

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

October 25, 2010

Those present at 7:00 pm:

Presiding: Mayor Vance A. Funk, III
District 1, Paul J. Pomeroy
District 2, Jerry Clifton
District 3, Doug Tuttle
District 4, David J. Athey
District 5, Ezra J. Temko
District 6, A. Stuart Markham

Staff Members: City Manager Kyle Sonnenberg
City Secretary Patricia Fogg
City Solicitor Roger Akin
Finance Director Dennis McFarland
Planning & Development Director Roy Lopata
Code Enforcement Supervisor Steve Wilson

1. The regular Council meeting began with a moment of silent meditation and pledge to the flag.

2. **1. ITEMS NOT ON PUBLISHED AGENDA**

A. Public

00:36

Carla Stone, a Newark resident, reported noise problems in her neighborhood and questioned how the City and the University handled issues involving students. Mr. Funk advised the University was notified if an arrest was made, and discipline was at their discretion. The students were also tried by the City in Alderman's Court. Ms. Stone expressed additional concerns about students parking in her neighborhood without a parking permit. She felt Ritter Lane should be changed to resident permit parking only. Mr. Athey will discuss the process involved with Ms. Stone which required a petition signed by a percentage of property owners followed by Traffic Committee review. Mr. Sonnenberg added the Police Department was responsible for noise enforcement, and they had issued over 350 citations for noise and disorderly premises thus far in 2010.

3. **1-B. UNIVERSITY**

1. Administration

There were no comments forthcoming.

4. **1-B-2. STUDENT BODY REPRESENTATIVE**

There were no comments forthcoming.

5. **1-C. COUNCIL MEMBERS**

05:17

Mr. Pomeroy

- Recognized and congratulated those involved in obtaining the \$2.25 million grant from the U. S. Department of Transportation for the Newark Train Station which he saw as a good step forward in establishing the station as an economic and regional travel hub.

- Congratulated City staff on the Halloween Parade.

6. Mr. Temko

- Issued a reminder about Election Day on November 2nd.
- Hosted the first nonprofit forum at the Newark Senior Center with Mr. Clifton and thanked all who participated in the event. He thought the forum provided a good opportunity for interaction and communication among nonprofits.

7. Mr. Clifton

- Commended Mr. Temko for taking the lead and thanked staff for assisting with the nonprofit forum which he felt was beneficial to local community organizations and would be a worthwhile event to sponsor again in the future.
- A constituent was concerned to learn online that a registered sexual offender had moved into the neighborhood and questioned whether residents having only cell phones (and no land line) would receive notification from the City about these occurrences. Mr. Sonnenberg will look into this question, and Mr. Athey pointed out that notification depended on the tier of the offense.
- Thanked Chief Tiernan and Lt. Hargrove for attending the George Read Village meeting and addressing residents' concerns.

8. Mr. Athey

- Was pleased WILMAPCO received the Tiger Grant of \$2.25 million related to the Newark Train Station. Mr. Sonnenberg clarified the funding was for design. There was an ongoing study to determine conceptually whether the train station could remain in its current location while accommodating some other concerns. The conceptual analysis indicated it was possible. The grant obtained by WILMAPCO in partnership with the City and several other entities will allow initial design to take place. The project will ultimately cost millions of dollars to execute to its fullest extent.

9. Mr. Markham

- Complimented the Halloween Parade.

10. Mr. Tuttle

- Observed that Council heard from the public tonight about noise attributed to rental properties, while public comment at the last meeting was from two students who felt the City unfairly targeted students when enforcing the noise and disorderly premise ordinances. If there were issues that could not be resolved without police involvement, he advised residents to do so in order to generate a track record for offending properties. He also encouraged renters to be responsible neighbors to avoid police calls.

11. 2. APPROVAL OF CONSENT AGENDA

- 11:58**
- A.** Approval of Regular Council Meeting Minutes – October 11, 2010
 - B.** Receipt of Alderman's Report - October 20, 2010

Ms. Fogg read the Consent Agenda in its entirety.

MOTION BY MR. CLIFTON, SECONDED BY MR. TEMKO: THAT THE CONSENT AGENDA BE APPROVED AS SUBMITTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Pomeroy, Temko, Tuttle.

Nay – 0.

12. **3. ITEMS NOT FINISHED AT PREVIOUS MEETING** – None

13. **4. FINANCIAL STATEMENT**

12:34

Mr. McFarland reviewed the Financial Report for the first three quarters of 2010. The consolidated results showed the City about \$1.9 million ahead of budget at this point in the year and was the third strong monthly financial report presented.

The Governmental Funds were almost \$1.2 million ahead of budget. Various revenue categories were above budget including transfer taxes, up \$166,000, parking meter revenues up \$165,000, and fines which were up \$178,000. Operating expenses were \$500,000 under budget in the Governmental Funds. The bulk of the positive variance was in Public Works due to lower personnel and landfill costs, with a timing difference reflecting higher DSWA rates which did not become effective until July. The negative variance for the Finance Department shrunk to less than \$10,000 and will be under budget by year end.

The Enterprise Funds were about \$750,000 over budget. Electric margins were \$300,000 over budget for the year with sales volumes up about 3.3% over 2009 based on the weather which was about 38% warmer than normal. The Water Fund was slightly below budget by \$115,000 from a normal fluctuation in consumption. Sewer margins were close to budget as a timing difference with the County billings turned around. Mr. McFarland anticipated the Water and Sewer Funds would come in very close to budget by year end, and the Electric Funds should be over budget by year end on a projected basis.

The cash balance at the end of September increased to \$16.4 million, an increase of almost \$4 million from the beginning of the year resulting from good operational experience and the fact that property taxes were due September 30. The cash balance should stay at that level or slightly higher toward year end.

Mr. Pomeroy asked the projected cash position by the end of the calendar year. Mr. McFarland said it was in the range of \$14 - \$14.5 million and was the highest figure in about three years.

Mr. Markham noted that even though the cash position improved, the acceptable target was \$21-\$25 million. Mr. McFarland agreed that the long-term goal was in the \$25 million range and said this was a better year than budgeted from a cash perspective by \$2+ million.

MOTION BY MR. ATHEY, SECONDED BY MR. MARKHAM: THAT THE SEPTEMBER 2010 FINANCIAL REPORT BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Pomeroy, Temko, Tuttle.

Nay – 0.

14. **5. RECOMMENDATIONS ON CONTRACTS & BIDS** – None

15. **6. ORDINANCES FOR SECOND READING & PUBLIC HEARING**

A. **Bill No. 10-17** – An Ordinance Amending Chapter 17, Housing and Property Maintenance, Code of the City of Newark, Delaware, By Adopting the 2009 Edition of the International Property Maintenance Code with Amendments (**Revised**)

17:40

Ms. Fogg read Bill 10-17 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND PUBLIC HEARING OF BILL NO. 10-17.

AMENDMENT BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT ITEM 301.6 (NUISANCE PROPERTIES), BE DELETED IN ITS ENTIRETY.

AMENDMENT PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Pomeroy, Temko, Tuttle.
Nay – 0.

AMENDMENT BY MR. TEMKO, SECONDED BY MR. TUTTLE: THAT ITEM 404.8.1 (RENTAL LICENSE REQUIREMENTS), BE AMENDED TO READ AS FOLLOWS:

- Item 3 (Inspection) – Delete sentence “Failure to complete or permit such rental inspection prior to the renewal date shall cause a late fee to be assessed in accordance with Section 404.8.2.”
- Item 4 (Lease) – Delete sentence “Such written agreements shall state that the tenant shall provide access for all required inspections by the City of Newark when provided with forty-eight hours written notice as per 25 Del. C., Part III, Landlord-Tenant Code.”

Mr. Athey questioned whether this change would have any bearing on the City’s ability to enforce Code violations external to the structure. Mr. Akin reported that Code violations on the exterior in plain view of the inspector may be cited as necessary.

Mr. Athey asked if the City had reason to believe there was overcrowding, did they have the opportunity to enter the premises to check the number of residents? Mr. Akin said if the City had information that a rental unit was overcrowded, the Code Inspector could gain access with the assistance of a warrant (assuming the tenants on the premises refused access to the inspector to perform an inspection.)

Mr. Athey explained the language being removed would have required tenants to give the City access, and apparently there were some legal issues with this language. He pointed out there would be instances where the City would seek another method to accomplish inspections, and while the requirement was being taken out of the Code, the opportunity to inspect still remained. For example, upon the presentation of probable cause of violation of a City ordinance and with the issuance of a warrant, the City may enter the premises. The rental inspection was part of the Newark Code for many years, and it was clear that municipalities throughout the country had the right and the responsibility to routinely inspect rental properties.

Mr. Temko said he followed up with Mr. Morse of the ACLU about the particular language and the City’s situation. Mr. Temko’s understanding was that deleting the problematic sections would have no implication towards the City’s regular rental inspection program.

Question on the Amendment was called.

AMENDMENT PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Pomeroy, Temko, Tuttle.
Nay – 0.

The Chair opened the discussion to the public.

Mark Sisk, the attorney representing the landlords, applauded Council for heeding the concerns expressed. One remaining area of concern was the different fee for commercial appeals (\$500) than residential appeals (\$100) to the Board of Building Appeals under Section 108.1.1. Mr. Sisk pointed out that the Superior Court charged \$185 for an administrative appeal, and the Delaware Supreme Court charged \$350 for appeals, and he felt there was an inherent unfairness in treating commercial properties differently than residential properties. Also, to the extent that an administrative fee was not reasonably related to the cost of service, it was often taken by a court as imposing a tax. **[Secretary's note: Mr. Sisk's comments referred to Item #16, page 3 of Bill 10-18.]**

Richard Morse of the ACLU of Delaware said in the earlier amendment Council addressed his concerns about the Fourth Amendment implications of language in Section 404.8.1.

John Bauscher, a Newark landlord, asked if the City recognized the tenant's right to refuse entry. Mr. Akin replied the City did recognize the right, and if an administrative warrant was the only way in which the City could fulfill its duty to inspect a rental property, that was the route they would take. Mr. Bauscher questioned whether landlords would be threatened with loss of rental permits if tenants refused an inspection. He noted the rental application permit signed by the landlord agreed, after notice to the tenant, to provide access to the property for inspection. He added the landlord could not give valid consent to search a tenant's home and did not understand why the City did not change the wording in the rental permit application. Mr. Akin indicated the City respected the constitutional rights of tenants and to the extent that an existing form in use today may be inconsistent, the form would be amended accordingly.

Mr. Bauscher pointed out that New Castle County had tenants sign a form consenting to inspections, and he asked why the City did not utilize a similar form. Mr. Akin advised if a Code inspection official of the City presented himself at a rental property and properly identified himself and the purpose for his visit, in his view there was no obligation for the City to tell the tenant they may refuse entry. Mr. Bauscher stated if the City was not going to inform tenants about their right to refuse entry, the landlords would make it public knowledge.

Mr. Athey reported he periodically received emails from tenants asking for the City's assistance with run-down properties. In response to Mr. Bauscher's comment about publicizing tenants' rights to refuse entry for inspections, Mr. Athey did not have a problem with mimicking New Castle County's form but believed it should also state the tenant had the right to an inspection any time he/she desired and clarify the landlord could not stop the inspection from being done.

Mr. Temko pointed out that regular inspections were done by scheduled appointments, so there was prior knowledge of the inspection by tenants.

Mr. Morse advised residents had a right not to let the government in and could give up that right, but the action had to be an intentional relinquishment or abandonment of a known right or privilege. Thus, if the inspector showed up for an inspection and the resident was not aware it was their choice to allow the inspection, that was not lawfully giving the inspector access. Mr. Morse said to comply with constitutional requirements, the resident must know their rights and one way to do that was the New Castle County form.

Mr. Temko asked if the intentional consent could be covered by the language in a lease. Mr. Morse said the problem with putting it in the lease was the tenant really had to know their rights, and most tenants would not remember one sentence in a lease signed months before an inspection.

Mr. Markham asked if all leases stated landlords had the right of entry. Mr. Morse said they typically will say the landlord had right of entry for certain things (such as broken plumbing), but not to let the government into someone else's home.

Bruce Harvey, a Newark resident and landlord, spoke for the Newark Landlord Association. He said the landlord's right to enter was a civil, contractual point of law. He said it was important to note that the Fourth Amendment restriction applied to everybody, and citizens had the right to say no. He felt young people exercising their rights for the first time were most likely to challenge authority when told they could not do something.

Carla Stone, a Newark resident, asked if the landlords wanted to be slumlords, contributing to the degradation of the City and decreasing property values. She thought it was their responsibility to maintain their properties and suggested landlords observe their properties late on weekends.

Stefan Breitfeld, a Newark resident, said Wollaston Avenue was a wonderful block when he moved in over a decade ago. He cited current problems with dead trees, rats in back yards and a garage that had not been kept up in decades. While regulations would not make these issues go away, he felt there had to be community supervision to protect residents and property values.

Jill Connell, a Newark landlord felt the code enforcement standards were higher for rental properties than they were for individual homeowners. She thought the City should require non-rental properties to be maintained at the same level as rental properties.

There being no further comments forthcoming, the discussion was returned to the table.

In summary, Mr. Temko said the City would investigate the correct way of getting consent and would make necessary changes to current policy. He felt the City as a municipality had the duty to respect tenants' rights. He read the purpose of inspections from the Property Maintenance Code and thought it was important to remember the reason for the inspection programs and the goal to insure tenant safety when rental permits were issued. Further, the City needed to protect itself from incidents due to lack of inspection.

Mr. Tuttle clarified the purpose of the inspections was not just to determine how many beds were in a house, but the primary focus was on the quality of life and safety. Based on his experience as a student and visits to current student housing, he believed a strong inspection system to insure quality standards was needed in the City.

Mr. Markham cited an incident when one of his fellow Council members received a phone call from a student's parent regarding a rental property where the smoke detectors did not work, there were holes in the walls, broken outlets, etc. In checking the rental inspection, it was learned that the student had caused the damages, and the landlord was actually protected.

Question on the Motion as Amended was called.

MOTION AS AMENDED PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Pomeroy, Temko, Tuttle.
Nay – 0.

(ORDINANCE NO. 10-21)

16. **6-B. BILL NO. 10-18 – AN ORDINANCE AMENDING CHAPTER 14, FIRE PREVENTION, CODE OF THE CITY OF NEWARK, DELAWARE, BY ADOPTING THE 2009 EDITION OF THE INTERNATIONAL FIRE CODE WITH AMENDMENTS**

1:00

Ms. Fogg read Bill 10-18 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL NO. 10-18.

The Chair opened the discussion to the public. There being no comments forthcoming, the discussion was returned to the table. **[Secretary's Note: Mr. Sisk addressed his comments regarding Bill 10-18 under the previous item #15.]**

Regarding Mr. Sisk's point about the difference in commercial and residential fees, Mr. Lopata said the proposed fee increase was to make it compatible with the fees in other appeals boards (for example, the Board of Adjustment fee was \$100 for residential and \$500 in other zoning districts.) The justification was that commercial properties called for much more inspection and work than a typical residential property. In response to Mr. Markham's question, Mr. Lopata said the Board of Building Appeals rarely heard cases, with perhaps just one in the last four or five years.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Pomeroy, Temko, Tuttle.
Nay – 0.

(ORDINANCE NO. 10-22)

17. **6-C. BILL NO. 10-19 – AN ORDINANCE AMENDING CHAPTER 7, BUILDING, CODE OF THE CITY OF NEWARK, DELAWARE, BY ADOPTING THE 2009 EDITION OF THE INTERNATIONAL CODE COUNCIL (CC) CODES WITH AMENDMENTS AND INCORPORATING CHAPTER 6, INTERNATIONAL ENERGY CODE, AND CHAPTER 8, INTERNATIONAL FUEL GAS CODE INTO CHAPTER 7**

1:02

Ms. Fogg read Bill No. 10-19 by title only.

MOTION BY MR. TEMKO, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL NO. 10-19.

Mr. Lopata thanked Steve Wilson and the other inspectors who spent a considerable amount of time working on the proposed ordinance. There were some technical changes made, and he noted the LEED amendments will be re-introduced at the next meeting.

The Chair opened the discussion to the public. There being no comments forthcoming, the discussion was returned to the table.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Pomeroy, Temko, Tuttle.
Nay – 0.

(ORDINANCE NO. 10-23)

18. 6-D. BILL NO. 10-22 – AN ORDINANCE AMENDING CHAPTER 20, MOTOR VEHICLE AND TRAFFIC, CODE OF THE CITY OF NEWARK, DELAWARE, TO BRING THE CODE INTO CONFORMANCE WITH STATE CODE REGARDING CHILD RESTRAINTS AND SEAT BELTS IN MOTOR VEHICLES

1:04

Ms. Fogg read Bill No. 10-22 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL NO. 10-22.

The Chair opened the discussion to the public. There being no comments forthcoming, the discussion was returned to the table.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Pomeroy, Temko, Tuttle.

Nay – 0.

(ORDINANCE NO. 10-24)

19. 6-E. BILL NO. 10-21 – AN ORDINANCE AMENDING CHAPTER 32, ZONING, CODE OF THE CITY OF NEWARK, DELAWARE, BY PERMITTING COMMERCIAL INDOOR RECREATION IN MOR (MANUFACTURING OFFICE RESEARCH) DISTRICT WITH SAID USE REQUIRING A SPECIAL USE PERMIT (SEE ITEM 7-A)

1:05

(NOTE: The public hearing for the special use permit to permit a commercial indoor recreational facility at 200 Interchange Boulevard was held in conjunction with the second reading of Bill 10-21.)

Ms. Fogg read Bill 10-21 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL NO. 10-21.

Matt Longo, Hillcrest Associates, reviewed a PowerPoint presentation for the Delaware Juniors Volleyball Club. Also present were Steve Lenderman, President and Director and owner of the club, Dave Cook, leasing agent for the Flynn Company, and Kevin Mayhew, a parent and coach.

The request was to permit commercial indoor recreation in the MOR district under a special use permit. The building at the intersection of Elkton and Otts Chapel Road was 200,000 square feet, and the club would lease a 30,000 square foot space for their use. There were 56 existing parking spaces with 216 additional parking spaces proposed.

Steve Lenderman said the youth sports association would provide a home for the approximately 350 boys and girls playing volleyball from 5-18 years of age. His plan was to make this a multi-sports facility.

Mr. Clifton questioned the adequacy of parking when the club hosted tournaments where there could be between 750-1000 people attending. Mr. Lenderman said the club would be the only traffic in the industrial complex during that time period. Most participants would be driven by their parents with 4-5 people in one vehicle, so they were not expecting 1,000 cars in the parking lot. Further, there was plenty of overflow parking and signage to make sure people parked accordingly.

The Chair opened the discussion to the public. There being no comments forthcoming, the discussion was returned to the table.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Pomeroy, Temko, Tuttle.
Nay – 0.

(ORDINANCE NO. 10-25)

20. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS

A. Request of Delaware Juniors Volleyball Club for a Special Use Permit for a Commercial Indoor Recreational Facility at 200 Interchange Boulevard, Newark, Delaware **(See Item 6-E)**

1:05

(NOTE: The public hearing was held under Item #19.)

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE SPECIAL USE PERMIT BE GRANTED AS REQUESTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

Aye – Athey, Clifton, Funk, Markham, Pomeroy, Temko, Tuttle.
Nay – 0.

21. 8. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members: None

22. 8-B. OTHERS: None

23. 9. SPECIAL DEPARTMENTAL REPORTS

A. Special Reports from Manager & Staff: None

24. Meeting adjourned at 8:15 p.m.

Patricia M. Fogg, CMC
City Secretary

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