

**CITY OF NEWARK  
DELAWARE  
COUNCIL MEETING MINUTES  
April 28, 2014**

Those present at 5:30 p.m.:

Presiding: Mayor Polly Sierer  
District 1, Mark Morehead  
District 2, Todd Ruckle  
District 3, Rob Gifford  
District 4, Margrit Hadden  
District 5, Luke Chapman  
District 6, A. Stuart Markham

Staff Members: City Manager Carol Houck  
City Secretary Renee Bensley  
City Solicitor Bruce Herron  
Public Works and Water Resources Director Tom Coleman  
Community Affairs Officer Dana Johnston  
Deputy City Manager Andrew Haines  
Finance Director Lou Vitola  
Planning & Development Director Maureen Feeney Roser

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- A.** Executive Session pursuant to 29 *Del. C.* §10004 (b)(2) for the purpose of discussions on site acquisitions for publicly funded capital improvements.
- B.** Executive Session pursuant to 29 *Del. C.* §10004 (b)(4) and (6) for the purpose of a strategy session involving legal advice or opinion from an attorney-at-law with respect to pending or potential litigation and discussion of the content of documents, excluded from the definition of “public record” in 29 *Del. C.* §10002 where such discussion may disclose the contents of such documents.
- C.** Executive Session pursuant to 29 *Del. C.* §10004 (b)(6) for the purpose of discussion of the content of documents, excluded from the definition of “public record” in 29 *Del. C.* §10002 where such discussion may disclose the contents of such documents.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: TO REMOVE ITEM A FROM THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.  
Nay – 0.

Council entered into Executive Session at 5:30 p.m. and returned to the table at 7:00 p.m. Ms. Sierer advised that no action was necessary at this time.

- 1.** The regular Council meeting began at 7:00 p.m. with a moment of silent meditation and the Pledge of Allegiance.

- 2.** MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: TO MOVE ITEMS 5A1 AND 5A2 TO THE BEGINNING OF THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.  
Nay – 0.

- 3.** **5-A-1. RESOLUTION 14-P: RETIREMENT OF LINDA SPRINTZ, CLERK/TYPIST**

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**5-A-2. RESOLUTION 14-Q: RETIREMENT OF NANCY WRIGHT, CLERK/TYPIST**

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**07:30**

Retirement resolutions for Linda Sprintz and Nancy Wright were unanimously endorsed by Council and presented by Mayor Sierer.

4. MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: TO REMOVE ITEM 9A FROM THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.  
Nay – 0.

5. 1. **ITEMS NOT ON PUBLISHED AGENDA:**  
A. Public

**13:37**

**Jeff Lawrence**, District 3, was disappointed he was unable to attend the 4/15/14 Council meeting due to it being rescheduled for the Council election.

**Brett Zingarelli**, District 4, expressed concern about the expansion of powers of the executive branch of the City.

**John Morgan**, District 1, reported on an upcoming UD Faculty Senate resolution regarding TDC and discussed power needs of the project.

**Melanie Cords**, District 1, expressed concern about the power plant.

**Carol McKelvey**, District 4, reported that the UD Board of Trustees do not own property or reside in Newark with the exception of the new Provost.

**Natasha Ortega**, District 5, wanted the zoning verification revoked for TDC.

**Bea Greenhill**, District 5, asked the City to revoke the zoning verification for TDC.

**Susan Eggert**, District 3, requested revocation of the zoning verification.

**Miranda Wilson**, District 4, asked for the City's public sponsorship of TDC's DEDO grant application to be withdrawn and that the zoning verification be rescinded.

**Bernard August**, a non-resident, opposed the power plant due to health risks.

**Anne Maring**, District 1, asked that the zoning verification be revoked.

**Margaret Cassling**, District 1, requested revocation of the TDC zoning verification.

**David Cassling**, District 1, did not object to a data center but opposed a power plant.

**Gary Loikith**, Newark, asked that TDC's zoning verification be withdrawn.

**Nancy Willing**, Barksdale Estates, discussed various issues regarding TDC including the health impact.

**John Freer**, Wilmington, urged the City to maintain its sponsorship and support the proposed data center.

**Pat Wisniewski**, District 3, challenged the University to be a good neighbor by looking to the future and not going back to fossil fuel at the data center.

**Karla Bell**, District 5, asked Council to withdraw the zoning verification for TDC.

**Karen Barker**, District 3, asked the City to withdraw its sponsorship of the DEDO grant application for TDC and revoke the zoning verification.

**Rebecca Powers**, District 3, supported Mr. Morehead's request that the City revoke TDC's zoning verification.

**Jackie LeGasse**, District 3, asked that the City's public sponsorship of the DEDO grant be withdrawn.

**Rebecca Arenson**, District 3, asked that Council revoke the TDC zoning verification and withdraw public sponsorship.

**Kathleen Obarski**, District 3, urged the City to examine all the facts regarding TDC and look beyond the economic benefits.

**David Obarski**, District 3, asked whether UD's assertions they would not be a thermal host or power plant customer were part of the zoning process or the DEDO grant.

**Jen Wallace**, District 3, asked Council to withdraw the zoning verification for TDC.

**Kris Lynn**, non-resident, expressed concerns about pollution, noise and the detrimental impact of TDC.

**Ron Walker**, Kells Avenue, urged Council to re-examine the power plant issue.

**Matt Doyle**, District 1, asked if the power plant was being traded for a substation.

**Nick Wasileski**, District 3, questioned how TDC's project was compatible with UD's commitment to sustainability and the STAR campus master plan.

**Margaret Latronico** spoke as an advocate for children's health in Newark.

**Amy Roe**, District 4, confirmed the City received a response from Mr. Beringer of Duffield Associates and read a statement from State Representative John Kowalko asking the City to withdraw zoning verification for the TDC proposal.

**Cathy Rookard**, Academy Hill, asked Council to withdraw the zoning verification.

**David Stockman**, Orchard Road, requested that Newark be removed as a sponsor for the TDC grant application and that the zoning verification be rescinded.

**Len Schwartz**, District 3, discussed financing for the TDC project.

**Baharah Barkhoud**, District 1, asked Council to revoke the zoning verification for TDC and withdraw the public sponsorship of the DEDO grant application.

**Amir Hagnight**, District 1, asked Council to revoke the TDC zoning verification.

**Vince D'Anna**, District 5, did not think Council had the authority to withdraw the zoning verification.

**Suzanne Beadle-Hurd**, Arbour Park, shared concerns about the close proximity of her home to the proposed power plant.

**Donna Means**, District 5, asked Council to rescind the zoning verification.

**Yong Peng**, a non-resident, discussed radioactivity and asked Council to revoke the zoning verification.

**David Carter**, Delaware Audobon, encouraged the City to get the Governor involved in addressing this statewide issue, deny the zoning and build a better alternative.

**Brian Dunigan**, District 3, encouraged residents to become educated on power plant issues regarding air emissions, gas pipelines, noise and water use.

**Catherine Spence**, West Park Place, wanted the zoning verification revoked and discussed UD's plans for the STAR Campus.

**Ajit Majmudar**, District 4, thanked Mr. Chapman for helping residents and commented about crime in the City, democracy and the power of the City Manager.

6. **1-B. ELECTED OFFICIALS**: None

7. **1-C-1. UNIVERSITY**

**02:24:05**

(1) Administration – Caitlin Olsen, UD Assistant Director of Government Relations, reported on several events open to the community and provided a summary of the teach in topics. In regard to the City's request for the University's lease with TDC, Mr. Herron advised the University declined to provide a copy.

8. **1-C-2. STUDENT BODY REPRESENTATIVE**: None

9. **1-D. COUNCIL MEMBERS**

**02:28:04**

**Mr. Ruckle**

- Suggested the community consider whether they would support the TDC project if it could be constructed without adding pollution.

**Mr. Morehead**

- Attended the teach in of the sustainability task force.
- Asked the status of getting the definition of neighborhood and accessory use to Council. Ms. Feeney-Roser hoped to have the information prior to the next meeting.

**Mr. Markham**

- Attended Ag Day at the University.
- Watched the video of the UD teach in. He was pleased with the engagement of the University in this matter.

**Ms. Hadden**

- Attended the Professional Women in Business luncheon which was a good networking opportunity for the City, a rail car safety meeting, the Cherry Hill Manor annual meeting, the Traffic Committee meeting, and the teach in at the University.

**Mr. Gifford**

- Went to the teach in and was pleased UD provided information to the community.
- Welcomed public participation at tonight’s meeting.
- Was reading through the time line and looking at the facts presented to the community regarding TDC and wanted to speak with the environmental consultant.
- Attended the rail car meeting and was concerned by some of the response plan.

**Mr. Chapman**

- The traffic calming mock up for Country Club Drive would be ready soon.
- Regarding concerns about speeding on New London Road, the City was considering spraying the road surface with cautionary messaging.
- Corbett Street would be repaved this year.
- Traffic issues from New London Road onto Cleveland Avenue should improve with a change in signal timing.

**Ms. Sierer**

- Thanked John Morgan for the teach in video.
- Attended the Jefferson Awards where two Newark High students were recognized for their community service projects.

**City Manager Houck**

- Mr. Coleman, Director of Public Works and Water Resources, confirmed the City was awarded the surface water grant for the City’s Storm Water Master Plan from DNREC. With the matching grant of \$136,000, a survey of the entire storm water system would be conducted and a database built.

10. 2. **ITEMS NOT FINISHED AT PREVIOUS MEETING:** None

11. 3. **ORDINANCES FOR SECOND READING & PUBLIC HEARING**

A. **Bill 14-14** – An Ordinance Amending Chapter 20, Motor Vehicles, Code of the City of Newark, Delaware, By Adding South Main Street to the Designated Emergency Snow Removal Routes

**02:39:00**

Ms. Bensley read Bill 14-14 by title only.

MOTION BY MS. MARKHAM, SECONDED BY MR. MOREHEAD: THAT THIS BE THE SECOND READING AND PUBLIC HEARING FOR BILL 14-14.

Ms. Houck reported this was a name change to South Main Street and would provide the same opportunities for South Main Street as were established for the other snow emergency routes. No change was required in signage.

**Public Comments:**

Brett Zingarelli, District 4, felt there was no need for this legislation since there was no parking on South Main Street.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 7 TO 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer  
Nay – 0.

**(ORDINANCE NO. 14–13)**

12. 4. **RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:** *None*

13. 5. **ITEMS SUBMITTED FOR PUBLISHED AGENDA:**

**A. Council Members:**

1. **Resolution 14-\_\_:** Retirement of Linda Sprintz, Clerk/Typist  
(See Item #2)

14. **5-A-2. RESOLUTION 14-\_\_:** RETIREMENT OF NANCY WRIGHT, CLERK/TYPIST  

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*(See Item #2)*

15. **5-A-3. RESOLUTION 14-\_\_:** RULES OF PROCEDURE FOR THE 2014-2015 COUNCIL YEAR  

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**02:49:08**

Ms. Bensley presented the resolution which was identical to the resolution passed by Council at its 2/24/14 meeting. Several changes were suggested by Council and staff including adding an agenda item for *City Manager* immediately after *Council* in the *Items Not on the Published Agenda* section, adding an agenda item for a Legislative Update by the City's lobbyist, placing a three minute time limit on the *Elected Officials* subsection of *Items Not on the Published Agenda*, moving the *Special Departmental Reports* section to an earlier position on the agenda to reduce overtime and compensatory time required for staff to attend the meetings, and reconsideration of categories open to public comment on the agenda. Any changes made would be reflected in the 5/12 Council agenda. Ms. Bensley pointed out that none of these items were in the resolution as it stood and the resolution would have to be amended to include any of the items.

**Council Comments:**

There should not be a time limit for *Elected Officials*. There should be an item for the *Lobbyist* (2-E). Move the *Special Departmental Reports* earlier. When UD has a prepared presentation, include that on the agenda in order to plan timing for the meeting. Move staff to item 4. Regarding public comment time, the more succinct and clear that ideas can be shared, making for a better process. The City Manager should speak at the meeting because she is the CEO of the City making the day-to-day decisions. People speaking for a group should be encouraged to identify themselves as such.

**Public Comments:**

**John Morgan, District 1**, agreed it would be disrespectful to limit the speaking time for public officials and felt it was helpful to allow applause.

**Carol McKelvey, District 4**, said the public did not have access to the item being discussed (was linked to the website).

**Amy Roe, District 4**, wanted the public comment time limit to be five minutes.

**Brett Zingarelli, District 4**, believed the City Manager should address Council from the floor.

**Melanie Cords, District 1**, wanted a five minute time limit for public comment.

**Jen Wallace, District 3**, thought the public comment time limit should be five minutes. She did not think the agenda should include City Manager comments.

**Natasha Ortega, District 5**, said public comment should have a five minute time limit with ceding time as an option. She did not think the City Manager should sit at the table with Council and said a special meeting should be set for TDC.

**John Morgan, District 1**, believed speakers should be able to get their thoughts out in three minutes, particularly if they prepared a written statement beforehand. He felt it was good to hear from the City Manager more often.

**Sherry Hoffman, District 4**, felt the issue of ceding time was problematic and believed a five minute limit per speaker with no ceding would facilitate better control over the length of public comment.

**Donna Means, District 5**, contacts Council members when she has issues and appreciates the opportunity for public comment.

**Nancy Willing, Barksdale Estates**, said the point of most public comment was to put it on the record. Statements from groups should be so identified. She asked for further discussion about clapping.

**Jen Wallace, District 3**, agreed that people should identify themselves when they spoke representing a group.

**Brian Cords, District 1**, would like speakers to identify if they are City residents.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: TO AMEND THE RULES OF PROCEDURE TO ADD AN AGENDA ITEM FOR THE CITY MANAGER BEFORE THE COUNCIL MEMBER SECTION ON THE ITEMS NOT ON A PUBLISHED AGENDA SECTION.

MOTION PASSED. VOTE: 5 to 2.

Aye – Chapman, Hadden, Markham, Ruckle, Sierer

Nay – Gifford, Morehead.

MOTION BY MR. CHAPMAN, SECONDED BY MR. MARKHAM: ADD AN AGENDA ITEM FOR A LEGISLATIVE UPDATE BY THE CITY'S LOBBYIST UNDER THE SECTION ITEMS NOT ON A PUBLISHED AGENDA AND PRIOR TO CITY MANAGER AND COUNCIL MEMBER COMMENTS.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer

Nay – 0.

MOTION BY MR. MOREHEAD, SECONDED BY MR. MARKHAM: MOVE SPECIAL DEPARTMENTAL REPORTS TO ITEM #4 ON THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer

Nay – 0.

MOTION BY MR. MOREHEAD, SECONDED BY MR. GIFFORD: TO CHANGE THE TIME LIMIT FOR PUBLIC COMMENT FROM THREE MINUTES TO FIVE MINUTES.

MOTION FAILED. VOTE: 2 to 5.

Aye – Gifford, Morehead

Nay – Chapman, Hadden, Markham, Ruckle, Sierer

AMENDMENT BY MR. MARKHAM: TO OPEN PUBLIC COMMENT TO FIVE MINUTES WITH NO CEDING OF TIME.

AMENDMENT FAILED – NO SECOND.

MOTION BY MR. GIFFORD, SECONDED BY MR. MARKHAM: TO CHANGE THE TIME LIMIT FOR PUBLIC COMMENT FROM THREE MINUTES TO FIVE MINUTES WITHOUT CEDING TIME.

MOTION FAILED. VOTE: 3 to 4.

Aye – Gifford, Markham, Morehead

Nay – Chapman, Hadden, Ruckle, Sierer

MOTION BY MR. MARKHAM, SECONDED BY MS. HADDEN: THAT THE RESOLUTION BE APPROVED AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer

Nay – 0.

**(RESOLUTION NO. 14-R)**

**16. 5-A-4. RULES OF DECORUM**

**03:46:51**

Ms. Bensley reported that the Mayor requested consideration of an amendment to the Rules of Decorum. The amendment would add the following after the portion stating that remarks shall be directed to Council as a whole, not to staff or the public in attendance. "This would include notes passed to or individual conversations with Council members or staff members on the dais while the meeting is in session."

**Council Comments:**

Applause after every speaker made it difficult to run the meeting by hampering the ability of the Chair to control the meeting and added to the meeting length.

**Public Comments:**

**Melanie Cords, District 1**, said the entire community was impassioned about TDC and applause was appropriate.

**John Morgan, District 1**, felt occasional note passing from the public to Council could be an important way to communicate and was not disruptive.

**Pat Wisniewski, District 3**, believed democratic input should not be limited.

**Helga Huntley, District 1**, thought Council was trying to take politics out of government and applause was an efficient way for large groups to express their opinion.

**Nancy Willing, District 3**, was disturbed the public was allowed to applaud for the retirees and said Council should not begrudge the public for applauding on other items.

**Amy Roe, District 4**, discussed transparency and asked Council to make their e-mails to each other publicly available. She felt staff was disrespectful to Council.

No action was taken by Council.

**17. 5-A-5. DISCUSSION REGARDING THE WITHDRAWAL OF THE CITY OF NEWARK'S PUBLIC SPONSORSHIP OF DELAWARE ECONOMIC DEVELOPMENT OFFICE INFRASTRUCTURE GRANT APPLICATION ON BEHALF OF THE DATA CENTERS, LLC – COUNCILMAN MOREHEAD**

**04:07:54**

Mr. Morehead referenced a document he wrote that touched on four topics.

- Was the decision appropriately informed and considered? The conceptualized version of the proposed project was put forward – more than a year later the project was still somewhat undefined.
- Was the correct decision reached? The community and Council were split on the quality of life and the economic facts and the belief that the environmental concerns outweighed any economic possibility.
- Was the Council and public appropriately informed? Concern that as the City has been the public sponsor, the City was not taking an active role in clarifying misinformation presented and should do so and communication should be improved.
- Was the decision made by the correct entity having jurisdiction? The Charter was the enabling legislation and framework from the State. It takes the Code to say the City will do this or that, and Council's decisions happen within that enabling framework. The timeline for the State grant expired. TDC requested an extension. A lot of information changed from the original application. He proposed a motion on legal advice but Mr. Gifford came up with a better motion, so Mr. Morehead asked to discuss that motion.

Mr. Gifford echoed Mr. Morehead's comments about inconsistencies and changes and granting an extension. It would make sense to have the application updated and then make a decision on whether that document was something the City wanted to sponsor.

**Council Comments:**

Regarding the public sponsorship the City had to be consistent with different forms of businesses locating in the City. The infrastructure benefit was the sponsorship basis. How would residents feel if they had to bear the burden of a lawsuit? The City might want to hire a power needs expert when information became available.

**Public Comments:**

**John Morgan, District 1**, distributed a handout to Council and stated there was no need for the City to serve as the public sponsor of the project as many other agencies could do so. In regard to the pipeline he urged withdrawal of the City's public sponsorship and if TDC wanted the City to be the public sponsor, the routes must be defined.

**Afton Clarke-Sather, District 3**, did not think it was clear at this point if the decision was legally binding and whether the City had been a public sponsor. He felt the further the project went, the greater the chance for litigation.

**Helga Huntley, District 1**, urged Council to reconsider sponsorship of the TDC DEDO application, discussed the proposed new substation to be built by TDC and other infrastructure improvements, the power supply and jobs.

**Amy Roe**, District 4, said the FOIA requests she made revealed the information provided by Ms. Houck showed false claims.

**Vince D'Anna**, District 5, referenced litigation, urged Council to move carefully and discussed the infrastructure project, eminent domain and the City's government structure.

**Brett Zingarelli**, District 4, discussed the fear of litigation in regard to the power plant and DNREC's affiliation with Duffield and Associates on the project.

**Nancy Willing**, District 3, said the infrastructure funding was for the pipeline, not the substation. She did not think litigation would follow a lapsed endorsement.

**John Morgan**, District 1, noted Council should consider the inaccuracy in the DEDO application and said pro bono lawyers were available in the event of litigation.

**Miranda Wilson**, District 4, felt the information provided by TDC was inaccurate, contradictory and misleading.

**Vince D'Anna**, District 5, discussed eminent domain and asked if there would be a binding vote tonight as he believed it would have to be advertised.

**Donna Means**, District 5, thought Council had adequate public comment on whether the City should withdraw its public sponsorship of TDC.

**Brian Cords**, District 1, felt Council should be consistent and questioned whether the City wanted to be associated with TDC.

**Council Comments:**

Direct staff to find out the following: the location of the gas line routes from TDC; whether the infrastructure grant explicitly covered the substation; whether the routes were variable; was the public sponsorship in perpetuity regardless of the grant's expiration or had it expired; would the applicant be able to obtain an extension or would they have to re-apply? Mr. Herron's view of the Charter and the Code was that the City Manager had the authority to sign the contract. Mr. Markham would like questions answered that were put to staff before voting on the motion and had concerns about the report coming from the environmental consultant, DNREC is doing their work, UD has their working group in a month and their environmental review.

MOTION BY MR. GIFFORD, SECONDED BY MR. MOREHEAD: THAT COUNCIL REQUEST THAT TDC IMMEDIATELY SUBMIT AN UPDATED AND AMENDED APPLICATION TO THE DELAWARE INFRASTRUCTURE INVESTMENT COMMITTEE THAT REFLECTS ANY AND ALL CHANGES, UPDATES AND MODIFICATIONS TO THE INFORMATION AND STATEMENTS CONTAINED IN THE ORIGINAL APPLICATION. COUNCIL WILL THEN REVIEW THE AMENDED APPLICATION AT A FUTURE MEETING TO DETERMINE WHETHER THE PUBLIC SPONSORSHIP REQUIREMENTS OF THE PROJECT ARE SATISFIED. TDC WILL BE INVITED TO ATTEND THE MEETING.

Mr. Herron confirmed this was a legally noticed motion.

AMENDMENT BY MR. MOREHEAD, SECONDED BY MR. CHAPMAN: TO ADD IN THE SIXTH LINE AFTER ORIGINAL APPLICATION "INCLUDING THE ROUTES OF THE PROPOSED PIPELINE".

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer  
Nay – 0.

AMENDMENT BY MS. HADDEN, SECONDED BY MR. MOREHEAD: TO ADD "NEWARK CITY" TO "COUNCIL" IN THE FIRST LINE.

AMENDMENT PASSED. VOTE: 6 to 1.

Aye – Chapman, Gifford, Hadden, Markham, Morehead, Sierer.  
Nay – Ruckle.

AMENDMENT BY MR. GIFFORD, SECONDED BY MS. HADDEN: TO ADD "AND TO THE CITY" FOLLOWING "THAT TDC IMMEDIATELY SUBMIT AN UPDATED AND AMENDED APPLICATION TO THE DELAWARE INFRASTRUCTURE INVESTMENT COMMITTEE".

AMENDMENT PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.

Nay – 0.

Question on the Motion as Amended was called.

**Final Motion:**

MOTION BY MR. GIFFORD, SECONDED BY MR. MOREHEAD: THAT NEWARK CITY COUNCIL REQUESTS THAT TDC IMMEDIATELY SUBMIT AN UPDATED AND AMENDED APPLICATION TO THE DELAWARE INFRASTRUCTURE INVESTMENT COMMITTEE AND TO THE CITY THAT REFLECTS ANY AND ALL CHANGES, UPDATES AND MODIFICATIONS TO THE INFORMATION AND STATEMENTS CONTAINED IN THE ORIGINAL APPLICATION INCLUDING THE ROUTE OF THE PROPOSED PIPELINE. COUNCIL WILL THEN REVIEW THE AMENDED APPLICATION AT A FUTURE MEETING TO DETERMINE WHETHER THE PUBLIC SPONSORSHIP REQUIREMENTS OF THE PROJECT ARE SATISFIED. TDC WILL BE INVITED TO ATTEND THE MEETING.

MOTION AS AMENDED PASSED: VOTE: 5 to 2.

Aye – Chapman, Hadden, Gifford, Morehead, Sierer.

Nay – Markham, Ruckle.

**18. 5-B. OTHERS**

1. Legislative Update – Bob Maxwell, Lobbyist

**05:33:20**

Mr. Maxwell reported there were 22 legislative days left until the end of the session. The last two weeks of May were a critical time in regard to the payment in lieu of taxes issue. A number of programs were in question depending on the proposed gas tax increase. Mr. Maxwell was tracking legislation called the Urban Redevelopment Downtown Initiative which was \$7 million allocated to three projects in each county in the first phase and was designed to generate developer interest and could get to be as many as 15 projects. HB 230 was a consumer protection monitions process to collect unpaid debt and raised opposition by landlords and bankers – the bill was withdrawn but a substitute bill would be introduced. Ban the Box (for public employees) passed the House and was expected to pass in the Senate.

**Public Comments:**

**Nancy Willing, District 3**, said Mr. Maxwell was right about the Downtown Initiative and Wilmington was already very competitive in their districts about it. However, if Newark had something to submit they should since it was limited to one per County.

**19. 6. RECOMMENDATIONS ON CONTRACTS & BIDS:**

**20. 7. SPECIAL DEPARTMENTAL REPORTS:**

- A. Special Reports from Manager & Staff:
  1. Noise Ordinance Research – Director of Legislative Services

**05:50:42**

Ms. Bensley reviewed the memo. Several Council members expressed interest in amending the section of City Code pertaining to noise. The current noise level for all residential districts in Newark was 57 decibels (dB) 7 a.m. and 9 p.m. and 52 dB between 9 p.m. and 8 a.m. The San Diego, CA ordinance was proposed by Council members as an example to emulate in Newark.

The San Diego Code had a three-tiered residential designation and also three different time of day allocations. The designations pertained to density. The permitted sound levels had a difference of five dB between the three residential categories. There was also a gradual scaling of the sound level for a total range of ten dB between the three tiers. Comparatively, Newark currently had only one blanket residential category and two tiers in the scale for noise limits for the five dB range. In addition, San Diego used a one hour average sound level which would account for temporary increases in noise such as lawn equipment, sirens, etc. It would now allow for sound levels at higher levels than permitted over a longer period of time.

The noise ordinances for 17 other cities were pulled and used as comps from a university community survey based on the criteria of having populations of 25,000 –

49,999 and one university within their city. Several of these cities do not have specific decibel level noise ordinances. A lot of them will prohibit specific types of noise but there is no measurable sound levels assigned but they do have several categories of sound restricted in evening hours. The majority have a blanket residential category and noise limits that are significantly higher than San Diego.

The results of Ms. Hadden's testing were reviewed.

There were three items Council may want to consider. (1) Times in Newark City Code do not match as to the change from daytime to nighttime. Daytime is listed between the hours of 7:00 a.m. and 9:00 p.m. while nighttime is listed between the hours of 9:00 p.m. and 8:00 a.m. which leaves the hour of 7:00 a.m. to 8:00 a.m. under two designations. (2) Newark City Code has one blanket residential category at this time; Council may want to consider a multi-tiered residential category with different designated sound levels for each tier. (3) Given the information around the sound levels measured by Ms. Hadden and the comparative noise ordinances from other cities Council may want to direct staff regarding changes that members would like to be in City Code regarding permissible sound levels in a future bill for Council consideration.

**Council Comments:**

The study by Ms. Hadden was to check to see how close the Code was (and it was not even close), and to maintain the current sound levels in residential areas at night. She did not go down Main Street or into any industrial areas. Can we hear the sound difference between 40 and 45 dB – the City's current nighttime number is 52 (equivalent to a lawn mower running three houses away). Businesses located near residential neighborhoods – more data needed before making a decision to see if any will be affected by changing the noise ordinance. Task staff with that. Reduce to 40-45 dB from 9 pm to 7 am.

City Staff was given direction to adjust the overlap of times in the morning. Give them guidance on developing a bill to present to Council at a later date. Ms. Hadden was going to recommend dropping the nighttime level to 40 dB. Three different sections with different information – needs to be uniform.

**Public Comments:**

**John Morgan**, District 1, suggested further research and the issue to address was not the occasional disturbance but continued disturbances.

**Brett Zingarelli**, District 4, suggested adjusting the Handloff Park schedule with the noise schedule to avoid confusion since the basketball court lights were kept on until 10 p.m. He noted the skate park was getting used at 2 a.m. at the park where there were no lights.

**Jeff Lawrence**, District 3, discussed the proposed amendments and urged the City to look at the subject across the entire spectrum.

Ms. Sierer confirmed staff direction to take a look at the entire noise ordinance and review it (including the times and noise levels during the evening).

**21. MOTION BY MR. CHAPMAN, SECONDED BY MR. MOREHEAD: TO POSTPONE ITEMS 7-A-2, BOARDS AND COMMISSIONS APPLICATION PROCESS – DIRECTOR OF LEGISLATIVE SERVICES AND 7-A-3, BOARDS AND COMMISSIONS REVIEW COMMITTEE MEMBERSHIP QUALIFICATIONS – DIRECTOR OF LEGISLATIVE SERVICES, TO THE 5/12/14 COUNCIL MEETING.**

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.

Nay – 0.

**22. 7-A-4. FOURTH QUARTER 2013 PENSION REPORT – DEPUTY CITY MANAGER/FINANCE DIRECTOR**

**06:34:25**

Mr. Haines presented the fourth quarter 2013 report. The defined benefit Pension Plan showed strong annualized gains and the benchmarks performed well in the overall plan. The \$50 million mark was eclipsed which provided a sizeable plan and thereby more dynamic investment strategies. Potential suggestions should be available by mid-year to be able to continue maximizing options within the defined benefit pension investments.

OPEB outperformed its benchmark by 25 basis points. A changes were made to all union contracts that discontinued post-retirement health benefits for future employees.

**Council Comments:**

What percentage funded was the Pension Plan? It was 54.9% funded as of July 2013, so the comparison would be done in July 2014.

There was no public comment.

MOTION BY MR. MARKHAM, SECONDED BY MR. CHAPMAN: TO ACCEPT THE FOURTH QUARTER 2013 PENSION REPORT.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.

Nay – 0.

**23. 8. FINANCIAL STATEMENT: (Ending March 31, 2014)**

**06:40:22**

Mr. Vitola presented the March 2014 Financial Statement. There was a surplus of \$887,000 on a citywide consolidated basis, about \$289,000 higher than the budget. The negative expense variances narrowed for the second month in a row related to the encumbrance accounts, and the artificial negative budget was working its way out. The governmental revenues were still behind through 3/31. Court fines, parking fees, transfer taxes and other revenues were still behind the budget through March. Early indicators showed the components of government revenue related to the timing issues were starting to correct themselves. Transfer taxes were stronger in March which were paid and booked in April. Red light camera fees that were delayed were received. The first quarter Verizon franchise fees and Comcast's annual fees were booked. Enterprise funds were the most significant positive for the period. Electric and water results were both stronger than budget with electric 14% better than budget and 15% better than last March. Water sales were marginally higher while stronger sewer revenues were offset by higher treatment costs. The cash position was \$28.6 million which included \$20.9 million in the reserve, \$0.8 million in the Smart Meter accounts and \$6.9 million in operating cash.

**Council Comments:**

The governmental fund deficit expected improvement. Governmental revenues were a weak spot. Expenses on both sides and enterprise revenue funds improved.

There was no public comment.

MOTION BY MR. CHAPMAN, SECONDED BY MR. MARKHAM: THAT THE FINANCIAL STATEMENT ENDED MARCH 31, 2014 BE RECEIVED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.

Nay – 0.

**24. APPROVAL OF CONSENT AGENDA**

**06:45:06**

**B.** Approval of Organizational Meeting Minutes – April 15, 2014

**C.** Receipt of Alderman's Report – April 15, 2014

Ms. Bensley read the Consent Agenda in its entirety.

MOTION BY MS. HADDEN, SECONDED BY MR. MARKHAM: THAT THE CONSENT AGENDA BE APPROVED AS SUBMITTED.

MOTION PASSED UNANIMOUSLY. VOTE: 7 to 0.

Aye – Chapman, Hadden, Gifford, Markham, Morehead, Ruckle, Sierer.

Nay – 0.

**25. Meeting adjourned at 1:45 a.m.**

Renee K. Bensley  
Director of Legislative Services  
City Secretary