

**CITY OF NEWARK
DELAWARE**

COUNCIL MEETING MINUTES

October 8, 2007

Those present at 7:30 pm:

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

Staff Members: City Manager Carl F. Luft
City Secretary Susan A. Lamblack
City Solicitor Roger A. Akin
Assistant to the City Manager Carol S. Houck
Assistant to the City Manager Charles M. Zusag
Planning Director Roy H. Lopata
Finance Director Dennis McFarland
Building Director Thomas J. Sciulli
Chief of Police Paul Tiernan

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

2. **2. CITY SECRETARY'S MINUTES FOR COUNCIL APPROVAL:**

A. Regular Council Meeting of September 24, 2007

Mr. Athey advised that on page 5, the DeIDOT representative's name should read "Somers."

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THE MINUTES OF SEPTEMBER 24, 2007 BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

A. Public

Chris Moore, 125 W. Main Street, encouraged enforcement of motorcycle noise especially on Sunday mornings after the cyclists leave the Deer Park between 10:00 am and 3:00 pm. Mr. Funk also noted that the motorcycle noise was bad on Thursday evenings. This problem was brought to Council's attention at their last meeting and as a result the Police Department will be doing more enforcement.

4. Jean White, 103 Radcliffe Drive, commented on the full-page ad in *The News Journal* where the Mayor was featured for WSFS. She thought it was entirely inappropriate because he represented the whole town and all the people and businesses in the City. Therefore, he should not advocate or publicly endorse one business over another business. In this case, it was a bank and there were many other banks located in the City. Although the ad did not identify

him as “Mayor” Funk, but because he was a very recognizable person, she claimed it was hard to separate his personal persona from his well-known position as the Mayor of the City of Newark. Ms. White said she did not know whether any money was received for the ad, but even if Mr. Funk was paid and the money was given to a charity or to the City, she did not think it was appropriate for him to be in the ad. Mr. Funk said he agreed with Ms. White and claimed he did not get any money for the ad.

Ms. White continued by saying she thought Mr. Funk should have refused to be a part of the ad. From a legal standpoint, doing the ad may not be strictly unethical, but from the point of view of appropriateness and appearances, it was inappropriate for the Mayor, who was in a position of power, to publicly endorse one business over another. If he wanted to make the endorsement after he was no longer Mayor, she would not have a problem with that. She suggested Mr. Funk desist from this ad activity and any such actions in the future because it detracted from the positive things he does for the City.

Mr. Funk said the way he approached doing the ad, in his mind, was WSFS was celebrating their 175th anniversary and the City was getting ready to celebrate its 250th anniversary. He also noted he did a lot of things for all the businesses in Newark, but reiterated that Ms. White was right, and he needed to be a little bit more careful in the future.

5. 3-B. UNIVERSITY

1. Administration

There were no comments forthcoming.

6. 3-B-2. STUDENT BODY REPRESENTATIVE

Dan Greenland, 34 Prospect Avenue, Student Relations for Student Government representative, said students were concerned with the lack of adequate recycling bins in the City, specifically on Main Street. He thought the City could be a leading example for recycling in Delaware. Last year the senior class gift at the University was \$50,000 for a recycling program, and Mr. Greenland thought that was a good start and a way for students to make their voices heard. He offered the assistance of the students to help with establishing a recycling program and advised that he had letters from students addressed to Mayor Funk regarding the same. Mr. Greenland concluded by saying the students were available to the City to help in anyway with recycling.

Mr. Funk advised that the City was in the middle of studying different recycling programs, one of which would be implemented shortly. He also noted that the Town & Gown Committee has been very active with recycling, specifically their successful student move out project that was coordinated by Carol Houck. Mr. Funk said it was his understanding that there was pressure being brought on the University’s administration to do something about more recycling on campus.

Mr. Athey advised that the Conservation Advisory Commission would be reviewing four curbside recycling options at their October 9th meeting.

7. 3-C. COUNCIL MEMBERS

Mr. Tuttle thanked the City Manager for bringing the City’s concerns about the Elkton Road project to DelDOT’s attention, and acknowledged DelDOT’s reply. Darryl Cole (DelDOT) referred to a workshop held in October 2005 where DelDOT shared several alternatives for the redesign of Elkton Road, all of which involved the closing of the median at Chrysler Avenue. He concurred with the idea that a meeting should be held prior to the next public hearing planned by DelDOT next year. He thought the earlier they got into the pipeline that

something else needed to be considered, the more likely it would come to fruition. Mr. Pomeroy agreed.

8. Mr. Tuttle acknowledged the large student turnout at the meeting and said he recognized some students from their participation in his intern seminar.

9. Mr. Pomeroy congratulated everyone involved with the Taste of Newark, which was a great success. He heard many positive comments about it that ranged from the quality of the event itself to the experience of being on Main Street afterwards and enjoying the downtown area.

10. Mr. Clifton thanked Roy Simonson for spending time with a resident of Fairfield explaining the operation of the reservoir.

11. Mr. Clifton complimented the Taste of Newark and the great representation of restaurants in Newark and restaurants that wanted to be in Newark.

12. Mr. Clifton complimented the Open House for the Police Department held on Saturday that provided the opportunity for residents to meet Chief Tiernan. Also, there was a good display of their equipment that showed the capabilities of the Police Department.

13. Mr. Clifton commented on the motorcycle pipes and the fact that there were some pipes with certification written on them that met most state codes for noise, etc. He was aware that people have hollowed the pipes on bikes and cars and some police officers will put something down the pipe to see if the baffles were removed. It was his opinion there were a lot of different ways to control that behavior.

14. Mr. Clifton referred to a memorandum from the Personnel Director regarding health coverage for the City Manager that he thought should be discussed at the table. He pointed out that when they discuss pay increases for the City Manager and City Secretary, they do that at the table because it was a matter of open government. Mr. Clifton explained that the memo was a request for retiree health care for the City Manager, and he thought it was incumbent upon Council to make a public stand as to whether they would or would not approve it.

Mr. Clifton said he was a strong advocate of retiree health care and fought for that benefit for the unionized employees for many years. The City's policy required a minimum of 25 years to be eligible to receive that benefit. The City Manager has served 21 years and Council would have to modify or make an exemption to the policy they established.

Mr. Funk said he was shocked when he got the memo given the financial situation of the City. He did not think it would be appropriate for Council to grant it. Mr. Pomeroy felt this put the City Manager in an awkward position because he was not "banging on the door" asking for it. He did not think it was a question of whether it was warranted; rather the question was whether Council stood by its own rules. Since the threshold was 25 years, and because it could set a precedent, he did not think Council should make an almost arbitrary consideration.

Mr. Athey said his first thought was if Council was going to approve the request, they needed to change the policy and not make it a one-time decision because of the precedent it would set.

Mr. Markham saw it as a "slippery slope" and questioned where they would stop. He might have a different viewpoint if he knew somebody was truly going to retire, but he knew Mr. Luft had many years left and would be working

as a consultant and would have other options as well. He believed setting a precedent was a difficult thing to do right now.

Mr. Tuttle said he appreciated the spirit in which Mr. Zusag brought this to Council's attention, but he believed they needed to be consistent.

Mr. Osborne agreed and believed it would be making an exception to the rule and that was difficult to do because it set a precedent for the future.

Mr. Clifton added that in the City there were people looking for disability versus retirement and there were arguments being made by Human Resources regarding that. There was also an employee deployed and serving in Iraq and even though the City paid the difference in (resulting from a vote by Council) his base pay that was now being disputed. He also claimed it was only after staff was embarrassed that they found that Council (as the trustees of the retirement plan) could afford to give the retirees a half percent increase for the next three years. He referred to the memo where it talked about being a "special" employee. Mr. Clifton said there were 220 special employees in the City because they were all special and they all served the community very well and did an excellent job of servicing the 29,000 external customers throughout Newark. He thought they needed to service their 220 internal employees as well. He said he was really taken aback by the request and suggested looking at some other issues that were happening in the City. He concluded by saying to grant the request was a de facto change in policy and he did not want to see that unless Council voted to change the policy to 20 or 21 years of service for everyone.

15. Mr. Clifton commented that everyone was aware the City Manager would be leaving in March and the City Secretary would be leaving in February, which left Council with a recruitment process they needed to move forward with. He said he spoke with the City Solicitor and asked him to comment on how to start the process and whether it should be done publicly or in executive session.

Mr. Akin advised that under the open government provisions of FOIA and under the state open meeting law, he believed when Council was focusing on process and/or general attributes they were looking for when replacing individuals, that needed to be done in public because under FOIA the public had the right to know the criteria Council would use in establishing their selection processes. If the discussion turned to a frank critique or observations on existing staff, it was the public policy of the state that those matters dealing with the competency and abilities of individual employees should be discussed in an executive session. If Council should agree on a short list of candidates for either or both positions, the interview process could be done in an executive session.

Mr. Clifton said he wanted to be clear on the approach they needed to take and asked for this item to be put on the next agenda for public discussion as well as an executive session. Mr. Pomeroy agreed and said he assumed by putting it on the agenda, it was an opportunity for the public to share their thoughts. Mr. Clifton said although the City Manager's position was their decision to make, it was everyone's City Manager so he assumed it would be appropriate to get the public's thoughts on what they expected for the future administration. Mr. Pomeroy thought they owed that to the public and felt it was a good recommendation.

Mr. Athey pointed out that the decision they needed to make now was do they hire a recruiting firm or do it themselves with the help of staff. He thought if they were asking for input into that decision, they needed a document listing the scenarios for the public to see so they have an educated opinion when they step up to the microphone.

Mr. Funk said he gave this a lot of thought and did not think they should be rushing into anything and questioned why do anything before they complete

the management study they had previously discussed. He also claimed business professionals all over the state have told him that during the reservoir litigation was not the time to bring in a new City Manager, and they should try to have an interim City Manager to get them through the litigation. He felt there would be a lot of good things to talk about in two weeks.

Mr. Pomeroy said that based on the feedback from Mr. Akin, there was clearly an important public component to what they do. He did not think it would take away any opportunities that were brought up by placing the discussion on the agenda. He did not feel the haste with which they move would mean they had to come to a decision quickly.

Mr. Tuttle added that not only had it been 21 years since a manager was selected, it was more than that since they selected a City Secretary. He thought the positions were very distinct and the processes may well be distinct so it would also be helpful to talk through the City Secretary position. He saw no reason for a management study to stand in the way of selecting a City Secretary.

Mr. Markham agreed they needed to get started and he had no objections to it being on the next agenda. He cautioned they could have so much conversation that they may have to have a separate meeting to deal with the process.

Mr. Funk added that he was impressed with Pat Fogg's resume and one thing they would have to decide was whether they had to do a search for the City Secretary position. Mr. Athey suggested putting that position on the agenda for discussion as well, and thought in many ways the position was as important as the City Manager's position.

16. Messrs. Athey and Markham recognized Senator Sorenson.

17. Mr. Athey complimented the Taste of Newark and the Open House held for the Police Department.

18. Mr. Athey advised that a Main Street Forum hosted by the Friends of Newark was scheduled for November 10th. Donovan Rypkema, an expert on economic revitalization, was the invited speaker.

19. Mr. Markham complimented the Taste of Newark.

20. Mr. Markham advised that he attended the Reservoir Dogs event held at the reservoir. He would like to see more events at the reservoir.

21. Mr. Markham said he received a compliment about the South Chapel Street changes made by Commerce Bank, which has made a big difference at that intersection.

22. Mr. Markham complimented the Open House at the Police Department. He learned there was no security camera for the parking lot at the reservoir and hoped that could be accomplished. He also thought it would be nice to get more lighting at the reservoir (such as on the tower) to give the police a better view across the reservoir itself.

23. Mr. Markham reported that the sidewalks along the reservoir were about half way done along the Nonantum side.

24. Mr. Funk commented on the Taste of Newark. He complimented the team that put it together every year and said they were a fantastic group to work with. He thought a major component of the Taste of Newark was the fact that the students (68) were actively involved and it was a time when the students, the community, and the businesses come together, and he was proud of that effort.

25. **4. ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

26. **5. RECOMMENDATIONS ON CONTRACTS & BIDS:**

A. Contract 07-14, Demolition of the Curtis Paper Mill Structures

Ms. Houck summarized her memorandum to the City Manager, dated September 27, 2007, wherein she explained the contract provided for the final demolition of the remaining structures at the former Curtis Paper Mill with the exception of the smokestack. All structures would be removed to the foundation of each building or area. Seven sealed bids were received and five were considered to be responsible. A pre-award meeting was held with the three lowest bidders to confirm understanding and approach to the demolition project. Ms. Houck recommended that Contract 07-14 be awarded to JMC Contractors, Inc. for the total bid of \$108,400.

Mr. Clifton asked what was required in the bid security to which Ms. Houck said they have to put up 5% of their bid in a certified check or a bid bond.

Mr. Pomeroy asked what was being left as it related to the foundation, and Ms. Houck said it would be the foundation itself. Otherwise, they would have to enter into an environmental program and that was something the City did not want to do.

Mr. Athey asked what percentage of the total cost was for putting the gravel down. Ms. Houck said the gravel would be broken up material from the site and would be used to level it off at this point in time. They would like to wait until after the smokestack was done before any placement of fill was put down.

Mr. Markham asked how much brick would be saved to which Ms. Houck said it would be three pallets which would be made available to the preservation contractor.

MOTION BY MR. MARKHAM, SECONDED BY MR. TUTTLE: THAT CONTRACT 07-14, DEMOLITION OF THE CURTIS PAPER MILL STRUCTURES, BE AWARDED TO JMC CONTRACTORS, INC. FOR THE TOTAL BID OF \$108,400.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

27. **5-B. CONTRACT 07-16, PURCHASE & INSTALLATION OF FORENSIC VIDEO ENHANCEMENT SYSTEM**

Ms. Houck summarized her memorandum to the City Manager, dated September 27, 2007, wherein she explained that one sealed bid, Ocean Systems, was received in the amount of \$49,955. Funds were available from a State of Delaware SLEAF grant awarded to the Police Department. Ms. Houck recommended that Contract 07-16 be awarded to Ocean Systems for the total bid of \$49,955.

MOTION BY MR. OSBORNE, SECONDED BY MR. TUTTLE: THAT CONTRACT 07-16, PURCHASE & INSTALLATION OF FORENSIC VIDEO ENHANCEMENT SYSTEM, BE AWARDED TO OCEAN SYSTEMS FOR A TOTAL COST OF \$49,955.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

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

- A. Bill 07-24 - An Ordinance Amending Ch. 7, Building, By Adopting the 2006 International Building Code with Supplements, the 2006 International Plumbing Code with Amendments Thereto, the 2006 International Mechanical Code with Amendments Thereto & the 2006 International Residential Code for One and Two Family Dwellings

Ms. Lamblack read Bill 07-24 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. POMEROY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-24.

Mr. Sciulli provided a brief summary of Bills 07-24, 29, 30, 31 & 33. He explained that currently the City enforced the 2000 edition of the International Codes. Since the adoption of that edition, the series has undergone two revisions with numerous supplements and amendments.

The International Energy Conservation Code was being adopted by the City for the first time. This will make Newark the only jurisdiction in the state to have this Code. Mr. Sciulli thought this would go a long way to start the City on the road to green building.

A major change had to do with violations to the Code. Violations will no longer be criminal offenses. They will be civil violations meant to be corrected within a specific timeframe. The Alderman's Court would impose fines for noncompliance. Mr. Funk asked if that meant the building inspector would now have the right to issue tickets. Mr. Sciulli said they were working on an "instant ticket" which was similar to a parking ticket.

Mr. Sciulli said he recommended fee changes that were consistent with previous changes approved by Council.

The graffiti and sprinkler ordinances were now a part of the Code. There were also several housekeeping amendments. For instance, the requirement to provide a new home warranty was relocated from the International Building Code to the International Residential Code. Also, the section (Sec.7-15) providing for maintenance of parking lots was moved from the International Building Code to the International Property Maintenance Code. The sprinkler ordinance adopted by Council has been tweaked to avoid any confusion as to its content—the phrase "cubical content" was replaced by "square footage," a more accepted term in the construction industry when quantifying renovated areas.

Mr. Clifton supported the "instant ticket" process that he thought would be more effective and encouraged voluntary compliance. He was also pleased to see that violations would not be criminal because he thought that it was overkill to give somebody a criminal record for certain types of violations. Mr. Clifton expressed concern in that he hoped there were no significant changes that Council may not be aware of until a problem arose and they discover a change occurred because of the adoption of this series. For example, there was a time when a property owner was permitted to have one unregistered vehicle parked on his/her property and that got changed unbeknownst to Mr. Clifton. He said he was concerned more with the sprinkler ordinance, which Mr. Sciulli alluded to when he summarized the changes. Mr. Sciulli said the only change to the sprinkler ordinance was to better define it because he never heard of designating a renovation to a property in cubical content. It should be either linear or square footage.

Mr. Markham asked how could they make sure there would not be unforeseen consequences because something got changed when they updated

the Code. Mr. Sciulli assured Council that most of the amendments were normal substitutes, i.e., substituting “City of Newark,” “Code Official” for director, etc. He did not think there were any monumental changes in the intent of what Council had put in previous codes.

Mr. Clifton reiterated that his concern was that they don’t adopt a boilerplate generic plan of ordinances that would actually usurp what Council may have spent a lot of time in many different arenas “crafting at the table.” Mr. Sciulli felt that 98% of the changes were strictly semantics.

Mr. Markham asked if the 2006 edition was compared to the 2000 edition and the changes that were made. Mr. Sciulli said the amendments made to the 2000 edition were carried over. He claimed the one big change in the 2006 edition that was not in the 2000 or 2003 editions was that “A” (assembly) occupancies – restaurant, night club, theater, church and stadium – if there were less than 50 people in an “A-4” (restaurant) that is no longer a restaurant in the eyes of the Code and becomes a “B” use group.

Mr. Athey pointed out that if the scenario of an unintended consequence occurred, there was the Board of Building Appeals where a waiver could be granted.

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 – Tuttle, Osborne, Pomeroy, Funk, Clifton, Athey, Markham.
Nay – 0.

(ORDINANCE 07-27 – Effective 1/1/2008)

29. 6-B. BILL 07-27 -AN ORDINANCE AMENDING CH. 14, FIRE PREVENTION, BY ADOPTING THE 2006 INTERNATIONAL FIRE CODE & SUPPLEMENTS, WITH AMENDMENTS THERETO

Ms. Lamblack read Bill 07-27 by title only.

MOTION BY MR. CLIFTON, SECONDED BY MR. ATHEY: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-27.

Mr. Sciulli advised that there was a state fire prevention regulation and the International Fire Code in no way negated that regulation, and it did not need to be adopted as a part of the City Code because it was state law. If there were any contradictions between the State Fire Prevention Code and this Code, the more stringent Code would apply.

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 – Tuttle, Osborne, Pomeroy, Funk, Clifton, Athey, Markham.
Nay – 0.

(ORDINANCE 07-28 – Effective 1/1/2008)

30. 6-C. BILL 07-30 – AN ORDINANCE AMENDING CH. 17, PROPERTY MAINTENANCE CODE, BY ADOPTING THE 2006 EDITION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE WITH SUPPLEMENTS

Ms. Lamblack read Bill 07-30 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR. TUTTLE: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-30.

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

Mr. Sciulli advised that all the rental property information included in the previous Property Maintenance Codes have not been changed.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE 07-29 – Effective 1/1/2008)

31. 6-D. BILL 07-31 - AN ORDINANCE AMENDING THE CODE OF THE CITY OF NEWARK, BY ADOPTING THE 2006 INTERNATIONAL FUEL GAS CODE, WITH SUPPLEMENTS, WITH AMENDMENTS THERETO

Ms. Lamblack read Bill 07-31 by title only.

MOTION BY MR. ATHEY, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-31.

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 – Tuttle, Osborne, Pomeroy, Funk, Clifton, Athey, Markham.
Nay – 0.

(ORDINANCE 07-30 – Effective 1/1/2008)

32. 6-E. BILL 07-33 - AN ORDINANCE AMENDING THE CODE OF THE CITY OF NEWARK, BY ESTABLISHING A NEW CHAPTER 6, ENTITLED ENERGY CONSERVATION CODE, BY ADOPTING THE 2006 INTERNATIONAL ENERGY CODE, WITH SUPPLEMENTS & WITH AMENDMENTS THERETO

Ms. Lamblack read Bill 07-33 by title only.

MOTION BY MR. OSBORNE, SECONDED BY MR. MARKHAM: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-33.

Mr. Markham asked if this ordinance was similar to the LEED program that the Conservation Advisory Commission recommended. Mr. Sciulli said it did not

use LEED criteria. The Energy Conservation Code was founded on the principals intended to establish provisions consistent with the scope of the Conservation Code. It does not unnecessarily increase constructions costs, and provisions do not restrict the use of new material or other methods and does not give preferential treatment to a typical type of class of materials. Mr. Sciulli added that the International Code counsel was working to develop a standard that would incorporate LEED criteria.

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 – Tuttle, Osborne, Pomeroy, Funk, Clifton, Athey, Markham.
Nay – 0.

(ORDINANCE 07-31 – Effective 1/1/2008)

**33. 6-F. BILL 07-34 - AN ORDINANCE AMENDING CH. 11,
ELECTRICITY, BY ESTABLISHING A NEW
ELECTRIC RATE TARIFF REFERRED TO AS
SERVICE CLASSIFICATION “ED” – ECONOMIC
DEVELOPMENT**

Ms. Lamblack read Bill 07-34 by title only.

Mr. Pomeroy explained that he was very interested in economic development and helped form the Greater Newark Network where they discussed how to promote economic development that complimented all the other things the City and Council were doing. His group focused more on industry, and talked to folks at the Delaware Technology Park and individuals who were trying to promote and bring in the high tech and the biotech industries, which were the industries of the future and needed to be in Newark and kept in Newark. They learned that businesses that use wet laboratories require availability and reliability of power so they have been working on the consistency of power. They discussed how they were able to control their electric costs. As a result, the new electric rate tariff referred to as service classification ED was proposed.

Mr. Pomeroy believed this added another component to what the City already had in its “toolbox” to affect positive outcomes in the area of economic development. This ordinance would affect business expansion and business retention. He expressed his appreciation to staff and Council for willing to take a look at this in terms of not just the expansion tool but also the retention tool.

Mr. Pomeroy continued by saying he thought Newark should be a place that wanted to do good business but also a place that did smart business. The kind of companies he would like to see in Newark were the kind that appreciated being in Newark and brought value to the area and wanted to be good community players. He claimed that while working with the Greater Newark Network, he learned there was a real appreciation for the fact that consuming electricity was important to businesses and it helped control their bottom line. Those businesses were also excited to hear about the City’s plans regarding LEED, recycling, etc. He concluded by saying this new classification was something the City should do for economic growth and retention.

MOTION BY MR. POMEROY, SECONDED BY MR. CLIFTON: THAT THIS BE THE SECOND READING AND FINAL PASSAGE OF BILL 07-34.

The chair opened the discussion to the public.

Jean White, 103 Radcliffe Drive, asked if one of the reasons this was proposed was because of possible changes at the Chrysler site. She was advised that Chrysler did not receive electricity from the City. However, that did not mean in the future the City couldn't supply electricity to that site.

Mr. Pomeroy added that the origin of looking at the economic development issue in general was the recognition of the fact that there was a dynamic shift in what the City could do to try and recruit the type of businesses it would like to have in Newark. That was why this ordinance was targeted for lands zoned for economic growth and expansion or lands that could be rezoned for that purpose.

Ms. White asked why the ordinance included existing industrial research businesses and who were the existing "P" rate customers that would qualify for the ED rate. Mr. Pomeroy said this rate would apply to new customers who meet the revenue threshold, or existing customers that expand to a level where they would meet those thresholds. He further said the idea was if an existing company was considering expansion, rather than moving to another location outside of the City, they would stay at their existing site and if they met the threshold they would get the ED classification.

Ms. White asked if there was any occupant at the Delaware Technology Park that currently met the criteria. Mr. Pomeroy said that nobody met the criteria at this time. Messrs. Funk and Clifton added that there was a real incentive to do this because of the major relocation by the Army from Fort Mammoth to Aberdeen and there were companies involved in that relocation looking in the Newark area for sites. This would give a competitive advantage over the County.

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

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(ORDINANCE 07-32)

34. **7. RECOMMENDATIONS FROM THE PLANNING COMMISSION/DEPT.**
None

35. **8. ORDINANCE FOR FIRST READING:**
A. Bill 07-35 - An Ordinance Amending Ch. 2, Administration, Article III, Alderman, By Revising Certain Wording Regarding Probation Before Judgment

Ms. Lamblack read Bill 07-35 by title only.

MOTION BY MR. TUTTLE, SECONDED BY MR. ATHEY: THAT THIS BE THE FIRST READING OF BILL 07-35.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 10/22/07)

36. 8- B. BILL 07-36 - AN ORDINANCE AMENDING CH. 2, ADMINISTRATION, ARTICLE III, ALDERMAN, BY BRINGING THE CODE INTO CONFORMITY WITH STATE LAW AS IT RELATES TO THE APPOINTMENT OF ALDERMAN & DEPUTY ALDERMAN FOR THE CITY OF NEWARK

Ms. Lamblack read Bill 07-36 by title only.

MOTION BY MR. OSBORNE, SECONDED BY MR. CLIFTON: THAT THIS BE THE FIRST READING OF BILL 07-36.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

(2ND READING 10/22/07)

37. 9. ITEMS SUBMITTED FOR PUBLISHED AGENDA:

A. Council Members: None

38. 9-B. COMMITTEES, BOARDS & COMMISSIONS:

1. Appointment to DNP Parking Committee (Mayor Appt.)

MOTION BY MR. POMEROY, SECONDED BY MR. OSBORNE: THAT DENNIS MCFARLAND, FINANCE DIRECTOR, BE APPOINTED TO THE DNP PARKING COMMITTEE.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

39. 9-C. OTHERS: None

40. 10. SPECIAL DEPARTMENTAL REPORTS:

A. Special Reports from Manager & Staff:

1. Pension Fund Performance Report through June 30, 2007

Mr. Clifton noted that it was the 2nd quarter report but it went from January 1 through June 30, 2007. He was told the report was for the first two quarters. Mr. Clifton asked what was meant by “lump sum payments.”

Mr. McFarland said they were lump sum payments made from the invested mutual funds into the principle account in order to make benefit payments.

Mr. Clifton asked about the \$40,000 in actuarial expenses and if that could be done internally. Mr. McFarland said the plan required an actuary to do the studies and the City did not have the in-house expertise to do those kind of studies.

Mr. Markham asked if performance was above spec, and the City has never had to pull money out before, why would they have to pull money out now. Mr. McFarland explained that the fund level now was worth about 80%. Mr. Markham asked if less people were contributing and more people withdrawing. Mr. McFarland explained that it was also because of the shift between when folks were retiring and starting to withdraw their benefits. Year by year the funds have performed as well as the benchmark, but they haven't performed as well as what the actuarial studies were telling the City they would in 1999 and 2000.

Mr. Markham asked if they would have to continue to draw money. Mr. McFarland said that ultimately it would be the result of what was contributed and what the fund's performance is. The general practice has been to put contributions into the plan (both the employee and the City contribution) per what the actuary tells them to put in. It could take a long time to get back to where they want to be if you simply follow the actuary's recommendation. If you want to get back faster than that, you have to put more money in than what they recommend and the market has to have a number of good years.

Mr. Markham asked if money would have to be taken out for the next quarter. Mr. McFarland said no because they completed the City's annual contribution.

Mr. Zusag explained that there were now more retirees (140) and that was part of the reason for having to take money out. When there were only 20 retirees, the employee and City contributions covered that. Because they were paying out more in benefits, it finally exceeded the annual contributions and therefore they needed to transfer money from Russell into Principal.

Mr. Clifton asked how many more retirees were there every year. Mr. Zusag said there were some years when there were 12-15 retirees and some years when there were less than 10. This year there were less than 10. Mr. Clifton asked how the actuary balanced that considering there were employees who could have retired seven to eight years ago but were still working.

Mr. McFarland added that an actuarial study was done every year and they look at what the City's experience has been up to that point in time and project a retirement rate on a prospectus basis and they do a projection on the rate of retirements in the future. That was another reason an actuarial firm was needed.

MOTION BY MR. CLIFTON, SECONDED BY MR. MARKHAM: THAT THE 2ND QUARTER PENSION PLAN PERFORMANCE REPORT BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

41. 10-B. ALDERMAN'S REPORT

MOTION BY MR. POMEROY, SECONDED BY MR. MARKHAM: THAT THE ALDERMAN'S REPORT DATED OCTOBER 2, 2007 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

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

42. Meeting adjourned at 9:08 pm.

Susan A. Lamblack, MMC
City Secretary

/pmf

