

Personnel Committee Minutes

Honorable Council
City of Newark, Ohio
September 8, 2020

There was a meeting of the Personnel Committee streamed on YouTube via Zoom on Tuesday, September 21, 2020 following the Capital Improvements Committee with these members in attendance:

Ryan Bubb - Chair
Mark Labutis Vice-Chair
Sean Fennell
Dee Hall
Jonathan Lang

We wish to Report:

1. Consider **Ordinance No. 20-30** AN ORDINANCE AMENDING THE POSITION CLASSIFICATION, PAY RANGE AND DEPARTMENT AUTHORIZATION TABLES OF THE CITY OF NEWARK, DEPARTMENT OF SERVICE, DIVISION OF PARKS AND CEMETERY BY CREATING THE *ADDITIONAL* POSITION OF **GROUNDS MAINTENANCE WORKER**, AND SETTING THE COMPENSATION THEREFORE

HR Director Spurgeon – The piece before you seeks your support. The employing authority believes and I agree it does serve the greater good of our community to add this additional asset in the Department of Public Service, Parks and Cemetery. I believe a cursory review tour of our city would show the significant commitment the administration has shown to our greenspace and certainly to our hallowed grounds, our cemetery and for these reasons I urge your support.

Mr. Bubb – Just for clarification this money is going to be realized through temporary service funds, is that correct?

Director Spurgeon – That is correct Mr. Chair and I believe the Director plans next year as well as part of a budgetary consideration to fund it fully, but is the intention of the administration to put this asset to work as soon as approval of the full council.

Motion to send to full council by Mr. Lang, second by Mr. Labutis, motion passed 5-0

2. Other items at the discretion of the Chair.
 - a) Discussion regarding removing Ordinance 20-16-A from the Table.

Mr. Bubb – This is in reference to the Municipal Clerk of Courts Office

Clerk of Courts Ms. Phelps – I believe through the emails that I've exchanged with everyone as well as the assistance and emails from Director Sassen, there seems to be a clear message as to what needs to happen now, if in fact that is the will of the Committee. Ordinance 20-16-A needs to be taken off the table and discussed or voted on and then move onto what is now being presented as Ordinance No. 20-16-C. I'm certainly open to any questions that anyone may have.

Mr. Lang – I would like to ask Ms. Phelps to just walk us through the changes and your rationale for these positions. The current levels to the new levels. I know you've outlined that in your emails, but I think it would be good to go over that here.

Ms. Phelps – I'll just go over the bullet points. Referencing bullet points I listed on September 3rd, are the overwhelming staff changes that we've had in the office. We have lost several people to other City offices, the Courts as well and all of them are at a pay range that is greater than what we have currently. With that said, it does create a void in our office. When you have senior employees that move to other offices and the courts for greater pay you can't blame them. That is their right and their privilege. That said to me, I need to do something to secure the trained staff that we still have left and those that are coming on board. Another thing I pointed out was some of the job duties. I don't want to labor over that, but everyone should be aware that the job duties of the deputies in our office are subject to many different kinds of variables. We serve a vast majority of people, some of which are harder to serve than others. We have never closed because access to justice cannot close. Unlike some of the areas in the building who have been able to work remotely or come in very rarely, we have been there every day. During the beginning weeks of the pandemic I did split the staff one week on and one week off to protect the security of those individuals in case someone was exposed. Recently one of the Muskingum County Clerks offices had to close for two weeks because someone tested positive. When that happens you have to bring people in who aren't familiar with the processes. One of the things they have to deal with are warrants. Trained people need to be able to deal with that. Our clerks are subject to people who may remain composed in court but when they come out of the court into our office they may show a different side. The position that I'm asking to add is a Deputy Clerk IT. Our Case management System will either be upgraded or converted to a new system and that is my reason for asking for that position. We need someone knowledgeable that will be able to help everyone with that software. The documentation that comes from the Auditors office shows that our expenses are less than what we take in. I compared our salaries with those of other Municipal Courts in Ohio and beyond. The Fifth Appellate Courts district opinion states that the Municipal Court Clerk has the right to hire at set salary.

Mr. Lang – Thanks you Ms. Phelps. My question now is for Director Sassen as to what our authority is here as it relates to the Fifth Circuit Opinion.

Director Sassen – It's pretty well settled law in Ohio, not just in the Fifth District Court of Appeals. There are multiple Ohio Supreme Court Cases on this issue. Section 190131H that really gives the Clerk authority to set employment structure in the department and to set budget and salary expectations that the City is not obligated to meet. The process as it's been interpreted by the Supreme Court is essentially that the clerks request comes with a presumption of reasonableness. Essentially, the revised code says that if the clerks request is reasonable, council shall meet that request. It comes with a presumption of reasonableness which then puts the burden on the City. The Administration or the Council or someone to rebut that presumption of reasonableness based on other factors. Essentially, the clerk is able to set structure, set salary, as long as that is not unreasonable then council has an obligation to comply with those requests.

Mr. Lang – are there any examples that you can site of what would be unreasonable or when have the courts said, yes that’s a reason why the council or city should not consider a particular decision.

Director Sassen – Actually, to be completely honest with you every case that has come before the court has ruled in favor of the clerk. The Mansfield case was probably the one that came closest to an analysis that the clerks request might have been unreasonable. All of the case law from the Supreme Court from Ohio has sustained the clerk’s request for budget. So there’s not a lot of guidance out there that says “this is what’s unreasonable” .Instead it says the burden is on you and I have not read a case where the city has met that burden to show the clerk’s request was unreasonable.

Mr. Marmie – Ms. Phelps indicated the need for the increases in salary was because she is losing personnel to other parts of the City for a higher salary. I would like to know the number of employees in the last three years that have left the position in that office for a higher salary outside the department and I want to request that list. How was that information obtained, was it from an exit interview or how was that information gathered.

Mr. Bubb – Ms. Phelps, would you like to address that now?

Ms. Phelps – I do complete exit interviews. Through exit interviews that is stated position. I can’t force someone to say something, but that has always been one of the points that they have made to me. I don’t have off the top of my head in the last three years how many people we have lost, but I can tell you, in the last year there have been 5, if not 6 that have moved on to other departments. If you actually have to have that data I can certainly provide that for you and I would be more than glad to share that with the full committee or members of council, whoever needs it and it would be through our exit discussions that I have come up with that information. I will also say that there have been a couple people who have left to work from home. They have children and with home schooling that has created some issues. I can’t blame them for wanting to do that. There has been some turnover for those reasons as well.

Mr. Marmie – I do want that data. HR should be able to provide data that shows someone who left and then went to a position that had greater pay. It should be clear and that should be able to be obtained.

Mr. Fennell – I would like to thank Ms. Phelps for being so thorough on all this information.

Motion to remove 20-16-A from the table and to send to full council by Mr. Fennell, Second by Mr. Lang, passed 5-0

Mr. Lang – I’m not sure everyone has seen 20-16-C, Director Sassen, did you circulate that to everyone?

Director Sassen – I’m not sure it went to full council but it did go to every member of the committee.

Mr. Bubb – I believe the only change on 20-16-C, correct me if I’m wrong, was just the change on the personnel number, the 112 to the 107.

Director Sassen – And language in paragraph 4 with regard to the Information Technology Coordinator position. There was some confusion as to which statement of policy that employee should be under because it was a unique position, so I clarified

that also in C. The language in C is cut and pasted language from a prior ordinance passed by council setting forth what benefit package this employee is under and what their vacation accrual rate would be.

Mr. Lang – I believe one other change from A to C was the Office Manager position, it was at 35 and was proposed to 40, but was changed to 42.

Director Sassen – Yes, that was a change from A to B. The other was the change from B to C. The number 40 was a typo on my part and should've been 42.

Motion to replace 20-16-A with 20-16-C by Mr. Lang, second by Mr. Fennell

Ms. Hall – I did not get C

Director Sassen – That email was sent, but I can follow-up on it tomorrow.

Ms. Hall – How is this being paid for?

Director Sassen – These funds come 80 percent from the clerks' budget and 20 percent from a court computerization fund

Mr. Lang – You're speaking specifically to the new position?

Ms. Phelps – The one IT Position is 80 percent Clerk Computer Fund and 20 percent Court Computer Fund, the remainder of the positions have always been and will continue to be from the General Fund. My point with the budget was. When you look at the revenue generated by the Municipal Court Clerks' office, it is greater than the amount paid into the city of Newark for the Municipal Court Clerks' office. That's how it's always been and will continue to be except for one IT Clerk position.

Mr. Bubb – It's confusing for some, they see the pay range and changes and that doesn't always reflect what they make. We all know that your clerks' office is getting 4, 4 and 4, the next three years. Can you put a number on what the cost will be to the General Fund next year to help people decide whether this is reasonable or not.

Ms. Phelps – I can do so, but I do not have that at this moment in time. I did have that, but obviously it's not part of anything that I've disclosed. Here's a sheet included in with a 64 page documents. When you look at the total overall, I think the greater amount I see is \$44,553.00. That would be the total amount that's greater from our current positions that we have to the added position plus the raises.

Mr. Marmie – I do want to know that dollar amount because I don't think that includes the 4 percent increase. The other thing is, since you're gathering documents I want to see the results of those exit interviews. That should be a matter of public record, so we should be able to get a copy of those as also.

Ms. Phelps – Most of those exit interviews are not documented.

Mr. Marmie – An exit interview that's not documented?

Ms. Phelps – Yes sir, that's correct.

Mr. Marmie – Okay well then, it did not happen.

Ms. Phelps – Yes it did.

Mr. Marmie – If there's no documentation, there's no proof that it occurred. Can you get me a list of the people that you did and then I will contact them directly.

Ms. Phelps – Sure.

Mr. Bubb – Getting back to the amendment, there is a motion and a second on this.

Director Sassen – I just wanted to clarify that the emended version of this 20-29-C was sent to all members of council at 12:49 today.

Motion to amend to 20-16-C is passed 5-0

Director Sassen – Before this was tabled there was a motion to adopt so, there doesn't need to be another motion, just a vote.

Mr. Bubb – It's my opinion that there are still unanswered questions. This is a rather large decision to make, especially with the General Fund. I believe we might want to table this for two weeks and let Ms. Phelps come back with some more direct numbers.

Motion to Table 20-16-C for two weeks by Mr. Bubb, second by Mr. Lang

Mr. Lang - Looking at the numbers presented, all of these folks get 4 percent each of the next three years. So, it looks like a range of around 6 percent up to 11 percent on top of those 4 percent raises. A total of over 20 percent for the Office manager position, I'm just trying to understand why these raises need to be so much more than raises afforded to other employees of the City, especially at a time when we are anticipating next years' income from taxes to be down.

Motion to Table for two weeks passed 4-1

Ryan Bubb - Chair