COUNCIL COMMITTEE OF THE WHOLE

The Council Committee of the Whole met on March 26, 2019 at 6:12 p.m. with Council President Slavin presiding. Members of Council present were Mr. Anderson, Mr. Sudler, Mr. Neil, Mr. Cole, Mr. Polce (departed at 6:56 p.m. and returned at 6:57 p.m.), Mr. Hare, and Mr. Lindell. Mayor Christiansen was also present. The civilian member present for their Committee meeting was Mr. Shevock (*Legislative, Finance, and Administration*).

LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE

The Legislative, Finance, and Administration Committee met with Chairman Hare presiding.

AGENDA ADDITIONS/DELETIONS

Mr. Sudler moved for approval of the agenda, seconded by Mr. Anderson and unanimously carried.

Legislative Updates

Mr. Carl Luft, Executive Director, Delaware League of Local Governments (DLLG), and Mr. Lincoln Willis, Principal, The Willis Group, LLC, and League Lobbyist, provided members with an update regarding items at Legislative Hall that are on the DLLG Legislative Committee's radar. He noted that the DLLG Legislative Committee meets at least monthly, and he sends regular updates to DLLG members, including council members and town/city managers.

Mr. Luft informed members that the Senate had just passed a bill regarding the Community College Infrastructure Fund that gives the community college bonding authority when needed to improve their facilities. He noted that the DLLG was opposed to it at first due to property tax implications; however, that was changed through two (2) Senate substitute bills.

Mr. Luft advised that the DLLG intends to request an additional $1M in State Municipal Street Aid (MSA). He reminded members that last year the Joint Bond Bill Committee increased MSA from $5M to $6M, which returned the funding to the level it was at four (4) or five (5) years ago. Mr. Luft indicated that the DLLG would be testifying before the Joint Bond Bill Committee regarding that increase on Monday, April 1, 2019.

Mr. Luft stated that a legislator had proposed a decrease in the State portion of the real estate transfer tax. He explained that Mr. Willis had been very helpful regarding this matter and made it clear to the representative that it is extremely important that the towns and counties not even be mentioned in the same breath as the State. Mr. Luft informed members that this bill was tabled. He reminded members that there was a real issue with real estate transfer tax two (2) years ago.

Mr. Luft noted that DLLG did not take a position regarding the National Popular Vote Act.

Mr. Luft stated that there are two (2) Senate bills pertaining to fines for handicap parking spaces which they are watching. He noted that the DLLG does not currently see a problem with these bills, as long as they stick to the fines and stay away from the municipal responsibilities for anything

dealing with infrastructure and parking lot changes. Mr. Luft noted that this may not greatly impact municipalities like Dover, Newark, and Wilmington that have the staff to handle these types of changes; however, for the smaller municipalities, it's a nightmare to change parking lots.

Mr. Luft advised that the DLLG is in favor of House Bill 54, which proposes an increase in the funding source for the Delaware Criminal Justice Information System (DELJIS). He stated that it would increase fines by $2, from $1 to $3, which would go into the DELJIS fund.

Mr. Luft noted that current Senate Bill 7, which had been hanging on since last year's session, would include the DLLG as a member of the population consortium and the DLLG was concerned when the bill was first introduced because it only pertained to municipalities with populations of 20,000 and above. He explained that the DLLG suggested that if the legislature was going to bring consistency to population figures, they should do it for all the incorporated towns. Mr. Luft stated that it was his understanding that there was an amendment to add the Sussex County Association of Towns as well, so it would now include all 57 incorporated municipalities, the counties, as well as the school districts. He informed members that the DLLG is not opposed to the bill because they feel it brings consistency to population figures to which everyone can abide.

Mr. Willis advised that last year a few municipalities passed hotel accommodations taxes. He noted that the first proposal was to pass one (1) bill to allow everyone in the state to have a hotel accommodations tax; however, leadership has requested that each municipality pass separate legislation. Mr. Willis explained that if the City is interested in establishing a hotel accommodations tax, a charter change is the route to go.

Mr. Willis stated that Senate Substitute for Senate Bill 5 is litter legislation which the DLLG Legislative Committee believes is a good bill. He indicated that municipalities are currently required to have trash receptacles and empty them regularly; however, this legislation would allow municipalities to designate certain parks as "carry in, carry out," so they would not have to provide trash receptacles.

Mr. Willis informed members that the DLLG is not going to take a position on Senate Bill 11 pertaining to payment-in-lieu of taxes (PILOT). He explained that currently all three (3) county seats receive PILOT to provide services to agencies like the State and universities because they have so much tax-exempt property. Mr. Willis stated that the proposed legislation would include the City of Newark in the PILOT calculation, and they would receive approximately $20,000. He noted that the City of Newark is looking to get access and go from there. Mr. Willis advised the DLLG does not believe that it is necessarily a League issue but noted that Dover, Wilmington, and Georgetown should definitely keep an eye on it. Mr. Luft stated that the same bill came up last session and the DLLG issued a note to Dover, Wilmington, Georgetown, and Newark, and advised Dover, Wilmington, and Georgetown in particular to calculate whether it would have any negative impact on them. He informed members that he sent the same note to the municipalities last week and he assumes it would not have a negative impact, otherwise there would be a problem getting the bill passed. Mr. Willis noted that, from his understanding, there was a maximum amount that could be distributed and the maximum had not been reached in a while, so the legislation would allow Newark to have access to that extra money.

Mrs. Donna Mitchell, City Manager, referring to Senate Bill 11, noted that based on staff's calculations, the City would come out favorable with the proposed legislation because they have added the assessed values for the University of Delaware (UD) and Delaware State University (DSU), which were previously exempt, into the calculation. She noted that the appropriation was also increased from $3M to $3.9M; however, at times when the State has had it tough, they have lowered the appropriation, and that's when it would have a negative impact on all of the recipients.

Mayor Christiansen cautioned members to take a hard look at Senate Bill 11 and whether the City supports this bill, noting that he personally does not support it. He explained that, with all due respect to the City of Newark, he did not believe it was appropriate to include them in the PILOT calculation because the original intent was for the county seats. Mayor Christiansen stated that benefits the City of Newark receives from UD and the money they receive are much greater than what the City of Dover receives.

Mr. Polce suggested that this would be an advantageous time to engage Senator Sokola, the sponsor of Senate Bill 11, as well as other members of the Senate and the House in conversations regarding the specific funding formula. He noted that anyone who has experience with PILOT generally understands that the City of Wilmington greatly benefits from it, while Georgetown and Dover continue to get the short stick.

Mr. Polce noted that he thought it was very important for the City to work with the DLLG on the Complete Count 2020, explaining that the total census count is directly related to the amount of money received from federal appropriations. He stated that he thought members should work to mobilize a real grassroots effort because the more people counted, the more money the City will receive from the federal government, which is the only way that the City will be able to continue to meet increased demand for services.

Responding to Mr. Anderson, Mr. Willis stated that he could provide the bills that were generated from the charter changes for the three (3) municipalities in regard to hotel accommodations taxes.

Mr. Anderson stated that he was in favor of Senate Bill 11, explaining that he thought including Newark in the PILOT calculation would be beneficial to the City in the long-run because it would provide more of a constituency for redoing the formula in the future if there are more legislators affected. He noted that the City has more tax-exempt property than the City of Wilmington; however, based on the current formula the City only gets a fraction of the money. He indicated that he thought that bringing DSU into the calculation might be part of the long-term solution.

Mr. Neil stated that one of the reasons PILOT is so important to the City is because, as the capital, Dover draws a lot of 501(c)(3) organizations, and many of the buildings are colleges and schools, and none of these entities pay taxes. He noted that the City previously discussed a PILOT formula; however, the nonprofit entities were resistant. Mr. Neil stated that he thought it was important for the City to pursue the hotel accommodations tax, noting that with events like Firefly and NASCAR, the City continues to miss out on revenue opportunities.

Mr. Sudler asked why nonprofit organizations are not taxed or do not have to pay a fee for property, and whether there is any proposed legislation in regard to changing the statute that prohibits taxing nonprofits or charging them a fee for property. In response, Mr. Willis stated that, to his knowledge, nonprofit exemptions began decades ago and he had not heard any discussion regarding getting rid of those. He noted that the only thing he heard recently was that the City of Dover had some considerations for a PILOT. Responding to Mr. Sudler, Mr. Willis stated that PILOT is not mandatory, that it is just a friendly gesture.

Mr. Hare informed members that he had discussed the PILOT formula with many different senators throughout the years. He stated that Dover does not currently get a proportionate amount of the funding based on the amount of tax-exempt State property, so he does not think including Newark in the PILOT calculation would be beneficial for the City.

Update - Small Cell Wireless Ordinance

Mr. Dave Hugg, Director of Planning and Community Development, reminded members that the City engaged the services of Cohen Law Group to assist with drafting an ordinance pertaining to wireless communications facilities and provided members with an update regarding the draft ordinance. Referring to line 11 of the draft ordinance, he reviewed the purpose and explained that the City is trying to proactively recognize and encourage new technology, while also ensuring that the City doesn't end up with antennas everywhere.

Mr. Hugg informed members that this issue had been divided into several parts. He stated that this proposed ordinance focused on the use of City-owned facilities in City rights-of-way, and the other questions would be addressed in a companion ordinance. Mr. Hugg noted that staff wanted to make the process as administratively easy as possible, and to keep the Planning Commission, Board of Adjustment, and Mayor and Council out of the process completely, so the structures will go through the same process as a building permit and it will only need to go before an additional body if there is an appeal or some type of issue.

Mr. Jim Robinson, Electric Director, agreed with Mr. Hugg that the City is trying to make the process as simple as possible for the applicants, and since the Electric Department already has 17,000 poles in its service territory, the City is anxious to continue to utilize those facilities for these types of new devices. He explained, however, that this may not be feasible for situations where there are a lot of underground facilities already in place or in areas with very ornamental light poles, so it is taking some time to ensure that all of these variables are captured. Mr. Robinson informed members that staff has been working with two (2) major carriers and has been able to exchange valuable information with them to help facilitate the process. He noted that due to the evolving nature of the technology, it is going to take some time to try to develop a standard set of devices that everyone can expect to see in the City. Mr. Robinson stated that they must also take into account safety and reliability concerns when it comes to third party entities installing equipment on the City's electric poles, especially those with primary circuits.

Mr. Polce stated that this topic is a passion and concern of his and, although he is not pleased with the pace at which the City is moving, he understands due diligence and how difficult it is to write legislation of this nature and make sure everyone comes to a full consensus. Referring to line 230,

he expressed concern with setting a precedent seeking reimbursement for rights-of-way (ROW) use, and requested that staff seek the opinion of the attorney regarding this matter. Mr. Polce also stated that he was concerned that the draft ordinance did not clearly define the 60-day timetable for standing structures already in place and 90-day timetable for new structures as outlined by the Federal Communications Commission (FCC). He noted that he did not see a fee structure in the proposed ordinance either. Mr. Polce advised that the City should clearly outline the fee structure within the ordinance, explaining that this topic had caused contentious debate across the state and nation. He stated that he thought that the City needed to be fair, reasonable, open and transparent. Mr. Polce suggested that staff also look at how the City can leverage the intellectual property that these telecom providers bring, and how to leverage them to make the City a better place.

In response to Mr. Polce, Mr. Hugg stated that staff had not done a lot of work on the fee structure, explaining that there are federal guidelines regarding the fee calculations. He indicated that staff was looking at using the City's existing fees for certificates for zoning compliance and building permits. Mr. Hugg advised that staff is working diligently to create an ordinance that is administratively simple to implement and leverages the economic development value in having the highest quality infrastructure possible.

Mr. Polce suggested that the City might want to partner with the companies in setting the initial fee, and to ensure the longevity and proactive upgrading of greater technology, that staff be mindful of what a recurring fee might look like and how to incentivize companies to become partners with the City.

Responding to Mr. Neil, Mr. Robinson stated that most of the attachment discussion is really referring to the City's existing wooden utility poles because street lights with existing infrastructure would be a challenge. He noted that he was looking forward to working with the different carriers to find a unique solution to maintain the integrity of the City's structures while also providing an opportunity to for the placement of equipment in prime locations like the downtown area.

Proposed Ordinance #2019-09 - 2018-2019 Budget Ordinance - Second Amendment

Mrs. Donna Mitchell, City Manager, reviewed Proposed Ordinance #2019-09 - 2018-2019 Budget Ordinances - Second Amendment, explaining that it incorporates the FY19 Beginning Budget Balances as presented in the City's Comprehensive Annual Financial Report (CAFR) for Fiscal Year Ending June 30, 2018 and restates the Capital Project budgets for the ongoing project funds that were included in the first budget amendment adopted on January 14, 2019. She advised that the amendment also includes a transfer of $2M to the Electric Rate Stabilization Reserve as a result of budget favorability in power supply and generation expenses.

Staff recommended approval of the second budget amendment and adoption of Ordinance #2019-09.

Mr. Neil moved to recommend approval of staff's recommendation, seconded by Mr. Cole and unanimously carried.

Proposed Amendments to Employee Handbook (Personnel Policy) - Article VII - Ethical Conduct, Section 6 - Discrimination and Harassment

Mrs. Donna Mitchell, City Manager, reviewed proposed amendments to the Employee Handbook (Personnel Policy) - Article VII - Ethical Conduct, Section 6 - Discrimination and Harassment. She advised members that a recent personnel matter prompted City staff to engage a labor attorney to review the Personnel Policy regarding discrimination and harassment and, on the advice of Mr. Tim Holly of Connolly Gallagher LLP, the proposed amendments will improve clarity.

Staff recommended approval of the proposed amendments.

Responding to Mr. Sudler, Mrs. Mitchell explained that the proposed policy clearly expresses that the harassment and discrimination laws are for protected classes of employees, not just for general complaints of incivility.

Mr. Neil moved to recommend approval of the proposed amendments to the Employee Handbook (Personnel Policy) - Article VII - Ethical Conduct, Section 6 - Discrimination and Harassment, as recommended by staff. The motion was seconded by Mr. Shevock and unanimously carried.

Mr. Sudler moved for adjournment of the Legislative, Finance, and Administration Committee meeting. The motion was seconded by Mr. Cole and unanimously carried.

Meeting adjourned at 6:57 p.m.

Mr. Sudler moved for adjournment of the Council Committee of the Whole meeting. The motion was seconded by Mr. Neil and unanimously carried.

Meeting adjourned at 6:58 p.m.

Timothy A. Slavin
Council President

TAS/TM/dd/jt
S:\AGENDAS-MINUTES-PACKETS-PRESENTATIONS-ATT&EXH\Committee-Minutes\2019\03-26-2019 CCW Minutes.wpd