



Allentown

435 Hamilton Street
Allentown, Pa. 18101

Minutes - Final

City Council

Wednesday, July 22, 2020

6:00 PM

Council Chambers

Roll Call: Council President Hendricks

Present: 7 - Candida Affa, Cynthia Mota, Daryl Hendricks, Julio Guridy, Ed Zucal, Ce-Ce Gerlach, and Joshua Siegel

Public Comment: The meeting will be livestreamed. The link to the meeting can be found on the city website with the agenda and legislation at <https://www.allentownpa.gov>. Council will receive comments on the legislation prior to the meeting. Council will consider all comments from city residents. All comments must include name and address, including your city, and be emailed to Michael.Hanlon@AllentownPa.gov by 2 PM on the date of the meeting. Comments received from city residents by that deadline will be forwarded to the Mayor and Council members prior to the meeting and will also be noted at Courtesy of the Floor or Public Comment periods of the meeting. These timely received comments will also be posted on the City's webpage as a supporting document to the meeting. Any comments received on the meeting day, after the 2:00 pm deadline, will be forwarded to the Mayor and Council as soon as practicable.

[15-3680](#)

R85

Authorizes the Administration to Execute the Integrated Agreements to Resolve and Settle All Pending Legal Disputes under the Allentown Water and Sewer Utility System Concession and Lease, dated as of May 1, 2013, between the City of Allentown and the Lehigh County Authority

Sponsors: Administration

Attachments: [CLEAN EXECUTION COPY 8.10.20- City of Allentown LCA- Final Amendment to Lease Agreement](#)
[Blackline of EXECUTION COPY 8.10.20](#)
[R85 LCA Disputes- Council Resolution for Introduction on July 15, 2020](#)
[Amendment to Lease- LCA Final as of 8.5.20](#)
[Amendment to CCRC MOU -CITY FINAL 7.6.20](#)
[Amendment to Lease CITY FINAL 7.6.20](#)
[Amendment to Water Supply Agreement CITY FINAL 7.6.20](#)
[Allentown City Council Committee of the Whole 072220 c](#)
[Stand-Alone Settlement Agreement- CITY FINAL 6.36.20](#)
[August 12 Lease Comments](#)
[Resolution #30026](#)

Mr. Dan Koplish, Consultant for the City of Allentown, thanked Council for the opportunity to present the key features of the Settlement worked out

between the City of Allentown and Lehigh County Authority. To address the disputes between the parties and provide necessary funding to provide capital improvements and a path forward to continue the quality of water and sewer services which the city and its residents have come accustomed to. It is a challenge between the next 10 years. It was a need by LCA to finance Capital Improvements over the next 10 years. The next slide gives Council a better perspective on what is going to be necessary over the next 10 years in order to make critical Capital Improvements to the facilities. The facilities are functional, but for the most part are fairly aged. The estimate for the needs for the next 10 years is \$150 million. Capital Improvements to the Water and Sewer Systems are vital to the future of the city and its residents. They need City Council to look at the options relative to proceeding. Unfortunately, there are only two options for proceeding at this point in time. With the Dispute Resolution and the decisions you are faced with is a choice of rejecting the Settlement that is proposed or approving the Settlement. If you reject the Settlement Proposal, the disputes are going to go to arbitration and court, and unfortunately, the third party is going to make the decisions for you. The city is going to occur significant legal and consultant costs. There are financial risks to the city. Two of these suits themselves have a total impact of \$41 million. If the city is not successful in those lawsuits the city is liable for that which will basically effect the General Fund and could lead to a tax increase and a loss of productivity with your staff. The staff time will be monopolized in dealing with the disputes in terms of gathering information for both of the parties. If on the other hand you determined it is in the city's best interest to approve the settlements, all the disputes will be withdrawn. There are no legal or consultant costs. The financial risks are totally eliminated. There is no risk to the city and the city employees are now allowed to focus on their primary job function. How does it effect the rates. If you reject the settlement. It will be an immediate rate increase. LCA does not have a choice in this point in time. They postponed pursuing a monthly rate increase why we are under negotiations in terms of showing good faith. They did not go ahead to show monthly billing. If the city rejects the settlement, monthly billing will begin January 1, 2021. The rate increase to the average resident will be \$176 per year in 2021. Again, if you decide to approve the settlement, there will be a phase in of the rate increases. Fixed charges will be phased in over four years. In 2021, the rates will go up approximately \$88 or \$22 per quarter. The billing frequency will remain quarterly. Capital Improvements is the driver for some of the needs of these rate increases. Again, if you reject the settlement what happens is with only monthly billing, assuming that monthly billing is initiated by LCA. It is questionable if just monthly billing can continually make the necessary capital improvements in a timely manner. If LCA, loses the monthly dispute and we go to arbitration, the necessary Capital Improvements will likely not be made in a timely manner. The question becomes, do you really want to

risk the quality of your water and sewer services by going to court. If in fact the settlement is improved, if City Council approves the settlement all necessary Capital Improvements are made in a timely manner. What additional benefits that this settlement brings. If you reject the settlement, there are no additional benefits. If you approve the settlement, the remainder of what he will show in the PowerPoint Presentation will be benefits that you will receive as part of the settlements. The settlement is a package deal. Basically, we have negotiated for a year and a half. There are four separate documents. They are integrated and is a package. We understand going in that we are not picking and choosing. There were trade-offs or compromises. We worked very diligently for over a year and a half putting it together. We basically looked at three major billing boxes in putting this together. On the top row is really what's important. The issues were addressing the financial issues, upgrading the water and sewer systems, and enhancing our partnership going forward. Moving into the future, we will have a viable partnership that will be able to resolve issues as they came up. Here is what Part I of the equation under the settlement. The proposal is there will be a phase in fixed rate over a four year transition period. Fifty percent of the fixed rates will be phased in during the first year. Seventy five percent during the second year. Seventy five percent during the third year and then the final year which will be 2024 the full fixed rate component would be included in your bill. The first phase will begin on October 1, 2020 and it will be about \$88 per year for residential ratepayer and will go all the way through 2021. The annual future increases under the phased program in 2024, the average resident will be paying about \$176 more per year. Billing frequency during the quarterly transition will remain quarterly. The last bullet brings them to the point in saying, if they have these rate increases, how does that stack us up against the other communities. Where do we stand? The next slide graph shows 24 local communities provide the water and sewer service. It looks at the annual average bill where ratepayers using the standard of 5,000 gallons per month. The question really becomes, where does Allentown really stands. The first green bar is where we are currently. Basically you can see from the left that we are in fifth. If in fact the rates goes into the phase program we move to the second green bar. Relative to all the communities we are still among the lower 30 percent of all the communities. The highest rates in the area are with Pennsylvania America. Should there be a worst case scenario. He is not envisioning that will happen, but Council needs to be aware of it. Should capital improvements not be made there will be potentially a point in time where you have to replace LCA as an Operator. A new operator will be a private entity. Private entities have to show a profit every quarter. In most cases with Pennsylvania America, they pay a dividend. They are competent organizations. There is no question on their ability to do things, but their rates because they are private have to show a profit or a significantly higher. If you look at the graphs it is double of what

Allentown would be paying. Years of experience and familiarity with the system and the institutional knowledge will be lost. He stated that he doesn't want to dwell on it, but does want to make them aware of it. Once LCA reached key financial targets, there will be rate relief provided to the ratepayers with either rate reductions or stable rates. They anticipate the projections in 2031. The last two bullets are important: If you read through the documents there are metrics in there and formulas where there is not subjective. LCA is not going to say to us we are in good financial shape. When you read through the documents metrics, formulas, which determines when they are in good financial shape and the dollar amount of what the rate relief is going to be. Under the Lease this is what the average ratepayer is going to pay. The Lease as it exist right now entitles the concessionaire which is LCA to get Margin Plus CPIU. The margin is presently 2.5 percent. This graph was generated using a CPIU of .5 percent. What that is saying is LCA is entitled to year after year to get the margin plus CPIU. That is what Allentown ratepayers is what your ratepayers is going to look like for the average household up into the end of the Lease. It is pretty steep and can get steeper if the CPIU is higher. If they go to the proposed settlement the red line now represents the rate relief under the proposal. In 2031, we are envisioning what will be the first time we will actually have rate relief. Going forward there will be a significant difference. The bar graphs are representing what the average residential customer is going to be paying. As it gets mid-way through the length of the graph, the numbers start becoming \$500 or \$600 per year. The totality of the rate relief over the Lease is going to be approximately a half of billion dollars. We help LCA out for 10 years and they reciprocate once they are financially stable they pay us back in terms of rate relief.

Mr. Joe McMahon stated that if you look at the difference, the red is what they are projecting now based on the new Agreement. If you look at all blue above the red line that is turning out to be profits. When LCA estimated this project back in 2013. There projection at the end of 2062, the original model said that they would have \$2.5 billion of profit over the 50 year Lease. Even if they were off by 50 percent, it is likely they may have been. The original contract there is nothing that states that retained earnings what private business would call profit. There is nothing that said it would come back to the city. This agreement mandates that we either get rate relief out of it or the money gets put back into the system which is our system. They could have potentially walked away with the \$1 billion at the end of 50 years and not owe the citizens of Allentown anything.

Mr. Dan Koplisch stated he appreciates that this was setup for private industries. The assumption was that you were going to give the city \$200 million. He stated that \$150 million was the minimum the city wanted so your profit had to be there for people to come up with that kind of money.

Mr. Julio Guridy asked if in 2062 the rates will start coming down.

Mr. Dan Koplish stated 2031. The Lease is ending. Their tenure as an Operator will be coming to an end. The last number you see there is a little bit of an aberration.

Mr. Joe McMahon stated that if you look at 2031, the red line is shorter than the blue line. That is where you start to see the relief.

Mr. Julio Guridy asked if the Capital Expenditure would end at some point.

Mr. Dan Koplish stated that is when the Lease ends. This graph is just to show the rate relief at the end of the Lease.

Mr. Joe McMahon stated that with Water and Sewer Systems, especially when it comes to plants, there are huge capital expenditures and the plants are good for 20 to 30 years and then you have to rebuild the plant. You will see spikes when it comes to the plants.

Mr. Julio Guridy stated that is the life of the plant. The average of 30 years.

Mr. Dan Koplish stated that they are still looking at the financial issues relative to the proposed settlement. One of the issues that the city wanted and LCA believes was the LCA suburban division takes about seven million gallons of water per day from the city. They signed an agreement at one point in time which was basically fairly generous to LCA's side. We are looking to address what we thought was an extremely favorable arrangement. With the settlement proposal, LCA will begin to pay for the water they consume as a cost per thousand gallons based on water average water production. They pay for it now based on marginal production or incremental productions so their cost per water is going to go up. LCA right now does not pay directly for Major Capital Improvements. That is not part of the existing agreements. With the proposal that you are reviewing LCA suburban division will begin to pay proportionate share of major capital improvements for water treatment. It will be based on the volume of sales to LCA versus the total water sales. As it works to seven over 18 or about 39 percent with LCA's proportionate share. Going forward city ratepayers will be responsible for about 60 percent of major capital improvements made for water treatments. The increase revenue from LCA's suburban division will be used for Water Treatment Capital Improvements. The city is contributing, LCA Suburban Division is also contributing to the Capital Improvements.

Mr. Julio Guridy asked when did that start.

Mr. Dan Koplish stated that will go into effect October 1, 2020. Because the capital improvements are done annually, that will not start until the 1st of January, 2020. The rate increase in terms of cost of water will go into effect October 1, 2020. The last part of the financial issues is basically going forward LCA will contribute to the city \$400,000 per year just for inflation beginning in 2021. That will go through the termination of the Lease. Every year, the city will receive the \$400,000 per year in two payments of approximately \$200,000 per year. Prior to this agreement, that money would have come out of the General Fund. It is important to realize that the \$400,000 is not affect by economic conditions. The \$400,000 is a firm figure, you will receive that every year. That is to support the effort the city put into Water and Sewage Regulatory Administrative Compliance Office. The second building block is upgrading our water and sewer systems. The funding is going to be used to make the necessary capital improvements and ensuring the quality of drinking water and sewage effluent. The Lease requires that LCA provide quality of treatment significantly beyond what is required by regulatory requirements. There was very much of an insistence by City Council at the time that the quality of water and sewage treatment that was being provided at that time under the city's operations be maintained. There were protecting and maintaining for the duration of the Lease the treatment systems and the infrastructures that the city owns. You own these assets. As you are making capital improvements, you are investing in your own assets. The two programs that are basically structured under the proposal which will allow for certain efficiencies for the good of the ratepayer and the entire system. We are going to reduce the amount of pipelines that are going to be replaced under the Lease. It will be reduced about a mile per year. The savings in that will be about \$2 million per year. What we are going to do is the annual leak protection mile which will be increased by 50 percent. The entire system will undergo leak detection every two years. It is really cost effective to find leaks and repair them while they are still leaks. Once the leaks becomes a main break, main breaks are unpredictable, very costly to repair and causes chaos. It is a nightmare when you have to deal with it. It is very expensive and could lead to property damage. The way you want to do it is by good preventative maintenance. That program will be basically evaluated and modified if necessary every four years. The next one, has to do with the criticality of the sewer system. LCA and the city have been partnering for years now. The city was under administrative orders which fortunately we were able to ourselves out of it in large part of the partnership between LCA and the city providing a leadership role to the communities. Unfortunately with the hydraulic situation that happened in August 2018 to July 2019, for 159 years the recorded chronological data was singularly highest rainfall we received. The sewer system was just inundated. The Treatment Plant treated beyond its capacity and

successfully provide treatment and met all the regulatory requirements, even at Allentown standards. None the less DEP is required relative to regulations we were hydraulically overloaded. DEP is required to act on that. They could have within their rights to impose a moratorium on development. DEP was very cooperative and said they want to work with us and asked the city to develop an ACT 537 plan to address current and future needs. They want the city to put together programs that includes projects and programs on how you are going to deal with this now and how you are going to deal with this in the future. They are going to continue to approve Planning Modules as we proceed. If you cannot get Planning Modules, there is no development. Development is crucial to the city and the entire region because it creates a stable tax base and it promotes employment opportunities for Allentonians. We need to look at this in terms of regionally. It is a regional benefit that we are working towards. One of the programs under the proposal, right now the city has the obligation through 2024 to 2025 to do remediation projects that are called inflow and infiltration. The city is going to do projects. There is a five year plan and when we get to 2024 or 2025, depending on when the project will end LCA is going to contribute \$650,000 per year to continue the remediation projects until the identifiable projects are completed. Another thing that the city has done, is they established the concept to develop a reserve fund. LCA is going to contribute a minimum of a quarter of a million dollars to a maximum of a half of a million dollars per year until we get up to \$2 million into a reserve fund. They will replenish it if we use some. It is there to be proactive. Right now under the existing Lease, LCA is allowed to charge an Equity Rate of Return. They are allowed to charge approximately 9.75 percent. That is the PUC rate. LCA is willing to use the Equity Rate of Return in major projects by 4.3 percent down to 5.45 percent. That is the initial interest rate when they borrowed the bonds to pay for the Concession Lease. Over the remaining life of the Lease it will produce a reduction in major capital improvements by \$220 million. Allentown portion of these savings are in addition to a rate relief. The savings are significant and that starts next year with the first projects that will start up in 2021. The third building block will be to enhance our relationship. With the Dispute Resolution we talked about without going over the first three to four bullets: avoiding legal expense and avoiding risks. They were able to work out when the Lease wasn't clear and interpreted certain portions of it. The city sat down with LCA and work over a period of time with the personnel department and said what is fair and what is reasonable. We sat down with them and work over a period of time with the personnel department and said what do we think is fair and what is reasonable and made judgments on people who might retire. They basically came up with the Resolution that LCA would pay to the city \$306,000 for the next four years (20021, 2022, 2023, 2024) to cover the city's retirees healthcare costs. The city will still remain responsible for the

administration of the program, but LCA agreed to make that payment of \$306,000 a year. Unfortunately, if you reject the settlement, there are no additional benefits. You are going to arbitration and it is going to court. The city has a lot to gain by approving the settlement. With the approval of the settlement, we ensure water and sewer system improvements expeditiously to continue to provide high quality water and sewer services, protecting the city's investments, ensure that the development can proceed without interruption, creates a stable tax base, promotes employment opportunities for Allentonians and strengthens the partnership to guide and coordinate Act 535 Planning. The settlement agreement includes four separate documents. It will be amendments to the Lease Agreements, amendments to the Capital Loss Recovery Charge, amendments to the Water Supply Agreement and a Stand Alone Agreement for certain things that don't fit into any other category like the Health Employee Benefits. It is handled under a standalone agreement. It is a package deal, not to be separated. The next steps are for Allentown City Council. He hopes that he prepared them with enough information to gain support for the proposal. It is very or more than fair to Allentown. It is clearly much more preferable than going to arbitration and lawsuits. LCA needs to get an approval of Bond Counsel or they are looking at refinancing 51 percent of their Lease in which they will not need Bond Counsel approval. That cannot happen unless the progression goes, until Allentown City Council has approved the proposal, LCA's Board of Directors have approved the proposal. Now, the Board Counsel knows that there is a deal in place.

Mr. Julio Guridy thanked Mr. Hendricks, Mr. Koplisch and Ms. McKenna. He stated that he thinks it sounds like a very good deal for the city. When he heard it on the phone, he could not hear everything. He had some questions and some were answered today by Mr. Glazier and Mr. Hendricks talked to him about some other ones. The last slide that you had with the benefits, he thought some of things were already embedded in the contract.

Mr. Dan Koplisch stated no. Those are all part of the proposal. They were generated as part of the negotiations.

Mr. Julio Guridy stated that it says about the steps and things that the city was supposed to be doing. He thought 1, 2 and 3 are part of the MOU.

Mr. Dan Koplisch stated that a MOU is a separate. The Capital Cost Recovery MOU that develops in the Lease itself. It basically says that the Concessionaire entitled to recover the funds that they use for a major capital improvement. The Lease Agreement does not say how that is going to be developed or how it is going to be structured. The city and LCA developed an MOU which basically is a Memo of Understanding.

Mr. Julio Guridy stated that was after the Lease Agreement. He asked about the Stand Alone Agreement.

Mr. Dan Koplish stated yes. He stated that the Stand Alone Agreement is about what he told them about: changing the pipeline and can be handled under the Lease Agreement. The changes in what LCA is going to be paying their suburban agreement can be handled under the Water Supply Agreement. The Stand Alone Agreement contains the Health Benefits and one other thing.

Mr. Julio Guridy asked who came up with that. It is a good idea, but how did that come up. He asked about the Equity Rate of Return could go up to 9.25 percent.

Mr. Dan Koplish stated that initially it is called a Sinking Fund. When you have an issue and have to go before City Council and say we need this money to just do some investigative work. It is not an easy sell. He stated that the way that the Lease is structured when the bidding were being done, a lot were private industries. It was structured not knowing whether it was going to be under PUC or not under PUC. The language was written by the idea of whoever won the Concession would be able to get an Equity Rate of Return. We had one project that was done under that and we paid 9.5 percent. The Schantz line was extended. It was a fairly extensive section that was leaking. There were 13 to 14 spot repairs which was made on Schantz' line all the way down to the plant. A portion of that was paid out of Equity Rate of Return and we paid 9.5 percent.

Mr. Joe McMahon stated that is why a lot of private companies can make a lot of money. They are incentivized to replace their equipment. Then they can charge everyone for the cost. If they use their own money to do it, they are guaranteed 9.75 percent. He stated that the city doesn't want to pay that because we are not getting that back.

Mr. Julio Guridy stated that at the beginning he was talking about disputed versus if we agreed to it. What is the guarantee if we moved forward this. How will this happen? Is it a court mandate?

Mr. Dan Koplish stated that there is a claim made by LCA which is called fraudulent inducement in terms of when the bidding took place the city did not provide accurate or full documents. When they bid they perhaps over bid.

Mr. Julio Guridy stated that wasn't necessarily true. That wasn't really true.

Mr. Joe McMahon stated that the city had to go to arbitration under the Master Sewer Agreement between the signatories and the city. They didn't have to go to court, they could go to arbitration.

Mr. Marc Feller stated that the city went to mediation. They went to mediation and were not able to resolve it and before it went to arbitration, a decision was made to hold off to see if they could settle it. It is still a claim, a perspective claim that LCA has that they can bring, but the settlement is designed to eliminate that possibility. Now, there was a similar case, the signatories the other municipalities brought forth basically the same argument that the city had overcharged the signatories for expenses associated with sewer and that case was handled in arbitration and the city won that and got 100 percent victory in that case. It was very similar claims. LCA was a party to that arbitration case. It made the city feel that our case was even stronger than we thought because LCA is making the same argument.

Mr. Dan Koplish stated that anybody that dealt with the courts you have no idea how it is going to turn out. Having lost the first one in which basically the judge rules they had not proved their case. The concerns would be that they would realize what their shortcomings were relative to the liabilities to the city. Even though you were successful the first time there is no guarantee that you will come ahead of the second one.

Mr. Julio Guridy stated since Council is approving the first and is the first one to approve it and it goes to the LCA board of directors, how do we guarantee that we will also approve the same thing that we approve.

Mr. Marc Feller stated that there is no guarantee.

Mr. Dan Koplish stated that the documents are posted online, but they will sign the same thing.

Mr. Mar Feller stated that the agreements are final. They are not going to change.

Ms. Jennifer McKenna stated that there are the documents that we put up. The language has been vetted by both organizations and both have approved it. They are working through the process with Council and LCA board on these four documents to integrate through the settlement agreement that goes to the Resolutions before you.

Mr. Dan Koplish stated that it is an important point. Attorneys for both sides are basically saying I agree to what is being said here on the documents so that both parties feel that they are with the language in there

truly represents their position. Both people want to make sure the disputes are gone.

Mr. Julio Guridy stated that we will eventually. The Resolution will indicate all that.

Mr. Joe McMahon stated going through those contracts and make changes to them with the attorneys to make sure they are legitimate changes. It is written properly. The future interpretation will be clear.

Ms. Cynthia Mota stated that it seems like a win/win situation for both parties. What happens with the people that have a fixed income. The reality is, the water is going to go up. It is her concern. As we know, we had a tax increase in the city, now the school board and now if we deal with this and we vote for this, it means that it is going to be a triple whammy for the taxpayers. We know the community is poor. She asked what is going to happen to the family that has a fixed income and they have to pay water. What will be the relief for them?

Mr. Joe McMahon stated that they will have to work it out with LCA at this point because he doesn't know if there are any other mechanisms. That would for LCA because they are a customer to LCA. If you look at it, Allentown Water and Sewer has been at the lowest costs. As rates go up, you will see a drop in the consumption.

Ms. Cynthia Mota stated we are dealing with a pandemic. They say we have to wash our hands more and more. We have to be more cleaner. Let's be real. It is pressure. People have to be more conscious about sanitation. We have to understand during a pandemic, not a lot of people work.

Mr. Joe McMahon stated that he fully agrees with her. He wasn't working for the City of Allentown when he went to Trenton, New Jersey to argue in front of the Delaware River Basin because their new regulations would affect people. He stood there and told them do you understand what this would mean for the citizens of Allentown.

Ms. Cynthia Mota stated that she understands the importance of quality water. When the Lease is over we have to make sure the infrastructure is still functioning. In the meanwhile what is going to happen with our poor citizens.

Ms. Jennifer McKenna stated that they have rebate programs that are primarily for senior citizens and also for people with disabilities. It is based on income levels. There is a program already in place that they can make

a commitment to advertising and make sure everyone is aware that they can have access for those who qualify. The other thing that is important to note, as Mr. Koplisch is saying the Settlement Agreement is build on kind of an all or nothing. If we don't vote for it, the monthly rate goes in right away and we lose all the other ratepayer cost savers. The offset to the General Fund, the reduced equity rate of return will help the total bill that ratepayers are going to get. It is going to reduce that. The city will lose that if they don't vote for the settlement.

Mr. Dan Koplisch stated that there is a sensitivity to the issues. That's why they went towards the phasing in of the rates. He understands that it is a significant amount of money people have to pay. They tried to recognize that it would be a hardship and tried to stretch out the increase over a period time. That was really being able to fund the Capital Improvements. He stated that Ms. Mota's point is very real and they did what they could to try to address that within the limitations of coming up with enough money.

Ms. Jenna McKenna stated that Liesel Gross from LCA is listening in and reminded her that LCA has suspended penalties and shutoffs during the pandemic. They are working on a Utility Relief Fund. That is something that the Poverty Law Clinic has come and spoken to LCA's board about. There are things in place. The city just doesn't have them yet. They are sensitive to the issues and things in place to try to make things happen.

Ms. Cynthia Mota stated that if this comes through she believes that it is extremely important to educate the community. She stated that she was talking to Mr. Glazier on a teenager spending 20 - 30 minutes in the bathroom showering. It is understandable that you know that your rate is going to go up with more consumption. You have to things differently. We are dealing with the pandemic and with a poor community. We did raise taxes. The school board is raising taxes four percent. We just need to be mindful.

Mr. Joe McMahon stated Liesel is online and can speak to this better. She knows what they do. There is more conservation. By changing fixtures within your home you can get the same service, but use less water. It is very cheap. If it is a five gallon tank you can put things in that only flushes it three gallons. Every gallon saved in water, is a gallon saved in sewage.

Ms. Cynthia Mota stated that the key here is education.

Ms. Candida Affa stated that she will go in a whole different direction. As you stated you never know in court if you wins or lose. Hypothetically, if the city win, what happens to LCA. The settlement is good and she understands it and agrees with it. If you should lose, do you go bankrupt.

Mr. Dan Koplisch stated that with LCA he just will tell them it is with monthly billing. Julio's reference was to the suit which is the bulk of the \$40 million. If they would lose the monthly billing they would be stressed for funding. They need to make these improvements. They need money coming in for both the suburban and the city. Facilities are aging. It was the biggest projects coming up at the water plant is the replacement of the filters. That is the most critical part of the water treatment process. It will be phased in.

Ms. Candida Affa stated that if we take this to court and we win if you go belly up. The city has choices. We can take it back and she doesn't think the city wants to do that. We would have to pay the loan back. She doesn't want the city to take this over. The rates are going to go up even more. If we win, are we in wors

A motion was made by Julio Guridy, seconded by Joshua Siegel, that this Resolution be moved forward favorably to the full Council.. The motion carried by the following vote:

Yes: 7 - Candida Affa, Cynthia Mota, Daryl Hendricks, Julio Guridy, Ed Zucal, Ce-Ce Gerlach, and Joshua Siegel

Enactment No: 30026

[15-3675](#)

Bill 50

Directing the Lehigh County Board of Elections to Place a Referendum Question Before the City of Allentown Voters on the November 3, 2020 General Election Ballot to amend the City of Allentown Home Rule Charter to Authorize and Permit the City Controller to Initiate and to Conduct all Manner of Audits, Including Performance Audits, without first being requested to do so my the Mayor or by City Council and to Permit the City Controller to have access to all types of Information, including payroll information, to conduct such audits.

Sponsors: Affa, Guridy, Hendricks, Mr. Siegel and Mr. Zucal

Attachments: [Bill 50 Controller Performance Audits- With Change to Section 210](#)

Mayor Ray O'Connell stated that he would like to ask Council and Mr. Glazier about the rationale for this bill.

Mr. Jeff Glazier stated that he thinks out of any group around, Council is sensitive to the value of oversight given our experience over the last 12 years. The Controller's office, certainly under his direction has shown that they are up to the challenge of digging in things. Providing Council and the public with the information that they need and the confidence that comes from a clear and unbiased investigation. If you look around at other Charters, Philadelphia City's Charter comes to mind. Allentown doesn't compare very well under the current and it really limits the Controller. Charter's like Philadelphia gives the Controller more leeway and authority to do the kind

of investigations that are demanded. Especially, with regards to performance audits. Really, what they do right now is financial stuff. Performance Audits and when you look at an operation and see if we are getting our monies worth is especially important to go forward through these challenging economic times. It would be a good thing for Council to approve this and hopes when Council does that the public looks upon it in favor as well and passes it in November. He stated that if anybody had any specific questions he will do his best to answer.

Mayor Ray O'Connell thanked Mr. Glazier. He stated that he wanted to know the rationale. He stated that he has known Mr. Glazier for a long time from the School Board, School Board President, and it kind of helped him get on City Council way back when. You were a great City Council member, great Controller and he has total respect for what he does. He stated that he has full confidence of Mr. Glazier as we go forth because he has always been very accurate, very fair, if he can do anything to improve not the financial audits he will go forth to improve the city. If we can do audits to improve productivity for our city it is a win/win for everybody. He asked Mr. Hendricks to ask some of his colleagues who did not sponsor it. Sometimes we don't read everything and then at the last minute say I will add on.

Mr. Daryl Hendricks stated to Council for any of those who did not sign on, do you wish to speak as to why.

Ms. Ce-Ce Gerlach stated that she did not have a reason other than she did not send an email. She would be glad to add her name as a sponsor. She stated that she doesn't have an opposition to it.

Ms. Cynthia Mota stated that she feels the same way. It would be a good idea. The more aware that they are when it comes financially the better. Audits are always good. It keeps people on their tippy toes. She asked to add her name.

Mayor Ray O'Connell stated that when they run for office whether it be City Council, the Controller, the School Board and the Mayor. We always use the term transparency. This gives us more transparency. Hopefully, we are building trust within the community and with residents and say we might not always agree with their decisions, but they are very concerned and confident with their transparency going forth.

Mr. Daryl Hendricks stated that he agrees. It is very true and very founded. He asked if there were any other comments on Bill 50. He asked Mr. Hanlon if it will be voted on tonight.

Mr. Michael Hanlon stated no. It will be voted on at the next Council meeting.

A motion was made by Ed Zucal, seconded by Candida Affa, that this Bill be moved forward favorably to the full Council. The motion carried by the following vote:

Yes: 7 - Candida Affa, Cynthia Mota, Daryl Hendricks, Julio Guridy, Ed Zucal, Ce-Ce Gerlach, and Joshua Siegel

[15-3681](#)

Bill 51

Directing the Lehigh County Board of Elections to Place a Referendum Question Before the City of Allentown Voters on the November 3, 2020 General Election Ballot to amend the City of Allentown Home Rule Charter to Require Approval by City Council of all Collective Bargaining Agreements prior the Mayor executing each agreement.

Sponsors: Affa, Guridy, Hendricks, Mr. Siegel and Mr. Zucal

Attachments: [Bill 51 Charter - Contract Approval](#)

Ms. Francis Fruhwirth asked that on Bill 50 was the public consulted for any additional comments. She did not hear that they were.

Mr. Daryl Hendricks stated no. He was relying on Mike.

Mayor Ray O'Connell stated no.

Mr. Michael Hanlon stated no one.

Ms. Cynthia Mota asked if her name can be added to Bill 51.

Mr. Michael Hanlon stated sure. He asked if Ms. Gerlach wanted her name added as well.

Ms. Ce-Ce Gerlach stated sure. For the people that are confused, this is just to add our names as co-sponsors.

Ms. Francis Fruhwirth asked if there were public comments asked for before R85. She stated that she did not hear that it was.

Mr. Michael Hanlon stated that there was none and the only thing that they got was a comment after the 2:00 PM deadline from the three Hs.

Ms. Francis Fruhwirth asked if that is distributed to Council and the administration.

Mr. Michael Hanlon stated that it is distributed to all the vested interest and the commitment was made to answer it before the next meeting.

Mr. Julio Guridy stated that it is to move it forward, not to vote on it.

Mr. Michael Hanlon stated that Ms. Fruhwirth is talking about comments that Council received from the public. We received something from Mr. Hunsicker after the 2:00 PM deadline. It was forwarded to the Mayor, City Council, to the Compliance Office and Dan Koplisch. The commitment was made to Mr. Hahn and Mr. Hunsicker to get an answer by the next meeting and make that answer known at the next meeting.

Mr. Daryl Hendricks stated prior to the vote taken by the body.

Mr. Julio Guridy stated that whenever we discuss a bill we ask the public if they had any comments.

Mr. Michael Hanlon stated that Council did not get any comments.

Mr. Julio Guridy stated now before we were to bring it forward.

Mr. Daryl Hendricks stated back to Bill 51. Any comments from the administration.

Mayor Ray O'Connell asked the rationale.

Mr. Daryl Hendricks stated that it gives the body a share in the responsibility for the impact of respective contracts on the city's finances. It is important and that is his reason for suggesting this.

Mayor Ray O'Connell stated all CBAs.

Mr. Daryl Hendricks stated correct.

Mayor Ray O'Connell stated fire, police and SEIU.

Mr. Daryl Hendricks asked if anybody else wishes to comment on that.

Mr. Ed Zucal stated that this came about as a result of recent contracts that were given, but not negotiated with members of Council. He knows that there exist a review board that is controlled by the Mayor with regards to accepting them or rejecting them. He would be willing to making an amendment to this if Council can be guaranteed that at least two members of Council can be on that board.

Mayor Ray O'Connell asked through negotiations.

Mr. Julio Guridy stated that Council asked that before and at one point Tom Burke asked to sit in the negotiations and he actually sat in a couple of meetings, but he could not say anything. It was just for information purposes. It was an issue of legality.

Mr. Michael Hanlon stated that historically Council always had to approve these. When you did not approve one, you set into play an arbitration and that was with the Afflerbach administration and the pension contract and for some reason during the Pawlowski's administration you got a read that you didn't have to do it. He stated that for most of his career, Council did. By you not approving one, you set into play an arbitration. That is pretty significant that happened.

Mayor Ray O'Connell stated that if they did not approve it goes through arbitration and usually the arbitrator rules in favor of.

Mr. Michael Hanlon stated at the end of the Pawlowski administration, he doesn't want to speak for the Solicitor's office. Fran is there. It would appear that Council no longer had to approve them because they no longer approved them.

Mr. Julio Guridy stated that it was during the Pawlowski administration, he took the time to talk to Council members not individually or two by two so that it won't be four of them together. More because of the Sunshine Law only two of them at a time would meet with him at a time and discuss the pros and cons and what is agreed to and not agreed. Those issues were more palpable. If it is legally possible to have a Councilmember or two during the negotiation process would be good. He stated that he is not sure if it is legal or not.

Mr. Ed Zucal stated or at least be consulted before the final decision.

Mr. Joshua Siegel stated that it would help if one could at least informally attend. Perhaps not have voting powers, but at least be present for the negotiations and be informed and report back to members of Council.

Mayor Ray O'Connell stated not necessary part of the negotiating team, but after they are almost at a settlement bring you in. Kind of like what they did with the Personnel Study. Not stating that he would not agree to having Council on the negotiating team, but definitely agree for everybody on Council that we are at the point now and 90 percent ready to roll the CBA and bring them in before that.

Mr. Julio Guridy asked is it being with him.

Mayor Ray O'Connell stated that you will meet with the team. A lot of times, he is not on the team, but he will have the final say. For an example, the Fire negotiations, the Managing Director is leading the team, and then HR person and down the line. He stated that he would be very amenable to that.

Mr. Michael Hanlon stated that is what used to happen because it was always assumed you had to approve them. The Mayor used to give you a briefing. You had a briefing because he knew or she knew you had to approve it. He stated that Council did not sit on any negotiation team, but you were told about it.

Mr. Julio Guridy stated that a lot of the things were confidential.

Mayor Ray O'Connell stated that Mr. Zucal is right. He walked in here on April 2 and there was already an agreement with the Police Department that was signed, sealed and delivered. Not necessary on the negotiating team, but briefing down the road.

Mr. Ed Zucal asked Mr. Hendricks if he would be amenable to that.

Mr. Daryl Hendricks stated that he would.

Mr. Julio Guridy stated that Council wants to keep approval.

Ms. Candida Affa stated that she has a question, they would pick one Councilperson to be there while the negotiations are going on, but not part of the negotiating team.

Mayor Ray O'Connell stated no. He stated that he would not approve that.

Mr. Daryl Hendricks stated to be briefed prior to the formal presentation.

Mayor Ray O'Connell stated to brief Council as they go through the process. He stated that he is not the direct negotiation for the Fire Contract, Mr. McMahon is the lead negotiator as the Managing Director and he has his team with the HR Director and the Finance Director. Mr. McMahon will brief him along the way, but when it comes down to it and they are very close they will bring Council in.

Mr. Julio Guridy stated that the Mayor should have an opportunity to brief everybody. Not just one or two people.

Mayor Ray O'Connell stated yes. Bring two in and then three in. If you are brought in to the briefings that is where they can wash it out and bring it on

as a formality and finalize it.

Ms. Cynthia Mota stated that even though he agrees to this, Bill 51 will be in the referendum during the election.

Mr. Daryl Hendricks stated that if Council votes for that, yes. Tonight is making the recommendation and then if there is a favorable motion to move it forward then yes.

Mr. Ed Zucal stated that the way it is written now, what if the citizens approve this, then the contract has to be approved by Council.

Mr. Daryl Hendricks stated correct.

Mr. Julio Guridy stated exactly. That is what we are looking for.

Ms. Cynthia Mota asked what happens when the Mayor is no longer here.

Mr. Joshua Siegel stated that this will be a permanent change. We are amending the Charter so for every administration moving forward, Council would be permanently moving forward. The Mayor is only agreeing to have a Councilperson sit in and bring them into the negotiations toward the end so they are better informed when they vote on the contract, but they still have to amend the Charter so they can legally have the responsibility to approve all future contracts.

Mr. Daryl Hendricks stated that it will happen no matter who the Mayor is.

Ms. Francis Fruhwirth stated that this legislation is to put a ballot question or asking the Board of Elections to put a ballot question on the vote in November. There may be a way absent a Charter change to effectuate what everyone seems to have a consensus on. Even if it isn't, between now and the next meeting or the 5th to explore whether that is possible.

Mr. Daryl Hendricks asked Ms. Fruhwirth if she is willing to do that.

Mayor Ray O'Connell stated that is her job and she will do it well.

Ms. Francis Fruhwirth stated you may seek a common ground rather than the full amount of the ballot question versus doing something else perhaps in the Code or somewhere else in our legislation to accommodate what appears to be a consensus that the Council will not approve a CBA, but would be informed throughout the process of the negotiation.

Mr. Julio Guridy stated that only the concern he has that it has to be done

expeditiously. It has to go in earlier than November 3. It has to be 13 weeks before the election.

Mr. Daryl Hendricks suggested that if there is time, to table it.

Mr. Michael Hanlon stated that Mr. Kloiber sent Council the LSR that would be a guidance for this. As a result of an LSR there was an opinion under the Charter as the result the court saying that standing in an arbitration issue that the Charter basically seemed to appear that you did not have to approve contracts. This is asking the public if they think you should approve contracts.

Mr. Julio Guridy stated correct.

Mr. Ed Zucal stated that if the public says yes, then Council has to approve it.

Mr. Michael Hanlon stated that he will send everybody the LSR that went out now.

Mayor Ray O'Connell asked about the drop dead date if you go 13 weeks from November 3rd back.

Mr. Michael Hanlon stated that you need to pass it next time. It is fairly simply, if you want to approve contracts, you need a Charter Amendment. It is not going to be done through the Administrative Code.

Mr. Julio Guridy stated that he would like to do the Charter Amendment and make it clear for everybody because it is already in the Charter.

Mr. Daryl Hendricks stated that is what he thinks too.

Mr. Michael Hanlon stated that the Commissioners did a Charter Amendment where even the Commissioners even negotiating the Contracts.

Mr. Joshua Siegel stated frame of reference up until last year the Board of Commissioners negotiated contracts at Lehigh County and that was an outright disaster.

Mr. Daryl Hendricks asked if there were any other comments or questions.

Mayor Ray O'Connell stated that with Bill 51 if you want it to go on the Charter and have you approve the contracts, then let it ride.

Mr. Julio Guridy stated that there are seven signers. Do you want to put it in the Charter or not?

Mayor Ray O'Connell stated that is the question that will come down to seven Councilmembers.

Mr. Daryl Hendricks stated that he thinks so.

Mr. Joe McMahon stated that you are ultimately responsible for the budget.

Mr. Daryl Hendricks stated that we have a Mayor now and hopefully we will have similar Mayors in the future for those of us that will be here and be willing to negotiate the same way.

Mr. Julio Guridy stated that if it is approved in the Charter, it has to be.

Mr. Daryl Hendricks stated that depending on what Ms. Fruhwirth comes up with.

Mr. Julio Guridy stated that the thing is that we don't have much time.

Mr. Daryl Hendricks stated that depending on what Ms. Fruhwirth comes up with. No, we don't. He asked if there were any comments from the public.

Mr. Michael Hanlon stated that there was a comment after the comment period was over from Mr. Ramos. We have moved that along to everyone and Mr. Zucal was really interested in that and went to the Solicitor and basically suggested that you amend and have Council if they regret the contract it has to reduce the cost. You can't be Santa Claus. You can't reject it and add something on.

Mr. Ed Zucal stated that you are not negotiating the contract for anybody, but you may find something that stands out. Once you do that, the Mayor has to accept it.

Mr. Julio Guridy stated that the issue is that it is nice to say that. The issue is that you are negotiating with the union. You are not going to say that you are going to reduce it and the union is going to come back with something else.

Mr. Michael Hanlon stated that Mr. Kloiber stated that under the Third Class City Code, Council approves all CBA's the Solicitor's Office interpreted the Lehigh Common Pleas Court opinion as changing that for Allentown because of the Home Rule Charter.

Mr. Julio Guridy stated that when they did this back in the year there was a lot of problems. What happened is we took it to court and we did not approve it and the Judge of Common Pleas at the time stated that Council had no standing. We were trying to take it to the Superior Court and everybody said look, you are losing money. When we dropped it, it is when we had the big exodus of police officers.

Mr. Michael Hanlon stated that was Mr. Kloiber's point that you have to do it. As a result of the Opinion, the Solicitor's office suggested that you don't need to approve them under the Home Rule.

Mr. Joe McMahon stated that it is under the Third Class City Code.

Mayor Ray O'Connell asked if Mr. Kloiber is saying Bill 51 should go forth.

Mr. Michael Hanlon stated he is not saying that. He is giving a legal opinion.

Mr. Julio Guridy stated that he is saying in order for Council to have standing, they have to approve it.

Mr. Hanlon stated Mr. Kloiber is saying under the Third Class City Code, Council approves CBAs. This came from was the Solicitor's office. This was not him. It was somebody else. The Solicitor's office in 2010 interpreted the Lehigh County Common Pleas Court Opinion as changing that for Allentown because of the Home Rule Charter. And because of the condition that Mr. Guridy was speaking about when they ruled that Council had no standing that the Solicitor's office at that time changed their view.

Mr. Julio Guridy stated that he would suggest that they put it on the Charter regardless of the Mayor. It has to do with Council as a body that governs the city's finances wants to do that and he thinks they should.

Mr. Daryl Hendricks stated that as stewards of the budget and the finances for the city it is important for them to do that.

Mayor Ray O'Connell asked for clarification on Mr. Ramos call with a possible amendment and what we are saying the way it reads now that is how it is going to go on as a Charter question.

Mr. Daryl Hendricks stated that is correct.

Mr. Ed Zucal asked what if they vote no.

Mr. Julio Guridy stated that they will continue and do what they said earlier.

Mr. Joe McMahon stated that it is either back to negotiation table or off to arbitration.

Mr. Daryl Hendricks stated that unless it can be worked out.

Mayor Ray O'Connell stated what if the citizens/residents will vote no.

Mr. Ed Zucal stated that it would ultimately be an agreement between the Mayor and City Council.

Mayor Ray O'Connell stated exactly, Mr. Zucal.

Mr. Michael Hanlon stated that if the citizens vote no, then the Mayor is in full charge.

Mayor Ray O'Connell stated that he doesn't want to say that.

Mr. Julio Guridy stated don't look at it as the Mayor being a nice guy or not being a nice guy. Look at it as if it is the right thing to do for the city.

Mr. Daryl Hendricks stated that Council is sharing in the responsibility.

Mayor Ray O'Connell stated that he is fine with Bill 51.

Mr. Joshua Siegel asked if there were any concerns over the standards and raising the bar for rejecting a CBA. The consequences of Council saying no is that they can enter a costly arbitration.

Mayor Ray O'Connell stated that is why you trust your team. The city goes in with negotiation strategies. Negotiations are give and take.

Mr. Daryl Hendricks stated that you can always go back for further negotiations if we reject it for whatever reason they can explain why. That can be negotiated to an amicable agreement that would be acceptable to us and the Mayor.

Mayor Ray O'Connell stated to remember that there were two Charter questions that really didn't go into effect until the following year. If these are approved, they won't go into effect until 2021.

Ms. Francis Fruhwirth stated that those were budget amendments and there was a timetable negotiated by Councilman Robinson. We were trying to avoid that period of time between the budget submission October 15 and working it out through the December 31 deadlines. There wasn't a

stipulation in the ballot question when it will go into effect. Normally, a ballot question goes into effect as soon as the results are certified by the Board of Elections. If you want some type of delayed implementation to Bill 51, you have to add to the text.

Mr. Michael Hanlon stated that it is a tough Charter question. It could be harmful or positive depending on what the answer is.

Mayor Ray O'Connell stated that he wouldn't like it to go in effect if it is approve in 2021. You are talking about November 3 and once the election is certified a week or two weeks down the road. We might be at the end of negotiations.

Mr. Julio Guridy asked the Mayor if he is going into negotiations with the Fire.

Mayor Ray O'Connell deferred to Mr. McMahon as the lead negotiator.

Mr. Joe McMahon stated that they are still working on their proposal. It might be a little bit longer.

Mr. Julio Guridy stated August or September and it usually takes one or two months. He asked when is the contract due.

Mr. Joe McMahon stated the end of the year for SEIU and fire.

Mr. Michael Hanlon asked when does the School Board end.

Ms. Ce-Ce Gerlach stated that they don't participate in negotiations. They have a negotiations team. You are there, but you are not negotiating.

Mr. Jeff Glazier stated that his experience on the board might be a little different than Ms. Gerlach's. This initially gets to somewhat of what Council is interested in. The administration would come to the board and they would discuss the parameters for the contract. The board would approve a wage increase between two and 2.4 percent and that gave the administration direction to negotiate so if the final agreement came within those parameters it should have been a forgotten conclusion. It is a different model over here.

Mr. Daryl Hendricks stated that it would behoove both entities to keep each other apprised as it goes along. The administration has been forthcoming in most cases.

Mr. Julio Guridy stated that it certainly can't be politicized.

Mr. Michael Hanlon stated that Mr. Kloiber is saying that under the Third Class City Code Council approves it. Most cities are operating under the Third Class City Code.

Mr. Jeff Glazier stated that not all the cities have a strong Mayor form of government. Easton is set up differently and Council might be more involved.

Mr. Julio Guridy suggested that it is moved forward as it is.

A motion was made by Julio Guridy, seconded by Joshua Siegel, that this Bill be moved forward favorably to the full Council. The motion carried by the following vote:

Yes: 7 - Candida Affa, Cynthia Mota, Daryl Hendricks, Julio Guridy, Ed Zucal, Ce-Ce Gerlach, and Joshua Siegel

ADJOURNED: 7:53 PM