

**CITY OF NEWARK
DELAWARE
COUNCIL MEETING MINUTES
March 10, 2014**

Those present at 7:00 p.m.:

Presiding: Mayor Polly Sierer
District 1, Mark Morehead
District 3, Doug Tuttle
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
Community Affairs Officer Dana Johnston
Deputy City Manager Andrew Haines
Electric Director Rick Vitelli
Finance Director Lou Vitola

A. Executive Session pursuant to 29 *Del. C.* §10004 (b)(9) for the purpose of discussing personnel matters in which the names, competency and abilities of individual employees are discussed (City Manager).

Council entered into Executive Session at 5:30 p.m. and returned to the table at 6:53 p.m. Ms. Sierer advised that Executive Session B was removed from the agenda.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: THAT THE SALARY OF THE CITY MANAGER BE INCREASED BY 3% EFFECTIVE 1/1/14.

MOTION PASSED. VOTE: 5 TO 1.

Aye – Chapman, Hadden, Markham, Sierer, Tuttle.
Nay – Morehead.

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

2. PRESENTATION OF 2014 JEFFERSON AWARDS

02:15

Mayor Polly Sierer presented the Jefferson Awards to the following individuals:

CHRISTOPHER KITSON

As an Eagle Scout, Christopher worked at Tri-State Bird Rescue and Research performing renovations on an outdoor cage creating a safe environment for hundreds of injured birds to be rehabilitated and providing work for over 30 volunteers. Christopher also installed a fence around the outside dumpsters for Tri-State, noticeably improving the appearance of the facility. Through his work, Christopher has encouraged others to offer their time and talents to Tri-State and they continue to do so today.

MARC MARCUS

As the Assistant Executive Director of Friendship House, Inc. and Director of the Newark Empowerment Center, Marc serves with care and compassion far beyond the requirements of his professional roles. His selfless compassion and ability to provide the homeless community a "hand-up" that focuses on specific needs of individuals has helped hundreds of people become self-sustaining and productive members of society. His patience, mentoring, and sound counseling never fail, and his extraordinary balance of gentle caring and tough love are greatly appreciated by all.

HARRY MCKENRY

Harry has served the City of Newark as a volunteer for the police department for over two decades. At 90 years old, Harry comes twice a week to review and pull any

police reports that may be of interest to the media, make photocopies, and refiling the original reports. Harry is always seeking feedback on his performance and how he can help the department more efficiently. While Harry is retiring from his volunteer service with the City on his 91st birthday, his work is greatly appreciated and he will be missed.

ROY SIMONSON

Former City of Newark Public Works and Water Resources Director Roy Simonson has faithfully served the citizens of Newark since 2005. During that time, Roy made significant contributions to the Public Works and Water Resources Department through his encouragement of professional and sustainable management practices, upgrading of outdated or obsolete water and wastewater facilities, and addressing of citizen concerns with prompt, courteous, and professional responses. While he will be missed, Roy's leadership, knowledge and skill created an efficient environment in carrying out assigned duties on time and with minimal inconvenience to the public.

DOUGLAS TUTTLE

Retiring Newark City Councilman Doug Tuttle has made contributions to the City, and to public service statewide. Doug has worked on projects to improve services to Delawareans ranging from broadband access to improved public safety to more effective public service performance. As the former University of Delaware Public Safety Director, Doug worked to develop the University of Delaware Police Department. Additionally, he worked with the City to establish UNICITY bus service. Doug has served as a pragmatic leader and a steady voice of logic and knowledge on Newark City Council. He is considered a valuable resource by his colleagues in the Institute for Public Administration as well as by government leaders throughout Delaware.

3. 1. ITEMS NOT ON PUBLISHED AGENDA:

A. Public

14:35

John Morgan, District 1, pointed out that none of the 20 sites in four other states considered by TDC made a bid to have the power plant and data center constructed in their jurisdictions, that no governor of any state other than Delaware wanted the project and no officials of other New Castle County cities wanted it built in their city limits. He said the project was not worth it in terms of increased tax revenues or jobs.

Martin Willis, New Castle, provided a rendering to Council from the UD Executive Summary Master Plan dated 8/4/11 of the STAR Campus showing two sites – the cogen plant and the substation. He also referenced the Planning & Development Department's Zoning Code amendment dated 8/22/11 establishing a Science & Technology campus. He noted that following discussions with UD officials (including representatives of 1743 Holdings), the Planning & Development Department provided a report to establish a zoning district appropriate for the site.

Nick Wasilewski, District 3, read a statement asking who the investors were and where the money was coming from to raise \$1 billion for the TDC project. Mr. Markham asked for confirmation about the two feeds into the STAR Campus as part of the reliability was having two sources. Mr. Vitelli stated the two existing 138,000 volt lines on the STAR Campus come from the same source – the same substation that Delmarva owns. At one point they were fed from two different sources for the reliability for the Chrysler plant but since it closed, the transmission system was completely revamped so everything now feeds through and has only one source.

Amy Roe, District 4, read a letter signed by about 50 people asking Council to withdraw the City's public sponsorship of the TDC project. According to Ms. Roe documents obtained via FOIA indicate Ms. Houck did not read the application submitted by TDC prior to granting the City's support. They saw this as an inappropriate action undertaken by the City. The Delaware Economic Development office advised the project was on hold while they await financing information, so the group asked Council to withdraw the City's support at this time.

Ajit Majmudar, District 4 – unable to transcribe as his comments were inaudible.

Brett Zingarelli, District 4, does not understand how the City can continue spending more money when he keeps hearing the City does not have any money. For example, he referenced recent pay increases for the City Manager and City Secretary.

Ezra Temko, District 5, spoke on behalf of the Delaware Chapter of Americans for Democratic Action (a non-partisan community group) and thanked Newark Council candidates and elected officials who completed or planned to complete the candidate questionnaire which can be found on their website: delawareada.org

Brian Dunigan, District 3, referred to a Newark Bicycle Plan footnote about the Frazer Field pathway being removed at UD's request and now gated to restrict through use. He hoped UD would unlock the gate to allow bicyclists and pedestrians. With regard to storm water, he felt the meetings were helpful and stated UD was going backwards with their carbon footprint if they allow TDC on STAR Campus.

Larry Laber, District 6, worked on numerous power plants and was skeptical about employment claims made by TDC. He wanted the City to investigate a statement made by a UD Police officer about a noise permit being issued for an event on campus.

4. 1-B ELECTED OFFICIALS – None

5. 1-C-1. ADMINISTRATION

51:04

Caitlin Olsen, Assistant Director of Government Relations, said UD will no longer hold winter commencement; spring break begins 3/28 with classes resuming 4/7.

6. 1-C-2. STUDENT BODY REPRESENTATIVE

51:54

Geoffrey Heath, Student Government Association (SGA), reported President Harker visited (SGA) where he discussed topics pertaining to the student body. SGA worked with the office of General Counsel to form a student resource partnership which would offer free resources for students to obtain legal aid on a variety of issues.

7. 1-D. COUNCIL MEMBERS

53:24

Mr. Morehead

- Requested an update on the City's request for TDC's lease from 1743 Holdings. Mr. Herron replied he was awaiting a response from the University's attorney. Ms. Olsen was asked to look into this request.
- Would like a discussion of fire safety laws under Item 5A at a future Council meeting to determine whether Newark wants to go beyond State Code requirements.

Mr. Tuttle

- Acknowledged the nomination by his peers who surprised him with the Jefferson Awards recognition tonight.

Ms. Hadden

- Attended the third storm water workshop and was pleased with community input and suggestions and looked forward towards equity with the final proposal.
- Commended the City for receiving the League of Women Voters of Delaware FOIA audit award for having received the highest grade that could be given.

Mr. Chapman

- Announced the Council Workshop on 3/17 at 7:00 pm to discuss Boards and Commissions.

Mr. Markham

- Regarding the storm water meeting Mr. Kaufman said UD was looking to increase their contribution and wanted to know if they came back with a number. Ms. Houck said UD will participate when Council meets again after the community meetings. The other comment was some type of development impact fee which was new to him. From an outreach perspective he liked the meetings being held out in the community and thought Council should look at this for future Council meetings or workshops.
- Was pleased DelDOT responded to the City's request for salt.
- Activating the snow routes was a good idea and UD went above and beyond in offering free parking in their garage which made clearing the snow routes much easier.
- Referred to Governor Markell's storm water proposal – he would like to see the plan and find out how funds would come back to the municipalities. Mr. Markham felt the City should prioritize projects based on cost vs. number of people impacted.

- Requested an update on activity at the Paper Mill. Ms. Houck reported the contract was awarded late last year and while it was hoped to start in February, bad weather caused delays. The trailer was on site, and clearing work would be underway shortly. The site survey was complete and the erosion and sediment controls (the silt fence) should be going in shortly. Removal of the water tank and the concrete pad would be done soon after, and the concept and construction plans were available on the City's website. The "U Don't Need It Program" would be relocated to the STAR Campus.

Ms. Sierer

- Clothes in the Past Lane, a Main Street merchant, moved to 77 E. Main Street and partnered with Gloss Salon.
- Attended the DNP Merchant's monthly meeting.

Ms. Houck

- Announced that the City's Parks & Recreation Department received two awards from the Delaware Recreation and Parks Society. One recognized the department with the Outstanding Organization Award and specifically referenced efforts for the Pomeroy and Hall Trail, William Redd Park and the many trails developed there and the two skateboard parks. The George T. Sargisson Fellow Award was also given to Parks Superintendent Tom Zaleski for his contribution to sustaining parks in the State and his commitment to the profession.
- The United States Air Force Heritage of America Concert Band would perform in Newark on 4/21 at 7:00 pm at UD's Mitchell Hall. Tickets were free.
- Newark Police Department Officers Will Smith and Dan Bystricky were commended for attending to a resident in cardiac arrest which aided his survival.
- GE Aviation would add 70 jobs to their Newark facility over the next five years.
- Thus far there were 87 responses to the community garden survey.

51:54

8. MOTION BY MR. MOREHEAD, SECONDED BY MR. CHAPMAN: TO REMOVE EXECUTIVE SESSION ITEM B FROM THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 6 TO 0.

Aye – Chapman, Hadden, Markham, Morehead, Sierer, Tuttle.

Nay – 0.

01:07:13

9. MOTION BY MR. MOREHEAD, SECONDED BY MR. TUTTLE: TO REMOVE ITEMS 9-E AND 9-F FROM THE CONSENT AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 6 TO 0.

Aye – Chapman, Hadden, Markham, Morehead, Sierer, Tuttle.

Nay – 0.

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

- A. Recommendation to Award Contract No. 14-01 – Purchase of a 7.5/8.4/1/10.5 MVA Transformer

01:07:32

Mr. Vitelli reviewed the recommendation to replace a transformer installed in 1964 at the Phillips Avenue substation. Based on cost and capacity considerations, staff decided to purchase the larger 10.5 MVA transformer. WEG Electric was the low bidder who met all the specifications and had no exceptions. The unit would feed the Binns, Devon, Casho Mill Road and eventually down Barksdale Road towards Abbotsford.

Council Comments:

Explanation of reasons for purchasing the larger transformer – spare capacity was important and the feeders were about 5 MVA – with the larger 10 MVA, in the event of an emergency situation there was the ability to redirect the power and pick up more load; the request for bid included specs for the both sizes of transformers; it was important to plan for the equipment life span; there was less loss with voltage upgrades.

Public Comments:

Amy Roe, District 4, commented on the noise from the current transformer and asked if the new unit would be quieter. Mr. Vitelli advised the transformer had to meet

standards for sound and was going into an existing substation where there was already noise, train tracks and the warehouse.

Brett Zingarelli, District 4, was disturbed about the cost of the transformer.

Jeff Lawrence, District 3, asked why the transformer needed to be replaced. It was explained this was part of the investment in the City's infrastructure to keep the utility working and was included in the Capital Program.

Rob Gifford, District 3, confirmed that the transformer would be relied on for back up if the current transformer went down.

MOTION BY MR. MOREHEAD, SECONDED BY MS. HADDEN: THAT CONTRACT NO. 14-01 BE AWARDED TO WEG ELECTRIC CORPORATION FOR THE ALTERNATE BID OF A 10/11.2/14 MVA TRANSFORMER IN THE AMOUNT OF \$384,900.

MOTION PASSED UNANIMOUSLY. VOTE: 6 TO 0.

Aye – Chapman, Hadden, Markham, Morehead, Sierer, Tuttle.

Nay – 0.

11. 7. **SPECIAL DEPARTMENTAL REPORTS:**

A. Special Reports from Manager & Staff:

1. Recommendation for Insurance Coverage 2014-2015

01:28:49

Mr. Vitola presented the report for the renewal which in the absence of the new auto policy represented an increase of only 1.8% in total compared to expectations of 6% based on advice from the brokers. With the new auto policy the City's rates would fall by more than 6%, saving about \$47,000 vs. the expiring premiums. Travelers was the auto incumbent and quoted a reasonable premium, but CNA came in much lower. The coverage was almost identical and the higher deductible was recommended to save \$10,000 in premiums. The incumbent carriers would continue coverage on all other lines at flat or marginally increased premiums so the deductibles and policy details were not changing. Exposures and insured values were reviewed last year so the level of coverage was considered appropriate. The Inland Marine line represented the equipment floater for the Smart Meters which was required by the Bank of America Smart Meter lease, and the premium was equal to the expiring premium. Other than a \$5,000 increase in liability coverage premium there were no notable increases.

Council/Staff Comments:

What does Willis do and could the City take over this responsibility? They act as the shoppers and the quoters, and handle all the interaction with the insurance wholesalers. Additional staff would be required to perform this function in house. Other ways to approach the insurance shopping process were being explored. Workers comp was self-insured and continually funded by the City, but those numbers were not included in the report. Staff was working to compare out-of-pocket cash claims paid from the insurance vs. the City paying for premiums. Was there any progress on previous discussions about reducing the number of automobiles (thereby reducing insurance)? This data would be looked at every year with the Capital Program starting in 2015 after a full year with the GPS. The number of vehicles were flat at 189 from the expiring premium so there was neither growth nor shrinkage. CNA noticed reduced claims in the most recent year. Last year at this time Council asked for accident data (because of going from a \$1,000 to \$2,000 deductible). The five year claims history showed average claims per year of 19 and the July data forward was on pace with 16.

There was no public comment.

MOTION BY MR. TUTTLE, SECONDED BY MR. MARKHAM: TO AUTHORIZE STAFF TO BIND COVERAGE WITH THE CARRIERS AS DETAILED IN MR. VITOLA'S MEMO TO COUNCIL DATED 3/4/14.

MOTION PASSED UNANIMOUSLY. VOTE: 6 TO 0.

Aye – Chapman, Hadden, Markham, Morehead, Sierer, Tuttle.

Nay – 0.

12. 7-A-2. BAN THE BOX INITIATIVE

01:36:38

Mr. Haines reported there were three House amendments to Ban the Box which had been moved to the Senate. The initiative was to try to give everyone a fair chance in regards to employment. Staff was not looking for any legislative action from Council but rather an affirmative comment that the City supports the initiative.

Council/Staff Comments:

The generic forms that had the box were being replaced with revised forms that were on order. The current operating procedure was that everyone was given a fair chance on the resume and Mr. Haines is present during interviews to ensure EEOC compliance by giving guidance on good interview questions. Following the selection of the candidate, reference checks were done followed by a conditional offer and drug screening and criminal background check. Credit checks were not done for non-sworn personnel. This procedure would be made part of the whole policy process, appropriate after the Legislature's decision on the final version. It was suggested that position advertisements include statements that the City is an equal opportunity employer and supports the Ban the Box initiative.

Public Comments:

Brett Zingarelli, District 4, felt if background checks were still being run at the end of the employment process, this could potentially disqualify someone from employment which did not make sense to him and was a potential waste of time. Staff explained ban the box provided an opportunity for an objective analysis and a fair shake.

Danielle Emerling spoke on behalf of the League of Women Voters of New Castle County. The organization supported the idea that all levels of government had the responsibility to provide equality of employment for all persons. Banning the Box provided opportunities for offenders to be responsible citizens and integrate into the law-abiding community. Fair criminal screening standards helped individuals with a criminal record get a foot in the door towards employment which helped reduce recidivism. Because of disparities in the State of Delaware's arrests and incarceration rates, Banning the Box also helped to further racial equality and was considered a best practice by the U.S. Equal Employment Opportunity Commission. They supported the City's recent removal of inquiring into criminal background on employee applications as well as the City's more long-standing policy of not conducting criminal background checks during the initial application process. They urged Newark to follow the lead of Wilmington's City Council by voicing their support for Ban the Box.

Ezra Temko, District 5 and a member of Americans for Democratic Action, said from an efficiency standpoint (regarding the criminal background check), cities that have done this and studied the results found they have a more efficient process because they do not waste time doing the criminal backgrounds and looking into criminal records. In terms of the initial application the reason for this movement was the amount of prejudice that goes into the application. If there was a criminal background, since the employer has gotten to know the person based on their qualifications, they could take it in context as to whether the applicant was appropriate for the job. Part of the provision in the State legislation was that this applied to local governments. Mr. Temko asked for a statement or motion that Newark supported the spirit of the initiative.

Jeff Lawrence, District 3, asked for clarification whether this was a policy that the City would use in its hiring or something that would be imposed upon private companies – it was clarified this would be for the City only.

Amy Roe, District 4, supported Ban the Box and reminded Council they hired Bob Maxwell as their lobbyist and it was the job of a lobbyist to keep track of what was going on in Dover and to advocate for the City.

MOTION BY MR. TUTTLE, SECONDED BY MR. MOREHEAD: TO ACCEPT THE BAN THE BOX INITIATIVE REPORT FROM MR. HAINES DATED 3/3/14.

MOTION PASSED UNANIMOUSLY. VOTE: 6 TO 0.

Aye – Chapman, Hadden, Markham, Morehead, Sierer, Tuttle.

Nay – 0.

13. 7-A-3. ELECTION CERTIFICATION AND SWEARING IN PROCEDURES

01:56:46

Ms. Bensley reported that at the previous Council meeting questions were raised during public comment regarding the propriety of the City's election certification and swearing in procedures. Ms. Bensley reviewed the certification procedure that takes place the night of the election, the audit procedure that takes place the day after the election, and the swearing in of the newly elected Mayor and/or Council members. Ms. Bensley also reviewed the procedures for organizational meetings, recounts, and ties.

Public Comments:

Amy Roe, District 4, thanked Ms. Bensley for the summary of how things were supposed to work and asked is that how they actually work. She has reason to believe in the past it has not operated that way. She would like to make sure the Election Board was comfortable with meeting the certification deadline.

14. 8. FINANCIAL STATEMENT: (None)

15. APPROVAL OF CONSENT AGENDA

02:04:15

- A. Approval of Regular Council Meeting Minutes – February 10, 2014
- B. Receipt of Alderman's Report – February 27, 2014
- C. Receipt of Planning Commission Minutes – February 4, 2014
- D. Moving the Regularly Scheduled Council Meeting of Monday, April 14, 2014 to Tuesday, April 15, 2014 Immediately Following the Organizational Meeting
- E. **First Reading – Bill 14-07** – An Ordinance Amending Chapter 20, Motor Vehicles, Code of the City of Newark, Delaware, By Updating Prohibited U-Turns to Match Current Traffic Patterns and Signage – **Second Reading – March 24, 2014**
- F. **First Reading – Bill 14-08** – An Ordinance Amending Chapter 26, Streets, Code of the City of Newark, Delaware, By Extending the Time to Clear Sidewalks after Inclement Weather Events – **Second Reading – March 24, 2014**
- G. **First Reading – Bill 14-09** – An Ordinance Amending the Amended Pension Plan for Employees of the City of Newark, Delaware, Regarding the Creation of a Limited Enhanced Early Retirement Option – **Second Reading – March 24, 2014**
- H. **First Reading – Bill 14-10** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Providing Limited Enhanced Eligibility For Health Insurance Coverage for Retired Management Employees – **Second Reading – March 24, 2014**
- I. **First Reading – Bill 14-11** – An Ordinance Amending the Zoning Map of the City of Newark, Delaware By Rezoning From BL (Limited Business) to BB (Central Business District) 0.426 Acres Located at 201 East Delaware Avenue – **Second Reading – April 15, 2014**

Ms. Bensley read the Consent Agenda in its entirety.

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

MOTION PASSED UNANIMOUSLY. VOTE: 6 TO 0.

Aye – Chapman, Hadden, Markham, Morehead, Sierer, Tuttle.

Nay – 0.

16. Meeting adjourned at 8:57 p.m.

Renee K. Bensley
Director of Legislative Services/City Secretary