

**CITY OF NEWARK  
DELAWARE**

**COUNCIL MEETING MINUTES**

**March 26, 2012**

Those present at 7:00 pm:

Presiding: Mayor Vance A. Funk, III  
District 1, Mark Morehead  
District 2, Jerry Clifton  
District 4, David J. Athey  
District 5, Ezra J. Temko  
District 6, A. Stuart Markham

Absent: District 3, Doug Tuttle

Staff Members: Interim City Manager Carol Houck  
City Secretary Patricia Fogg  
City Solicitor Bruce Herron  
Assistant to the City Manager Charles Zusag  
Communications Affairs Officer Dana Johnston  
Finance Director Robert Uyttebroek  
P&D Director Maureen Feeney Roser

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

2. MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT ITEM 8-A-1, RESOLUTION NO. 12-E, RETIREMENT OF RAY JOHNSON, WATER & WASTEWATER DEPARTMENT, BE MOVED TO ITEM 3.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko.

Nay – 0.

Absent – Tuttle.

3. **8-A-1. RESOLUTION NO. 12-E: RETIREMENT OF RAY JOHNSON, WATER & WASTEWATER DEPARTMENT**

**00:57**

The resolution honoring Mr. Johnson for his 35 years of service in the Water & Wastewater Department was unanimously endorsed by Council.

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

A. Public – None

**03:38**

Norma Ringel, recently moved back to her childhood home in Newark. She observed that the University had grown and felt the City declined. Ms. Ringel was appalled by the behavior on St. Patrick's Day with drinking parties starting at 10:00 a.m. and the lack of respect for people or property. She noticed that Main Street was cleared on Sunday, but there was still trash on Delaware Avenue and Haines Street. Mr. Funk said he would make sure Ms. Ringel's location would be on the list of streets to be inspected by the City for clean up on Saturday and Sunday mornings.

Mr. Athey made some observations about St. Patrick's Day. He rived it to homecoming based on the crowds but had no complaints about problems in

the Kells Avenue area. He encouraged cooperation and coordination between the University and the City's police departments in order to most effectively address these types of issues in the future.

5. Ivan Nusic, a Newark resident, asked for assistance regarding an issue where he said one of his friends from Serbia was mistreated and he felt experienced discrimination at the Philadelphia International Airport. Mr. Funk offered to contact Senator Carper's office to assist Mr. Nusic with his complaint.

6. **1-B. UNIVERSITY**

**20:49**

1. Administration – Mark Brainard reported he and Erik Shramm will transition into Mr. Armitage's job upon his retirement in June.

7. **1-B-2. STUDENT BODY REPRESENTATIVE** - None

8. **1-C. COUNCIL MEMBERS**

**21:14**

**Mr. Athey**

- Mr. Athey requested the City Solicitor to provide information for Council to consider when reviewing the rezoning request for the Newark Charter School (if approved at the State level.) He also suggested giving thought to managing the public hearing in regard to space and time limits for public comment.

- Mr. Athey congratulated Mr. Temko for a job well done and future success. He said Mr. Temko brought a lot of issues to the table that might not otherwise have been discussed and thought the City was a better place based on the initiatives he brought to Council.

9. **Mr. Clifton**

- Mr. Clifton reported that Newark Senior Center staff were invited to make a presentation at the 2012 Aging in America Conference in Washington, D. C. The seminar addressed attracting and working with volunteers in the senior center community. Mr. Clifton thought the recognition spoke highly of Newark's Senior Center.

- Mr. Clifton advised he will be absent from the Council meeting on 4/23/12.

- Mr. Clifton wished Mr. Temko well and said he raised the collective consciousness of Council and the public to many issues, particularly green issues. Mr. Clifton was glad the acquisition of hybrid cars came to fruition before Mr. Temko left Council.

10. **Mr. Morehead**

- Mr. Morehead announced that the Skate Spots forum would be held by the Parks & Recreation Department on March 29 in the Council Chamber.

- Mr. Morehead said although he did not have much time to get to know Mr. Temko, he said his reputation had always been stellar for green and social initiatives, and he wished him the best.

11. **Mr. Markham**

- Mr. Markham issued a reminder of the Nefosky Police Memorial Walk and 5K Run on April 13 at the Newark Reservoir.

- Mr. Markham suggested giving the Planning Director or the Planning Commission Chairman the option to have legal counsel available when difficult

issues were on the agenda. Mr. Funk felt that should be the call of the Planning Department.

- Mr. Markham noted that House Bill 247 was going to the House Energy Commission and would put the renewable energy requirements on hold.
- Mr. Markham said he saw Mr. Temko grow into the position, and he was going to miss him, thought he served his district well and got his ideas out there in a good way.

**12. Mr. Temko**

- Mr. Temko reported the Candidates Forum would be held on 3/31 at the Unitarian Universalist Fellowship Church of Newark.
- Mr. Temko expressed gratitude to Fifth District citizens for the opportunity to serve and represent them over the past four years. He was proud of what Council accomplished and hoped they would focus around citizen and stakeholder involvement, developing new leaders and integrating citizen leaders into our government process. Further, he encouraged Council to insure that the next City Manager make collaborative governance the way that Newark does business. Mr. Temko appreciated the openness and working relationship he had with Council and appreciated City Staff for their dedication. In conclusion, he encouraged residents in the Fifth District to vote on 4/10.

**13. 2. APPROVAL OF CONSENT AGENDA**

- A. Approval of Regular Council Meeting Minutes – March 12, 2012
- B. Receipt of Alderman’s Report – March 22, 2012

**38:33**

Ms. Fogg read the Consent Agenda in its entirety.

Mr. Athey removed Item 2-A from the Consent Agenda and requested several changes to his comments on page 2 under the Discussion re City Manager Search.

The comment “A City Manager who was innovative and would rock the boat.” was made by Mr. Morehead.

The following comment was amended to read: “Four years ago they wanted a City Manager who would come in and take a top to bottom look. Mr. Sonnenberg brought a number of issues forward that Council did not necessarily act upon.”

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

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THE MINUTES BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

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

- A. **Bill 12-02** – An Ordinance Amending Chapter 32, Zoning, Code of the City of Newark, Delaware, By Reducing the Permitted Rental Apartment Density and Providing Density Bonuses for Owner Occupant Multi-Family Housing in the BB Zoning District

**40:32**

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: TO LIFT BILL12-02 FROM THE TABLE.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko.

Nay – 0.

Absent – Tuttle.

Ms. Roser summarized the current status of the bill which included changes made at the 3/12 Council meeting. Amendment 1 further reduced the density for apartments to 16 and 30 while owner-occupied units remained at 90 per acre. At that meeting Council also deleted amendments dealing with parking and discussed but did not revise Amendment 2 regarding building height.

Amendment 2 provided bonuses for up to six stories for a total building height of 90 feet. Since the 3/12 meeting the Planning Department met with community representatives, did an analysis of BB developments over the recent past, and then compared those approved densities against the originally proposed 24-60 density ratio and the 16-30 currently in the bill. They also created three additional levels of density in between those two to see what impact the varying densities would have on the viability of existing projects. Through those efforts, the latest set of density numbers were developed for Council's consideration of 20-50 and 90 which reflected a compromise between the Council, Planning Commission, developers and downtown resident input as well as the Planning Department's internal review of the matter.

As for Amendment 2, the Planning Department previously heard from developers that the floor-to-ceiling height of 11 feet often made it difficult to meet modern construction best practices and to provide well-designed, mixed use buildings. Thus, they proposed a bonus for buildings in which more than half of the apartments were two bedroom or owner occupied. That would allow six floors at 15 feet each, for a total of 90 feet in height. Since then there was community concern about allowing a 90-foot building. Therefore, it was suggested that the proposed 15 feet be changed to 14 feet for up to six floors, providing a maximum building height of 78 feet (one foot more than currently allowed by Code for bonuses not related to density or tenancy or size.)

Ms. Roser believed Amendments 1 and 2 revised as suggested met the objectives of reducing the overall densities for BB and significantly reduced allowable densities for larger apartments while providing density and height bonuses for smaller apartments and owner-occupied apartments downtown. This would be a step forward toward the development of a unit mix which would attract young professionals, graduate students and retirees. The Planning Department will continue to explore ways to encourage developers to build owner-occupied housing downtown and plans to continue that conversation through the Comprehensive Plan update.

Mr. Clifton liked the idea of 16 units. He said if they were to move forward a real impact was needed that would send a message that Council wanted something different in the BB zoned areas.

Mr. Athey thought the compromise proposal at 20 and 50 made a great deal of sense.

Mr. Morehead was concerned that Council was making a change because they think they want a change. His understanding was that when they move this number they will get no projects vs. if left alone they will get projects. He believed the City was in danger of compromising continued development. His sense was that the stakeholder's meeting which came up with a number of 24-60-90 (the Planning Department's original proposal) should be left alone.

Mr. Markham referred to New Center Village which was thought to be a prime location for owner occupancy and noted there was no movement there in spite of incentives. He was concerned that putting restrictions on the rest of the downtown was too drastic a change and would send developers elsewhere when the market got better.

Mr. Temko thought the bottom line was the mortgage companies would dictate what they build because of limited financing in residential construction.

Mr. Clifton noted the Great American Main Street award was given for what was there today, not for the potential of what could be there.

MOTION BY MR. MARKHAM, SECONDED BY MR. ATHEY: THAT THE RULES BE SUSPENDED AND THE DISCUSSION BE OPENED TO PUBLIC COMMENT.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Robyn Harland, a Newark resident, said all who were associated with the Landlord's Association were finding it difficult to rent existing units due to the economy. She did not see a reason to move on this now and thought Council was jumping the gun. She said downtown would take care of itself.

Will Hurd, a Newark resident, an architect and a member of the Design Review Committee, added several observations about the building height. He agreed that the current floor height limit of 11 feet was too short and that an increase to at least 13 feet would provide several benefits. The first is that indirect lighting fixtures could be used more effectively to provide more even lighting, especially in an office setting with lower wattage bulbs. The higher ceiling would allow natural light to get deeper into a building – three feet for every one foot of height – which also decreased the need for artificial light during the day. He agreed with Mr. Lang's comments about needing a 13-foot floor to allow for conversion from residential to offices. Further, offices have more occupants and therefore require larger ducts. For those reasons he felt that the minimum floor to floor height should be at least 13 feet and that 15 feet be considered as a maximum.

Joe Charma, a Newark resident, spoke in support of the Planning and Development Department's original recommended density ratios of 24, 60 and 90 dwelling units per acre. He believed reducing the density in downtown urban areas to levels equivalent to those in surrounding suburban areas would have a negative impact on the quality and quantity of new construction downtown which would eventually hurt the positive economic growth that Newark has experienced. He said the types of mixed-use projects built over the last 10 years depended on a portion of solid revenue generated from the residential component to allow greater flexibility in commercial development of the buildings. Further, the apartment rental market remained strong not only in Newark, but nationally and lending institutions more readily fund projects with rental units. Also, because rental unit revenues were dependable and consistent, developers could afford to create architecturally aesthetic buildings. He thought by reducing

site densities, rental revenue would be reduced and subsequently there would be a general decline in the quality and architecture of buildings.

In order to encourage owners to build owner-occupied housing or types of projects that could be converted to owner-occupied residences in the future, he suggested rather than lowering densities, the City must create other incentives to make it more economically feasible for developers and property owners to consider building owner-occupied housing projects. Mr. Charma suggested the following:

- Provide 20% of the units available for owner occupancy with provisions to rent to two unrelated individuals if not sold in two years. A higher density should be allowed which would include the additional units targeted for owner occupancy.
- Establish low-cost loan programs directed at first-time home buyers such as the POOH program.
- Investigate funding from Federal and State sources and foundations.
- Work with banks and credit unions and other lending institutions to create a revolving loan program to provide capital for buyers.
- Defer property taxes over a ten year period or reduce taxes for owner occupants.
- Reduce transfer taxes on owner occupied unit sales.
- Encourage City workers to live downtown in owner-occupied units. For example, special initiatives could be developed for police officers, fire fighters and other City employees to purchase properties downtown.
- Work with the University of Delaware and other local employers to develop incentives for UD employees to live downtown in owner-occupied units.
- Collaborate with the Delaware Home Builder's Association, local realtors, developers and landlords to develop incentives to encourage and promote owner occupancy downtown.

Mr. Charma reported in June at Newark Day, the Planning and Development Department and other City organizations will begin soliciting public comments in preparation for the updating of the Comprehensive Plan in October 2013. He urged Council to consider, investigate and create some of the incentives he mentioned as mechanisms to encourage owner occupancy downtown.

Mr. Funk stated his concern if Council continued to allow rapid development of apartment buildings downtown, there would not be any place to build owner-occupied units. Mr. Charma responded that the market would take care of itself. He noted that Council was trying to change a market by playing with densities and putting an RM density downtown. Mr. Charma supported the 90-unit per acre density for owner occupied as he believed that was necessary to get quality buildings.

Glenn Schmalhofer, a Newark landlord, said he warned a year ago about what was coming with apartment development and was hearing more comments from landlords that it was becoming extremely difficult to rent in the fringe areas of the City. He repeated his previous request to Council to conduct a study to find out if the City needed anymore housing.

Chris Locke, of Lang Development and a Newark resident, agreed with Mr. Markham's comments about New Center Village and thought Mr. Charma presented some excellent ideas for encouraging owner occupancy projects. He

stated that the majority of Lang Development projects were 100% rented. He said the 90-units per acre density would motivate someone to do owner occupant.

Lisa Ward, a Newark landlord, agreed with Mr. Locke that the competition was good for businesses, and she believed in free market. She did not want to see growth stopped but thought it should be slowed down a little. She recommended doing a study to determine how much student housing existed.

Jeff Lang, a Newark resident, developer and landlord, summarized the development on Main Street where the intent was to bring residential to the downtown, create a more dynamic environment, increase demand for the retail services and provide an alternative to the rental houses throughout the City. While owner occupancy downtown may not be increasing, he said it was being increased within the community because they were taking students out of houses and bringing them into apartment projects downtown. He suggested looking at the global picture of owner occupancy.

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

Mr. Temko pointed out the issue of affordability and said in Terry Manor almost all families have been pushed out and were now student rentals.

AMENDMENT BY MR. ATHEY, SECONDED BY MR. MARKHAM: TO ADOPT AMENDMENT ONE IN THE PLANNING & DEVELOPMENT DEPARTMENT'S UPDATED RECOMMENDATION OF 20 UNITS PER ACRE FOR APARTMENTS WITH 3 OR MORE BEDROOMS, 50 UNITS FOR 2 BEDROOM UNITS AND 90 FOR OWNER OCCUPIED WITH A TOTAL BUILDING HEIGHT LIMIT OF 78 FEET AND A CEILING HEIGHT LIMIT OF 15 FEET PER FLOOR.

AMENDMENT PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

Mr. Clifton said he would support this proposed change because he thought it was a move in the right direction. He was not willing to give up the opportunity to make an impact in resetting the City's compass in the types of units and a different clientele that he would like to see.

Mr. Athey applauded Mr. Charma for his ideas and said he would appreciate a future report from the Planning Department commenting on Mr. Charma's suggestions.

**(SECRETARY'S NOTE: THIS WAS THE ORIGINAL MOTION MADE AND TABLED AT THE 3/12/12 MEETING.)**

MOTION BY MR. TUTTLE, SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-02.

Question on the Motion as Amended was called.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

**15. 4. FINANCIAL STATEMENT:**

**1:44**

Mr. Uyttebroek presented the Financial Report as of February 29, 2012. His concern was with the sale of electricity, the City's primary revenue source. Budget to actual on the sale of electricity was under budget, coming in at \$445,000 less than expected. This was somewhat mitigated because the purchase cost of power was over budget by \$414,000. Mr. Uyttebroek said this should be monitored and hoped more sales would be generated going into the summer months.

Mr. Markham asked if there would be data available to analyze how the warm winter affected utility purchases through March. Mr. Uyttebroek said he would provide this information.

Mr. Markham also asked for projections as to how the recent union contract changes would affect the bottom line. Mr. Uyttebroek said he would also provide that number.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE FEBRUARY 29, 2012 FINANCIAL REPORT BE RECEIVED.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko.

Nay – 0.

Absent – Tuttle.

**16. 5. RECOMMENDATIONS ON CONTRACTS & BIDS: None**

**17. 6. ORDINANCES FOR SECOND READING & PUBLIC HEARING:**

**A. Bill 12-11 – An Ordinance Amending the Amended Pension Plan for Employees of the City of Newark, Delaware, Regarding Disability Pension and Survivor's Pension**

**1:47**

MOTION BY MR. ATHEY, SECONDED BY MR. TEMKO: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-11.

Mr. Zusag reported this amendment to the pension ordinance would implement a portion of the recent agreement reached between the City and the FOP. The amendment improved the disability and survivor benefits for police employees and for non-police employees. Mr. Funk noted this was contractually obligated under the terms of the contract.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko.

Nay – 0.

Absent – Tuttle.

**(ORDINANCE NO. 12-12)**

**18. 6-B. BILL 12-13 – AN ORDINANCE AMENDING CHAPTER 19, MINORS, CODE OF THE CITY OF NEWARK, DELAWARE, BY BRINGING THE CODE INTO CONFORMANCE WITH STATE CODE WITH REGARD TO PROVIDING ALCOHOLIC LIQUOR TO MINORS**

**1:48**

Ms. Fogg read Bill 12-13 by title only.

MOTION BY MR. MARKHAM, SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-13.

Mr. Herron said these changes mirrored language in the State Code.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko.

Nay – 0.

Absent – Tuttle.

**(ORDINANCE NO. 12-13)**

**19. 6-C. BILL 12-16 – AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, BY REVISING THE PAY PLAN FOR MANAGEMENT EMPLOYEES, EFFECTIVE JANUARY 2, 2012**

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**1:49**

Ms. Fogg read Bill 12-16 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-16.

Mr. Zusag said this ordinance was requested by Council after all three bargaining agreements were settled. The 2% increase was consistent with what the bargaining units received on January 1. He reported this was the first increase in management salary rates since April 1, 2008.

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: 6 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko.

Nay – 0.

Absent – Tuttle.

**(ORDINANCE NO. 12-14)**

MOTION BY MR. MOREHEAD, SECONDED BY MR. CLIFTON: TO GRANT THE CITY MANAGER THE AUTHORITY TO IMPLEMENT THE INCREASE ACROSS THE BOARD.

Mr. Zusag explained this ordinance was necessary to authorize the City Manager to raise the minimum and maximum of the salary ranges. It would not change the salary rates for the individuals in those ranges. This authorized the City Manager to increase those individual salary rates for those employees by the same amount.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

**20. 6-C-1. 2012 SALARY RATE INCREASE FOR ALDERMAN AND DEPUTY ALDERMAN**

**6-C-2. 2012 SALARY RATE INCREASE FOR CITY SECRETARY**

Mr. Zusag recommended that effective 1/1/12 the salary rate for the Alderman be increased by 2% to \$36,342, that the Deputy Alderman's hourly rate be increased 2% to \$84.86 and that the City Secretary's rate be increased 2% to \$68,952.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: THAT A 2% INCREASE BE IMPLEMENTED FOR THE ALDERMAN, THE DEPUTY ALDERMAN AND THE CITY SECRETARY EFFECTIVE 1/1/12.

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: 6 to 0.

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

Mr. Zusag recommend that the salary rate for the City Secretary be increased by 2% to \$68,952 effective 1/1/12.

**21. 7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS:**

**A.** Request of Yi Palace, Inc. for a Special Use Permit to Allow the Sale of Alcoholic Beverages at their New Restaurant Located in Unit 259 of the Park N Shop Shopping Center, Elkton Road, Newark, Delaware

**1:52**

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

Ms. Roser said an application was received for Yi Palace to serve alcoholic beverages at their new restaurant which was owned by Li and Jenny Qu. The application was reviewed by staff who determined that the sale of alcohol at this restaurant would not adversely affect the health and safety of the neighborhood, be detrimental to public welfare or in conflict with the Comprehensive Plan. In addition, the Zoning Code prohibited the sale of alcohol after midnight unless approved by Council to go to 1:00 a.m. According to Ms. Roser, Mr. Qu was not interested in that extension. The Planning and Development Department believed the restaurant would help improve dining opportunities on Elkton Road.

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: 6 to 0.

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

**22. 7-B. REQUEST OF TAVERNA MAIN STREET, LLC, FOR A SPECIAL USE PERMIT TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES UNTIL 1 A.M. AT THEIR PROPOSED NEW RESTAURANT LOCATED AT 121 E. MAIN STREET (FORMERLY THE LEARNING STATION), NEWARK, DELAWARE**

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**1:54**

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

Ms. Roser said an application was received from Taverna Main Street, LLC, which was part of the Platinum Dining Group. Restaurant owners Carl and Lisa Georgi were preparing to open in the location formerly occupied by The Learning Station. The Planning & Development Department determined the Special Use Permit for the sale of alcoholic beverages would not adversely affect health and safety or be detrimental to public welfare or be in conflict with the Comprehensive Plan. The applicant requested being able to serve alcohol until 1:00 a.m. The Planning & Development Department recommended approval of the application as it would increase adult dining opportunities on Main Street. Mr. Funk remarked this would be a very welcome addition to the area.

The Chair opened the discussion to the public.

John Horner, a Newark resident, asked what kind of entertainment was planned. Mr. Georgi explained their formal liquor license application with the State requested live music only because it was easier to have that on the application in case of any special situations or future needs. He said they had no intention of having live music for Taverna, and there was no floor space allocated for it.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko.

Nay – 0.

Absent – Tuttle.

**23. 8. ITEMS SUBMITTED FOR PUBLISHED AGENDA**

**A. Council Members:**

1. Resolution No. 12-E: Retirement of Ray Johnson, Water & Wastewater Department

**(SEE ITEM NO. 3)**

**24. 8-A-2. RESOLUTION NO. 12-F: DEMOCRACY IN ELECTIONS**

**2:00**

MOTION BY MR. TEMKO, SECONDED BY MR. ATHEY: THAT THE RESOLUTION BE APPROVED AS PRESENTED.

Mr. Temko hoped Council would support the Resolution to be on record along with local jurisdictions across the country in supporting democracy in elections. He believed Newark had an open process that did not involve corruption.

Mr. Athey asked what instructions Mr. Temko was giving to the City Secretary if the Resolution passed. Mr. Temko would like it to be sent to Representative Carney, Senator Carper and Senator Coons who were aware the City was considering the Resolution and have expressed their support.

Mr. Morehead asked what the endorsement was signing the City up to do. Mr. Temko said it did not sign the City on to any specific action but rather signed on to the principal that the City supported transparency and reasonable campaign finance reform.

The Chair opened the discussion to the public.

Steven Fox, a Newark resident, said he found the small democracy of Newark very important and a strong asset to the community. As a resident and a voter, he encouraged Council to pass the Resolution.

Mr. Funk advised that Ms. Fogg spoke to the City's lobbyist who recommended against voting on the Resolution until he came to discuss the negative aspects to the Resolution. Ms. Fogg said she was asked to call and find out whether Mr. Maxwell thought this was something Council should do at this time. He felt it was out of the character and out of the purview of a municipality to weigh in on a Supreme Court decision. Mr. Temko asked if Mr. Maxwell had read the Resolution, and Ms. Fogg responded that he reviewed it. Mr. Temko asked Mr. Herron if it was within the City's purview to pass resolutions of this nature. Mr. Herron said there was nothing in the law to prohibit it and that it was a symbolic gesture with no legal effect, and there was no legal prohibition against expressing one's opinion. Mr. Temko reported that the City's Federal delegation and the President supported this and since it was aimed at the Federal government, he did not know what repercussions it would have in any other way. Mr. Funk said as a lawyer he was taught never to take a public opposition point of view towards a Supreme Court decision. Mr. Temko said many municipalities have taken similar, or stronger actions.

Bruce Fisher, a Newark resident, said the Resolution was a statement about values, about who we are and how we regard people as being more important than corporations. He felt it was important to recognize that people have been given Constitutional rights and corporations have not.

Jen Wallis, a Newark resident, urged Council to pass the Resolution and mentioned that a similar one was introduced to the Wilmington City Council. She said there were also plans to introduce this at the County level. The goal was to work at the local level and to move up to the State level.

Paul Baumbach, a Newark resident, thanked Mr. Temko for his service on Council and for introducing the Resolution. He felt on major issues it was important to take a stand on the right side of things. He noted there were four Supreme Court Justices who took a stand against this decision even though they were in the minority. He said this was a step to raise public awareness and to let people in government know that in Newark we stand for people first, that the rights in the Constitution are for people and that corporations should be regulated. He urged Council to support the Resolution.

Phil Petepiece, a former Newark resident, urged Council to pass the Resolution and was glad it was brought to the table. He believed it was one of the Supreme Court's greatest flaws and while the Resolution was not effectual on a legal level as was indicated by Mr. Herron, it was a symbolic gesture. He felt it put more pressure on the President and Congress to reconsider future resolutions of this nature.

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

Question on the Motion was called.

MOTION PASSED: VOTE: 5 to 1.

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

Mr. Morehead commented that he was not entirely convinced this was within the purview of Newark Council but since this was a representative government and District 1 spoke overwhelmingly in support, he voted for the Resolution.

25. **8-B. OTHERS:** None

26. **9. SPECIAL DEPARTMENTAL REPORTS:**

- A. Special Reports from Manager & Staff:  
1. Recommendation for Insurance Coverage

**2:18**

Mr. Uyttebroek reported that the City entered into a three-year contract with Willis of Pennsylvania to be the consultant, agent and broker for the City's insurance. This was the second year of the agreement, and Willis was requested to remarket coverage requirements. They looked at all the City's inventory and revalued the buildings for potential replacement costs. They came up with a proposal at a total premium of \$683,793 (the auto insurance premium was unknown at the time of Mr. Uyttebroek's memo but came in at about \$1,000 lees or \$205,000.) The premium increase was based on high claims in automobile accidents in 2009, the values of replacement costs of all the public buildings being brought up to actual costs and the nationwide insurance industry getting hit hard in the recession and trying to build back the reserves.

Mr. Uyttebroek recommended approval of the contract with Willis of Pennsylvania with the various underwriters cited on the memo.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT WILLIS OF PENNSYLVANIA BE INSTRUCTED TO CONTRACT WITH THE VENDORS DETAILED IN MR. UYTTEBROEK'S MEMO OF 3/19/12 TO PROVIDE INSURANCE COVERAGE FOR THE POLICY YEAR 4/1/12 THROUGH 3/31/13.

MOTION PASSED UNANIMOUSLY: VOTE: 6 to 0.

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

27. **9-A-2. CURTAILMENT SERVICE PROVIDER (CSP)**

**2:20**

Mr. Uyttebroek reported that Council approved a resolution last year where the Curtailment Service Provider steps in during summer months when the demand load reaches the peak and large customers were asked to curtail their use until an established time when they could restore their heavy usage.

Scott Lynch from DEMEC said the Resolution was an essential piece going forward and insured that companies in Newark had an opportunity to financially benefit from participating in curtailment, both on a savings side and a revenue side. Mr. Lynch explained that by having exclusivity with the DEMEC Converge group, compliance with the State law could be more easily gained by having one company provide this data for Newark.

MOTION BY MR. TEMKO, SECONDED BY MR. MARKHAM: THAT COMVERGE BE DESIGNATED AS THE CURTAILMENT SERVICE PROVIDER FOR THE CITY FOR A ONE-YEAR PERIOD.

MOTION PASSED UNANIMOUSLY. VOTE: 6 to 0.

Aye – Athey, Clifton, Funk, Markham, Morehead, Temko.

Nay – 0.

Absent – Tuttle.

**28. Meeting adjourned at 9:22 p.m.**

Patricia M. Fogg, CMC  
City Secretary

/av