

City of New Castle Delaware
Special City Council Meeting
Virtual Meeting via Zoom
Friday May 29, 2020 – 3:00 p.m.

Call to Order: 3:00 PM

Roll Call

Present: Council President Linda Ratchford
Councilperson Suzanne M. Souder
Councilperson Valarie W. Leary (joined at 3:12 pm)
Councilperson Russell P. Smith
Councilperson Michael M. Platt

Also present: Mayor Michael J. Quaranta
William Barthel, City Administrator
Daniel Losco, Esquire, City Solicitor
Richard P. McCabe, Chief of Police
Laura Fontana, New Castle Partnership
Jeff Lank, Jaycees
Brian Whittaker, City Clerk

Council President Ratchford called the meeting to order and introduced the Council and attendees. The purpose of the meeting is to discuss the reopening of the City of New Castle in accordance with the Governor's Phase I Orders that begins June 1. The Mayor intends to have the City State of Emergency lapse on May 31, 2020.

COVID cases are flattening; however the Council President cautioned that CDC Guidelines should still be adhered to: stay at home, wash your hands, stay 6' apart, wear a mask and avoid large gatherings.

Comments from Mayor Michael J. Quaranta

Mayor Quaranta thanked everyone in the greater New Castle area for their patience through the last several months. Locally, he thanked the residents of New Castle, Council members and City Staff. He noted that all recommendations, advice and comments were appreciated.

The most recent data shows that hospitalizations in the State are approximately 183 and numbers are trending down; and the Mayor confirmed that he will not be extending the State of Emergency Orders and Declarations at this time. The Mayor briefly explained his decision and the unique circumstances that caused him to declare a State of Emergency, noting he felt it was in the best interests of the entire community.

The Mayor noted a number of topics he felt City Council should discuss:

Limited outdoor events: The number of large gatherings has been increased to 250 with conditions, which offers an opportunity for the City to have some limited outdoor events such as Concerts and Movie Nights, following all appropriate Guidelines.

Battery Park: The Mayor recommended that Council consider reopening Battery Park to non-residents, opening Parking Lots and opening Public Bathrooms. With regard to the public bathrooms, he noted that this would require cleaning and disinfecting the facilities more frequently. The Park is a shared responsibility between the City and the Trustees and expectations should be clear. The Governor has not removed the restriction on playground equipment use and the Mayor suggested that City Council also consider this.

City, Board and Commission Meetings: The Mayor suggested that the City might be able to move ahead with public meetings in June or July; however he deferred that decision to City Council. He noted that virtual meetings have been successful and he has not received any negative feedback from the public regarding their ability to attend or participate in virtual meetings. He added that if in-person public meetings are held the facilities would need to be disinfected after each meeting.

City Offices: The Mayor noted that he fully supports the City's decisions with regard to opening City Offices.

Discussion

Council President Ratchford began a discussion of the topics brought up by Mayor Quaranta, and asked for clarification from the City Solicitor regarding City Council roles, responsibilities and processes. She stated that when the Mayor lifts his Emergency Orders the City is still under the Governor's Phase I orders.

Mr. Losco stated that when the City's State of Emergency lapses on May 31, City Council resumes control of essential City decisions. He added that Battery Park is managed by the Trustees and decisions regarding playground equipment, sanitization of bathroom facilities, etc., are the exclusive province of the Trustees subject to the Governor's mandates. All other City Parks are City managed and Council will need to consider appropriate restrictions and/or rules as to their use, consistent with the Governor's State of Emergency Order as it may be modified.

Mr. Losco added that if there is a relapse situation that gets out of control, there may be a need to again exercise State of Emergency powers. Council President Ratchford agreed that is a situation the City should be prepared for. She added that the City needs to make decisions regarding facilities realizing there are limitations on directing the process. She noted that the Trustees may be interested in what the City policies are, and some recommendations could be made to the Trustees regarding reopening Battery Park. She stated that outside a State of Emergency the Council has no authority to limit Battery Park to residents, and opened the floor to Council concerns regarding reopening Battery Park to non-residents.

Battery Park

Councilperson Souder noted that she had no concerns about reopening the Park, but opined that Council should adhere to the Governor's mandate regarding playground equipment. She asked Mr. Losco if the City would be exposed to any liability if it is more liberal than what is mandated in the State Guidelines in Phase I. Mr. Losco stated that in talking about recommendations made by the State, the City would have the flexibility to be more liberal; however, the City would have no flexibility with regard to State of Emergency Orders in any form. If the Governor's Orders state "no playground equipment shall be used", the City cannot circumvent that Order. He added that in terms of liability, it is safest and wisest to be consistent and follow the State directives and recommendations. If Council feels it should take a different avenue than the recommendations, that is Council's prerogative; however the actual State of Emergency Orders cannot be countermanded.

Councilperson Platt noted that the Mayor stated it was the Governor's *suggestion* that playground equipment be closed, and Mr. Losco stated that was correct. (*emphasis added*) Council President Ratchford noted that with regard to playground equipment the Phase I guidance states "unless they are closely monitored", and added that the City could not "closely monitor" playground equipment use.

In the Governor's press conference, he mentioned specifically that he had been in discussions with all the Cities, and Council President Ratchford noted that most of them still have their playgrounds closed. It is in the best interest of the community to be consistent across the State. Council President Ratchford stated that it is her recommendation that the City should follow the Governor's Directive by opening the park to everyone but keeping playgrounds and associated equipment closed. Councilpersons Souder and Smith stated their agreement with Council President Ratchford.

Councilperson Smith added that the Battery Park Committee is looking to City Council for some guidance on their direction. With regard to the public bathrooms, the State Guidance is that restrooms should be cleaned multiple times throughout the day; and that would be an issue for the Trustees to decide.

Councilperson Smith also noted that because tennis is more of an individual sport where participants can safely distance themselves, the tennis courts could be opened.

Councilperson Leary expressed her agreement with statements by Councilpersons Souder and Smith and Council President Ratchford. She opined that the fencing around the benches could be removed unless that opens the City to some type of liability. Councilperson Smith agreed and Councilperson Souder noted that the State Guidelines state that wooden structures in the park do not need to be cleaned.

Council President Ratchford restated that the recommendation is to keep the playgrounds and basketball courts closed. She added that the tennis courts are the purview of the Trust, and other communities are keeping their tennis courts closed due to concerns about gathering.

Councilperson Souder noted that the U.S. Tennis Association Guidelines specify that people should wear masks, distance themselves, and not congregate at benches, and the doors are left open so people do not have to touch them to enter or leave. She adding that if the tennis courts open, the pavilion should remain closed. The tennis courts at the DuPont Country Club have been opened, but all benches have been removed. If the tennis courts are opened, there is also the issue of enforcement of the Guidelines. Council President Ratchford reiterated that the tennis courts are managed by the Trustees and are not under the purview of the City; and they are separate from Battery Park.

Councilperson Smith reiterated that the Battery Park Association is asking for City Council's recommendations. Councilperson Leary noted that if City Council makes any recommendations with regard to Battery Park, they can be communicated to the Battery Park Association.

Councilperson Platt stated that when the Mayor lifts the State of Emergency the City will fall under the Governor's Guidelines (*per the Governor: basketball courts are closed; playgrounds are closed; tennis courts are closed; and gatherings outside are limited to 250*) and opined that Council does not have to make those decisions or recommendations and the discussion is moot. Council President Ratchford noted that Council could make the decision to open the park and some or all of the parking lots; however, the Battery Park parking lot is under the purview of the Trust. She added that Council should have some discussion about signage regarding the park, noting her recommendation would be to remove signage on Rt. 41 and have signage in the Park regarding the adherence of CDC Guidelines.

Councilperson Leary opined that Council may be overthinking the situation and should adhere to the Governor's directives. With regard to the parking lots she opined they should be opened to minimize parking issues in the City.

Mr. Losco spoke to Council making recommendations to the Trustees and liability to the City. He opined that the City Council should not be in the position of making recommendations to the Trustees specifically about the management of Battery Park when the Trustees have exclusive control of the Park. He noted that City Council could inform the Trustees how the City intends to manage the parks it is in charge of.

Public Bathrooms

Council President Ratchford stated her agreement with Mayor Quaranta's recommendation that the Public Bathrooms be opened to provide facilities to the public, especially if outdoor summer events will be held in the park. Per the Guidelines, they will require more frequent disinfection and asked the City Administrator if funding is available that could be offered to the Trust.

City Administrator Barthel noted that he and Mr. Losco have discussed Federal Guidelines and the CARES Act for reimbursements. He stated that because the facilities will need to be disinfected, the City will present those expenses to the County for consideration for reimbursement. City Administrator Barthel participated in a call with the County and they were

very vague with regard to the requirements. It was recommended that the request be submitted to the County and its Council and Auditor would review the request to determine if it qualified for reimbursement. Therefore, City Administrator Barthel stated that he is inclined to submit those expenses under the CARES Act. The City will be able to submit requests in approximately two weeks.

Mr. Losco noted that the U.S. Treasury Department has issued Guidelines on eligible expenditures under the CARES Act: “Public health expenses, such as expenses for disinfection of public areas and other facilities such as nursing homes in response to COVID-19.” The key word is “disinfection”. Cleaning is not sufficient; a disinfecting agent must be used to sanitize. Thus, disinfecting the public bathrooms should be, per the U.S. Treasury Guidelines, an eligible reimbursable expense.

Councilperson Smith noted that the City assuming the responsibility of disinfecting the public bathrooms exceeds making recommendations. Councilperson Smith also asked how he should respond to the Battery Park Association’s request for recommendations from Council. Mr. Losco recommended that his response be that it is not City Council’s position to make recommendations on how the Trustees manage the Park, and present the steps the City will take with respect to City parks. Acting in a consistent manner will not confuse the public as to what is and is not permissible in the parks.

During discussion M. Losco stated his understanding that only State and Local Governments can submit expenses for reimbursement which would preclude the Trust from submitting any claims for reimbursement. Mr. Losco suggested that clarification be sought from the County as to whether it is an eligible, permissible expense. He also noted that if the City voluntarily takes on a duty (*disinfecting the restrooms*) that is not its legal duty it will be responsible if that duty is done in a negligent manner and could theoretically be targeted as a defendant if someone gets sick from that origin.

Council President Ratchford restated the City choices: (1) keep the public bathrooms closed; (2) install porta potties at the Wharf and Dobbinsville and the City could manage disinfecting them.

Councilperson Souder noted that if the porta potties are not adequately disinfected the City would still face potential liability if someone gets sick. Mr. Losco added that if the City provides the facility and is doing the sanitizing, and if it is not done properly the City could be exposed to liability. In addition, most insurance policies do not have coverage for pandemic-related events and a lack of insurance coverage could increase any potential liability.

Council President Ratchford added that a third option would be that porta potties not be reinstalled at the Wharf and Dobbinsville.

Councilperson Leary stated that the Battery Park restroom is under the purview of the Trust and opined that the City does not need to assume any responsibility for that facility. She added that

if a tall ship comes in to dock, a porta pottie could be placed at the wharf for the time it is in dock.

Councilperson Souder asked if the company supplying porta potties would be responsible for disinfecting and therefore liable for any negligence, and if the City could submit a claim for that expense. Councilperson Smith asked if the City would still have liability if the company is an agent of the City. Mr. Losco noted that if the company has absolute control over the cleaning process they are responsible; however if the City directs them in how to clean, what they use and what to clean, then the City could bear some liability. He opined that the best course of action is to seek the County's opinion as to whether they will reimburse the City if the City reimburses the Trustees for disinfecting services; if the answer is no or is vague, the City will incur some additional expense to clean rest rooms and preserve public health without exposing itself to liability for the cleaning process.

Councilperson Platt asked what the burden of proof is to state with authority that an individual contracted the virus in a restroom at Battery Park due to negligent sanitization, and stated his opinion that the rest rooms be disinfected 3-4 times a day or be kept shut down. Mr. Losco explained that a causal connection must be established to prove a valid claim for negligence, which can be difficult; and a common thread would have to be established that a group of people all contracted the virus at a particular event or day, and all of them used the Battery Park restroom facilities. The City Council must weigh whether the risk is reasonable and make a judgment call in making these decisions. Mr. Losco reiterated his recommendation to seek advice from the County as to whether or not reimbursing the Trustees is a reimbursable expense. He added that because the ultimate goal is to prevent the spread of the virus, he felt that ultimately the Federal Government would determine it is a reimbursable expense. He recommended that the City not assume the responsibility of cleaning the facilities.

Council President Ratchford stated that there are still three questions regarding the bathrooms: (1) should the porta potty be replaced in Dobbinsville if the company that owns it assumes responsibility for cleanings, and (2) should the Battery Park public restrooms be opened with either (a) the City doing the extra cleanings or (b) reimburse the Trust for the extra cleanings; and (3) should a porta potty be put at the Wharf and keep the public restrooms closed. Council President Ratchford stated that more information is needed in terms of reimbursement and if someone else would assume those responsibilities.

City Administrator Barthel noted that the Guidelines are clear that even if the City approves the expense and it is approved by the County Council and Auditor, if the Federal Government denies the claim because it is a Land Trust, the City could have some liability; however, the City may have access to the funds because it owns the park land.

Mayor Quaranta noted that funds given to the State under the CARES Act are for COVID-related expenses. If the City assumes the responsibility for sanitizing the public restrooms, it assumes the liability; however a causal link would be a difficult test to prove. He opined that if

the City opens the park and goes forward with any type of organized public gathering, appropriate facilities must be made available; and if the park is open, the public restrooms need to be opened and managed properly either by the City or the Trustees to take every reasonable precaution to safeguard the community.

Council President Ratchford recommended that if agreement is reached by the Council to move ahead that Mr. Losco be asked to seek clarification for reasonable accommodation to provide public bathroom facilities for visitors to Battery Park.

Councilperson Platt asked if liability to the City would be lessened by posting “at-your-own-risk” signage at the public restrooms. Mr. Losco opined that was wise to inform people that they assume a certain risk when using a public bathroom. However, he stated that a protocol should be in place to ensure the facilities are cleaned and sanitized at least three times each day and accurate records should be maintained that show reasonable precautions were made to safeguard the public in the event an assertion of negligence is made. Councilperson Platt suggested that signage also be posted at the entrances to the Park. Mr. Losco noted that he had no objection to posting such signage.

Events

Council President Ratchford introduced Ms. Linda Fontana of the New Castle Partnership and Mr. Jeff Lank of the Jaycees to speak about their proposal for summer concerts in the park.

Ms. Fontana explained that along with Mr. Lank and the Jaycees, they propose that the concert series begin on June 24th. The schedule has been revised to have smaller groups (2-4 performers) in the beginning of the season to ensure proper distancing can be maintained, and some of the larger groups have been cancelled entirely. Ms. Fontana and Mayor Quaranta had a few discussions on how to space people at outdoor events, and they suggest painting 15’x15’ areas to accommodate either 2 individuals or one household to maintain an appropriate distance between groups, and a 6’ aisle way on each side. For the first several concerts they recommend not having food or using porta potties.

Councilperson Souder asked how staying within the assigned boxes and the number of people in each box was going to be enforced. Ms. Fontana suggested that for the first few concerts Police Officers could be hired to enforce distancing restrictions. Councilperson Platt thanked Ms. Fontana and Mr. Lank, noting that the concerts are a good thing for the community. He asked what the average attendance for concerts was last year, and Ms. Fontana stated that she reviewed the attendance numbers for all concerts in 2019 and attendance ranged from 75 and up, and she estimated the average was no more than 150. Councilperson Platt added that he is opposed to painting blocks on the grass, noting that as a whole the American public has been extremely cooperative with social distancing. Councilperson Leary noted that in the years she ran the concerts the highest attendance at a single concert was a little over 200.

Councilperson Platt noted that neither the beaches nor the state parks are scheduling summer concerts as yet. During discussion it was noted that during the concerts most people leave a distance between themselves and other attendees; however all measures outlined by the Governor would have to be followed, including wearing a mask within 6' of others. Ms. Fontana noted that there is a measure of personal responsibility; however the Committee intends to have a presence at the first several concerts to enforce social distancing and other restrictions.

Council President Ratchford noted that the City will not have Seasonal Officers for the 2020 summer season and asked Chief McCabe to comment. Chief McCabe stated that a regular patrol was not feasible, but if there is concern about distancing there should be an official presence at each concert. He added that if attendance is small and there is an issue that cannot be controlled, Dispatch could be called and an Officer would respond after any pending calls have been handled. Ms. Fontana asked who is responsible if attendance exceeds 250. Mr. Losco noted that if there a repeated pattern of the City condoning the social distancing or gathering size requirements and someone gets sick, the City could be liable; however, if the City enforces the Guidelines for social distancing and/or gathering size, he opined that liability would be small. Council President Ratchford opined that the first concert will be small, and most people will follow the rules set out by the Governor.

Chief McCabe noted that the rules will be established by the event organizers, and the host will need to confirm that the gathering size does not exceed the 250 maximum. He added that the mandate for wearing a mask is not “within 6’ wear masks”; the groups have to maintain the 6’ distance and wear a mask. (*emphasis added*) Council President Ratchford added that the Guidelines say “cloth coverings must be worn”, so all attendees will be required to wear a mask for the duration of the concert. The Guidelines also state that hand sanitizing stations must be supplied. Ms. Fontana stated that Echo Labs has agreed to supply hand sanitizers and Councilperson Platt interjected that he would donate hand sanitizers as well. Ms. Fontana noted that the musicians will not be able to wear masks and she will contemplate that issue further.

Ms. Fontana asked if she also needed to speak with the Trustees, and City Administrator Barthel explained that she would need to inform the Trustees of her conversation with Council and that Council appears to have no objections.

Council President Ratchford noted that any organization that applies for an event in Battery Park must follow the same rules. During discussion, it was noted that the musicians probably will not have to wear masks. Also during discussion, opposing interpretations of the Guidelines regarding wearing masks in an outdoor gathering of less than 250 people were made, and Chief McCabe stated that he would reach out to get clarification. Mayor Quaranta asked Chief McCabe to specifically ask if attendees at outdoor gathering of less than 250 people who would be stationary would be required to wear masks for the duration of the event. Council President Ratchford stated that Council would rely on the information Chief McCabe learns.

Council President Ratchford asked if any Councilperson had concerns about allowing summer concerts. Councilperson Souder stated she had not concerns regarding concerts because they are held in daylight; however, she expressed concern about holding a night-time event such as Movie Night, which would be more difficult to monitor.

Ms. Fontana stated that she would wait for information from Chief McCabe regarding masks for the public and for the musicians.

Miscellaneous

Councilperson Smith noted that although the City Code should be reviewed and revised for pandemic situations he suggested that the 24-hour emergency exception for announcing meetings be used if a State of Emergency is reinstated.

Councilperson Smith also noted that zip code 19720 is the largest zip code in the state, and when the State began reporting the number of COVID-19 cases per capita it became evident that the number of cases in New Castle was in line with other areas of like size.

Councilperson Platt noted that Mr. Losco informed Council at the April 29, 2020, meeting that Council needs a 24 hour public notice to meet in an emergency, and Councilperson Smith opined that Council was operating with a longer schedule for meetings than was necessary. The 24-hour public notice rule is a State FOIA Rule. The State of Emergency rules in the Code apply to Civil Unrest. It was agreed that Ordinances regarding a State of Emergency in the Code need to be revised.

Council President Ratchford asked if any businesses had applied for assistance from the City, and City Administrator Barthel stated that there have been discussions with Nora Lee's French Quarter Bistro regarding their ability to open and the ABC rules set forth by the Governor. A formal request for an expansion of outdoor area has been filed and Mr. Bergstrom has had discussions with them; however, they are not yet ready to approach the ABC. The Governor's Extension only goes to July 31 and Nora Lee's was hoping to expand to October 31. The City is ready to proceed, and City Administrator Barthel is hopeful that they will proceed with the ABC. Mayor Quaranta noted that many businesses are in a similar situation and are faced with the same dilemma. City Administrator Barthel will keep Council informed.

Council President Ratchford noted that with the lapse of the State of Emergency, the City will migrate to in-person Board and Committee meetings. City Administrator Barthel has been in touch with representatives of the Senior Center and they have stated they will be willing to host City Council meetings. He opined that based on distancing requirements the Senior Center appears to be the best space for City Council meetings. The City would be responsible for appropriate cleaning of the facility subsequent to meetings. City Administrator Barthel noted that another venue was the Buttonwood School; however, based on the size of the space it would be challenging to hold Council meetings there. Council President Ratchford noted that some of

the small Committees could still use Council Chambers for their meetings. She added that virtual meetings have been working well to conduct City business.

City Operations

City Administrator Barthel noted that the City is going into Phase I, staff continues to work from home, he is moving very cautiously back to “normal”, and will maintain that protocol as the State moves into Phase II. When the State moves to Phase III, he is contemplating a staggered work schedule for staff, and scheduling specific appointment times for residents who need to come into the office. Nothing has changed with Public Works; however, things may change in Phase II. City Administrator Barthel also noted that staff has been productive and seems to be content

Chief McCabe stated access to the Station is still limited to the foyer using the intercom, and residents are being encouraged to contact the Station by phone. Chief McCabe indicated the Police presence will be more evident with increased traffic to the City. Staff has been working alternate shifts and is in the Station more frequently. The Officers enter and exit the building at the same location, Officers wear masks, work stations are taped off to force distancing, Officers self-screen when they enter, and gathering rooms have been closed off.

Councilperson Smith asked if the Rookies are working independently and Chief McCabe noted they have approximately one more month to go.

Council President Ratchford noted that the Governor has referred to the opening as “rolling”, and suggested that changes will be seen as things get better. She cautioned everyone to continue to be vigilant. There have been no complaints from residents for a lack of City services, and City Administrator Barthel stated New Castle is a full-service City.

City Administrator Barthel reiterated that the City will apply for all COVID-related expenses. Mayor Quaranta asked if the City Administrator could estimate how much the City has spent in total for FOIA-related requests. City Administrator Barthel noted that expenses have slowed down and he will provide the actual number at the next Council meeting.

There being no further discussion on Reopening and City Operations, Council President Ratchford opened the floor to Public Comment.

Public Comment

Council President introduced Mr. Brian Whitaker, City Clerk

Mr. Whitaker noted that he had a number of comments and suggestions:

- At a previous City Council meeting there was discussion about reconvening the Medical Board and Mr. Whitaker expressed his feeling that was necessary, noting that with regard to COVID-19, the Medical Board could review receipts and expenses and determine if

they are applicable medical issues. The Medical Board is also needed to review porta potty and social distancing issues as they would know the overall scope of the medical situation.

- Rehoboth Beach has hired people to man porta potties, and the Governor made a list of what seaside communities must do to remain open and porta potties is a requirement dovetailed to the opening of the boardwalk and seaside communities.
- The City should use caution in moving to Phase I because the Governor could close down Phase I if Sussex County continues to be a problem, noting that the number of cases continue to rise due to the chicken farms.
- Mr. Whitaker asked who would enforce social distancing in Battery Park to ensure the Governor's orders are being followed.
- While Battery Park has been closed to non-residents, non-residents have been using the park and it is not possible to stop people from ignoring signage and entering the park.

Council President thanked Mr. Whitaker for his comments, noting that those topics have been previously discussed and spoke to a number of Mr. Whitaker's comments.

Council President introduced Mr. Philip Gross.

Mr. Gross made a number of comments:

- He thanked Mayor Quaranta for his role in the community.
- Mr. Gross noted that he and other residents have been picking up trash in Battery Park and expressed his hope that the Trustees will address that situation when the park reopens in Phase I.
- Mr. Gross expressed his agreement that Council should meet with at least 24 hours' notice to the public via Zoom.
- It would be incumbent on Council to meet with local businesses and try to work with them regarding special considerations.
- Mr. Gross noted that no outdoor concerts are being held at this time. Based on his experience with outdoor concerts, Mr. Gross opined that there is too much movement among attendees and alcohol is often involved. He added that he felt a Movie Night would be a better option.

There being no further business to discuss and no additional public comment, Council President Ratchford called for a Motion to Adjourn.

City Council of New Castle
Special Meeting
May 29, 2020

Councilperson Platt made a Motion to adjourn. Councilperson Leary seconded the Motion. On vote, the Motion was unanimously approved and the meeting was adjourned at 4:52 pm.

Respectfully submitted,

Kathleen Weirich
Stenographer
Next Regular Meeting Date: June 9, 2020 Posted: 0510512020