

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

July 9, 2012

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, Luke Chapman (arrived late)
District 6, A. Stuart Markham

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

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

2. MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT ITEM 9-B, REQUEST FOR EXECUTIVE SESSION RE PENDING LITIGATION, BE ADDED TO THE AGENDA.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

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

A. Public

00:40

Bruce Harvey, a Newark resident and landlord, referred to an incident that occurred with a former neighbor (a grad student) in October 2010. Following a large party at a rental unit on Ritter Lane and subsequent investigation by the City, his neighbor was forced to move out of the rental unit she occupied based on occupancy restrictions. Mr. Harvey does not believe the decision benefitted the City in any way.

4. **1-B. UNIVERSITY**

02:10

Mr. Brainard stated that the August 13th Council meeting was a suitable date for the Wellspring presentation by the University. Ms. Fogg will check the date and get back to Mr. Brainard.

5. **1-B-2. STUDENT BODY REPRESENTATIVE** - None

6. **1-C. COUNCIL MEMBERS**

02:52

Mr. Tuttle

- Mr. Tuttle expressed thankfulness that the City did not suffer the wind damage that occurred to the south of Newark.

7. Mr. Clifton

- Mr. Clifton reported that he and Ms. Houck attended the ribbon cutting ceremony and toured the recently completed Reserve Center. The facility was being shared by the Army Reserve and the Delaware Army National Guard.
- Mr. Clifton thanked Sgt. Van Campen and his team for their tremendous efforts in Lumbrook where two minors were charged with over 112 counts of tire slashing, breaking into cars, stolen property, drug issues, etc.
- Mr. Clifton congratulated three police officers who would be promoted on Friday – Lt. Kevin Feeney, Sgt. Curt Davis and Master Cpl. Mike Szep who have made important contributions to the City during their time with the force.

8. Mr. Athey

- Mr. Athey offered kudos for the fireworks display and Liberty Day event on July 4th.
- Mr. Athey expressed his appreciation to Roy Simonson and Tom Coleman for holding a public information meeting on July 11th regarding waterline and water main projects along Beverly, Sunset and Winslow Roads.

9. Mr. Markham

- Mr. Markham recognized the Liberty Day fireworks display.
- Mr. Markham cautioned the public about a billing scam where people were told the Federal government through a program created by President Obama had a way to pay utility bills.
- Mr. Markham thanked Mr. Emerson for his help with an issue at Karpinski Park.
- Mr. Markham noted the City fared quite well compared to the rest of the State during the last major storm and asked whether Smart Meters were equipped to pinpoint where outages originated.
- Mr. Markham congratulated Newark resident Caitlin Jones who was a participant in the women’s swimming Olympic trials.

10. 2. APPROVAL OF CONSENT AGENDA

10:25

- A. Approval of Regular Council Meeting Minutes – June 25, 2012
- B. Receipt of Alderman’s Report –July 5, 2012
- C. Receipt of Planning Commission Minutes – June 5, 2012
- D. Recommendation from Community Development/Revenue Sharing Committee re Target Funding for 2013 Revenue Sharing Program
- E. Appointments (4) to Downtown Newark Partnership – Reid Rowlands, Amy Plante, William Sullivan, and Cari Woolf – 3 Year Terms to Expire July 2015
- F. ***First Reading – Bill 12-22 – An Ordinance Amending Chapter 2, Administration, Article IV, Downtown Newark Partnership, Code of the City of Newark, Delaware, By Expanding the Boundaries of Downtown Newark – *Second Reading July 23, 2012****

Ms. Fogg read the Consent Agenda in its entirety.

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

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

11. **3. ITEMS NOT FINISHED AT PREVIOUS MEETING:** None
12. **4. FINANCIAL STATEMENT:** None
13. **5. RECOMMENDATIONS ON CONTRACTS & BIDS:** None
14. **6. ORDINANCES FOR SECOND READING & PUBLIC HEARING:**
 - A. **Bill 12-18** – An Ordinance Amending Chapter 17, Housing and Property Maintenance, Code of the City of Newark, Delaware, By Revising the Annual Rental License Fees for Single-Family, Two-Family Dwellings and Dwelling and Rooming Units in Residential Occupancy Including Mixed Use Occupancies Except for Fraternities or Sororities

11:34

MOTION BY MR. CLIFTON, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-18.

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, Chapman, Clifton, Funk, Markham, Morehead, Tuttle.
Nay – 0.

(ORDINANCE NO. 12-18)

15. **6-B. BILL 12-21 – AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, CODE OF THE CITY OF NEWARK, DELAWARE, BY REVISING ACCRUED COMPENSATORY TIME FOR MANAGEMENT EMPLOYEES**

12:28

MOTION BY MR. ATHEY, SECONDED BY MR. MOREHEAD: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 12-21.

Mr. Tuttle questioned the provision related to the expectation of regular Council meeting attendance by the Planning Director. Ms. Houck responded they were correcting what Mr. Tuttle noted, and the assumption would be that the Planning Director would not get comp time for the first Council meeting nor the one Planning Commission meeting of the month but would be eligible for comp time for the second Council meeting.

Mr. Funk asked who decided staff attendance at Council meetings. Ms. Houck said she typically talked to staff and requested certain individuals to attend.

Mr. Markham said it made sense to have the right staff person present to answer questions because otherwise, everything just slowed up and more questions kept arising.

Regarding the new language in Section 2-94.2 (a), Mr. Morehead asked whether management overtime was a personal decision or whether a supervisor signed off on the requirement. Ms. Houck replied that the management employee's supervisor made the decision. Mr. Morehead thought there was a lot not being said in the proposal, for example the current personnel policy limit of 150 comp hours was not indicated anywhere. He thought this was trying to address a problem that did not exist and as a service organization, he did not want to hinder the City's ability to offer services in an emergency because of comp time limitations. He felt this was an issue of oversight and did not plan to support the ordinance as written since it did not make the changes he believed were needed.

Mr. Clifton agreed this was fixing a problem that did not exist and if there were individual issues, they should be addressed. This proposed change limited comp time only (not comp pay), and one management employee he spoke to was not even aware there was an option to take comp pay at time and a half. Mr. Clifton thought this change would potentially force employees to take comp pay which would create budget issues. He said management was not one deep (there was someone else capable of filling in) and that would help control costs in responding to emergency situations. He was disturbed that management employees went without a pay increase for over four years and now Council proposed to reduce comp time which he felt was necessary in a full service government. Further, it was alluded to Mr. Clifton that there had been discussions about the potential for a fourth union.

Mr. Chapman asked if there was a problem and what it was. Ms. Houck did not believe there was a problem but said the proposed ordinance originated from a request of Mayor and Council in response to their concerns. Mr. Chapman believed everyone should be properly compensated for the work they do. He felt Council had to work off the assumption that every overtime hour worked was necessary. The way he read this was the reduction in the cap from 150 to 105 hours simply prevented further accrual. An employee could use their comp time and then continue to accrue more, just never above the 105 hours. Ms. Houck said she felt it all came down to supervisory approval and whether Council felt there was a need to tighten it up.

Mr. Funk said he originated the request because he was surprised management people received comp time. He was concerned about the ability of managers to do their job when they could be out of work for up to eight weeks a year on combined vacation and comp time. From conversations he had with the City of Wilmington he was told management employees did not receive comp time. Ms. Houck noted there were many different scenarios within the State so it was difficult to find any common policy.

Mr. Clifton thought oversight control was appropriate. He did not think the current numbers were inappropriate and would never ask City employees to put in time they were not compensated for. If Wilmington was the benchmark, he thought the City was looking in the wrong direction.

Mr. Markham said he did not understand how this proposal saved the City money. He thought it was important to have upper level management around for emergencies and that there needed to be flexibility for the City to run well.

Mr. Tuttle said the typical definition of exempt employee meant getting paid for the job however long it took and if you needed an afternoon off, you took it. Apparently at some point the City decided to create a new category of individuals who would receive overtime compensation even though most organizations would consider management employees as exempt. It was his belief that management employees should be compensated for extra time worked so they would be at work when they were expected to be there.

Mr. Athey asked if employees were using comp time in lieu of short-term disability. Ms. Houck explained that anybody who was out on medical leave for an extended period would have to use up their time. She added that employees managed their comp time very differently as this was a matter of personal choice.

Mr. Clifton researched the Department of Labor's definition of exempt employee. He reported that someone with the title of manager was not automatically considered an exempt employee, and one of the benchmarks for exempt employees was being able to hire and terminate people or had strong input to that process.

Mr. Funk believed the maximum number of comp hours should be reduced because the City could not afford to have management personnel absent 7-8 weeks a year. Mr. Morehead said maybe the managers should be paid instead of offering them comp time. Mr. Markham added then you had a budget issue when the issue was people being here more often.

Mr. Chapman felt comp time was the same as being paid, but was just deferred payment. He thought that was important to note. The situations where a significant amount of accrued comp time was tacked on the end of the career could cost the City doubly and was worth noting as well.

Ms. Houck said she would go back and put language together that spoke to the administration and supervisory aspect of it.

Mr. Clifton suggested voting down the bill if it would be coming back in very different form. Mr. Herron advised that it could be tabled and then amended.

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

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: THAT BILL NO. 12-21 BE TABLED.

MOTION PASSED UNANIMOUSLY: VOTE: 7 to 0.

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

16. **7. PLANNING COMMISSION/DEPARTMENT RECOMMENDATIONS:**
None

17. **8. ITEMS SUBMITTED FOR PUBLISHED AGENDA:** None

18. **8-B OTHERS:**

1. Conservation Advisory Commission Annual Report for 2010

46:58

Tom Fruehstorfer, Conservation Advisory Commission Chair, summarized the contents of the 2010 Annual Report.

A recommendation was made to allocate \$100,000 for green energy purchases as defined in Resolution 05-H. The recommendation was approved but held by Council for a possible solar installation which was not determined to be feasible. The Commission was looking forward to the resurrection of this project and hoped an economically feasible plan for constructing a solar park would be identified.

The Commission recommended that Newark participate in Earth Hour and subsequently, staff continued to schedule Earth Hour events.

The CAC endorsed a plan developed by Roy Lopata for a Newark LEED-based energy conservation program which was implemented.

Another project being investigated by the Commission was to obtain certification for the City as a Backyard Wildlife Habitat community.

With the help of City staff, the CAC applied for and obtained a grant in support of the City's anti-idling ordinance. A video, public displays and signs were developed with the grant funding.

The Commission began talking about deficiencies in local public transportation, pedestrian and biking infrastructure and made some progress toward further communications between City Staff, DART, Septa, Wilmapco and the University. They hoped to improve and publicize existing public transportation as well as pedestrian and biking options.

In response to Mr. Markham's question about whether DEMEC had attended any CAC meetings, Mr. Fruehstorfer responded that they had attended several meetings. Mr. Athey added that DEMEC President Pat McCullar agreed to address Council at a future workshop meeting and suggested designating that as a joint Council/CAC meeting.

19. 9. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff: None

20. 9-B. REQUEST FOR EXECUTIVE SESSION RE PENDING LITIGATION

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT COUNCIL ENTER INTO EXECUTIVE SESSION TO DISCUSS PENDING LITIGATION.

Council entered into Executive Session at 7:51 p.m. and returned to the table at 8:18 p.m.

Mr. Funk advised that no action was requested at this time.

21. Meeting adjourned at 8:19 p.m.

Patricia M. Fogg, CMC
City Secretary

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