTENCE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: TO APPROVE BILL 15-38 ORDINANCE AMENDING CHAPTER 10, ELECTIONS, CODE OF THE CITY OF NEWARK, DELAWARE, BY CLARIFYING THE PROCEDURE FOR APPOINTMENT TO THE ELECTION BOARD AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

Mr. Markham addressed recommendation 3 regarding compensation. He read the minutes and knew the board was dedicated and were not there for the money. He suggested changing the rate to \$100 a day, recognizing the work involved.

Mr. Chapman clarified that the \$12 hourly rate was for clerical work only, so that was worth more than working the polls at \$75 for Election Day. Ms. Bensley explained quite a few Election Board members do various tasks, whether verifying candidate petitions, updating voter registration rolls or the preparation work for Election Day, those would all be work eligible for the \$12 an hour. Usually, most workers were in the range of being paid \$50 to \$200 per cycle. There were not a large number of hours claimed on top of the \$75 for Election Day. She believed for the last cycle, the highest amount paid was \$177, and that included Election Day work.

Mr. Chapman suggested simplifying the process and compensating at \$12 an hour. Mr. Markham asked if that meant that they now had to submit time sheets. Ms. Bensley explained they submit time sheets for the overall work for the election cycle. The rate, as set in Code, was a per diem for the day of the election, so the recommendation here would be to make that rate \$180 if that was the way Council decided to go because that was \$12 an hour for the 15-hour election.

Ms. Bensley said they go to the polls at 6 am to get everything ready to go before they open at 7. Then they were in the municipal building for the 13 hours that the polls were open. They fielding any questions for eligibility, any problems with the polling places and make sure poll workers were fed for the day. At the end of the day, they head out about 7:30, go to each of the polling places to make sure the machines were closed properly, get the cartridges with the results back, and usually return to the building by about 9:00.

The general consensus of Council was to pay the board members \$180 each.

John Morgan, District 1, said since he raised the issue of compensation at the Boards and Commissions Review Committee meeting a few months ago, he was shocked at the current rate of compensation of \$75 for a day that was fully 15 hours. The citizens at large needed to have confidence that the elections were being run competently. He felt the regulations for who could be an Election Board member were a bit complicated because members had to be chosen from each of the six different districts, He favored raising the compensation to \$180 for the full day. He suggested making this an attractive position, where multiple people step forward volunteering for this role.

Ms. Sierer directed staff to raise the compensation to \$180 and present an ordinance to Council. She thanked the Boards and Commissions Review Committee for working on this.

(ORDINANCE NO. 16-04)

21. 9. **RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:** None

22. 10. **ITEMS SUBMITTED FOR PUBLISHED AGENDA**
A. **Council Members:** None
B. **Others:** None

23. 11. **APPROVAL OF CONSENT AGENDA**

02:59:40

Ms. Bensley read the Consent Agenda in its entirety.

- A. Approval of Council Meeting Minutes – November 2, 2015
- B. Approval of Council Meeting Minutes – November 23, 2015
- C. Approval of Council Meeting Minutes – November 30, 2015
- E. Receipt of Alderman’s Report – December 22, 2015
- F. Receipt of Planning Commission Minutes – December 1, 2015
- G. ***First Reading – Bill 16-01*** – An Ordinance Amending Chapter 5, Animals, Code of the City of Newark, Delaware, By Updating the Definition of Vicious Animal, Regulations Regarding Cruelty to Animals, and Regulations Regarding the Quarantine of Animals in Accordance with State Code – ***Second Reading – January 25, 2016***
- H. ***First Reading – Bill 16-02*** – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Amending the Definition of a No Impact Accessory Building or Structure to Include a Height Limitation – ***Second Reading – February 8, 2016***

MOTION BY MR. MARKHAM, SECONDED BY MR. GIFFORD: THAT THE CONSENT AGENDA BE APPROVED AS PRESENTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Ruckle, Sierer.
Nay – 0.

24. **Meeting adjourned at 10:04 p.m.**

Renee Bensley
Director of Legislative Services
City Secretary