

**MAYOR & CITY COUNCIL
REGULAR MEETING MINUTES
April 8, 2019**

The Mayor & City Council met on **Monday, April 8, 2019 in the Margaret Rollins Community Center Meeting Room**, in accordance with proper notification, with the following members present: Mayor Ted Becker, Deputy Mayor Fred Beaufait and Councilpersons Bonnie Osler, Dennis Reardon & Rob Morgan. Also present were: City Solicitor Glenn Mandalas, City Manager Ann Marie Townshend, Chief of Police Thomas Spell, City Planner Thomas West and Recording Secretary Alice Erickson.

- A. CALL TO ORDER:** Mayor Becker called the meeting to order at **7:00pm**.
- B. PLEDGE OF ALLEGIANCE:** Mayor Becker led the Pledge of Allegiance and a moment of silence.
- C. ANNOUNCEMENTS:** *Mayor Becker* made the following announcements:
- The new parking meters will into effective May 1, 2019. There with a 50¢ convenience fee added for the use of credit cards and the hour of operation will be extended to 8:00pm.
- D. ADDITIONS AND/OR DELETIONS TO THE AGENDA:** There were no changes or additions to the agenda.
- E. PROCLAMATIONS, RECOGNITIONS & APPOINTMENTS**
- **April 26, 2019 as Arbor Day in the City of Lewes**
 - **May 4, 2019 as Historic Lewes Farmers Market Day in the City of Lewes**
 - **May 2019 as Lewes Bike Month in the City of Lewes**
 - **May 2019 as Historic Preservation Month in the City of Lewes.**
 - **April 23, 2019 as Osher Lifelong learning Institute Day (OLLI)**
 - **Recognition of the Lewes-Cape May Ferry's adoption of Ocean Friendly Environment Practices.**

F. MINUTES:

- 1. Presentation & consideration of the Mayor & City Council regular meeting minutes from March 18, 2019 and special meeting minutes from March 14, 2019, and March 18, 2019 and budget meeting minutes from March 14, 2019, and March 15, 2019.**

ACTION: *Councilperson Reardon made a motion to accept the minutes as presented, seconded by Councilperson Osler.*

Councilperson Morgan stated he has not had an opportunity to review the minutes and requested approval be contingent on any changes he may have to be addressed at the next meeting. *Deputy Mayor Beaufait* requested any changes be given to council prior to the next meeting for their review.

ACTION: *All voting in favor, motion carried.*

- 3. Presentation & acceptance of the Board of Public Works meeting minutes from February 27, 2019 and special meeting minutes from March 7, 2019.**

ACTION: *Councilperson Reardon made a motion to accept the minutes as presented, seconded by Councilperson Osler, all voting in favor, motion carried.*

G. STAFF REPORTS:

- 1. Presentation & acceptance of the Financial Activity Report.** *Councilperson Osler* presented the March 2019 Financial Activity Report.

ACTION: *Councilperson Osler made a motion to accept the Financial Activity Report as presented, seconded by Councilperson Reardon, all voting in favor, motion carried.*

- 2. Presentation of the City Manager's Report.** *City Manager Ann Marie Townshend* presented the March 2019 City Manager's Report.

3. **Presentation & acceptance of the Police Department Activity Report.** *Chief Thomas Spell* presented the March 2018 Police Department activity report.
4. **Presentation of the Fire Department Activity Report.** *Mayor Becker* presented the March 2019 Lewes Fire Department report and year-to-date comparison.

ACTION: *Staff reports were accepted by common consensus.*

H. UNFINISHED BUSINESS:

1. **Presentation & possible action on Amendments to the Lewes City Code, Chapter 59, Animals, Article II, Felines.**

Councilperson Morgan prepared a draft ordinance which was circulated to council. *Councilperson Morgan* stated he has received comments from Councilperson Osler and others in the community that he has not had time to digest. He explained the process he has gone through with the drafting of the proposed ordinance. He is trying to make our current ordinance consistent the State Code and also, increasing its humaneness, trying to prevent any euthanizing of cats. This would require cats be taken to a no kill facility. There is one point in the proposed ordinance that is contentious. If a cat can't be adopted, the state has a provision that it can't be relocated to a 'coastal migratory bird flyway' but didn't define what that flyway is. Also, it only said a cat can't relocate not that the it could not be returned to the original location. It is his suggestion that because Lewes is in a coastal migratory bird flyway, and is certainly within DNREC's definition, that the city go beyond what the state allows and state if a cat can't be adopted by a no kill shelter, it can't be returned to the city of Lewes. This suggestion has been quite controversial, and there has been discussion. He doesn't believe they are ready to address the ordinance at this time and suggested working with Councilperson Osler to draft an ordinance that narrows down all the possible points of difference as much as possible and for council to resolve the differences. Also, they have received an email from a concerned individual that indicates the state's statute is in the process of being revised and it might be premature to move forward with revising the city's ordinance at this time.

Dr. Bett Lazzaro, 298 Fox Run Road, Exton PA. *Dr. Lazzaro* questioned where they would send these feral cats. *Councilperson Morgan* stated a good area would be in western Delaware on public lands that aren't parks and or farm lands. *Dr. Lazzaro* explained the process of returning a cat to an area that they were not trapped in. It is not an easy process and the cat would probably die. Also, removing feral cats creates a void in the original location for other feral cats to come in that are probably not neutered. She would recommend returning the cats to their original location and keep them fed. This will prevent other cats from coming into the colony. The city will get a lot of back lash from the proposed ordinance. Also, how will they determine a feral cat from a house cat.

Deputy Mayor Beaufait understands waiting to see what the state is going to do. He would like to adopt the Trap, Neuter, Release Program for the city of Lewes, allowing cats to be returned to their original location. This is the standard policy of the ASPCA. He questioned who pays for the spay/neutering.

Councilperson Osler reviewed some of her suggested changes to the proposed ordinance. She agreed that the Trap, Neuter, Release Program is the best option for controlling feral cat colonies. She is concerned about resident's pets being an unintended consequence of this effort. They also need to resolve the requirement for cats to be collared. She feels it is unrealistic and a better option would be micro-chipping. She would be happy to work with Councilperson Morgan and suggested continuing to work with Brandywine SPCA and adopt the Trap, Neuter, Release Program for the city of Lewes.

ACTION: *Deputy Mayor Beaufait made a motion for the city of Lewes to adopt the Trap, Neuter, Release Program, pending further consideration of the draft ordinance, seconded by Councilperson Osler.*

Councilperson Morgan stated it is the details that are important. Adopting a policy and not knowing how it will be carried out is a little bit tricky. Also, it prejudices one of the questions in the proposed ordinance which is are we going to allow feral cats to be returned to the city of Lewes. This is something that council needs to vote on after an informed discussion.

There was discussion about defining where the coastal migratory flyway is located. *Councilperson Morgan* stated Lewes is within the DNREC defined flyway. *Ms. Osler* pointed out the state statute does not prohibit the return of feral cats into Lewes.

Deputy Mayor Beaufait stated he will not agree to the relocation of these cats to someplace outside of Lewes. If a decision is forced tonight, he will vote against it. *Mr. Beaufait* stated there is a motion on the floor for council's vote.

Walt Fenstermacher, Brandywine SPCA, thanked council for addressing this issue. There are a lot of community members that want to become part of the problem-solving process. It is important to address this issue now as they are going into the spring kitten season. The feral cat population in Lewes is low at this time but that could change very quickly. He understands wanting to adopt a new policy, but they need to bring to light all the factors and educate the community.

Mayor Becker thanked the Brandywine SPCA for helping the city with this issue and their efforts have been successful in placing as many cats for adoption and those that are unadoptable, back into the community.

Mayor Becker called for the question.

ACTION: 4 members voting in favor, and Councilperson Morgan voting against, the motion carried with a majority vote of 4-1.

I. NEW BUSINESS:

1. Presentation by Kelly Valencik on the Resilient Communities Partnership Project

Kelly Valencik, Planner, State of Delaware, DNREC, gave a presentation on the Resilient Communities Partnership Project. The Delaware Coastal Management Program is a state and federal partnership between NOAA and the Department of Natural Resources. They have been working since 1979 to help Delaware manage its coastal resources for balanced use.

This project includes Lewes, Henlopen Acres, Rehoboth Beach, Dewey Beach, Bethany Beach, South Bethany Beach and Fenwick Island. They are working on a comprehensive study of impervious surface coverage due to redevelopment in the coastal municipalities and its impacts on storm water management, flooding and water quality. The city of Rehoboth has taken the leadership with the project. Lewes City Manager Ann Marie Townshend, as well as other coastal communities, have been involved with this program. The goal is to help communities undertake the necessary planning to become more resilient to coastal hazards.

Ms. Valencik reviewed the project schedule. The project will be done in two parts. Part 1 is a summary of options that will increase storm water infiltration and reduce future impervious surface coverage, performed by AECOM. Step 2 will be the development of model ordinances for each municipality to control future impervious surface coverage and final assessment report by KCI. Their goal is to be completed by the end of September 2019.

Councilperson Osler stated stormwater management is under the Board of Public Works; therefore, they need to be included in the process. She questioned if there will be an opportunity for the people of Lewes to have input into the process and will the plan result in steps just for the city or will it include actions the public can take? *Ms. Valencik* stated there will be both. At this time there is no public workshop scheduled but they will take public comments.

Councilperson Morgan stated the BPW is also hiring a hydrologist to study water in depth. Since impervious surfaces affect the watershed area, will they be coordinating with them? *Ms. Valencik* stated she could look into that option.

Marta Namack, Harborview Road, stated she is glad to hear about the project. She has done some research on impervious surface and the percentage of impervious surface is the best indicator of water quality. Will they be concentrated on the impact of impervious surfaces on flooding or will they be looking at water quality? *Ms. Valencik* stated they will be looking at how it contributes to flooding and stormwater management but also water quality.

Janice Pinto, Rodney Avenue, stated this is a DNREC operation and they know the significance of flood plains and why they exist and the need for green infrastructure. In the DNREC policies regarding flood plains, they still say there “should not” be development, but it does not say there “shall not” be, leaving is open. The “teeth” coming from the state agency is a little bit lacking. Is there any move to change to from “should not” to “shall not”?

Ms. Valencik stated there is no movement from the state at this time and it is up to the local municipality to set the flood plain ordinance. If they want that to be a part of the recommendation in the final report, they can entertain that idea. She requested comments be sent to her so she can put them in front of the team.

Judy Rolf, Henlopen Gardens, stated she would love to have her report folded into addressing development that is happening in Lewes. There is a climate change train wreck unfolding. She is very concerned about a development that is threatening the Great Marsh. From what she has read, the marshes are very important is providing flood protection and she is worried about stressing the Great Marsh.

Ms. Valencik stated marshes act like a sponge absorbing flood waters and help it to infiltrate the water back into the ground. Any natural areas need to be protected.

Mayor Becker thanked *Ms. Valencik* for her presentation.

2. Acceptance of the Candidates for the 2019 Municipal Election

Mayor Becker read the Certificate of Election into the record. No other candidates have filed; therefore, there will not be an election this year and *Mayor Becker* is deemed re-elected.

3. Presentation & possible action on an ORDINANCE to amend an ordinance to amend Chapter 183, Vehicles and Traffic, Article XI, Parking Meters, Section 183-30 zones established, Code of the City of Lewes, Delaware relating meters on the north side of Kings Highway and expansion of meter hours to 8:00 p.m.

This proposed Ordinance is from a recommendation of the Downtown Parking Review Ad-Hoc Committee to add meters along Kings Highway fronting the Zwaanendael Museum and the Lewes Chamber of Commerce, up to the residential neighborhood. There is currently 2-hour parking in this area, but it has not been enforced for a long time. The proposal is to install (10) parking meters which will pay for itself within the first year of operation.

A petition has been received signed by 20 residents living along the Kings Highway corridor opposing the installation of these meters. They feel because it is abutting a residential neighborhood, the meters would encourage vehicles to move further into the residential area to find free long term parking.

This ordinance also proposes to extend parking meter hours from 9:00am-6:00pm to 9:00am-8:00pm.

Ms. Townshend stated Councilperson Reardon pointed out an error in the existing ordinance. Section 1 item 4) is redundant with item 1) and requested the removal of the language in line 24 of the ordinance: 4) South side of Second Street from Market Street to Mulberry Street.

Deputy Mayor Beaufait stated because there has been feedback from residents along Kings Highway in opposition to the installation of parking meters, they need to address the two items separately. *Mayor Becker* agreed.

ACTION: *Deputy Mayor Beaufait made a motion to adopt the ordinance as written, removing Section 1. A. 11) West side of Kings Highway, from the intersection with Third Street, 335 feet South to the boundary of Zwaanendael Park (lines 34 & 35) to be addressed separately and amending Section 1. A. 1) Second Street on both sides from Savannah Road to Mulberry Street (line 21) and Section 1. A. 4) Southside of Second Street from Market Street to Mulberry Street (line 24) to state: **Southside on Savannah Road to Mulberry Street and on the northside from Savannah Road to two spaces beyond Market Street towards Mulberry Street**, seconded by Councilperson Osler, all voting in favor, motion carried.*

Council then addressed Section 1. A. 11) West side of Kings Highway, from the intersection with Third Street, 335 feet South to the boundary of Zwaanendael Park (lines 34 & 35)

Deputy Mayor Beaufait stated he understands the concern. Currently parking is allowed with a 2-hour limit. He doesn't understand the difference whether they are ten (10) metered spaces or 2-hour limited parking. There would still be limited time to park there. People are now abusing the privilege and parking there all day. With parking meters, the city would have some revenue. He favors installing the parking meters.

Councilperson Osler agreed people parking there are going to the commercial district. If it turns out there is an adverse impact to the area, council can always opt to remove the meters.

Councilperson Morgan stated this section is not marked for parking at this time. *Ms. Townshend* agreed, there are no markings on the pavement at this time. City staff is aware this may need to be done. *Mayor Becker* stated they did receive input from the Chamber and the Museum regarding their needs and four (4) spaces have been exempted and will be designated as loading zones.

Councilperson Morgan clarified that his understanding of this action is that it will enable more vehicles to park there. *Ms. Townshend* stated that by marking the pavement, more vehicles will be able to park because they will be using the space more efficiently.

Councilperson Morgan questioned if metering these spaces is to raise money or to increase parking? If it is to increase parking, the marking of the spaces will be useful, but the installation of meters doesn't increase parking. *Mr. O'Donnell* clarified that the meters would encourage more turnover for the commercial district. *Mr. Morgan* stated if the 2-hour parking limit was enforced it would achieve the same thing. *Mayor Becker* stated they have not been enforcing the 2-hour parking limit for a long time. *Mr. Morgan* stated he is in favor of trying to increase the number of parking spaces and the turnover, but he is not in favor of imposing more costs on the residents.

Councilperson Osler questioned Chief Spell which would result in more effective enforcement; having a meter or having no meter but allowing parking for a specific time. *Chief Spell* stated there is no data, but his opinion would be installing parking meters. *Deputy Mayor Beaufait* agreed it is easier to enforce parking meters.

Martin Yerick, 140 Kings Highway, collected the resident signatures on the petition. Everyone that signed the petition, from the park to the fire station, doesn't want the meters believing it will shift parking into the residential neighborhood. He questioned how they will be able to measure the benefit to the commercial community. All they will be able to measure is how many vehicles park there and it will be a detriment to the residents. He feels it is bad policy.

Councilperson Osler questioned if these people have off street parking? *Mr. Yerick* stated the ones along Kings Highway have a single entrance driveway. *Ms. Osler* stated that whether these spaces are metered or not, there is still a 2-hour parking limit.

Jean Kissane, 134 Kings Highway, stated her concern is all the things that have been raised. She doesn't see how meters will get people out any sooner than enforcing what is already there. If it is a money issue, then it is even more upsetting.

ACTION: *Deputy Mayor Beaufait made a motion to install parking meters on Kings Highway from the intersection with Third Street, 335 feet south to the boundary of Zwaanendael Park, seconded by Councilperson Osler.*

Councilperson Osler explained she has been sitting on the Downtown Parking Committee for several months and the two basic problems are parking space inventory and vehicle turnover. They heard a lot from the downtown business owners about the parking "churn". Could they accomplish the "churn" without meters? Yes, but enforcement would be difficult. It is not about revenue. It is about the question of what is the best way to do it. If it becomes a burden, then council can remove the meters.

Deputy Mayor Beaufait stated it is a matter of enforcement. This will delineate parking spaces and enforce the limited parking time. He feels they need to try and if it doesn't work then can take them out.

ACTION: *Four voting in favor, Councilperson Morgan voting against. The motion carried with a majority vote of 4-1.*

Mayor Becker stated they will re-evaluate the situation after the meter season. He welcomed comments from the residents.

4. Presentation and possible action on an ORDINANCE to amend Chapter 63, Beaches, Article I, General Restrictions; Article VII, Jet Skis; Article IX, Fishing on Beach; and Create Article X, Kiteboards/Kiteboarding, Code of the city of Lewes, Delaware relating to Allowed Beach Activities.

Ms. Townshend explained they have changed the draft version slightly by added kiteboarding to the list of prohibited activities in §62.3 Restrictions.

There was a meeting with *Ms. Townshend*, *Kay Carnahan*, Councilperson *Reardon*, Mayor *Becker*, and the Lifeguard Captain to discuss what could be done to improve the beach area. Prohibited activities in the restricted areas include boating; crabbing, fishing or seining; launching or use of kayaks or paddle boards; smoking, vaping or use of tobacco products; glass containers; four post canopies; storage of personal items overnight; windsurfing and kiteboarding. They have updated the definition of a personal watercraft and the dates of the prohibited activities within the restricted areas will be May 1 to September 30.

Councilperson Reardon stated within §63-20, Fishing on beach prohibited, the language in this section refers to an area just short of Roosevelt Inlet all the way to the east side of Pilot Point. He has seen people fishing within 300 feet of the beach his whole life and he thinks it would be more appropriate to confine this to the restricted area.

Councilperson Morgan questioned what the restricted area is. *Councilperson Reardon* explained the restricted area starts at Pilot Point and goes to the far side of Beach 1. From this point down to the Roosevelt Inlet should not be included in these restrictions. People come down to fish early in the morning and later in the evening.

After discussion it was determined to remove Section 63-20 and 63-21. *City Solicitor Mandalas* cautioned that the public has not been put on notice about this change. *Ms. Townshend* stated if adopted without Section 3 (line 54-66), it will have to be brought back to council in May for consideration but will still be done before the next season.

ACTION: *Councilperson Reardon made a motion to approve the ordinance with the deletion of §63-20 and §63-21, which will be brought back to council at the May meeting, seconded by Councilperson Osler, all voting in favor, motion carried.*

5. Presentation & possible action on addition to Phase 23 Street Rehabilitation Contract – Patches on Ocean View Boulevard and Liszar Court.

City Engineer Charlie O'Donnell explained the proposed project and contract with Jerry's Paving in the total amount of \$27,147.82. This will be combined with the project Jerry's is doing on Beach 1.

ACTION: *Deputy Mayor Beaufait made a motion to approve the contract with Jerry's Paving in the amount of \$27,147.82, FB motion to approve, seconded by Councilperson Osler.*

Councilperson Morgan questioned how it will be handled in the budget. *Ms. Townshend* explained they will be using funds from the MSA reserve. *Mayor Becker* stated they may need to amend the budget as this project needs to be done.

ACTION: *All voting in favor, motion carried. Councilperson Reardon recused himself from the vote.*

6. Presentation & possible action on a contract with KT Lawncare for grass cutting.

Ms. Townshend explained the contract. There are a handful of areas that have been maintained by the street department and this contract would cover those areas. A city employee owns KT's Lawncare, LLC and submitted a proposal to cut these areas, as listed in the contract. She has spoken with city solicitor and it has been determined to be appropriate under the tax law. As per the City Code of Ethics, this needs to be approved by city council. It has been determined to be more economical than purchasing the equipment and paying staff to do it.

City Solicitor Mandalas explained there are some amendments needed to the contract detailing the term and price in Section 5 as follows: \$150 per cut, with a total of \$3900 for the summer and allows for additional services at \$35 per hour in the areas identified in Section 1. This would be a one-year contract.

Mayor Becker stated the contract needs to be amended to say should the weather determine, the city manager can direct them not to cut.

Atty. Mandalas clarified the contractor/employee would provide these services outside of his normal work schedule, with his own equipment and the equipment would not be stored on city property.

Councilperson Osler stated independent contract rules gets a bit difficult when dealing with an employee. *City Solicitor Mandalas* explained for purposes of this contract; it is made clear in Section 3. Independent Contractors, that this will not be done as a part of his regular duties as an employee of the city of Lewes.

Councilperson Osler stated she doesn't have a problem with it, but they will just have to be very careful. *Councilperson Reardon* stated it seems to be above board and doesn't have any problem with it.

ACTION: *Deputy Mayor Beaufait made a motion to approve with amendments as discussed, seconded by Councilperson Osler, all voting in favor, motion carried.*

7. Presentation & possible action on a proposal from MERJE Design for a Wayfinding Signage Plan, consistent with what is proposed on Route 1.

Mayor Becker explained this project is for the designing of a wayfinding signage plan. MERJE Design is working with So. Delaware Tourism and the plan will include the types of signs currently used by DeIDOT out on Route 1, bringing them into Lewes. It is the same contract they have with Rehoboth and they are looking for an economy of scale. The location for signs has not been determined at this time.

Ms. Townshend stated this issue came out of the Downtown Parking Review Ad-Hoc Committee for visitors to be able to find available parking. This contract will cover all public signage within the city, not just parking. The \$29,000 has not been included in the city's budget and will be brought forward with budget amendments. They could request CTF funds from the city's legislators.

Councilperson Morgan stated it is a great idea but wants to know how it will be funded before voting on it.

Mary Roth, Historic Lewes Scenic Byway, Chairperson, stated she was a part of a similar project in New Castle County. There are funding opportunities, but they need the plan first.

Ms. Townshend stated over next month she will talk to their legislators for funding then look at numbers and return to council in May. *Mr. Morgan* agreed to this plan.

ACTION: *Tabled until next month.*

8. Presentation & possible action on the extension of a 99-year lease on property located at 101 Cedar Street, SCTM 335-4.20-159.00.

ACTION: *Deputy Mayor Beaufait made a motion to approve the lease, subject to providing a survey to determine if there are any encroachments within the city's right of way, seconded by Councilperson Reardon, all voting in favor, motion carried.*

J. EXECUTIVE SESSION: Pursuant to 29 DEL. C §10004(b) an executive session shall be held to discuss the following: (4) Strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to ... pending or potential litigation: City vs Nepa, City vs Virden and Collective Bargaining.

Council went into Executive Session at: 9:50pm

Council returned to Open Session at: 10:11pm

K. CONSIDERATION AND/OR ACTION ON MATTERS DISCUSSED IN EXECUTIVE SESSION: No action was taken

L. ADJOURNMENT: The meeting adjourned at 10:12pm.

Submitted by,

Alice M. Erickson
Recording Secretary