

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

November 14, 2011

Those present at 7:00 pm:

Presiding: Mayor Vance A. Funk, III
District 1, Mark Morehead
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 Bruce Herron
Community Affairs Officer Dana Johnston
Finance Director Dennis McFarland
Planning & Development Director Roy Lopata
Planning & Development Planner Mike Fortner
Assistant P & D Director Maureen Feeney Roser

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

2. **PRESENTATION OF CERTIFICATES TO CITIZENS ACADEMY PARTICIPANTS**

00:23

Community Affairs Officer Dana Johnston recognized the ten members of the second class of the Citizens Academy, a series of eight classes led by City Administrators and Directors and designed to teach residents about the City and its services. Mr. Funk presented certificates and pins to the following participants:

Richard Gregg, II	Robert Persak
LeRoy Hill	Charles Scott
Dennis Jones	Howard Smith
Laura Kerst	Lester Stein
Svetlana Khaletskaya	Robert Walter, Jr.

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

A. Public – None

4. **1-B. UNIVERSITY**

05:03

1. Administration

Mr. Armitage reported the following construction on campus.

- Delaware Avenue near the old Armory just before Academy Street on the southern side – a new Life Sciences Research facility to be completed in the fall of 2012.
- East Campus around the former Gilbert Dormitory – two new five-story dormitory buildings housing approximately 767 students with construction

beginning over the winter and lasting through spring or early summer 2013 with dorms opening that fall.

- Just completed – the addition to the Bob Carpenter Center on S. College Avenue. In the final planning stages was an addition to the little Bob on the central part of the campus which would provide additional recreational space for the student body.

5. 1-B-2. STUDENT BODY REPRESENTATIVE

08:02

Kenneth Adams, a Newark resident and UD Graduate Student Senate representative, invited Council to attend a GSS monthly meeting held on the first Thursday from 5:30-7:00 p.m. at 103 Gore Hall. Mr. Clifton attended a meeting and spoke with the GSS.

Mr. Adams reported that Captain Williams, NPD, discussed his concerns about vehicular noise and speeding on Delaware Avenue from Elkton Road to the campus. He said out of three observation stakeouts the officers saw only one motorcycle and hot car and issued two tickets. Mr. Adams hoped NPD would remain on alert.

Mr. Adams raised the issue of student concerns about street parking. He said night parking and bad weather parking at Delaware Stadium presented hardships and safety concerns, while in a very short walking distance there were empty streets restricted to permit holders. Mr. Adams pointed out that although the streets were maintained by the City, they were off limits to students. He believed extending property rights beyond the front yard of homeowners extended their rights to public streets and denied student access to public property. He asked Council to consider the safety and comfort of students as well as the privileges of home ownership on streets near the University.

6. 1-C. COUNCIL MEMBERS

11:32

Messrs. Clifton and Athey welcomed former Council member Paul Pomeroy.

Messrs. Morehead, Tuttle and Markham acknowledged a great Halloween Parade.

7. Mr. Athey

- Mr. Athey was pleased that Saturday of Homecoming Weekend was the most uneventful in years on Kells Avenue.
- Mr. Athey extended congratulations to Mr. Sonnenberg for being selected President of the City Manager Association in Delaware.
- Mr. Athey reported after Hurricane Irene there were some sewer issues on Kells Avenue. He reported the City sent out a survey and was trying to determine the extent of the problems.

8. Mr. Clifton

- Mr. Clifton said he was honored to speak to the Graduate Student Senate and thanked Mr. Adams for his efforts.

9. Mr. Morehead

- Mr. Morehead participated in the DEA drug take back at the Newark Senior Center where over 509 pounds of medications were collected.

10. **Mr. Tuttle**

- Mr. Tuttle reported that the Downtown Newark Partnership would hold its annual volunteer recognition on November 17 which unfortunately coincided with the monthly meeting of the Delaware League of Local Governments. He acknowledged the great work of the Partnership volunteers.
- Mr. Tuttle noted that his utility bill included a notice about sidewalk snow removal which he thought was a helpful reminder. He hoped that in high pedestrian areas the City took steps to clear snow when property owners did not.

11. **Mr. Temko**

- Mr. Temko congratulated the Citizens Academy graduates for their participation.

12. **2. APPROVAL OF CONSENT AGENDA**

- A. Approval of Regular Council Meeting Minutes – October 24, 2011
- B. Receipt of Alderman’s Report – November 3, 2011
- C. Setting Date for the Presentation and Public Hearing of 2012 General Operating Budget for November 28, 2011
- D. ***First Reading – Bill 11-24*** - An Ordinance Amending Chapter 20, Motor Vehicles and Traffic, Schedule XVI, Code of the City of Newark, Delaware, By Amending the Gross Weight of Trucks for Local Delivery Only Permitted on Certain Streets – ***2nd Reading – November 28, 2011***
- E. ***First Reading – Bill 11-25*** - An Ordinance Amending Chapter 20, Motor Vehicles and Traffic, Schedule IV, Code of the City of Newark, Delaware, By Requiring a Stop Sign on Westbound Country Club Drive at the Intersection with Windsor Drive – ***2nd Reading – November 28, 2011***
- F. ***First Reading – Bill 11-26*** – An Ordinance Amending Chapter 26, Streets, and Chapter 16, Garbage, Refuse and Weeds, Code of the City of Newark, Delaware, By Clarifying the Public Works Director’s Authority to Issue a Summons for Civil Violations Related to Snow and Ice Removal and the Accumulation of Trash, Rubbish and Debris – ***2nd Reading – November 28, 2011***
- G. Appointment of Amy Smith to Conservation Advisory Commission to Fill Vacancy in District 4 – Appointment to Expire March 2014

19:15

Ms. Fogg read the Consent Agenda in its entirety.

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

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

13. **3. ITEMS NOT FINISHED AT PREVIOUS MEETING:**

- A. **Bill 11- 21** – An Ordinance Amending Chapter 20, Motor Vehicles and Traffic, Code of the City of Newark, Delaware, By Requiring Tow Operators to Photograph a Vehicle Prior to Being Towed and to Inform Person Claiming a Towed Vehicle of His/Her Right to Inspect Vehicle (***TABLED October 10, 2011***)

21:01

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT BILL 11-21 BE LIFTED FROM THE TABLE.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

Mr. Markham said the bill was tabled when Council expressed concerns about going into new territory since the City had never required tow operators to photograph the condition of vehicles or specify the length of storage of the photographs. Since the bill was tabled, he noted the City Solicitor identified several cities where this procedure was required. Mr. Funk asked if the Police Department considered this from the viewpoint of tow operators remaining any longer than necessary when towing a vehicle based on possible negative repercussions. Mr. Markham confirmed the Police Department had no objections to the proposal.

Mr. Temko asked if Council wanted to add language that would require photographs documenting the location of the illegally parked vehicle. Mr. Funk did not think this would be helpful since the towing signs were the same all over town, thus the photograph would not necessarily distinguish the vehicle's location.

Mr. Herron suggested adding the language "which adequately document the condition of the vehicle" to the end of the second sentence of revised item (d) Amendment 1 so it would read "No tow operator acting under the authority of this section shall tow a vehicle without first taking photographs of the front, back, and sides of the vehicle which adequately document the condition of the vehicle."

AMENDMENT BY MR. MARKHAM, SECONDED BY MR. ATHEY: THAT THE ORDINANCE INCLUDE THE REVISED LANGUAGE SUGGESTED BY MR. HERRON.

AMENDMENT PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

MOTION BY MR. MARKHAM SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 11-21.

(Motion that was made and tabled at October 10, 2011 meeting.)

Question on the Motion was called.

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

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

(ORDINANCE NO. 11-22)

14. 4. FINANCIAL STATEMENT

27:43

Mr. McFarland presented the Financial Report for the first three quarters of 2011 which showed the City about \$1.4 million ahead of budget. While portions of that amount were timing differences, he said somewhere in the range of \$500,000 to \$1 million of the positive variance should "stick to the ribs" by year end. Within the Governmental Funds, revenues were up about \$1 million due to higher permit revenues of about \$500,000 and higher fine revenues of about \$175,000.

Expenses were currently under budget within the General Fund due to timing differences, ongoing cost management efforts and some vacancies.

The Enterprise Funds on a consolidated basis were tracking close to budget. The Electric Fund was right on budget. The Sewer budget had a negative variance which was a timing difference. The Parking Fund was currently about \$270,000 over budget, and Operating Expenses were about \$167,000 over budget. The cash position at month end was \$25.5 million, an increase of \$6.5 million from the beginning of the year. Mr. McFarland noted that year end September was the best cash position of the year as all summer utility revenues and annual property tax payments were received. Within the \$25.5 million cash position, \$2.5 million was a regulatory liability.

Mr. Funk said it appeared that only 20%-30% was collected from Instant tickets, and he thought that should be looked into.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE OCTOBER 2011 FINANCIAL REPORT BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

15. 5. RECOMMENDATIONS ON CONTRACTS & BIDS:

None

16. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING:

None

17. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS:

None

18. 8. ITEMS SUBMITTED FOR PUBLISHED AGENDA

A. Council Members: None

19. 8-B. OTHERS:

1. Recommendation from Community Development/Revenue Sharing Advisory Committee – Proposed 38th Year (July 1, 2012 – June 30, 2013) Community Development Block Grant and 2012 (January 1, 2012 – December 31, 2012) Revenue Sharing Programs

32:41

Mr. Fortner presented the recommendation from the Community Development/Revenue Sharing Advisory Committee. He referenced Attachment 1, the Community Development Block Grant recommendation where a lower planning figure was used this year based on lower funding levels from Congress. Also, New Castle County's share was smaller and, in turn, the City's share was smaller as well. Mr. Fortner noted the funding level was 15% for community services including Newark Day Nursery Day Care, Parks & Recreation Fee Assistance, the Youth Beautification Program and Homeward Bound. The remainder was for capital projects like the Senior Home Repair Program, the Home Improvement Program, Newark Housing Authority and the Public Works ADA Ramps.

Attachment 3 was the contingency plan, earmarked for more or less money than anticipated from the planning figure. This plan was to give guidance on how that amount should be distributed.

The Revenue Sharing program allocated \$60,050 for this year. According to Mr. Fortner, it was probably the toughest year the Committee ever had in terms of the increase in demand and the lower funding for the program.

Mr. Temko thanked Mr. Fortner and the Committee for their work which he felt was a great example of community involvement. He questioned the Hope Dining Room funding amount. Mr. Fortner explained they received the full

amount requested through two different programs – the Community Development Block Grant fund and the Revenue Sharing fund.

Mr. Temko noted that Program Administration and the ADA Curb Ramps did not receive fully recommended funding although the City would still incur these expenses. Mr. Sonnenberg said these funds would have to be taken out of the surplus.

Mr. Funk complimented the work done by Mr. Fortner and the Committee in balancing all these interests.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE RECOMMENDATION FROM THE COMMUNITY DEVELOPMENT/REVENUE SHARING ADVISORY COMMITTEE – PROPOSED 38TH YEAR (JULY 1, 2012 – JUNE 30, 2013) COMMUNITY DEVELOPMENT BLOCK GRANT AND 2012 (JANUARY 1, 2012 – DECEMBER 31, 2012) REVENUE SHARING PROGRAMS BE ACCEPTED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

20. 9. SPECIAL DEPARTMENTAL REPORTS:

- A.** Special Reports from Manager & Staff:
1. Authorization to City Manager to Execute Memo of Understanding – Greater Newark Economic Development Partnership

39:00

Regarding the Memorandum of Agreement between the City, the Chamber and the University, Mr. Sonnenberg reported for a number of years there was an informal partnership called the Greater Newark Network which Mr. Pomeroy was instrumental in getting started. With the downturn in the economy the partners looked at economic development efforts and decided those efforts should be formalized while directing more time and energy towards enhancing the local economy. He said the University stepped up to the plate with their purchase of the Science and Technology campus, and they attracted Bloom Energy to the site. However, there were other locations in the City as well as on the Science and Technology campus that could benefit from greater business activity. He recommended developing this partnership of working together, each contributing resources to the effort and trying to focus more on business recruitment, outreach to existing businesses, trying to help retain those businesses and looking for opportunities for expansion. The plan was to start by establishing an economic development website which he believed was an important tool to have available. Mr. Sonnenberg proposed formalizing the relationship and focusing attention on building the local economy which would benefit the City in a number of ways.

Mr. Athey asked who from the City would be on the steering committee. Mr. Sonnenberg said he intended to be involved as would the Planning and Development Director. Mr. Athey noted there was discussion about development of a one year plan and preparation and distribution of written monthly updates. Mr. Sonnenberg clarified these would be distributed to Council for their perusal and that reauthorization to renew the agreement would come back to Council one year from now.

Since the City would be contributing funds to the partnership, Mr. Athey questioned the public notification process and whether there would be opportunities for public comment. Mr. Herron advised he was not aware of any such obligations. Mr. Sonnenberg said the Greater Newark Network had a number of public events where they made presentations about activities, and he

expected those would continue in the future. Mr. Athey believed there should be visibility in the public arena for these activities as well.

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 BY MR. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THE CITY MANAGER BE AUTHORIZED TO EXECUTE A MEMO OF UNDERSTANDING WITH THE GREATER NEWARK ECONOMIC DEVELOPMENT PARTNERSHIP WHICH INCLUDES A CONTRIBUTION OF \$75,000 FROM THE CITY.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

21. 9-A-2. REPORT ON POOH PROGRAM – CITY MANAGER

45:57

Mr. Sonnenberg reported that at a recent workshop Council discussed starting up the POOH program (Promoting Owner Occupancy of Homes). The program was discontinued several years ago when cash was tight. He was looking for direction from Council to determine if they wanted to start the program up again.

Mr. Funk stated that it was a great program, and he wanted it reinstated. He thought the maximum loan should be set at \$30,000.

Mr. Morehead asked if there was a limit on how many loans were available each year. Mr. Sonnenberg confirmed the program had a \$250,000 limit. As he understood it, essentially everyone who qualified for the program in the past was funded. Mr. Athey preferred a \$50,000 limit. Mr. Fortner said while \$50,000 sounded like a big number that would attract more attention, the \$30,000 would spread out further.

Mr. Clifton asked the current amount of outstanding loans for the program. Mr. Fortner reported the total amount loaned was \$462,960 with \$10,000 paid back by one person thus far. Mr. Fortner clarified that the payback period was deferred as long as the applicant was the owner occupant of the house. Mr. Clifton asked if the \$10,000 that was paid back was reinvested in the program. Mr. Fortner confirmed it went back to the General Fund.

Mr. Morehead asked what protection was in place so the buyer does not pay too much for the property. Mr. Fortner said the safeguard in place was to get an independent appraisal of the property. He also looked at their loan agreements.

In looking at the map attachment Mr. Markham noted the loans were clustered in a section of the City and asked if that was that because there were a large number of rentals there. Mr. Fortner said the program was available City wide, and he thought that area was where the bulk of the rentals were and tended to be more affordable. Also, the people who took advantage of the program were most often first-time homebuyers or single parents, and townhouses were a more affordable alternative for them. He added that this type of program helped bridge the gap between someone not being able to afford to buy a home or being able to buy a home.

Mr. Athey questioned whether it needed to be clarified that grandfathering from the student home rental ordinance went away as soon as the rental permit was given up under the conditions for the loan. According to Mr. Lopata, under

this program the applicant must give up a rental permit. In addition to being a very successful program, he added that it does help make a dent in the off-campus rental issue. Mr. Funk gave credit to Mr. Fortner for spending a lot of time publicizing this program to the real estate community which accepted this as a real plus to buying a house in Newark.

MOTION BY MR. ATHEY, SECONDED BY MR. MOREHEAD: THAT THE POOH PROGRAM (PROMOTING OWNER OCCUPANCY OF HOMES) BE REINSTATED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

22. REVENUE STABILIZATION ADJUSTMENT – EFFECTIVE JANUARY 1, 2012 – FINANCE DIRECTOR

1:03

Mr. McFarland reviewed his memo of November 4 addressing the resetting of the Revenue Stabilization Adjustment as of January 1, 2012. The Revenue Stabilization Adjustment was instituted May 1, 2011 when electric rates were redesigned. The Code or electric tariff stated that the RSA was used to track changes in wholesale power costs and to assure the recovery of the budgeted operating margin for the electric utility. Subsequently, in August Council adopted a policy as to how the RSA would be implemented and adopted an accounting method called deferred accounting. That policy stated that the RSA would be reset at least once a year on January 1 of each calendar year based upon operating results through September 30th of the current year. His memo addressed how the RSA would be reset in accordance with the electric tariff adopted in May and the accounting policy which was adopted in August.

There were three different reasons for the RSA adjustment.

1. Wholesale power costs from DEMEC were projected to go down by about \$1.8 million in calendar 2012, resulting in a .45 cent decrease in the RSA. The City would incur lower expenses and would not charge customers for them.
2. Over collection in 2011 of the wholesale power cost and margin in the amount of \$2.5 million and equating to an RSA adjustment of .62 cents. This was largely driven by the accounting policy adopted in August and was not dictated by Code but rather governed by Council policy.
3. Adjustment to reach budgeted operating margins, set by policy at 20%. Because wholesale power costs and overall expenses have gone down, a 20% margin is fewer dollars than what it otherwise would be by roughly \$1 million. That adjustment was governed by Code.

Mr. McFarland reported in total, those three factors would necessitate a negative RSA of 1.33 cents on January 1 and lower electric revenues by \$5.4 million. Absent any direction from Council, that was what would transpire. He noted that Council had discretion, particularly with respect to the \$2.5 million over collection for 2011 as to whether and how that amount was passed back. He said this was a significant overall reduction in electric rates of 9.5%. However, that reduction would only be in effect for 12 months. So in January 2013 Council would be looking at increasing the RSA by about \$2.5 million. Because the swing was so large he said there could be a whipsaw kind of effect come 2013. Council had the ability to decide not to expose customers to that and could pass back less than the full \$2.5 million this year and leave it in the balance sheet account to be addressed a year from now.

Mr. Clifton asked Mr. McFarland where he forecast electric rates in 2013-2014. Mr. McFarland felt they would be flat or slightly down from the 2012 level.

Mr. Athey questioned where the over collected amount was held. Mr. McFarland advised the money was in a balance sheet account to be returned to the electric customers. The money could never be used to improve the operating surplus as this would violate the accounting policy.

Mr. McFarland clarified to Mr. Temko that the RSA was a line item on the electric bill.

Mr. Athey's opinion was that he would like to smooth the fluctuations to strike a balance somewhere.

Mr. Markham agreed with Mr. Athey but said by law the City was required to return .62 cents on January 1. Mr. McFarland added that the City had to track wholesale power costs and could not collect more than the budgeted margin.

Mr. Tuttle stated that Council had been talking about returning over collected fees for months and pointed out when considering the turnover in electric customers, it was the City's responsibility to return the money in a timely manner.

Mr. Temko agreed with Mr. Tuttle and said a lot of the discussions on the RSA focused on having a more stable mechanism for adjusting it. This mechanism was established, and he thought it made the most sense to continue with the policy and let it try and work.

Mr. Athey thought Mr. Tuttle made an excellent point he had not considered. He asked what Mr. McFarland would recommend so that this time next year everything was even and the rates did not have to be adjusted. Mr. McFarland stated it was an anomaly having this amount this year because the electric rate decrease was delayed for five months.

Mr. Clifton agreed the City made a promise to its customers and the money belonged to the people of the City who paid and should be returned to them. He believed customers were reasonable enough to understand fluctuations in the rates.

Mr. Funk said in light of economic development, it was in the City's best interest to have the lowest rates now, not a year from now, and the money should be refunded.

Mr. Markham understood the need to do economic development to attract people now because in 2013 property tax and water rates would be increased.

Mr. Athey still felt the rates should be kept smooth. Mr. Markham commented that the City's agreement with DEMEC was to keep stable rates.

Mr. McFarland told Council that technically speaking, they did not have to take any formal action for the adjustment to become effective. There were no further comments.

23. Meeting adjourned at 8:21 p.m.

Patricia M. Fogg, CMC
City Secretary

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