

**CITY OF NEWARK  
DELAWARE  
COUNCIL MEETING MINUTES  
May 12, 2014**

Those present at 5:30 p.m.:

Presiding: Deputy Mayor A. Stuart Markham, District 6  
District 1, Mark Morehead  
District 2, Todd Ruckle (arrived at 5:45 p.m.)  
District 3, Rob Gifford  
District 4, Margrit Hadden  
District 5, Luke Chapman (arrived at 6:15 p.m.)

Absent: Mayor Polly Sierer

Staff Members: City Manager Carol Houck  
City Secretary Renee Bensley  
City Solicitor Bruce Herron  
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.

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

MOTION PASSED UNANIMOUSLY. VOTE: 4 TO 0.

Aye – Gifford, Hadden, Markham, Morehead.

Nay – 0.

Absent – Chapman, Ruckle, Sierer

**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.

Council entered into Executive Session at 5:30 p.m. and returned to the table at 6:50 p.m. Mr. Markham announced that no action needed to be taken 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 MS. HADDEN, SECONDED BY MR. CHAPMAN: THAT ITEMS 2-A AND 2-B BE POSTPONED UNTIL THE JUNE 9 COUNCIL MEETING.

MOTION PASSED UNANIMOUSLY. VOTE: 6 TO 0.

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

Nay – 0.

Absent – Sierer.

**3.** MOTION BY MS. HADDEN, SECONDED BY MR. MOREHEAD: THAT ITEM 6-A-1, A RESOLUTION URGING THE DELAWARE MUNICIPAL ELECTRIC CORPORATION TO DELAY FURTHER ACTION ON A PROPOSED POWER PURCHASE AGREEMENT WITH THE DATA CENTERS, LLC, BE ADDED TO THE AGENDA.

MOTION PASSED UNANIMOUSLY. VOTE: 6 TO 0.

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

Nay – 0.

Absent – Sierer.

**4. PRESENTATION FOR NATIONAL BIKE TO WORK DAY**

**04:40**

Mr. Markham presented a proclamation read by Mr. Morehead to Mark Deshon, president of the Newark Bicycle Committee, declaring May 16 as Bike to Work Day.

**5. MOTION BY MS. HADDEN, SECONDED BY MR. GIFFORD: THAT ITEM 1-C, UNIVERSITY, BE MOVED AHEAD OF ITEM 1-A ON THE AGENDA.**

MOTION PASSED UNANIMOUSLY. VOTE: 6 TO 0.

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

Nay – 0.

Absent – Sierer.

**6. 1-C. UNIVERSITY**

**07:03**

(1) Administration – Rick Deadwyler, UD Director of Government Relations, introduced Dr. Charlie Riordan, Vice Provost of UD and chairman of the UD Working Group on The Data Centers, LLC project. Dr. Riordan gave background on the timeline, purpose, membership and process of the working group, which began in the fall of 2013. The group has been looking at the environmental impact of the project and the question of the sizing of the proposed cogeneration facility. Two consultants have been enlisted as part of this evaluation: Environ, an environmental impact consulting firm, and HDR, an energy firm addressing the sizing and delivery of the cogeneration facility. The working group is near completion and will have a draft report for the administration to review within two weeks prior to UD making a decision on how best to proceed with the project. Dr. Riordan expressed commitment to making the executive summary of the working group's report available to public. UD has entered into a non-disclosure agreement with TDC.

Ms. Hadden thanked him for coming and addressing the audience.

Mr. Morehead asked about the qualifications of the consultants, which Dr. Riordan cited and assured him possess the right expertise to answer questions and do rigorous assessment, including a noise assessment.

Mr. Gifford asked for elaboration on how a data center benefits UD's mission. Dr. Riordan gave an overview of guiding principles for partners on the STAR Campus, including expectations that partners will operate with core mission and values of UD, to ensure work can provide synergy with academic units on campus, student internship potential and research opportunities. While this may not happen on day one, opportunities will be available in the future. When opportunities arise of potential partners interested in residing on STAR campus, a working group meets to review proposals. This working group felt that TDC's proposal was worth exploring further and doing further due diligence, which is what they are doing now. Job creation is taken seriously and valued for both short term and long term jobs. In addition, the ability to provide infrastructure on campus to meet broader goals in developing the STAR Campus is also considered. The current timeline is consistent with the timeline expected as you build partnerships and do due diligence regarding any new project.

Mr. Gifford asked what impact will the Faculty Senate vote endorsing no fossil fuel burning power plant on the STAR Campus have on the working group's report. Dr. Riordan stated that the Faculty Senate vote and other information being received is being taken very seriously.

Mr. Gifford asked why Dr. Steve Dentel recently was added to the group. Dr. Riordan stated that through conversation between Dr. Dentel, a professor in civil and environmental engineering at the University, and Provost Grasso, Provost Grasso thought Dr. Dentel had expertise that could be helpful for the working group to consider.

Mr. Gifford asked what influence the results of the working group would have with the administration. Dr. Riordan stated that the working group is looking at the environmental impact and appropriate sizing within the larger vision of the STAR Campus and UD as a whole. The group also has been charged with making well validated and

supported recommendations to the UD leadership. The recommendations are advisory, but will be seriously considered. The administration will make the final decision.

Mr. Ruckle asked if UD could look into adding scrubbers to the smoke stacks. Dr. Riordan stated that there was ongoing technological research going on at UD and the University is working to leverage that research, test ideas and develop partnerships.

Mr. Markham encouraged the University to come back to future meetings to provide additional information.

7. **1-C-2. STUDENT BODY REPRESENTATIVE:** None

8. **1. ITEMS NOT ON PUBLISHED AGENDA:**

A. Public

**30:26**

**John Morgan**, District 1, reviewed the history of the previously referenced Faculty Senate resolution and asked Council to consider that in any upcoming decisions related to the TDC project.

**Michael Chajes**, Covered Bridge Farms, described the positive support of the Faculty Senate resolution and urged Council and the University to oppose the TDC project as he felt it was inconsistent with the University and City's missions.

**Anne Maring**, District 1, thanked the Faculty Senate for passing their resolution, described the growth of citizen opposition in the City, and stated disappointment in the University for considering the TDC project.

**Martin Willis**, New Castle, asked what the alternative plan is if the TDC project does not happen.

**Edward Streets**, District 4, spoke in opposition to individuals soliciting on Main Street without a permit.

**Tim Spaulding**, District 4, spoke in opposition to the TDC project and in favor of the Faculty Senate resolution.

**Heather Dunigan**, District 3, spoke on increased citizen involvement in City government as a result of the TDC project and gave action items that she would like to see the City complete.

**Donna Means**, District 5, spoke on the University's due diligence process, the number of Newark residents in opposition to the TDC project, the positions of various Council members, and the motives of those advocating for the TDC project.

**Vince D'Anna**, District 5, spoke about FOIA concerns regarding the resolution in item 6-A-1.

**Nancy Willing**, District 3, spoke on the relationship between Black & Veatch and TDC and why the City has not consulted with Black & Veatch. Ms. Willing also asked Council to consider a health impact study and if a formal acknowledgement of the most recent information from TDC had been sent. Mr. Markham advised that the City was still working on a response and it had not yet been sent.

**Margaret Cassling**, District 1, responded to the earlier comments of Mr. Willis and expressed concerns about the health impacts of the TDC project.

**Len Schwartz**, District 3, congratulated the City on the new park at Curtis Paper Mill, stated his disapproval of DEMEC in regards to their negotiation with TDC and his opposition to non-disclosure agreements.

**Brett Zingarelli**, District 4, disagreed with the City promoting businesses on its social media accounts, the Downtown Newark Partnership, and the role of the City Manager in Newark's government.

**Ken Grant**, District 2 and media contact for TDC, apologized for not better communicating the environmental benefits of the proposed CHP facility.

**Amy Roe**, District 4, relayed information regarding the UD climate action plan and asked questions about TDC's response regarding Councilman Morehead's questions and

the integrity of the information in that response. She felt the zoning verification should be revoked immediately.

**9. 1-B. ELECTED OFFICIALS**

**01:22:44**

State Representative John Kowalko responded to Mr. Grant's earlier statement and stated that he felt the emissions reduction claims were inaccurate. Mr. Kowalko also spoke regarding other construction on the University campus and his belief that the University is not using union labor for these projects. He further stated that he believes the tax revenue numbers are inflated. Mr. Kowalko would also like to hear more about the University being interested in what is best for the community. Mr. Kowalko urged the City to write a letter to the University asking for a copy of the non-disclosure agreement, the credentials of HDR in grid supply power, the original mission statement of the University, and if the lease between the University and TDC can be cancelled.

**10. 1-D. LOBBYIST: None**

**11. 1-E. CITY MANAGER**

**01:30:23**

Ms. Houck gave an update on the Curtis Mill Park project progress including the outside funding that has been obtained and upcoming related traffic work. Ms. Houck also updated Council on the community garden project, Bike to Work Day, the Newark Bike Project bike donation drive, the arrest of a suspect in the bomb threat at Porter Automotive Group, and the arrest of three suspects in a pizza delivery employee robbery.

**12. 1-F. COUNCIL MEMBERS**

**01:33:02**

**Ms. Hadden**

- Attended the financial planning workshop, the NPD memorial service, and a Board of Adjustment workshop hosted by IPA.
- Reminded everyone about the Memorial Day parade on 5/18.

**Mr. Gifford**

- Thanked citizens for participating in Council meetings.
- Attended the Planning Commission meeting and updated the audience on the status of the cell tower installation request from the 4/15 Council meeting.
- Asked if students soliciting on Main Street are required to obtain permits. Ms. Bensley explained that they should request a letter of permission from the City Secretary's office that the police approve.
- Attended the Faculty Senate meeting and the financial planning workshop.
- Spoke regarding Mr. Grant and TDC's statements and encouraged accuracy.

**Mr. Morehead**

- Asked Mr. Vitola if the City has enough data to evaluate the smart meter project. Mr. Vitola stated that the City does not have enough data. Mr. Morehead asked about the assistance the City is giving Dover with the project. Mr. Vitola stated that Dover was looking for information about early steps in the process. Ms. Houck added that Dover understood that there was an evaluation period. Mr. Morehead asked if there would be an opportunity for Council to review the project and the return on investment. Mr. Vitola said that is the plan.
- Asked Mr. Vitola to add the reasoning for discontinuing the voluntary green energy fund to information to the public. Mr. Markham asked Mr. Vitola to give that reasoning. Mr. Vitola stated that the current blocks have expired and that DEMEC is not procuring additional blocks in the future due to price.
- Promoted Bike to Work Day locations around the City listed on the website, the 5/15 meeting regarding upcoming work on the upper Christina River, the City's Spring Concert Series, the Police Department promotion ceremony on 5/22, and the 5/21 Community Garden meeting.
- Spoke regarding Mr. Grant's article, other data centers and power plants, and the accuracy of the TDC's state of the art claims.

**Mr. Ruckle**

- Thanked the police for their efforts in arresting suspects in robberies in the district.
- Extended condolences on the death of a constituent in a car accident.

- Spoke on the closing of Brunswick Bowling Lanes.
- Promoted an upcoming public safety meeting for District 2.
- Would like Council to consider alternatives to alleviate late night meetings.

**Mr. Chapman**

- No comments at this time.

**Mr. Markham**

- Announced that the next Council meeting will be Tuesday, 5/27 due to the Memorial Day holiday.
- Reminded Council that policies discussed in the financial workshop are what staff use to prepare the budget, so Council should give staff feedback on the policies.
- Stated personal opposition to HB 333 and asked for Council input. Ms. Hadden and Mr. Morehead echoed Mr. Markham's opposition. Mr. Kowalko stated that he is happy to take the City's opposition to the General Assembly. Mr. Morehead asked if there should be a resolution. Mr. Markham stated that the City Secretary could write a letter in opposition to HB 333 on behalf of Council. It was the consensus of Council that the City Secretary should write and send the letter on behalf of Council.
- Spoke about the stormwater legislation being considered in the General Assembly and asked staff to find projects that would be able to utilize the funding generated by the State.
- Promoted the Memorial Day parade, University graduation, and UDon't Need It.
- Asked for applicants for the District 6 Planning Commissioner vacancy.

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

14. 3. **SPECIAL DEPARTMENTAL REPORTS:**  
A. Special Reports from Manager & Staff: None

15. 4. **ORDINANCES FOR SECOND READING & PUBLIC HEARING:** None

16. 5. **RECOMMENDATIONS FROM THE PLANNING COMMISSION AND/OR PLANNING & DEVELOPMENT DEPARTMENT:** None

17. 6. **ITEMS SUBMITTED FOR PUBLISHED AGENDA:**

A. **Council Members**

1. **Resolution 14-\_\_:** A Resolution Urging the Delaware Municipal Electric Corporation to Delay Further Action on a Proposed Power Purchase Agreement With The Data Centers, LLC – Councilman Markham

**01:56:27**

Mr. Markham spoke about the purpose of the resolution and that while a resolution does not have the force of law, it is a request for DEMEC to wait until all additional information is obtained before proceeding.

Mr. Morehead stated that he would like to offer an amendment.

MOTION BY MR. MOREHEAD, SECONDED BY MR. CHAPMAN: TO ADD AFTER THE FIRST WHEREAS CLAUSE ON PAGE 2 OF THE RESOLUTION THE FOLLOWING: WHEREAS, COUNCIL UNDERSTANDS THAT ON MAY 5, 2014, THE FACULTY SENATE OF THE UNIVERSITY PASSED A RESOLUTION, BY VOTE OF 43-0 WITH 8 ABSTENTIONS, RECOMMENDING THAT THE TDC PROJECT NOT BE CONSTRUCTED ON THE STAR CAMPUS SO LONG AS ANY SUCH PROJECT CONTAINS ANY FOSSIL-FUEL BURNING POWER PLANT.

There were no comments from Council on the motion.

Question on the Motion was called.

MOTION PASSED UNANIMOUSLY. VOTE: 6 TO 0.

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

Nay – 0.

Absent – Sierer.

**Public Comment:**

John Morgan, District 1, urged support for the resolution and gave additional background on the TDC project.

Anne Maring, District 1, asked if elected officials would be at the DEMEC meeting and if elected officials could be on the DEMEC board. She also asked for expansion of the use of text messages to notify citizens of important issues.

Vince D’Anna, District 5, expressed concerns about the resolution and hoped it was not too aggressive in involving the Council in a contract negotiation where he felt it has no part.

Nancy Willing, District 3, asked about Council considering the purchase power agreement in an open public hearing.

Jen Wallace, District 3, expressed support for the resolution and questioned the City’s participation in DEMEC.

Len Schwartz, District 3, expressed support for the resolution and concern about the purchase power agreement process.

Mr. Markham gave an overview of the setup and the City’s participation in DEMEC, as well as the history of electrical purchases prior to participation in DEMEC.

Anne Maring, District 1, requested that Council submit an official statement to be read at the DEMEC meeting. Mr. Markham said the resolution is Council’s official statement to DEMEC.

Amy Roe, District 4, supported the resolution and the emergency meeting that was cancelled and would like to see regular updates to Council about DEMEC action.

There were no further comments from Council.

MOTION BY MS. HADDEN, SECONDED BY MR. MOREHEAD: TO APPROVE THE RESOLUTION AS AMENDED.

MOTION PASSED UNANIMOUSLY. VOTE: 6 TO 0.

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

Nay – 0.

Absent – Sierer.

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

**18. 7. RECOMMENDATIONS ON CONTRACTS & BIDS:**

**02:24:24**

**A. Recommendation to Waive Bid for Network Cabling Services**

Mr. Haines presented the recommendation to waive the bid for network cabling services, which was related to the door access program approved in April. The City is looking to update its phone system by installing a voice over IP system which would provide additional features and functionality. However, the limitations of the building and its wiring prohibited that installation. The City requested a proposal from the company doing the wiring for the door access program so wiring to upgrade the network cabling can be done simultaneously. The proposal to wire 132 locations with CAT6 cable came

in at \$42,120. Staff is recommending that the bid process be waived in order to move forward with the additional cabling and to allow IT to move forward with investigating options through the State contract for voice over IP services.

**Council/Staff Comments:**

Ms. Hadden asked if there was asbestos in the building and expressed concern that it would affect the cost and the employees if found. Mr. Haines stated that he was unaware of any issues with asbestos in the building.

Mr. Gifford asked if any problems are anticipated with using CAT6 wiring instead of CAT5E. Mr. Haines stated that staff does not anticipate any issues and that CAT6 came in at a lower price than CAT5E. Mr. Gifford asked if there are any wireless options. Mr. Haines stated that with the phone upgrades, a wireless solution is not the best option.

Mr. Ruckle asked if the wiring could be moved if there was an eventual move to a new building. Mr. Haines stated that these enhancements could be relocated and the wires could be reused.

Mr. Chapman asked if there was a specific citation as to why the bid needed to be waived. Mr. Haines stated it was because of the amount and because it was a State Contract. Estimates for this service were over \$50,000 from other vendors. Mr. Chapman asked if the City is confident that they cannot get a better price through the bid process. Mr. Haines stated that additional calls had been made, but since the vendor is already in the walls and ceilings for the door access wiring, from a labor and encumbered cost standpoint, it was a tough number for other companies to beat. This should be around a \$10,000 cost savings than bidding out the project separately. Mr. Chapman asked if we were confident in the quality of the work. Mr. Haines responded yes.

Mr. Markham stated that the cabling should also enhance the network to provide better network speeds and the ability to video conference in addition to the voice over IP phone system.

**Public Comment:**

Pat Wisniewski, District 3, asked if the price included additional equipment and thought that there was opportunity for lower pricing estimates in the bid process.

Brett Zingarelli, District 4, stated he thought the reason the cost was high was due to prevailing wage.

Discussion was brought back to the table.

Mr. Chapman asked if Mr. Haines could respond to the questions raised by the public. Mr. Haines stated he would need to get back to Council with additional information at a later time. Mr. Chapman asked if the primary reason for waiving the bid was so the lines could be run sooner. Mr. Haines stated that staff believed the price was good based on earlier estimates and did not want to miss the timing with the door project as it would cause the wiring to have to be a separate project. Mr. Chapman asked how long Advantech would be wiring the doors. Mr. Haines said he would have to check, but that coming back by the next Council meeting should not be an issue. Mr. Chapman asked if the City could go through the bid process in two weeks. Mr. Haines and Ms. Houck stated that the bid process takes approximately six to eight weeks to complete and reviewed the process. Mr. Chapman asked if Advantech would be completed with the door wiring before then. Mr. Haines stated he believed they would be. Mr. Chapman stated that if in two weeks Council did not want to waive the bid process, two more weeks have been added to the six to eight week timeline.

Mr. Gifford stated that he would agree with postponing the vote for two weeks.

MOTION BY MR. CHAPMAN, SECONDED BY MR. GIFFORD: TO POSTPONE ITEM 7-A, RECOMMENDATION TO WAIVE BID FOR NETWORK CABLING SERVICES TO THE 5/27/14 COUNCIL MEETING.

MOTION PASSED UNANIMOUSLY. VOTE: 6 TO 0.

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

23. **8. FINANCIAL STATEMENT**: None

24. **9. APPROVAL OF CONSENT AGENDA**

**02:40:16**

- A. Approval of Regular Council Meeting Minutes – April 15, 2014
- B. Receipt of Alderman’s Report – May 1, 2014
- C. ***First Reading – Bill 14-15*** – An Ordinance Amending Chapter 2, Administration, Code of the City of Newark, Delaware, By Updating Management Classifications and Fringe Benefits – ***Second Reading – May 27, 2014***
- D. ***First Reading – Bill 14-16*** – An Ordinance Amending Chapter 20, Motor Vehicles, Code of the City of Newark, Delaware, By Adding Requirements to Complete a Drug and Alcohol Evaluation and a Program of Education or Rehabilitation For Individuals Convicted of Driving Under the Influence Under the Age of 21 in Compliance With Delaware State Code – ***Second Reading – May 27, 2014***
- E. ***First Reading – Bill 14-17*** – An Ordinance Amending Chapter 20, Motor Vehicles, Code of the City of Newark, Delaware, By Designating Portions of Ritter Lane as “No Parking Anytime” – ***Second Reading – May 27, 2014***

Ms. Bensley read the Consent Agenda in its entirety.

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

MOTION PASSED UNANIMOUSLY. VOTE: 6 TO 0.

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

25. **Meeting adjourned at 9:39 p.m.**

Renee K. Bensley  
Director of Legislative Services  
City Secretary