

COUNCIL MINUTES

August 19, 2019
Council Chambers
7:00 P.M.

7:00 P.M. - President Ellington called the Monday August 19, 2019 Newark City Council Meeting to order

ROLL CALL- Mr. Lang, Mr. Marmie, Mr. Rath, Mr. Blake, Mr. Bubb, Mr. Cost, Mr. Fennell, Mr. Fraizer, Ms. Hall, Mr. Labutis

INVOCATION – Mr. Blake

PLEDGE OF ALLEGIANCE- President Ellington

CAUCUS

MINUTES of August 5, 2019 Motion by Mr. Labutis to approve the August 5, 2019 Newark City Council Minutes as presented and the reading be dispensed with in view of the fact each member of Council has received written summary of same, second by Mr. Fraizer. **Motion carried by acclamation.**

APPOINTMENTS

Mayor Hall- reappointing Mark Mauter, Chris Harkness, Kandee Engle and Jillian Flowers as an alternate to the Etna Corporate Park Joint Economic Development Zone 1 (ECP JEDZ1) Board. Their new two year terms will begin October 1, 2019 and will expire September 30, 2021.- **No Objections**

REPORTS OF STANDING COMMITTEES

Finance- **Received & Filed**

Service- **Received & Filed**

Ways & Means- **Received & Filed**

REPORTS FROM CITY OFFICIALS

Stephen E Johnson, City Auditor- operating report for the period ending July 31, 2019. - **Received & Filed**

COMMENTS FROM CITIZENS

Brad Bates, Lives in north Newark- his comments were regarding a retention pond at Home Depot that is not being maintained and causing mosquitos and rodent problems for the surrounding neighbors. He asked for the overgrowth to be cut and to see if they are taking a tax credit that they get for maintaining that retention pond which they are not doing.

Bill Price, Thomas Ave- his comments were regarding the concert venue on Vogel, he didn't want it shut down but he wants the noise to be stopped at 11:00 P.M.

Sheri Mertz, owner of Roost on the River- she stated that they had a meeting Sunday with the neighbors that started out rocky but she thought that they had more of an agreement with a few of the neighbors who had complaints. Last year she met with city officials and they discussed an 11:00 P.M. shut off but the light show is a big part of the event so they let us go until midnight to see how that would go. Of course after that show there were several complaints so this year we wanted to compromise with the neighbors a little more. They complained that it lasted too long because it started at 2:00 P.M. last year and ended at midnight. This year we aren't starting until 6:00 P.M. we are projecting to stop at 11:30 P.M. but it run over due to set changes. We have a contract with the band to play for an hour and a half. She emailed Steve Baum on May 9th advising him of their intended changes for this year. Jeremy you put me on the spot yesterday stating that you didn't know the music would go on until midnight but your post on Facebook stated otherwise. She stated she thinks the public was well aware because of the advertising that they are doing. We have a lot of investors and sponsors, I have a contract with the Double Tree and I booked all of the cabins at the Trout Club for our country show and I did adds on 104.7, T100, The Blitz, QFM 96 our tickets sales are as far as Louisiana, Mississippi, Pennsylvania we are bringing a lot of fans here for the music and for the most part we have had a lot of support. I have volunteer staff some of who are neighbors. For the most part I think that everybody is looking forward to having

something like this that we need because we want to support our local bands and have them performing before national acts. We have a classic rock band scheduled for September 14th. I am trying to work with the neighbors if they will work with me, we only have two shows I don't plan on doing more than 3 shows I don't think I can handle more than that.

President Ellington- just to be clear you do have security and EMS personnel like the group asked you.

Sheri Mertz- yes, Ohio Medical Services is a private EMT service and LCS Securities we are contracted with.

Jeff Mullivan, resident of the south end- his comments were regarding the loud music from the Roost on the River and a concern about property value with this venue there. He stated that the loss of sleep affects his health. He didn't agree with the 11 P.M. shut off.

ORDINANCES ON FIRST READING

By: Rath, Marmie, Cost, Lang, Fraizer

19-16 AN ORDINANCE ANNEXING CERTAIN TERRITORY, GENERALLY DESCRIBED AS BEING 0.419 ACRES, MORE OR LESS, LOCATED IN NEWARK TOWNSHIP, TO THE CITY OF NEWARK, OHIO, AND DECLARING AN EMERGENCY

Motion by Mr. Rath to adopt Ordinance No. 19-16, second by Mr. Fraizer

Mr. Marmie- this needs to be expedited so we can meet the timelines for this type of annexation, we are given a very short window on them.

Motion passed by a vote of 10-0.

By: Cost, Rath, Fraizer, Lang

19-17 AN ORDINANCE AMENDING SECTIONS 890.03, 890.051, 890.062, 890.063, 890.07, 890.10 AND ENACTING SECTIONS 890.141, 890.23, 890.24, 890.25, 890.26, 890.27, 890.28, 890.281, 890.29, 890.30, 890.31, 890.32, 890.33, 890.34, 890.35, 890.36, 890.37, AND 890.38 OF CHAPTER 890 OF THE CODIFIED ORDINANCES FOR THE CITY OF NEWARK OHIO REGARDING THE LEVYING AND COLLECTION OF MUNICIPAL INCOME TAXES

Held for a second reading

RESOLUTIONS ON FIRST READING

By: Rath, Fraizer, Cost, Marmie, Lang

19-55 A RESOLUTION AUTHORIZING AND DIRECTING THE DIRECTOR OF PUBLIC SERVICE TO ACCEPT BIDS AND SELL CERTAIN SURPLUS PERSONAL PROPERTY NOW OWNED BY THE CITY OF NEWARK, OHIO, AND DECLARING THAT SUCH PROPERTY IS NO LONGER NEEDED FOR ANY MUNICIPAL PURPOSE, AND DECLARING AN EMERGENCY.

Motion by Mr. Rath to adopt Resolution No. 19-55, second by Mr. Cost

Mr. Rath- the reason for the emergency clause on this one is because of legal advertisement deadlines.

Motion passed by a vote of 10-0.

By: Marmie, Cost, Rath, Lang

19-56 A RESOLUTION APPROPRIATING MONIES FOR THE CURRENT EXPENSES OF THE MUNICIPAL CORPORATION- Expedite (100 General Fund- \$1000.00: Services General; 100 General Fund-\$1000.00: Overtime; 153 Comp Abs: Payout Blake Vermillion; 661 Sewer Dept-\$106,000.00: Service Contracts; 661 Sewer Dept-\$100,000.00: Sludge Program; 153 Comp Abs-\$13,850.00: Payout Gale Miller)

Motion by Mr. Marmie to waive the two day reading rule, second by Mr. Fraizer

Mr. Marmie- we need to expedite this in order to meet deadlines for projects before the end of the year.

Motion passed by a vote of 10-0.

Motion by Mr. Marmie to adopt Resolution No. 19-56, second by Mr. Fraizer

Motion passed by a vote of 10-0.

By: Marmie, Lang, Rath

19-57 A RESOLUTION APPROPRIATING MONIES FOR THE CURRENT EXPENSES OF THE MUNICIPAL CORPORATION (100 General Fund-\$497.76: Overtime NFD; 100 General Fund: \$2115.63: Overtime)

Held for a second reading

By: Rath, Cost, Marmie, Lang, Fraizer

19-58 A RESOLUTION OF CONSENT AUTHORIZING THE SERVICE DIRECTOR OF THE CITY OF NEWARK OHIO TO ENTER INTO CONTRACT WITH THE DEPARTMENT OF TRANSPORTATION FOR THE BRIDGE INSPECTION PROGRAM SERVICES, INCLUDING, BUT NOT LIMITED TO ROUTINE INSPECTIONS, ELEMENT LEVEL INSPECTIONS, CRITICAL-FINDINGS REPORTS, FRACTURE CRITICAL MEMBER INSPECTIONS, LOAD RATING CALCULATIONS AND REPORTS, WEIGHT LIMITS POSTING SIGN RECOMMENDATIONS, SCOUR ASSESSMENTS, SCOUR PLAN OF ACTIONS, DEVELOPMENT OF FRACTURE CRITICAL PLANS, AND UNDERWATER DIVE INSPECTION REPORTS IF NEEDED AND DECLARING AN EMERGENCY.

Motion by Mr. Rath to adopt Resolution No. 19-58, second by Mr. Fraizer

Mr. Rath- this is a program that we participate in annually and has the emergency clause because of deadlines imposed by ODOT

Motion passed by a vote of 10-0.

COMMENTS FROM CITIZENS

Rochelle Bolen Smith, 237 Violet Ct- stated she thought that there was a noise ordinance and that it was 10:00. She stated it seems as though a compromise could be made by starting earlier. She also stated that midnight seemed totally outrageous for an outdoor concert in a neighborhood setting.

Mindy Bolster, south end Newark resident-she too does not agree with the 11:00 shut off but she doesn't want it shut down because she is all for businesses. She stated that starting earlier would be fine because during the day it's not bothersome and you can go somewhere and at night time it's supposed to be peaceful.

Robert Evans, Summit St- he has to be at work at 2:00 AM and that shutting it down at midnight is too late.

Jeremy Davies, Summit St- stated that he knows we have a noise ordinance but isn't sure why it doesn't apply to this. It doesn't have an issue with the venue just that it goes on until midnight or close to it he thinks it needs to be 11:00 and he would be fine with it starting earlier.

Ted Cobb, 246 Moull St- his comments were regarding Section 1860 of our ordinances regarding trash cans not being at the curb for more than 24 hours. He doesn't know why we have a law on the books if we are not going to enforce it and stated that he was told the city doesn't have time to follow that ordinance. He stated what a great job that the Fire Department did putting out the fire at Tom Hunters house on Moull St.

Laura Cambey, 1120 Wintermute- she invited everyone to the 5th annual overdose awareness rally on Thursday August 29th from 5-7 at Canal Market.

Shana Francis, Venue owners' daughter- stated that they have decreased the watts from 10,000 that it was last year to 4,000 this year. She stated that shutting off at 11:00 is hard to do that there may be set backs with stage setup. She doesn't feel like asking for the one day Saturday for one hour is bad. She stated that Friday and Saturday nights both from her house on National she can hear the Moose Lodge but it is entertainment.

Beth Bline, Summit St- she stated that civility is the thing she is most concerned with. She was also concerned about safety because there is only one way in and one way out.

Everett McKee, 255 Ups and Downs Rd- he stated that 4,000 watts is way too much for that small of an area and that it can be turned down and everybody would be happy.

MISCELLANEOUS

Safety Director Baum- I am going to give you a brief overview of how we got to this point. Some of you are aware of the issue and some of you had no idea of the issue until you arrive here tonight so let me bring you up to speed. Last year I was approached by Roost on the River property owners who had owned the property for about 4 years and they wanted to open up a music venue so I convened an Adhock group of zoning, fire, police, engineers office and property maintenance. We discussed it. What do we do? Do we try and stop a music venue from going in there? Do we have the ability to stop a music venue from going in there? It's their property, they own it. We didn't have the ability to stop a music venue from going in there and we knew it wasn't going to be popular with the neighbors. We knew we would be right here we just figured it would be sooner. There was nothing with zoning, fire did an inspection and they required the Roost on the River to reorient their stage a little bit in case of a fire, the engineer's office denied them a second entry access because they are in the flood plain. Police and Property Maintenance didn't have anything. Police had a suggestion that they should have security or traffic direction depending on how many people they had. The Fire Chief also suggested that they have to have EMS. They didn't have to have Newark EMS but they had to have EMS. They complied. Important to know the city doesn't sign off on you starting a business; you are either zoned for it or not and after talking to Director Sassen last week even if the zoning was changed they would be grandfathered so nothing

changes. They are allowed to operate. When I met with the owners we talked about educating the neighborhood by knocking on doors and passing out flyers and being good neighbors. They came to Council and got the blessing from you for a business startup. They have been transparent. I have had no problem communicating with them. They have been responsive. They are in a place where the neighbors just aren't happy about them being there. That is the plain and simple truth of it. We did have a talk about explicit lyrics it was a non-starter. We had a problem with that once and as far as I know we haven't had a problem with that since. I sent you all a copy of the noise ordinance today. It was written in 1984. It speaks to a variance issued by the Safety Director but that only applies to public speaking and public assembly. I don't know why it would be needed but it is in there. To my knowledge it has never been used. I wouldn't know what I would use it for but it doesn't apply to this concert. Section 634.04.02 speaks to public entertainment and decibel levels. Sound meters above 96 decibels, if you have a concert on your property and it comes across my property and it is at 96 decibels or above that is a problem. The problem with that section is the sound meters have been challenged in court. Think of them as a radar unit in a cruiser if you don't calibrate it before you use it and after you use it you can't use it. We don't have the ability to calibrate the sound meters before and after they are used. They are either calibrated by the company that sold them to us or by a third party vendor. Regardless the Police Department doesn't have the technology to calibrate a sound meter. So sound meters are out. Other subsections, the 9:30 P.M.-7:00 A.M. which is actually the time in the noise ordinance. Without working sound meters it's really not applicable. 9:30 P.M. frankly is too early. The only thing that we have used this section for to my personal knowledge is that I have contacted the Law Director about trash trucks doing their runs at 4:00 A.M. The Law Director has graciously sent letters to a couple of the companies advising them that they are getting started too early in this neighborhood or that neighborhood and they ceased and desisted. Where do we go from here? There is a section under disorderly conduct which is causing an inconvenience, annoyance or alarm through some activity being performed. It is inordinately hard to prove and would require heavy documentation for minimal gain. What I would submit to this body is that you control the legislature and you have to overhaul the noise ordinance. The decibel section needs to go away. It needs to come up with some common sense verbiage can be enforced by the officers regardless. An ordinance that passed the year that I was a junior in high school and I am 52 now is not going to be applicable ordinances evolve. Let's talk about quiet time; what I want to be upfront with you about is the Police Department enforces what you pass without passion or prejudice. So if you declare it is 10:00 or you declare it is 11:00 what I want everybody here to be completely clear on is that means church festivals, the Trout Club, Don Edwards Park, North Newark League are all effected not just Roost on the River. That is quiet time for everybody. If you choose to head down that path just understand that it will be enforced across the board across the city. Not that you would try to pass something that would not be that way I just want everybody to remember this is city wide and that there are other venues around the city as well that will be effected; not only music concerts but festivals, little leagues and etc. So fireworks, if the fireworks don't start until 10:00, 10:00 is probably not going to be the number. I appreciate your time.

Mayor Hall- school starts this week so I just suggest everybody be careful out there kids will be out on the streets once again in the mornings and afternoons.

Mr. Lang- wished Sean Fennell a Happy Birthday. During our committees we approved an appropriation for some monies donated by Pat Guanciale and I just wanted to give him a shout out he does a great job of supporting our Fire Department. If you see any of the videos that the Fire Department puts out he is often there helping as a volunteer. I think that is great that we got some money to put towards mental health training for our Fire Department. I appreciate everyone coming out tonight there were some interesting comments. I think the thing that struck me the most was the theme of neighborly civility. I think that it is important to keep in mind that we are all neighbors whether we are doing something that we disagree with or not we need to find a way to work with each other. The city can't solve all of the problems; we can pass whatever ordinances we are going to pass or not but folks still need to figure out a way to work together.

Mr. Marmie- called a Finance Committee meeting. I want to agree with Brad Bates and it is not just Home Depot. I have had complaints about retention ponds and I go to Property Maintenance and Property Maintenance says it is storm water and then we have to get the health department involved. I want to know what is supposed to be maintained. I know that there are times when there is a certain amount of water you can't cut the grass that is in there but I would like some clear explanations. Ted I appreciate you coming in. I agree some of the things are not being enforced. I don't believe in putting an ordinance in place that no one is going to enforce. So I am going to Segway from your comment and to this noise ordinance and what is going on. I recognize that it does need to be revamped but it has to be enforceable and like Director Baum said it is going to be consistently enforced. If it is your daughter that has a wedding at an outdoor venue and you make it 10:00 and they have to shut it down then it is a different story you want the exception. If it is your church group that is holding a festival the kids these days don't even come out until 11:00. So your revenue generating time is going to be between 11-12. It has to be something that we can enforce and have the man

power to enforce. At that time of night in the City of Newark there are higher priorities going on, there are life and death situations going on. I agree with Director Baum that it needs to be looked at but it can't be so strict that we can't enforce it or we're not going to. I knew that when we put that in there about the trash cans I knew we weren't going to enforce that, who was going to do that. We don't have the staffing for that. People that are going to do the right thing are going to do it without that law in place. As far as what is going on in the south end I am seeing people wanting to work together and I know that the business wants to do business. They only do it a couple of times a year and honestly I live maybe a mile from the Trout Club and I hear it and that is often Thursday, Friday Saturday during the summer months. It happens across the city and I am not going to say that it is pleasant but this city needs the Trout Club to generate taxes and revenue. I'm glad to see that at least there is communication. I do appreciate you all being here and being open and discussing it. I hope that no one feels so threatened that they can't give their address and I would hate to see who was doing that. If you feel threatened then we need to get the authorities involved.

Mr. Rath- wished Sean Fennell a Happy Birthday. If anyone in the room or watching this on video is interested in obtaining a Newark Urban Hunting Permit the applications are available now and can be picked up at the Police Station or Broken Arrow Archery. He asked to speak to the owner of the Roost on the River after the meeting. As far as the noise goes and the venue goes I appreciate everyone coming in to talk and informing us of what is happening. I would be all in favor of working on revamping our noise ordinance. It does have to be consistent and applicable to all. If I were to take this on and rewrite the noise ordinance to where I thought that it was absolutely perfect and brought it to our next committee meeting which is the process that would be on September 3rd it would go through committee and be discussed then it would be taken to Council for a first reading if everybody agreed with what I said which never happens but if there weren't any significant changes and it was passed with the emergency clause that would be September 16th but I can tell you that I am not going to bring a revised noise ordinance to committee on September 3rd. If I did it would be at Council two days after their next concert so the last thing I want to hear is that Council blew this off and they went ahead and had the concert anyways. They are going to go ahead and have the concert because there is nothing that we can do about it right now. This is something that we don't need to rush because they're not having a concert again until next year. Do we need to rewrite the noise ordinance probably so? It is better to take our time and research what other municipalities are doing and find out what is working and what isn't working. The one thing that I heard our Safety Director say were decibel meters aren't to be used. We don't have the technology to do that. We have to have an objective guidelines to go by. He called a Service Committee Meeting.

Mr. Blake- wished Sean a Happy Birthday. I want to make a plug for the South End Newark Association because there are some good things happening in the south end. I was looking through my emails and it goes back to 2014 when we first started talking about the Newark Electro Plating building and working with the Civic Association we had a phase one study done of that property and now it is being demolished. That is huge for the south end. Thank you Director Mauter and the team for being consistent and persistent. That has been an eyesore and a burden on the neighborhood for a long time. The other plug for the Civic Association is that they hosted the meeting last night between these groups and you're right I did post a posting on Facebook because I knew after your concert on the 10th I was going to be getting phone calls but unfortunately I'm not that popular people don't read my Face Book but I did try to put out a warning about the concert coming up and now as we all know there is one coming up September 14th. What I have always seen my role as a Council person is to bring the sides together. The purpose of Sunday evening meeting was to bring people together and we have to keep in mind that was the first meeting of people who were passionate on both sides and many times when we have discussions of this nature you are coming in at a defensive mode. I was very pleased when I left I know emotions were there and people said what was on their heart and what they felt but I think that people need to share that because people were upset. I want to thank you for participating in the conversation. When we talk about developing neighborhoods and developing community it has to begin with a conversation. If you agree with the person or not we are here we are talking about it. I heard you say the next concert will end at 11:30 it's not the end result that everyone wanted but we are all talking and living in this community I think that was the purpose of last nights' meeting. I thank you for voicing your opinion and your concern. Whatever happens in the future process we just need to keep the community engaged. As you see it's not going to end tonight so we need to continue talking and continue communicating with one another.

Mr. Bubb- wished Sean a Happy Birthday. September 7th is the light the Night Cruise In which is a big courthouse lighting fundraiser. I encourage everybody to try to attend. This Saturday August 24th is the dedication to the skate Park on Everett Ave at 10:00 A.M. I would like to thank the Mayor and Service Director for their hard work to get this done. It is a good addition for east Newark. I appreciate everyone else's efforts and hope to see everyone down there.

Mr. Cost- I want to thank the people that came last night and tonight, I think that it is important for people to be able to express their views. I was glad to be there last night and I learned a lot. I think that the point that I was trying to make was that a lot of the things that come in front of us are not necessarily about law or about legality. Like this lady said it's

about showing some consideration. Treat your neighbor like you want to be treated. I know that is old school but it still applies. That is the gist of this, try to find a way to work together, try to find a way to solve our differences and I do believe that we need to look at an overhaul to the noise ordinance and I would be glad to be a part of that also. In addition to the time that you end an event, the content of the language and just the general noise I think that we have to look at respect and consideration for one another. That to me is ¾ of what we are dealing with. Thank you very much.

Mr. Fennell- thanked everyone for their birthday wishes. I would like to thank everyone for coming tonight and speaking from your hearts about your neighborhood. I think that it is important that we are the body that you can come and talk to about issues that are happening and then we can look at legislation and thank you Director Baum for bringing that forward so we can consider something that we can do that is fair because we do have to think about it in terms of the entire city. I think Director Baum brought up a good point that we look at every single venue and not just one particular instance. I appreciate everyone coming forward with their civic pride and your involvement. We all want our neighborhoods to be great places. I want to thank my mom she is literally the reason I am here celebrating my birthday.

Mr. Fraizer- I want to thank the administration for their work on the North Street Park that project has been moving forward and it is really going to be an asset to our community. What we are going to see is a gathering place for everybody in our community with the young people and people of all ages. It is really nice to see the skate park opening and Fory Park opening as well. The progress that we see is astounding in our neighborhood. I went to an economic development session at Denison University with Grow Licking County and heard about the growth and the projected growth that we have for our community and with a 28 million dollar sewer separation project going in the south end, the CRA expansion going in the south end there is a lot of opportunity and progress coming to the south end. I want to thank you for your business and residency encouraging that growth. I am a pretty strict constitutionalist when it comes to the freedom of speech and freedom of assembly is very important to me. I want good fair objective and enforceable legislation. When it comes to the ordinance that you brought up Ted about the trash cans this is on the books why can't people enforce it? That is not something that I want to repeat with the sound ordinance. I think that if we take our time and work together we can find a solution but I want to make sure that we make it so it is enforceable, accurate and protects the families living in our community because we don't want an over reach of government and we want to make sure that when future business that come in their prohibited. Thank you everybody for coming in and expressing your concerns and putting this on our agenda. There is going to be another concert on September 14th and I think everybody is well aware of that and the progress that I see in reducing the wattage, talking to neighbors, having EMS and security there I think that we are being good neighbors. I think that additional conversations need to occur but I think that everybody is making steps in the right direction. I hope that we can continue the dialog and I hope that we can continue to get more businesses and residents to come to the south end as well as more development opportunities.

Ms. Hall- wished Sean Happy Birthday. I want to thank you for coming tonight. I think that we should revamp our noise ordinance. I wanted to address the gentleman's comments earlier about the trash cans; I think that we all notice that around our neighborhoods. Property Maintenance addresses trash that is sitting out but I have called the waste company that the neighbor is using and they have called the person and advised them of the city law about removing your trash can within 48 hours.

Mr. Labutis- wished Sean a Happy Birthday. Thank you all for coming in and sharing your concerns about the Roost on the River that is a conversation that will continue beyond this evening. I am exciting about the August 24th dedication of the Newark Skate Park.

President Ellington- the Newark Skate Park is really nice you should come out and take a look at that. I would also like to add my thanks to everyone for coming out tonight and speaking we certainly appreciate your comments. We appreciate you coming to speak anytime sometimes that is the only way that we know there is a problem or that something is going on. Our next committee meeting will be Tuesday September 3rd at 5:45 P.M. City Hall is closed Monday for Labor Day. City Council will also meet Tuesday September 3rd at 7:00 P.M.

ADJOURNMENT- Motion by Mr. Cost, second by Mr. Bubb. Motion carried by acclamation