

**MAYOR AND COMMISSIONERS MEETING  
CITY OF REHOBOTH BEACH**

**April 4, 2011**

The Workshop Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 9:01 a.m. by Mayor Samuel R. Cooper on Monday, April 4, 2011 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

The Invocation and Pledge of Allegiance took place at the Special Meeting prior to this meeting.

**ROLL CALL**

Present:   Commissioner   Bill Sargent  
              Commissioner   Pat Coluzzi  
              Mayor            Samuel R. Cooper  
              Commissioner   Dennis Barbour  
              Commissioner   Stan Mills left the meeting at 10:30 a.m.  
              Commissioner   Lorraine Zellers

Absent:     Commissioner   Kathy McGuiness

Also in attendance was:    City Manager Gregory Ferrese  
                                  City Solicitor Glenn Mandalas

**CORRESPONDENCE**

Correspondence will be read when that order of business is taken up.

**OLD BUSINESS**

Mayor Cooper called to discuss draft ordinance that would establish smoking restrictions in certain public parks and children's playgrounds.

Commissioner Mills noted that at two previous meetings in February and March 2011, the Commissioners discussed the potential to implement smoking restrictions or bans in certain areas of the City. Those presentations and supporting documents have been placed on the City website. Since the last meeting, Ocean City, MD and Milton, DE have adopted bans on smoking in their public parks and playgrounds. The draft ordinance was developed using Codes from the City of Lewes, DE and Town of Bethany Beach, DE. Within the proposed ordinance, the restrictions are identified and violations and penalties are set. The expectation is that this will largely be self-enforced. Signage would read to call to report any violations. Conditions to be imposed would be that signage must be available in order to arrest someone. Commissioner Mills suggested that the Commissioners review the content of the proposed ordinance and have it placed on the agenda for the Regular Meeting to be held on April 15, 2011.

Mayor Cooper questioned why the offense would not be a civil offense. Commissioner Mills did not disagree at all. He had just followed the Codes in other municipalities. City Solicitor Mandalas said that in Section 94-5, the civil offense chapter of the Code should be referenced.

Mayor Cooper did not know that the proposed ordinance would need to be put in a separate chapter of the Code. Typically the chapters in the Code are alphabetical, so this ordinance should fall between refuse and transportation and numbered accordingly.

Commissioner Bill Sargent was uncomfortable that there is not a strong enough safety reason to require this proposed ordinance. He wished that the State would take the lead on this matter. To some extent, the City is holding these lands for the public outside the area so what the Commissioners are doing is making a State statement. Commissioner Sargent wished that this would be on a requested basis to not smoke. He was not sure that aggravating a smoker is healthy. Commissioner Sargent did not see a net gain for Rehoboth or for society by having this ordinance.

Commissioner Mills said that the City needs to have some laws on the books in regard to this matter, and he was convinced that when enforcement is begun and the word gets out, then people will adhere to the ordinance. Commissioner Mills reviewed the penalties that the Town of Bethany Beach has as compared to the City of Lewes.

Commissioner Dennis Barbour agreed with Commissioner Sargent that it is becoming more socially unacceptable for people to smoke in public. People on the whole are not smoking as much so it is not that big of an issue. Commissioner Barbour's concern was that this could be a slippery slope, and he did not see a need for this proposed ordinance. He could agree with t

Commissioner Pat Coluzzi said that adopting this ordinance is a reasonable thing to do. She is concerned about the issue of smoking and possible fires being started in the parks. There is no reason why there cannot be an ordinance in place that outlaws smoking. Commissioner Barbour said that he could agree with the ordinance if it is a matter of public safety.

Mayor Cooper said that he would prefer less regulation.

Commissioner Lorraine Zellers agreed with Commissioners Mills and Coluzzi that there should be something on the books. It would be reasonable to have anti-smoking initiatives in areas where there are children and areas that could catch fire. It gives people a mechanism for not smoking such as a sign saying this is the law. This ordinance is reasonable.

Commissioner Barbour said that there are a lot of issues the Comprehensive Development Plan lists to focus on, and he would rather the Commissioners spend their time on those things that have been identified as issues. Speeding is far more of a public safety issue than smoking. The Commissioners need to have some sense of priorities of what the real public safety issues are in the City that need to be addressed. If smoking is enframed as a public safety issue, he is more inclined to support the ordinance.

Mr. Walter Brittingham, 123 Henlopen Avenue, supported most of the proposed ordinance. In regard to Section 94-3, there should not have to be a container every 50 feet around all of the City's parks. Signage would be more appropriate at the entrance to the City saying that there is no smoking in the City's parks. He did not disagree with the comments of making it a civil offense.

This item will be placed on the agenda of the Regular Meeting to be held on April 15, 2011.

## **NEW BUSINESS**

Mayor Cooper called for the presentation by and discussion with the owners and operators of the Jolly Trolley of their desire for the City to limit the use of transit stops to fixed route operators only and to enact a "dispatch only" rule for taxi cabs within the City.

Mr. David Hastings, President of Transit U, Inc. clarified that in the letter forwarded to the Commissioners, the dispatch only rule was only a suggestion.

Mrs. Christine Hastings, Vice President of Public Relations of Jolly Trolley, read a portion of the letter to the Commissioners dated March 14, 2011. Executive staff of Transit U, Inc. has contacted and requested to work the City of Rehoboth Beach and Town of Dewey Beach Traffic/Transportation committees and local enforcement departments in the past months. The request was in regard to protection of the State licensed mass transit fixed route stops of the Jolly Trolley. This issue was highlighted to the Delaware Economic Development Office, DelDOT public carrier regulations, Southern Delaware Tourism, local Chamber of Commerce and Rehoboth Beach Main Street as well as local residents and business owners. This matter has been a significant part of the post 2010 summer season and pre-2011 spring/summer season for Transit U, Inc. Transit U, Inc. doing business as the Jolly Trolley, which is family owned and operated, has been involved in the local Rehoboth Beach and Dewey Beach business community since 1970. The Hastings family has been directly involved with local businesses for many decades and has owned property in the Rehoboth Beach and Dewey Beach hundred for close to 100 years. The Jolly Trolley is truly a community oriented family business. The Jolly Trolley has been operating for over 40 years and Transit U, Inc. has been the proprietor since 1992. At that time, the Jolly Trolley was the original transit system. Transit U Inc. developed and originated the Rehoboth Beach/Dewey Beach state licensed mass transit fixed route when the corporation was started. Before obtaining the required State License of Public Convenience and Necessity, Transit U, Inc. did extensive research and development for the route and stops; and in addition, had to submit an extensive application with DelDOT, confer with both the City of Rehoboth Beach and the Town of Dewey Beach to finalize safe and efficient stop areas, have a public hearing and adhere to all regulations and compliances required of a State licensed mass transit fixed route public carrier. The original stop locations are still in existence over 20 years later. Privately owned, Transit U Inc. is a non-subsidized public carrier operator that takes its responsibilities very seriously. The Hastings family has committed their lives to this service and the local community, dedicated to constant improvement of the transit system and being front line ambassadors for tourism in the Nation's summer capital resort. The system runs 18 hours daily during the prime resort spring/summer season

with frequency and headway up to every 5-7 minutes during peak travel times. Transit U Inc. contributes and sponsors with dollars and transportation service to numerous community non-profit events. The Jolly Trolley Rehoboth Beach/Dewey Beach fixed route shuttle has a rate structure that includes discounts for local employees to and from downtown work locations as well as for children five years and under. The Jolly Trolley has become an iconic attraction over the years and is a fun, efficient reliable source of transportation in and around Rehoboth Beach and Dewey Beach.

Mr. Turner Hastings, Treasurer of Jolly Trolley, gave a presentation in regard to protection of mass transit fixed route anchor system stops. The definition of fixed route is a regular route that is run by a transportation provider that seats no less than 10 passengers, but normally utilizes much larger vehicles between two fixed termini, on a schedule with a mandated number of service hours per day. Fixed routes are frequently referred to as a mass transit anchor system in a community because an anchor system handles the majority of people in transit. Without the anchor system in place the other transportation entities would not be able to handle the volume effectively. Public hearings are generally required to institute a fixed route because they are designed to serve specific needs within a community. The public hearing determines hours, rates and route which can only be changed through an application process. The benefits of a fixed route are: 1. Rates listed with DelDOT public carrier office. 2. Designed to fill a specific need in a community. 3. Low cost per passenger. 4. Consistent service. 5. Move large numbers of people efficiently. 6. Take cars off the road. 7. Improve overall quality of life in a community. 8. Must follow rules and regulations of Delaware Code. A limousine can carry 15 passengers or less over regular or irregular routes between two termini, at least one of which has to be fixed. The fare and the trip are predetermined and scheduled ahead of time. Benefits of limousines are: 1. Rates listed with DelDOT public carrier office. 2. No mandated schedule that they must operate on. 3. Pre-arranged service. 4. Service level customized to suit specific customer needs. 5. Must follow rules and regulations of Delaware Code. A taxi always has to have a meter to compute fares and miles. They can carry up to six passengers over irregular routes between termini which are not fixed. Benefits of taxis are: 1. Rates listed with DelDOT public carrier office. 2. No mandated schedule that they must operate on. 3. They are available as demand warrants. 4. Must follow rules and regulations of Delaware code. The issues are the survival of the Jolly Trolley fixed route mass transit service and public safety concerns. The Jolly Trolley is mandated as a fixed route carrier to provide 18 hours of service per day. For over 20 years, the Hastings have been developing and advertising its fixed route stops and building a substantial customer base; however, for many hours every day they operate at a loss. In order to continue to operate a viable business, the Hastings need to carry the passengers who come to the Jolly Trolley stops to catch a Jolly Trolley. This allows the Hastings to collect the fares in order to pay the bills, make a profit and exist as contributing members of the Rehoboth Beach/Dewey Beach community. The Hastings are seeing a dramatic increasing trend of taxicab direct solicitation of customers at Jolly Trolley stop signs. Transitional non-action results in the anchor system being diluted and eventually eliminated. The need for safety in and around fixed route stops is significant because of the size of the vehicles, the numbers of people carried on those vehicles and the volume of pedestrians at and around the fixed route stops. If the large fixed route vehicles are not able to get to their stops, then this leaves the vehicle sticking out in traffic which creates a dangerous, confusing situation for drivers and pedestrians. The taxicabs are not only a physical barrier to the stops, but the drivers themselves are also a distraction to the Jolly Trolley drivers and customers. The Hastings have reports of harassment from these individuals. Direct solicitation at Jolly Trolley stops began intensifying in 2007 and has progressively worsened. In 2010, the DART Park and Ride fixed route was reported to be up 17% in passenger trips, and the Jolly Trolley fixed route service was only up 2.5%. Photographs were provided of various stops in Rehoboth Beach and Dewey Beach where direct solicitation, guerrilla marketing campaigns by a taxicab operator, blockage at stops and visual evidence of harassment have occurred. The solution is protection of fixed route mass transit stops. The Hastings propose that Rehoboth Beach and Dewey Beach set up an ordinance or regulation which will establish a fine structure that will deter other non-fixed route transportation operators from poaching passengers who go to fixed route mass transit anchor system stops for that type of service. No picking up or solicitation will be allowed 100 feet in all directions of a licensed stop to allow safe and efficient entering and exiting of the large fixed route vehicles from their stops.

Mr. David Hastings said that they are not trying to stop people from taking any mode of transportation they want. The Hastings' issue is that the system which they built is being poached. If this continues to happen, it will develop into a big public safety issue because taxicabs will be lined up at the stops. Most taxi operations lease their vehicles to drivers so they are essentially all independent contractors and it is very difficult to control them through the owners of the cab companies. The Hastings are trying to be proactive. Jolly Trolley will not be able to survive if this is not stopped. The Hastings would like to expand their service to possibly start a jitney service.

Commissioner Coluzzi said that if the Commissioners were to agree that this is a good ordinance for the City, in terms of enforcement officers would need to be at each stop. Mr. David Hastings said that random enforcement by police officers would be the answer, but any type of documentable, legitimate time-stamped photo or video would be grounds for at least in approaching them about the issue.

Mrs. Hastings said that in Dewey Beach, they have more distinct Jolly Trolley signs that say that these are Jolly Trolley licensed stops, not taxi stands. In Rehoboth Beach because of aesthetic reasons and streetscape, the bus stop signs have been put up. The Hastings have asked over the years if Jolly Trolley signs could be included with the bus stop signs, and they have been told no because bus stops are considered State licensed mass transit fixed route stops and inclusive of Jolly Trolley stops. DART over the years has added Jolly Trolley information into its information at the bus stops.

City Solicitor Mandalas noted that there are legal issues to be considered. He was concerned about constraint on free trade, etc. The Jolly Trolley and the taxi services are two types of businesses both providing transportation services. City Solicitor Mandalas was concerned that if the Commissioners were to do anything which would favor the Jolly Trolley's business to the detriment of the taxicab drivers, the Commissioners may be violating free trade laws.

Mrs. Hastings acknowledged that DeIDOT and the State do not have any rules that prevent taxicabs from stopping at a DeIDOT stop. If this would be more of a statewide issue and would affect buses, there would be a regulation in place. She noted that there used to be taxi stands in the City but were removed when streetscape was done.

Mr. David Hastings said that short of hiring a private investigator, they have not pursued private action against the taxicabs.

Commissioner Barbour said that first the Commissioners need to find out is what limitations there are on the Commissioners' authority to do anything, and then proceed from there. He suggested that the Hastings prepare a recommendation for the Streets and Transportation Committee to review. Then the Streets and Transportation Committee can make a recommendation to the Board of Commissioners. Commissioner Coluzzi agreed.

City Manager Ferrese was only aware of one taxi stand at First Street Station prior to streetscape. The taxicabs are licensed with the City or they are cited. There had been a problem between 12:00 a.m. and 1:30 a.m. on Rehoboth Avenue and other areas. The cabs were backing up especially in front of Conch Island. It would be good to get locations for the taxicabs, but then there will be issues with dealing with merchants losing parking in front of their businesses.

Mrs. Hastings noted that the Town of Dewey Beach has promised it will be working and helping the Hastings with Jolly Trolley. City Solicitor Mandalas commented that this matter has been placed on the agenda for the meeting on April 16, 2011.

Correspondence:

1. Email dated April 1, 2011 from Ms. Jenny Barger of Rehoboth Beach Main Street – in support of.

Mr. Walter Brittingham, 123 Henlopen Avenue, said that someone from the State and DeIDOT should be in attendance at the Board of Commissioners meeting to answer questions in regard to this matter.

City Solicitor Mandalas will research this issue and return to the Commissioners with his findings at a future date.

Mayor Cooper called to discuss a proposed ordinance that would amend the definition of sidewalk within the zoning code to permit a walkway leading to a main entry to be up to five feet wide, an increase from the existing three feet.

Mayor Cooper noted that an ordinance at the request of the Building Official two years ago that defines sidewalks because there were issues with large concrete paving areas around pools, etc. which were hard to define. Among other things, the proposed ordinance reads that a walkway can be three feet wide or otherwise it is a structure. Mayor Cooper had been approached by a citizen who not knowing a permit was needed, put in a four foot wide sidewalk for the main entry. He thought that for the main entry from the street to the front door, three feet is a bit small and the walkways should be allowed to go to five feet. This would be a Zoning Code change and would require a public hearing.

Commissioner Mills said that in a section of the Code, it says that the width of the sidewalk is five feet; however, within three feet of the entry it can be wider such as a flare out. He questioned how the seven feet was derived. Mayor Cooper said that the reference to seven feet is currently in the Code. City Solicitor Mandalas thought that the main walkway to the main entrance could be seven feet wide and people were making patios that were seven feet wide instead of walkways. Seven feet was not specific to the ordinance change two years ago.

Commissioner Sargent suggested that the flare out could be seven feet or to the width of the steps if wider within the last three feet. Commissioners Coluzzi and Zellers agreed with this suggestion.

City Solicitor Mandalas will prepare the resolution. Mayor Cooper and City Solicitor Mandalas will talk about changing the definition in accordance with the suggestion made by Commissioner Sargent.

Mayor Cooper called for discussion arrests of owners and managers of restaurants cited for patio violations in September 2010.

Commissioner Barbour said one of the most compelling issues which is still hanging is that of the arrest records of the individuals that were cited for violations of the patio ordinance. In the case of one individual, the City has decided not to proceed, but he still has the arrest record. The owner of Cloud 9 pled guilty, so the question is how to resolve this to get the criminal record undone. The Commissioners need to clean this up and move on. It is unfair to have the consequences of this fall on individuals when it is clear there were irregularities on the part of the City. Commissioner Barbour acknowledged that City Solicitor Mandalas work to help expunge the records of the two, possibly three individuals.

Mayor Cooper did not know if there is an arrest record. He wanted to know that there is a record that needs to be expunged. He asked Commissioner Barbour to provide copies of the arrest records from the State. City Solicitor Mandalas presumed that this was dealt with as a criminal matter, and it probably is on record. He has not seen the arrest record either.

Commissioner Barbour said that the City needs to provide copies of the arrest records from the State. In the case of a criminal matter, it automatically goes into the State's system. Commissioner Barbour will research and come back with the findings.

Mayor Cooper said that since Commissioner Barbour requested this subject be placed on the agenda, he should provide the Commissioners with the information of what is being discussed.

Commissioner Sargent thought that the affected individuals along with their attorneys should be the ones to initiate this process. Commissioner Coluzzi disagreed because an individual was wrongly accused. She did not see how someone who is wrongly accused in one situation should have to bear the brunt of clearing his record.

Commissioner Barbour said that in the case of the individual who pled guilty, there is question as to whether or not there was a valid citation. Mayor Cooper said that this individual should right that argument.

Commissioner Sargent said that it was an unfortunate situation, but the individuals need to give the Commissioners the facts.

Commissioner Barbour said that this was a premeditated action on the part of the City to do a bust. The decision was made under questionable circumstances and individuals have suffered personal consequences. Commissioner Coluzzi said that this issue should be put to a vote and move on. Commissioner Barbour agreed. The opinion from the Public Integrity Commission makes it very clear that the City was out of line. He recommended that City Solicitor Mandalas research what is or is not doable and then forward that to the Commissioners so it can be placed on the agenda for a vote at the next Regular Meeting.

City Solicitor Mandalas noted that there is mandatory and discretionary expungement. If some things are mandatory, the State will expunge them if someone goes through the process. Under discretionary, there are some things that cannot be expunged. He will look into expungement and figure out what will likely occur in these two cases.

## **CITY MANAGER'S REPORT**

City Manager Gregory Ferrese reported that the City's Yard Waste Program is in the process of being finalized. Within the next two (2) weeks, he will be sending a letter to residents detailing the program. The Yard Waste Program will also be included in the City's Newsletter which will be mailed to residents by the end of April. The State has notified Mr. Ferrese that the City's hospitalization rates will not increase this year. An eight (8) percent

increase was projected in the 2011/12 Budget. The City has passed the workplace safety inspection which was performed by the State. Savings will be realized in Workman's Compensation rates. Mayor Cooper, Commissioner Coluzzi, Police Chief Keith Banks, Building Inspector Terri Sullivan and Mr. Ferrese conducted interviews for the part-time Code Enforcement Officer. Five (5) applicants were interviewed, and a job offer was made to a qualified applicant pending a successful background review. All departments are in the process of hiring personnel for the summer season. The improvements to the Beach Patrol building and Baltimore Avenue restroom are on schedule. The bid has been approved for the new decking around the Delaware Avenue restroom. This project will be completed before Easter 2011. The Stormceptor Project in Country Club Estates will be starting at any time. A grant has been received for a mobi-mat for handicapped accessibility to the beach at Laurel Street. In regard to the \$500,000.00 competitive grant, the City will be going out to bid in late April 2011, and bids will be opened in May 2011 for the new roof at the Convention Center and all new windows in the Municipal Building. A bidding date has not been finalized for the improvements to the Public Works building and the Senior Citizens Center. Anyone contacting the City in regard to the bicycle study has been referred to Commissioner Coluzzi.

Commissioner Coluzzi said that on April 17, 2011 at 12:00 p.m., there will be a ceremony with the Italian delegation from Greve, Italy at the Bandstand. At 1:00 p.m., a wreath will be placed at the Verrazzano monument.

### **COMMITTEE REPORTS**

Commissioner Coluzzi reported on recent committee meetings of the Streets and Transportation Committee. The Committee recommended tabling the request from Nora Martin to change parking space No. 2 to a 30-minute space because the Committee needs to recommend the adoption of a policy that delineates the reasons for 30-minute parking spaces. The Committee will be working on preparing a draft policy at its next meeting.

Commissioner Barbour said that the Committee should work on the policy first, and it would be helpful if a general history of the 30-minute meters could be provided to the Committee.

Commissioner Coluzzi said that the grant for the pedestrian/bicycle master plan must go out for competitive bid. The entire process as it was delineated in the scope of work will take place over a period of a year. The Committee has felt there are a few things that should be addressed immediately. Some of the recommendations were: 1. The concrete at the crosswalks should be painted with a white reflective paint. 2. Put speed bumps on the eastbound and westbound entrances to the circle. 3. Remove the wall at the circle to increase driver visibility and safety.

These items are to be placed on the agenda for the next Workshop Meeting.

Mr. Walter Brittingham, 123 Henlopen Avenue, said that in conversation with a representative from DelDOT at Smyrna, DE, state records show that Rehoboth and Columbia Avenues are state maintained roadways. The State's policy is that speed bumps only allowed in subdivisions. Eastbound and westbound on Rehoboth Avenue, and the circle was designed under Streetscape according to standards. The State of Delaware will want to have a say and examine what the Streets and Transportation Committee proposes to do before anything can be done. According to the State of Delaware as of approximately three weeks ago, Columbia and Rehoboth Avenues and State Road are state owned roads. The State maintains those roads.

Commissioner Barbour said that it was his understanding that Rehoboth Avenue was deeded from the State back to the City in the 1980's. Rehoboth Avenue is a City street, not a State street. Commissioner Barbour said that he has a written maintenance agreement the City entered into in the 1980's that gave Rehoboth Avenue back to the City. City Manager Ferrese said that this maintenance agreement is for the City to be able to do patching of the roads, snow removal, etc.

Mayor Cooper said that a lot has been said about speeding lately; and at some point, the Commissioners need to determine how big the issue is. There has been a lot of misinformation in regard to speeding, and the Commissioners need to know what the norms are. It would be good to know if the City's speed limits fall within the range of what is typically acceptable or what is expected. He did not know how much the State would be willing to help with this study. This item should be placed on the agenda for a future meeting.

Commissioner Sargent said that in regard to the signs on Columbia Avenue, the City should have a mechanism to capture this information. The City should purchase something to monitor speed. This item should be placed on the agenda for a future meeting.

### **CITY SOLICITOR'S REPORT**

There was nothing to report.

**COMMISSIONER ANNOUNCEMENTS/COMMENTS**

There were none.

**Discuss items to include on future agendas.**

Topic to be included on a future agenda is to discuss a personnel issue in executive session. City Solicitor Mandalas said that the matter Commissioner Barbour would like to discuss is an appropriate matter for an executive session.

There being no further business, Mayor Cooper adjourned the meeting at 11:05 a.m.

**Respectfully submitted,**

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**(Ann M. Womack, Assistant Secretary)**