

**TOWN OF ELSMERE
COUNCIL MEETING MINUTES
JANUARY 10, 2019
TOWN HALL
6:30 p.m.**

CALL TO ORDER: Mayor Eric Thompson called the meeting to order at 6:30 p.m.

PLEDGE OF ALLEGIANCE:

MOMENT OF SILENCE:

ROLL CALL:

MAYOR	ERIC SCOTT THOMPSON	PRESENT
1 ST DISTRICT	MARIANNE SKIPSKI	PRESENT
2 ND DISTRICT	TED PFIRRMANN	PRESENT
3 RD DISTRICT	ROBERT KACPERSKI	PRESENT
4 TH DISTRICT	CHARLES MCKEWEN	PRESENT
5 TH DISTRICT	JOANN I. PERSONTI	PRESENT
6 TH DISTRICT	BRIAN HURST	PRESENT

Town Solicitor, James McMackin – Present

Town Manager, John Giles – Present

Chief of Police, Laura Giles – Present

PUBLIC COMMENT:

None

APPROVAL OF MINUTES:

Minutes of the December 13, 2018 Council Meeting.

ACTION: A motion was made by Councilman Hurst to approve the minutes of the December 13, 2018 Council Meeting with no corrections. The motion was seconded by Councilman McKewen.

VOTE: 7-0 All-in-favor Motion carried

EXECUTIVE SESSION:

The Mayor and Council will enter into an executive session for the purpose of a strategy session and receiving legal advice on a pending contract negotiation in accordance with Title 29 Chapter 100 §10004(b)(4) of the Delaware Code, in which the discussions would have an adverse effect on the bargaining position of the Town. The Mayor and Council will return to public session following this executive session and may vote once they reconvene the public session.

Town Manager John Giles stated that he would like to remove the executive session from the agenda.

AUDIT PRESENTATION:

Representatives from Whisman, Giordano & Associates will present the annual audit report for the fiscal year ending June 30, 2018.

Mr. Vince Barbone and Mr. Nick Baccino from Whisman Giordano & Associates gave a lengthy presentation of the audit report for fiscal year ending June 30, 2018. Members of the Mayor and Council listened and had their questions answered regarding the audit presented.

ACTION: A motion was made by Councilman McKewen to accept the audit report presented by Whisman Giordano & Associates for the fiscal year ending June 30, 2018. The motion was seconded by Councilwoman Personti.

VOTE: 7-0 All-in-favor Motion carried

OLD BUSINESS:

Introduction for First and Second Reading of Ordinance 642.

Town Manager John Giles gave a brief overview of the ordinance explaining that there is currently no fee structure adopted for the repair of roadway openings within the Town. The code calls for a fee to be adopted and he is proposing a fee of 2.5% of job cost or \$90 whichever is greater. This fee structure is consistent with other permits issued by the Code Enforcement Department.

ACTION: A motion was made by Councilman Pfirrmann to approve Ordinance 642 for First and Second Reading. The motion was seconded by Councilman Hurst.

VOTE: 7-0 All-in-favor Motion carried

Introduction for First and Second Reading of Ordinance 643.

Town Manager John Giles stated that there should be a correction on the agenda for this item. This ordinance is actually amending Chapter 187 Solid Waste not Chapter 192 Streets and Sidewalks.

Councilwoman Personti stated that she would like to table this ordinance because the ordinance should address all forms of containers placed on a corner lot in any zoning district of the Town, not just dumpsters located on corner commercial lots. She further stated that corner lots seemed to be governed differently by our code and there are a number of properties which leave their containers out for collection all the time, not just during the appropriate collection times.

Town Manager John Giles apologized and stated that he had misunderstood the circumstances which led to the request for this ordinance. Now that he understands the circumstances more, he believes he can rewrite the ordinance to fit the intentions described by Councilwoman Personti.

Councilman McKewen reported that he would like to see a more thorough enforcement for containers which have not been returned to the property after collection within the 4th District. He stated that on his alley alone, most people will leave the containers outside the fence all the time and never return them to the properties.

ACTION: A motion was made by Councilwoman Personti to Table Ordinance 643 for a total rewrite. The motion was seconded by Councilman McKewen.

VOTE: 7-0 All-in-favor Motion carried

NEW BUSINESS:

Consideration of setting the Town's 2019 Events Schedule.

ACTION: A motion was made by Councilman Hurst to approve the 2019 Events Schedule. The motion was seconded by Councilwoman Skipski.

VOTE: 7-0 All-in-favor Motion carried

Introduction for First and Second Reading of Ordinance 644.

ACTION: A motion was made by Councilman Pfirrmann to approve Ordinance 644 for First and Second reading. The motion was seconded by Councilman Hurst.

VOTE: 7-0 All-in-favor Motion carried

DEPARTMENTAL REPORTS:

Code Enforcement

Town Manager John Giles presented the following information:

1. The department issued 28 violations during the month, 7 were corrected with just a warning, 20 were issued fines and 1 remained pending.
2. There were 4 properties which were deemed to be a public nuisance during the month.
3. There were 11 registered vacant properties.

There were no questions.

Finance

Town Manager John Giles presented the following information:

1. The department received \$30,894.00 in transfer taxes for the month of November.

There were no questions.

Public Safety

Chief Laura Giles asked if there were any questions regarding the written report. She further stated that she has a matter which is time sensitive regarding authorizing the Mayor to execute a Certificate of Compliance required by the Federal Government in order to receive grant funds the department was awarded to construct a new interrogation room within the department. She stated that the grant was for the installation of a new interrogation room for a cost of \$6,500.00. The certificate states that the Town of Elsmere will not become a Sanctuary City, they will be required to comply with ICE when or if they need to enter the Town. This form is required to be signed to receive any federal funds.

Town Solicitor James McMackin asked if the matter just came up and if it was so urgent that it could not wait until the next Council Meeting.

Chief Laura Giles stated that she did not receive the Certificate of Compliance until Monday of this week and that if the form is not returned within a timely manner, they could end up forfeiting the awarded grant. The grant coordinator made it clear that the matter is time sensitive. Therefore, she does consider the matter urgent. If a grant is forfeited, you also lose your priority/repeat status for future grant awards.

ACTION: A motion was made by Councilman McKewen to amend the agenda to include the discussion and approval to allow the Mayor to sign the certificate of compliance with 8 US Code 1373 because this issue just came up and cannot be deferred. The motion was seconded by Councilwoman Personti.

VOTE: 7-0 All-in-favor Motion carried

ACTION: A motion was made by Councilman Pfirrmann to instruct the Mayor to execute the certificate of compliance with 8 US Code 1373 that has been sent to the Police Department for Consideration. The motion was seconded by Councilwoman Skipski.

VOTE: 6-1 Motion carried

1st District – Yes, 2nd District – Yes, 3rd District – Yes, 4th District – Yes,
5th District – Yes, 6th District – No, Mayor – Yes

Public Works

Town Manager John Giles presented the following information:

1. The department patched 30 potholes throughout the Town during the month.
2. The street sweeper was run through each district at least two times during the month and 11 loads of debris was removed from the streets.
3. The department replaced a broken light fixture outside the library and replaced 4 light fixtures within the police department.

Councilman Pfirrmann reported that the lights for the American flag located along the Poplar Avenue side of the building are not working. He requested that someone look at the issue and have the light repaired or replaced.

Chief Laura Giles stated that lights on the pole are for the new fallen office display and that the lights for the flag are on the building.

Town Manager John Giles stated that the lights on the flag were working the last time he drove by in the evening, however, he would look again tonight and have the Public Works Department address the issue as soon as possible.

Councilman Hurst asked for an update regarding the damage to the Vilone Park Concession Stand.

Town Manager John Giles stated that he has had a conversation or two with John Mahoney of the Public Works Department regarding the repairs, however, he is not certain of the current status because Mr. Mahoney has been out of work for a medical issue. He stated that he would follow up with the other members of the department and provide the Councilman with an update.

Town Manager

Town Manager John Giles asked if there were any questions regarding the written report. He added the following items in addition to his written report:

1. The Town received a Thank You card from Barbara Fitzsimmons who is a New Castle County Crossing Guard. She thanked the Town for the holiday card which was given to each of the crossing guards.
2. The contract with Community Champions is set to expire this year, it is his intention to add the approval of a contract extension to the February 2019 Council Agenda.
3. The 10-year review and resubmission of the Comprehensive Plan is due by June 30, 2020. The Town typically contracts with the University of Delaware to assist in the preparation of this document. He has received their proposed contract and it is a cost of \$28,000.00.

Mayor Thompson asked if there were any other agencies or organizations which could potentially assist at a lower cost.

Town Manager John Giles stated that he would look into other potential agencies.

4. His second knee surgery will occur on February 19th. During this recovery, he will be handling his absence much differently and will be in the office more than his previous surgery. He has always wondered what would happen if he didn't come in and he has learned that he needs to

come in, work via email and generally have a more hands on approach when he is out of the office.

ITEMS SUBMITTED BY THE MAYOR AND COUNCIL:

District 1 – None

District 2 – Councilman Pfirrmann stated that he would like to loan a copy of an original draft of the Town Charter for display in the showcase in Town Hall.

District 3 – None

District 4 – None

District 5 – Councilwoman Personti stated that she is incredibly concerned after attending the Planning Commission Meeting on January 8th. She asked when the requirements changed for calculating parking for a property, especially regarding variances. She indicated that she had always been under the impression that parking variances do not carry with a property when the use changes. She asked if Solicitor McMackin could write an opinion on what variances issued by the Town carry with a property forever, and which variances do not.

She further stated that she would like to discuss offering some sort of training or additional support to the Planning Commission and Board of Adjustment.

Town Manager John Giles stated that the members of these boards and commissions are given sheets each meeting indicating what needs to be put into motions, references, etc, whether approved or denied and they fail to use those notes when making the motions. However, he will coordinate with Solicitor McMackin and reach out to Max Walton who has significant experience in training municipal boards and commissions, to see if they can offer training to the members of these boards.

Councilwoman Personti stated that she has one final concern, she believes that members of the Planning Commission and Board of Adjustment are being treated differently in respect to conflicts of interest. She stated that her husband who serves as the Chairman of the Board of Adjustment was advised that he should recuse himself from voting on a matter because the petition was located across the street from their home, however, the chairman of the Planning Commission who lives next to the same project was not advised to recuse. In addition, at the most recent Planning Commission meeting there was another petition which had similar circumstances where a member of the Commission lived next to a project and failed to recuse himself.

Town Manager John Giles stated that he would agree that there seems to be a disconnect. He stated that he will admit that on the project where Mr. Personti of the Board of Adjustment recused, he did not think about the fact that the Chairman of the Planning Commission should also recuse. However, the matter regarding the other member of the Planning Commission has been discussed, that member has recused in the past and he as Town Manager was equally surprised at the recent meeting when that member did not recuse for this vote. He further stated that unfortunately while he can advise the Board

and Commission of the Town's position, he has no authority to force a member to recuse, that is a matter for the Council to replace members or the Solicitor to attend and force the recusal.

Town Solicitor James McMackin stated that the state law governs these recusals and a lot of it will revolve around the appearance of impropriety versus actual conflict of interest. His preliminary opinion is that if the member is within the required 200-foot public notice then the member should recuse themselves from voting and discussion.

Councilwoman Personti stated that she feels that her husband was forced to recuse simply because he was related to her. Therefore, she would like the solicitor to write a formal opinion on when member of the Planning Commission and Board of Adjustment should recuse themselves from voting on a matter.

Town Solicitor James McMackin stated that he would render opinions on all three issues discussed.

District 6 – None

Mayor – None

PUBLIC COMMENT:

ADJOURNMENT:

ACTION: A motion was made by Councilman Pfirrmann to adjourn and enjoy refreshments. The motion was seconded by Councilman Hurst.

VOTE: 7-0 All-in-favor Motion carried

These minutes summarize the agenda and other issues discussed at this Council Meeting. Votes are recorded accurately. The audio recording of this meeting will be available at Town Hall for a period of two years from the date these minutes are approved. The audio recording may be reviewed at Town Hall by appointment and in accordance with the Freedom of Information Act.

**ERIC THOMPSON
MAYOR**

**BRIAN HURST
SECRETARY**